The contribution of civil society to combatting torture and ill-treatment: a cross-national analysis

by Lena Barrett

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Abstract

A majority of states have signed treaties promising not to torture; torture, however, remains widespread. Something further is needed to turn *de jure* commitment to *de facto* compliance by the state. This research focuses on the contribution of civil society to this process, employing a mixed methods approach to examine the conditions under which civil society can influence the state, and the mechanisms through which civil society activism results in state change.

Quantitative evidence demonstrates that where scope conditions are met, states with higher openness to civil society activism perform better in relation to torture than states with lower openness to civil society activism. Using case studies from Bulgaria, Albania, Romania and Macedonia, it is argued that while the prospect of EU accession provides an opportunity for states to reform their practices on torture, with states being particularly vulnerable to influence during this period, such reform will only be effective where civil society is in a position to exploit this vulnerability to influence. It is argued that civil society organisations are more likely to be successful where they can access decision-makers, state agents on the frontline, and individuals deprived of their liberty. Such access enables civil society actors to carry out "norm patrol", which acts as a pathway by which the state can begin the process of internalising the norm, in line with agentic constructivism theory.

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List of Abbreviations

AI	Amnesty International
AHC	Albanian Helsinki Committee
APADOR-CH	Association for the Defense of Human Rights in Romania – the Helsinki Committee
BHC	Bulgarian Helsinki Committee
CCTV	Closed Circuit Television
CEDAW	UN Convention on the Elimination of All Forms of Discrimination against Women
CIDT	Cruel, Inhuman or Degrading Treatment or Punishment
CIRI	Cingranelli and Richards' Human Rights Data Project
CPT	(European) Committee for the Prevention of Torture
CSI	Civil Society Index
CSO	Civil society organisation
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECPT	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECtHR	European Court of Human Rights
ERRC	European Roma Rights Centre
EU	European Union
FH	Freedom House
GONGO	Government-organised 'NGO' (ie. pseudo NGO)
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IHF	International Helsinki Foundation for Human Rights
IPA	(EU) Instrument for Pre-Accession Assistance
LGBT	Lesbian, Gay, Bisexual and Transsexual
MHC	Macedonian Helsinki Committee for Human Rights
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organisation
NPM	National Preventive Mechanism
OHCHR	Office of the UN High Commissioner for Human Rights
ODIHR	Office for Democratic Institutions and Human Rights
OPCAT	Optional Protocol to UNCAT
OSCE	Organization for Security and Co-operation in Europe
OSI	Open Society Institute
SPT	UN Subcommittee on Prevention of Torture
UNCAT	United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
USAID	United States Agency for International Development
VMRO-DPMNE	Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity

Introduction

Most states in the world have undertaken not to torture.[1] Despite this formal commitment, there are "persistent gaps between rhetorical success and empirical reality."[2] In its 2016 report, Amnesty International estimated that at least 122 states continued to torture or otherwise ill-treat people. The act of making an international commitment is not in itself the factor that differentiates states that torture from those who do not.[3] What then turns *de jure* commitment to *de facto* compliance by the state? This research focuses on the role played in this process by one set of actors: civil society, and in particular, that subset of civil society that takes the form of non-governmental organisations (NGOs). The purpose is to explore the ways in which civil society activism contributes to improved state performance on torture and ill-treatment.

1. Ending torture: the international normative framework

The prohibition on torture did not begin with the international human rights movement of the mid-twentieth century. Before it was codified in international conventions, it was understood to be *jus cogens* or a peremptory norm. In England, parliament rejected the legal use of torture in 1640, with the abolition of the Court of

[1] The prohibition on torture is enshrined in the International Covenant on Civil and Political Rights (ICCPR), to which 170 states are party as of April 2018, and elaborated in UNCAT, to which 163 states are party as of the same date. Lists of states party to UN treaties are available from https://treaties.un.org The prohibition on torture is also replicated in European, Inter-American and African regional human rights treaties.

[2] Emilie M. Hafner-Burton and James Ron, 'Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes' (2009) *World Politics* 61(2) 360-401, 362.

[3] Oona Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) *Yale Law Journal* 111, 1935-2042.

Star Chamber, where torture evidence was accepted, and the refusal to issue any further torture warrants.[4] It has been suggested that it was easier for a common law system to do so than for the continental civil law systems derived from Roman law, which relied more heavily on confession evidence, a risk factor for torture.[5] Lord Bingham identifies the underlying motivation of Parliament as a matter of moral conscience, mixed with a pragmatic concern regarding its utility:

> the common law was moved by the cruelty of the practice as applied to those not convicted of crime, by the inherent unreliability of confessions or evidence so procured and by the belief that it degraded all those who lent themselves to the practice.[6]

More widely, the spread of Enlightenment values in the eighteenth century led to a decline in the painful judicial punishments applied in previous eras.[7] By 1911, the Encyclopaedia Britannica was confidently asserting that torture was of historical relevance only, at least as far as Britain was concerned. The subsequent course of the twentieth century made it clear that torture was very much a contemporary phenomenon. The right not to be tortured featured high on the list of rights set out in Universal Declaration on Human Rights 1948. It appears in the International Covenant on Civil and Political Rights (ICCPR) Article 7. The definition and the associated state obligations are expanded on in some detail in the UN Convention against Torture and other forms of Cruel, Inhuman and Degrading treatment (UNCAT). The Inter-American, European and African regional human rights treaties all have an equivalent. The right not to be tortured is absolute and non-derogable.

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[4] This history is set out by Lord Bingham of Cornhill in *A and others v the Secretary of State for the Home Department* [2005] UKHL 71, para 12.
[5] Ibid, para 11.
[6] Ibid.
[7] See for example the 1764 publication of "*Del delitti e delle pene*" by Cesare Beccaria; its influence is discussed in JD Bessler, 'Revisiting Beccaria's Vision: The Enlightenment, America's Death Penalty, and the Abolition Movement' (2009) *Northwestern Journal of Law and Social Policy* 4(2), 195-328.

These treaties do not simply codify the prohibition on torture; they also introduce important provisions related to enforcement, including complaint mechanisms for individuals who have had their rights violated: complainants can bring their case to the UN Human Rights Committee under the ICCPR[8] and the UN Committee against Torture under UNCAT.[9] Where the state is party to the European Convention on Human Rights and Fundamental Freedoms, the individual has the potential to bring a case to the European Court on Human Rights; there are equivalents in the other regional systems. A further compliance mechanism is the creation of national institutions: the Optional Protocol to UNCAT (OPCAT) part IV obliges states to "maintain, designate or establish" a National Preventive Mechanism, an independent body with the mandate to prevent torture at the domestic level. The creation of national-level bodies acknowledges the importance of local contextual understanding in analysing the causes of torture, the ways in which it manifests itself within a given state, and the local social and political frameworks within which it must be tackled.

Beyond the Conventions, the human rights systems provide further opportunities to examine and comment on states' performance on torture, including through on-site visits by the UN Special Rapporteur on Torture, and the Universal Periodic Review mechanism of the UN Human Rights Council. This corpus of law and practice and this set of institutions together establish the norms that states must observe and the forums in which they can be called to account for failing to do so. It is further supplemented by soft law instruments.[10]

[8] Provided the state in question has also ratified the Optional Protocol to the ICCPR.
[9] Provided the state in question has made the necessary declaration under Art 22 of UNCAT.
[10] Including *Standard Minimum Rules for the Treatment of Prisoners* (1977), updated in 2015 as the Mandela Rules; *Code of Conduct for Law Enforcement Officials* (1979); *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988).

As can be seen from this brief account, the prohibition on torture has deep historical roots, predating modern human rights architecture, but now integrated within it. This investigation begins from the standpoint that the norm prohibiting torture is well-established. The question examined here is fundamentally empirical rather than normative: what turns state commitment into state compliance? What makes the "ought" the "is"?

2. *From the normative to the empirical: an enquiry into the role of civil society in bringing about state compliance*

In international law, the focus traditionally has been on states as the major actors: they are the signers of treaties, the locus of the obligation to respect, protect and fulfil human rights. Human rights treaties constrain a state's freedom: a state must have compelling reasons to accept such constraints. For rationalists, state choices are framed in terms of global military-economic power structures: states are pursuing economic and reputational advantages by accepting international human rights norms. Without discounting the importance of such motivations, this research project is sympathetic to the claims of constructivists, with their emphasis on the importance of ideation, and the process by which states over time come to internalise norms: where things are done because they have become "the done thing". In this study, rationalist and constructivist theories are viewed as complementary rather than competing: states are motivated by a complex mixture of reasons, and both sets of theories contribute to disentangling the underlying incentives. This approach is in line with Goodman and

Jinks' plea for "theoretical eclecticism" when searching for explanations for changes in human rights changes at global level.[11]

This research examines the role of civil society, particularly in the form of non-government organisations (NGOs), in the process of state reform on torture. NGOs here are understood as organised collectives of private individuals, outside state governance structures but with an avowed intention of influencing them, through non-violent means, in pursuit of ideals (in the shape of human rights norms) rather than profit. Both rationalist and constructive approaches can allow for a role for NGOs. On the basis of the rationalist understanding that states are motivated by reputational advantage, NGOs can exert influence by threatening to expose state abuses and thus damaging the state's reputation. From the perspective of "agentic constructivism", as espoused by Sikkink, NGOs are seen as agents of socialisation of states, spreading "new understandings of the ways in which states ought to behave, and new understandings of the national interests of states".[12] This theory forms the bedrock of the current research.

Prior to embarking on this research, the author worked in a number of different NGOs between 1996 and 2005. These years spanned what was arguably the high-water mark of the "romance" between civil society, international organisations such as the UN, and sympathetic states, with heady triumphs such as the anti-landmine treaty and the

[11] Ryan Goodman and Derek Jinks, 'Incomplete Internalization and Compliance with Human Rights Law: A Rejoinder to Roda Mushkat' (2009) *European Journal of International Law* 20(2), 443-446, 444.

[12] Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (WW Norton 2011) 237.

creation of the International Criminal Court.[13] In the immediate aftermath of the landmine ban and the ICC's creation, activist Kenneth Anderson reported that every international meeting he attended featured "a sort of adulatorio to NGOs, a hymn of thanksgiving for 'international civil society'".[14] This heady moment did not last long: in 2001 came the events of 9/11 and a marked change in the leading global narrative, with anxieties over security coming to dominate the agenda. More recently, much of the narrative on civil society focuses on the phenomenon of shrinking civil space, a widespread international trend with "many deep-seated structural drivers, in part linked to the world's authoritarian turn, in part the reflection of an emboldened anti-liberal social agenda."[15] An EU policy paper from April 2017 noted that "the global clampdown on civil society has deepened and accelerated in very recent times". It observed that this clampdown has "assumed an unprecedented depth and seriousness, and…is likely to continue for the foreseeable future".[16] If civil society plays a key role in bringing about human rights improvements, the need to understand how and when it fulfils this function takes on a new urgency, given its embattled state in many countries. This research looks at the conditions under which civil society can influence the state, and the mechanisms through which civil society action results in state change.

[13] Kenneth Anderson, 'The Ottawa Convention Banning Landmines, the Role of International Non-governmental Organizations and the Idea of International Civil Society' (2000) *European Journal of International Law* 11, 91-120, 92 and 104.
[14] Ibid 112.
[15] European Parliament Policy Department, *Shrinking Space for civil society: the EU response*, April 2017, EP/EXPO/B/COMMITTEE/FWC/2013-08/Lot8/12, at 5.
[16] Ibid at 10.

3. Research methods and structure

The research project is driven by an inherently pragmatic worldview: a quest to find what works in reducing state abuse. This philosophy lies behind the choice of a mixed methods approach, with both quantitative and qualitative elements.[17] Hafner-Burton and Ron have argued that there is a tension between quantitative and qualitative methods in this area, with researchers who rely on qualitative methods tending to reach more optimistic conclusions than scholars who use quantitative methods.[18] Qualitative researchers may be drawn to case studies where states have achieved anomalous success in the reform process over and above states demonstrating more indeterminate outcomes, leading to findings of limited generalisability. Quantitative researchers may find that quantifying torture levels is so challenging that changes in torture levels are obscured, so that a change in state performance on torture is difficult to identify; the search for drivers of such change then becomes redundant. The challenges specific to each method are considered in further detail in later chapters: the difficulties inherent in measuring torture and civil society activism for the purposes of quantitative research are considered in chapter two, while the methodological issues pertaining to qualitative case study research are examined in chapter four. The decision was made to integrate these explorations into the body of the research rather than set them out as a discrete methodology chapter, so that the rationale for making the relevant research choices is interleaved with an account of the research itself. Both quantitative and qualitative approaches have

[17] The association between pragmatism and a mixed method approach is explored in Abbas Tashakorri and Charles Teddlie, *Mixed Methodology: Combining Qualitative and Quantitative Approaches* (Sage Publications 1998).

[18] Emilie M. Hafner-Burton and James Ron, 'Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes' (2009) *World Politics* 61(2), 360-401, 362.

distinct strengths and weaknesses; by employing both, it becomes possible to triangulate the findings, increasing their robustness.

Similarly, the chapters are ordered in a manner that intertwines theoretical material with empirical evidence, so that each can inform the other. Analysing the available data is an inherently iterative process, as the researcher cycles between theory, quantitative findings and empirical observations from fieldwork, each part challenging and yielding insights for the other parts. The sequencing of chapters reflects this iterative process, with the first chapter taking a theoretical approach, chapter two focusing on quantitative investigation, chapters three and four returning to theory, before chapters five onwards set out empirical observations from the fieldwork.

Chapter one opens by considering the question of why states torture, and why and when they reform their practices on torture. Having posited in this chapter that civil society activism would be expected to contribute to a reduction in torture, at least when certain scope conditions are met (hypothesis one), chapter two explores the empirical evidence for the proposition, examining whether states that experience higher levels of *civil society advocacy* also demonstrate a better performance on torture compared to states with lower advocacy. As data on civil society advocacy levels are relatively limited, the chapter also considers whether a state's *openness to activism* influences its performance on torture. Statistical tests are applied to examine whether there is an association between the dependent variable (state performance on torture) and independent variables (levels of advocacy; state openness to activism), controlling for factors such as conflict, population size and levels of democracy.

These tests scrutinise whether it is possible to falsify the hypothesis that a relationship exists between the dependent and independent variables.

Chapter two will suggest that there is at least an association between civil society activism and state practice on torture. A causal link cannot definitively be established based on the quantitative evidence alone, and the case studies in later chapters will return to this question of causation. Before embarking on the detailed qualitative analysis, it is useful to consider how civil society activism might be expected to influence state practice on torture. This is the subject of chapter three. While much of the existing literature focuses on a particular subset of activism (naming and shaming,[19] strategic litigation,[20] torture prevention work[21]) or treats activism as a single undifferentiated activity, this research attempts to unpick the distinct contribution of the various strands of activism. Chapter three introduces a typology of organisations and the activities they undertake. These theories are then tested against four case studies, introduced in chapter four, with chapters five to eight each detailing a case study. All four case studies are set in post-socialist states in south-eastern Europe: Bulgaria, Albania, Romania and Macedonia.[22] Based on the scope conditions for torture reform set out in chapter one, these four states are identified as

[19] See for example Emilie M. Hafner-Burton, 'Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem' (2008) *International Organization* 62(4), 689-716; James Meernik, Rosa Aloisi, Marsha Sowell and Angela Nichols, 'The Impact of Human Rights Organizations on Naming and Shaming Campaigns' (2012) *Journal of Conflict Resolution* 56(2), 233-256; Cullen S Hendrix and Wendy H Wong, 'When is the Pen Truly Mighty? Regime Type and the Efficacy of Naming and Shaming in Curbing Human Rights Abuses' (2013), *British Journal of Political Science* 43(03), 651-672.

[20] Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (WW Norton 2011); Dia Anagnostou (ed), *Rights and Courts in Pursuit of Social Change: Legal Mobilisation in the Multi-level European System* (Hart Publishing 2014).

[21] Richard Carver and Lisa Handley, *Does Torture Prevention Work?* (Liverpool University Press 2016).

[22] "Macedonia" here indicates the Former Yugoslav Republic of Macedonia, sometimes referred to as FYROM. The name Macedonia is used for convenience and is not intended to signify any position on the politically-sensitive issue of the state's name.

experiencing the opportunity to reform their practices on torture. The findings from chapter two inform case selection to ensure comparability. From 2000 onwards, the four states demonstrate contrasting trends in relation to civil society advocacy: Bulgaria consistently receives the best score, while Albania improves over the period and by 2016 has the second highest score. Romania and Macedonia do less well over the period, and by 2016 have lower scores for civil society advocacy than the first two. The case study chapters examine whether these trends are reflected in the state's performance on torture over the period. Do the states with highest advocacy scores also demonstrate the best performance and/or the greatest degree of relative improvement in relation to torture? The structure of each case study chapter draws on the theoretical framework set out in chapter three, so that the influence actually brought to bear by civil society in each case is examined against theories of influence. Chapter one introduced the concept of scope conditions for successful activism: the case studies identify a new scope condition which has not, it is contended, been given sufficient attention previously: the importance of *access* by civil society, not just to *decision-makers*, which has been described elsewhere,[23] but also to *state agents on the frontline* (those working in places where people are deprived of their liberty) and to those *individuals who are deprived of their liberty*: even more than decision-makers, these are the people who know whether fine words in the capital make any difference in real life. It is contended that this access is in itself an important scope condition for successful advocacy in the area of torture and ill-treatment (hypothesis two).

[23] Jutta Joachim, 'Framing Issues and Seizing Opportunities: the UN, NGOs, and Women's Rights' (2003) *International Studies Quarterly* 47(2), 247-274; Jutta Joachim, *Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights* (Georgetown University Press 2007).

4. *Scope of research*

While torture is often popularly understood as a crime committed against political prisoners, in the tradition of Amnesty International's original focus on prisoners of conscience, there is no such limitation within the relevant Conventions. All persons deprived of their liberty come within the compass of the right, including for example, those held in asylum/immigration centres and living in residential institutions for the mentally disabled. Even where there is no deprivation of liberty, the state may have responsibilities to intervene in order to protect individuals at risk of abuse.[24] Given resource limitations, however, the case studies focus on *abuses in the context of the criminal justice system*, particularly in relation to those detained in police stations and prisons, exclusive of immigration/asylum centres. The focus is on behavioural change by police and prison officers: whether there has been a reduction in the use of purposive ill-treatment, for example to extract confessions, and also of casual brutality. Less attention is paid to conditions of detention, in the sense of the physical infrastructure, on the assumption that different mechanisms may be expected to bring about change. A change in detention conditions will often require investment in infrastructure and may involve increased use of alternatives to detention in order to reduce over-crowding, while a change in behaviour of police and prison officers would be expected to require different inputs, such as training and the prosecution of individuals perpetrating abuse. While not the focus of this research, it is of course acknowledged that conditions of detention may be so poor that they amount to ill-

[24] See for example cases on domestic violence: *Z v UK* ECtHR App. No. 29392/95; *E v UK* ECtHR App. No. 33218/96; *ES v Slovakia*, ECtHR App. No. 8227/04. Such cases are not confined to the European system: see the Inter-American Court case of *Maria da Penha v Brazil*, Case 12.051, Report no. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev (2000) and the CEDAW case of *AT v Hungary*, CEDAW 2/2003.

treatment in and of themselves. Issues related to inter-prisoner abuse are also beyond the scope of this research.

Conant notes that "citizens routinely encounter police, and police are the most common perpetrators of peacetime rights violations".[25] Policing involves paradox: police protect basic human rights and freedoms – for example, safeguarding an individual's physical integrity by deterring potential assailants – but at the same time, the role involves an intrusion into the same rights, such as the use of legitimate force in effecting an arrest and deprivation of liberty. Striking a balance is a challenge for states, particularly those in political transition, who find themselves grappling with new expectations regarding accountability to the public and the requirement to comply with human rights norms.

5. Terminology

Throughout this dissertation, "torture" is generally used as short-hand for torture and cruel, inhuman, degrading treatment or punishment (CIDT). The two categories are defined separately in UNCAT, and this distinction can be important in some contexts (for example, the principle of *non-refoulement* is framed in terms of torture rather than CIDT). However, the distinction is often difficult to draw in real life – the same act of abuse could amount to either torture or CIDT depending on the characteristics of the victim – so they are subsumed into the same category of rights violations for the purposes of this research.

[25] Lisa Conant, 'Compelling criteria? Human rights in the European Union' in R. Daniel Kelemen, Anand Menon and Jonathan Slapin (eds), *The European Union: Integration and Enlargement* (Routledge 2015), 75.

Civil society has been defined as an "associational realm….populated by organizations which are separate from the state, enjoy autonomy in relation to the state and are formed voluntarily by members of the society to protect or extend their interests or values".[26] Keane describes civil society as:

> a term that both describes and anticipates a complex and dynamic ensemble of legally protected non-governmental institutions that tend to be non-violent, self-organising, self-reflexive, and permanently in tension, both with each other and with the governmental institutions that 'frame', constrict and enable their activities.[27]

While civil society and NGOs/CSOs are often used synonymously, civil society extends beyond NGOs, and can variously encompass religious groups, student movements, trade unions, women's organisations, formal or informal coalitions of peasants, the landless and others. Donor organisations can play an important role through their allocation of resources and sometimes through direct advocacy. NGOs are a particular focus for this research, not least because they are the easiest to observe: their regular reporting, along with the self-reflexivity noted by Keane, generally means that these organisations leave a paper trail of their goals and the activities undertaken to achieve those goals. I have usually preferred the term NGO, although the term CSO appears in Chapter two as I draw on the USAID CSO Sustainability Index and otherwise retain the term throughout the chapter for the sake of consistency.

The term activism is used here to mean the process of engaging in any of a number of (non-violent) influencing activities with the aim of bringing about an improvement in

[26] Gordon White, 'Civil Society, Democratization and Development: Clearing the Analytical Ground' (1994) *Democratization* 1(3), 375-390.
[27] John Keane, 'Civil Society, Definitions and Approaches' in Helmut K. Anheier, Stefan Toepler, and Regina List, (eds.), *International Encyclopedia of Civil Society* (Springer 2009).

human rights law and practice. The USAID CSO Sustainability Index provides country scores for what it terms "advocacy". This score is based on CSOs' record in relation to influencing public policy, taking into account the opportunities for forming coalitions and networks, their ability to communicate with the public and to articulate their message to government officials, and whether they can monitor state performance.[28] In other words, the score takes into account the *context* in which organisations operate and the *impact* of their activities. In the following chapters, I have used the term "advocacy" to indicate when I am drawing on the CSO Sustainability Index data, but I have used the term "activism" when focusing specifically on the *activities* of the organisations.

6. Contribution of this research

The claim that civil society norm entrepreneurs play an important role in influencing state is not a novel one.[29] Our knowledge is far from complete, however, regarding the pathways along which this influence operates, and the conditions under which it is successful. This research examines how civil society organisations negotiate the interplay between extrinsic and intrinsic state motivations for reform in the particular context of EU enlargement in south-eastern Europe. The prospect of EU accession is attractive to these states, as it brings economic and political advantages, so any human rights reform undertaken with this end in mind is a *rational choice*. EU accession represents an opportunity to reach states when they are socially and materially

[28] See USAID, 'CSO Sustainability Index Methodology', 19 February 2016, https://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/cso-sustainability-index-methodology (accessed 4 February 2018).

[29] See in particular Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999); Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013); Beth Simmons *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

vulnerable, and when resources are available for capacity-building.[30] Given the strength of this *extrinsic* motivation, these states offer valuable insights into whether such motivation is sufficient in itself to bring about genuine improvement. The case studies provide opportunities to study whether and how this extrinsic motivation can evolve over time into *intrinsic* motivation, whereby the state has become so habituated to the norm that it adheres to that norm it is perceived as the right thing to do, not because of external pressure. The latter perspective is in line with constructivist understandings of state motivation: states still make rational choices, but these choices are conditioned by a new "logic of appropriateness" steering them towards norm compliance.[31] Central and eastern European states have gone through major shifts in their self-identity since the fall of communism regimes at the start of the 1990s: the prospect of EU membership is powerfully resonant in that it validates states' desired self-perception as modern, European, rule-compliant members (actual or potential) of a powerful regional bloc. Given these extrinsic and intrinsic motivations for reform on torture, are states achieving such reform, and if so, what are the mechanisms for making it happen? If EU membership is the real incentive for reform, does civil society matter very much at all in this context? These states offer a powerful test case with global implications: if external incentives can effectively replace domestic civil society activism, then would-be reformers might well decide to prioritise the former. If domestic civil society still plays a key role in bringing about reform, even where powerful external incentives apply, then those wishing to see human rights reform in a given country must support civil society within that state and enable it to play its part.

[30] The relevance of these points is explored in chapter one.

[31] See discussion in Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) *International Organization* 52(4), 887-917.

As noted above, this question takes on renewed urgency in the context of the regional, and indeed global, phenomenon of shrinking civil space, discussed further in chapters one and four. If civil society plays an essential role in improving state performance on torture, then urgent action is needed to counter the restrictions placed by many states on civil society. If the evidence supports a finding that the contribution of NGOs to human rights is, as claimed, a profound one, this offers support for NGO legitimacy and value, particularly important given that they find themselves beleaguered in many countries.

Constructivists have long argued for the importance of state internalisation of norms, but the process by which this internalisation occurs is often described at a relatively high level of abstraction. When making theoretical claims about state acculturation to human rights norms, Goodman and Jinks note that their theories need to be refined by case studies to identify how the mechanisms for state socialisation actually work.[32] This piece of research responds to their challenge. Drawing on the tradition of Risse, Ropp and Sikkink[33] and Simmons,[34] this investigation builds on existing views of civil society actors as agents of *norm creation* and *norm diffusion* to insist on their importance as agents of what is here called *"norm patrol".* In the context of torture, local civil society actors establish expectations of state compliance through the sheer force of reiteration: regular detention monitoring, year on year, acts not just to detect abuses, and not just to deter them, but to reinforce expectations of compliance: they

[32] Ryan Goodman and Derek Jinks, 'International Law and State Socialization: Empirical, Conceptual and Normative Challenges' (2005) *Duke Law Journal* 54, 983-998.
[33] Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999); Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013).
[34] Beth Simmons *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

offer a tangible reminder of expected conduct, year in and year out. It is contended that this process of reiteration over long periods of time plays an important role in creating a new logic of appropriateness within state actors. Hypothesis three, therefore, is that civil society actors with sufficient access carry out the function of norm patrol, which is a pathway to eventual internalisation of the norm by the state.

7. Indicators of Internalisation of Norms

To determine whether internalisation has taken place, it is necessary to identify indicators of such internalisation. Internalisation goes well beyond mere legalisation of the norm. The key indicator of full internalisation would be for the state to adhere to the norm with only rare exceptions over a long period of time. As we shall see, none of the four case studies has yet achieved this position: none has been awarded more than a middling score with regards to its practice on torture.[35] At best, we can look for only partial internalisation. What then might this look like?

Finnemore and Sikkink set out a three-stage process for norm compliance, involving distinct groups of actors at each stage.[36] The initial stage of norm emergence involves norm entrepreneurs (civil society in a broad sense), motivated by altruism and idealism, focusing on persuasion. The second stage, norm cascade, involves states and international organisations, motivated by legitimacy, reputation and esteem, focusing on socialisation, institutionalisation and demonstration. The final stage, that of internalisation, involves law, professions, bureaucracy, is motivated by conformity, and focuses on habit and institutionalisation.

[35] The torture scores are discussed at some length in chapter 2.
[36] Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) *International Organization* 52(4), 887-917, 898.

As will be seen, all four states have reached stage one, in that there are civil society actors working on the issue of torture. All can be described as having reached stage two: they are parties to the relevant treaties, subject to the jurisdiction of the European Court of Human Rights, receive visits from monitoring bodies such as the European Committee for the Prevention of Torture (CPT), and the UN Subcommittee on Prevention of Torture (SPT); not least due to the incentive of EU membership, "legitimacy, reputation and esteem" represent motivating factors for compliance. The question is how far they are along the path towards stage three. Finnemore and Sikkink's description can be used to derive a number of indicators:

(1) *The breadth of actors who invoke the norm*

NGOs, as norm entrepreneurs, would be expected to refer to the norm (in this case, the prohibition on torture), but an indicator of internalisation is where there is also engagement more widely within the state by lawyers, professional bodies and by bureaucracy.

(2) *The existence and effectiveness of domestic accountability mechanisms*

This indicator embodies an important aspect of institutionalisation. All four states are members of the Council of Europe, meaning they are parties to the European Convention on Human Rights and Fundamental Freedoms (ECHR), and subject to the jurisdiction of the European Court of Human Rights (ECtHR). To this extent, a powerful complaint mechanism is available in all four states where domestic accountability fails. However, it is a long and cumbersome route: a high volume of ECtHR cases relating to the state is positive in the sense that local lawyers are engaging with the norm, but

negative in that it indicates that the state is failing to address complaints at an earlier point. A norm-compliant state should be taking responsibility to investigate and penalise abuses, and provide redress to victims.

(3) *The role played by the National Preventive Mechanism* (NPM). This is another feature of institutionalisation and habit formation. The Optional Protocol to the UN Convention against Torture (OPCAT) requires states to designate an NPM to oversee its progress in implementing its obligations under the Convention. In many states, the role of NPM is added to that of the national human rights institution/Ombudsman. These bodies are established by the state with a constitutional and/or legislative mandate to protect and promote human rights. While funded by the state, and usually accountable to the legislative, the Paris Principles set out the expectation that they be empowered to act with independence and autonomy.[37] These bodies are required to cooperate with state and the civil society sector, but to be independent of both.[38] Despite their formal independence, it may be challenging for such institutions to curb the excesses of the government that put them in place. There is a risk of institutional capture, meaning that the institution may serve as "'window-dressing' placebos" at best, and at worse reinforce restrictions on civil society.[39] Institutional capture is by no means a

[37] OHCHR, *National Human Rights Institutions. History, Principles, Roles and Responsibilities*, Professional Training Series no. 4, 2010, 13.

[38] The issue of NPM independence is discussed in Rachel Murray, 'National Preventive Mechanisms under the Optional Protocol to the Torture Convention: One Size Does Not Fit All' (2008) *Netherlands Quarterly of Human Rights* 26(4), 485-506 at 497 et seq. See also Rachel Murray, Elina Steinerte, Malcolm Evans and Antenor Hallo de Wolf, *The Optional Protocol to the UN Convention against Torture* (Oxford University Press 2011) 122.

[39] Tom Pegram 'State Restrictions on Civil Society and the Free Flow of Information', 13 May 2017, available online at http://tompegram/2017/05/state-restrictions-civil-society-free-flow-information/ (consulted 24 Dec 2017). His points relate to NHRIs in general rather than NPMs specifically, but the same concerns apply.

given, however. Formal design features such as a constitutional foundation can enhance their independence, and the appointment of competent and credible staff members with sufficient willingness to challenge the authorities. Statutory authority is key, in particular the powers they have to launch investigations of their own motion, to require evidence via subpoena, and to publicly disseminate their reports.[40] A central aspect of the NPM's mandate involves monitoring visits to places of detention, often with NGO partners and representatives from professional bodies, with the aim of inculcating and reinforcing good habits by state officials working in those places: the importance of this role will be explored in each of the country chapters.

Using these indicators, it will be possible to identify how far each of the states has progressed in internalising the norm against torture, and the extent to which this is linked to changes in their performance on torture.

8. *Summary of hypotheses*

1. Where scope conditions are met, states with higher levels of civil society activism perform better on torture than states with lower levels of civil society activism.
2. Access to decision-makers, state agents on the frontline, and individuals deprived of their liberty is an important additional scope condition for successful civil society activism in the area of torture and ill-treatment.
3. Access enables civil society actors carry out "norm patrol", which is a pathway to eventual internalisation of the norm by the state.

[40] Ibid.

Chapter 1 State Motivations

This survey of the literature begins with the question of why and when states torture, which in turn provides insights into why a state may be prepared to renounce the practice, and what the barriers are to implementing such a commitment. Understanding the drivers for torture is a necessary precursor to any evaluation of civil society interventions aimed at ending torture for two reasons. If the intervention is unsuccessful, we must consider whether the failure represents a shortcoming in relation to the intervention itself, or whether conditions were such that no intervention could have been successful (ie. *scope conditions* were not met). Alternatively, if the intervention is apparently successful, we need to consider possible alternative explanations, such as a *change in the drivers* for torture.

Section 2 of the chapter introduces the theme of state *receptiveness to influence* by considering the association between states' democracy levels and their use of torture. Democracy implies that political leaders are influenced by the wishes of the electorate and are held accountable for improper actions by the state. Section 3 notes that the evidence in the previous sections indicates the existence of certain *scope conditions* which must be fulfilled in order for activism to be effective, and makes the case that these are necessary but not sufficient for human rights improvements to take place. Something more is needed for change to happen: section 4 goes on to consider civil society *mobilisation* as a candidate for that extra ingredient. Section 5 returns to the theme of how states are influenced, but this time focusing on the *processes by which states are persuaded* to adapt and implement norms, contrasting intrinsic and extrinsic

motivations. Section 6 switches attention from states as the targets of persuasion back to civil society activists as the agents of persuasion, examining the *mechanisms* through which they operate, followed by a short conclusion in section 7.

1. States' Use of Torture

International human rights law makes states the duty-bearers in relation to human rights: states sign international treaties committing themselves to ending torture; they submit reports on progress to UN and regional bodies; states rather than individuals are held to account in human rights courts.[1] In defiance of these commitments, many states nevertheless continue to torture for a variety of purposes. The *purposive* aspect is emphasised in the definition of torture in UNCAT article 1, where the violation is framed as the intentional infliction of severe pain and suffering:

> for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind.

The treatment must have been inflicted "by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".

Torture has been used instrumentally by states to maintain control over populations (or particular sections of the population, notably ethnic minorities, political groups perceived as threatening to the regime, the marginalised), as a policing technique, and

[1] International humanitarian law and international criminal law are outside the scope of this study, but it is noted in passing that they create avenues for individuals to be held to account as well as states. Some jurisdictions also allow individuals to be held responsible for tortures as a criminal act, or as a civil tort: one of the best-known instances of the latter is *Filártiga v Peňa-Irala*, 630 F 2D 876 (CA, 2 Cir. 1980).

to support the state's efforts to emerge the victor of a conflict. In the criminal law system, torture has often been seen as a quick way of getting information or a confession, particularly where expertise and resources for forensic investigation are limited, or where the domestic legal system privileges confessions over other forms of evidence. In one well-known nineteenth century description, the explanation for torture is that "It is far pleasanter to sit comfortably in the shade rubbing red pepper into a poor devil's eyes than to go about in the sun hunting up evidence".[2]

States facing internal or external conflicts are particularly likely to resort to torture.[3] In this context, a state's securitisation strategy typically involves framing a conflict as an existential threat justifying the invocation of "panic politics".[4] This move attempts to legitimise the use of extraordinary measures by the state, beyond what would normally be seen as acceptable, including acts of torture.[5] Even states which do not habitually torture, when faced with a threat, may resort to torture where it is portrayed

[2] This remark was reportedly made by a civil officer discussing the use of torture in India in 1872 by certain "native police officers"; it is attributed to Sir James Stephen and quoted in A Lawrence Lowell 'The Judicial Use of Torture Part I' (1897) *Harvard Law Review* 11(4), 220, 224. Where legal systems include expectations of a confession within a criminal investigation, interrogators have an increased incentive to pressure suspects to confess, leading to a higher incidence of torture: Darius M Rejali, *Torture and Democracy* (Princeton University Press 2007). Wu and Vander Beken note that the importance of confessions in the Chinese legal system is a significant factor in the high prevalence of torture of criminal suspects. While confessions extracted under torture are officially deemed inadmissible in court in China, this rule is inadequately implemented, and furthermore, evidence is admissible even if obtained on the basis of confessions secured through torture ("the fruit of the poisoned tree": Wei Wu and Tom Vander Beken, 'Police Torture in China and its Causes: A Review of the Literature' (2010) *Australian and New Zealand Journal of Criminology* 43(3), 557-579.

[3] Christian Davenport and David A Armstrong II, 'Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996' (2004) *American Journal of Political Science* 48(3), 538–554; Courtenay Ryals Conrad and Will H Moore, 'What Stops the Torture' (2010) *American Journal of Political Science* 54(2), 459-476.

[4] Barry Buzan, Ole Wæver, Jaap de Wilde, *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1998), 34.

[5] In the case of torture, this attempted legitimisation is primarily political rather than legal, as international law does not permit derogation from the prohibition on torture under any circumstances, including a threat to the state. By contrast, derogations from the right to life and liberty may be legally permissible where a state of emergency has been declared. See for example section 15 ECHR.

as a "lesser evil" when weighed against the greater good of public protection.[6] States may attempt to legitimise torture by invoking the "ticking-bomb" scenario, according to which a terrorist must be quickly forced to reveal the location of a bomb in order to save innocent lives.[7] In fact, research indicates that rapport-based techniques are more effective than torture and other coercive methods in eliciting information from suspects,[8] but the perception of torture as a useful interrogation method lingers on in many quarters. The way that states frame torture is important: much of the work of those who oppose torture is necessarily based on framing it in a different way, as an illegitimate act, and one where the end does not justify the means.

As well as its use in the criminal system and in conflict, torture is also used as a means of maintaining political control: for powerful elites, it is a method of repressing challenge and maintaining their grasp on power. The use of torture for the purposes of political repression is central to much human rights campaigning, such as Amnesty International's work on "prisoners of conscience". Torture victims in this category are often easier for campaigners to portray to domestic and international audiences as virtuous victims, ill-treated because they stood up to powerful elites rather than because they are suspected criminals or terrorists (although the state will often riposte by attempting to blur this distinction).

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[6] See in particular Michael Ignatieff, M, *The Lesser Evil: Political Ethics in an Age of Terror* (Princeton University Press 2005).

[7] See for example the notorious 1999 Torture Ruling in Israel, which provided a mechanism for acts of torture to be deemed justified: *Public Committee against Torture in Israel v Government of Israel,* High Court of Justice, 5100/94, 1999.

[8] Laurence J Alison, Emily Alison, Geraldine Noone, Stamatis Elntib and Paul Christiansen, 'Why tough tactics fail and rapport gets results: Observing Rapport-based Interpersonal Techniques (ORBIT) to generate useful information from terrorists' (2013) *Psychology, Public Policy and Law* 19(4), 411.

State attitudes to torture occur on a spectrum:

State use of torture

Deliberate/strategic use — *Indifferent to its use* — *Opposed to torture*

At one extreme, the state may deliberately use torture as a means of repressing dissent and remaining in power; midway on the spectrum, the state may not use torture deliberately and strategically, but make little effort to prevent its use by the police and the military or other state agents; at the other end of the spectrum, the state may wish to eliminate torture, and the question then becomes whether it can be effective in its attempts to constrain its agents. Understanding why torture occurs in a particular context is a necessary precursor to understanding how the issue needs to be addressed. Solutions are not one size fits all: different contexts will require different strategies, and will have different prospects of success. If the state's cost-benefit analysis indicates that the benefits of torture (such as security of tenure for political elites) outweigh the costs (such as international censure), the challenge for those wishing to bring about change is to find ways to increase the costs so that they come to outweigh the perceived benefit to the state.

Attempts by the state to *justify* the use of torture have already been described above. An alternative state strategy to deflect criticism is *denial*. This may take the form of denying that the alleged acts occurred; if confronted with evidence that the acts did occur, it denies that they amount to torture;[9] if forced to concede that the acts did take place, and did amount to torture, states may deny responsibility, portraying the torture as the actions of "a few bad apples" in the army or the police, or the actions of an

[9] A notorious example is the US use of "enhanced interrogation techniques" under Bush and the official denial that they amounted to torture. For an extensive discussion of denial strategies, see Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering* (Polity Press 2001).

armed group beyond the state's control.[10] While some of these denials may be simple acts of bad faith by the state, mere attempts to avoid responsibility, it should be acknowledged that the issue of its *capacity to constrain its agents* may indeed be a genuine challenge to a state wishing to end the use of torture.

States face the *principal-agent problem*: the state as principal is handicapped by the fact that its agents have their own goals and incomplete information, so that agents do not always perfectly implement the wishes of the principal. Official policy may be to renounce torture, but state agents (police, army, detention centre staff and others) may fail to change their practices. Of course, even to speak the state as if it represented a single-minded "principal" is problematic in itself: states are made up of institutions and institutions are made up of people, each with their own preferences, priorities, and ability to make things happen; an executive wishing to bring about change may face a veto from powerful institutional players.[11] The principal-agent problem is itself a simplification to the extent that it gives the impression of a "principal" expressing a clear demand for its agents to do something: the principal may be speaking to its agents with many tongues, making unclear and competing demands. Formal messages ("Do not use torture in criminal investigations") may be undermined by informal messages ("But there are no consequences if you do"). Hawkins has shown

[10] For a discussion on the phenomenon of states effectively sub-contracting human rights abuses to pro-government militias, see Neil J. Mitchell, Sabine C Carey and Christopher K. Butler, 'The Impact of Pro-Government Militias on Human Rights Violations' (2014) *International Interactions* 40(5), 812-836. The use of contractors to deliver services is another mechanism by which the state distances itself from abuses: see the UK's use of the private company G4S to run immigration removal centres. Media reports from 1 September 2017 noted that nine staff were suspended by G4S after allegations about abuse of detainees. Thangam Debbonaire, chair of the all-party parliamentary group on refugees said: "This contract should be, in my view, suspended and removed. The Home Office needs to take responsibility for this…" Travis, Alan and Weaver, Matthew, "G4S abuse claims prompt call for contract suspension", *The Guardian*, 1 September 2017, www.theguardian.co.uk (accessed 31 October 2017).

[11] Courtenay Ryals Conrad and Will H Moore, 'What Stops the Torture?' (2010) *American Journal of Political Science* 54(2), 459-476.

how within the Chilean authoritarian regime, a split emerged between "softliners", who wished to establish legitimacy in the eyes of external audiences, and "hardliners", who were less open to influence.[12] Competing demands complicate the issue of reform.

States may use the challenge of controlling their agents to disguise the fact that they are choosing not to control their agents in an attempt to evade accountability.[13] Human rights law is not helpless in the face of this strategy by the state: a state's obligation not torture carries not only a negative responsibility ("Do not order your agents to torture") but also positive responsibilities ("Take reasonable steps to ensure your agents do not torture"). States can exert a degree of control over their agents through recruitment, training, monitoring, supervision, prompt and fair investigation of allegations of torture, and the imposition of proportionate sanctions when torture is found to have taken place. When bodies such as the European Court of Human Rights find a state in violation of the prohibition on torture, it is less often because the state has directly ordered torture (difficult to prove), and more often because it has failed in its positive obligations, such as the duty to investigate allegations of torture.

However, it should be acknowledged that a state's claim that it "can't control" its agents is not always a smokescreen for "won't control".[14] In the cases of weak and failed states, the government may be unable to physically impose its will throughout its territory. Even in less extreme examples, the central executive is likely to find it challenging to introduce universal reform where the state has a large population,

[12] Darren Hawkins, *International Human Rights and Authoritarian Rule in Chile* (University of Nebraska Press 2002).
[13] Neil J. Mitchell and Bronia Naomi Flett, 'Human Rights Research and Theory', in Anja Mihr and Matthew Gibney (eds), *The Sage Handbook of Human Rights* (Sage 2014) 14-15.
[14] Ibid.

covers a lot of territory, and has devolved local governance. Economic constraints are another barrier: a state with low levels of economic development is more likely to experience higher levels of violations of physical integrity.[15]

In summary, states may not be willing to end torture due to its perceived benefits; even if they are willing (or can be persuaded to become willing), the state's limited capacity to end torture may be an obstacle. It is unsurprising therefore that torture, once entrenched, usually reoccurs from one year to the next. Conrad and Moore calculate that if torture takes place in a particular state in one year, there is a 93% likelihood that it will occur in that state in the following year.[16]

This discussion indicates that there are two main areas that a would-be reformer will have to tackle. One aspect involves practical efforts aimed at ensuring that the state has the capacity to change, which is likely to entail a degree of technical support (eg. the introduction of forensic investigation techniques, so that the police do not rely on obtaining confessions through beatings). More profoundly, the would-be reformer must attempt to influence political will, so that there are enough incentives reaching enough state actors to attain a critical mass in favour of reform. When state actors

[15] Poe and Tate originally found a "weak" association: Steven C. Poe and C. Neal Tate, 'Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis' (1994) *The American Political Science Review* 88(4), 853-872. Re-testing the data, Poe, Tate, and Keith found that economic development had a significant impact: Steven C. Poe, C. Neal Tate and Linda Camp Keith, 'Repression of the Human Right to Personal Integrity Revisited: A Global Crossnational Study Covering the Years 1976-1993' (1999) *International Studies Quarterly* 43(2), 291-315. See also Todd Landman, *Protecting Human Rights: A Comparative Study* (Georgetown University Press 2005). On this basis, globalization that is successful in terms of improving a state's economic standing may be expected to improve human rights. Apodaca finds that trade and foreign direct investment are positively associated with respect for human rights: Clair Apodaca, 'Global Economic Patterns and Personal Integrity Rights after the Cold War' (2001) *International Studies Quarterly* 45(4), 587–602. Poverty is relevant not just for states but also for groups and individuals who may be subjected to torture: torture tends to be disproportionately directed at the poorer elements of society: in eastern Europe, for example, those most at risk include the socially-disadvantaged Roma (the term "Roma" is used throughout this research to cover communities also known as Sinti, Tzigane and Gypsies).

[16] Courtenay Ryals Conrad and Will H Moore, 'What Stops the Torture' (2010), *American Journal of Political Science* 54(2), 459 at 459.

carry out a cost-benefit analysis to decide whether to allow torture or attempt to constrain it, part of this calculation includes the impact on their security of tenure. The level of democratic responsibility in the state will affect this assessment, so we now turn to this aspect.

2. Torture and Democracy

According to quantitative research, torture is more likely to occur where the state tends towards the authoritarian rather than the democratic.[17] Democracy is important not only in terms of a state's likelihood of committing torture in a given year, but also as a precondition for its capacity to improve its performance on torture over time: democratic consolidation is strongly associated with human rights progress.[18]

Democracy clearly matters: but what exactly do we mean by democracy in this context? *Conceptually, democracy exists where the governed have the power to exercise genuine, informed choice regarding those who govern them.* Assuming that the governed wish human rights to be observed by the state, the implication is that they will remove political leaders who fail in this regard. By the same logic, compliance with human rights obligations will confer an electoral advantage, rendering it more attractive to political elites.

This understanding of democracy is not easily quantified, so for the purposes of measurability, researchers combine a number of factors, typically including

[17] Steven C. Poe and C. Neal Tate, 'Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis' (1994) *The American Political Science Review* 88(4), 853-872; Steven C. Poe, C. Neal Tate and Linda Camp Keith, 'Repression of the Human Right to Personal Integrity Revisited: A Global Crossnational Study Covering the Years 1976-1993' (1999) *International Studies Quarterly* 43(2), 291-315; Todd Landman, *Protecting Human Rights: A Comparative Study* (Georgetown University Press 2005).

[18] Thomas Risse, Stephen C. Ropp and Kathryn Sikkink K (eds), *The Power of Human Rights: International Norms and Domestic Change*. (Cambridge University Press 1999), 241.

competitive executive recruitment, competitive participation, executive constraints; open executive recruitment; and the regulation of participation.[19] A state may have some of these elements in place, while still failing to meet the above definition. Elections in and of themselves will not bring about effective change unless and until those elections are preceded by institutional changes that embed accountability.[20] Richards observes that elections alone are a "perilous proxy" for real democracy, noting the existence of "technical" democracies where regimes are voted into power but still fail to respect the rights of their people.[21]

Where there is genuine accountability, torture poses a risk to political tenure, thereby encouraging elites to reduce torture.[22] Citizens who can remove their rulers via the ballot box are more likely to be listened to by their rulers; freedom of expression, particularly in the form of a free press, plays an important role in mediating this relationship.[23] Cardenas finds that rights are more likely to be respected where there is broad social support for human rights constituencies, outweighing any competing domestic pressures in favour of violations, and where domestic elites have something to lose if they allow violations, such as damage to their economic interests.[24] Cingranelli and Filippov note that physical integrity rights are most likely to be respected in contexts where the electoral advantage is the most immediate: where

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[19] See for example Bueno de Mesquita B, Downs GW, Smith A, 'Thinking Inside the Box: A Closer Look at Democracy and Human Rights' (2005) *International Studies Quarterly* 49, 439-457, 444.
[20] Ibid, 457.
[21] David L. Richards, 'Perilous Proxy: Human Rights and the Presence of National Elections' (1999) *Social Science Quarterly* 80(4), 648-665. See also James Franklin, 'IMF Conditionality, Threat Perception, and Political Repression: A Cross-National Analysis' (1997) *Comparative Political Studies* 30, 576-606, who argues that the imposition of structural adjustment policies by the International Monetary Fund and World Bank have in some instances led to more democratic features (better democratic institutions, freer and fairer elections, and more freedom of speech and press) but less respect for physical integrity rights, including an increase in torture.
[22] Courtenay Ryals Conrad and Will H Moore, 'What Stops the Torture' (2010), *American Journal of Political Science* 54(2), 459.
[23] Courtenay Ryals Conrad and Will H Moore, 'What Stops the Torture' (2010) *American Journal of Political Science* 54(2), 459.
[24] Sonia Cardenas, *Conflict and Compliance: State Responses to International Human Rights Pressure* (University of Pennsylvania Press 2007).

members of parliament are elected through low magnitude proportional representation districts, and where the electorate vote directly for individual candidates.[25]

There are a number of important caveats. As explored in the previous section, political elites may use *denial* of the abuse to evade accountability: Rejali argues that democracies are more likely to be characterised by stealth torture, leading to innovation in "clean torture" techniques, which does not leave physical scarring and thus allows plausible deniability.[26] The threatened exposure of torture is less of a threat to political tenure if public opinion is not against torture; the previous section has shown how democracies may use *justification* strategies, such the threat of conflict, to evade being penalised at the ballot box,[27] Besides conflict, the electorate may accept that torture is justified in pursuit of a law and order strategy. In India, for example, a state which is both the world's largest democracy and which experiences extremely high levels of torture, a 2014 survey by Amnesty International found that 74% of Indians surveyed agreed that torture could sometimes be justified.[28] This lack of pressure from its domestic constituency reduces the incentive for the state to abolish the use of torture by its agents.

Later chapters will consider states in south-eastern Europe where torture is also not generally seen as a high-priority public concern, which creates a challenge for

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[25] David Cingranelli and Mikhail Filippov, 'Electoral Rules and Incentives to Protect Human Rights' (2010) *The Journal of Politics* 72(1), 1-15.

[26] Darius M Rejali, *Torture and Democracy* (Princeton University Press 2007). As an example of this, Ron found that international scrutiny of practices in Israel led to a shift to psychological abuse, which leaves no physical scars: James Ron, 'Varying Methods of State Violence' (1997) *International Organization* 51(2), 275-300.

[27] Christian Davenport, Will H. Moore and David A. Armstrong, 'Waterboarding and Democracy: Do Democratic Institutions Inhibit Torture?' (2008) Paper presented at the Annual Meeting of the International Studies Association, 28 February-3 March 2007, Chicago, IL.

[28] Amnesty International, 'Global Survey on Attitudes to Torture (2014)', www.amnesty.org/Act40 (accessed 30 August 2016).

domestic advocacy. In such cases, the demand to end torture may emanate from a small subset of the population made up of local human rights activists, working in alliance with transnational partner organisations. Democracy should not be seen simply a matter of majority rules: minority voices have a claim to be heard too, but they often have to work harder to claim legitimacy and to establish political reach. This is a theme that will re-emerge throughout the following chapters.

The growth of democracy and increasing respect for human rights are complementary processes, creating a positive feedback loop: a degree of respect for rights makes democracy feasible, and burgeoning democracy in turn makes respect for rights more likely. However, this does not mean that the relationship between democracy and respect for physical integrity rights is an entirely linear one.[29] Bueno de Mesquita et al argue that a state must reach a relatively high threshold of democracy in order for authorities to perceive an electoral advantage in restraining abuses.[30] For authoritarian states, minor increases in democracy will not necessarily produce equivalent increases in human rights improvement unless and until this threshold has been reached.[31] Vreeland notes that torture is more likely to occur in incomplete autocracies, where there is a possibility of challenge to the political elite, such as where there are multiple political parties. In complete autocracies, such as one-party or no-party dictatorships, fewer individuals challenge the regime, so there may less perceived need for less torture, and in complete democracies, there are effective

[29] Christian Davenport and David A Armstrong II, 'Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996 (2004), *American Journal of Political Science* 48(3), 538–554.
[30] For more on the finding that only states with the highest levels of democracy are correlated with better human rights practices, and not all states conventionally categorised as democracies, see Bruce Bueno de Mesquita, George W. Downs and Alastair Smith, 'Thinking Inside the Box: A Closer Look at Democracy and Human Rights' (2005) *International Studies Quarterly* 49, 439-457.
[31] Ibid.

constraints against the habitual use of torture.[32] States in the middle, where challenges to the regime exist and constraints against abuse are weak, experience the highest risk, a phenomenon dubbed the "More Murder in the Middle" paradox.[33] On this logic, the initial stages of democratisation, during which the political elite is facing new challenges to its tenure, may see higher rates of human rights abuses both compared to the state's own authoritarian past and in comparison to other states where democratic institutions and behaviour are long-established.[34] As a corollary, emerging democracies make particularly interesting case studies for researchers studying civil society demands for reform, as there is more need for reform than in longer-established democracies, and more opportunity to demand reform than in authoritarian states.[35] This consideration has influenced the selection of case studies, as explained in chapter four.

When investigating whether activism improves a state's practice on torture, one alternative explanation to consider is whether the improvement on torture is attributable instead to an increase in democracy levels. An increase in activism may co-occur with an improvement in torture performance because of this underlying increase in democratisation, rather than the increased activism itself leading to the better performance on torture. Alternatively, it may be the case that while the increase in democracy opens up opportunities for more activism, the activism itself still plays a causal relationship in improving the state performance on torture.

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[32] James Vreeland, 'Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention against Torture' (2008) *International Organization* 62, 65-101.
[33] Helen Fein, 'More Murder in the Middle: Life Integrity Violations and Democracy in the World' (1995) *Human Rights Quarterly* 17, 170-191.
[34] Todd Landman, *Protecting Human Rights: A Comparative Study* (Georgetown University Press 2005).
[35] This argument is made by Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

According to this model, activism still matters to state performance on torture, but its influence only takes effect once a sufficient threshold of democracy has been met.

3. Scope conditions for ending torture

The above account of the context in which torture occurs suggests (a) explanations for why a state experiences a particular level of torture at a given time and (b) a number of *scope conditions* under which change is more likely to occur. If, as hypothesised, civil society activism has an impact on torture, it can be predicted that any such impact is more likely to be detected in states not experiencing conflict; where there is a sufficient level of democracy to create an incentive for political elites to accede to demands to restrain abuses; and where there is in fact at least some demand to restrain abuses. Progress must not be prevented by veto players or spoilers. States must have both willingness and capacity to change. They must be able to exert sufficient control over their agents; state institutions must be adequate for the task; there must be enough actors with an interest in promoting rights and the ability to work together in coalition to exert the necessary political heft.[36]

Assessing NGO influence on states in relation to women's rights in an international context, Joachim finds that they are successful when two interacting conditions are met: (1) NGOs are embedded in a political opportunity structure which allows access to decision-makers and where they have influential allies and (2) NGOs can mobilise organisational entrepreneurs, a heterogeneous international constituency and

[36] Stephen Hopgood, Jack Snyder and Leslie Vinjamuri (eds), *Human Rights Futures* (Cambridge University Press 2017); see the editors' Introduction.

experts.[37] Translating her findings into the domestic context, the case studies in later chapters will expand in particular on the implications of access, not only to decision-makers, but to state agents on the frontline and to individuals deprived of their liberty – through this access, organisations derive expertise in the form of detailed operational knowledge and credibility, both domestically and in the eyes of international allies, in line with her second condition.

An assessment of the impact of interventions aimed at ending torture must take into account these scope conditions. Their existence implies that the outcome of a given intervention is not predicated entirely on the merits of the intervention itself, but also on whether the surrounding context is one in which positive change is possible.

If change is unlikely where these scope conditions are not met, the implication is that those living in the most rights-violating states have least hope of succour from human rights activism.[38] It creates something of a moral quandary in deciding where resources for human rights improvements should be allocated. Is the implication that human rights advocates should focus on the "easy cases" where states are well-positioned to change, reducing efforts to reach the "hard cases" which are affected by structural impediments to progress? Or do the hard cases require a different approach, perhaps more pragmatic than principled? In such cases, some argue that the emphasis should be on putting in place the scope conditions before insisting on the implementation of human rights, so that, for example, human rights abusers are

[37] Jutta Joachim, 'Framing Issues and Seizing Opportunities: the UN, NGOs, and Women's Rights' (2003) *International Studies Quarterly* 47(2) , 247-274; Jutta Joachim, *Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights* (Georgetown University Press 2007).
[38] Emilie M. Hafner-Burton and Kiyoteru Tsutsui, 'Justice Lost! The Failure of Human Rights Law to Matter Where Needed Most' (2007) *Journal of Peace Research* 407-425 argue that human rights efforts to date have failed people in the most rights-abusing states.

granted amnesties to avoid them sabotaging peace processes: putting peace before justice in the sequencing of desired outcomes.[39] In her case study of Chile and Argentina, for example, Cardenas argues that human rights improvements could only take place once the armed threat had ceased.[40]

Should human rights campaigners therefore abandon the attempt to end torture while a state is experiencing conflict? Should they wait until a sufficiently high level of democracy has been attained? Bueno de Mesquita et al suggest that waiting may be necessary.[41] A human rights campaigner with a "high tolerance for delayed gratification" can "get in at the ground floor and labor in a newly democratizing state – possibly for years – in an effort to create the broad institutional foundation necessary for eventual progress in human rights". Alternatively, the authors propose, the would-be reformer can simply wait till the state is ready for political party competition and thus improved rights. If this putative reformer is unwilling to wait, she can support local right activists and attempt to mobilise external pressure to convince the state to change, but the authors are sceptical of the chances of success before full democracy is attained. Bueno de Mesquita et al. are writing from an international perspective, it should be noted: a locally-based human rights reformer does not have the freedom to cherry-pick an easier environment.

[39] Stephen Hopgood, Jack Snyder and Leslie Vinjamuri (eds), *Human Rights Futures* (Cambridge University Press 2017) make a case for such sequencing in their Introduction chapter. This claim is strongly contested by those who believe in "no peace without justice"; an organisation of that name, founded by former MEP Emma Bonino, is on the steering committee of the International Criminal Court.

[40] Sonia Cardenas, *Conflict and Compliance: State Responses to International Human Rights Pressure* (University of Pennsylvania Press 2007), 79.

[41] Bruce Bueno de Mesquita, George W. Downs, Alastair Smith, 'Thinking Inside the Box: A Closer Look at Democracy and Human Rights' (2005) *International Studies Quarterly* 49, 439-457, at 456.

The mere presence of scope conditions is not sufficient in itself to end torture. The potential for change is not enough: some intervention is needed in order to turn the potential for change into actual change. For many researchers, the relevant intervention is *human rights mobilisation*: strategic attempts to influence states by transnational actors, in particular civil society actors, to which we now turn. These theories lay the foundation for this current research: before scrutinising if and how civil society can influence states' performance on the specific issue of torture, it is necessary to consider if and how civil society can influence states more generally.

4. Mobilisation as a means to influence political will

It has often been asserted that high levels of civic associationalism are linked to strong democratic performance,[42] which as we have seen above, is in turn a precursor to motivating states to end the use of torture. According to this account, civil society makes governments respond to citizens' priorities. Warren describes associations as a mechanism for amplifying "autonomous judgements into collective decisions".[43] Gill sees civil society as a providing "channels for popular participation and oversight", which makes it less likely that decision-making will be captured by elites, including economic elites.[44] As discussed above, states are more likely to improve their performance on torture where there is otherwise a threat to the tenure of political elites, so civil society makes an important contribution by helping to articulate and crystallise the threat to tenure.

[42] An argument made in the nineteenth century by Alexis de Tocqueville with regard to the US; Robert Putnam amassed empirical support for the proposition through his survey of civic participation in Italy in Robert Putnam, *Making Democracy Work* (Princeton University Press 1993).
[43] Mark Warren, *Democracy and Association* (Princeton University Press 2001), 61.
[44] Graeme Gill, *The Dynamics of Democratization: Elites, Civil Society and the Transition Process* (St Martin's Press 2000) 241.

In relation to third and fourth wave democracies, such as the states examined in later chapters, Tusalem's research shows that states with stronger civil society prior to and after transition experienced strengthened political freedoms and improved institutional performance.[45] This does not necessarily mean that civil society itself causes the better democracy: it could be that the stronger democracies allow more opportunities for civil society to flourish.[46] Causation may run in both directions, so there is a mutually reinforcing virtuous cycle of civic space leading to stronger civil society leading in turn to expanded civic space, with the overall effect being a better functioning democracy. Democratic demands matter in encouraging the state to restrain torture, as discussed above, so whether civil society promotes democracy or democracy promotes civil society (or whether both explanations apply), the important point is that civil society is strengthened, and acts as the locus of demands for the state to refrain from torture.

While the role of civil society mobilisation has been widely praised,[47] there are some dissenting voices, arguing that a civil society wielding excessive power can interfere improperly with the business of democratic governance and have a destabilising effect.[48] Berman finds an association with undemocratic political development, although her findings relate to the Weimar Republic, which Fish argues renders them

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[45] Rollin Tusalem, 'A Boon or a Bane? The Role of Civil Society in Third- and Fourth-Wave Democracies' (2007) *International Political Science Review* 28(3), 361-386.

[46] See Sydney Tarrow, 'Making Social Science Work Across Space and Time: A Critical Reflection on Robert Putnam's *Making Democracy Work'* (1996) *American Political Science Review* 90, 389-97.

[47] See Introduction for discussion of the international "adulatorio to NGOs" described in Kenneth Anderson, 'The Ottawa Convention Banning Landmines, the Role of International Non-governmental Organizations and the Idea of International Civil Society' (2000) *European Journal of International Law* 11, 91-120, 112.

[48] Ariel C. Armony, *The Dubious Link: Civic Engagement and Democratization* (Stanford University Press 2004).

anachronistic with regard to contemporary politics.[49] Huntingdon suggests high levels of civil society mobilisation can be associated with higher conflict if political institutions are not capable of managing the stresses of modernisation (and as we have seen, conflict is in turn associated with torture).[50] This is not inevitable, however: Boulding finds that high levels of civic engagement in Bolivia led to political protest, but were still associated with support for the political system; protest and the articulation of discontent with a political system should not be conflated with the undermining of the political system.[51] The state and civil society can implicitly recognise each other as legitimate interlocutors by engaging with each other, even where the engagement is critical in tone.

Armony believes that there is a "dark side" to civil society in that it can deepen social fragmentation and exclude minorities.[52] Similiarly, Brysk notes that the democratic deficits in civil society itself need to be addressed.[53] Encarnación does not argue that civil society is inherently harmful to democratic growth, but rather than it may be irrelevant; in his view, the performance of political institutions matters more than the configuration of civil society, and the former is not necessarily contingent on the latter.[54]

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[49] Sheri Berman, 'Civil Society and Political Institutionalization' (1997) *American Behavioral Scientist* 40(5), 562-574; Fish also disputes Berman's evidence and the causal links she proposes: M. Steven Fish, *Democracy Derailed in Russia: The Failure of Open Politics* (Cambridge University Press 2005).
[50] Samuel P. Huntingdon, *Political Order in Changing Societies* (Yale University Press 1968).
[51] Carew Boulding, *NGOs, Political Protest and Civil Society* (Cambridge University Press 2014).
[52] Ariel C. Armony, *The Dubious Link: Civic Engagement and Democratization* (Stanford University Press 2004).
[53] Alison Brysk, 'Democratizing Civil Society in Latin America' (2000) *Journal of Democracy* 11(3), 151-165.
[54] Omar G. Encarnacion, *The Myth of Civil Society* (Palgrave Macmillan US 2003).

Going well beyond this strain of academic scepticism is the rhetoric of a number of political actors leading the *backlash* against civil society mobilisation. Actors threatened by human rights have undertaken a counter-mobilisation against rights using a competing discourse based around stability and sovereignty;[55] in some cases, they have strategically invoked alternate value systems (including systems based on a particular religion or the so-called "Asian values" system). In a worrying trend, political rhetoric to this effect has been supplemented in a number of states with practical obstacles to civil society mobilisation – preventing visits from international observers, hindering access by local organisations to international funding; hobbling their activities by restrictive registration requirements or taxation rules.[56] Many observers have expressed concern in recent years about the shrinking of the political space for civil society. A 2017 EU policy paper notes that the phenomenon of shrinking civil space has been gradually intensifying since 2004 or 2005 at least. Initially attributed to the re-emergence of authoritarianism in a few states, it is now understood as a wider trend:

> the global clampdown on civil society has deepened and accelerated in very recent times…..[it has] assumed an unprecedented depth and seriousness, and…is likely to continue for the foreseeable future.[57]

The implications of shrinking space in the European context are discussed further in chapter four, in the context of the case studies in south-eastern Europe.

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[55] See Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013).
[56] See Stephen Hopgood, Jack Snyder and Leslie Vinjamuri (eds), *Human Rights Futures* (Cambridge University Press 2017).
[57] European Parliament Policy 'Shrinking Space for civil society: the EU response', April 2017, EP/EXPO/B/COMMITTEE/FWC/2013-08/Lot8/12, 9.

One form of backlash is to question the legitimacy of activists' claims to represent what the governed want: contrary to Gill's claim about civil society as an avenue for "popular participation and oversight", civil society may be making demands for something that not is particularly popular with domestic audiences. We have seen above that a majority of the Indian public, for example, expresses the view that torture may be necessary: on whose behalf is civil society then speaking in advocating for an end to torture in India?

There is an argument for the value of *localisation* (or "vernacularisation") in cases where rights do not necessarily or immediately resonate with local priorities or values, so that the rights are translated (figuratively as well as literally) in ways that harmonise better with local perspectives.[58] Incorporating local voices helps validate human rights as a participatory project and brings a new dimension, as when activists in the global South demanded more attention for economic and social rights in addition to civil and political rights. However, there are tensions too, when local values run counter to human rights; expectations regarding gender are often cited in this context. In some cases, the fear is that the translation of rights becomes a watering down of content. With regard to torture, because it is often inflicted on unpopular targets, those perceived as terrorists and/or criminals, widespread public sympathy tends to be challenging to achieve, leaving it potentially well down the list of locally-derived priorities. In such cases, the demand for human rights implementation may be largely foreign-led, so that it becomes derided as a

[58] Ibid. For an anthropological analysis of NGOs and social movement activists as knowledge brokers and intermediaries in making human rights concepts meaningful in local social settings, see Sally Engle Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle' (2006) *American Anthropologist* 108(1), 38-51.

"missionary endeavour",[59] "a cultural project for 'civilizing savage' cultures",[60] "legal imperialism"[61] or "a cargo cult".[62]

The answer may lie somewhere in the middle: efforts to end torture can be locally-owned even where they are not a high priority for the population as a whole. In a particular state, activists may be drawn largely from an urban, educated middle-class who are sufficiently liberated from the struggle for basic survival that they have to capacity to undertake work in this area (which is not to deny the contribution of activists drawn from the poor and marginalised sections of the population). Such people may be well-positioned to act as mediators between international norms and local expectations. Acharya calls them "insider proponents" who act to localise a universal agenda.[63] Mutua is more scathing of non-Westerners in human rights organisations who "think white" and uncritically adopt the international rights agenda.[64] While his critique is useful in demanding that international observers scrutinise their own assumptions, it is worth underlining that a concept's legitimacy within a given setting is not derived solely from how indigenous it is to that setting.

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[59] Anderson and Rieff suggest that international human rights organisations can be viewed as latter-day post-religious missionary movements attempting to disseminate essentially parochial priorities: Kenneth Anderson and David Rieff, '"Global Civil Society": A Sceptical View', Washington College of Law Research Paper no. 2008-69.

[60] Makau Mutua, 'Human Rights International NGOs: A Critical Evaluation' in Claude E Welch Jr, *NGOs and Human Rights: Promise and Performance* (University of Pennsylvania 2001), 151.

[61] Keith Anderson, 'The Ottawa Convention Banning Landmines, the Role of International Non-governmental Organizations and the Idea of International Civil Society' (2000) *European Journal of International Law* 11, 91-120 at102.

[62] Goodman and Jinks express concerns about rights being imported as a "cargo cult" rather than a phenomenon rooted in local priorities: Ryan Goodman and Derek Jinks, 'How to Influence States: Socialization and International Human Rights Law' (2004), *Duke Law Journal* 54(3), 621-703.

[63] Acharya Amitav, 'Local and Transnational Civil Society as Agents of Norm Diffusion', Paper presented to the Global Governance Workshop, 1-3 June 2012, Department of International Development, Queen Elizabeth House, University of Oxford, 3.

[64] Makau Mutua, 'Human Rights International NGOs: A Critical Evaluation' in Claude E Welch Jr, *NGOs and Human Rights: Promise and Performance* (University of Pennsylvania 2001), 154.

Alongside concerns about the *legitimacy* of activists, some observers raise questions about their *capacity*. It is considerably cheaper for international donors to fund a local NGO campaigning for judicial reform than it is to fund a comprehensive state-based judicial reform programme: investing only in the former becomes a problem if it is less effective than the latter.[65] Quigley finds that in Eastern Europe, donors' limited investment in civil society over relatively short periods of time restricted the ability of NGOs to achieve their goals. On the political front, he argues that optimistic assessments of the potential of civil society to drive change were at odds with local conditions immediately post-transition, when the mass movements which had coalesced around the demand for democracy began to splinter into mutually hostile factions and interest groups.[66] This disintegration had a negative impact both on the capacity and legitimacy of activists.

Pragmatically, Simmons notes that local activists are more highly motivated to improve their home state than international activists as they have a higher personal investment, and their attention is less likely to be distracted by exciting new crises in other parts of the word. She finds:

> Human rights treaties matter where local groups have taken up the torch for themselves. Without that, transnational and peer pressure will ultimately flag as funders and headline hunters seek new opportunities to make their mark.[67]

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[65] Marina Ottaway and Thomas Carothers, *Funding Virtue: Civil Society Aid and Democratization* (Carnegie Endowment for International Peace 2000), 8.

[66] Kevin Quigley, 'Lofty Goals, Modest Results: Assisting Civil Society in Eastern Europe', in Marina Ottaway and Thomas Carothers, *Funding Virtue: Civil Society Aid and Democratization* (Carnegie Endowment for International Peace 2000).

[67] Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009), 378.

An ongoing commitment is important, particularly where problematic practices are deeply embedded. Alston and Gillespie point out that where rights advocates have short attention spans, they can misleadingly imply that problems have been solved when this is not the case, and furthermore, they can give the impression that measures to address a concern are more useful than they are: they highlight a number of cases where Amnesty International (AI), Human Rights Watch (HRW) and the Special Rapporteur on Extrajudicial Executions called for Commissions of Inquiry into alleged extrajudicial executions, but failed to follow up the call, or to monitor whether a Commission was in fact an effective accountability mechanism, or simply a sop "to placate those calling for action", with no real impact.[68] Local organisations are by no means guaranteed to have a long tenure, particularly given funding challenges and consequent difficulties with staff retention, but they are less likely to switch attention to a different set of issues in another part of the world, no matter how much global media interest the new issues have garnered.

When we explore the case studies in chapter four onwards, we will see these tensions in action, and in particular how some states attempt to delegitimize calls for torture reform by portraying them as an externally-imposed agenda. Transnational networks are a key support for local organisations, but they can also lead to their local legitimacy being called into question.

5. Extrinsic v Intrinsic Motivation

The opportunities available to civil society attempting to influence a particular state are conditioned by the state's *openness to influence*, and the *types of incentives*, positive or negative, that are likely to motivate it. Risse et al. view openness to

[68] Philip Alston and Colin Gillespie, 'Global Human Rights Monitoring, New Technologies, and the Politics of Information' (2012) *European Journal of International Law* 23(4), 1089-1123, 1105.

influence as itself a scope condition for positive change: whether the state is *materially vulnerable* or not (with China's relative lack of material vulnerability helping to explain its resistance to international human rights pressure, for example) and also whether the state is *socially vulnerable* (how much it cares what others think).[69]

Rationalist scholars have traditionally emphasised the importance of coercion in influencing states: the sticks and carrots that impel states to journey in a particular direction. Earlier in the chapter, individual politicians were described as receptive to the demand to restrain torture where this led to an electoral advantage. The prospect of loss of tenure is a form of coercion. Coercion applies not just to individual politicians, but also to the collective interests of the executive, for example, where the prospect of joining a powerful trading bloc such as the EU encourages states to establish themselves as compliant with norms, including the prohibition on torture. This type of motivation is *extrinsic*; states undertake obligations without necessarily being persuaded of the value of the obligation itself, but as a step towards achieving another goal.

Constructivist scholars, however, emphasise the importance of ideation and the development of *intrinsic* motivation. This view focuses on the socialisation process by which states learn to internalise norms. Where this socialisation is successful, states do not have to be coerced into meeting their human rights obligations, because these obligations have become part of their identity, incorporated into "business as usual". States develop intrinsic motivation to comply with norms over and above

[69] Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013).

extrinsic pressures. The role of domestic activists in localising rights feeds into this internalisation process. Domestic voices, freighted with local understanding, can turn "something that donors want" into "something that we want". The process is one of "identity transformation", so that over time, human rights are increasingly observed "for reasons of belief and identity", part of the logic of appropriateness.[70] Beyond compliance, states may see themselves as beacons for other states, encouraging the adoption of norms in regional and international fora. Sweden played an important role in advocating for the creation of UNCAT, [71] for example, while Costa Rica advocated for the creation of OPCAT.[72]

There are obvious parallels with individual psychology, and how for example, a police officer makes the decision whether or not to ill-treat a suspect under interrogation: the police officer may refrain from ill-treatment based on the perceptions that sanctions are reasonably likely to follow (extrinsic motivation).[73] As well, or perhaps alternatively, as a result of training and the influence of peers and

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[70] Thomas Risse and Kathryn Sikkink in Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999) 18.

[71] According to Nigel Rodley, in the early 1970s, AI was keen on a Declaration against Torture, but was not initially lobbying for a treaty. This was an initiative that came from the Swedish government: once mooted, AI then made the treaty a campaign goal. The Netherlands also played an important role in pushing for the Convention: Nigel Rodley in Carrie Booth Wallig and Susan Waltz *Human Rights: From Practice to Policy. Proceedings of a Research Workshop*, Gerald R. Ford School of Public Policy, University of Michigan, October 2010 (2011).

[72] Costa Rica worked with several civil society organisations to develop and present a first draft of OPCAT to the UN Human Rights Commission in 1980: Manfred Nowak in Council of Europe/Association for the Prevention of Torture, *New partnerships for torture prevention in Europe: Proceedings of the Conference, Strasbourg, 6 November 2009* (2010), 109. See also the account by APT in the same volume at 122 and footnote 17. When progress towards OPCAT proved slow at the UN level, civil society organisations pushed for it to be pioneered at the European regional level instead, with a view to demonstrating the viability of the approach.

[73] Jean-Pierre Restellini recounts a visit he made as member of the CPT delegation to an unnamed state with a reputation for high levels of torture. During this particular visit, detainees reported a remarkable reduction in abuse. Restellini asked a group of police officers why things had changed, and they replied that since the government had introduced legislation providing for the dismissal of police officer who committed torture, they refrained from abuse because they did not wish to lose their jobs. While this report is anecdotal, its context lends it a degree of credibility. See his account in Council of Europe/Association for the Prevention of Torture, *New partnerships for torture prevention in Europe: Proceedings of the Conference, Strasbourg, 6 November 2009* (2010) 91.

seniors, ill-treatment may be perceived as near unthinkable: simply not how things are done (intrinsic motivation).

Returning to the state, it can be useful to think of these two mechanisms less as alternative explanations, and more in terms of sequencing, or perhaps parallel but complementary processes. An element of coercion may be required to bring states to undertake human rights obligations. Having formally validated the norms, the state begins a process of internalising them. The sequencing can also work in the opposite direction: human rights norms can begin as statement of principle (the ideation phase) with increased supervision (implying potential criticism, and thus coercion) following later.[74] The classic example of this progress can be seen with the creation of the Universal Declaration of Human Rights in 1948, which stated the norms; supervisory mechanisms followed nearly two decades later, in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Risse et al agree that state motivation is best explained by these mechanisms acting in combination: rational decisions are made in the context of a constructed world-view. In their articulation:

> the logic of consequences and the cost-benefit calculations of utility-maximizing egoistic actors are often embedded in a more encompassing logic of appropriateness of norm-guided behaviour as institutionalized in the contemporary international human rights regime.[75]

[74] Ryan Goodman and Derek Jinks, 'How to Influence States: Socialization and International Human Rights Law' (2004), *Duke Law Journal* 54(3), 621-703, 701.
[75] Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013), 13.

In the case of states wishing to accede to the EU, it may be a rational choice for the state to ratify the ECHR and to carry out reforms of the justice and security sector (including restraining its agents from torturing) as this is a prerequisite for eventual EU membership, ie an extrinsic reason for reform. Of course, the extent to which these issues are prioritised in the context of EU membership reflects a constructed set of values promoted by EU institutions and member states, so the extrinsic demand in one place is ultimately based on an intrinsic motivation arising elsewhere.

Goodman and Jinks use the term "acculturation" for the mixture of internal and external pressures to change behaviour.[76] Their theory applies in a context where there is a reference group of states within which a set of norms is accepted: states outside that group can be influenced to act in the same way through "a number of microprocesses, including orthodoxy, mimicry, identification and status maximization".[77] This mechanism explains the "contagion" effect: states are more likely to institutionalize norms where other states in the region have also recently done so.[78] Contagion, as we shall see, can also work in the opposite direction, so that a state pursuing a backlash strategy against civil society may in turn influence its neighbours.

Goodman and Jinks do not specify a causal pathway for the acculturation process, speculating that it may result from the acculturation of government leaders or high-level policymakers; alternatively, or as well, it may involve domestic and international activists as norms transmitters. They sound a note of caution in terms of

[76] Ryan Goodman and Derek Jinks, 'How to Influence States: Socialization and International Human Rights Law' (2004), *Duke Law Journal* 54(3), 621-703, 701.
[77] Ibid 638.
[78] Ibid 650.

the pressure being brought to bear on states: it is not necessarily the case of the more different types of pressure the better. Introducing a material incentive can degrade its value as a social signal which can weaken commitment to the social norms.[79] The state actor might not want to be seen as motivated by the material pay-off (or fear of censure); it may not wish to appear weak and easily coerced; this fear in turn can play into the hands of those who would promote a counter-narrative centred on state sovereignty. The source of the pressure has political implications – its influence may be compromised if it is seen as emanating from a resented foreign authority or a hostile country or unrepresentative segment of civil society. Even if the incentive promotes compliance, external incentives can cause actors to overlook why they originally wanted to comply (internal motivation), retrospectively attributing their compliance to the external incentive. If the material incentive is then taken away, compliance might then fall below where it would have been if the incentive never applied as the intrinsic motivation has been weakened. The effect is to stop the norm becoming internalised and part of the state's new identity. Of relevance to the case studies in later chapters is the suggestion that a state's compliance with norms on the basis of its desire to join the EU could be an instance of external incentives crowding out internal motivation. If a state is restraining its agents from torturing in order to position itself for EU membership, what happens when EU membership becomes less attainable or less desirable? Does the impetus for restraining torture also drop away? This question will reoccur in the context of the Macedonian case study in particular.

It can be contended that international civil society implicitly (and often explicitly) focuses on *extrinsic* motivation: the desire of the state to avoid international

[79] Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights Through International Law* (OUP 2013).

criticism.[80] Local civil society can and does use the same threat of international censure, and transnational activist networks support local civil society in doing so; local concerns can be disseminated to a global audience with the help of the transnational network. However, it is also contended here that local civil society is much better placed than non-national actors to foster the growth of *intrinsic* motivation on the part of the state to conform to human rights norms. They can more credibly make the case that "As citizens of country x, this is how we want our country to be". Their legitimacy to represent the will of the people may be challenged, as discussed above, but they are nevertheless better-placed than those outside the state. From a constructivist perspective, they are in a position to contribute to the dynamic process of identity formation.

6. Mechanisms for influencing the state

To identify if and how civil society activism improves state performance on torture, it is necessary to understand the processes by which the input of civil society activism can lead to the output of an improved state performance on torture. Risse et al identify a mixture of three sub-processes within the larger process of socialization, to which transnational activists are central: bargaining and adaptation; arguing and moral consciousness-raising; institutionalization and habitualization.[81] Domestic and

[80] Hafner-Burton, LeVeck and Victor interviewed132 NGO professionals in the field of human rights to ascertain their views on whether international law works primarily through coercion (sanctions through non-compliance) or persuasion (the internalisation of norms over time), finding that the majority of their interviewees emphasised the first aspect, that of accountability. The findings do not appear to have been disaggregated on the basis of whether the interviewees were local or international activists. Emilie M Hafner-Burton, Brad L., LeVeck and David G. Victor (2016), 'How Activists Perceive the Utility of International Law', *Journal of Politics* 78(1), 167-180.

[81] Thomas Risse and Kathryn Sikkink in Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999).

transnational activists work together to put norm-violating states on the international agenda, pressurising states both from "below" (domestic protest) and "above" (pressure from other states and from intergovernmental institutions).[82] Here we see an element of coercion (extrinsic motivation) to allow political space for dialogue to take place; but through this dialogue, states become persuaded of the value of human rights, with the desired end-point being a state that has absorbed human rights into its identity and complies with norms for intrinsic reasons.

In their 2013 revisiting of their original 1999 theories, Risse et al. scrutinise in more detail how states transition from accepting norms in principle to complying with them in practice. As well as coercion, sanctions and rewards, and persuasion, they note the importance of capacity-building, acknowledging violations as often arising from lack of state capacity rather than the deliberate intention to violate (where the state "can't" rather than "won't" protect, as discussed earlier in the chapter). Capacity-building includes education, training and development of administrative capacity to implement and enforce human rights.[83]

An important step in a state's progress towards (potential) compliance with the ban on torture is its ratification of international treaties forbidding torture.[84] Hathaway found that ratification is not in itself an immediate turning point for state practice: in her analysis, ratifying a human rights treaty can be a low-cost substitute for effective

[82] Ibid.
[83] Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013).
[84] The conventions are listed in the introduction. Technically, a state signs and ratifies a convention not yet in force and it accedes to a convention that is already in force, but for convenience, "ratification" is used here to denote both scenarios.

action to bring about change.[85] She does concede that ratification may lead to improvements over the longer term, by "creating public commitments to which human rights activists can point as they push nations to make gradual, if grudging, improvements down the road".[86] Subsequent research has further established that ratification is an important step in a longer process. Treaties have a positive effect if a strong civil society exists to make use of them.[87] Even if the state is making an insincere commitment in the first place (in response to extrinsic motivation), the benefits include giving domestic protest more breathing space, legitimizing their demands and empowering them, allowing them more room to interact with trans-national actors. States may under-estimate the power of these tactical concessions and can be surprised by what is set in motion both domestically and internationally.

Risse et al describe acceptance of a convention as "not inconsequential", as it leads governments to "entangle" themselves in a legal process which they "find harder and harder to escape". [88] At least sometimes, states "matched words with deeds eventually".[89] By engaging with their critics, states legitimize them as "valid interlocutors"; once in the "dialogical mode of arguing" they have to justify themselves and make concessions. Over time, it becomes more of a true dialogue, as governments begin to internalize a rights-based worldview (leading eventually to

[85] Oona Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) *Yale Law Journal* 111, 1935-2042, 1941.
[86] Ibid.
[87] Eric Neumayer, 'Do International Human Rights Treaties Improve Respect for Human Rights?' (2005) *Journal of Conflict Resolution* 49(6) 925-953.
[88] Thomas Risse and Kathryn Sikkink in Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999), 248.
[89] Ibid.

intrinsic motivation for rights compliance).[90] As noted above, this process is by no means a guaranteed trajectory, and may be subject to disruption and backlash.

Simmons sees three domestic mechanisms as being set in train by treaty commitment: elite-led agendas are affected; opportunities for litigation are increased; and the gap between expectation and performance is highlighted, (potentially) sparking popular mobilisation behind the issue. She sees treaties as providing political, legal and social resources to activists. Her view is that the additional leverage is most likely to have an impact in political contexts which are neither entrenched democracies nor entrenched autocracies, where the scales could come down either way, and even a small amount of additional power to human rights advocates can create a tipping point.[91]

7. Summary and Conclusion

This chapter has outlined existing research that finds that states are more likely to torture when political elites perceive that its utility outweighs its costs. The challenge for reformers is to increase the political costs of torture to the state to the point where they outweigh the perceived benefits. Certain scope conditions need to be met before reform will take full effect: as well as propitious conditions for change, there needs to be a felt demand for change, and civil society mobilisation is, in the eyes of many if not all observers, central to the articulation of this demand. A sufficient degree of democracy is required in order to open up the space necessary for this mobilisation. The demand needs to be sufficiently persuasive to political elites: it may appeal to

[90] Heather Cannoy-Smith, *Insincere Commitments: Human Rights Treaties, Abusive States and Citizen Activism* (Georgetown Press 2012).
[91] Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

extrinsic or intrinsic motivations or some combination of both. Local civil society organisations can be expected to be particularly important in the development over time of intrinsic motivation by the state to comply with human rights norms.

Risse et al are particular cheerleaders for this process, hailing transnational civil society as "the single most important group of actors to put a norm-violating government on the international agenda".[92] But there is nothing inevitable about the process of human rights reform. The role of activists in influencing states is a contested one: their relevance, legitimacy and capacity may be questioned; they may face a powerful backlash from the state; they may find that the state pays lip service to the objective of ending torture but does little more.

Mobilisation theory offers a plausible explanation for how states progress to accepting and implementing human rights norms. The processes described here underpin the examination in later chapters of how civil society organisations attempt to influence state practice on torture, and the extent to which they succeed.

The chapter opened with a warning about the potential for spurious causality: it is unsafe to assume that a particular intervention (civil society activism) causes a particular outcome (improved state performance on torture) without considering other factors that may have played a role. For example, conflict in state A comes to an end, and a military dictatorship is replaced with a nascent democracy. Over the next few years, civil society becomes highly active; post-conflict reconstruction activities include training for police and army; the prosecution of war crimes, including torture,

[92] Thomas Risse and Kathryn Sikkink in Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999), 242.

take place. The prevalence of torture declines. In this scenario, it would be unsafe to conclude that the decline in torture was caused by civil society activism on the issue, alongside the training of state agents, and a reduction in impunity, as all these outcomes stem from the same ultimate cause: the end of the conflict and the increase in democracy. The civil society interventions may be a proximate cause, or mechanisms through which the change occurred, and so are not negligible in their own right, but it would be risky to assume that they would be enough to end torture in state B, where the conflict persists and/or the regime remains authoritarian. The case studies in later chapters are designed to deliver a richer description of the political context in which activism occurs, with a view to unpicking as far as possible its distinct role in the causal process.

Having considered these questions in theoretical terms and on the basis of the existing literature in this chapter, the next chapter examines whether there is empirical evidence to support the hypothesis that civil society activism is associated with better state performance on torture, and under what conditions.

Chapter 2 Is More Activism Associated with Less Torture?

Chapter one explored the theoretical underpinnings for the hypothesis that civil society activism can be expected, provided scope conditions are met, to influence state practice in relation to torture. This chapter marshals further empirical evidence in support of this hypothesis, demonstrating that under certain conditions at least, (a) states that experience more civil society advocacy and (b) states that are more open to activism also tend to demonstrate a lower prevalence of torture.

Drawing on the discussion in the previous chapter, three factors are controlled for: size of population, the presence of conflict, and levels of democracy. It has been argued in the previous chapter that the second two variables affect the prevalence of torture in any given year. It also seems reasonable to assume that they may affect the degree of influence that civil society is likely to attain: it is harder for civil society activists to engage in dialogue with an authoritarian government than a democratic one, and more challenging to advocate against torture where this can be construed as undermining a war effort. The impact of population size has previously been noted by quantitative researchers such as Poe, Tate and Keith.[1] From a theoretical perspective, the impact of population size has been explored much less than the impact of democracy and conflict levels. Possible explanations include the fact that states with smaller populations are more likely to be socially and materially vulnerable than their larger counterparts, and potentially more subject to

[1] Steven C. Poe, C. Neal Tate and Linda Camp Keith, 'Repression of the Human Right to Personal Integrity Revisited: A Global Crossnational Study Covering the Years 1976-1993' (1999) *International Studies Quarterly* 43(2), 291-315.

contagion/spillover effects from neighbouring states. We cannot rule out the fact the apparent lower rate of abuse in small states could potentially be a mere reporting function, because the state's small size may make it harder to maintain a cadre of human rights professionals, and may inhibit the reporting of human rights violations (as individuals making reports become more identifiable and hence more at risk). It is plausible, however, that it is a genuine phenomenon, as activists in the smaller states find it easier to access decision-makers, and decision-makers are more directly accountable where abuses do take place. At a practical level, it seems likely that, all things being equal, it is easier for the executive to maintain control over its agents in small states.

Having examined whether higher activism levels are associated with better scores on torture, at least under specific conditions, we then consider the dynamics of change over a set period. Does an improved torture score precede an increased activism score (perhaps indicating that a state is becoming less repressive, less likely to use torture, and thus a more hospitable environment for activism) or does increased activism influence the state in a way that shows up in an improved torture score soon afterwards? Both scenarios are plausible in different states at different times, and given the relatively sparse data, it is not possible to provide a definitive answer. However, comparing changes in activism scores with changes in torture scores over time is at least suggestive with regard to the sequencing of those changes.

Limitations

This chapter explores the evidence for a *correlation* between NGO activism and an improved performance on torture. Correlation, of course, is not the same as *causation*: it is important to emphasise that the following analysis does not claim to demonstrate a causal relationship between the variables. A state may become (a) more open to activism and (b) less likely to use torture, not because (a) causes (b), but because (a) and (b) are both caused by (c) where (c) might be, for example, a change in political leadership. Even if there is a degree of causality between (a) and (b), a question remains regarding the direction of this causality: section 10 below attempts to identify whether (a) or (b) come first in time, but it must be acknowledged that a finding that (a) preceded (b) again does not establish that (a) caused (b) – known as the *post hoc* fallacy. The causality, if it exists, it may flow both ways, so that more activism encourages the state to reduce torture, and a reduced threat of torture leads to more emboldened and vigorous activism.

In addition to the causality issue, another important limitation relates to the difficulty of measuring the variables. Are the measures both *factually correct* (for example, are there accurate measures for the prevalence of torture in a given state in a given year?) and *conceptually satisfying* (while international law provides a definition for torture, what can and should be captured in the score for activism)? Before turning to the analysis, the next sections elaborate on these challenges.

1. The challenge of measuring torture

There are a number of existing datasets, created using a standards-based measurement approach in which narrative human rights reports are used to assign each state a score

for its performance in a given year based on a predetermined set of coding standards. All the datasets considered here rely primarily on either or both of two sources, the annual US State Department Country Reports on Human Rights Practices and Amnesty International (AI) reports. Other UN and regional human rights bodies as well as other civil society organisations also issue reports, but as they do not attempt to cover all states on an annual basis, it is more difficult to extract comparable data year-on-year for each state. Generating accurate data on torture prevalence is a major challenge for a number of reasons:

(i) Information gaps

Information about torture is often hard to verify, and there is room for error in extrapolating from reported individual incidences to the overall prevalence of torture. As noted in the previous chapter, states fall on a spectrum in relation to their willingness to admit the existence of torture (use of justification v. use of denial). The state may not only suppress information, but also challenge reports from other sources, claiming that such reports are unreliable and subject to political bias. Where there is little hope of justice and a risk of retaliation, victims themselves are also likely to under-report incidences of torture, as there is little incentive and a high risk attached to reporting, at least while the victim and/or family members remain within the country.[2] Where torture is common, individuals may not necessarily identify as victims of human rights abuse, taking it for granted, for example, that an encounter with the police will involve a degree of physical violence.

[2] Torture victims who seek asylum elsewhere may lodge complaints against their host country for attempted *refoulement* to the country of origin: for example, an Iranian asylum-seeker may bring a case to the Committee against Torture or the ECtHR against Sweden for attempting to return him to Iran, where he fears future torture. This is often why states which themselves commit little or no torture are nevertheless found to have breached to have breached their commitments related to torture. Breaches of the *non-refoulement* obligation are, however, beyond the scope of this dissertation.

Resistance to reporting may be less likely to occur in states which do not use torture strategically to achieve political control, and where the ill-treatment that occurs is more a matter of *de facto* tolerance of the abuse by authorities (often through a failure to hold individual police officers accountable for the use of excessive force). Where a state makes genuine efforts to tackle the issue by monitoring and prosecuting incidences of torture, its record can appear worse than a state where torture is frequent but there is no monitoring or state response. A state's record may therefore appear to decline at the point where it begins its attempts to acknowledge and eradicate torture.[3] This phenomenon has been dubbed the "human rights information paradox".[4] As Anagnostou and Mungiu-Pippidi explain, "higher reporting often stands at the root of the puzzling fact that the more open and liberal states tend to show higher levels of rights violations."[5] As well as the fact that a more open state allows more *opportunity* for reporting, an incident of ill-treatment in a state where abuse rarely occurs is more *newsworthy* than a similar incident in a state where it is common. Greater coverage in reports can lead to the incident having a proportionately much greater impact on the perceived performance on the state in question.

(ii) Potential bias by reporting body

Both the US State Department and AI reports have their limitations. The US State Department has on occasion been accused of bias: Qian and Yanagizawa detect a

[3] See for example Michael Dodson 'The Human Rights Ombudsman in Central America: Honduras and El Salvador Case Studies' (2006) *Essex Human Rights Review* 3(1), 29-45 where an increase in reports of human rights abuses increases in El Salvador in the late nineties is attributed at least in part to the appointment of a particularly active Ombudswoman in 1995, who increased public trust that reported abuses would be investigated and prosecuted.

[4] See for example Ann Marie Clark and Kathryn Sikkink, 'Information Effects and Human Rights Data: Is the Good News about Increased Human Rights Information Bad News for Human Rights Measures?' (2013) *Human Rights Quarterly*, 35, 539-568.

[5] Dia Anagnostou and Alina Mungiu-Pippidi, 'Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter' (2014) *European Journal of International Law* 25, 205-227, 213.

degree of bias in favour of Cold War allies,[6] while Alston and Gillespie find the US State Department reluctant to criticise "embattled allies" such as Israel, and its reporting potentially uneven across states and over time.[7] They note that on the whole, however, the reports are "considered by many to be reasonably balanced and accurate".[8] Poe et al noted some bias towards trading partners, but on the whole they found a high degree of concurrence between AI and US State Department Human Rights reports.[9]

Political bias was arguably more of a concern in the 1990s: for example, in 1994, in the context of the US-backed "war on drugs" in Bolivia the US State Department raised the possibility that reports of serious abuses by a US funded- and trained-section of the national police force were potentially politically motivated and therefore suspect.[10] The concern is not the US State Department's assertion that the abuse allegations were politically motivated *per se*, but that it made this assertion in a context where abuse allegations had not been properly investigated. AI did not flag any such doubts about the credibility of the abuse claims.[11] In later years, the US State Department changed the wording of its reports to acknowledge that torture allegations existed and not been properly investigated (failure to investigate

[6]Nancy Qian and David Yanagizawa, 'The Strategic Determinants of U.S. Human Rights Reporting: Evidence from The Cold War' (2009) *Journal of the European Economic Association* 7(2-3), 446-457.
[7] In the CIRI dataset provided in appendix one, which draws on both the US State Department reports and Amnesty International reports, Israel receives the worst possible score on torture during the years 2006-2010, suggesting that under-reporting of abuse in that state is not impacting on the country score.
[8] Philip Alston and Colin Gillespie, 'Global Human Rights Monitoring, New Technologies, and the Politics of Information' (2012) *European Journal of International Law* 23(4), 1089-1123, 1098.
[9] Steven C. Poe, Sabine C. Carey and Tanya C. Vasquez, 'How are these pictures different? A quantitative comparison of the U.S. State Department and Amnesty International Human Rights Reports, 1976-95' (2001) *Human Rights Quarterly* 23, 650-77.
[10] US State Department *Country Reports on Human Rights Practices for 1994: Bolivia* (1995). Available at http://dosfan.lib.uic.edu/ (accessed 5 May 2013): "Some rural leaders exaggerated reports of UMOPAR abuses, making it harder to distinguish between legitimate complaints and political agitation".
[11] AI, *A Summary of Amnesty International's concerns related to the Bolivian Governments implementation of the International Covenant on Civil and Political Rights* (March 1997), AMR 18/0597.

allegations of torture is of course a state violation in its own right), suggesting that it is to some degree self-correcting over time in respect of political bias.[12]

(iii) Lack of sustained focus on issue by reporting body

Unlike the fixed format of the US State Department reports, which cover the same categories in the same order every year, and where certain sections of text may be repeated from year to year, the sub-headings within each state entry in an AI report vary from one year to the next, so that different issues are given prominence. AI reports reflect AI's activities and priorities, and should not be read as a comprehensive account of all aspects of human rights in that state. Hopgood describes how the concept of minimum adequate coverage (the capacity to speak with authority on any country and a commitment to include every state in the Annual Report) was modified in the mid-1990s to become strategic coverage (prioritising coverage based on the perceived seriousness of human rights violations, the likelihood of having an impact, or the usefulness of a test cases).[13] In 2005, AI expanded its remit beyond its relatively narrow traditional focus on civil and political rights such as arbitrary detention and torture, embracing the "full spectrum" of rights, including economic, social and cultural rights.[14] This development limited the space available for discussion of torture. To choose one example, the country report on Nicaragua in 2006 reported on violence against women, the right to health, indigenous peoples,

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[12] By the time of its 1997 report, the US State Department was conceding although "many such allegations clearly were politically motivated exaggerations, the similarity and volume of such claims suggest that they had some basis in truth": US State Department *Country Reports on Human Rights Practices for 1997: Bolivia* (1998). Available at http://dosfan.lib.uic.edu/ (accessed 5 May 2013).

[13] This turbulent period of organisational repositioning is explored in detail in Stephen Hopgood, *Keepers of the Flame: Understanding Amnesty International* (Cornell University Press 2006).

[14] Stephen Bowen, 'Full-spectrum' human rights: Amnesty International rethinks', 2 June 2005, *openDemocracy*, available at http://www.opendemocracy.net/democracy-think_tank/amnesty_2569.jsp (accessed 14 January 2012). Stephen Hopgood, 'Amnesty International: The politics of morality', 22 March 2010, *openDemocracy*, available at http://www.opendemocracy.net/democracy-think_tank/amnesty_morality_3625.jsp (accessed 14 January 2012).

labour right and LGBT rights, whereas the discussion of torture or excessive use of force by police in Nicagarua, previously covered in AI reports, correspondingly disappeared. The US State Department report for the same year demonstrates that torture had not stopped being an issue in 2006. A similar trend is clear in AI reports on other states: Cameroon was reported by AI as having serious problems with torture until 2007, and then for the next few years any mention of torture disappeared from its country reports, with no suggestion that its lack of discussion implied that violations had ended. The "disappearance" of torture from AI reports does not necessarily indicate an improvement, but contrariwise, it is also not safe to infer that no mention of torture indicates a continuation of the status quo: in its reports on South Korea, AI stopped mentioning torture from 2003, whereas the US State Department reports describe significant improvements over the following years.

This point is made not to criticise AI, or other organisations such as Human Rights Watch, which similarly displays changes of focus, year on year: both of these organisations readily acknowledge that their reporting is not exhaustive. Their reports include a disclaimer to this effect, stating that silence on a given issue is not to be interpreted as meaning that no violation has taken place.[15] Their reports are ultimately designed to support their advocacy work rather than to form the basis for the creation of a dataset. It does mean, however, that caution needs to be exercised in relation to any coding system based solely on AI reports. If reports stop mentioning torture because the reporting organisation has changed its focus, and this in turn affects the score, there is a risk of making spurious associations.

[15] See discussion in Philip Alston and Colin Gillespie, 'Global Human Rights Monitoring, New Technologies, and the Politics of Information' (2012) *European Journal of International Law* 23(4), 1089, 1096. They quote the disclaimers found in the AI and HRW annual reports for 2009.

(iv) The translation of narratives into scores

Neither the US State Department nor AI design their narrative reports for the purpose of conversion into scores. Where a dataset attributes scores based on an (inevitably) arbitrary number of reported incidents, a state may appear to change its performance significantly where it has tortured (say) 50 people one year and 49 the next, because the threshold have been crossed, even though the actual change is minor, and may be a function of uneven reporting. Wood and Gibney note that failure to factor in the size of state populations may create a misleading impression: fifty incidents in a country such as China, with its billion plus inhabitants, may have different implications compared to fifty incidents in a tiny state.[16] With one aggregate score for each state, the scores conceal differences within the state based on geography (treatment of detainees in the capital may be very different to those in a contested border zone) and the individual characteristic of the detainee (ethnicity, real or perceived political affiliation, social class, gender, age). Carver and Handley note that human rights observers have historically been more interested in the fate of political detainees over criminal suspects, even though the latter account for the majority of victims, which may skew accounts.[17]

As well as absolute (reported) numbers, coders rely on the language used in reports, so for example the adjectives "gross", "widespread", "systematic", "epidemic", "extensive", "wholesale", "routine" or "regularly" lead to a worse score than the adjectives "numerous", "many", "various", "dozens" or "multiple". Carver and Handley point out that this is a form of content analysis, but whereas content analysis

[16] Reed M. Wood and Matthew Gibney, 'The Political Terror Scale (PTS): A Re-introduction and a Comparison to CIRI' (2010) *Human Rights Quarterly* 32(2), 367-400, 378.
[17] Richard Carver and Lisa Handley, *Does Torture Prevention Work?* (Liverpool University Press 2016), 36.

is normally used to study the medium (methods of communication), here it is used as a proxy for the underlying reality.[18] They note the risks of assuming that word-choice is driven entirely by the situation on the ground and "not influenced by such factors as personal taste or a wish to avoid repetition".[19]

While noting these limitations, it is not contended that they render all efforts at measurement invalid. For the reasons set out above, political bias is not currently a major concern with regard to the reliability of the scoring, and AI's changes of focus in reporting from year to year can be compensated for by the US State Department's consistency of coverage. While imperfect, the available information is sufficiently robust to allow us to assign states to one of three categories (best, medium and worst performance on torture) and to set up useful comparisons across those categories.

2. The available datasets on torture and ill-treatment

Given resource limitations, it was impractical to carry out a coding exercise specifically for the purpose of this current research, necessitating instead the use of an existing dataset. Scholars have created a number of datasets scoring political repression levels per country-year. The widely-used Political Terror Scale measures physical integrity violations, but does not disaggregate scores according to violation, so data relating to torture as a distinct violation compared to, say, extrajudicial killing, is not available.[20] This renders it unsuitable for the current study.

[18] Ibid 27.
[19] Ibid.
[20] Mark Gibney, Linda Cornett, Reed Wood, Peter Haschke, Daniel Amon and Attilio Pisano, 'The Political Terror Scale', http://www.politicalterrorscale.org/(accessed 14 January 2012).

Of the available torture-specific datasets, Oona Hathaway's dataset was one of the earliest, with her codification exercise covering the years 1985 to 1999.[21] She created this dataset in the context of an important study demonstrating that ratification of an international treaty on torture did not, in and of itself, necessarily lead to improved performance by the state in relation to this right. While her insights remain valuable, her dataset is not sufficiently recent to be used in this research.

Conrad and Moore created their own dataset through their Ill-Treatment and Torture Data Collection Project. At the time when this analysis was undertaken, it covered years up until 2005, which also ends too early for this study.[22] Aside from its end date, a further concern is that the choice has been made not to use data from the US Department of State, relying entirely on information from AI (its annual reports and its supplementary reports on specific countries/issues). It has already been contended above that reliance on AI reporting alone creates susceptibility to information gaps arising from AI's inconsistent reporting focus from year to year.

In their 2016 book, Handley and Carver make use of their own dataset, the Carver-Handley Torture Score.[23] It takes contemporaneous human rights reports as a starting point, attempting to verify them through other sources, including "official and unofficial statistics, and extensive interviews with primary sources".[24] Their dataset relies on the contribution of a large number of in-country researchers and extends to

[21] Oona Hathaway, 'Do Human Rights Treaties Make a Difference?' (2002) *Yale Law Journal* 111, 1935-2042.
[22] Courtney R Conrad and Will H Moore, 'The Ill-Treatment & Torture (ITT) Data Collection Project', 'http://www.politicalscience.uncc.edu/cconra16/UNCC/ITT_Data_Collection.html (accessed 14 January 2012).
[23] Richard Carver and Lisa Handley, *Does Torture Prevention Work?* (Liverpool University Press 2016), 39 et seq.
[24] Ibid.

16 countries only. As the authors observe, this represents a relatively small dataset for the purposes of quantitative analysis, although the authors compensate by considering the states over a relatively long thirty-year period, 1985-2014. The 16 countries do not include those countries discussed in the case studies in later chapters, and this dataset is not relied on here, where a wider number of states are examined over a shorter period in time.

The dataset used for the purposes of this chapter is the Cingranelli and Richards' Human Rights Data Project (hereafter CIRI).[25] Unlike the Political Terror Scale, this dataset has the advantage of being disaggregated by violation, so a specific score for torture can be identified; unlike Conrad and Moore, it uses both Amnesty International and US State Department reports. It provides global coverage, unlike the Carver-Handley Torture Score. At the time when the analysis was undertaken, it covered the years 1981-2011, making it more up-to-date than Hathaway and Conrad and Moore.

The CIRI dataset has been criticised in some quarters for variance truncation: unlike the five- and six-point scales used by both Hathaway and Conrad and Moore, the CIRI scores range from 0 (worst record on torture) to 2 (best record on torture). The consequence of this truncation of categories is that, as Hafner-Burton and Ron point out, even quite significant changes in state practice will not necessarily show up in the score.[26] It is likely, furthermore, that changes will show up unevenly across the three

[25] Full details on the Cingranelli and Richards' Human Rights Data Project are available at http://www.humanrightsdata.org/index.asp

[26] Emilie M. Hafner-Burton and James Ron, "Seeing Double Human Rights Impact through Qualitative and Quantitative Eyes" (2009), *World Politics* 61(2), 360–401. The authors make this point in relation to the use of quantitative scoring methods in general rather than to the CIRI dataset in particular.

categories: one or two anomalous incidents of ill-treatment that receive considerable attention by virtue of being unusual could cause the state in question to be reclassified from 2 to 1, whereas a state already scored at 0 could experience a marked surge in torture with no opportunity for a change in score. While these designations lack nuance, however, their parsimony does ensure that they are robust. The use of such broad categories compensates to a degree for the differential availability of information about state performance: broad but robust categories are to be preferred over a more finely-graduated but potentially less reliable categorisation. It can be said with a reasonable degree of reliability that a detainee is at most risk of ill-treatment in a state scoring 0, at medium risk in a state scoring 1, and at least risk in a state scoring 2, even though there is a spectrum of risk within each category, particularly the categories reflecting a score of 1 and 0.

Fariss argues that all the standard datasets underestimate human rights improvements, because they fail to take into account the fact that "[t]he standard of accountability used to assess state behaviors becomes more stringent as monitors look harder for abuse, look in more places for abuse, and classify more acts as abuse".[27] He proposes that scores be adjusted over time to account for the fact that the same score several decades apart may represent different levels of achievement. As this chapter concerns itself with state performance over a relatively short period, no such adjustment has been deemed necessary here: the assumption is made that neither the understanding of what constitutes ill-treatment nor how is it identified has changed significantly within the period under examination.

[27] Christopher Fariss, 'Respect for Human Rights has Improved Over Time: Modeling the Changing Standard of Accountability' (2014) *American Political Science Review* 108(2), 297–318.

Having ascertained the most appropriate dataset for the purposes of measuring torture, the next step is to identify a method for measuring civil society activism.

3. The challenge of measuring civil society activism

Assessing levels of civil society activism in a state is not straightforward, even without the difficulty of disaggregating activism specifically on torture. In a weak state, civil society may be highly engaged in carrying out what are more usually seen as state functions (education, health, development), while the state's weakness also means it lacks effective control over its agents and/or its territory, so that high levels of torture co-exist with high levels of civil society. It is therefore not enough to measure rates of civil society presence alone, as this measure does not distinguish a state's willingness to engage with civil society from a state's derogation of certain areas of responsibility to civil society. The sectors in which torture typically occurs, justice and security, are not sectors that states will readily cede to civil society, so a high civil society score due to many CSO-run schools and health clinics, for example, does not necessarily indicate that the state is amenable to civil society intervention in its handling of political or criminal detainees.

Assessing activism is of course a complex task in itself, involving more than simply counting the number of CSOs at work: multiple CSOs may reinforce each other, or may duplicate work and compete with each other.[28] The mere fact that an CSO exists does not mean it is active: some may be "briefcase NGOs", set up in a cynical bid to

[28] See for example the OSCE's report on its torture prevention work in Bosnia-Herzogovina: "[T]he multiplicity of local actors had brought negative consequence, as rivalries between NGOs in the context of discussions on the creation of a network to establish a public monitoring mechanism [on torture] led to the process being stalled": OSCE/ODIHR, *The Fight against Torture: The OSCE Experience* (ODIHR 2009), 20.

attract funding; some may be well-intentioned but are not very active in a given year, for reasons such as turnover of key personnel, not unusual given the funding constraints common to the sector. Nor does counting the number of CSOs which include torture in their mandate indicate how much pressure is brought to bear on the state to amend its current practices in this area: a torture rehabilitation organisation may focus entirely on supporting victims of political torture from a past regime, having little to no involvement with present-day issues of ill-treatment within the criminal justice system. Conversely, an organisation working on gender equality could be carrying out advocacy relevant to torture, although framing it in terms of women's physical integrity rights rather than specifically as torture. Also, not all activism is necessarily undertaken by NGOs – it may be undertaken by individuals or groups working in journalism, the law, trade unions, religious groups or social movements. Some manifestations may be fleeting and hard to capture: a religious leader praying publicly for compassion in the justice system; a lobbyist's private conversation with a politician. Activism is not always undertaken steadily over the course of years – campaigns may be short-lived. Particularly in large states, activism may focus on one area, such as the capital city, and engage to a lesser extent with other parts of the country. The variety of ways in which activism may be manifested is explored in the next chapter, but the relevant point here is that quantification is difficult.

Despite these challenges, there are some existing attempts at measuring civil society strength. CIVICUS produces reports which assess the environment in which civil society operates and the impact it has on the state; at the time of writing, the existing dataset is too limited for the analysis undertaken here. USAID publishes a Civil

Society Organization (CSO) Sustainability Index, which measures civil society strength, including a specific score on *advocacy*. The country advocacy score is based on CSOs' record in relation to influencing public policy in that state, taking into account the opportunities for forming coalitions and networks, their ability to communicate with the public and to articulate their message to government officials, and whether they can monitor state performance.[29] This dataset is a good fit for the current research, although it is not possible to distinguish torture-specific advocacy levels.[30] Unfortunately it only covers a limited number of states for the years during which CIRI scores are also available, yielding a relatively low number of observations for the purposes of statistical analysis. Advocacy scores are available for 25 states for the years 2000-2010: these scores are used below in an initial test of the hypothesis that higher levels of civil society advocacy are associated with a better state performance on torture. However, the number of observations is too low to disaggregate the data in order to test the strength of the association under different conditions.

[29] Definition available at USAID, 'CSO Sustainability Index Methodology', https://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/cso-sustainability-index-methodology (accessed 4 February 2018).

[30] Hafner-Burton has measured the naming and shaming by NGOs of state performance on a range of rights by counting the number of Amnesty International press releases or background reports publishing per year per state: Emilie M. Hafner-Burton, 'Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem', (2008) *International Organization* 62(4), 689-716 at 697. However, as will be described in detail in the next chapter, naming and shaming does not exhaust the category of activism under examination here. Likewise, the work of one prominent international organisation is not sufficiently illustrative of local civil society activism, which is important here alongside international activism. DeMeritt and Conrad have created a dataset on the shaming of states by the UN Commission on Human Rights and the UN Human Rights Council specifically in relation to torture: see Courtenay R. Conrad and Jaqueline DeMerrit, 'Unintended Consequences: The Effect of Advocacy to End Torture on Empowerment Rights Violations', 159-183 in *Examining Torture: Empirical Studies of State Repression*, eds. Tracy Lightcap and James Pfiffner (Palgrave MacMillan, 2014). Again, data on naming and shaming provides only a partial picture of activism, and shaming undertaken by these two UN bodies, which has a very particular political context, is not necessarily illustrative of activism by civil society.

Because it is important to have a larger dataset to ensure that the association is valid and to control for variables that may influence the relationship between civil society activism and performance on torture, it has been found necessary to use another dataset, the Freedom House annual scores on associational and organisational rights which measure the state's *openness to civil society activism*, ie. its respect for the rights that effectively create the political space in which civil society can operate. It is not necessarily the case that the political space available for activism will be perfectly exploited by activists, but at least in principle, a facilitative environment should be relevant to the contribution that it is possible for civil society activism to make within a given social and political context.[31] The Freedom House only began to publish scores on associational and organisational rights from 2006 onwards. The analysis therefore focuses on the years 2006-2010, a five-year period for which both CIRI scores on torture and Freedom House scores on openness to activism are available.

Use of a rights-based score has a limitation that must be acknowledged. States that respect one right (the right of individuals not to be tortured) may also be more likely to respect another set of rights (associational and organisational rights). There is a risk of circularity in finding that a rights-respecting state in one respect is a rights-respecting state in another respect. At the same time, an advantage of using openness to activism as an indicator rather than levels of activism per se is that it protects against *endogeneity*, as the dependent variable is less likely to drive the independent variable. One reason a state with high openness to activism may have little torture-

[31] In the Freedom House dataset, scores are based on a scale of 0 to 4 for each of three questions where a score of 0 represents the smallest degree and 4 the greatest degree of rights or liberties present. States score highly where there is **freedom of assembly, demonstration, and open public discussion (so, for example, peaceful protests are permitted); where there is freedom for nongovernmental organizations (members can go about their work without undue interference); and where there are free trade unions or an equivalent. See** http://www.freedomhouse.org/report/freedom-world-2011/ (accessed 19 May 2013).

specific activism is because there is no felt need, as little or no torture occurs in that state. More torture may thus mean more torture-related activism (albeit perhaps not a linear increase, as the risks to activists become higher with increased torture, leading to a potential tapering off of activism where torture is highest). By contrast, more torture would not be expected to drive more state openness to activism.

4. Control variables

As discussed in the previous chapter, a number of variables have been identified as influencing the prevalence of torture; to isolate the impact of openness to activism, it is necessary to control for these intervening factors.

(i) Conflict

Data on conflict is taken from the Uppsala Conflict Data Program.[32] The threshold for conflict is deemed to be at least 25 battle-related deaths per calendar year, across the categories of intrastate, interstate, one-sided and non-state conflict. Some scholars prefer to use a lower threshold for conflict; for example, Conrad and Moore deem violent dissent to be present if a state experiences at least one act of guerrilla war or is coded by the Correlates of War project as experiencing a civil war in a given year. The authors apply this threshold to test whether even relatively low levels of conflict change the probability of whether a state uses torture. The higher threshold applied in this research here poses a slightly different question: whether civil society activism can still have an observable effect even in states with some low-level dissent. The scores have been used to create a dichotomous classification of states as experiencing conflict versus not experiencing conflict.

[32] Uppsala Conflict Data Program, available at http://www.ucdp.uu.se/gpdatabase/search.php (accessed 18 February 2015)

(ii) Democracy

To determine level of democracy, the Freedom House score for political rights is used. States are assessed on the electoral process, political pluralism and participation, and functioning of government. The score is independent of the score for associational and organisational rights. It is a 7-point scale, with the lowest scores representing the strongest democracies. States have been divided into three categories: high democracy states (based on a Freedom House Political Rights score of 1); medium democracy states (score of 2-5) and low democracy states (score of 6-7).[33] Data tables are provided for reference in Appendix 1.

(iii) *Population size*

Using data from 2010, states are categorised as having a small population size as (under 2 million), a medium population (between 2 and 22 million) and large (over 22 million).[34]

5. Presentation of findings

As a visual aid, heat maps are used here to depict the distribution of performance on torture within each category, alongside statistical analyses to identify the degree of statistical significance of the associations identified. In each heat map, states in the relevant category are listed in descending order of *advocacy* score (first set of findings) and then *openness to activism* (second set of findings). Full country-year scores are provided in the appendix, but omitted in the chapter. In the following

[33] Freedom House, 'Freedom in the World: Aggregate and Subcategory Scores', https://freedomhouse.org/report/freedom-world-aggregate-and-subcategory-scores (accessed 30 November 2016).
[34] Organization for Economic Cooperation and Development Annual statistics. Montenegro is omitted as scores are not available for 2006.

graphs, the state's performance on torture over the period is colour-coded to show the best, medium and worst performance on torture. The heat map should be read from top to bottom. If performance on torture improves in association with openness to activism, we would therefore expect to see a heat map that appears as follows, with the best country-year performances (represented by dark green) on torture clustered at the top of the table, in the area showing most openness to activism, and the worst country-year performances on torture (represented by orange) at the bottom of the table, where there is least openness to activism. States with middling levels of civil society advocacy/openness to activism are located in the middle of the table, and show a middling performance on torture (light green).

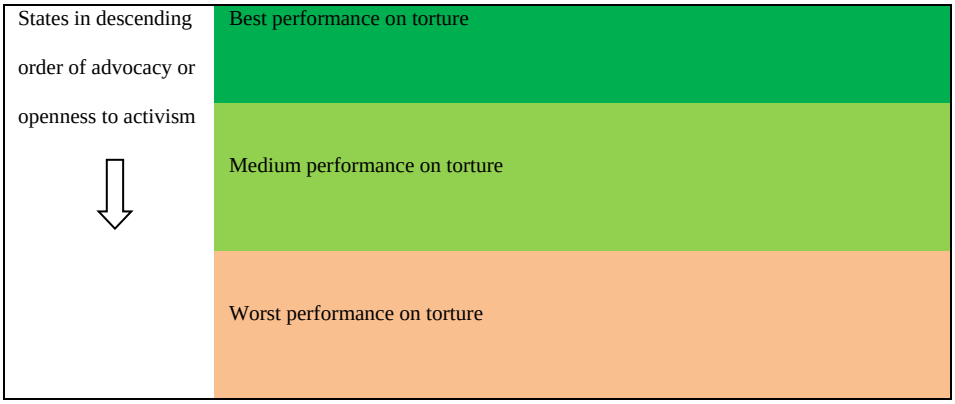


Figure1 *Sample heat map where advocacy/openness to activism is associated with state performance on torture*

The closer a heat map is to this ideal pattern, the stronger the association between openness to activism and performance on torture.

6. Association between advocacy and performance on torture

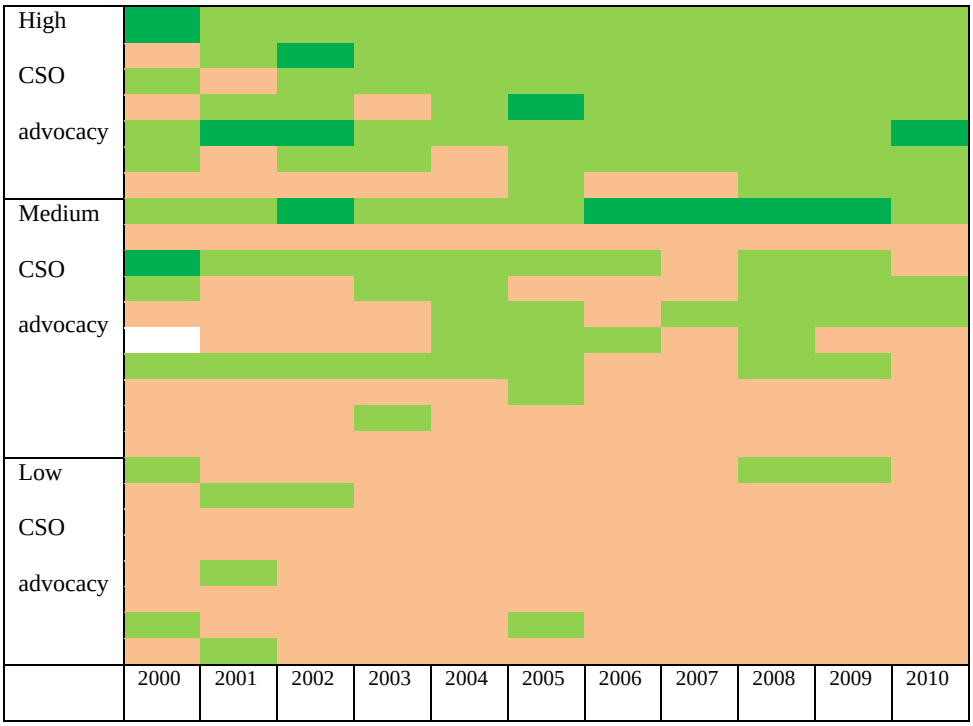


Figure 2 *States in descending order of CSO advocacy scores, colour-coded according to state performance on torture (for 25 states where scores are available)*

Full country scores are provided in the appendix on p.295. Using the USAID CSO Sustainability Index advocacy scores and the CIRI torture scores, this heat map shows that the best and medium performance on torture (dark green and light green colour-coding respectively) occurs most often in states with high and medium advocacy scores. The category of states with low CSO advocacy scores contains the worst performances on torture. This table indicates that there is a linear relationship between CSO advocacy and state performance on torture, ie. as CSO advocacy increases, state performance on torture also improves.

Represented as a cross-tabulation, the figures are as follows:[35]

Advocacy * Torture Crosstabulation

			Torture			
			Worst	Medium	Best	Total
Advocacy	Low	Count	85	10	0	95
		% within Advocacy	89.5%	10.5%	0.0%	100.0%
	Medium	Count	65	60	9	134
		% within Advocacy	48.5%	44.8%	6.7%	100.0%
	High	Count	5	37	3	45
		% within Advocacy	11.1%	82.2%	6.7%	100.0%
Total		Count	155	107	12	274
		% within Advocacy	56.6%	39.1%	4.4%	100.0%

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	84.924[a]	4	.000
Likelihood Ratio	97.190	4	.000
Linear-by-Linear Association	73.128	1	.000
N of Valid Cases	274		

a. 2 cells (22.2%) have expected count less than 5. The minimum expected count is 1.97.

As two cells have an expected count of under 5, results are rechecked combining best and medium categories on torture, yielding the following (almost identical) result.

Chi-Square Tests

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	83.259[a]	2	.000
Likelihood Ratio	94.128	2	.000
Linear-by-Linear Association	82.873	1	.000
N of Valid Cases	274		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 19.54.

[35] High advocacy indicates a score of 2.9 or below; medium advocacy is 3.0 to 3.9; low advocacy is over 4.0. Full data provided in appendix.

This test indicates that there is a statistically significant association between CSO advocacy and state performance on torture at p=0.01. A further test, equivalent to a correlation between these ordinal variables, confirms the strong association.

Correlations

			Advocacy	Torture
Spearman's rho	Advocacy	Correlation Coefficient	1.000	.550**
		Sig. (2-tailed)	.	.000
		N	274	274
	Torture	Correlation Coefficient	.550**	1.000
		Sig. (2-tailed)	.000	.
		N	274	274

**. Correlation is significant at the 0.01 level (2-tailed).

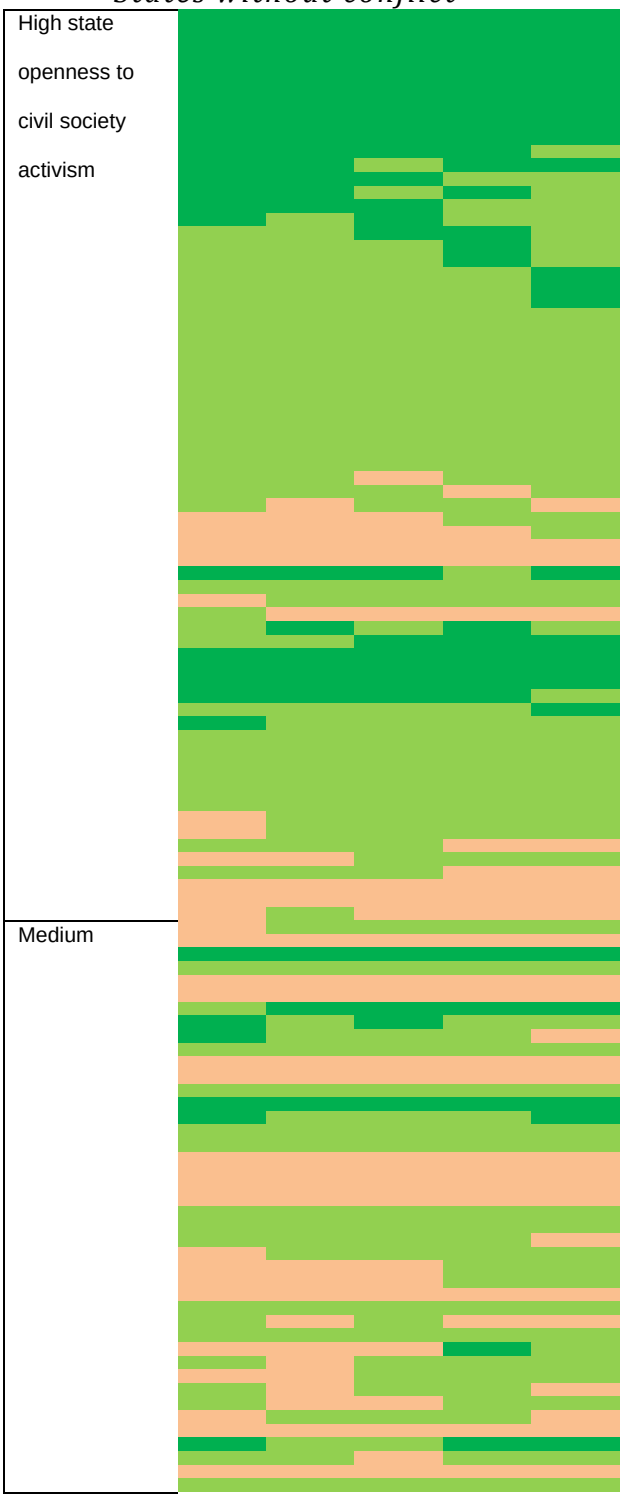
This finding strongly supports the hypothesis that a higher score for CSO advocacy is correlated with better state performance on torture.

As noted earlier in the chapter, the USAID dataset on CSO advocacy covers only a limited number of states for this time period. Numbers are too low to allow examination of whether this association persists when we control for factors such as conflict and democracy levels. To fill the gap, we turn to the dataset produced by Freedom House, which allows us to rank states by their openness to civil society activism. We now examine whether openness to activism is correlated with better performance on torture independently of conflict, democracy levels, and population size.

7. *Association between state openness to activism and performance on torture, controlling for conflict*

For states not experiencing conflict, the relationship between levels of openness to activism and state performance on torture can be represented as follows.

States without conflict



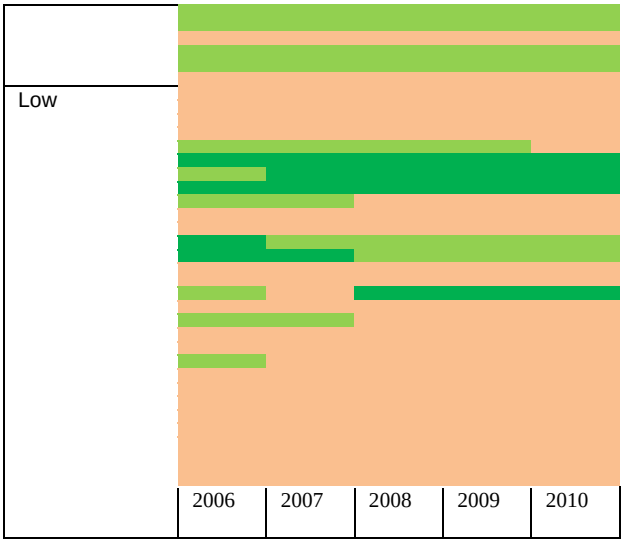


Figure 3 States in descending order of openness to activism, (based on 141states not experiencing conflict)

Full country scores are provided in the appendix on p.296-299. The graph suggests that although the association is not perfect, better performance on torture is concentrated in the states most open to civil society activism. Dark green (best performance on torture) predominates at the top of the table, amongst states most open to activism, while the worst performances on torture are clustered at the bottom of the table (states least open to activism). On the whole, states which are more open to activism perform better on torture than states which are less open. Using statistical tests leads to the following results.

Openness * Torture Crosstab (states without conflict)

			Torture			
			Worst	Best/med	3	Total
Openness	Low	Count	87	18	20	125
		% within Openness	69.6%	14.4%	16.0%	100.0%
	Medium	Count	101	121	23	245
		% within Openness	41.2%	49.4%	9.4%	100.0%
	High	Count	48	181	106	335
		% within Openness	14.3%	54.0%	31.6%	100.0%
Total		Count	236	320	149	705
		% within Openness	33.5%	45.4%	21.1%	100.0%

Chi-Square Tests (states without conflict)

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	157.687[a]	4	.000
Likelihood Ratio	167.226	4	.000
Linear-by-Linear Association	107.790	1	.000
N of Valid Cases	705		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 26.42.

There is a significant association between openness to activism and performance on torture in states without conflict at p=0.01. Its strength is confirmed by Spearman's rank-order correlation.

Correlations (states without conflict)

			Openness	Torture
Spearman's rho	Openness	Correlation Coefficient	1.000	.408**
		Sig. (2-tailed)	.	.000
		N	705	705
	Torture	Correlation Coefficient	.408**	1.000
		Sig. (2-tailed)	.000	.
		N	705	705

**. Correlation is significant at the 0.01 level (2-tailed).

States with conflict

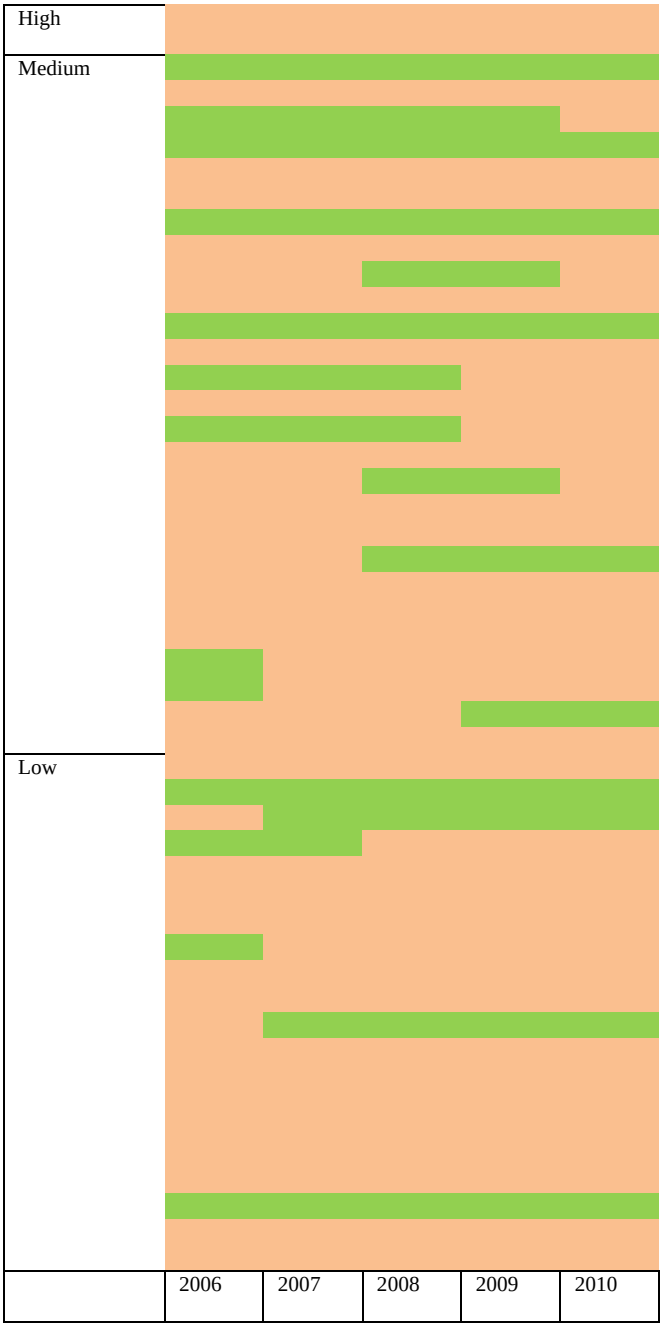


Figure 4 *States in descending order of openness to CSO activism (based on 48 states experiencing conflict in one or more years 2006-2010)*

Full country scores are provided in the appendix on p.299-300. The most obvious point is that states experiencing conflict rarely score highly on openness to activism (Israel being the only exception), and there are no cases in which a state experiencing conflict demonstrates the best score on torture. Comparing this graph with the previous one confirms that states experiencing conflict generally perform poorly on

torture, although medium-open states perform slightly better than low-open states. This can be demonstrated statistically as follows:

Openness * Torture Crosstab (states with conflict)

			Torture		
			Worst	Best/med	Total
Openness	Low	Count	79	21	100
		% within Openness	79.0%	21.0%	100.0%
	High/med	Count	99	41	140
		% within Openness	70.7%	29.3%	100.0%
Total		Count	178	62	240
		% within Openness	74.2%	25.8%	100.0%

Chi-Square Tests (states with conflict)

	Value	df	Asymptotic Significance (2-sided)	Exact Sig. (2-sided)	Exact Sig. (1-sided)
Pearson Chi-Square	2.090[a]	1	.148		
Continuity Correction[b]	1.680	1	.195		
Likelihood Ratio	2.123	1	.145		
Fisher's Exact Test				.179	.097
Linear-by-Linear Association	2.081	1	.149		
N of Valid Cases	240				

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 25.83.

b. Computed only for a 2x2 table

Correlations (states with conflict)

			Openness	Torture
Spearman's rho	Openness	Correlation Coefficient	1.000	.093
		Sig. (2-tailed)	.	.149
		N	240	240
	Torture	Correlation Coefficient	.093	1.000
		Sig. (2-tailed)	.149	.
		N	240	240

Spearman's rho remains positive, although the association is weaker than in states without conflict.

8. Association between state openness to activism and performance on torture, controlling for democracy

High democracy

Figure 5 *Based on 57 states with a FH score on political rights of 1*

Medium democracy

Figure 6 *Based on 63 states with a FH score on political rights of 2-4*

Low democracy

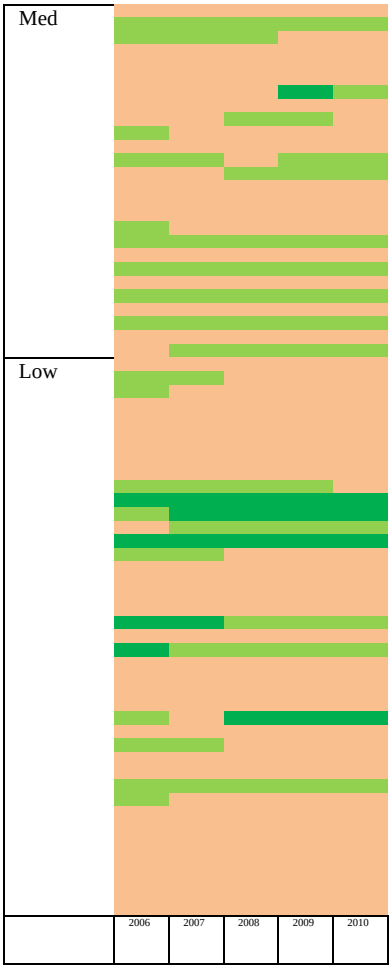


Figure 7 *Based on 67 states with a FH score on political rights of 5-7*

Full country scores are provided in the appendix on p.301-305. High democracy states are nearly all highly open to activism; a few states (USA, Japan, Grenada) have only medium levels of openness, but no highly-democratic state showed low openness to activism. Given the skewed distribution in this category, comparing torture performance in high versus medium open states does not lead to a statistically reliable result, and so a statistical analysis is not undertaken here. Conversely, none of the

low democracy states can be categorised as highly open to activism. Even comparing medium openness to low openness to activism, it does not seem to be the case that the former category performs better on torture than the latter. The category of low democracies with low openness to activism contains a number of states with an anomalously good performance, such Brunei, Bhutan and Qatar. There are a number of possible explanations for this puzzle. As shown below, states with small populations tend to perform better on torture than would be expected based on their openness to activism. Chapter one also referred to the contention that in states where power is not shared, either through a multi-party system or otherwise, individuals are less likely to defect against the regime, which so the state perceives less need to use torture. By this logic, the most complete autocracies would be expected to experience less torture than less complete autocracies.[168] The mixed picture above does not entirely support this view: it seems to be true of some states but not others, perhaps on the basis of a state's capacity to control its agents, as discussed in chapter one. It may be the case that conditions in the low democracy states are so unfavourable to activism that there is very little scope for civil society to monitor and report on torture, so that the absence of reported torture appears as an absence of actual torture, a corollary to the information paradox discussed earlier in the chapter.

Only medium democracies exhibit high, medium and low openness to activism. In this category, the states with high openness to activism perform better overall on torture than the states with low openness (which uniformly perform badly on torture), but there is a great degree of variation, particularly in the states with medium openness.

[168] James Vreeland, 'Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention against Torture' (2008) *International Organization* 62, 65-101.

Openness * Torture Crosstab (medium democracy)

			Torture			
			Worst	Medium	Best	Total
Openness	Medium/Low	Count	111	113	21	245
		% within Openness	45.3%	46.1%	8.6%	100.0%
	High	Count	22	38	10	70
		% within Openness	31.4%	54.3%	14.3%	100.0%
Total		Count	133	151	31	315
		% within Openness	42.2%	47.9%	9.8%	100.0%

Chi-Square Tests (medium democracy)

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	5.047[a]	2	.080
Likelihood Ratio	5.046	2	.080
Linear-by-Linear Association	5.010	1	.025
N of Valid Cases	315		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 6.89.

As the category for low openness to activism is so small, it is combined here with medium openness. The association is below the threshold for significance where p = 0.01 although it is significant at a lower threshold of p = 0.1; significance is affected by the lower number of observations. Again, Spearman's rho is positive.

Correlations (medium democracy)

			Openness	Torture
Spearman's rho	Openness	Correlation Coefficient	1.000	.126*
		Sig. (2-tailed)	.	.025
		N	315	315
	Torture	Correlation Coefficient	.126*	1.000
		Sig. (2-tailed)	.025	.
		N	315	315

*. Correlation is significant at the 0.05 level (2-tailed).

Moving to low democracy states, there are no low democracy states that are also highly open to activism, so we can only compare states with medium openness to activism and states with low openness to activism.

Openness * Torture Crosstab (low democracy)

			Torture			
			Worst	Medium	Best	Total
Openness	Low	Count	155	50	0	205
		% within Openness	75.6%	24.4%	0.0%	100.0%
	Medium	Count	85	0	45	130
		% within Openness	65.4%	0.0%	34.6%	100.0%
Total		Count	240	50	45	335
		% within Openness	71.6%	14.9%	13.4%	100.0%

Chi-Square Tests (low democracy)

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	103.830[a]	2	.000
Likelihood Ratio	135.480	2	.000
Linear-by-Linear Association	31.153	1	.000
N of Valid Cases	335		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 17.46.

Using this measure, there is a significant association between openness to activism and performance on torture at p=0.01.

Correlations (low democracy)

			Openness	Torture
Spearman's rho	Openness	Correlation Coefficient	1.000	.199**
		Sig. (2-tailed)	.	.000
		N	335	335
	Torture	Correlation Coefficient	.199**	1.000
		Sig. (2-tailed)	.000	.
		N	335	335

**. Correlation is significant at the 0.01 level (2-tailed).

Rho remains positive for both medium and low democracy countries.

9. Association between state openness to activism and performance on torture, controlling for population size

Small populations

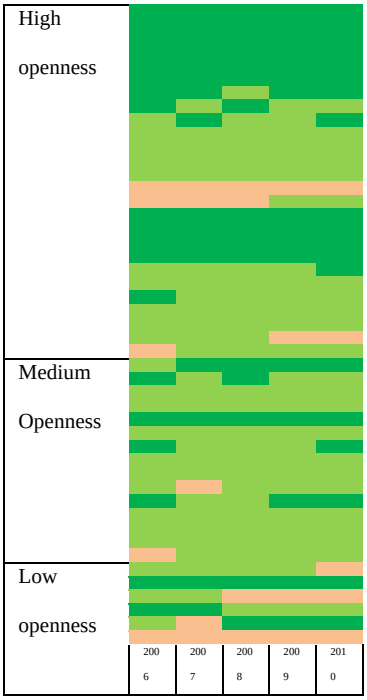


Figure 8 *Based on 47 states with populations under 2 million in 2010*

Medium Populations

Figure 9 *Based on 89 states, pops 2-22 million in 2010*

Large populations

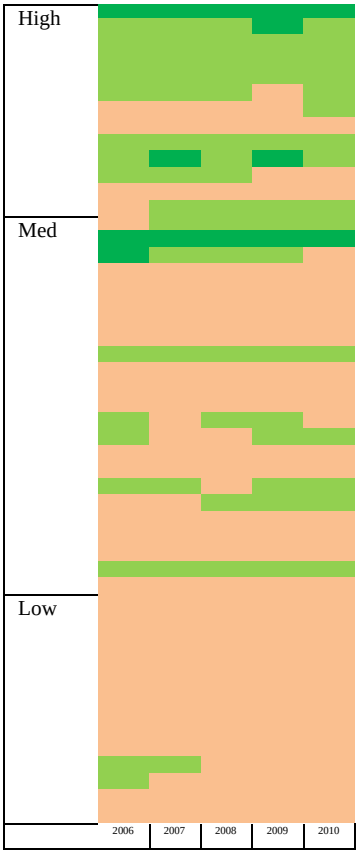


Figure 10 *Based on 50 states with populations over 22 million in 2010*

Full country scores are provided in the appendix on p.306-310. It is immediately obvious that size matters: the states with the smallest populations generally perform much better on torture than the states with the largest populations (ie. of the three graphs, the one for small populations has the most green overall, and the most dark green). States with small populations tend to be more open to activism than states with medium or large populations, and even where not open, at least some small states apparently still perform well on torture (Brunei, Bhutan, Qatar). As noted at the start of the chapter, this may be because smaller states have a lesser *principal-agent* problem, because they have higher levels of *social or material vulnerability* to international influence, because state authorities are more accessible to activists, or it may be due to some other factor, such as a greater sense of national identity and solidarity within the population, and/or fewer social cleavages. Alternatively, and more negatively, it may be because this category includes a number of complete autocracies: Vreeland noted, as pointed out above, that in these complete autocracies, torture is less likely to be used as the political leader is not fending off challenge. Again, as noted previously, it could also be a reporting issue, with the smallest states lacking human rights professionals who can gather and publish information on torture violations.

For states with medium and large populations, the better performances on torture are clustered in the most open states; this is particularly marked in the states with the largest populations. We can see a linear association between openness to civil society activism and performance on torture, particularly in the largest states, where good performance on torture is concentrated in the highly-open states, and bad performance on torture is concentrated in states with low openness. Subjecting the same data to standard statistical tests yields the following results.

			Torture			
			Worst	Medium	Best	Total
Openness	Low	Count	11	19	10	40
		% within Openness	27.5%	47.5%	25.0%	100.0%
	Medium	Count	1	48	16	65
		% within Openness	1.5%	73.8%	24.6%	100.0%
	High	Count	11	59	60	130
		% within Openness	8.5%	45.4%	46.2%	100.0%
Total		Count	23	126	86	235
		% within Openness	9.8%	53.6%	36.6%	100.0%

Chi-Square Tests (small population)

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	31.722[a]	4	.000
Likelihood Ratio	29.819	4	.000
Linear-by-Linear Association	12.547	1	.000
N of Valid Cases	235		

a. 1 cells (11.1%) have expected count less than 5. The minimum expected count is 3.91.

This test shows that there is a significant association, where p is 0.01. However, its validity is affected by the fact that there is an expected count of less than 5 in the category of states with low openness and the worst performance on torture. We can repeat the exercise by combining the categories of medium and low openness to activism, so the question is now whether states with high openness to activism perform better on torture than states with medium and low openness to activism.

Chi-Square Tests (small population)

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	11.463[a]	2	.003
Likelihood Ratio	11.703	2	.003
Linear-by-Linear Association	8.756	1	.003
N of Valid Cases	235		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 10.28.

Again, with p = 0.01, the association is significant. Spearman's rho is positive.

Correlations (small population)

			Openness	Torture
Spearman's rho	Openness	Correlation Coefficient	1.000	.204**
		Sig. (2-tailed)	.	.002
		N	235	235
	Torture	Correlation Coefficient	.204**	1.000
		Sig. (2-tailed)	.002	.
		N	235	235

**. Correlation is significant at the 0.01 level (2-tailed).

Turning to medium populations, we find, once more, that the relationship is significant.

Openness * Torture Crosstab (medium population)

			Torture			
			Worst	Medium	Best	Total
Openness	Low	Count	75	15	10	100
		% within Openness	75.0%	15.0%	10.0%	100.0%
	Medium	Count	116	83	1	200
		% within Openness	58.0%	41.5%	0.5%	100.0%
	High	Count	25	85	35	145
		% within Openness	17.2%	58.6%	24.1%	100.0%
Total		Count	216	183	46	445
		% within Openness	48.5%	41.1%	10.3%	100.0%

Chi-Square Tests (medium population)

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	120.221[a]	4	.000
Likelihood Ratio	138.991	4	.000
Linear-by-Linear Association	79.643	1	.000
N of Valid Cases	445		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 10.34.

Correlations (medium population)

			Openness	Torture
Spearman's rho	Openness	Correlation Coefficient	1.000	.447**
		Sig. (2-tailed)	.	.000
		N	445	445
	Torture	Correlation Coefficient	.447**	1.000
		Sig. (2-tailed)	.000	.
		N	445	445

**. Correlation is significant at the 0.01 level (2-tailed).

The association between the variables is stronger in states with medium populations than in those with small populations, and as we shall see below, it is strongest of all in states with the largest populations.

Openness * Torture Crosstab (large population)

			Torture			
			Worst	Medium	Best	Total
Openness	Low	Count	67	3	0	70
		% within Openness	95.7%	4.3%	0.0%	100.0%
	Medium	Count	82	32	6	120
		% within Openness	68.3%	26.7%	5.0%	100.0%
	High	Count	17	35	8	60
		% within Openness	28.3%	58.3%	13.3%	100.0%
Total		Count	166	70	14	250
		% within Openness	66.4%	28.0%	5.6%	100.0%

Chi-Square Tests (large population)

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	66.478[a]	4	.000
Likelihood Ratio	74.264	4	.000
Linear-by-Linear Association	59.134	1	.000
N of Valid Cases	250		

a. 2 cells (22.2%) have expected count less than 5. The minimum expected count is 3.36.

Once more there is a significant association between openness to activism and performance on torture, with p =0.01. Given the presence of two cells with an expected count under 5, we redo the test combining the categories of best and medium performance on torture.

Chi-Square Tests (large population)

	Value	df	Asymptotic Significance (2-sided)
Pearson Chi-Square	66.133[a]	2	.000
Likelihood Ratio	73.036	2	.000
Linear-by-Linear Association	64.763	1	.000
N of Valid Cases	250		

a. 0 cells (0.0%) have expected count less than 5. The minimum expected count is 20.16.

The significance of the association persists.

Correlations (large population)

			Openness	Torture
Spearman's rho	Openness	Correlation Coefficient	1.000	.509**
		Sig. (2-tailed)	.	.000
		N	250	250
	Torture	Correlation Coefficient	.509**	1.000
		Sig. (2-tailed)	.000	.
		N	250	250

**. Correlation is significant at the 0.01 level (2-tailed).

The evidence demonstrates that there is a significant relationship between a state's openness to activism and its performance on torture, and this relationship persists when controlling for conflict, democracy levels, and population size.

10. Changes over time

Having considered a static measure (what factors affect levels of torture), it is also useful to consider a dynamic comparison: what factors contribute to changing levels of torture? How do the trends compare over the years from 2006-2010? If openness to civil society activism has a causal relationship with an improvement in torture, the expectation would be that an improvement in openness would predate an improvement in torture. We should not necessarily expect this change to occur within a set time-frame: some reform may show up in the scores fairly quickly (eg. the introduction and crucially, the enforcement, of stronger sanctions for police officers using torture to elicit confessions) while others may be much longer-term (eg. changes to the curriculum in police training may have little impact until serving officers begin to retire or be replaced over time so that a critical mass is achieved of serving officers with human rights training). We are concerned here only with the overall trends rather than attempting to identify cases of an increase in advocacy in one year showing up as an improvement on torture in the subsequent year(s).

It should be emphasised that the following tables are offered primarily as descriptive data rather than an attempt to test the hypotheses very directly. Torture levels are subject to a number of influences, and the complexities will be explored in detail in later chapters. The following observations on trends can only be suggestive.

A table of the average scores is provided in the appendix. The relevant information here is the trend data, so for ease of comparison, the average CIRI score (between 0 and 2) has been multiplied by 10 so it can be viewed alongside the average FH score (between 0 and 12). Because the activism score covers a wider range of scores, it

registers smaller changes than the score on torture, which can only show bigger jumps across the categories of best, medium and worst.

States with and without conflict

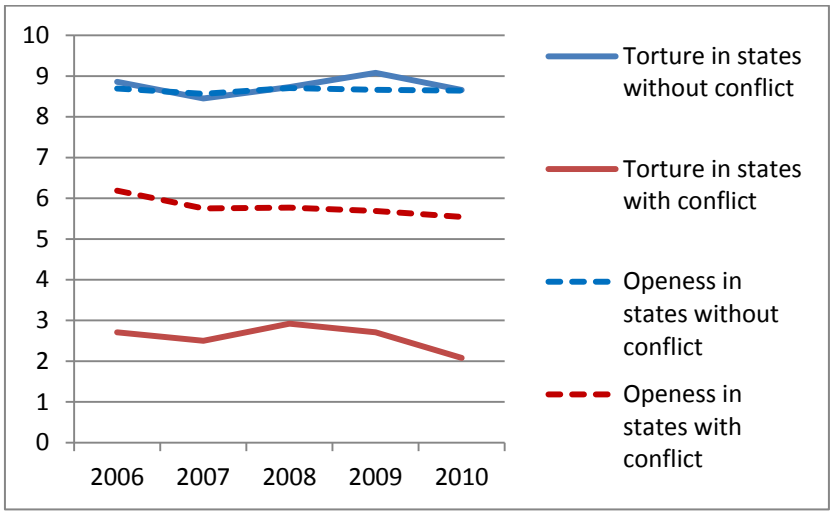


Figure 11 Changes in CIRI torture scores compared to changes in FH openness scores

Full country scores are provided in the appendix on p.310. Trends in torture performance appear to demonstrate a relationship with trends in openness to activism. In states without conflict, the highest score for openness to activism occurs in 2008, preceding the best performance on torture (2009). In states affected by conflict, both openness to civil society and performance follow a similar trend, a decline in 2007, a temporary improvement in 2008, and a further decline over the following years. These matching trends are not in themselves proof of causation – one must beware the *post hoc* fallacy – but they are consistent with the hypothesis that activism leads to improved performance on torture

Repeating the exercise while controlling for democracy rather than conflict produces the following results.

States with High, Medium and Low Levels of Democracy

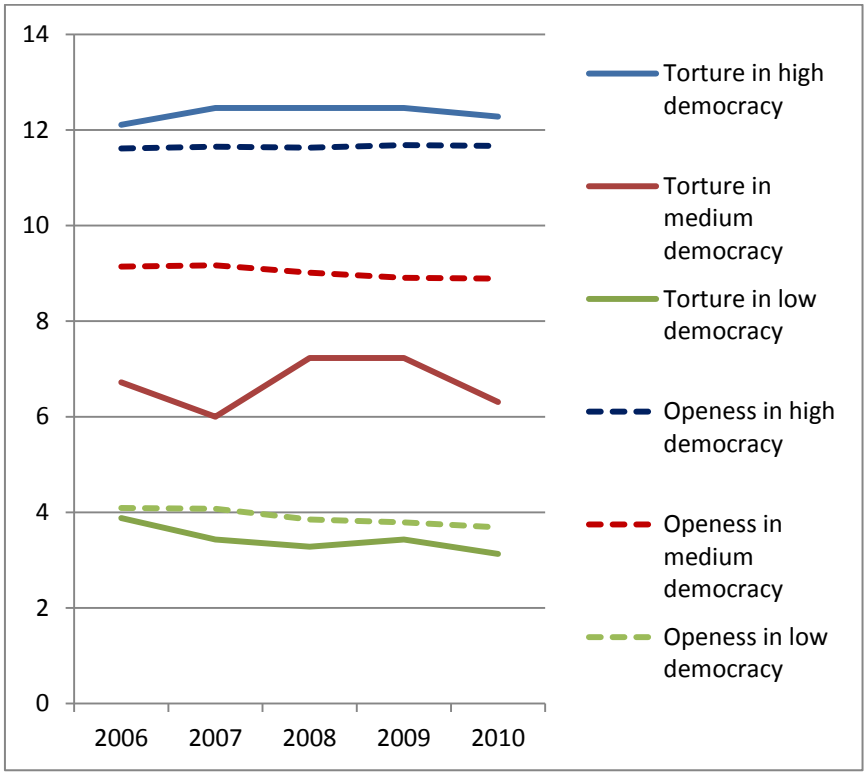


Figure 12 Changes in CIRI torture scores compared to changes in FH openness scores

Full country scores are provided in the appendix on p.311. As demonstrated above, states with high levels of democracy demonstrate a better performance on torture than states with medium and low levels of democracy. There is very little change in either performance on torture or openness to activism in the most democratic states, consistent with the argument that the overall performance on torture is satisfactory enough to reduce the need for civil society pressure for improvement.[169] In the medium democracies, states' performance on torture varies more over the five-year period. The best score in relation to openness to activism is in 2007, while the best performance on torture is seen in the two subsequent years, 2008 and 2009, again consistent with a hypothesis that increased openness to activism drives improved performance on torture. The most obvious trend in the low-democracy states is a decline in both performance on torture and openness to activism. Performance on

[169] Beth Simmons' reasoning in this area is explored in more detail in the previous chapter.

torture rallies temporarily in 2009, although there is not an obvious link to a change in openness to activism.

States with small, medium and large populations

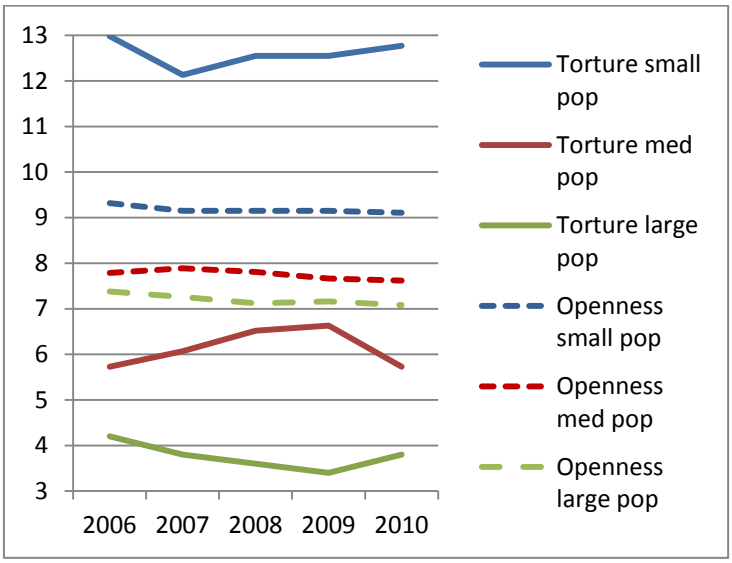


Figure 13 Changes in CIRI torture scores compared to changes in FH openness scores

Full country scores are provided in the appendix on p.311-2. By and large, we see that performance on torture tracks openness to activism. For small populations, the best year for both openness and performance on torture was 2006. For medium populations, openness peaks in 2007, while torture performance improves in 2008 and peaks in 2009, which accords with the hypothesis that increased openness to activism leads to better state performance on torture. In states with large populations, openness and activism both peak in 2006; the lowest level of openness comes in 2008, while the worst performance on torture is a year later, in 2009.

11. Conclusion

The above analyses indicate a positive association between political space for activism and an improved state performance on torture, particularly in states not experiencing conflict, and in states with medium to large populations. Examining trends over a five-year period demonstrates that the data is consistent with the contention that there is a causal relationship (although it not contended that causation has been established), with an improvement in openness to activism in one year being associated, in many but not all cases, with an improvement in torture practices in subsequent years. The period examined is perhaps too short to allow for a very robust examination of this point, and it should be borne in mind that causality is not necessarily uni-directional: freedom for activism may mean that civil society is effective in combating on torture, and a lower threat of torture may encourage civil society to be more active. States may enter "virtuous circles" where higher activism contributes to less torture which in turn contributes to higher activism, as well as "vicious circles" where the opposite happens.

Chapter four will set out the logic underlying the choice of case studies: in line with the findings above, case selection focuses on states of medium size, without ongoing conflict, and falling within the category of medium democracies. In describing the difficulty of measuring activism, this chapter has alluded to the fact that activism manifests itself in a variety of ways. As preparation for the case studies, therefore, the next chapter attempts to capture some of the rich diversity of activism in action, in order to be clearer about what we are looking for when attempting to identify the presence of activism on torture in a given state.

Chapter 3 Civil Society Mechanisms for Influencing the State

Chapter one explored the theory of how states can be influenced to improve their record on torture, examining the scope conditions under which attempts to influence the state are likely to be successful and the theories underlying how influence works. Chapter two assessed the empirical evidence to support the hypothesis that (a) higher levels of *civil society advocacy* are associated with better state performance on torture and (b) higher levels of *state openness to civil society activism* are associated with better state performance on torture. This chapter moves from theories of influence to a practical consideration of what would-be influencers actually do.

The first section sets out a basic typology of human rights organisations and the next section is a typology of their campaigning strategies. The remaining part of the chapter covers the major categories of activity undertaken by the organisations: information-based strategies; dialogue; strategic litigation; and the implementation of practical safeguards to protect persons deprived of their liberty, including detention monitoring. By identifying the range of options open to NGOs, the ground is prepared for an examination in the case study chapters of what strategic choices organisations have made (to the extent that they are choices, rather than decisions dictated by the socio-political environment) as well as how impactful their activities have been.

The following description of civil society activism should be understood in the context of a wider regional and international framework. The framing of civil society

demands and the channels through which these demands are articulated are heavily shaped by the regional and international frameworks: the treaties, soft law, institutions and mechanisms put in place by the UN, the Council of Europe, the Inter-American and the African systems. Civil society activism predates these human rights frameworks (see for example eighteenth and nineteenth century campaigning against the slave trade), and civil society activism helped to create these frameworks and the treaties within them.[1] Of particular relevance to the fight against torture is the history of how UNCAT received its initial impetus from a 1973 report by Amnesty International on torture worldwide.[2] Having predated these supranational frameworks and helped to create them, civil society also makes much strategic use of them: for example, by bringing legal cases to regional human rights courts, flagging concerns with treaty bodies and special rapporteurs, and issuing shadow reports alongside the state's own reports on its progress. As noted in the introduction, international law also mandates the existence of a potentially important ally for NGOs at national level, the National Preventive Mechanisms (NPMs), created under the Optional Protocol to the UN Convention against Torture (OPCAT).

Within this international legal framework, we now turn to the distinct role played by local and international civil society.

[1] On the importance of NGOs in the creation of the UDHR and the architecture of the UN system, see William Korey, *NGOs and the Universal Declaration of Human Rights: A Curious Grapevine* (Macmillan 1998).

[2] Nigel Rodley in Carrie Booth Wallig and Susan Waltz *Human Rights: From Practice to Policy. Proceedings of a Research Workshop,* Gerald R. Ford School of Public Policy, University of Michigan, October 2010 (University of Michigan 2011).

1. Typology of human rights organisations

The World Bank has classified NGOs into two broad categories, *advocacy* organisations (who attempt to influence state policies) and *operational* organisations (who focus on the delivery of projects).[3] Organisations working on torture can be either, or a hybrid of both: some focus purely on campaigning, with no direct provision to torture survivors; some focus on delivering medical, psychosocial and rehabilitation services. While this service delivery can be combined with advocacy, it is not invariably the case; for example, an organisation focusing on the rehabilitation of victims of torture under a past political regime may not undertake advocacy in relation to the practices of the current government.

Advocacy organisations can be sub-divided further based on their orientation. Brysk sees human rights movements as made up of "overlapping clusters of institutional reformers, advocates, affected populations and norm-promoters".[4] The first category often includes lawyers who document abuses and may use a strategic litigation strategy. Her term "advocates" refers to the tradition of a "conscious constituency" prepared to lobby governments on behalf of victims who cannot speak for themselves, whereas "affected populations" speak on their own behalf and often engage in symbolic protests. While all of the above could be considered "norm-promoters" in one form or another, she uses this term to denote normative constituencies mobilised around a particular principle associated with their identity, whether faith-based (such as the church-led liberation movements in Latin America)

[3] World Bank Operations Policy Department, *Working with NGOs: A Practical Guide to Operational Collaboration between the World Bank and Non-governmental Organizations* (World Bank 1995) 14.
[4] Alison Brysk, 'Human Rights Defenders and Activism', in Anja Mihr and Matthew Gibney (eds), *The Sage Handbook of Human Rights* (Sage 2014) 346.

or professional.[5] As noted in the introduction, Finnemore and Sikkink associate the involvement of professional bodies in institutionalising the norm with the internalisation process: these actors reinforce the point that norm compliance is not only desirable but it is *to be expected*.[6] In other words, they strengthen a new "logic of appropriateness".

There are examples of all the above categories working on torture: institutional reformers use strategic litigation to address torture through domestic and regional human rights courts, through individual complaints to UN committees (a quasi-judicial process), and cross-nationally through the doctrine of universal jurisdiction. This area of activity is a very significant one in relation to torture, and is considered at more length later in the chapter. The classic example of advocacy by a "conscious constituency" is Amnesty International's pioneering campaigning efforts on torture, involving new techniques such as coordinating letter-writing campaigns by concerned members of the public to governments responsible for torture. An example of advocacy by affected populations is the vigils held by the Mothers of the Disappeared in Argentina. "Norm-promoters" who oppose torture on professional grounds include medical organisations: their involvement has led to policies and guidance such as the Istanbul Protocol.[7]

Organisations can also be categorised based on their geographical identity. They may be *local* or *international*. The category of "local" spans a range of possibilities, from

[5] Ibid, 346-347.
[6] See discussion in Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change' (1998) *International Organization* 52(4), 887-917, 898.
[7] Formally entitled the Manual on Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment became an official UN document in 1999. Professional bodies such as the Turkish Medical Association, the Society of Forensic Medicine Specialists and medical NGOs such as Physicians for Human Rights USA played a leading role in its creation.

organisations with a grassroots base to those which are domestic but not necessarily community-based. They may be confined to a particular geographical area or extend their interests nationwide. Chapter one discussed why localisation is important as an aspect of legitimacy. In addition, there are practical reasons why local organisations are valuable in combating torture: they understand the local political context, the priorities and the people who have influence in decision-making; they speak the local language, both literally and figuratively in the sense that they help translate concepts into local idiom. As noted previously, they have longer attention spans and are not in a position to leave the country in order to redirect their efforts at a new crisis elsewhere in the world. They are more accessible to victims than international NGOs. As will be explored in the final section below, in carrying out practical protection methods such as detention monitoring, they go to more places more often than any international equivalent ever will. Their sheer presence, day in and day out, year after year, is highly important to a process I refer to as *norm patrol:* the expectation that rights are not something spoken about occasionally, in far away places, or during the rare visit of an international delegation, but are invoked and monitored regularly at the local level, so that they become integrated into ongoing performance expectations. Chapter one discussed how the constructivist perspective emphasises the importance of internalisation of norms for the purposes of forming intrinsic motivation to comply: it is contended here that local norm entrepreneurs create and reinforce pathways for this internalisation process. Local civil society actors contribute to combatting torture by encouraging state actors, over time, to perceive abuse as aberrant behaviour.

As important as local activists are, their chances of success are greatly increased where they are embedded in transnational advocacy networks. This point is discussed in more detail in the section on inward-facing v. outward-facing strategies later in the chapter. The *sequencing* of local and international advocacy may be important. Local organisations operate as a conduit of information to international organisations, who then act to draw international attention to the issue.[8] This international interest ensures that the concerns are reflected within the national political agenda, which in turn opens up opportunities for local organisations to embark on an ongoing dialogue with local state officials. The latter part of this dynamic in particular is explored in some detail in the case study chapters.

2. Typology of advocacy strategies

Hicks identifies the following roles played by NGOs in human rights work:

- catalysts (raising issues, getting them on the political agenda);
- advocates (mobilising information, expertise, media and public support to compel governments to engage with the issue);
- shapers of the debate (framing an issue in human rights terms where it might previously have been framed differently, eg. as a trade issue);
- partners in policy-making (such as direct input into the wording of an international treaty or national legislation);

[8] James Meernik, Rosa Aloisi, Marsha Sowell and Angela Nichols, 'The Impact of Human Rights Organizations on Naming and Shaming Campaigns' (2012) *Journal of Conflict Resolution* 56(2), 233-256. It has also been found that a stronger local civil society has an impact on international media reporting of human rights abuse: see Howard Ramos, James Ron and Oskar NT Thomas, 'Shaping the Northern Media's Human Rights Coverage, 1986-2000'(2007) *Journal of Peace Research* 44 (4), 385-406, although it is only one of a number of factors.

- monitors (leveraging information to highlight failures to adhere to norms);
- legitimisers (where domestic NGOs localise the human rights debate to generate local buy-in – see discussion in chapter one)
- beneficiaries (human rights defenders themselves benefit from advocacy on their behalf where their rights work has brought them into danger).[9]

Implicit within these categories, but worth emphasising in its own right, is the need for relationship-building with state actors at all levels from presidents to prison warders, and with regional and international human rights bodies. To be effective, it is important for NGOs to know to whom to talk, what arguments are likely to resonate with domestic concerns, and the identity of potential spoilers. Organisations and individual activists must develop a reputation for reliability, building up trust over time so that their advocacy is taken seriously.

In shaping their strategies, organisations make choices whether to adopt *insider/outsider* positions; whether to prioritise *depth or breadth*; and whether their focus is *inward-facing v outward-facing*. These are not sharp dichotomies, but points along a spectrum. Their choices will be conditioned on organisation type, on the available resources (including staff skills and preferences), and on the opportunities available within the environment in which they operate.

(i) Insider v Outsider

The traditional image of human rights advocacy is that of the righteous outsider denouncing abuses. The downside of this model is that denunciation tends not to win

[9] Peggy Hicks, 'Human Rights Diplomacy: The NGO role' in Michael O'Flaherty, Kedzia Zdzislaw, Amrei Műller and George Ulrich (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Brill 2011).

friends amongst those being denounced. It will often make it harder for activists to work proactively with the authorities, losing the benefits of good working relationship with the relevant institutions. More insider-oriented activism focuses on the benefits of access at all levels, both top-level decision-makers and the "frontline" service areas in the police and staff in prisons and other institutions. Insiders may have more opportunities for actions such as advising on legislative amendments and providing training. An organisation may make a pragmatic decision not to adopt a denunciatory tone, because it makes the calculation that it will further its reform goals by keeping the relevant authorities as allies rather than opponents.

Evangelista contrasts the insider approach of Transparency International with the outsider approach of Amnesty International.[10] Transparency International avoids denouncing individual instances of corruption ("muckraking") in favour of building alliances to reform corrupt systems, relying on self-interest (for example, enhancing the state's attractiveness to foreign investors) as well as principle.[11] By contrast, Amnesty International's success in promoting human rights is attributed to its refusal to yield to expediency: it signals its independence, credibility and integrity by its willingness to be publicly critical of states.[12] These organisations represent different ends of the spectrum, but many NGOs opt for something between the two, a "critical friend" stance. There are risks at both ends of the spectrum: working with the state can be highly effective, but carries the a risk of being co-opted, and unable to criticise where warranted, while a strategy involving public criticism of the state can be

[10] Matthew Evangelista, *Unarmed Forces: The Transnational Movement to End the Cold War* (Cornell University Press 1999) 365.
[11] Ibid.
[12] Ann Marie Clark, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* (Princeton University Press 2001) 135.

dangerous in that campaigners face threats in organisational, reputational and even physical terms.

Where several NGOs are working in the same context, they may locate themselves at different points on the spectrum. There are possibilities for cooperation to exploit the opportunities: for example, one organisation chooses not to publicly criticise the state in order to maximise its access to detainees, but quietly cooperates with another NGO which is more willing to publicly denounce state failures, at the price of having less access to detainees. Even without this cooperation, the cumulative impact of the different approaches may be greater than the sum of its parts, as described by Johnson:

> In what can look like a good cop-bad cop routine, the grassroots and public movement campaigns target their messages and raise expectations; the resulting demands and pressure make the political decision makers insecure, which encourages them to turn to the incrementalists for 'reasonable' solutions and reassurance.[13]

Kitschelt notes that the strategies used by social movements, and the outcomes of their campaigning, are largely determined by the political openings in the state in question.[14] Where it was possible to use existing political structures to demand a referendum on the use of nuclear power, social movements opted for this approach;[15] where it was not feasible, they adopted "outsider" strategies such as confrontational demonstrations. He found that social movements were most effective where they had the most access to formal political decision-making, suggesting that where insider

[13] Rebecca Johnson, 'Advocates and Activists: Conflicting Approaches on Nonproliferation and the Test Ban Treaty', in Ann Florini (ed), *The Third Force: The Rise of Transnational Civil Society* (Japan Center for International Change and Carnegie Endowment for International Peace 1999), 76.
[14] Herbert Kitschelt, 'Political Opportunity Structures and Political Protest: Anti-nuclear Movements in Four Democracies' (1986) *British Journal of Political Science* 16(1), 57-85.
[15] Ibid 70.

strategies are possible, they represent a more productive choice.[16] This point is reinforced by Joachim's findings that NGO advocacy is successful where the organisations are embedded in a political opportunity structure which allows access to decision-makers.[17]

(ii) Depth v Breadth

Civil society campaigning can be "narrow and deep" or "broad and shallow", or can combine both strategies. A "narrow and deep" campaign involves a few individuals (often but not always working within an NGO), with technical expertise, aiming their message at key stakeholders with the ability to bring about change. Haas describes the creation of "epistemic communities", in which campaigners wield authority derived from their professional knowledge.[18] In the case of advocacy on torture, NGO experts often have much to contribute by way of legal knowledge: they may have a more detailed understanding of an international convention than the civil servants drafting the domestic legislation based on it, or more knowledge of ECtHR jurisprudence than the national judge who must seek to apply it.

A "broad and shallow" strategy typically aims at mass mobilisation, with much less expertise and effort being required of each individual participant. Rather than focusing on technical aspects of a human rights breach, this type of communication tends to highlight the human angle, using an image and/or quotation from a victim, in line with Rorty's recommendation to privilege sentimentality over rationality in

[16] Ibid 74.
[17] Jutta Joachim, "Framing Issues and Seizing Opportunities: the UN, NGOs, and Women's Rights" (2003) *International Studies Quarterly*, 47(2) 247-274; Jutta Joachim, *Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights* (Georgetown University Press 2007).
[18] Peter Haas, 'Introduction: Epistemic Communities and International Policy Coordination' (1992) *International Organization* 46, 1-35.

human rights discourse.[19] The general public may be invited to show solidarity by joining a protest march, signing a petition or wearing a symbol of support. AI has for decades pursued a strategies of creating opportunities for huge numbers of individuals outside the cadre of "experts" to signal support for human rights (sign a petition, write a letter, wear the t-shirt). Schmitz notes that AI membership peaked in the late 1980s, and he argues that from the 1990s, the public "became content with delegating [human rights campaigning] tasks to an elite group of activists", both those in AI itself and in other organisations such as HRW. [20] On the other hand, the advent of social media has opened up ever more opportunities for "broad and shallow" engagement: it is the work of seconds to "like" and "share" a human rights message on social media, or sign an online petition. Alston and Gillespie provide examples of the use of social media for human rights purposes, such as the live streaming of protests from Syria and Libya in 2012, but note that the sector lags well behind the humanitarian sector, which operates large-scale digital networks for the purpose, amongst others, of early warning of impeding disasters.[21] They note the potential of social media to offer more meaningful participation and a less top-down approach.[22]

There are limits to the breadth of audience than can be reached using this type of strategy. Cohen shows how state denial of atrocities is facilitated by the public's unwillingness to engage with the issue.[23] Feeling powerless to solve the problems that surround us, people look away. He notes that "[e]ven the most populist

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[19]Richard Rorty, 'Human Rights, Rationality and Sentimentality', in Stephen Shute and Susan Hurley (eds), *On Human Rights: The Oxford Amnesty Lectures 1993* (BasicBooks 1994), 185.
[20] Hans Peter Schmitz, "Transnational NGOs and Human Rights in a Post-9/11 World", in Human Rights in the 21st Century: Continuity and Change since 9/11, eds. Michael Goodhart and Anja Mihr (Palgrave 2011), 203 and 206.
[21] Philip Alston and Colin Gillespie, 'Global Human Rights Monitoring, New Technologies, and the Politics of Information' (2012) *European Journal of International Law* 23(4), 1089-1123,1110.
[22] Ibid.
[23] Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering* (Polity Press 2001).

organizations only reach a restricted section of the population: well-educated, of high socio-economic status, liberal in their political views, already belonging to the 'conscience constituency'".[24] As increasing numbers of people use personalized news feeds as their source of information about the world, it becomes ever more challenging to bring human rights stories to the attention of new audiences. One commentator on new media observes:

> People's self-defined information feeds could limit their exposure to anything that falls outside of their interests, preferences and yes, their biases. It could be the Balkanization of information….We already make choices about what we expose ourselves to. We already filter. Personalized news feeds have the potential of providing us with a new and more powerful filter.[25]

The "broad and shallow" engagement can be criticised for its superficiality and even derided as mere virtue-signalling, but when engaged in en masse, and despite the challenges of engaging a wide audience, it has the potential to open up political space for NGO human rights experts to be heard. "Broad and shallow" engagement can create an environment in which politicians will listen to NGOs; expert-led "deep but narrow" engagement ensures that the NGOs have something to say that is worth listening to. The "broad but shallow" strategy goes some way to addressing the concerns sometimes raised with regard to legitimacy discussed previously. Where there is some demonstrable public support for the cause, NGOs have a more straightforward claim to be heard by governments.

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[24] Ibid 196.
[25] Mike Hoban, 'Personalized News Feeds: The Dark Side of "Have It Your Way", *Fast Company*, online article dated 28 Feb 2011, https://www.fastcompany.com/1732527/personalized-news-feeds-dark-side-have-it-your-way (accessed 7 January 2018).

The importance of public buy-in to the issue has been mentioned in chapter one in relation to the lack of public opposition to torture in India and the resulting obstacles to reform. Lokaneeta and Jesani observe that, in order to fully eradicate torture, activists must tackle underlying social attitudes about the way in which torture is used "to impose and perpetuate power relationships (such as caste, gender, class, sexuality, ethnicity)".[26] To this end, they view as a "significant development" the fact that a national anti-torture campaign has achieved a higher profile as it presses for legislation containing measures aimed at preventing torture.[27]

Across the sector, not all human rights campaigns engage in both expert lobbying and popular mobilisation. In some times and places, human rights issues have more purchase on the public imagination than in others. In many social and political contexts, preventing the ill-treatment of detainees is a low priority for the public, particularly where those detainees are perceived as criminal and non-deserving. In such situations, the "narrow and deep" technocratic advocacy tends to predominate.

The same organisation may do both (as in the AI example); organisations might consciously work together, with one focusing on the broad but shallow end to build a case for the government to pay attention, and another organisation providing the expert input. There are risks attached to both extremes: some popular campaigns may drum up support but fail to make sufficiently targeted political demands and therefore no policy change takes place; or the experts may have a useful contribution to make but find themselves able to achieve political access because politicians have little incentive to ally themselves with an unpopular cause.

[26] Jinee Lokaneeta and Amar Jesani, 'India' in Richard Carver and Lisa Handley, *Does Torture Prevention Work?* (Liverpool University Press 2016), 545.
[27] Ibid.

(iii) Inward-facing v outward-facing

Political elites are performing for both a domestic audience and for an audience of other states and inter-state institutions. Advocates against torture thus have two fronts on which to campaign, the inward-facing and the outward-facing. It is not an either/or choice, and it is common for organisations to do both, shifting their attention depending on the available opportunities. Where an organisation has little traction domestically, the boomerang model proposed by Risse et al explains how advocacy will be directed to an external audience (other states and international institutions) so that those external audiences will re-direct the advocacy back at original state.[28] The information exchange between domestic and transnational activists helps to put norm-violating states on the international agenda, so those states are pressured to improve their human rights both from "below" (domestic protest) and "above" (pressure from other states and from intergovernmental institutions). Risse and his co-authors evoke the image of a boomerang: when domestic activists find that their advocacy is not having an impact on their own political leaders, they hurl information outwards across borders so that it can curve back homewards to reach its domestic target. They see this process as serving a number of ends: it legitimizes domestic protest, offers a degree of protection to domestic activists and over time, helps to open the political space for them to operate.[29] Not every boomerang throw will be successful: if activists in state X direct their advocacy at state Y, state Y's own agenda (maintaining trade relationships, military alliances) affects the return of the boomerang. Chapter one referred to a state's vulnerability to pressure as a scope condition: the boomerang only works if state X wants to please state Y more than the other way round.

[28] Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999); Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013).
[29] Ibid.

Human rights organisations may direct advocacy at external bodies such as regional institutions and donor bodies in order to bring pressure to bear on their real target, the state. One such mechanism for bringing external pressure to bear is aid conditionality. The EU uses conditionality in its agreements with non-accession states, particularly within the framework of development cooperation, but also in other contexts such as trade, the environment and security. Since 1995 it has included an "essential elements" clause, including provision for suspension, into its agreements with third countries. This clause states that the agreement rests on a foundation of respect for human rights and democratic principles. Donno's research indicates that essential elements clauses are "modestly effective" in improving physical integrity rights, including torture, where the state in question is heavily reliant on EU trade and aid (again reinforcing material vulnerability as a scope condition).[30]

(iv) Choice of strategy

As Kitschelt points out, NGOs select an approach based on the political opportunities open to them.[31] This is not to claim that NGOs will always optimise the political niches potentially available. NGOs have their own characters and internal politics. NGO orientation may be influenced by the individuals leading the NGOs, their education, professional background (an NGO leader who has practised as a lawyer may instinctively favour one strategy, while one who rose through the ranks of a trade union may lean towards another) and personal preferences. It is not unusual for there to be tensions within and between NGOs, for them to be critical of each other's

[30] Daniela Donno, *Legalization and Leverage: Human Rights Conditionality in the European Union's Economic Agreements.* (Report of APSA Annual Meeting 2012).
[31] Herbert Kitschelt, 'Political Opportunity Structures and Political Protest: Anti-nuclear Movements in Four Democracies' (1986) *British Journal of Political Science* 16(1), 57-85.

approaches, and for individuals working within an NGO to become alienated by the approach within the organisation. Those individuals might leave and found an organisation with a different approach. The NGO sector is not a monolith, and neither are individual organisations. The civil society sector can be dysfunctional, its work complicated by competition, duplication, and a lack of coordination. As in any ecology, a vacant niche offers opportunity for new contenders: where barriers to entry are high, however, there is less likelihood that that will happen.

3. Human rights activities carried out by NGOs

While not necessarily exhausting the possibilities for human rights activism, the activities typically undertaken by NGOs can be broadly categorised as follows: *information-based strategies, dialogue, strategic litigation,* and *practical safeguards including monitoring.*

(i) Information-based strategies

Activism is often understood as a set of activities relating to the "naming, framing, blaming and shaming" of state abuse.[32] These have been described as the "principal weapon of choice" for many international organisations.[33] It is often an outsider, reactive model: the activist identifies shortcomings in human rights protections, frames them in the context of legal obligations, attributes responsibility, and brings these shortcomings to the attention of the state, the public and other audiences, particularly international institutions. The rationale is that if states run the risk of

[32] Shamima Ahmed and David M Potter, *NGOs in International Politics* (Kumarian Press 2006).
[33] James Meernik, Rosa Aloisi, Marsha Sowell and Angela Nichols 'The Impact of Human Rights Organizations on Naming and Shaming Campaigns' (2012) *Journal of Conflict Resolution* 56(2), 233-256 at 233.

moral, legal or political censure in response to human rights violations, the political costs increase domestically and/or internationally, which has a dissuasive effect. The denunciation may involve analysis of varying levels of depth and sophistication, varying from identifying individual acts of abuse to deeper analysis of root structural causes and societal cleavages (for example, the underlying prejudices against Roma, the poverty and lack of access to education by many in this community that put them at greater risk of abuse while in detention).[34]

Antonio Cassese, leading scholar in international law and first President of the European Committee for the Prevention of Torture, believed that public opinion was key to reigning in state abuse, but for this to happen, the public needed information. He believed that the mass media alone could not be expected to serve this purpose, as its attention to human rights was insufficiently detailed and sustained over time. NGOs could fill this gap, by collecting relevant information and disseminating it; bringing issues to public attention and being the "moral voice of the international community".[35] This is not to underplay the value of media coverage: in particular for the "broad but shallow" style of campaigning discussed above, traditional media and new forms of social media are essential in order to reach a wide audience. Video footage of a police beating will bring abuses to public attention more vividly and immediately than any number of human rights reports ever will. "Information" in this context is broader than the mere communication of facts. Symbolic actions – a candlelight vigil, a mass demonstration – convey a message to the public: "Something

[34] Hans Peter Schmitz, 'Transnational NGOs and Human Rights in a Post-9/11 World', in Michael Goodhart and Anja Mihr (eds), *Human Rights in the 21st Century: Continuity and Change since 9/11* (Palgrave 2011), 206.
[35] Antonio Cassese, 'A Plea for a Global Community Grounded in a Core of Human Rights', in Antonio Cassese (ed), *Realizing Utopia: The Future of International Law* (Oxford University Press 2012), 136.

is happening here that requires your attention"; they are another facet of the politics of information.

Hafner-Burton has expressed scepticism about the success of naming and shaming strategies. In her statistical analysis of state practices from 1975 to 2000, she finds that abusive leaders may simply "adjust their methods of abuses in economical ways in reply to the spotlight".[36] In response to international criticism, political leaders might agree to hold elections, but then attempt to minimize the risk to tenure posed by those elections by terrorizing voters and the opposition.[37] Conrad and DeMeritt agree that naming and shaming strategies in relation to torture may have unintended negative consequences. They set out the converse position to the one posited by Hafner-Burton, whereby states may respond to international shaming on their torture record by "squelch[ing] civil and political rights in an effort to minimize situations in which torture would otherwise prove useful as a tool of government control".[38] If a political elite can reduce the threat to its tenure by limiting the political space for dissent, the logic runs, it thus reduces its "need" to use torture to combat any such threat. As noted in Chapter two, this is a plausible explanation for the existence of a number of low-democracy states with low openness to activism which also appear to have a low prevalence of torture.

Chapter one set out the evidence that democracies are less likely to torture, and more likely to reform their torture practices, than autocracies, at least once a threshold level

[36] Emilie M. Hafner-Burton, 'Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem', (2008) *International Organization* 62(4), 689-716 at 710.
[37] Ibid. She offers Nigeria and Zimbabwe as examples of this dynamic.
[38] Courtenay R Conrad, and Jaqueline DeMerrit, 'Unintended Consequences: The Effect of Advocacy to End Torture on Empowerment Rights Violations' in Tracy Lightcap and James Pfiffner (eds) *Examining Torture: Empirical Studies of State Repression* (Palgrave MacMillan, 2014), 161.

of democracy is met. Hendrix and Wong argue, somewhat counter-intuitively, that international NGO advocacy is therefore more likely to improve the practices of autocracies than democracies.[39] Their logic is that in deciding whether to permit torture, leaders carry out a cost-benefit analysis regarding the potential impact on their political tenure. Leaders in less autocratic/more democratic states will have already taken into account that information about torture will emerge via political opponents, the media, and domestic civil society. Their cost-benefit analysis remains therefore largely unchanged. For autocratic leaders, this reporting and shaming may not have been previously incorporated into the cost/benefit analysis, and it may change the calculation. The problem with this logic is that it assumes that political elites treat criticism as a dichotomous measure in their cost-benefit analysis: "We expected some criticism" versus "We did not expect criticism". Political elites may also be surprised by the volume of criticism received, domestically and internationally, and this change in volume may itself be enough to change their cost-benefit calculation.

Alston and Gillespie express concern about the "fragmented" nature of information gathering and dissemination by activists.[40] They pose the question: when organisations such as AI and HRW research and publish reports, are their methods "sufficiently collaborative, transparent and self-correcting as to warrant such weight being placed upon them?"[41] From a legal viewpoint, the fact that a credible allegation of torture has been made creates an obligation on the state to carry out an

[39] Cullen S. Hendrix and Wendy H. Wong, 'When is the Pen Truly Mighty? Regime Type and the Efficacy of Naming and Shaming in Curbing Human Rights Abuses' (2013) *British Journal of Political Science* 43(3), 651-672.
[40]Philip Alston and Colin Gillespie, 'Global Human Rights Monitoring, New Technologies, and the Politics of Information' (2012) *European Journal of International Law* 23(4), 1089-1123, 1092.
[41] Ibid 1091.

investigation – it is common in ECtHR cases for a state to be found in breach of the duty to investigate rather than to have actually committed torture. From a reputational point of view, however, an organisation that repeatedly makes unsubstantiated allegations will quickly lose credibility.

Cohen notes the risk of human rights reports being treated as an end in themselves: their usefulness depends on how well the information is communicated to others with the power to drive change.[42] In an analysis of government responses to human rights reports, he found little evidence that governments improved their practices as a result of the criticisms found in them.[43] Civil society reports needs to be the starting-point for civil society dialogue with the state, not the end-point.

As a genre, human rights reports may be couched in technical language and focused on detailed policy analysis and recommendations (the "narrow but deep" approach based on what Rorty terms "rationality") or feature emotive stories, pictures and quotations relating to individual victims (a more "broad but shallow" approach, albeit that few human rights reports are ever likely to reach a mass audience, using Rorty's preferred "sentimentality"). As noted earlier in the chapter, activists do not always choose the path of denunciation. In addressing external audiences, activists can ask international partners for investment in and technical support for the state as well as political pressure on the state.

[42] Stanley Cohen 'Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims', (1996) *Human Rights Quarterly* 18(3), 517-543.
[43] Ibid.

(ii) Dialogue with state officials

Dialogue is usually an insider, expert strategy: moving away from denunciation of abuse towards a pragmatic seeking of solutions. It encompasses the sub-category of advocacy often called lobbying; a classic example is that of a NGO proposing changes to the wording of draft legislation. To be effective, all parties to the dialogue need to recognise each other as valid interlocutors. Risse is particularly emphatic about the link between dialogue or "communicative action" and the internalisation of norms.[44] This internalisation of norms is, as discussed in chapter one, central to the constructivist understanding of why states improve their performance on human rights. He argues that dialogue (or "arguing") enables "actors [to] develop a common knowledge concerning both a definition of the situation and an agreement about the underlying 'rules of the game'". It also contributes to "problem solving in the sense of seeking an optimal solution for a commonly perceived problem".[45] According to this reasoning, through dialogue with human rights advocates, the state becomes persuaded by the "logic of appropriateness" and learns to adopt it in its own right.[46] It is not contended that dialogue invariably leads to such an outcome, but rather than "persuasion and discourse" is an important sub-process within the larger process of socialisation.[47]

There is an overlap between categories: for example, an NGO might contribute a technical analysis how domestic legislation fails to fully reflect the state's international commitments on torture. The same report can be presented by the

[44] Thomas Risse, '"Let's Argue!": Communicative Action in World Politics" (2000), *International Organization* 54(1), 1-39, 2.
[45] Ibid.
[46] Ibid, 1.
[47] Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013).

organisation and perceived by different audiences as outsider denunciation ("The state is failing to meet its obligations in these ways") and/or insider expert input into technical processes such as the drafting of legislation ("The wording of paragraph section 31(d) should be amended as follows"). Much depends on tone, which is mediated by the organisation's existing and desired relationship with state officials. As noted above, NGOs may attempt to invoke both positions, for example by issuing a short press release aimed at a wider audience, outlining *why* the state must make a change, along with the detailed expert report which indicates to the state *how* it can make the change.

(iii) Strategic litigation

Strategic litigation, or "cause lawyering" as it is also called, is an important subset of the denunciation model. Legal narratives of human rights very often emphasise groundbreaking cases that changed legal understandings, or drew attention to an issue. Once again, the logic is that the likelihood of judicial challenge increases the costs of torture to political elites who promote or tolerate that torture.[48] The problem with this account is that a case might set an important legal precedent without resulting in any obvious change in state practice, at least in the short term. In the famous *Filártiga* case, a US court upheld a civil claim made by a Paraguayan family against the individual who tortured their relative. For lawyers, it is a significant case on extraterritorial jurisdiction: the successful plaintiffs, years later, reportedly felt that

[48] See for example Courtenay R. Conrad and Emily Hencken Ritter, 'Treaties, Tenure and Torture: The Conflicting Domestic Effects of International Law' (2013) *Journal of Politics* 75(2), 397-409.

"nothing happened" as a result; there was little evidence of change in Paraguay; the case was a "dead-end street".[49]

Lutz and Sikkink, who quote the Filártiga family's disappointment, nevertheless argue for the existence of a "justice cascade".[50] They believe that a legal *cause celebre* can change the public discourse about an issue, which in turn changes the political climate. Change may not be immediate, but may be observable over the mid- to long-term. Chile is often cited as an example of the value of strategic litigation. Litigation was not the sole strategy pursued in that country: it was undertaken alongside popular mobilisation in the form of demonstrations. In the nineteen seventies, in the face of widespread human rights abuses by the military junta, an alliance of religious and legal bodies, co-led by the Catholic and Lutheran bishops, created the Cooperative Committee for Peace in Chile. In 1974, this body filed a total of 1568 *habeus corpus* petitions on behalf of detainees. Not one was successful in securing the release of the detainee, but cumulatively, the sheer number of cases effectively publicised the scale of violations being carried out.[51] Even after Chile's ratification of UNCAT and the fall of Pinochet, both in 1988, Chilean courts demonstrated reluctance to convict the perpetrators of torture. This changed after 1998, when Pinochet was arrested in London. The attempt at prosecuting Pinochet in the UK did not result in a successful conviction, but opened up debate in Chile: Lutz and Sikkink argue that the case was a turning point which "lifted psychological, political and juridical barriers to justice by weakening the powerful forces blocking

[49] Interviews with Dolly Filártiga and Dr Joel Filártiga, reported in Ellen Lutz and Kathryn Sikkink, 'The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America' (2001), *Chicago Journal of International Law* 2(1), 1-33,10.
[50] Ibid. See also Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (WW Norton 2011).
[51] Chile's experience under Pinochet has been widely reported: this account draws in particular on Beth Simmons *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009), 286 et seq.

such trials in Chile since the return to democracy".[52] Pinochet's initial arrest in the UK sparked off further arrests in Chile, with twenty-five Chilean officials subsequently being charged with torture, kidnapping and murder. Simmons finds it "suggestive" that Chile's performance on torture begins to improve from 1999.[53]

Israel offers another example of activists using litigation to challenge torture. Grosso reports that from the mid-1990s, NGOs and their legal partners made the decision to refer cases of suspected torture or ill-treatment to the Israeli courts on almost every possible occasion, leading to hundreds of petitions being filed.[54] As with the Chilean courts, the Israeli courts were initially reluctant to condemn state policy, but by 1999, "the flood of cases….finally encouraged the High Court to address it directly".[55] The court reiterated the absolute nature of the prohibition on torture, and ruled against the use of a number of abusive practices. Unfortunately, the High Court judgement also counter-productively established that the legal authorities might create guidelines setting out the circumstances in which interrogators might use these practices with immunity from prosecution.[56] This litigation did not lead to an end to torture in Israel. According to the CIRI scores, Israel remains at the lowest end of the scale (chapter 3 notes a country score of 0 for the years 2006 of 2010). From a brute quantitative perspective, this indicates no major change. While remaining in the same CIRI category, however, many observers do indicate that the overall number of

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[52] Ellen Lutz and Kathryn Sikkink, 'The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America' (2001), *Chicago Journal of International Law* 2(1), 1-33, 12. *In re Pinochet*, Oral Judgment: 17 December 1998 [1999] UKHL 52.
[53] Beth Simmons *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009), 296.
[54] Catherine M Grosso, 'International Law in the Domestic Arena: The Case of Torture in Israel' (2000) *Iowa Law Review* 86, 305-337.
[55] Beth Simmons *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009), 302.
[56] *Public Committee against Torture in Israel v Government of Israel*, High Court of Justice, 5100/94, 1999. See the judgement of High Chief Justice Aharon Barak, para 38. See also HC 4054/95; HC 6536/95; HC 7563/97; HC 7628/97; HC 1043/99.

individuals subject to severe torture has fallen significantly since the High Court ruling of 1999.[57] This is an instance where the foreshortening of measurement scales may under-represent actual change on the ground, a measurement challenge explored in more detail in the previous chapter.

Turning to the treatment of torture in the European regional system, the case of *Ireland v UK* drew attention to British abuses in Northern Ireland. The European Commission initially considered the five techniques under consideration, including hooding, stress positions and sleep deprivation as torture. The ECtHR re-classed them as ill-treatment rather than torture; nevertheless, this still amounted to a violation of Art 3 ECHR, and the decision ended the use of the techniques in Northern Ireland, although their use would re-emerge three decades later by the British army in Iraq.

Anagnostou argues that cause lawyering supports rather than replaces other forms of advocacy: activists "draw leverage from the rising volume of condemnation of abuses by the court".[58] The large number of ECtHR cases protesting against torture by the Turkish state is one such example. Carver and Handley, who are by and large sceptical about the value of litigation, concede:

> In practice, Turkey's compliance with [ECtHR] judgments has often been tardy, half-hearted or selective, but the Court's rulings are nevertheless widely understood in Turkey to be an important benchmark of respect for human rights.[59]

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[57] Yuval Ginbar, '"Celebrating" a Decade of Legalised Torture in Israel' (2009) *Essex Human Rights Review* 6, 169-87.

[58] Dia Anagnostou (ed), *Rights and Courts in Pursuit of Social Change: Legal Mobilisation in the Multi-level European System* (Hart Publishing 2014), 174.

[59] Kerem Altiparmak, Richard Carver and Lisa Handley, 'Turkey', in Richard Carver and Lisa Handley, *Does Torture Prevention Work?* (Liverpool University Press 2016) 442.

Anagnostou concludes: "ECtHR judgements do matter in multi-faceted ways, even if their implementation is at times resisted or evaded by national authorities".[60] The same author notes in addition that cases have a cumulative impact: subsequent cases exploit "points of judicial receptivity" from earlier cases.[61] Efforts to challenge security forces in Northern Ireland in the 1970s created precedents and experience that later contributed to efforts to challenge abuses in Turkey in the 1990s. In an example of the transnational networks highlighted by Risse et al, a number of individual lawyers who had honed their expertise in the earlier cases shared their knowledge with the activists who followed: Anagnostou provides the example of individual lawyers involved with the earlier Northern Irish cases who later went on to provide support to the Kurdish Human Rights Organisation with regard to the cases it took against Turkey.[62]

Where activists strategically bring large numbers of complaints to the ECtHR relating to the same state (or region within the state), the Court can begin to "acquire a thorough knowledge of the local situation and therefore to recognise the systemic nature of abuses and to identify systematic practices, thereby moving beyond the fact-specific and strictly individualised approach to cases".[63] The ECtHR uses the "pilot judgement" procedure as a way of identifying structural problems underlying repeated cases against particular states. Where several applications are made to the ECtHR with the same root cause, the ECtHR can select one as the pilot, and in that case, decide not only if a violation has taken place on the specific facts of the case,

[60] Ibid 180
[61] Dia Anagnostou (ed), *Rights and Courts in Pursuit of Social Change: Legal Mobilisation in the Multi-level European System* (Hart Publishing 2014), 174.
[62] Ibid 179
[63] Ibid 175

but whether there is a systematic problem underlying it, and what the state needs to do to remedy it.

As well as the courts in the regional human rights systems, activists may also make use of the UN individual petition mechanisms in an attempt to get justice for individuals, and with the broader aim of raising awareness of rights issues both with the public at large, and with the specific audience of lawyers and judges. Where individual petitions lead to a finding that the state was at fault, NGOs can publicise this finding and pressure the state for compliance, not just with compensation to the individual, but by improving its practices. Cannoy-Smith cites the precedent created by the individual petition in the case of *AT v Hungary* to the Committee against the Elimination of All Forms of Discrimination against Women.[64] Hungary accepted that its legal provisions on the issue of domestic violence were inadequate: after the decision, local NGOs were in a strong position to push for the state to adopt improved legislation in this area, which it subsequently did.

Where complainants have the option available, the ECtHR is more likely to be the forum of choice, given the enforceability of its judgements as compared to the non-enforceability of Committee views. Under the principle of subsidiarity, states have the discretion to decide how to implement decisions. ECtHR judgements are monitored by the Council of Ministers (Art 54 ECHR). When a decision is made that there has been a breach, states must provide an individual remedy (eg. payment, reopening of domestic proceedings etc). States are also expected to implement general measures to tackle the causes of the violation in order to prevent future

[64] CEDAW Communication 2/2003, 26.01.2005, discussed in Heather Cannoy-Smith, *Insincere Commitments: Human Rights Treaties, Abusive States and Citizen Activism* (Georgetown Press 2012).

repetition (Art 46 ECHR). This could take the form of legislative reform and/or executive measures; in light of the discussion on the localisation of human rights, it is worth noting, in the context of the importance of localisation strategies, that other measures that may be ordered include translation and dissemination of the judgments domestically. The Council of Ministers reviews progress, in which it may draw on national human rights institutions and NGOs for information about the execution of judgements; if satisfactory, it terminates its supervision through the adoption of a final resolution and if it is not satisfactory, it may instead adopt an interim resolution highlighting the state's failure to take satisfactory action. The EU, amongst others, may refer to ECtHR judgements and Council of Minister resolutions when creating policy related to the state in question.

Anagnostou and Mungiu-Pippidi note a legal case does not usually solve the problem in and of itself: as per a Council of Ministers report, "clone or repetitive cases make up 80-85% of the Court's caseload, suggesting that major structural problems persist and require more effective and timely domestic implementation".[65] Potential barriers to local reform include "outright resistance, political reluctance, or mere inertia on the part of national authorities"; mobilisation of non-state actors and/or domestic constituencies can help to address these problems.[66]

(iv) Practical safeguards

Where there is a lack of political will to combat torture, there tends to be a failure to implement safeguards in the form of "ex ante or ex post controls on supervision and

[65] Committee of Ministers, *Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights* (Council of Europe 2010), 11.
[66] Dia Anagnostou and Alina Mungiu-Pippidi, 'Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter' (2014) *European Journal of International Law* 25, 205-227, 208.

interrogation processes".[67] Sir Nigel Rodley, former UN Special Rapporteur on Torture, has described torture as a "crime of opportunity".[68] Reducing torture requires not only generating political will to oppose it, but taking away the opportunities for it to occur. The first chapter noted the principal/agent problem that may hinder torture reform: the demand for the creation of practical safeguards is fundamentally a demand for the state to take effective measures to constrain its agents.

Amnesty International adopted a12-Point Program for the Prevention of Torture in October 2000. Alongside official condemnation of torture by state authorities, the ratification of international conventions, and the prosecution of torturers domestically or internationally, the plan emphasises the importance of practical safeguards, including:

- Limits on incommunicado detention, when detainees are most vulnerable;
- No secret detention/detention in undisclosed locations;
- Safeguards during interrogation and custody, including informing detainees of their rights and ensuring independent inspection of places of detention;
- Training for all officials involved in custody, interrogation and detention.

Miller agrees that to eliminate torture, it must be prohibited by law, it must be made clear that political leaders are against the practice, there needs to be appropriate training of police and others, and accountability mechanisms must be put in police, including the use of close-circuit television cameras in cells and interview rooms, as

[67] Courtenay Conrad and Will Moore, 'What Stops the Torture' (2010), *American Journal of Political Science* 54(2), 459-476.
[68] Nigel Rodley, 'Reflections on Working for the Prevention of Torture' (2009) *Essex Human Rights Review* 15.

well as external oversight bodies.[69] Delaplace and Pollard similiarly emphasise the importance of training and of reinforcing normative frameworks,[70] although Carver and Handley add an important caveat: they find that training which educates police on alternative forms of investigative techniques and evidence-based methods of constructing criminal cases has more of an impact than training that simply reiterates human rights norms.[71] They also note that police reform in some post-Soviet states had an unintended consequence: after a large-scale exodus of experienced, Soviet-trained police investigators, "[t]he new police forces of independent Georgia and Kyrgyzstan made widespread use of torture in criminal investigations for the simple reason that they were not equipped to identify perpetrators by other means".[72] Equipping the police with more appropriate investigative skills is key element of the solution.

It is vital to ensure that detainees are informed of their rights: they need to know that they have rights and that these have been violated, and what mechanisms exist to report abuse, or monitoring becomes redundant. Where ill-treatment is common, it may be so normalised to victims that it is perceived as part of the sentence.[73] The previous chapter emphasised the importance of internalisation of norms by the state, but it is important for victims to also internalise expectations regarding the treatment they should receive. The role of victims and their families as key informants must not be under-estimated: information gathering relies in a large part on their perception

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[69] Seumas Miller, 'Torture' (2008) in Edward N. Zalta (ed.), The *Stanford Encyclopedia of Philosophy* http://plato.stanford.edu/archives/win2008/entries/torture/ (accessed 14 January 2012).
[70] Eduoard Delaplace and Matt Pollard, 'Torture prevention in practice' (2006) *Torture* 16(3), 220-246.
[71] Richard Carver and Lisa Handley, *Does Torture Prevention Work?* (Liverpool University Press 2016), 80.
[72] Ibid 81.
[73] Rodriguez Rescia in Council of Europe/APT (2010), Council of Europe/Association for the Prevention of Torture, *New Partnerships for Torture Prevention in Europe: Proceedings of the Conference, Strasbourg, 6 November 2009* (Council of Europe 2010), 19.

that they have been wrongfully treated. Where strategic litigation is pursued, it relies heavily on victims' tenacity and willingness to pursue justice for years on end, a task that may involve great psychological strain and potentially state hostility.[74]

In their survey of torture prevention initiatives in 16 different countries, Carver and Handley consider the effectiveness of four groups of preventative measures:

- monitoring
- complaint mechanisms
- prosecution of torturers, including the assertion of state jurisdiction
- the application of laws, rules and procedures regarding the detention and interrogation of criminal suspects.[75]

According to their analysis, the most effective of these preventative measures is the last one, and in the particular the safeguards applying in the hours and days after arrest. Individuals are safer from torture where they are held only in lawful, acknowledged places of detention; where family and friends are promptly notified; where they have access to a lawyer and to medical examination by an independent medical professional; and where they are brought promptly before a judge. These are the type of mechanisms that AI predicted would be useful in its 12-Point Plan from 2000. For there to be a genuine increase in safety, the above measures must,

[74] Where a victim has died, and does not have relatives willing to take the case, there is potentially nobody to act as a complainant, hence the attempt by certain NGOs have sought to be recognised as having legal standing to bring cases in their own right: in *Bulgarian Helsinki Committee v Bulgaria* ECtHR Chamber decision 21.07.2016 , the named NGO requested that the ECtHR grant it legal standing either as an indirect victim or as the representative of two children with mental disabilities who had died in special homes where they had been placed by the state. The application was deemed inadmissible due to lack of *ratione personae*. Unlike the African Court of Human Rights, where NGOs are permitted to bring complaints in their own right, the ECtHR does not permit NGOs to act *as* complainants where they are not the victim of the violation (although they may act *for* individual complainants as advocates).

[75] Richard Carver and Lisa Handley, *Does Torture Prevention Work?* (Liverpool University Press 2016), 1.

unsurprisingly, actually be implemented in practice, as opposed to appearing only on the statute books.[76] Access to a lawyer and/or doctor has much less of a preventative effect where the professionals in question lack technical competence or independence.[77]

Carver and Handley find that the second most important on the above list is the prosecution of torturers.[78] If politicians retreat from torture when the political costs increase, it is unsurprising that individual perpetrators retreat from torture when the cost, in the form of exposure to criminal sanctions, increases to them. Carver and Handley's survey does not extend to high-level prosecutions, such as those undertaken by the International Criminal Court: prosecutions at this level are as yet sufficiently rare that they cannot be expected to have much deterrent power. Outside the criminal sphere, Carver and Handley find little evidence regarding the benefit of complaint mechanisms, ie. opportunities for individuals whose rights were violated to complain to human rights ombudsmen or similar body.[79]

With regard to monitoring mechanisms (ie. visits to places of detention to observe conditions and make recommendations for improvement), Carver and Handley note that they have some effect on torture, but a less significant effect than the procedural safeguards described above. Their case studies include states where procedural safeguards exist and where they do not. For the case studies in this research, where procedural safeguards by and large do exist in principle, the question being whether

[76] Ibid.
[77] Ibid 3.
[78] Ibid.
[79] Ibid 3.

they apply in practice, it will be seen that detention monitoring assumes more prominence in relation to reducing ill-treatment.

While torture and ill-treatment prevention initiatives focus on places of detention, further evidence regarding the inhibitory effect of monitoring comes from findings that equipping police officers with body-worn cameras significantly reduces allegations of ill-treatment by them in their encounters with the public. One 12-month experiment in the US found that when body cameras were worn, the number of complaints against officers dropped markedly. Several factors may be at play: knowing that they were being filmed may have inhibited aggression by members of the public towards the police, so that the police response was in turn less forceful; it may also have reduced the rate of false complaints of policy brutality. However, the authors make a compelling case that wearing the body cameras and knowing that their conduct can be scrutinised in and of itself changes police behaviour for the better.[80]

Of these practical safeguards, some may be delivered by civil society organisations: training for police officers, for example, or posters and leaflets telling detainees about their rights. NGOs may provide legal or medical services directly to detainees. They often carry out detention monitoring, in addition to monitoring by NPMs and by international bodies such as the CPT, the SPT and the Special Rapporteur on Torture.

[80] Barak Ariel, William Farrar and Alex Sutherland, 'The Effect of Police Body-Worn Cameras on the Use of Force and Citizens' Complaints against the Police: A Randomized Controlled Trial' (2015) *Journal of Quantitative Criminology* 31, 509-535. Reservations about the downsides of body-worn cameras are expressed in Mike Rowe, Geoff Pearson and Elizabeth Turner, 'Body-Worn Cameras and the Law of Unintended Consequences: Some Questions arising from Emergent Practice' (2017), *Policing: A Journal of Policy and Practice*, pax011 although the authors still accept that they may improve the quality of police-citizen interactions.

However, in many cases, the NGO role is to advocate that the state legislate for and implement the safeguards in question: for the state to install audio-visual systems to record interrogations; for the state to ensure that there is appropriate provision of legal aid and medical services; and for the state to put in place an effective complaint mechanism for when violations occur.

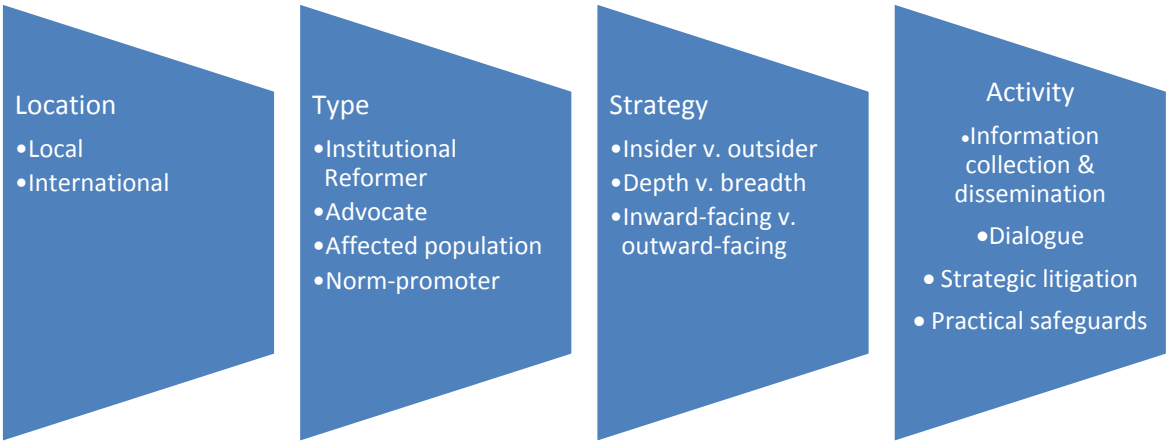
4. Norm entrepreneurs and norm patrol

In exploring the role of activists as norm entrepreneurs, much has been said about how they contribute to the establishment and dissemination of norms. To this, we can now add another concept, that of *norm patrol*, which centres on their ongoing reinforcement of the fact that norm-compliant behaviour is expected. Monitors undertaking visits to places of detention may *detect* abuses (for example, they may be given information about such abuses by interviewees, and witness injuries and equipment used to inflict those injuries); they may *deter* abuses, because they raise the likelihood that a sanction will ensue, but beyond detection and deterrence, monitors have a symbolic aspect in that they *reinforce expectations* of norm-compliant behaviour. From this perspective, punctual visits are important because of their reinforcement value. Unannounced visits are particularly valuable for the purpose of detection and deterrence, but even pre-announced visits, which allow for the potential concealment of abuses, remain useful for their symbolic value in reinforcing a shared expectation about the standards to be observed. Chapter one discussed the process of internalisation of the norms – it is contended that the iterative nature of the monitoring visits and other forms of contact contributes over time to this internalisation process.

As noted before, domestic NGOs are particularly important in this regard. The value is partly symbolic (there are local voices restating the norm; the norm is framed as a locally-sought goal) and partly pragmatic (local staff can access more places of detention more frequently, and their offices are more likely to be accessible to potential complainants). Of course, the symbolism of a common purpose may be inhibited by class, ethnic, political, even gender tensions between monitors and police/prison staff; similar cleavages between victims and activists may inhibit how accessible they seem to victims; activists may find it difficult to access remote or dangerous areas of the country. NGOs are challenged by resource limitations and staff retention, and not all organisations achieve longevity. Despite these potential limitations, local NGOs play a role that cannot readily be replicated by international organisations.

5. Conclusion

NGO identity and positioning can be represented as follows:



The available choices do not represent rigid categories, but rather positions on a spectrum. Some of the choices logically cluster together: strategic litigation is a depth strategy (ie. drawing on narrow technical expertise rather than popular appeal); it is also an outsider strategy, a form of righteous denunciation. Before a case is taken to the ECtHR, domestic remedies must be exhausted, so the action is first local and then potentially international, first inward-facing and then outward-facing. Activities focusing on the implementation of practical safeguards are often going to be led by local organisations (notwithstanding monitoring by international bodies). As they rely on developing good relationships with local officials, to some extent they are insider strategies (working together on developing good practice rather than denouncing poor practice). However, this clustering of features should not be overstated: organisations may use one strategy in order to open up space for another. The outward throw of the boomerang hits its target on its inward return. The international court case becomes a domestic *cause celebre*, changing local views on accountability, and opening up political space for organisations to be accepted as insider advisers on the implementation of practical safeguards.

In each of the case studies considered in chapter five onwards, the main organisations carrying out advocacy on torture will be considered in light of how they position their choices. Before turning to the individual case studies, however, it is first necessary to do some scene-setting to justify the selection of cases and to consider the shared political context. This is the subject of the next chapter.

Chapter 4 Introduction to the Case Studies

Chapter 2 demonstrated that states with more political space for civil society activism tend to perform better on torture and CIDT. While the findings are consistent with a hypothesis that more activism leads to better state performance on torture, they tell us little about the causal process involved. To supplement the quantitative findings, we therefore turn to more detailed case studies. The next four chapters undertake a process tracing exercise in four states to attempt to identify how far activism contributes to any reduction in torture and ill-treatment, and/or how far civil society freedom and a reduction in torture and ill-treatment co-occur simply because they have a mutual causation. As pointed out in chapter 2, there may of course be an element of both: a state's desire to qualify for EU membership may ensure that it both improves police training, thereby reducing incidents of ill-treatment, and it also increases its willingness to cooperate with prominent NGOs, both national and international. So far, the prospect of EU membership is the causal factor for both. But once given space to manoeuvre – access to carry out fact-finding, freedom to report, political space to propose changes to legislation, the opportunity to carry out training to relevant groups, the chance to litigate violations – civil society may then play a role in accelerating progress and embedding good practice. The purpose is to trace whether and how civil society *contributes* to and plays a distinct role within the improvement of state practice on torture, and not necessarily to establish that it is the sole cause of progress. Following on from the discussion in the first chapter about extrinsic motivation for reform (the rationalist approach) versus intrinsic motivations (the constructive approach), the case studies offer some insights into the questions of

if and how local civil society in particular can play a role in the state's internalisation of norms.

Before embarking on the case study chapters, this introductory chapter has a number of purposes: it justifies the case selection, explaining that all four cases have important common features, enabling us as far as possible to isolate activism as the key independent variable and minimising alternative explanations for variance in torture performance. The following section outlines the very distinct political context of accession to the EU, which carries a specific set of incentives for reform. The next section examines the context for civil society in the four states, including the regional (and indeed, global) challenge of shrinking space for civil society. The final section of the chapter outlines the methodological issues specific to this case study research.

1. Selection of Case Studies

One of the classic problems in case study research is "too many variables, too few cases". States differ from one another in many complex ways; it is not possible to identify states that are identical save for one single characteristic which can be then used to explain differing outcomes. The best that the researcher can hope for is to identify states that are reasonably similar in important ways (control variables) so that differences in the independent variable (level of activism, in this case) carry at least some degree of explanatory power with regard to differences in the dependent variable (state performance on torture). The four states selected as case studies were chosen on the basis that they demonstrate different trajectories in relation to activism, but also because they are comparable in a number of ways that we know to be

important, based on the literature review in chapter one and the findings from the quantitative analysis in chapter two.

The selection criteria were as follows:

(i) The states should be medium democracies

Simmons notes that yet-to-be consolidated democracies make good case studies, as they offer both an *opportunity* for reform (compared with the most entrenched autocracies, where there is less opportunity) and a *need* for reform (compared with entrenched democracies, where good practice is already observed and so there is less perceived need).[1] Chapter two supports this insight, finding that high democracies generally perform reasonably well on torture, and most (although not all) low democracies perform badly in this regard; medium democracies show the widest variation, creating an opportunity to search for explanations.

(ii) The states should not be experiencing conflict

Chapter one explains how conflict impacts on the likelihood that a state will use torture, and this finding is borne out by the analysis in chapter two. If comparing torture in state A, where there is conflict, to torture in state B, where there is no conflict, it is unsafe to attribute any differences to activism.

(iii) The states should be of comparable population size

Chapter 2 found that the states with the smallest populations generally perform much better on torture than the states with the largest populations. It was important, therefore, that all case studies had reasonably comparable population sizes. The fact

[1] Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009).

that they were all in the same category (large, medium or small population) was more important than which of the categories applied.

(iv) The case studies should be from the same region

In order to make meaningful comparisons, the case studies must be subject to the same international obligations on torture. While much of this transcends region, particularly in relation to obligations occurred under UN treaties, regional human rights frameworks differ in relation to the commitments required of states and the strength of their enforcement mechanisms. To isolate activism as a variable, it is important to control for these differences by selecting states from within a single region. Furthermore, chapter 1 pointed to the existence of the regional contagion effect, both in relation to the adoption of norms and also in relation to the backlash against human rights. For these reasons, it was important that the four case studies belong to the same region.

(v) The states should have a similar degree of vulnerability to influence

Chapter one sets out the argument that openness to influence is a scope condition for positive change, suggesting that the case studies should be comparable in their *material and social vulnerability*.

(vi) Ethical considerations

In accordance with the "do not harm" principle, the researcher attempted to identify case studies where interviewees (and indeed the researcher) would not be put at

unnecessary risk by the research. The decision was made to avoid including states where public criticism of the state would be likely to lead to reprisals.

Taking all the above factors into account, the following states were identified as appropriate case studies: Albania, Bulgaria, the Former Yugolav Republic of Macedonia (hereafter Macedonia) and Romania.

According to the USAID scores on CSO advocacy (described previously in chapter 2), each of the four states demonstrates a distinctive trajectory on advocacy over the period from 2000 to 2016.[2]

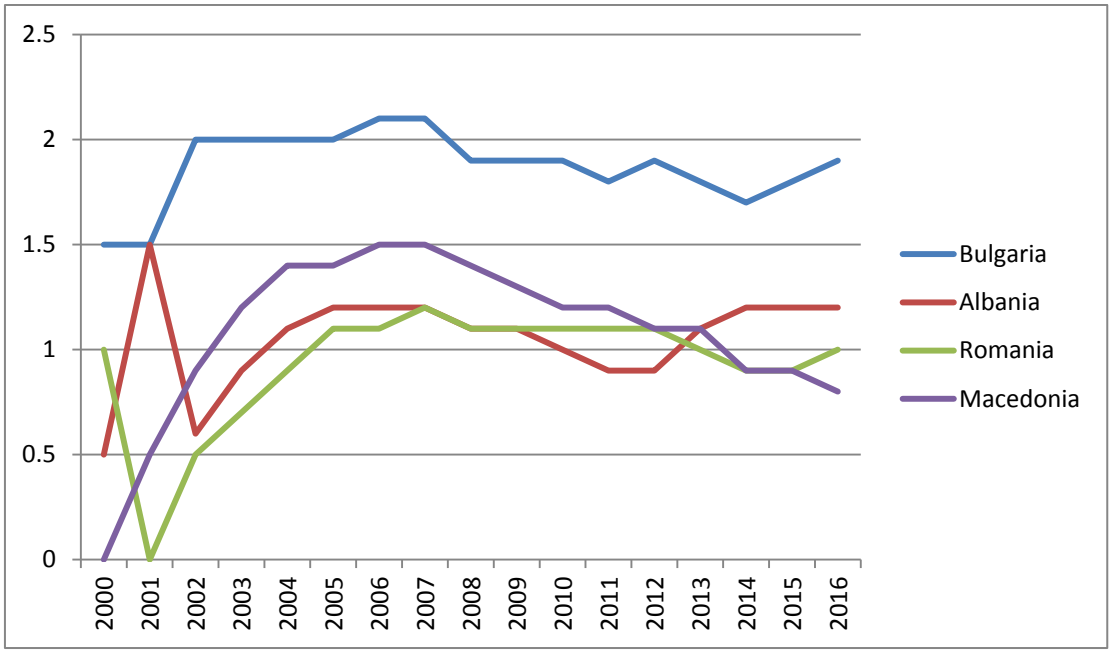


Figure 1 CSO Advocacy scores (Source: USAID)

[2] Data taken from USAID, *CSO Sustainability Index for Central and Eastern Europe and Eurasia*, 20th edition, July 2017. In the USAID report, lower scores for advocacy represent a better performance; for ease of comparison with the CIRI torture score in later graphs, this depiction has been reversed so that higher scores represent better advocacy performance; this was achieved by subtracting the original USAID score from 4.5. The original scores are provided in the appendix.

The contrast in their advocacy trajectories suggest that they offer a good test of the hypothesis that more advocacy means better state performance on torture. The prediction would be for Bulgaria to be performing best on torture by 2016, given that it has consistently had the highest score for CSO advocacy. While Albania has a number of low points, the overall trajectory from 2002 is a positive one, and by the end of the period, it has the second highest score, suggesting that its performance on torture should improve over the period. Macedonia and Romania both have extremely low scores for CSO advocacy at the start of the period, in 2000 and 2001 respectively. Both then improve until 2007 and decline thereafter, with the decline in Macedonia being particularly precipitous. The prediction from the hypothesis is therefore that Romania and Macedonia will perform less well on torture than the other two states by the end of the period. The following chapters will examine whether this is indeed the case.

2. Matching the states to the case study criteria

(i) *Medium democracies*

All four states are post-Communist, and are classed as emerging or newly-emerged democracies, part of the so-called "third wave" of democratisation.[3] The Democracy Ranking Association ranks 112 states in order of democracy for the years 2011-12 and 2014-15: during both of these periods, all four states were ranked as middle performers.[4]

[3] Samuel Huntingdon, *The Third Wave: Democratization in the Late Twentieth Century* (University of Oklahoma Press 1991).

[4] A middle position in the ranking implies a ranking between 37th and 74th of the states surveyed: in 2011-12, Albania was 60th and in 2014-15 it was 55th; Bulgaria was 43rd and then 41st; Macedonia 66th and then 74th; Romania was 41st and then 40th. See Democracy Ranking Association, www.democracyranking.org/wordpress/2016-full-dataset/ (accessed 14 January 2018).

(ii) Absence of conflict

During the period in question, conflict was largely absent, with the exception of Macedonia in 2001.[5] The cessation of conflict in 2001 in this state must be borne in mind as a likely explanation for any improved performance on torture in the years immediately afterwards. However, as we have seen, Macedonia also demonstrates a declining advocacy score from 2007, not directly linked to conflict: if state performance on torture also worsens after this date, as predicted by the hypothesis, the 2001 conflict cannot explain this decline, leaving the change in advocacy as a more persuasive explanation for the change in torture performance. It is contended that this one year of conflict, early in the period under scrutiny, does not invalidate the use of Macedonia as a case study. Pragmatically, it was not possible to identify an alternative case study where the state matched all other criteria set out here as well as being conflict-free throughout the period, so this compromise in case study selection was deemed necessary.

(iii) Population size

All four states are considered here to be medium-sized: Albania and Macedonia each have a population of under 3 million, Bulgaria just over 7 million, while Romania is the largest with a population of just under 20 million. This range is arguably not insignificant, and it should be borne in mind that Romania's relatively large size may cause greater challenges in implementing reforms than those faced by the smaller states. However, comparisons between Bulgaria and Romania are of particular

[5] As in chapter 2, the threshold for conflict is deemed to be at least 25 battle-related deaths per calendar year, across the categories of intrastate, interstate, one-sided and non-state conflict, with data drawn from the Uppsala Conflict Data Program. Chapter 2 noted that this can be seen as a relatively high threshold for conflict; a certain amount of social unrest and upheaval may exist under this threshold. The intention is to exclude only countries in a state of war; social unrest is not uncommon, and we are looking here for torture reform that has a degree of robustness in the face of such challenges.

interest due to the fact that they acceded to the EU at the same time (see below), justifying a degree of compromise on the population size aspect.

(iv) Region

The states chosen were all in south-east Europe; all are members of the UN and the Council of Europe and are participants in OSCE. Their accession to international and regional commitments with regard to torture is set out in the following table:

Date acceded to:	ICCPR	ICCPR First Optional Protocol	UNCAT	OPCAT	ECHR	ECPT
Albania	1991	2007	1994	2003	1996	1996
Bulgaria	1970	1992	1986	2011	1992	1994
Romania	1974	1993	1990	2009	1994	1994
Macedonia	1994	1994	1994	2009	1997	1997

Although Bulgaria was the earliest adopter of all the Conventions, with the exception of OPCAT, one limitation is worth noting: it has made a declaration, under Art 28 UNCAT, that it does not recognise the competence of the Committee against Torture to carry out the special form of investigation mandated by Art 20 UNCAT in cases where there are credible accounts of systematic torture within a state's boundaries.

On a practical note, the choice of four states within the south-eastern region of Europe, in reasonable proximity to the UK-based researcher, offered logistical advantages in relation to accessibility and cost of field visits.

(v) Vulnerability to influence

The four states were, over the period under scrutiny, particularly susceptible to the influence of the European Union; two acceded to the EU during the period, while the two others remain aspiring members as of the time of writing. The details of how this

influence operates are sufficiently important to given their own extended section below.

(vi) Ethical considerations

It should be observed that critics of the state have on occasion faced risks, as explored in each of the case study chapters. At the same time, civil society activists can and do publish reports pointing out state shortcomings in this area with a reasonable degree of freedom and safety, at least in comparison to a state such as Turkey, at the time of writing. The view was taken that the research would not create additional risks for any of the participants.

Other points of comparison

While not in themselves selection criteria, it is worth noting that the states have further similarities. All are middle income countries: the World Bank classifies Albania as lower-middle-income and the three others as upper-middle-income.[6] A state's resources are relevant in that reform often requires a degree of investment. Ensuring detainees have access to medical care and legal advice carries a cost, as does the purchase of equipment such as closed circuit television. As discussed previously, ensuring police have access to forensic investigation techniques (eg. DNA) means they are less likely to resort to forcing confessions. Another

[6] The World Bank lists GNI per capita for 2013 as Albania 9950; Bulgaria 15,210; Macedonia 11,520 and Romania 18,390: http://data.worldbank.org/indicator/NY.GNP.PCAP.PP.CD (accessed 2 May 2015). Data represent Gross National Income per capita, converted to international dollars, calculated on purchasing power parity with what a US dollar buys in the US. Relative prosperity has been found to affect a state's performance on physical integrity measures: Steven C. Poe, C. Neal Tate and Linda Camp Keith, 'Repression of the Human Right to Personal Integrity Revisited: A Global Crossnational Study Covering the Years 1976-1993' (1999) *International Studies Quarterly* 43(2), 291-315. See also Todd Landman, *Protecting Human Rights: A Comparative Study* (Georgetown University Press 2005).

commonality is the existence of Roma populations in of each of the four countries.[7] Roma communities tend to be socially disadvantaged and disproportionately affected by human rights abuses including torture and ill-treatment.

3. The regional effect: human rights in Europe and EU accession

There are three layers to the European human rights system: the Council of Europe, which includes the European Court of Human Rights (ECtHR), the Organization for Security and Cooperation in Europe (OSCE) and its human rights arm ODIHR,[8] and the EU. The different bodies draw on each other, and in particular the EU builds its human rights norms on the principles and definitions established by the Council of Europe. All of the actors in turn interact with local and international civil society, which often takes the lead in implementation. For example, in an OSCE report on its activities to combat torture, it repeatedly notes how it uses local NGOs: its monitoring of places of detention "often involves the facilitation of this work by NGOs rather than direct activities by the field operations";[9] one of its methods of dealing with complaints by individual victims is "directing individuals to the relevant NGOs";[10] it sees its advocacy role as including "facilitation of dialogue between the

[7] "Roma" is used here as an overarching term to include groups who consider themselves Roma, Sinti, Gypsies or other terms.

[8] The focus of the Organization of Security and Cooperation in Europe (OSCE) is on the promotion of political dialogue rather than the creation of legal norms. It is not a human rights-specific body, but carries out some human rights activities as part of the so-called "human dimension" of its political work. A number of its Documents include commitments to eradicate torture, including the Vienna Document of 1989, the Copenhagen Document of 1999, and the Istanbul Charter of 1999. Albania and Macedonia have OSCE Field Operations, while Bulgaria and Romania participate in OSCE, without having field offices. The mandates of field offices vary, but in Albania and Macedonia, the mandates align closely with torture prevention work, as they include elements such as rebuilding the legal system, enhancing the professionalism of the police, and supporting the work of the NPM.

[9] OSCE/ODIHR, *The Fight against Torture: The OSCE Experience* ODIHR (2009) 14.

[10] Ibid 15.

government and NGOs".[11] In highlighting obstacles to reform, ODIHR specifically noted "[a] weak or non-existent NGO community, or one in which none of the actors focuses on torture issues".[12] The point to note is that the avowed aim is to support and work with domestic civil society, and not to supplant it.

The importance of the ECtHR for strategic litigation has been discussed in the previous chapter. It is worth noting here the relative use made of the ECtHR by each of the four states. In 2015, the Court received 4,439 applications concerning Romania, 1,213 applications concerning Bulgaria, 101 applications concerning Albania and 340 applications concerning Macedonia.[13] Compared to their relative populations, Bulgaria and Romania see a broadly similar use of the Court, while it is much less used in the context of Macedonia and notably less with regard to Albania. This suggests that local civil society strategies differ in their use of strategic litigation, at least in this forum. If Albania is more of a success story in reducing torture than Romania, as predicted by the hypothesis, then it also suggests that strategic litigation may not be associated with the greatest success in ending torture. This should not necessarily be understood as indicating that strategic litigation is a poor choice of strategy: NGOs may resort to strategic litigation where the state is otherwise unreceptive to their demands for torture reform, so strategic litigation co-occurs with state reluctance to reform rather than causes it. On the other hand, we should be alert to the possibility that strategic litigation in a regional forum is a choice of strategy that is coercive and external, and has the effect of "crowding out" internal motivation to reform, as predicted by Goodman and Jinks (see chapter one). The case studies

[11] Ibid.
[12] Ibid 23.
[13] Numbers taken from the European Court of Human Rights Press Country profile for each state, as updated July 2016, available www.echr.coe.int (accessed 15 September 2016).

will allow us to examine the dynamic more closely, and to identify if the rationalist perspective (with its focus on an external locus of demand, often using coercive strategies) or the constructivist perspective (focusing more on persuasion and the process of internalising norms) has more explanatory power in relation to state reform on torture.

Accession to the European Union

Chapter one noted that a state's social and material vulnerability to external influence acts as a scope condition for reform. The four states operate in a particular political context that would be expected to render them especially "vulnerable" or receptive to the influence of the EU. Bulgaria launched its bid for EU candidacy in 1992, Romania in 1993, and Albania and Macedonia in 1995. The first two acceded to the EU in 2007 and the latter two were recognised as official accession candidates in 2010 (Macedonia) and 2014 (Albania). The accession process means that human rights and reform of the justice and security sector are placed firmly on the state's agenda: states have a strong incentive to demonstrate reform within this sector, and NGOs working on these issues have traction for their arguments to be heard. This phase represents a moment in the state's history when there is a particular opportunity for change to happen, at least in principle – it cannot be denied that political expediency plays a role in the accession process, and at least some commentators view the accession of Romania and Bulgaria to the EU as premature, a political payoff for cooperation with the NATO bombing of Serbia in 1999 rather than recognition that these two states had indeed met EU standards on institutional readiness and the observation of human rights norms.

The European Commission monitors accession states to ensure that they meet the criteria for admission, known as the Copenhagen criteria. These include the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The EU's inward-facing policy on human rights, including the right not to be tortured, is commonly phrased as the EU's commitment to being an area of "freedom, security and justice" (from the Lisbon Treaty article 3.2).[14] Member states are required to abide by these principles, and accession states are expected to reform their justice and security sectors to conform to them. During the negotiations, an Accession Partnership is agreed between the state and the EU, setting out the areas in which the candidate state needs to make progress in the short and medium term. The aspiring member state creates a corresponding National Programme for the Adoption of the *Acquis*. The Accession Partnership also includes commitments made by the EU to provide financial and technical support to enable the state to make the necessary changes, drawing on the EU Instrument for Pre-accession Assistance (IPA).[15]

Does the EU really care whether its member states torture?[16] Some of its long-standing members, such as Italy and Greece, themselves have poor records in this

[14] "The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States", Art. 67(1) Treaty of the European Union. This area of governance involves a number of additional pan-European agencies, outside the main EU bodies, which are sources of EU soft law. These include agencies responsible for operational activities (Frontex, Eurojust, Europol, CEPOL) and those primarily oriented towards networking and information exchange (EMCCDA, ENISA, FRA).

[15] Information available through the Official Journal of the European Union, http://eur-lex.europa.eu/summary/glossary/accession_partnership.html (accessed 19 August 2016). The original IPA had a budget of €11.5 billion from 2007-2013 (note that the period post-dates Bulgarian and Romanian accession; the accession process has evolved over the years) while its replacement, IPA II has a similar budget for 2014-2020. Amongst the investment areas is democracy and governance (which includes a reference to empowering civil society) and rule of law and fundamental rights. IPA II emphasises performance measurement using agreed criteria.

[16] Chapter 1 pointed out that "what the state wants" is an artificial construct, given that state institutions are made up of individual actors with their own preferences. This applies even more to the EU, which incorporates a vast array of actors with often competing preferences. Asking what the EU

regard, leaving it open to a charge of hypocrisy.[17] In relation to the justice sector, the questions of corruption and organised crime in the region loom larger in the EU's concerns than the ill-treatment of detainees. At a minimum, however, the EU itself is subject to rhetorical entrapment in relation to human rights. Left entirely to its own devices, the EU and aspiring member states might not prioritise the issue of torture when deciding eligibility for accession. However, having committed itself rhetorically both to human rights, and to the principle of civic participation, the EU has created a space for civil society actors to assert that improving its record on torture does matter to a state's "Europeanisation" process.

CIVICUS summarised the changes brought by joining the EU (the reference is to Bulgaria, but the principles apply to all four of the states):

> The process of EU integration considerably changed the contextual environment, adding three new dimensions: a new level of decision-making; EU leverage over domestic reforms; and new partners in decision- and policy-making, in the shape of EU institutions. This offers a new momentum for civil society organisations…in shaping their agenda and role in society and policy-making.[18]

CIVICUS also noted that funding patterns changed in Bulgaria after EU accession, with "traditional donors" reducing their contribution to CSOs;[19] the same phenomenon is noted in the Romania chapter. EU accession brings to bear new

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wants in relation to torture means attempting to determine the extent to which torture reform emerges as a priority amongst the many other priorities held by EU institutions and by the states constituting the bloc.

[17] CIRI torture scores for all states 2006-2010 are provided in the appendix. Spain and Greece both received the lowest possible score for four out of those five years, indicating a worse performance than Bulgaria, Albania and Macedonia over that period.

[18] CIVICUS and Open Society Institute Sofia, *Civil Society Index 2008-2010. Civil Society in Bulgaria: Citizen Actions Without Engagement* (Open Society Institute 2011) 13.

[19] Ibid 14.

opportunities to influence state policy and practice, including on torture, but it may also represent a period of adjustment for organisations, as previously relied-on donors take the view that their funding is now more appropriately directed elsewhere.

While the EU accession process represents a highly important opportunity for reform, there are two counter-trends that may impede this process: *backlash* and *backsliding*. Although not a new phenomenon, Euroscepticism and *backlash* against the European project gained a new level of prominence in 2016 with the UK referendum decision to leave the EU. The rhetoric of national sovereignty has political traction in many states, particularly where a majority of the population perceives that the EU's handling of economic and migration challenges has been disadvantageous to them. Where EU membership is unpopular, reforms aimed at meeting the Copenhagen criteria, include reforms of state practice on torture, are more likely to be resisted, at the political level and/or or by state agents (in line with the principal/agent problem, discussed in chapter one).

At the time of writing, the balance of public opinion remains in favour of EU membership in the majority of states, including the four states that form the case studies here. In a 2017 survey for the European Parliament, nearly 28,000 EU nationals were questioned whether they felt their country had benefited from EU membership: in 25 out of 28 states, more than half of those surveyed responded that on balance, EU membership was of benefit to their country, with 56% of Bulgarians and 61% of Romanians answering to this effect.[20] In the two states that have yet to

[20] European Parliament, Directorate-General for Communication, Public Opinion Monitoring Unit, October 2017, *Parlemeter 2017, A Stronger Voice, Citizen's Views on Parliament and the EU. Part II Complete Survey Results.* PE608.759, 23. The average for respondents in all countries was 64%. It is also worth noting that within the survey, respondents were asked which values European Parliament

accede, Macedonian support for EU accession was reported as 77% of the population in 2016.[21] Public support for EU accession was estimated to be even higher in the same year in Albania, at 80-90%.[22] The popularity of EU accession indicates that demands for torture reform are likely to find political traction. Furthermore, governments used the promise of EU accession as a legitimation strategy, with the concept of "returning to Europe" revealing the importance of this development for the state's self-identification as a modern European nation. The lure of the EU relates not only to the benefits of economic development and freedom of movement, but to the state's view of itself. As Risse et al point out, from the constructivist perspective, this process of "identity transformation" is key to lasting state reform in which, over time, human rights are increasingly observed "for reasons of belief and identity".[23] Negative reports about persisting abuses impact on the state not only because they potentially jeopardize a decision by the EU that the state is ready for full membership (a rationalist motivation). From a constructivist angle, the prospect of EU membership is also tied in with a state's self-image: its identity as a modern European rights-respecting state, distanced from its communist past and anxious to demonstrate that it now behaves differently. Of course, such a new self-image is not universally sought-after or cherished: a competing discourse based on national sovereignty is discussed in the next section.

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should defend as a matter of priority: 55% of respondents from both Bulgaria and Romania said that the protection of human rights should be prioritised: ibid, 21. The average for respondents in all countries was 56%.

[21] Ivan Damjanovski, *Analysis of public opinion on Macedonia's accession process to the European Union (2014-2016)* (IDCS 2016).

[22] Konrad Niklewicz, *The Long March Towards the EU: Candidates, Neighbours and the Prospects for Enlargement* (Wilfred Martens Centre for European Studies 2016), 35.

[23] Thomas Risse and Kathryn Sikkink in Thomas Risse, Stephen C Ropp and Kathryn Sikkink (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999) 18.

Concerns have been expressed in relation to Bulgaria and Romania that once accession was achieved, *backsliding* took place. Romanian commentator Mungiu-Pippidi argues that for states in Central and Eastern Europe: "the day after accession, when conditionality has faded, the influence of the EU vanished like a short-term anaesthetic".[24] Conant criticizes the EU for rewarding promises of reform rather than action, and accuses it of "anaemic oversight" as to whether legislative changes are followed by genuine change in practice.[25] She concludes that the commitments by new EU states to human rights standards remain "shallow" and such progress as has been attained is reversible.[26] Similarly sceptical, Guasti and Mansfeldová note that while states in the region have demonstrated levels of enthusiasm for joining international organisations, "the process of these complex changes [has not been] linear or unidirectional", carrying the risk that citizens lose enthusiasm for the project.[27] Levitz and Pop-Eleches are more optimistic: they acknowledge that the pace of reform may slow after accession, but they do not accept the charge of complete backsliding. While states no longer have to demonstrate progress in order to achieve the goal of accession, EU membership itself carries "alternative leverage and linkage mechanisms", most obviously in the form of increased EU aid and trade, but also the ongoing socialisation both of elites and ordinary people. New opportunities to work and travel in the more established EU states lead them to raise

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[24] Alina Mungiu-Pippidi 'Is East-Central Europe Backsliding? EU Acession is No "End of History"' (2007) *Journal of Democracy* 4, 8-16.
[25] Ibid 76.
[26] Lisa Conant, 'Compelling criteria? Human rights in the European Union' in R. Daniel Kelemen, Anand Menon and Jonathan Slapin, eds. *The European Union: Integration and Enlargement*, (Routledge 2015) 71.
[27] Petra Guasti and Zdenka Mansfeldová (2013), *Central and Eastern Europe after Enlargement: Successes and Failures*. Paper proposed for 41st ECPR Joint Sessions of Workshops, Workshop 12, "From the Outside In – International Relations' Effects on Domestic Public Attitudes", Johannes Gutenburg Universität, Mainz, 11-16 March 2013, 1.

their expectations of government performance and their own right to play a part in political decision-making.[28]

There are some structural protections against backsliding. In response to criticisms that Bulgaria and Romania had not fully addressed concerns in the area of justice and home affairs at the time of their accession, the European Commission created a follow-up instrument, the Mechanism for Cooperation and Verification, with the aim of continuing scrutiny over the reform process; it was given leverage by including conditionality related to Schengen area membership. Continuing monitoring also takes place through the European Commission and European Court of Justice infringement procedures. Examining environmental case studies from Romania and Bulgaria after their accession to the EU, Dimitrova and Buzogany find that accession had not negated governmental sensitivity to naming and shaming in the eyes of EU institutions, and this ongoing sensitivity could still be leveraged by NGOs to enable more democratic policy-making and implementation, even in a non-*acquis* issue such as forestry policy.[29] They found that, drawing on their transnational links, domestic NGOs acted as "conduits for norm diffusion". They "participated in two-level games in which they sought to use EU rules and involve the EU or other international actors to change policy practices and prevent or limit effective state capture".[30] Activists had greater success in Bulgaria, where environmentalists were able to draw on a long tradition of political mobilisation, while weaker mobilisation in Romania hampered

[28] Philip Levitz and Grigore Pop-Eleches, 'Why No Backsliding? The European Union's Impact on Democracy and Governance Before and After Accession' (2010) *Comparative Political Studies* 43(4), 457-485, 457.
[29] Antoaneta Dimitrova and Aron Buzogany, "Post-Accession Policy-Making in Bulgaria and Romania: Can Non-state Actors Use EU Rules to Promote Better Governance?" *Journal of Common Market Studies*, 2014 52(1), 139–156.
[30] Ibid, 152.

progress.[31] Their findings highlight the fact that differing local opportunities for activism result in different outcomes, even where the external oversight mechanisms are the same.

The case studies in subsequent chapters allow us to compare and contrast states in both a pre- and post-accession phase. If EU accession encourages states to improve their performance on torture, we would expect Bulgaria and Romania to consistently perform better than Albania and Macedonia. If states merely attempt to create the appearance of reform, and then backslide once accession is achieved, we would expect Albania and Macedonia to out-perform Bulgaria and Romania. Both outcomes contrast with the prediction that activism levels affect outcomes on torture, which predict one EU member state and one non-EU member to be the better performers (Bulgaria and Albania) and one EU member state and one non-EU member state (Romania and Macedonia) to be the worse performers. If the latter prediction turns out to be the case, we can reach the following conclusion: *the period before and after EU accession is one in which the state has heightened extrinisic and intrinsic motivation to be seen to be doing the right things. This sensitivity can be exploited to improve state performance on torture. Success is predicated on how well civil society activists are positioned to capitalise on this opportunity.*

A state can be denied EU membership for failing to achieve sufficient reform,[32] but to date it is unprecedented for EU membership to be suspended or withdrawn for failure

[31] Ibid, 152-3.
[32] The ongoing reluctance of many EU states to grant Turkey accession status is often attributed to its poor human rights record, although some see this as a fig-leaf to cover the real concern about large-scale migration and troublesome external borders.

to implement the reforms on an ongoing basis.[33] Article 7 of the Treaty on European Union allows for such a suspension if a country "seriously and persistently breaches the principles on which the EU is founded", including respect for human rights. This article has not to date been invoked, although a 2015 report by Amnesty International proposed that it be activated in respect of Hungary in response to its refusal to allow asylum-seekers access to its territory, and the use of force by security forces in border areas.[34] Amnesty's director for Europe and Central Asia, John Dalhuisen, has been quoted as saying "The EU needs to lose its virginity when it comes to Article 7".[35] As seen in the case of Macedonia, however, a state perceives that its prospects of EU membership are receding, the weakening of this extrinsic motivation can lead to a decrease in its respect for human rights, and invoking Article 7 could have unintended negative consequences.

4. Civil Society Context

While advocacy levels vary across the four states, as shown above, none of the states is without its own challenges in relation to citizen engagement in human rights issues. During the Communist era, the police were used as an instrument of state repression; all four states entered the post-Communist phase with a legacy of low public trust, transparency and accountability. Police and others were used to committing abuses

[33] Unprecedented for the EU, although not the Council of Europe: Greece voluntarily left the Council of Europe in 1969 to pre-empt a decision of the Human Rights Commission relating to torture and other abuses under the military government then in power. The junta had fallen by the time Greece joined the then European Community in 1975.
[34] Amnesty International, *Fenced Out: Hungary's Violations of the Rights of Refugees and Migrants,* EUR 27/2614/2015.
[35] Quoted in Hervey Ginger and Livingstone Emmet, "What is Article 7?" *Politico* website, https://www.politico.eu/article/hungary-eu-news-article-7-vote-poland-rule-of-law/ (accessed 4 March 2018).

with impunity.[36] Citizens were accustomed to so-called "civic organisations" that were in fact sponsored by the Communist state and had little faith in the independence and probity of such institutions.[37] Independently of the Communist legacy, the political culture in these states includes other challenges: client-patron relations; clan culture; ethnic tensions, and widespread corruption.[38] Corruption is linked to impunity (perpetrators of abuse can use financial or other leverage to escape accountability) and lack of trust in authorities, which in turn tends to interfere with human rights advances. The issue of corruption is also likely to occupy so much of public, media and political attention, both domestically and internationally, that it narrows the space available for consideration of issues such as the fight against torture.

Human rights organisations often have relatively shallow local roots, and rely on international donors to support their existence. A 2011 CIVICUS report on Bulgaria assesses civic engagement in the form of participation of CSOs as being low; citizens do not feel a great sense of trust in CSOs and are apathetic towards their activities.[39] Those CSOs that do operate score fairly well, a fact that is to some extent attributable to the support (financial and capacity-building) received via foreign donors and

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[36] Eirin Mobekk, 'Police Reform in South East Europe: An Analysis of the Stability Pact Self-Assessment Studies'. *Defence and Security Sector Governance and Reform in South East Europe Self-Assessment Studies: Regional Perspectives Police Reform in South East Europe by Nomos*, (Geneva Centre for the Democratic Control of Armed Forces 2005), 155-168.

[37] Petya Kabakchieva and Desislava Hristova, *Civil Society in Bulgaria: NGOs v Spontaneous Civic Activism* (Open Society Institute Sofia and Trust for Civil Society in Central and Eastern Europe 2012), 25. While the point was made in connection with Bulgaria, it is also applicable to the other three states.

[38] Tina Mavrikos-Adamou (2005). *The Role Played by Local Culture in the Democratization Process: Comparing FYR Macedonia, Bulgaria and Albania*. Paper presented at the annual meeting of the American Political Science Association, Sept 1-4, 2005, Washington DC, 7-11. The author is referring primarily to Macedonia, Bulgaria and Albania, but the description is applicable also to Romania, perhaps with the exception of clan culture.

[39] CIVICUS and Open Society Institute Sofia, *Civil Society Index 2008-2010. Civil Society in Bulgaria: Citizen Actions Without Engagement* (Open Society Institute 2011) 14.

transnational networks.[40] Despite this technical competence, CSOs lack financial stability, which affects employment stability.[41] This affects the retention of expertise, which in turn hinders an organisation's effectiveness. There is a lack of sustainable coalitions/networks amongst CSOs at national level, reducing their ability to impact on government policy.[42]

Regarding Albania, CIVICUS noted a similar distrust by citizens towards civil society activism, along with concerns about a donor-driven agenda. More positively, the report praised civil society's "networking potential", its "resistance to political pressure", and the fact that it had knowledge and expertise.[43] Financial and thus employment stability is also a challenge in this state.

For Romania, civil society activism was likewise hampered by "[l]ow citizen participation…a poor level of organization and limited inter-relations amongst…CSOs".[44] It was "affected by lack of financial resources and qualified personnel", leaving it reliant on international financial support.[45] Its activities "continue to remain invisible to the majority of the population, and CSOs and more oriented to the donors' priorities and unable to build local constituencies".[46]

In Macedonia, as of 2011, civil society was evaluated as "moderately well-developed"; "sectoral communication and cooperation is highly rated, as well as

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[40] Ibid.
[41] Ibid.
[42] Ibid.
[43] CIVICUS, IDM and UNDP, *Civil Society Index for Albania: In Search of Citizens and Impact,* (IDM 2010) 2.
[44] CIVICUS and Civil Society Development Foundation, *Dialogue for Civil Society: Report on the state of civil society in Romania* (CIVICUS 2005) 6.
[45] Ibid.
[46] Ibid 7.

networking", although the unsustainability of human resources posed challenges.[47] From 2008 onwards, civil society faced a particularly high level of hostility from the government: this difficult political context will be explored in some detail in the relevant chapter.

Advocacy on torture is concentrated in each of the states in a small number of organisations, and resources are an obstacle for would-be new entrants to the sector. An important actor in human rights advocacy in the four states is the national Helsinki Committee. Both for historical reasons, and due to the identity of their main donors, these national organisations (they are more than national branches of the same organisation) tend to be particularly associated with politicised Western allegiances. They have their roots in the 1970s negotiations on East/West relations which led to the Helsinki Final Act in 1975. One of the principles set out in the Helsinki Final Act was "respect for human rights and fundamental freedoms" (principle VII of the first "basket" of issues). A transnational activist network took shape around it, determined to achieve its full implementation:

> It became commonplace for an Eastern European dissident to write to an American diplomat asking that his plight be addressed in upcoming talks or for an American-Polish activist to press the Polish Ambassador to the United States to free a trade union organizer.[48]

Here we see a classic example of the "boomerang" model of advocacy described in the previous chapter. In some cases, Soviet states found that there was less loss of face in yielding to the request of "world public opinion", as expressed through an international organisation, than by giving in to a formal demand by

[47] Ibid 10.
[48] Sarah Snyder, *Human rights activism and the end of the Cold War: a transnational history of the Helsinki network.* (Cambridge University Press 2011) 8.

the US government.[49] Tracing the progress of the Helsinki network over more than three decades, Snyder concludes that "it does demonstrate the nongovernmental activism can affect positive political change", although given the persistence of human rights abuse in the successor states to the Soviet Union, she concludes that the story "is not a triumphal one".[50]

Over time, local Helsinki monitoring groups developed into a more formal transnational coalition, under the umbrella of the International Helsinki Federation for Human Rights.[51] The prominent international advocacy group Human Rights Watch grew out of the US-based Helsinki Watch. The current national Helsinki Committees lay claim to this lineage. The length of their presence and their international linkages lend them credibility, with the state and with international partners, but also leaves them vulnerable to accusations of serving foreign interests.

Much of the antagonism to these organisations has been couched as an attack on the funding provided by Hungarian-American philanthropist George Soros. Regionally, this position has been articulated with particular force in Hungary and other states in the so-called Visegrad group (Poland, Slovakia and the Czech Republic). As discussed in chapter one, such narratives form part of a larger trend of counter-rhetoric attempting to challenge and reverse human rights gains, the phenomenon of *backlash*.[52] The attacks carry an anti-Western and in some

[49] Ibid 126, quoting US Assistant Secretary of State for Human Rights and Humanitarian Affairs Paula Dobriansky.
[50] Ibid 249.
[51] Ibid 11.
[52] Stephen Hopgood, Jack Snyder and Leslie Vinjamuri (eds), *Human Rights Futures* (Cambridge University Press 2017).

cases, an anti-semitic subtext, Soros being of Jewish origin. The Hungarian prime minister, Viktor Orbán, who came to power in 2010, is amongst those who portrayed George Soros as part of a conspiracy to undermine the state, threatening institutions founded by Soros, such as the Central European University, with closure, and introducing legislation restricting access to funding by internationally-financed NGOs.[53] Similar anti-Soros political rhetoric has occurred in Poland and Macedonia, as noted by Council of Europe Commissioner Nils Muižnieks in 2017, alongside what he calls "harsh stigmatising of NGOs" in states including Bulgaria and Romania.[54] Of the four states, Albania seems least affected by this human rights counter-narrative.

Muižnieks locates this anti-CSO language within a larger context of the reduction in the civil space within the region. This takes various different forms across a number of states:

> legal and administrative restrictions; judicial harassment and sanctions, including criminal prosecution for failure to comply with new restrictive regulations; smear campaigns and orchestrated ostracism of independent groups; and threats, intimidation and even physical violence against their members. In some cases, the climate is so negative that it forces human rights work to the margins or even underground.[55]

Such repressive strategies carry a cost in the form of international disapproval: Christensen and Weinstein find that states will refrain from such behaviour if they

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[53] George Szirtes, 'If you doubt Europe still matters, ask a young Hungarian', *The Guardian* (London 29 April 17); Andrew Byrne 'Hungary steps up anti-Soros rhetoric with "national consultation', *Financial Times* (London 3 Oct 2017).
[54] Nils Muižnieks, *The Shrinking Space for Human Rights Organisations, The Commissioner's Human Rights Comments, Strasbourg 04/04/2017*, available at https://www.coe.int/en/commissioner/-/the-shrinking-space-for-human-rights-organisations (accessed 20 Dec 2017). Unpaginated.
[55] Ibid.

feel the cost outweighs the benefit.[56] Conversely, governments are more likely to be willing to accept this cost if they feel their political survival is at stake.[57] This sense of vulnerability to losing control may have been heightened in states experiencing the "Arab spring" or the "colour revolution" in a number of post-Soviet states, including Macedonia. Rutzen believes that governments felt at risk at the news of uprisings in other states, and instituted restrictions on domestic civil society with a view to avoiding similar uprisings in their own domestic setting.[58]

Kreienkamp notes that there is a "sophisticated playbook" used by states to suppress civil society "often combining legislative restrictions with targeted delegitimisation campaigns".[59] These range from overly-restrictive registration requirements, to the strategy of harassing inspections, which disproportionately absorb the time, energy and resources of organisations, such as the inspections in Hungary in 2014 of organisations who had received Norwegian grants. Some governments seek to control NGOs by controlling funding: in Poland, for example, the government proposed to set up a National Centre for the Development of Civil Society, to be supervised by Prime Minister. Funding may be made dependent on government approval; states may impose a cap, or prohibit funding from certain donors or for certain kinds of activity, insist on it being channelled through a government bank, or banning foreign funding outright. In justifying new reporting requirements, governments claim that these requirements are imposed in the interests of

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[56] Ibid.
[57] Darin Christensen and Jeremy M Weinstein 'Defunding Dissent: Restrictions on Aid to NGOs', *Journal of Democracy* (2015) 24(2), 77-91. See also Kendra Dupuy, James Ron and Aseem Prakash in 'Hands Off My Regime! Governments Restrictions on Foreign Aid to Non-Governmental Organizations in Poor and Middle-Income Countries" (2016) *World Development* 84, 299-311.
[58] Douglas Rutzen, 'Civil Society under Assault' (2015) *Journal of Democracy* 26(4), 28-39, 30.
[59] Julia Kreienkamp, *Responding to the Global Crackdown on Civil Society*, Policy Brief September 2017, Global Governance Institute, 7.

transparency, as with Hungary in 2017 in respect of its proposed legislation on the "Transparency of Organisations Financed from Abroad", requiring that organisations receiving foreign donations above a set threshold must register with the authorities. Another repressive use of the law includes forcing activists into self-censorship due to the risk of costly legal cases.

One strategy used by political elites is to "crowd out critical voices" by supporting government-friendly NGOs or GONGOS – government-organised "NGOs".[60] States use these "ersatz" or "captive" groups to create the appearance of supporting civil society, as a safe (from the regime's perspective) way of channelling funding and to delegitimize more challenging voices.[61] Gershman and Allen cite the example of Slovakia, where the government has sponsored "parallel" NGOs to compete with their independent counterparts.[62] A similar "crowding out" strategy underlies the manipulation of the media, both traditional and new, by the spreading of 'fake news'.[63] This phenomenon will be explored in the Macedonia chapter. Less subtle strategies including the harassment of activists, including by means of physical attack: an example occurs in the Bulgaria chapter.

The importance of transnational networking has been highlighted in previous chapters: there are examples of states attempting to restrict these opportunities by making it difficult for activists to travel and obtain visas; they may also monitor internet use, or restrict access to certain websites. Such strategies do not feature to

[60] Ibid 8.
[61] Carl Gershman and Michael Allen (2006) 'The Assault on Democracy Assistance', *Journal of Democracy* 17(2) 36-51 at 44-45.
[62] Ibid 44.
[63] Julia Kreienkamp *Responding to the Global Crackdown on Civil Society*, Policy Brief September 2017, Global Governance Institute, 8.

any noteworthy extent in the four states examined here. State involvement would be hard to deny, and the strategies would be particularly inimical to the EU, with its traditional emphasis on free movement of goods, services and people.

5. *The EU and demand for torture reform: a look back at theory of state motivation*

Given that the four states were all members of the Council of Europe, had ratified the ECHR and were subject to the jurisdiction of the ECtHR before joining the EU, why so much emphasis in these case studies on the EU accession process? If accession to human rights treaties is enough in and of itself to change states' practice, the four states should have improved their performance on torture after joining the ECHR; their subsequent entry into the EU accession process would not then require further major change. The expected evolution might unfold as follows: the states accede to the ECHR; they are exposed to these human rights norms; they face public criticism if they fail to adhere to them, by having their failures exposed through ECtHR cases and through the monitoring mechanism of the Committee of Ministers. Over time, they internalise the norms, and they start performing better.

The literature review in chapter one explored the arguments of the treaty pessimists from Hathaway onwards, who note that ratification of a human rights treaty does not lead automatically to an improvement in human rights performance. In the four case studies that follow, it will be seen that the trend in the years post-ratification of the ECHR cannot be described as a straightforward linear improvement in performance on torture. If one were, somewhat arbitrarily, to select the tenth anniversary of accession to the ECHR, in each case the state received the lowest possible CIRI score

on torture (a score of 0 for Albania in 2006, Bulgaria in 2002, Romania in 2004 and Macedonia in 2007).

Accepting a human rights treaty is evidently not sufficient to bring about reform in itself: further incentives for compliance are needed. Rationalists might point to the greater political and economic incentives associated with EU accession: EU investment in its poorer regions; access to the European single market; free movement for citizens across the whole territory of the EU. If states need to show human rights improvement in order to meet the conditions for EU accession, then they are hugely motivated to demonstrate such an improvement. This argument does not invalidate the applicability of constructivist understandings: over time, if states act in rights-compliant ways, they begin to internalise the appropriateness of such behaviour. For emerging democracies, as noted above, adoption of human rights norms may represent a break from the Communist past, and become an assertion of its identity as a modern European state, although this identity formation is complicated by a counter-narrative based on national sovereignty and an unwillingness to have change dictated by external actors.

Both rationalist and constructivist explanations can help with understanding different stages of a state's progression. External demands for change may become internalised over time. If this does not happen, and the demand for torture reform is perceived as emanating largely from an external source, the resulting risk is that if EU membership becomes less politically desirable, and/or the counter-narrative around national sovereignty and resistance to external demands becomes dominant, much of the incentive to demonstrate reform is potentially dissipated. From a constructivist

viewpoint, if states have reached the point where norms have been internalised, the loss of external pressure should matter less: states will largely respect, protect and fulfil rights because they are the "done thing". For states not at this stage, an abatement of external pressure may compromise their willingness to invest in improving human rights performance.

The following case studies will allow us to examine how NGOs and the state frame the demand for torture reform: is the locus of the demand external or internal? Does this change over time? If the case studies indicate that improvements are attributable to a state's desire to meet EU accession criteria or forestall external criticism, then the rationalist explanation is more convincing, particularly if backsliding becomes evident once accession is achieved and the external incentive is less acute. If it is possible to identify a state undertaking torture reform and maintaining it on the basis of internalised demands – a new self-identity as a rights-respecting state – then this finding will support a more constructive interpretation, perhaps as the next step in a sequence of state motivations for reform. The constructivist interpretation does not preclude backsliding: if a state's self-image is malleable, the implication is that this self-image can change again in ways that are less hospitable to human rights reform. The narratives around any reform process are important to the durability of that reform.

6. Methodological aspects of case study research

The purpose of multiple case studies is to allow the researcher to support or falsify the "hypothesized contrast" between the cases.[64] As Flyvberg observes, "it is falsification, not verification, that characterizes the case study".[65] Case studies involve a trade-off amongst the competing goals of "attaining theoretical parsimony, establishing explanatory richness, and keeping the number of cases to be studied manageable".[66] In this case, the hypothesized contrast is that differences related to civil society advocacy (the advocacy itself and/or the conditions in which it takes place) account at least to some extent for differences in state performance on torture. The case study research outlined in the next four chapters involved both primary and secondary data collection. Both aspects are described below, along with some observations on the limitations of the research method.

(i) Primary data collection

Primary data collection involved a field trip to each of the four countries between 2015 and 2017, in order to carry out semi-structured interviews with relevant expert informants. The interviews enabled the collection of primary data, not available elsewhere, enabling this research to make an original contribution to the literature. This research strategy was chosen in preference to possible alternatives such as a survey, which was seen as too closed to allow in-depth exploration of the key themes, and the use of participant observation, which was unfeasible for logistical reasons, including resource limitations and lack of competence in the local languages.

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[64] Robert Yin *Case Study Research: Design and Methods* (Sage Publications 2003) 54.
[65] Bent Flyvbjerg, 'Five Misunderstandings about Case-Study Research' (2006) *Qualitative Inquiry* 12(2), 219-45, 235.
[66] Alexander L George and Andrew Bennett, *Case Studies and Theory Development in the Social Sciences* (MIT Press 2005), 31.

These semi-structured interviews were conducted in person, in most but not all cases in the offices of the participants. Due to logistical limitations, research visits were relatively brief and confined to the capital of each country and interviews were carried out in English. Respondents were notified that they could participate on an anonymous basis and could withdraw consent at any point. While no interviewee asked for their name to be withheld, for ethical reasons caution has been exercised here in identifying participants to avoid any unintended consequences for those individuals or the organisations for which they work. Organisations were initially identified by their online visibility, and there was an element of the snowball method, as a number of interviewees recommended others. While attempts were made to secure a range of perspectives, individuals who position themselves as pro-torture reform and pro-NGO voices were more likely to be willing to participate in the research, leading to potential selection bias. However, this is not fatal to the endeavour: interviewees were being asked for their views on the circumstances under which they do and do not achieve their goals in relation to combatting torture (*how* civil society works rather than *if* civil society works), and were well-positioned to provide information on this matter.

Attempts were made to initiate contact with police training colleges and relevant government ministries, but it was not possible to secure interviews. In Albania, the researcher had the opportunity to attend a meeting between local NGOs, donors, the NPM and senior members of the police: the meeting was conducted in Albanian, but an English interpreter was available. This event allowed direct observation: the researcher directly witnessed activists engage with the police. It created an

opportunity to secure a broader range of views, although the views expressed were undoubtedly mediated by the nature of the event and the identity of participants.

Interviews took place in February 2015 (UK-based informant); April 2015 (Bulgaria); May 2015 (Albania); March 2017 (Romania) and May 2017 (Macedonia).[67] The primary, although not the sole, informants for this research were NGOs, which could arguably lead to a skewed understanding of their centrality to the fight against torture. It has been stated earlier that NGOs do not exhaust the category of civil society. It is considerably easier to secure interviews with NGO staff than to identify and locate the originators of an informal demonstration. NGOs involved in international networks, with English-speaking staff and English language publications on their websites, are considerably more visible and accessible to an external researcher than less formal/more grassroots initiatives.

Attempts were made to interview a representative of the National Preventive Mechanism (NPM) in each of these states: an interview duly took place with the Bulgarian NPM and the researcher observed a joint meeting of the NPM, funders, NGOs and police in Albania as described above, but it was not possible to arrange an equivalent interview in Romania and Macedonia. The difficulties besetting the NPM in the latter two countries are set out in the relevant chapters.

[67] Full details have been retained on file by the researcher.

(ii) Secondary

A review of the secondary literature encompassed academic studies, government and NGO reports, including reports generated for the purposes of reporting to the UN; and EU and Council of Europe information, including ECtHR case law. The researcher took into account the fact that these sources are not generated entirely independently of each other: international NGO reports draw on the narratives created by local organisations; visits from the UN and European monitoring bodies also cite them; ECtHR judgements in turn may refer to reports by the UN and European monitoring bodies. There is an extensive body of literature on the period leading up to and immediately after the transition from communism: this current research does not focus on this period, but rather on the years from 2000 onwards, as the author felt there was greater opportunity to make an original contribution within this temporal scope.

(iii) Potential bias

Prior to undertaking this research, the researcher herself spent a decade working for NGOs. Given this background, and given the fact that the interviews undertaken for the purposes of the research involved discussion with NGO representatives who are usually eloquent about the value of their work, often carried out in difficult circumstances, and sometimes at personal risk, it should be acknowledged that there are psychological barriers to a potential conclusion that activism does not contribute in a significant way to torture reduction. Given the attacks on the legitimacy of civil society and the narrowing of civil space described earlier in this chapter, there is also a reluctance to potentially contribute to criticism of their role and activities. However, the overriding ethical imperative for this research is to impartially identify

what factors are genuinely important in improving state practice on torture, and so as far as possible, the researcher has attempted to set aside assumptions of utility in favour of scrutinising the evidence base. Even the most sympathetic observer can see that there is variability in how well-organised civil society is in different contexts, in the receptiveness of the political climate, and in its success in bringing about its goals. It is this variability that underpins the current research.

6. Conclusion

This chapter has explained the rationale for the selection of cases. It has set out the common features of the four states selected, which are sufficient to rule out a number of explanations why one state performs differently to another on torture (eg. very different experiences of conflict or democracy). The political context of accession to the EU – achieved in two cases, an aspiration for the two states – has been explored. The prospect of EU membership creates an external incentive for state reform on torture, an incentive that potentially weakens once membership is achieved. This allows us to examine whether and when extrinsic motivation for reform (central to the rationalist understandings of state decision-making) turns into intrinsic motivation (key to constructivist understandings). The environment for civil society activism is challenging, and there is an overarching concern related to the narrowing of the civic space in the region and beyond. This chapter concluded with an account of the methodology employed in carrying out the research. Equipped with this background, we now turn to the case studies themselves. Based on the hypothesis that higher civil society activism leads to a better state performance on torture, the prediction is that Bulgaria and Albania will see greater improvement than Romania and Macedonia. The next four chapters will demonstrate whether this prediction is fulfilled.

Chapter 5 Bulgaria

This chapter first considers the trends in (i) civil society advocacy and (ii) torture and ill-treatment in Bulgaria since the turn of the twenty-first century. It then goes on to consider the role of civil society in driving change, juxtaposed against the theoretical framework set out in previous chapters.

Along with Romania, Bulgaria became an EU member in 2007. The poorest EU member state, it is the second wealthiest of the four and, after Romania, the second largest. As noted in the previous chapter, of the four case studies, Bulgaria is the state where civil society has strongest record of influencing public policy, taking into account network-building opportunities, communication with the public, and access to government officials, along with monitoring of state performance.[1] The question is whether this relatively strong space for civil society is translated into improved state performance in relation to torture.

1. Trends in Torture and Advocacy

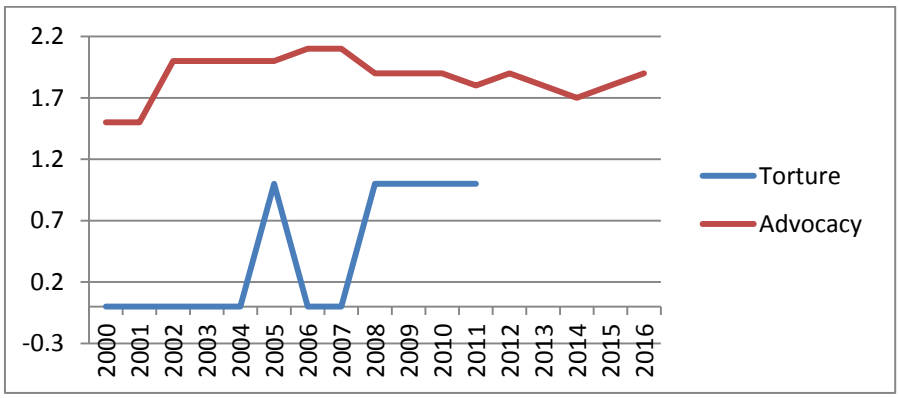

Figure 1 Torture in Bulgaria (CIRI scores) and CSO Advocacy in Bulgaria (USAID scores)

[1] See chapter 2 for more on these scores, which are taken from the USAID Civil Society Organization (CSO) Sustainability Index. An upward trend is positive for both measures.

Bulgaria signed an EU accession treaty in 2004 and formally became an EU member state in January 2007. Civil society advocacy notably increased from 2002 onwards, peaking in 2006 and 2007. The timing suggested that civil society was galvanized by the EU accession process, seeing this period as a particularly important opportunity to influence the state. With regard to torture, Bulgaria demonstrated its first year of improved performance in 2005, and then repeated its improved performance on torture in 2008, this time retaining its improved score for the following three years, when the CIRI dataset ends. Up until 2011, therefore, the data suggest a period of heightened advocacy, alongside an improved performance on torture.

Uniquely amongst the four states, there is a further and very specific survey-based dataset for Bulgaria. Every year since 1999, the Bulgarian Helsinki Committee (BHC) has carried out its own survey in a number of prisons across the country. The chart below represents the percentage of interviewees reporting ill-treatment during arrest and in police custody. Some limitations should be noted: BHC reports state that survey sample is representative of the prisons surveyed (which usually include the same four prisons, but sometimes additional ones) and not necessarily of the penal system as a whole. The survey also relies on self-reporting by detainees, without a further verification process.

	Force used during arrest %	Force used while in police custody %	Source
1999	51.0	53.0	Survey in Jan and Feb 1999 – unspecified prisons.
2000	49.0	44.0	309 interviewees in all prisons in the country.
2001	45.0	45.0	155 interviewees.
2002	31.0	43.0	4 Bulgarian prisons, interviewed Aug-Sept 2002
2003	24.0	28.0	Sample of 620 prisoners
2004	17.0	17.0	Plovdiv, Pleven and Belene (Jan 2005)
2005	23.2	23.2	Plovdiv, Pleven and Belene
2006	20.1	20.8	Plovdiv, Pleven, Belene and Bobovdol.
2007	17.1	22.9	140 inmates in 4 prisons: Plovdiv, Pleven, Belene and Bobovdol (interviewed Nov-Dec 2007)
2008	23.1	23.1	121 inmates in 4 prisons: Plovdiv, Pleven, Belene and Bobovdol (interviewed Dec 2008)
2009	24.0	22.3	121 inmates interviewed in 4 prisons: Plovdiv, Pleven, Belene and Bobovdol (Nov and Dec 2009)
2010	26.2	17.4	271 inmates interviewed in 8 prisons: Plovdiv, Pleven, Bobovdol, Belene, Vratsa, Pazardzhik, Lovech and Stara Zagora (interviewed Oct 2010 and Jan 2011).
2011	27.1	25.5	Prisons: Vratsa, Pazardzhik, Lovech and Stara Zagora (Jan 2012).
2012	24.6	18.0	Survey of convicted inmates in the prisons in Vratsa, Pazardzhik, Lovech and Stara Zagora (interviews Jan 2013)
2013	22.0	23.3	Survey of convicted inmates at the prisons of Vratsa, Pazardzhik, Lovech and Stara Zagora (interviewed Dec 2013 and Jan 2014)
2014	23.0	22.4	Survey of convicted inmates at the prisons of Vratsa, Pazardzhik, Lovech and Stara Zagora (interviewed 2015)
2015	15.5	21.8	1691inmates from all Bulgarian prisons, interviewed May-June 2015
2016	19.4	24.0	survey carried out between November 2016 and February 2017.[2]

Table 1: Survey data on force used on criminal detainees.[3] Data drawn from BHC annual reports.[4]

[2] Reported in BHC "Written Comments of the Bulgarian Helsinki Committee Concerning Bulgaria for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 92nd Session", March 2017, 4-5. All other figures are extracted from the BHC annual reports.

[3] Reports from interviewees who had been convicted and whose pre-trial proceedings began since 1 January of the year preceding the reporting year.

[4] At two points the reports are contradictory: the 2003 BHC report says that 30% of interviewees said

Represented in graph form, the trend is displayed below. Unlike the CIRI scores, where a higher score indicates a better performance on torture, here a lower score indicates a lower use of torture. Although the CIRI and BHC trendlines go in different directions, they indicate the same finding, ie. Bulgaria's performance in this area has improved.

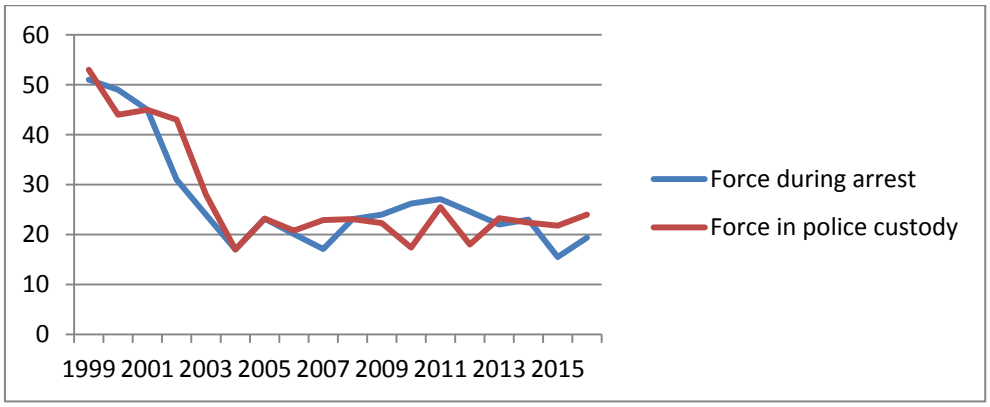

Figure 2 Reported use of force by police, BHC survey

The BHC survey findings demonstrate a dramatic decrease in the use of force during arrest and while in police custody, particularly from 2003 onwards. (Recall that figure 1 in this chapter showed that advocacy levels increased from 2002 onwards). Apart from 2015, the two best performing years are 2004 (signing of EU accession treaty) and 2007 (acquiring EU membership). While reform seemed to stall in the years after 2007, the use of force did not revert to the levels seen in 1999 and 2000.

Based on this evidence, we can be confident that a positive change has occurred in Bulgaria in relation to state performance on torture since 1999. The success is

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they were subject to violence during arrest, and 37% of detainees said they were subjected to violence in custody in 2003. The 2004 report gives figures for 2003 of 24% and 28% respectively. The 2005 report cites complaints at 17% in both categories for the year, whereas the 2006 report gives figures of 23.2% in both categories for 2005. In both cases I have used the latest-reported figures on the assumption that they are most likely to be accurate. The 2005 report gives a figure of 11% for use of force in police stations, but this seems to be a simple error – mistaking the percentage decline in complaints for the overall percentage of complaints – and has been ignored. The figures from 2010 are taken from the 2011 report.

relative: the state remains overall a poor performer in this regard. Ill-treatment has become less ubiquitous rather than eliminated. The European Committee for the Prevention of Torture (CPT) released a public statement on Bulgaria on 26 March 2015 noting that individuals detained by the police continued to face a "significant risk" of ill-treatment.[5] The UN Committee against Torture expressed concern in December 2017 that one-third of detained persons underwent physical abuse in police stations, with the abusers generally remaining unpunished, and with individuals of Roma origin being twice as likely to face abuse as ethnic Bulgarians.[6] Given this ongoing level of abuse, the prohibition on torture cannot be described as fully internalised by state agents. Nevertheless, the statistics indicate that individual state agents who used to commit violations now do so less often. A discernible change has occurred over the last 15 years: this chapter will explore why and how.

2. Civil Society in Bulgaria

The number of organisations working on the issue of torture in Bulgaria is limited. As an indication of organisations active in this area, listed below are those who met with the CPT during its monitoring visits.

[5] CPT, *Public Statement concerning Bulgaria*, Strasbourg, 26.03.15, CPT/Inf (2015) 17, paras 5, 6.
[6] UNCAT, *Concluding observations on the sixth periodic report of Bulgaria*, Sixty-second session (6 November – 6 December 2017), para 11.

Year of visit	*Organisations met*
2015	*Ad hoc visit* Bulgarian Helsinki Committee (BHC) Bulgarian Prisoners' Rehabilitation Association
2014	*Periodic visit* BHC
2012	*Ad hoc visit* BHC
2010	*Periodic visit* Assistance Centre for Torture Survivors "Adaptatsiya" Society BHC Bulgarian Lawyers for Human Rights Legal Clinic for Refugees and Immigrants
2008	*Ad hoc visit* BHC Open Society Institute, Project "Civil monitoring of the police"
2006	*Periodic visit* "Adaptatsiya" Society BHC Bulgarian Lawyers for Human Rights Human Rights Project Association for the development of psychosocial rehabilitation
2003	*Ad hoc visit* BHC
2002	*Periodic visit* BHC Bulgarian Psychiatric Association Human Rights Project
1999	*Periodic visit* BHC Bulgarian Lawyers for Human Rights Bulgarian Psychiatric Association Human Rights Project

Table 2: CSOs with whom the CPT held meetings during its monitoring visits

Although detailed information is not available on all the above organisations, it is possible to classify at least some of them according to Brysk's typology, described in chapter 3.[7] There are the *institutional reformers* such as the BHC and the Bulgarian Lawyers for Human Rights: these organisations document abuses and use legal tools such as strategic litigation. They also act as *advocates*, or a "conscious constituency"

[7] Alison Brysk, 'Human Rights Defenders and Activism', in Anja Mihr and Matthew Gibney (eds), *The Sage Handbook of Human Rights* (Sage 2014) 346-347.

prepared to lobby governments on behalf of victims who cannot speak for themselves; the contribution of international organisations in this regard will be covered below. The Bulgarian Prisoners' Rehabilitation Association was set up by an individual who is himself a detainee, with the mission to criticise prison conditions and offer detainees information about their rights, and so comes into Brysk's category of *affected populations*, who act on their own behalf. Brysk used the term *norm promoters* to denote normative constituencies mobilised around a particular principle associated with their identity, including professional groupings, a category that would encompass the Bulgarian Psychiatric Association.

Civil society challenges

Chapter 4 noted the challenges facing civil society in the region. The organisations listed here have not been immune to those difficulties: indeed, the fact that most of the organisations appear only few times in Table 2 indicates how challenging it is for them to work consistently on the issue of torture. Only one organisation met the CPT during all of its visits between 1999 and 2015, Bulgarian Helsinki Committee (BHC) and for three of the CPT visits, it was the only civil society representative. Many organisations face problems due to lack of funding and consequent problems with staff retention. For example, the CPT met the Human Rights Project a number of times during its earlier visits, but not in later years. This organisation, focusing on the rights of Roma, including the provision of legal support to Roma victims of ill-treatment, seems to have been affected by key staff departures, and by the time of the research visit conducted for this study in 2015, it appeared to be largely dormant, and did not respond to requests for an interview.

In 2010, the CPT met the Assistance Centre for Torture Survivors, an organisation providing rehabilitation services for torture victims amongst the refugee and asylum-seeker populations. In 2013, one of its employees reported that the team was experiencing "serious funding-related challenges and difficulties": all team members were by that time working part-time, which meant a lack of clinical supervision or difficulty holding weekly team meetings, as well as reducing the number of clients assisted. Support from the IRCT international peer support project in 2012/13 offered "an opportunity for overcoming the fragmentation of the team and its gradual marginalisation" and led to the "decrease of tension among the team members",[8] but problems persisted, and a 2017 report says that the organisation "recently…ceased to operate in this sphere".[9] It is not clear whether this is a temporary difficulty or a permanent closure.

BHC has faced a slightly different set of problems, related to backlash and political hostility to human rights organisations, which has led to a narrowing of civic space in the region and beyond. As discussed in the previous chapter, the national Helsinki Committees are associated with a "Western" agenda and with the controversial figure of George Soros. BHC has found itself vulnerable to the counter-rhetoric that associates foreign-funded organisations with a lack of patriotism. In 2014, after BHC challenged a march by a far-right party, Bulgarian National Movement party (VMRO), the same party successfully persuaded the National Revenue Agency to carry out a tax audit on BHC.[10] While no irregularities were found, such audits can

[8] Gologanova, Kristina, 'No state support, little funding: how Bulgaria centre manages to treat torture victims in trying times', https://worldwithouttorture.org>2013/03 (accessed 14 February 2018).
[9] Refugee Solidarity Network, '2017 Bulgaria Field Report',2 March 2017, 3, footnote 7.
[10] Bulgarian Helsinki Committee, 'BHC Condemns Authorities' Inaction against Harassment and Discriminatory Rhetoric', *Liberties*, 25 September 2014 https://www.liberties.eu/en/news/ngo-harassment-bulgaria/1744 (accessed 20 February 2018).

be abused to divert an organisation's attention from its human rights work, and to impugn its reputation. Later the same year, another political party with xenophobic leanings carried out a demonstration in front of the BHC offices, where BHC staff members were threatened with physical violence. Police were present but did not intervene.[11] In October 2016, BHC President Krassimir Kanev was physically attacked by two men, who punched him in the face and stomach. The assailants were not identified. Kanev was reported in the media as saying "There have been many such cases of people insulting, threatening me or spitting at me on the streets", and that this had increased since the Patriotic Front entered government in 2014.[12]

The combination of hostility and financial constraints make it a challenging environment for civil society organisations to focus on their activism on torture. Despite these difficulties, however, the BHC has continued to undertake its activities without any obvious gaps.

Civil society strategies

Unsurprisingly in this context, popular mobilization is not a noteworthy feature of civil society strategies on torture. The emphasis is on *depth* (expert advocacy) rather than *breadth* (appeal to popular sentiment). It is a professionalized technocratic model of NGO advocacy, with relatively weak links with the wider society. This is representative of civil society more generally in Bulgaria, which has been described as "civil society without the citizens".[13] There is generally low sense of solidarity with groups at particular risk of ill-treatment, such as Roma and suspected criminals

[11] Ibid.
[12]Cheresheva, Mariya,'Bulgaria Helsinki Chief Links Assault to Nationalism', *Balkan Insight*, www.balkaninsight.com, 28.10.16 (accessed 22 May 2017).
[13]CIVICUS, *Civil Society Without the Citizens: As Assessment of Bulgarian Civil Society2003-2005*(CIVICUS 2005).

(categories which are often conflated),[14] which limits the opportunity to rally the wider community behind the cause of ending torture.

As will be seen in the description of civil society activities below, organisations pursued a mixture of *insider* and *outsider* strategies. BHC is willing to adopt an outsider stance in that it frequently publishes public criticism of Bulgarian state practice on torture and undertakes strategic litigation, but it has also used an insider approach, for example when it was invited to take part in the official process for reforming legal aid.[15]

The fact that the above organisations were recognised by an international body such as the CPT as potential interlocutors tends to indicate that they are *outward-facing* at least to some degree. Their flagging of concerns to the CPT is an example of the boomerang model in action, where organisations raise their concerns with an international body in order for the international body to turn them back in the direction of the state target. Many of the organisations demonstrate their interest in reaching an audience beyond state borders, by publishing their websites and issuing their publications in both English and Bulgarian.

Local and international activism

The organisations listed above are primarily local groups, although many are part of transnational networks that Risse et al see as so important. BHC reports are quoted in the USAID annual reports on state practices on human rights, by Amnesty

[14] Interviews with author, Sofia, April 2015.
[15] Interview with author, Sofia, April 2015. The government invitation to participate in the legal aid review process followed work by BHC, Open Society Institute and others in 2005/6 to identify flaws in the existing legal aid system.

International, by the ECtHR in its judgments and elsewhere, and the organisation lists donors on its website that include US, UN, Dutch, Swiss, UK and EU sources of funding.[16] Bulgarian Lawyers for Human Rights reports a not dissimilar list of funders on its website.[17] As noted above, the Assistance Centre for Torture Survivors is part of the International Rehabilitation Council for Torture Victims network.

International organisations have also played a role in advocating for state reform in relation to torture in Bulgaria, particularly at the time when Bulgaria became an official EU candidate in 1995. Local organisations such as BHC and Bulgarian Lawyers for Human Rights were founded at the start of the 1990s (1992 and 1993) and initially found it difficult to be heard by the state authorities. International organisations were important in getting torture onto the agenda for the Bulgarian government at this time. Amnesty International and Human Rights Watch both issued strategically-timed reports on torture and mistreatment in 1996. The Human Rights Watch report focused on police mistreatment of Roma street children.[18] The AI report described 17 cases of torture and dozens of cases of mistreatment, and found there was "a pattern of casual violence and illegal acts by police officers throughout the country." According to AI, the government was sufficiently concerned about its report that a month after its June publication, the Ministry for Foreign Affairs wrote to AI, expressing the "wish to develop a cooperation as well as to conduct a constructive dialogue with your organization in order to contribute to the further improvement of the human rights situation in Bulgaria". On 8 October 1996

[16] BHC website, 'Funding', available at http://www.bghelsinki.org/en/about-us/funding/ (accessed 16 February 2018).
[17] BLHR website, 'About us', available at http://blhr.org/p/za-nas/ (accessed 16 February 2018).
[18] Human Rights Watch, *Children of Bulgaria - Police Violence and Arbitrary Confinement* , 1 September 1996, 1-56432-200-9, available at: http://www.refworld.org/docid/3ae6a7dc4.html (accessed 11 May 2014).

AI received from the Bulgarian Embassy in London a second letter from the Ministry for Foreign Affairs which contained information on investigations into 16 cases described in the June report.[19] The European Commission therefore had a range of evidence before it when issuing its own Opinion on Bulgaria's application for Membership of the EU in 1997. It expressed concern that "[s]everal organisations have reported numerous instances of the police inflicting inhuman and degrading treatment on persons in detention".[20] Under pressure to show progress, the Ministry of Interior produced statistics showing that it was attempting to tackle impunity, and that there had been a sharp increase in the number of penalties imposed for police brutality.[21]

By 1999, civil society actors were reporting an attitude shift by police and government authorities, in the form of "a new receptivity and a more meaningful dialogue" in relation to human rights concerns.[22] In that year, the National Police Service invited the BHC to conduct a human rights awareness training seminar with 500 senior police officers, including the police deputy commander. In the same year, the BHC, the Human Rights Project and representatives of the Council of Europe delivered a smaller training seminar on international law and police practice. The government reported that the police academy was providing human rights training (although it was criticised in some quarters as inadequate)[23], and from 2000 the

[19] AI, 'Bulgaria: Bulgarian Authorities respond to Amnesty International's June 1996 Report', http://www.amnesty.org/fr/library/info/EUR15/016/1996/en (accessed 29 December 2014).
[20] Ibid 17.
[21] US State Dept 1998. The government produced statistics showing that in 1996 there were 21 complaints, 3 of which were found justified, whereas in a 12-month period in 1997 and 1998, there were 106 complaints, leading to 44 legal cases, with 4 officers being convicted, 26 dismissed, and 63 sanctioned.
[22] US State Department *Country Reports on Human Rights Practices for 1999: Bulgaria* (2000). Available at http://dosfan.lib.uic.edu/ (accessed 5 February 2015).
[23] US State Department *Country Reports on Human Rights Practices for 2000: Bulgaria* (2001). Available at http://dosfan.lib.uic.edu/ (accessed 5 February 2015).

government was reportedly making "a significant effort" to train officers in investigative techniques.[24] This combined pressure for reform from local and international civil society, at a moment when the state was particularly vulnerable to such pressure (incentivized by the need to demonstrate readiness for EU membership), laid the groundwork for the steep reduction in abuse seen in the years after 2000.

Further safeguards followed. In July 2003, the Ministry of the Interior made provision for medical personnel in places of detention to investigate and document all injuries suffered by detainees, and for prosecutors to be informed if the medical staff believed the injuries or traumas were a result of torture or mistreatment.[25] In 2004 an Ombudsman was appointed, and would formally assume the role of NPM in 2011 (the year Bulgaria ratified OPCAT).[26] As noted above, a project to reform legal aid was undertaken from 2005/6 onwards.

Once accession was achieved in 2007, the government continued to respond to pressure to improve its record. In 2009, the Council of Europe rapporteur for Bulgaria, Mr. Holovaty, had discussions with the Ministry for the Interior in the context of post-accession monitoring, including with regard to the police use of force.[27] In 2012, the government passed legislation to restrict the use of force by the police to cases of absolute necessity, and prohibiting the use of force against minors,

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[24] US State Department *Country Reports on Human Rights Practices for 2001: Bulgaria* (2002). Available at https://www.state.gov/j/drl/rls/hrrpt/2001/ (accessed 6 February 2015).
[25] US State Department *Country Reports on Human Rights Practices for 2004: Bulgaria* (2005). Available at https://www.state.gov/j/drl/rls/hrrpt/2004/41674.htm (accessed 6 February 2015).
[26] Office of the High Commissioner of Human Rights, 'National Preventive Mechanisms', undated, http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx (accessed 11 May 2014).
[27]BHC, 'Police Brutality' August 2011, available at http://www.bghelsinki.org/en/publications/obektiv/obektiiv/2011-08/police-brutality-between-collegial-solidarity-and-public-interest/ (accessed 20 December 2014).

pregnant women, and nonviolent offenders. The government worked in partnership with domestic human rights organisations to draft this legislation.[28]

As of 2014, when reporting on the measures it was taking to eradicate police ill-treatment in accordance with its obligations under ICCPR, the Bulgarian state reported that inter alia:

- Open Society Institute (OSI) had implemented a project on civil monitoring of the police between 2004 and 2011. This monitoring project allowed citizens to visits places of detention at police stations without prior notice, with the aim "to build trust between the police and the local community and ensure the transparency of police work". At the end of the project, OSI presented a series of recommendations to the Ministry of Interior and the Standing Committee on Human Rights and Police Ethics.
- NGOs continued to contribute to the training of police officers. Those organisations included the Bulgarian Gender Research Foundation, the Diva Foundation for Care in the Community, Plovdiv, the Demetra Association of Bourgas, Nadia Centre, OSI, Bulgarian Lawyers for Human Rights, BHC and others.
- In 2011, a training seminar was held for members of the Standing Committee on Human Rights and Police Ethics. on "Recent decisions of the European Court of Human Rights in the context of police ethics", with lectures from the OSI and Bulgarian Lawyers for Human Rights.[29]

[28] US State Department *Country Reports on Human Rights Practices for 2012: Bulgaria* (2013). Available at https://www.state.gov/j/drl/rls/hrrpt/2012/ (accessed 8 February 2015).
[29] UN Human Rights Committee, *Concluding observations on the third periodic report of Bulgaria, Addendum, Information received from Bulgaria on follow-up to the concluding observations,'* 13 January 2014, CCPR/C/BGR/CO/3/Add.1, Paras 27-30.

This account shows how international and local organisations worked together to ensure that the issue of torture was on the agenda for the government. International organisations such as AI and HRW (Brysk's "advocates") were important in the early years, at the time when Bulgaria was being recognised as a potential EU member. The Bulgarian government was under pressure to make improvements to reform its practices on torture. Local organisations were then in a position to flesh out the detail of those commitments (for example, the reforms needed to the legal aid system); to carry out ongoing training for police and others, and to monitor and report on implementation. While local organisations took the lead, international organisations became much less. HRW, for example, seems to have undertaken little or no advocacy related to torture on Bulgaria between 2002 and 2013.[30]

Once the state embarked on the reform process, it became drawn into an ongoing dialogue about the need for continuous improvement and escalating demands for it to fulfil its commitments: NGOs played a key role in this dialogue. Here we see the ingredients coming together – a political environment in which the state was keen to show the European Commission that it was making progress; criticism by international organisations ensuring that the topic of torture was on the agenda for the EU Commission and the state; the readiness of local organisations such as BHC and Human Rights Project to contribute training and provide expert input into the question of what changes needed to be made. In more recent years, international organisations such as AI have been rather more hands-off: AI tends to quote from

[30] The www.refworld.org database does not contain HRW reports related to Bulgaria between these years.

BHC in its annual country report, rather than undertake its own investigations and in-country advocacy.[31]

Local organisations made it difficult for the state to confine itself to lip service regarding its commitments to reform on torture. It was not enough to have an increased availability of avenues of complaint about police brutality: human rights organisations continued to criticise the inadequacy of the investigations.[32] It was not enough for the state to make provision for medical personnel to carry out examinations in prisons: the state was publicly criticised for the fact that medical examinations were often not carried out.[33] It was not enough to grant monitors access to prisons: the state was reprimanded for the fact that human rights monitors did not have access to all places of detention, and they needed a prosecutor's permission for access to pre-trial detainees.[34] This is the phenomenon I describe as norm patrol: the everyday process of monitoring how the state's performance matches its rhetoric, and calling attention to the state promises that are not fulfilled.

3. Categories of activism

The above account illustrates civil society's use of strategies. Using the typology set out in chapter 4, it is possible to categorize them as follows.

[31] Although in August 2013, it did release a special report: Amnesty International, *Bulgaria: Investigations into alleged excessive use of force during Sofia protests must be prompt and thorough*, 1 August 2013, Index number: EUR 15/001/2013.
[32] US State Department *Country Reports on Human Rights Practices for 2012: Bulgaria* (2013). Available at https://www.state.gov/j/drl/rls/hrrpt/2012/ (accessed 8 February 2015).
[33] Ibid.
[34] Committee against Torture *Concluding observations of the Committee against Torture: Bulgaria*, Forty-seventh session, 31 October–25 November 2011, 3.

(i) Information-gathering and dissemination

As described above; BHC undertakes an annual survey on the use of force during arrest and police investigation. It publishes annual reports covering ill-treatment in places of detention. The organisation also issues shadow or alternative reports alongside the state's own periodic reports on its implementation of the ICCPR and UNCAT. These reports are widely quoted, as has been noted, by USAID, AI, the ECtHR and others. They are a powerful mechanism to keep pressure on the state to fulfil the commitments it has made.

(ii) *Dialogue*

Dialogue strategies are also in evidence in the above account. In 2005/6, BHC, OSI and others undertook a survey to identify the gaps in the existing legal aid system, and issued a publication on access to legal aid at exactly the time that the government was under pressure from the European Commission to act. The government then issued invitations to NGOs to contribute to the reform process. The resulting legal aid system is not ideal: Problems remain – individuals held in police custody still do not have access to legal aid, and the quality of legal aid is not always very high, with lawyers acting ex officio and too often having low motivation to tackle ill-treatment. Despite these deficiencies, the provision of legal aid once an individual is charged helps to prevent ill-treatment, and enables a response when it does occur. An interviewee for this research estimated it to be one of the most significant advances in protecting detainees against ill-treatment.[35]

[35] Interview with author, Sofia, April 2015.

The OSI project on "Civil Monitoring of the Police" described above is another project involving civil society dialogue with the state authorities. The project was based on a methodology approved by the Ministry of Interior's Security Police Chief Directorate and one of the outcomes was state-civil society dialogue on recommended actions.[36]

(iii) Strategic litigation

Litigation is a strategy much-used by Bulgarian activists in this area, particularly using the ECtHR.[37] A 2011 study carried out by a lawyer at the Bulgarian Helsinki Committee listed 27 ECtHR rulings on police brutality in Bulgaria during the period 1998-2010.[38] In all 24 cases (of which 16 cases related to torture and inhuman and degrading treatment, involving 20 victims), the ECtHR found that the state's investigation was inadequate and ineffective.

In another large group of cases, Bulgaria has been found in breach of Art 3 ECHR due to conditions of condition deemed inhuman or degrading. In its 2015 Chamber decision on conditions of detention, *Neshkov and others v Bulgaria,*[39] the ECtHR decided it was appropriate to use its "pilot judgement" procedure, noting that at the time when the case was heard, the court had already decided more than 20 similar

[36] UN Human Rights Committee, *Concluding observations on the third periodic report of Bulgaria, Addendum, Information received from Bulgaria on follow-up to the concluding observations,'* 13 January 2014, CCPR/C/BGR/CO/3/Add.1, Paras 27-28.

[37] As well as the ECtHR, complaints have on occasion been directed to other international mechanisms: see for example UNCAT Communication no. 257/2004, submitted by Kostadin Nikolov Keremedchiev The complainant was beaten by police in 2003. The Committee found it amounted to CIDT under Art 16 CAT and that the state had also violated art 12 by its failure to carry out a proper investigation (November 2008).

[38] Margarita Ilieva, 'Police violence in Bulgaria through the ECHR's eyes – unlawfulness and lack of punishments' (Полицейското насилие в България през погледа на Европейския съд по правата на човека– безправие и безнаказаност), available in Bulgarian at: http://policebrutality.bghelsinki.org/about/ As this report does not appear to be available in English, I rely here on the account given in Slavka Kukova, *The Normative and Practical Obstacles to Effective Prosecution of Ill-Treatment by Official Persons,* BHC 2016, 15-16.

[39] Chamber decision 27.01.2015.

cases and a further 40 applications on the same issue were pending. Using this procedure, the Court undertakes to identify the underlying structural problems leading to so many cases, and what the state should be required to do to fulfil its obligations. The Court proposed specific legislative measures, including provision for independent investigation of complaints, giving the state 18 months to remedy its defects. The Bulgarian authorities set up a working group to execute the judgement, and its members include the NPM along with NGOs such as BHC, the Centre for the Study of Democracy, and Bulgarian Lawyers for Human Rights. Anagnostou and Skleparis applaud the Committee of Minsters' increased emphasis on NGO involvement in the execution of ECtHR judgments, which offers "a different and critical picture of the government's proposed and actual measures", often substantiated by the NGOs' insights derived from their own experiences in detention monitoring.[40]

Litigation is one mechanism by which Brysk's category of "affected populations" can push for reform. In 2017, the Bulgarian Prisoners' Association praised Svetlomir Neshkov for pursuing the above case and demonstrating to the state the need to make changes, announcing that he was taking on the role of Vice Chairman of the Association.[41] The organisation noted that in February 2017, new laws governing the Bulgarian penitentiary system came into force, and that it (along with other NGOs) had been able to take part in the drafting of the legislation, and in discussions with the

[40] Dia Anagnostou and Dimitris Skleparis, 'Human Rights in European Prisons: Can the Implementation of Strasbourg Court Judgements Influence Penitentiary Reform Domestically?', in Daems T and Robert L (eds), *Europe in Prisons: Assessing the Impact of European Institutions on National Prison Systems* (Palgrave Macmillan 2017) 69.
[41] Bulgarian Prisoners' Association, The New Bulgarian Penitentiary System Law, 14 March 2017, available at http://bpra.info/en/the-new-bulgarian-penitentiary-system-law/ (accessed 16 February 2018).

Minstry of Justice and the Commission for Legal Questions. Here we see the strategies of litigation and dialogue working together in mutual reinforcement.

In 2016, BHC sought legal standing in its own right either as an indirect victim or as the representative of two children with mental disabilities who had died in special homes where they had been placed by the state.[42] The application was deemed inadmissible due to lack of *ratione personae.* While it may not have achieved its immediate legal goal, the case served its political goal of drawing attention to a human rights violation that would not otherwise have come to court.

Alongside NGOs, a number of individual lawyers have energetically pursued strategic litigation at the ECtHR: individuals such as Mihail Ekimdzhiev[43] and Yordanka Vandova[44] re-occur in the case reports. One of the most active litigants in recent years has been Yonko Grozev, who was appointed Bulgarian national judge at the ECtHR in 2015.[45] There is considerable crossover between individuals acting as lawyers in private practice and NGOs. Grozev, for example, was a founding member of the Bulgarian Helsinki Committee and involved with a number of other human rights NGOs in addition to practising as a lawyer.

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[42] *Bulgarian Helsinki Committee v Bulgaria,* ECtHR Chamber decision 21 July 2016.

[43] Art 3 cases in which he represented the applicant include *Gutsanovi v Bulgaria,* ECtHR App. No. 34529/10; *Iordan Petrov v Bulgaria* ECtHR App. No. 22926/04; *Yankov v Bulgaria* ECtHR App. No. 39084/97; *Rashid v Bulgaria* ECtHR App. No. 47905/99; *Boyko Ivanov v Bulgaria* ECtHR App. No. 69138/01. While not an Art 3 case, another significant case is *The Association for European Integration and Human Rights and Ekimdzhiev V Bulgaria,* ECHR App No. 62540/00. Mr Ekimdzhiev acted for the first-named applicant and he himself was the second applicant, with both applicants arguing that they were at risk a violation of their rights as a consequence of the secret surveillance measures permitted under Bulgarian legislation. The ECtHR found that Arts 8 and 13 had indeed been violated.

[44] See for example *Bekirski v Bulgaria* ECTHR App. No. 71420/01 2 September 2010; *Toteva v Bulgaria* ECtHR App. 42027/98.

[45] See for example *Anguelova v Bulgaria* ECtHR App. No. 38361/97; *Vasil Petrov v Bulgaria* ECtHR App. No. 57883/00; *Ivan Vasilev v Bulgaria* ECtHR App. No. 48130/99; *Ognyanova and Choban v Bulgaria* ECtHR App. No. 46317/99; *Georgi Dimitrov v Bulgaria* ECtHR App. No. 31365/02; *Vladimir Georgiev v Bulgaria* ECtHR App. No. 61275/00.

(iv) Practical safeguards

Civil society participation in *training* has been noted above. An important safeguard for detainees is *access to legal aid*. NGOs have contributed to this safeguard in a number of ways: through information-gathering and dissemination about gaps in the legal system, by taking part in dialogue with the authorities about what a better system of legal aid involves, and by directly providing legal expertise to bring court cases about abuses.

A key practical safeguard is *detention monitoring*. Detention monitoring can be seen as key to the other types of activism: it enables information-gathering, which in turn allows organisations to engage in dialogue from a position of authority. Monitors find out whether safeguards that exist in principle, such as access to medical examinations, are honoured in practice. The OSI project on "Civil Monitoring of the Police" from 2004 to 2011 has been mentioned above. BHC has had an even longer engagement with detention monitoring, dating back to the mid-1990s. The organisation has an agreement with the Ministry of Justice allowing it to interview all convicted prisoners in private. However, it requires permission from a prosecutor before it can access and interview pre-trial detainees. BHC notes that this hinders its effectiveness, given that most ill-treatment by law enforcement officers is known to take place during the first hours of arrest.[46] In 2017 the organisation was also reporting a deterioration in its opportunities to monitor other closed institutions. While previously it had been able to monitor psychiatric hospitals, children's institutions and social care homes for adults with mental disabilities, the relevant

[46] BHC, 'Alternative Report on the Implementation of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Bulgaria', July 2017. Available at http://www.bghelsinki.org/media/uploads/documents/reports/special/2017-alternative_report_cat.pdf (accessed 16 February 2018) 52.

government departments had refused to renew the agreements which made this monitoring possible.[47] This lack of access increases the risks to the most vulnerable persons deprived of their liberty. At the time of writing, it is too early to identify whether the reduction in access for monitors has resulted in a measurable rise in torture and ill-treatment.

As noted above, the involvement of civil society in prison monitoring seems to have become embedded in the "logic of appropriateness" used by the Ministry of Justice, at least. On the constructivist view, this demonstrates the internalisation of the norm by this part of the state. The recent refusal by the Ministry of Health and others to restrict BHC monitoring of closed institutions demonstrates that this internalisation is not universal across all areas of the state, and that gains can be reversed.

The National Preventive Mechanism (NPM) can still access closed institutions where it is difficult for CSOs to enter, being authorised to visit all places of detention. The CPT noted at the time of its 2015 visit that the NPM was only able to carry out a limited number of visits as its budget had been reduced. In another sign of straitened resources, NPM activities were being carried out by staff members of the Ombudsman's office who also had other non-NPM duties.[48] Despite these difficulties, the NPM continued to publish frank criticisms of the government's

[47] Ibid.
[48] CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 20 February 2015*, p.9, available at http://www.cpt.coe.int/documents/bgr/2015-36-inf-eng.pdf. Footnote 6 states "The delegation noted that in 2012 the budget of the Ombudsman's Office had been increased by approximately 180 000 euro in order to fulfil the NPM functions but the budget for 2014 had been reduced by almost the same amount."

failure to meet its obligations to detainees.[49] Where NGOs find their path is blocked, a good relationship with an effective NPM is hugely important in order to keep the reform work moving forward.

Besides physical visits to places of detention and interviews with detainees, there are other important ways in which NGOs monitor state treatment of detainees, such as to call for the creation and implementation of procedural safeguards. As discussed in chapter 3, such safeguards include tackling impunity for torturers (which means effective complaints mechanisms), and access by detainees to a lawyer and to medical services, along with deterrence measures such as the recording of interrogations. While in some cases NGOs might directly provide some of these services, given the greater reach and resources of the state, it is a better long-term strategy for organisations to push the state to ensure that these safeguards are consistently applied. The contribution of BHC and others to the legal aid reform process has already been discussed above. In addition, BHC has researched the implementation of these procedural safeguards. In a 2011 report, it noted that none of the police officers who perpetrated the violence in the cases reaching the ECtHR was sentenced appropriately.[50] In 2016, it reported on the relatively light sanctions applied in cases of police abuse.[51]

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[49] See for example Annual Report of the Ombudsman as a National Preventive Mechanism 2014, http://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/BulgariaAnnualReport2014.pdf (accessed 16 February 2018).

[50] Margarita Ilieva, 'Police brutality in Bulgaria through the ECHR's eyes – unlawfulness and lack of punishments' 2011. As this report in available in Bulgarian only, I rely here on the findings as presented in Slavka Kukova *The Normative and Practical Obstacles to Effective Prosecution of Ill-treatment by Official Persons*, (BHC Sofia 2016), 13. The author reports that in 27 ECtHR cases, none of the officers who participated in abuse was subject to disciplinary action. Some of the officers were in fact promoted.

[51] Slavka Kukova, *The Normative and Practical Obstacles to Effective Prosecution of Ill-treatment by Official Persons*, (BHC Sofia 2016), p10-11. In 2000-2015 military and civil courts reportedly dealt with 212 allegations of ill-treatment, resulted in 101 fines and 28 prison sentences; only 42 courts replied out of 144 polled. For the same period, the Ministry of Interior reported 138 criminal

The 2016 report noted that while in principle detainees have the right of access to a lawyer, to medical care, and to have a third party notified of their detention, in practice this is not always respected. Detainees are not always informed of their rights and their attempts to exercise them are not necessarily successful: "sometimes, the police officers just dictate to the detainee to check "No" in the fields related to asking for a lawyer, doctor, or third person to be informed in order to avoid a larger workload".[52] Even where the request for a lawyer is noted and acted on by police, legal representation is likely to be difficult to secure in small towns at night, where there may be a lack of lawyers on duty or willing to take action.[53] Medical examinations are generally "superficial", and although doctors are likely to ask about the cause of any injuries, "the record [tends to] reflect the explanations of the police officers" rather than the account provided by the detainee.[54]

Finally, the 2016 BHC report says that while the law provides for video and audio recording of interrogations, in practice this seems not to be happening. Abuse takes place in areas where there are no cameras, or where they have been turned off. If abuse has been recorded, the recording is likely to be "lost". It quotes the 2014 NPM report, which noted that there were still places of detention where no video monitoring system is installed, and highlighted the need to install such systems in order to ensure the safety of the detainees.[55]

It may be recalled that in chapter one, reference was made to the need for human

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proceedings against police officers, leading to 48 fines and 11 conditional sentences. In cases where internal disciplinary procedures were applied, 3 officers were reprimanded, 18 received a written warning, 75 were sanctioned with written warnings for dismissal, 7 were prohibited from applying for a job promotion and 18 were dismissed.

[52] Ibid 17.

[53] Ibid.

[54] Ibid 20.

[55] Ibid 18-19.

rights organisations to have an ongoing commitment to the issues with which they deal. Alston and Gillespie raise the concern that where rights advocates move on to another issue, they can misleadingly imply that problems have been solved when this is not the case, and they can give the impression that measures to address a concern are more useful than they are.[56] BHC here offers a powerful example of what can be achieved by a local organisation, alongside other local organisations and within the context of a transnational advocacy network, which has maintained its focus on the issue of torture over more than two decades. It can be contrasted with international organisations such as Amnesty International and Human Rights Watch, which did important work in drawing attention to the issue in the mid-1990s, but which have not paid sustained interest to the issues over the interim. This description adds an extra nuance to the account of transnational activism set out by Risse et al, unpacking the distinct contribution of national and international actors. The international organisations did what the local organisations could not by putting the issue on the international agenda: the local organisations did what the international organisations could not, by devoting their attention on daily basis over the decades to the detail of what changes were needed.

Its work illustrates the value of "norm patrol". The dogged reiteration of the question "Is this working to reduce torture?" is important not just for identifying individual violations or even for deterrence, but because of the power of making this question an ever-present one in the minds of state officials. In regularly asking detainees whether force was used against them, the organisation is sending a powerful message to detainees that abuse should be an anomaly, and worthy of complaint. This

[56] Philip Alston and Colin Gillespie, 'Global Human Rights Monitoring, New Technologies, and the Politics of Information' (2012) *European Journal of International Law* 23(4), 1089-1123, 1105.

persistent local pressure is a channel for state internalisation of the norm forbidding torture. Internalisation is clearly far from complete; there are countervailing pressures, as can be seen from the attacks on BHC, and reverses remain possible. Measured over two decades, however, progress is significant.

4. Conclusion

As a case study, the Bulgarian experience bears out many of the theories discussed in previous chapters. There is sufficient data to conclude that the state use of torture has greatly declined since 2000. The prospect of EU membership was clearly an important incentive for the state to undertake reform. International organisations such as HRW and AI helped to ensure that in the mid-1990s, at the time when Bulgaria was being considered as a potential accession state, torture was on the agenda. Local organisations stepped in to require the state to do more than pay lip service to the need to reduce torture, by persistently highlighting the gap between state rhetoric and the reality for detainees.

The chapter has illustrated the constraints facing civil society: the relative lack of opportunity for mass mobilisation on torture; the financial difficulties that have made it impossible for some organisations to maintain their activities; the challenge in accessing some closed institutions for the purposes of monitoring; and the attacks on organisations such as BHC. For BHC, its embeddedness in an international network give it strength and credibility, at the same time as it exposes the organisation to attack for perceived lack of patriotism. Its local dimension is crucial to the length and depth of its engagement with the problem of torture in Bulgaria.

Bulgaria's desire to join the EU has been a powerful motivating factor for the improvement in its performance on torture, less because the EU was directly demanding improvement, and more because both the EU and Bulgaria were rhetorically entangled in a commitment to human rights and civic participation, which created an opening for civil society to exploit. EU accession was not sufficient in itself to bring about the improvement: it created an opportunity, but civil society involvement played an important part in making use of the opportunity. It benefited from the fact that the state has been willing, if sometimes begrudgingly, to allow civil society *access*, both to places of detention (detainees and staff) and to policy-makers (as for the consultation on legal aid). This access made it possible for BHC to make innovative use of annual surveys, which yield particularly compelling data in relation to ill-treatment. Whereas references to individual abuses (often the bedrock of human rights reporting) can be dismissed as individual incidents, annual survey data is harder to dismiss. Given the value of access, recent restrictions in access to other closed institutions (psychiatric hospitals, children's institutions and social care homes for adults with mental disabilities), is a particular concern.

Civil society experienced a degree of success in its efforts to combat torture because the conditions were such that this was possible. However, NGOs such as BHC are not mere passive beneficiaries of a congenial political climate (to the extent that it can be described as such): the demands they have made over the decades and their leverage of opportunities has helped to shape the civil space in which they operate.

As noted earlier in the chapter, the existence of ongoing levels of abuse mean that it cannot be contended that Bulgaria has fully internalised the prohibition on torture.

Using the indicators of internalisation set out in the introduction, can it be said that Bulgaria has made progress along this path?

Indicator	**Situation in Bulgaria**	**Progress?**
Actors invoking the norm	Norm invoked by NGOs such as BHC, by international and regional bodies such as UNCAT and CPT, by Bulgarian lawyers, including in the context of the ECtHR There is some evidence of involvement by professional bodies such as the Bulgarian Psychiatric Association.	Progress
Domestic accountability	As noted by the UN Committee against Torture in its December 2017 report, impunity for abusers continues to be a significant problem. A large body of ECtHR cases demonstrate that there is an ongoing issue with the state failing to investigate credible allegations of torture.	Limited progress
Positive role played by NPM	Resource constraints, but good relationship with NGOs and willingness to criticise state.	Progress

Bulgaria's improved score in relation to torture is matched by evidence that the state has taken some steps along the path towards internalisation of the norm. The state may not welcome the involvement of NGOs such as BHC (see the anti-Soros rhetoric, the tax inspections, the failure to protect it against attacks), but although it may be grudging, it has accepted the legitimacy of BHC participation: its access to prisons and police stations, its annual survey and reports, and its interventions in legal aid reform. The evidence is consistent with the hypothesis that access by local civil society to decision-makers, frontline staff and detainees acts as a precondition to internalisation of the norm. Once access is achieved, progress may not be inevitable or irreversible, but the foundations have been laid.

Chapter 6 Albania

This chapter first examines trends in (i) advocacy and (ii) torture and ill-treatment in Albania, particularly since the turn of the twenty-first century. The chapter then goes on to consider the role of civil society in driving change, juxtaposed against the theoretical framework set out in previous chapters.

Albania was notorious for its particularly isolationist regime during the communist era. Its early years of independence were marked by the collapse of financial pyramid schemes in 1996-97, leading to civil unrest. The police and army were unable to cope with this unrest, bringing international attention to the need to support and rebuild these forces. It remains the poorest of the four states examined here. Its civil society advocacy score has varied, but the overall trend from 2000-2016 has been positive, and at the end of the period, it had the second highest score after Bulgaria.

1. Trends on torture and advocacy

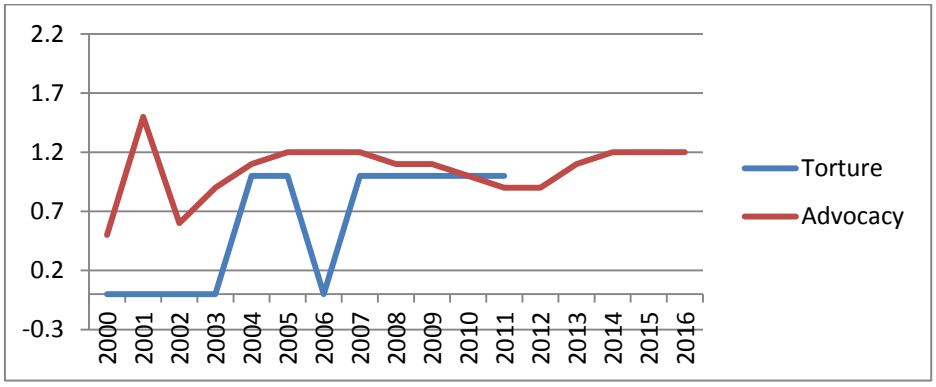

Figure 1 Albania performance on torture (CIRI data) and advocacy (USAID data)

Apart from a short-lived spike in 2001, advocacy in Albania began to rise from 2003, peaking from 2005 onwards, ahead of Albania's 2006 signing of a Stabilization and Association Agreement with the EU. Advocacy declined somewhat from 2008, only to increase again from 2014 onwards, the year Albania became an official candidate for accession to the EU. As with Bulgaria, the timing of advocacy increases suggest that civil society perceives the prospect of EU accession as an opportunity to develop and exploit the state's "rhetorical entanglement" in human rights norms and commitment to encourage civil participation. Prison reforms, including the need to protect detainees from torture and ill-treatment, have been explicitly included as one of the elements in the agenda of the EU accession for Albania.[1]

According to the CIRI scores, the state's record on torture improved from 2004, declined briefly in 2006, then improved from 2007 and remained at this level. As with Bulgaria, an increase in advocacy levels preceded an improvement in torture performance. But was this improvement maintained after CIRI data ends in 2011? Unfortunately there is no Albanian equivalent of the Bulgarian Helsinki Committee annual survey on the use of force by police (see previous chapter). In order to determine the trajectory of state performance since 2011, the US State Department Country Reports on Human Rights Practices are used here. As described in Chapter 2, the existing datasets on torture rely on a codification exercise in which the language used in the reports is used to derive a torture score for that year.[2] A codification exercise is not undertaken here, but the wording is scrutinised for

[1] Council of Europe, 'Enhancing the Protection of Human Rights of Prisoners in Albania', available at https://www.coe.int (accessed 18 February 2018).
[2] CIRI also uses the Amnesty International annual reports for its coding, but AI reports for Albania in the relevant years tend not to use the language on which coders rely where absolute numbers of violations are unavailable, eg. "widespread", "systematic", "epidemic", "extensive", "wholesale", "routine" "regularly", "numerous", "many", "various", "dozens" or "multiple". See chapter 2 for a fuller account of the challenges related to such coding exercises.

indications as to how the situation might have changed over the time period in question.

Year	*US State Dept Country Report description of the use of torture in Albania*
2000	"often"
2001	"often"
2002	"at times", but local NGOs reported a decrease in the number of cases
2003	"at times", but local NGOs reported a decrease in the number of cases
2004	"at times", but local NGOs reported a decrease in the number of cases
2005	"at times"
2006	"at times"
2007	"sometimes"
2008	"sometimes"
2009	"sometimes"
2010	"sometimes"
2011	"sometimes"
2012	"sometimes"; CPT report says that most interviewees report being correctly treated while in custody, although there were a "significant" number of reports of physical abuse
2013	"sometimes"
2014	"sometimes"; NGOs quoted as saying that police and prison authorities' treatment of detained juveniles and women improved from 2013. NGOs reported fewer complaints from juvenile detainees about physical abuse or violence
2015	"sometimes"
2016	"sometimes"; release of CPT report for 2014 visit: still a significant number of credible reports of abuse

Table 1 Reporting on torture in US State Department Country Reports on Human Rights Practices 2000-2016

The language of the reports suggests that there was an initial series of improvements over the years 2002 to 2004, and that by and large the situation has remained static at least since 2007, although with an improvement for some categories of detainees in from 2013/2014. Clearly ill-treatment continues to be a concern in Albania, but viewed against the situation in 2000, it seems reasonable to conclude that a degree of improvement has occurred and has been sustained.

2. Civil Society in Albania

As in Bulgaria, the number of organisations working on the issue of torture in Albania is limited. During its monitoring visits, the Committee for the Prevention of Torture (CPT) met the following civil society organisations:

Year of visit	*Organisations met*
2014	*Periodic visit* Albanian Helsinki Committee (AHC) Albanian Rehabilitation Centre for Trauma and Torture European Institute of Tirana
2011	*Ad hoc visit* No reference
2010	*Periodic visit* AHC Albanian Rehabilitation Centre for Trauma and Torture European Institute of Tirana
2008	*Ad hoc visit* Unspecified NGOs
2006	*Ad hoc visit* No reference
2005	*Periodic visit* Albanian Association of Psychiatrists AHC Albanian Human Rights Centre Albanian Human Rights Group Albanian Rehabilitation Centre for Trauma and Torture Children's Human Rights Centre of Albania
2003	*Ad hoc visit* No reference
2001	*Ad hoc visit* No reference
2000	*Periodic visit* AHC Handicap International

Table 2 CPT meetings with NGOs during field visits to Albania

As with Bulgaria, it is possible to categorise the organisations in accordance with Brysk's typology.[3] There are the *institutional reformers* such as the Albanian Helsinki Committee (AHC), who overlap with the *advocates*, speaking on behalf of those who cannot speak for themselves (Albanian Rehabilitation Centre for Trauma and Torture Victims, which also works with networks of former political prisoners, so there is, albeit indirectly, some involvement by *affected populations*).[4] There are also *norm promoters*, normative constituencies mobilised around a principle associated with their identity (Albanian Association of Psychiatrists). Not all of the organisations maintained a focus on torture throughout the period, but at least some have demonstrated a consistent engagement. In 2009, the National Preventive Mechanism (NPM) signed cooperation agreements with three of these organisations, allowing it to call on their specific expertise for its work: Albanian Rehabilitation Centre for Torture and Trauma, AHC and the European Institute of Tirana.[5]

Challenges

Civil society organisations face similar levels of public apathy and distrust as in the other case studies explored here. One local activist, Alida Karakushi, describes how even individuals involved in activism want to disassociate themselves from the NGO sector, as otherwise the public accuse them of being "paid to protest".[6] She also notes that many civil society actors go on to enter government, which in her view leads to

[3] Discussed in chapter 3. See Alison Brysk, 'Human Rights Defenders and Activism', in Anja Mihr and Matthew Gibney (eds), *The Sage Handbook of Human Rights* (Sage 2014) 346-347.
[4] See for example ARCT *Annual Report 2011* 44 which describes the organisation "working with a Network of 6-8 organizations of former political persecuted."
[5] Youth Initiative for Human Rights, International Rehabilitation Council for Torture Victims, Rehabilitation Centre for Trauma and Torture, Youth Initiative for Human Rights, *Mechanisms for the Prevention of Torture in the Western Balkans, Sub Regional Report: Albania, Montenegro and Serbia 2016*, 13-14.
[6] Alida Karakushi, 'Albania: Shrinking Spaces, Battles and Striving to Foster Trust in Civic Activism' in *Shrinking Spaces in the Western Balkans* (Heinrich Böll Foundation 2016), 47-52, 51.

"hemorrhaging" of civil society.[7] This movement of actors between the civil society and political spheres has been noted elsewhere for its tendency towards "blurring the boundaries….in the public's opinion" between government and non-government bodies, which can negatively impact the perception of NGOs.[8] More optimistically, the movement of individuals between sectors is potentially a channel by which norms promoted by civil society can be absorbed by the state (the internalisation process emphasised by constructivist theories). It indicates a degree of collaboration between the state and civil society, a term which can have both positive and negative connotations, depending on the observer. On the insider/outsider spectrum, it suggests that at least some elements of civil society in Albania position themselves on the insider end of the spectrum.

Civil society organisations do not seem to have been subject to official hostility in the form of tax audits aimed to discredit them and distract them from their mission, as seen against the BHC in Bulgaria, and as will be seen again in subsequent chapters, and there have not been reports of physical attacks on NGO staff. In the mid-1990s, after an initial period of over-closeness between AHC and the ruling party,[9] the relationship between the organisation and the governing party began to demonstrate some strain: in 1995, there were accounts of AHC activists coming under personal attack in the ruling Democratic Party newspaper,[10] and a year later, during the 1996 election year, the organisation reported heightened levels of criticism in pro-

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[7] Ibid 50.

[8] CIVICUS, IDM and UNDP, *Civil Society Index for Albania: In Search of Citizens and Impact*, (IDM 2010) 9.

[9] US State Department *Country Reports on Human Rights Practices for 1994: Albania* (1995). Available at http://dosfan.lib.uic.edu/ (accessed 5 April 2015). At this time, AHC was criticized by the International Helsinki Federation and individual Helsinki representatives from other countries for its perceived close association with the ruling Democratic Party.

[10] US State Department *Country Reports on Human Rights Practices for 1995: Albania* (1996). Available at http://dosfan.lib.uic.edu/ (accessed 6 April 2015).

government newspapers and by government officials.[11] The tensions subsequently seemed to abate, although the AHC 2016 report does express concern that:

> [s]tatements or reactions made in some cases that civil society organizations misuse donations, have an unjust impact on reducing the public's trust on the activity of civil society and divert attention from the causes that civil society defends…[12]

It does not provide further details. Despite such concerns, at the time of writing, there is little evidence of the backlash seen in some other countries in central and Eastern Europe, and in particular of the anti-Soros rhetoric used by right-wing parties to attack foreign-funded NGOs in other countries in the region. An anonymous hostile media report from Macedonia reports that "a network of people and organizations influenced, funded and controlled by George Soros in Albania has an almost total grip on the government and on the state institutions" up to the level of the prime minister. The author criticizes "the unlimited, unchecked and largely unchallenged control of the Soros network on the funding of what is considered as 'civil society' in Albania", and the article is complete with a picture of Soros' face superimposed on tentacles stretching out across a map from America to Europe.[13] Right-wing voices in Macedonia accuse Soros of trying to damage the integrity of the country with his support for the Albanian minority there.[14] His perceived pro-Albanian stance may help to explain why anti-Soros rhetoric has not gained traction in Albania in the way it has done in other countries in the region.

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[11] US State Department *Country Reports on Human Rights Practices for 1996: Albania* (1997). Available at http://dosfan.lib.uic.edu/ (accessed 6 April 2015).
[12] AHC, *Report on the Situation of Respect for Human Rights and Freedoms in Albania during 2016*, 34.
[13] Anonymous, '"Soros" network in Albania has a strong influence in Macedonia', Republika website, 11 February 2017, http://english.republika.mk/soros-network-in-albania-has-a-strong-influence-in-macedonia/ (accessed 18 February 2018).
[14] Anonymous, 'A Macedonian breakdown gets Europe's attention", 9 May 2017, *The Economist*, https://www.economist.com/news/europe/21718549-tensions-countrys-albanian-politicians-could-deteriorate-conflict-macedonian (accessed 18 February 2018).

CIVICUS research has found that civil society has made "great strides" since the 1990s.[15] From the turn of the millennium, it notes an increasing willingness by the government to consult CSOs when drafting laws and policies.[16] In 2016, CIVICUS reported that "[a] combination of energetic advocacy by civil society and the granting of European Union Candidate Status in 2014 resulted in important recent gains for civil society organisations in Albania."[17]

Civil Society Strategies

Given the public attitude to civil society outlined above, it is unsurprising that organisations tend not to rely on popular mobilization, in the sense of asking the public to petition the government for change. Albanian Rehabilitation Centre for Torture and Trauma's mandate does include increasing public awareness of the issue, as part of its work focuses on preserving the historical memory of torture committed against political prisoners during the Communist era.[18] A narrative based on the suffering of political prisoners in the past is potentially more attractive to the public than present-day issues affecting individuals in the criminal justice system (often seen as less sympathetic victims, less deserving of support).

As in Bulgaria, the bulk of civil society activism on torture emphasizes *depth* (expert advocacy) rather than *breadth* (appeal to popular sentiment). While the organisations publicly criticize violations by the states and undertake strategic litigation (*outsider*

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[15] CIVICUS, IDM and UNDP, *Civil Society Index for Albania: In Search of Citizens and Impact,* (IDM 2010) 1.

[16] CIVICUS, IDM and UNDP, *Civil Society Index for Albania: In Search of Citizens and Impact,* (IDM 2010) 9.

[17] CIVICUS Monitor, Albania Overview, 14 April 2014, available at https://monitor.civicus.org/newsfeed/2016/04/14/Albaniaoverview/ (accessed 18 February 2018)

[18] Other organisations such as the Albanian Human Rights Group have drawn attention to the problems facing former political prisoners, including delays in compensation measures.

strategies), there is also considerable emphasis on constructive working relationships between CSOs and state institutions (a more *insider*-focused approach, as noted above). Rather than an extreme insider or outsider approach, it is somewhere in between: civil society acting as a kind of critical friend to the state. An insider tone of finding common cause with the state – reform as a joint project - can arguably be detected in at least some of AHC's reports. See for example the AHC 2016 report:

> AHC appreciates the reduction of the number of claims by detainees or convicts for the use of violence in Institutions for the Execution of Penal Decisions.
>
> AHC submitted to relevant institutions a large number of recommendations and Suggested the undertaking of measures for the implementation of legislation in force, which were generally considered constructively. Institutions such as the General Prosecutor's Office, the Ministry of Justice [and others] responded to raised issues about the activity in the context of respect for the rights of persons deprived of their liberty, informing them about measures taken or their follow up. In particular, we point out the cooperation with the General Directory of Prisons, the transparency demonstrated and the reflections of this institution toward problems raised by AHC.[19]

Similarly, in the AHC 2014 report:

> [I]t is worth applauding the leaders of this system for having the right concepts in terms of monitoring of operations in their institutions by outside actors. They should be thanked for their understanding and cooperation in this regard.
> In reviewing 2014 developments, we also need to highlight as positive the investments for the construction of new institutions….[20]

[19] AHC, *Report on the Situation of Respect for Human Rights and Freedoms in Albania during 2016,* Tirana May 2017, 23. Emphasis added.
[20] AHC, *Report on the Situation of Human Rights in Albania during 2014,* Tirana December 2014, 30. Emphasis added.

The organisation is keen to give credit for improvements by the state and its agents where it can. It notes the practical challenges facing police and prison staff, and advocates for what staff need to do their jobs well, including more resources, job security and an acceptable working environment. The organisation strikes a note of solidarity with state agents: it notes that providing training is not enough, and that retaining trained staff is equally important. It flags concerns about staff downsizing in some prisons and encourages the prison service to improve job security and operate a meritocratic system.

The same tone featured in a meeting in May 2015 between police, the NPM and civil society, attended by the researcher. Police representatives discussed the logistical difficulties that made it difficult to implement better practices, to which an NGO representative replied, "We are on the same wavelength. We understand the problem and you do too – I feel good about your intentions."[21]

The impression created by the tone of these reports and these exchanges is that on the spectrum of insider/outsider approaches, Albanian civil society situates itself to some extent on the insider side, although it is not a fully insider approach to the extent that it no longer publicly criticises state breaches of its commitments (ie. it is not captured by the state and does not fall into the category of GONGO or government-organised "NGO"). As noted in chapter 4 and explored further below, Albania is subject to proportionately fewer cases of strategic litigation at the ECtHR, another indication

[21] Researcher's note from meeting with police, NPM and civil society, Tirana, May 2015. The discussion was in Albanian, but simultaneous interpretation into English was provided. The police spoke of their frustration at being overworked and underpaid and lacking sufficient resources to meet the demands on them.

that an insider strategy is preferred over an outsider one: attempts to persuade on the merits rather than attempts to force compliance based on sanctions.

Given the fact that the prospect of EU accession is a powerful incentive for state reform, NGOs unsurprisingly have a strong *outward-facing* element to their advocacy. An entirely inward-facing approach would miss out on the leverage available through external demands for reform. Local organisations publish websites and reports in English. There is evidence of close partnerships between local NGOs and international organisations such as Amnesty International. For example, in 2004, AHC, Albanian Human Rights Group and the Albanian Rehabilitation Centre for Trauma and Torture (ARCT) issued a joint press release with AI asking the government to provide information about the fate of an individual who was disappeared.[22] The following year, AI released a detailed report on torture in Albania citing the work of all these organisations, and using photographic evidence of injuries caused by torture supplied by the Albanian Human Rights Group.[23] Local organisations are part of international networks – for example, ARCT is a member both of the World Organisation against Torture network and the International Rehabilitation Council for Torture Victims. Its website acknowledges funding from the Danish Institute against Torture, Civil Rights Defenders (a Swedish NGO), the UN, Austrian Development Cooperation, the EU, the US and the Open Society Institute.

[22] Amnesty International and others, Albania: *What happened to Remzi Hoxha?* 21 Oct 2004, AI Index EUR 11/004/2004.
[23] Amnesty International, *Albania: Obligations under the UN Convention against Torture – a gap between law and practice*, 2005, EUR 11/001/2005, 8.

As noted in chapter four, EU accession entails an adjustment for NGOs, as previously relied-on donors take the view that their funding is now more appropriately directed elsewhere. CIVICUS noted concerns in relation to Albania: the sector relied on internal donors as its "main lifeline", so with those donors withdrawing from the region, civil society was turning to EU programmes and the Albanian state for support. CIVICUS warned:

> Neither of the two is taking full responsibility – either because the Government is unprepared for such a step, or because of a lack of capabilities on the CSOs' side to cope with the bureaucratic application and grant procedures under various EC programs.[24]

At the time of writing, when EU accession has not taken place, at least some of the key organisations working on the issue of torture are continuing to secure funding from their traditional donor base. This is likely to change if and when accession takes place: as discussed in the Bulgaria chapter, there may be a consequent impact on the sustainability of some NGO activism if NGOs are not prepared to make the necessary transition with regard to their funding base.

Local and international activism

In the chapter on Bulgaria, we saw that international organisations such as AI and Human Rights Watch played an important role in getting the issue of torture on the agenda during the 1990s, after which point local organisations were in a stronger position to take the lead in demanding reform. A similar sequence can be observed in Albania. The state ratified UNCAT in 1994. The period immediately before and after saw heightened levels of national and international interest in the issue. In 1993,

[24] Ibid 18.

Amnesty International wrote to the Albanian President to express concern about police abuses and published a report on the issue.[25] Two years later, AI published a second report, concluding that for all the attention it was receiving, the situation had yet to improve.[26] It continued to report cases of mistreatment into 1996, particularly at the time of the elections and post-election protests. In a 1996 report HRW reported that it had collected testimony documenting "many instances of excessive force used by the Albanian police and security forces", and quoted concerns flagged up by AHC.[27]

Despite some resentment of public criticism,[28] the government indicated a degree of willingness to respond to these calls for reform. In 1996, the Interior Minister opened a number of offices where citizens could lodge complaints against the police, and introduced human rights training courses for police. Matters came to a head in1997, a period of great volatility, as massive public unrest followed the collapse of pyramid investment schemes and the resulting economic trauma. Prisons were stormed, and the detainees escaped. Observers disagreed about the police response to the unrest. AI claimed that "[h]undreds of people were tortured or ill-treated by police"[29] while the US State Department said there was "considerable praise for the police force's efforts to handle difficult situations in a tense and unstable atmosphere" and that the police showed "great restraint many times."[30] Whichever account is accepted,

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[25] AI, *Albania - Human rights abuses by police (AI Index: EUR 11/05/93.*
[26] AI, *Failure to End Police Ill-Treatment and Deaths in Custody* EUR 11/04/1995, available at: http://www.refworld.org/docid/3ae6a9cf0.html (accessed 24 May 2014).
[27] Human Rights Watch, *Human Rights in Post-Communist Albania*, 1 March 1996, 1606, available at: http://www.refworld.org/docid/3ae6a7f30.html (accessed 18 February 2018).
[28] US State Dept 1996 reports "Some organizations [reported]… they were harassed and intimidated once they had made direct criticisms of the Government".
[29] AI, *Amnesty International Report 1997 – Albania*, 1 January 1997.
[30] US State Department *Country Reports on Human Rights Practices for 1997: Albania* (1998). Available at http://dosfan.lib.uic.edu/ (accessed 12 April 2015).

international attention was drawn to the inadequacy of the Albanian police force, and the case for reform became urgent.

Despite the upheaval, 1997 was also the year that Albania ratified ECHR and ECPT and aimed to show it was on track to meet European standards. Although large-scale plans for police training had to be curtailed by the security crisis, a few police officers attended international training. The Albanian Center for the Documentation of Human Rights met with officials from the Interior Ministry to design a curriculum for seminars to train police officers in fundamental human rights principles and good conduct, and published a book on human rights aimed at police supervisors.[31]

By the following year, the US State Department judged that the training and education programmes were beginning to make some headway in increasing police professionalism, although standards remained low. It also reported that "virtually all domestic NGO leaders report that the current Government gave them significantly greater access and cooperation than they received from previous governments".[32] In 1999, new legislation was introduced to create the country's first national People's Advocate (Ombudsman), who would later take on the functions of the NPM.[33]

Over the next few years, both national and international NGOs continued to report abuses. AHC, Albanian Human Rights Group and Albanian Center for Human Rights noted that the police continued to use torture and CIDT, but that levels were

[31] Ibid.
[32] US State Department *Country Reports on Human Rights Practices for 1998: Albania* (1999). Available at http://dosfan.lib.uic.edu/ (accessed 12 April 2015).
[33] US State Department *Country Reports on Human Rights Practices for 2001: Albania* (2002). Available at https://www.state.gov/j/drl/rls/hrrpt/2001/ (accessed 12 April 2015).

beginning to decrease.[34] NGOs contributed to police training programmes, and the issue of impunity began to be addressed. In September 2001 the Ministry opened a telephone complaints line and within the first month reportedly received 33 complaints alleging physical ill-treatment or verbal abuse. As a result, eight police officers were reportedly suspended from duty or dismissed for these or other abuses.[35] The Albanian National Police's Office of Internal Control began to investigate and punish misconduct by individual officers.[36]

Amnesty International kept up its campaigning, issuing reports on torture and ill-treatment in 2001,[37] 2002,[38] and 2004.[39] In 2003, the year Albania ratified UNCAT, HRW stopped issuing reports related to Albania, not starting again until it reported concerns related to the Kosovo crisis in 2008. AI published a 2005 report on the gap between Albania's legal obligations under UNCAT and what was happening in practice.[40] The organisation also issued a public protest in 2008 when Shkoder Police Directorate initiated criminal proceedings against the People's Advocate, claiming that his unannounced visit to Shkoder police station jeopardized an investigation.[41]

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[34] US State Department *Country Reports on Human Rights Practices for 2002: Albania* (2003). Available at https://www.state.gov/j/drl/rls/hrrpt/2002/ (accessed 12 April 2015).
[35] AI, *Amnesty International Report 2002 – Albania*, 28 May 2002, available at http://refworld.org/docid/3cf4bc1028.html (accessed 6 May 2015).
[36] US State Department *Country Reports on Human Rights Practices for 2002: Albania* (2003). Available at https://www.state.gov/j/drl/rls/hrrpt/2002/ (accessed 12 April 2015).
[37] AI, *Albania: Torture and ill-treatment - an end to impunity?* 18 May 2001, EUR 11/001/2001, available at: http://www.refworld.org/docid/3b83b6d7e.html (accessed 18 February 2018).
[38] AI, *Albania: Alleged ill-treatment of detainees by police*, 1 May 2002, EUR 11/006/2002, available at: http://www.refworld.org/docid/3d99cf0a7.html (accessed 18 February 2018)
[39] AI, *Albania: Inhuman and degrading detention conditions in police stations - steps towards reform*, 19 February 2004, EUR 11/001/2004, available at: http://www.refworld.org/docid/42ae98910.html (accessed 18 February 2018).
[40] AI, *Albania: Obligations Under the UN Convention Against Torture - A Gap Between Law and Practice*, 1 February 2005, EUR 11/001/2005, available at: http://www.refworld.org/docid/42ae98930.html (accessed 18 February 2018).
[41] AI *Albania: Obligations Under the UN Convention Against Torture - A Gap Between Law and Practice*, 1 February 2005, EUR 11/001/2005, available at: http://www.refworld.org/docid/42ae98930.html (accessed 18 February 2018).

While this international attention was useful, the vast bulk of monitoring and reporting on torture was being carried out by local organisations by this point.

AHC and the Albanian Human Rights Group continued to note improvements in police behaviour into 2004. The director of Prison 302 and the chief of the prison's police were both dismissed after an investigation by the general directorate of prisons found that prison staff had physically and psychologically abused 24 individuals multiple times.[42] The same year, Parliament passed a law enabling the ombudsman to inspect and monitor detention facilities and prisons, and giving him authority to initiate public interest cases.

In 2005 and 2006, the CPT carried out inspection visits, finding that most of the detainees interviewed reported some degree of physical abuse or inhumane treatment. It visited again in 2008 (with the report being issued in January 2009), and while serious concerns remained, particularly relating to physical abuse during interrogation, it did find that the situation had improved compared to its previous visits, with the majority of detainees interviewed in 2008 saying that they had not been subject to abuse while in police custody. This is a significant reversal in a very short space of time: from a majority reporting abuse in 2005 and 2006, to a majority reporting correct treatment in 2008. In between those visits, Albania signed a Stabilization and Association Agreement with the EU, which involved a series of measures to reform the legal system and to combat high-level corruption: a key moment during which the government is highly motivated to demonstrate to an international audience its willingness to make progress on achieving human rights

[42] US State Department *Country Reports on Human Rights Practices for 2004: Albania* (2005). Available at https://www.state.gov/j/drl/rls/hrrpt/2005/ (accessed 12 April 2015).

progress. One of the issues on the agenda was the need to tackle torture and CIDT.[43] At this point, Albania's willingness and ability to meet EU obligations became "an issue of interest for all citizens", according to AHC's 2011 report.[44] In 2007, the state made amendments to Article 86 of the Criminal Code to incorporate the definition of torture set out in the UN Convention against Torture.

The improved treatment of detainees continued to be in evidence in the report of the CPT's 2010 visit (published 2012), with most interviewees saying that they were not abused, although a significant minority continuing to report physical abuse during interrogation, in the form of slaps, kicks and blows to the legs with truncheons. In 2011, AHC carried out 17 monitoring visits to detention centres (pre-trial and penal). It received collective complaints in three institutions covering both conditions of detention and inhumane treatment by staff; despite these ongoing problems, it noted that overall the situation had improved, which it attributed to investment in infrastructure and capacity-building efforts with staff there.[45] It found that allegations of physical violence from staff had declined in number from previous years to the point where they had become relatively rare.[46] While numbers were few, AHC still noted concerns regarding institutional failures around access to medical examination, record-keeping and investigation of the allegations that did occur.[47] AHC continued

[43] See for example the 2010 Communication from the EU Commission to the European Parliament and Council, where it is noted on page 7 that a "serious concern relates to detention conditions and the treatment of detained persons in police stations, pre-trial detention and prisons." http://ec.europa.eu/enlargement/pdf/key_documents/2010/package/al_opinion_2010_en.pdf (accessed 24 May 2014).
[44] AHC *Monitoring Report on the Situation of Respect for Human Rights in Albania for 2011*, January 2012, 5.
[45] Ibid 30.
[46] Ibid 37.
[47] Ibid 38.

to contribute to the training of prison staff at all levels (frontline, middle and senior management), alongside expertise contributed by foreign governments.[48]

NGOs drew attention to the particular needs of vulnerable groups (including those with mental health problems, minors, LGBT prisoners etc). AHC noted that awareness of the need for differentiated treatment had increased.[49] In the case of prisoners with mental health problems, for example, AHC noted approvingly that prison officers were decreasingly likely to resort to handcuffs as a response to detainee agitation.[50]

In 2014, Albania formally became an EU candidate state. The EU specifies a number of key tasks carrying over from the integration process, which included the protection of human rights. Political conditions were difficult, with the Opposition boycotting Parliament, but reforms still went through, including those targeting impunity. AHC praised "[g]ood efforts [by the state]…to build bridges of cooperation with the civil society". In prisons, allegations of violence were "scarce".[51] "[C]ontinued efforts [by police] to respect citizens' rights better….Police bodies are making efforts to be transparent in their activity and to cooperate with citizens, especially with civil society organizations, particularly those whose mission it is to protect human rights and freedoms".[52]

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[48] AHC, *Report on the Situation of Human Rights at Police Directorates and Commissariats, and Pre-trial Facilities and Institutions for the Enforcement of Criminal Sentences, during the period of May-November 2012,* December 2012, 18.
[49] Ibid 19.
[50] Ibid 23.
[51] AHC, *Report on the Situation of Human Rights at Police Directorates and Commissariats, and Pre-trial Facilities and Institutions for the Enforcement of Criminal Sentences, during the period of June-November 2013,* December 2013, 12.
[52] AHC, *Monitoring Report on the Situation of Respect for Human Rights in Albania for 2014*, December 2014, 12.

3. Categories of Activism

The above account provides examples of a wide range of activist strategies: fact-finding and publication, ie. *(i) information-based* activities. We can also see *(ii) dialogue-based* activities: AHC reports that it and other CSOs have contributed to changes to legislation, including on laws relating to the rights and treatment of detainees, on legal aid, on police, on the Ombudsman, the Penal Code and on prison officers.[53] NGO involvement in police *training* has also been described.

As already noted above, *(iii) strategic litigation* is used much less frequently than in Bulgaria, perhaps in line with a more insider-leaning approach by civil society (although it may also be attributable to lower levels of local legal expertise in litigating in the Strasbourg court). There are relatively few cases in the ECtHR where Albania has been accused of an Article 3 violation, and those that do often centre on inadequate medical treatment.[54] The case of *Ceka v Albania*, arose from the death of Ms Ceka's son in police custody; unusually, the government admitted violation of Articles 2 and 3 and proposed compensation of EUR10,000.[55] The ECtHR felt the state had responded adequately so struck out the case. One case where the court found an art 3 violation was in the case of *Kaçiu and Kotorri v Albania,*[56] which concerned the beating of a suspect to extract a confession and the state's failure to investigate the allegation.

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[53] AHC, *Monitoring Report on the Situation of Respect for Human Rights in Albania for 2014* (December 2014) 16.
[54] *Grori v Albania* ECtHR App. No 25336/04 concerned the absence of appropriate medical care for a detainee with multiple sclerosis, and *Dybeku v Albania* ECtHR App. No. 41153/06 concerned conditions of detention that amounted to ill-treatment in the context of a detainee with mental illness.
[55] ECtHR App. No. 26872/05.
[56] ECtHR App. No. 33192/07 and 33194/07.

(iv) Practical safeguards

The importance of *monitoring* by local CSOs as well as the NPM and international bodies such as the CPT has already been noted in the account above. ODIHR paid tribute to the value of monitoring visits to places of detention in a 2009 report. Noting a reduction of public police beatings, it observed that this "highlights the importance of exposing torture and ill-treatment to public view and ensuring it is not allowed to thrive un-scrutinized in places of deprivation of liberty".[57]

The point has been made earlier in the chapter that the tone of local NGO reports is often positive towards the authorities, noting the real challenges they face and highlighting improvements. By the time of its 2014 report, AHC noted "few cases" of reported CIDT in prisons. Where complaints did arise, AHC referred them to the "relevant bodies" who "often notified us" about measures taken, including instances where the accused official had been suspended from duty.[58] However, this does not imply an unwillingness to criticise where it is due. AHC reported that it was still receiving complaints regarding ill-treatment in police stations, and in at least one area (Berat Police Commissariat), complaints were "numerous". AHC notified the Ministry of Interior and the Internal Control Service who responded that they had begun investigations.[59] The organisation said:

> In this regard, there is room for a lot more work to uproot the mentality of police officers to obtain confessions through the violation of the [suspect] or to exercise violence even when it it is not necessary. The Interior Ministry's Internal Control Service should react continuously and more strongly in this regard, as they have done in some cases.[60]

[57] OSCE/ODIHR, *The Fight against Torture: The OSCE Experience* (ODIHR 2009) 24.
[58] AHC, *Report on the situation of respect for Human Rights in Albania during 2014* (December 2014) 34.
[59] Ibid 37.
[60] Ibid.

It expanded on these findings in its Monitoring report, also published in December 2014, which noted for example that in Saranda police station, detainees "stated that they had often heard the loud noises of blows and cries of individuals who begged not to be hit".[61] At the police station of Tropoja, some police officers told the monitors that "the beating was reserved for those who deserved it".[62] In some stations, monitors found instruments that could be used for physical abuse: "batons, handcuffs, as or sticks, chair legs of iron, various twigs etc". Police claimed that these items were evidence, but the monitors noted that they were not being stored in accordance with the rules on material evidence, giving rise to concerns that they were used in the process of extracting confessions.[63] It also observed several individuals with injuries they claimed were inflicted during arrest. AHC formally wrote to the Directorate General of the State Police to express its concerns.[64] AHC carried out several days of training with police officers from across the country and afterwards wrote to the Minister of Interior and the Director General of the State Police to express concerns that there were still "old school" police officers who resorted to unacceptable treatment of prisoners.[65]

It is worth noting here the importance of integrating training with other types of activism such as detention monitoring: it would be relatively easy for an international organisation to provide training based on international law, but training that is rooted in an understanding of how and why abuses take place at local level is more likely to be effective in addressing the phenomenon.

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[61] AHC, *Report on the Human Rights Situation of Liberty Deprived Persons in the Police Directories and Stations and in Detention and Prisons* (December 2014) 21.
[62] Ibid.
[63] Ibid.
[64] Ibid.
[65] Ibid.

Giving a sense of the ongoing dialogue between AHC and the state authorities arising from its monitoring, AHC lists 27 letters it sent to officials ranging from police and prison directors to the Ministry of Justice on training and on the implantation of detainees' rights in a period between May and December 2014.[66]

Other practical safeguards

With regard to informing individuals under arrest of their rights, including access to a *lawyer, to medical services, and to inform a third party*, in its 2012 report, AHC noted that individuals were being given a copy of their rights in writing in most, although not all, police stations.[67] AHC found that the individuals themselves did not necessarily understand the purpose served by this document.[68] In its report for 2013, AHC noted with approval that posters with this information were being displayed in police stations.[69] Its 2016 report noted however that violations of the right to be informed continued.[70]

In 2008, the Parliament approved legislation which made provision for state-funded legal aid. By 2011, AHC reported that implementation was "slow" and no individual had as yet benefited received this state-funded legal aid.[71] Rather than create a brand-new service, the State Committee for Legal Aid would commission non-profit

[66] Ibid 77-79.
[67] AHC, *Report on the Situation of Human Rights at Police Directorates and Commissariats, and Pre-Trial Facilities and Institutions for the Enforcement of Criminal Sentences,* December 2012, 45.
[68] Ibid.
[69] AHC, *Report on the Situation of Human Rights at Police Directorates and Police Stations, and Pre-Trial Facilities and Institutions for the Enforcement of Criminal Sentences,* December 2013,19. As of 2015, there is also information about rights on the website of the Albanian state police. OSCE has contributed financially to the dissemination of this information, which includes television advertisements.
[70] AHC, *Report on the Situation of Respect for Human Rights and Freedoms in Albania during 2016,* April 2017, 27.
[71] AHC, *Monitoring Report on the Situation of Respect for Human Rights in Albania for 2011*, January 2012, 61-62.

organisations to provide legal aid services. AHC noted that a few were already in operation and had the capacity to deliver, notably the Tirana Legal Aid Service. AHC itself offers a Free Legal Clinic which offers interventions with state institutions and litigation right up to ECtHR.[72]

A practical measure to reduce torture is to provide audio-visual recording devices in holding cells and interview/interrogation cells: this measure was reportedly being implemented in some areas but not others. An AHC staff member noted when interviewed that CCTV was not a big factor to date in bringing about improvement – where the equipment was installed, it tended to break: attitudinal change and tackling impunity mattered more, although this measure could still potentially help.[73]

As in the chapter on Bulgaria, there are local organisations who have been working for more than two decades on the issue of torture. This long-term local dedication mitigates the risks flagged by Alston and Gillespie about international actors having too short-term a focus on human rights issues.[74] We see again how international organisations play a key role early on in getting the issue of torture on the agenda; well-known international organisations such as Amnesty International can leverage their reputation to help local organisations be heard (see for example the joint press release in 2004 referenced above). Later in the process, the international organisations may focus their resources elsewhere, while local organisations are in a position to take over the longer term duties associated with "norm patrol".

[72] Ibid 67.
[73] Interview with author, Tirana, May 2015.
[74] Philip Alston and Colin Gillespie, 'Global Human Rights Monitoring, New Technologies, and the Politics of Information' (2012) *European Journal of International Law* 23(4), 1089-1123, 1105.

With regard to the question of where Albania is located on the spectrum of rational choice "comply to win EU membership" versus constructivist motivation to do the right thing, it can be argued that both sets of motivations play a role. Lazeri asserts that Albania is undergoing a process of identity formation, in which it "seeks…to legitimize its claims of sharing an identity with what it perceives to be *the* successful model of civilization", the EU.[75] From a constructivist standpoint, the more that respect for the norms against torture remains associated with this desired identity, the more reason there is to hope that the reform attempts will be successful over the longer term.[76]

A more pessimistic point of view is put forward by Frasheri, who argues that:

> Domestic actors see little incentive to go all the way in meeting external demands when returns are not tangible and do not arrive in the short term, as is the case with the EU membership.

As we have seen, there does seem to be tangible progress on the issue of torture to date, but there is a risk that if EU membership is postponed over the longer term, or if it becomes less desirable amongst the domestic constituency, the incentive to continue with reforms may be reduced. As things stand, however, it would seem that there are grounds for reasonable optimism for Albania's improved performance on torture to continue.

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[75] Marina Lazeri, *Renegotiating Albania Identity: European Transformations* (unpublished manuscript, Utrecht University, The Netherlands), http://www.inclusionexclusion.eu/site/wp-content/uploads/2014/11/Marina-Lazeri.pdf (accessed 18 February 2018), 1.

[76] Ermal Frasheri, *Of Knights and Squires: European Union and the Modernization of Albania*, Working Paper no 81 (Center for International Development at Harvard University 2016) 71. He argues more generally that the Europeanisation project is harmful to the domestic democratisation project.

4. Conclusion

The prospect of EU accession gives powerful leverage to civil society organisations wishing to influence the aspirant state. Again we see that international organisations play an important initial role in getting torture reform on the agenda, followed by ongoing norm patrol by local organisations to push the government to ensure that its rhetoric is matched by its practice.

The tone of the relationship between states and CSOs is less contentious than that found in Bulgaria. While Albanian organisations do report on incidences of torture and ill-treatment, there is less emphasis on an outsider strategy such as strategic litigation. The national Helsinki Committees in the two countries have positioned themselves in somewhat different ways vis-à-vis the state, a choice that seems to be driven largely by the different environments in which they operate. Both approaches seem to have met with at least some degree of success, even if there is still a considerable way to go in order to eliminate torture and ill-treatment entirely.
With regard to the state's motivation to demonstrate to the EU its worthiness to become a member, the question can be asked whether NGO efforts make a difference. Even without NGO activism, would the state not have made the improvements anyway? It must be accepted that improvement in state performance may have taken place without immediate NGO participation, given EU assertions that it wished to see state reform in this regard. However, several observations can be made. Firstly, civil society has contributed its expertise: its understanding of international treaty and soft law commitments has underpinned the training it has provided to police and other state agents, along with its knowledge about what needs to be done to translate them

into the Albanian context. Secondly, without local civil society monitoring and reporting, how would the EU bodies know whether genuine progress was being made? It is relatively easy for a state to report changes to legislation: it is important to have independent verification of whether such changes result in better treatment for individual detainees. The CPT itself can only visit a limited number of institutions, normally at intervals of two to three years: local organisations can visit more places of detention more frequently, and the CPT regularly draws on their knowledge. International organisations such as AI and HRW rarely conduct their own investigations in these countries at this time, but like the US State Reports on Country Practices on Human Rights, they draw on trusted local organisations.

Civil society activism may not be the sole driver in state reform on torture, but given a state with the motivation to demonstrate reform, civil society in Albania has been able to position itself as an ally and a critical friend in bringing about this change. A key part of being able to position itself in this way is its access to decision-makers, to frontline state agents (police, prison officers) and to detainees, allowing it to build its knowledge base, develop relationships, and contribute practical advice on how to deliver change.

Returning to the three indicators of internalisation identified in the introduction, we can measure the extent to which Albania has made progress over the period under scrutiny. As with Bulgaria, the prohibition on torture cannot be said to be fully internalised, given that breaches continue to occur.

Indicator	**Situation in Albania**	**Progress?**
Actors invoking the norm	Norm invoked by organisations such as AHC and the European Institute of Tirana, and by international and regional bodies such as UNCAT and CPT, although less frequently by Albanian lawyers in the context of ECtHR. There is some evidence of involvement by professional bodies such as the Albanian Association of Psychiatrists.	Progress
Domestic accountability	2001: the Albanian National Police's Office of Internal Control began to investigate and punish misconduct by individual officers. 2004: a prison director and chief of the prison's police were dismissed after an investigation by the general directorate of prisons found that prison staff had carried out abuse. 2012: ECtHR case of *Ceka v Albania* where the state admitted responsibility.	Some progress. While some violations continue to go unpunished, the risk of punishment has increased, altering the cost/benefit calculation for potential abusers and the authorities.
Positive role played by NPM	Good relationship with NGOs	Progress

The evidence indicates that Albania has made at least some progress towards internalising the norm prohibiting torture. The state seems to accept civil society is a legitimate partner in addressing issues of torture and ill-treatment, which in turn enables civil society, through its norm patrol, to make progress in ingraining better practices in this area.

Chapter 7 Romania

As in the previous two chapters, this chapter begins by tracing the trends in (i) civil society advocacy and (ii) torture and ill-treatment in the state concerned over the last two decades. Although Romania acceded to the EU at the same time as Bulgaria in 2007, therefore facing the same set of external pressures for reform, there was an important difference with regard to domestic political conditions: a notably lower level of civil society advocacy, as measured by the USAID CSO Sustainability Index. Accompanying this lower advocacy score is a failure by Romania to improve its performance on torture. So does the former contribute to the latter? This chapter explores civil society efforts to bring about change, and considers why such change has proved so elusive in practice.

Romania is the largest and, relatively speaking, the wealthiest of the four states under consideration. Although all four case studies have been classed as middle-sized territory and middle-sized population (see chapter 2), it is worth noting that Romania is approximately twice the size and twice the population of the next largest, Bulgaria. As discussed previously, this relatively larger size may create some challenges with regard to central government's control over its more remote agents (see the discussion of the principal/agent problem in chapter 1) and for access by NGOs based in the capital to outlying regions for the purposes of monitoring, training, and relationship-building. In logistical terms, these challenges complicate the task of norm patrol.

1. Trends in Torture and Advocacy

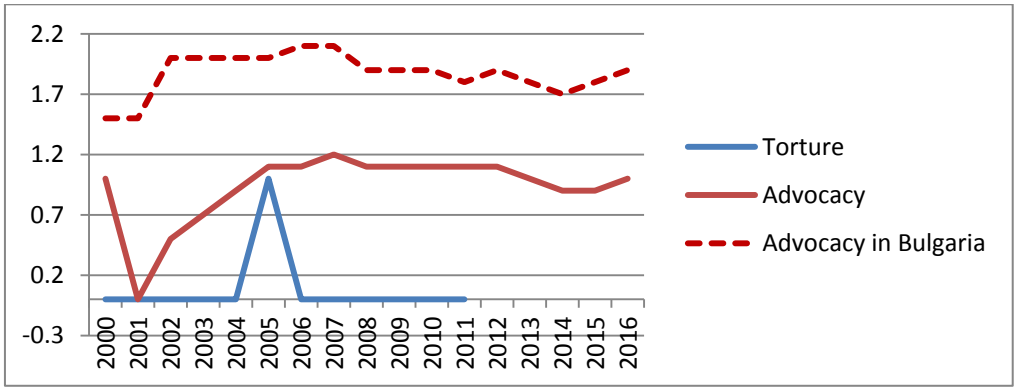

Figure 1 Torture in Romania (CIRI scores) and Advocacy in Romania (USAID scores), compared with advocacy in Bulgaria

After a particularly low score in 2001, advocacy scores for Romania increased steadily up until 2005, the year in which the EU accession treaty was signed, peaking in 2007, the year of formal EU accession. The time-frame for accession is the same as that of Bulgaria, so the states experienced similar incentives to demonstrate reform at similar times, with the key difference being the fact that Romania has had a much lower level of civil society advocacy throughout the period.

Bulgarian civil society was able to exploit the opportunity offered by EU accession, as shown in chapter 5, resulting in a sustained improvement in relation to torture practices. Romania has not shown this degree of positive change, demonstrating a better performance on torture in one year only, 2005. As noted above, this is the year when the EU accession treaty was signed, which can be interpreted as meaning that Romania adopted a purely rationalist approach to improving its performance on torture: it demonstrated an improvement at the point when its EU accession treaty required ratification by other EU member states, but once this external motivation had expired, the state's performance reverted to its previous problematic level. The

implication is that for some reason the state did not internalise its commitments to reform such that they became integrated into a new norm-compliant self-identity (in constructivist terms). This chapter explores whether the reason for this missed opportunity is that civil society was thwarted in its efforts to make this happen.

To determine torture trends since 2011, there is unfortunately no Romanian equivalent of the annual Bulgarian Helsinki Committee survey of abuse reported by detainees. As with Albania, it is necessary to resort to the wording of the annual US State Department Report on Country Practices on Human Rights in order to discern the trend.

Year	*US State Dept Country Report description of torture in Romania*
2000	…there were credible reports that police beat detainees and used excessive force.
2001	…there were credible reports that police beat detainees and used excessive force. Human rights organizations cited numerous reports of torture and mistreatment by police. On at least two occasions police beat detainees to death …
2002	…there were credible reports that police beat detainees and used excessive force. Human rights organizations cited numerous reports of torture and mistreatment by police.
2003	As previous year
2004	As previous year
2005	…there were numerous credible reports of police torture and mistreatment of detainees and Roma, primarily through excessive force and beatings by police.
2006	As previous year
2007	As previous year
2008	As previous year
2009	…there were numerous NGO reports of police mistreatment and abuse of detainees and Roma, primarily through excessive force and beatings by police
2010	…there were reports from nongovernmental organizations (NGOs) and the media that police mistreated and abused prisoners, pretrial detainees, and Roma, primarily through excessive force and beatings.
2011	As previous year
2012	… there were reports from NGOs and the media that police mistreated and abused prisoners, pretrial detainees, Roma, innocent citizens… primarily through use of excessive force and beatings. A report CPT report from November 2011 refers to "multiple allegations of mistreatment”
2013	…there were reports from NGOs and the media that police mistreated and abused prisoners, pretrial detainees, Roma, and other citizens, primarily through use of excessive force and beatings….
2014	…there were reports from nongovernmental organizations (NGOs) and the media that police mistreated and abused prisoners, pretrial detainees, Roma, and other citizens, primarily through use of excessive force including beatings. Media

	reported such cases …. In most cases the police officers involved were exonerated.
2015	As previous year
2016	…there were reports from nongovernmental organizations (NGOs) and media that police and gendarmes mistreated and abused prisoners, pretrial detainees, Roma, and other vulnerable persons… primarily with excessive force, including beatings. Media reported various instances of such abuse throughout the year. In most cases, the police officers involved were exonerated. The NGO Romani Center for Social Intervention and Studies (CRISS) stated that, in 43 cases of police brutality against Roma it documented over the previous 10 years, there were no convictions at the national level, in part because of prosecutorial decisions not to send the cases to court…

Unlike the Albanian reports, there is no wording indicating an improvement from one year to the next. While the word "numerous" disappeared between 2009 and 2010, it was not accompanied by any suggestion that there had been a reduction in reports of ill-treatment, and no change appears in the CIRI score, so it seems unwise to attach too much significance to this semantic change. On the basis of the available evidence, it seems reasonable to conclude that we are not observing any significant reform in state performance on torture in Romania over the time period in question.

Unlike the other two states, CPT reports feature concerns about attempts by state agents to conceal ill-treatment of detainees. In its 2014 report, it noted:

> The CPT is particularly concerned by allegations of ill-treatment inflicted on detainees by personnel in the three prisons visited. Furthermore, it seems that detainees in Târgşor prison were warned not to talk to the delegation, and numerous detainees in the three prisons visited were particularly reticent in confiding in the delegation for fear of potential physical reprisals (in the prisons of Arad and Oradea) and/or disciplinary action (in the prison of Târgşor). [1]

[1] CPT, Report of Periodic Visit to Romania, 05/06/2014-17/06/2014, translated from French by the present author. The original French text says:

> *le CPT est particulièrement préoccupé par les allégations de mauvais traitements infligés aux détenus par des personnels dans les trois prisons visitées. En outre, il semble que les détenues de la prison de Târgşor aient été mises en garde de ne pas parler à la délégation et de nombreux détenus dans les trois prisons visitées étaient particulièrement réticents à se confier à la délégation par peur d'éventuelles représailles physiques (dans les prisons d'Arad et Oradea) et/ou disciplinaires (à la Prison de Târgşor).*

This attempt to conceal wrongdoing offers a striking contrast with Bulgaria, where the BHC annual surveys freely expose the extent of ill-treatment of detainees. Concealed problems are inherently more difficult to address.

Individuals interviewed for this research concurred that overall the state's performance had not greatly improved in relation its treatment of detainees.[2] There were some aspects which were better than previously: there had been some investment in infrastructure, meaning that physical conditions in prisons and in residential institutions had improved. There has been relatively more success in tackling ill-treatment within prisons than by police. For prison staff, according to one interviewee, "the mentality has changed a lot". They have encountered the work of NGOs, not just in detention monitoring, but also NGOs working on initiatives to reduce the transmission of HIV and hepatitis in prison, and over time have become more open to concerns about the welfare of the prison population: this is an example of how norms can be internalised through a process of habituation.

The police force reportedly shows less improvement. The police force is much larger than the prison staff, and officers move around more, so it is much more difficult logistically to reach a critical mass in the provision of training to police than it is for prison staff. Human rights topics are not a standard part of the police training college curriculum, and police generally have very limited exposure to human rights norms.[3]

There are also structural challenges: although jurisdiction for police abuses was changed from military courts to civil courts, oversight remains poor. The

[2] Interviews with author, Bucharest, March 2017.
[3] Ibid.

International Helsinki Federation for Human Rights reported in 2006 that legislative reforms had not been matched by a change in practice: while a law had been passed providing for independent oversight of police operations, it was not clear whether any such oversight occurred in practice, and there was no reporting on the findings, if indeed any had been made.[4] Over a decade later, an interviewee from APADOR-CH noted that the demilitarisation was only a partial success: even under civilian oversight, there is still a lack of transparency, but civil courts are easier to deal with than the military equivalent, so things are "slightly better". There are a number of different branches of police and gendarmes, some of which are not subject to any effective oversight, which remains an ongoing obstacle to reform.[5]

Interviewees noted that the biggest risk for abuse is for those individuals not formally recognised as detainees. In the criminal justice system, this covers an individual's first encounter with the police, when he or she can be "led to a police station" where they remain for up to 24 hours without any formal recognition of being "detainees". At this point, the only acknowledged right is for their name to be entered in a record held by the police station: this unrecognised detention period is the time of greatest risk for abuse, including for the purposes of extorting confessions.

Outside the criminal justice system, the state is also unwilling to acknowledge residential homes for children and those with mental disabilities as "places of detention" (although the CPT has visited and reported on such places and the ECtHR has issued judgement on violations taking place there). While an organisation such as APADOR-CH has been successful in negotiating access to detainees in prisons and

[4] IHF, *Annual Report on Human Rights Violations (2006): Romania*, 8 June 2006.
[5] Interview with author, Bucharest, March 2017.

police stations, NGOs wishing to monitor residential homes face much greater resistance. This is partly due to their non-recognition as “places of detention”, and partly structural: there are 47 local authorities which have a degree of autonomy in how they implement national rules/policies (on child protection and social assistance), and it is hard to build positive relationships with each of these local authorities. With a massive increase in the numbers of refugees and migrants in recent years, interviewees also expressed particular concerns at the conditions in closed centres where people were kept pending deportation, and where access for civil society was all but impossible.

This differential picture highlights an important point: the places of detention to which NGOs are most successful in negotiating access are also the places where improvements are most likely to have occurred. It is logical that authorities are more likely to be receptive to access where there is less to hide: some improvement may be a precursor to access by monitors as well as a consequence of it. As noted earlier in the chapter, however, shining a light on problems is an important first step towards addressing them; the denial of access is another form of concealment.

2. Civil Society in Romania

Since the fall of the communist leadership in 1989, Romania is considered to have made "impressive strides in establishing political and economic institutions that are accountable and a free civil society", according to Freedom House.[6] As with the three other cases studies, Romania's civil society is, however, negatively impacted by low levels of citizen engagement and lack of funding. NGO activities were assessed by CIVICUS as being "invisible to the majority of the population"; the organisations were "more oriented to the donors' priorities and unable to build local constituencies".[7] More positively, in a number of policy areas, there is good "specialization and professionalism" on the part of civil society organisations.[8]

Interviewees agreed that the public had little interest in or knowledge about the issue of torture and ill-treatment. Public discourse has been dominated by concerns about corruption rather than human rights. Victims are generally invisible, although a few cases that had made it into the media did attract public sympathy for the victim and condemnation of the abuse. In those cases, prosecutors acted more quickly, although were not necessarily more likely to prosecute. The official response was often a defensive one, such as to claim that images of abuse were staged to discredit manager of institution rather than to investigate fairly.[9]

As with Bulgaria and Albania, a limited number of organisations work on the issue of torture and ill-treatment.

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[6] Freedom House, *Nations in Transit 2015*, 518.
[7] CIVICUS and Civil Society Development Foundation, *Dialogue for Civil Society: Report on the state of civil society in Romania* (CIVICUS 2005), 3.
[8] Ibid 4.
[9] Interview with author, Bucharest, March 2017

Year	*Organisations met*
2018	*Periodic visit* Report not yet published
2014	*Periodic visit* APARDOR-CH Centre for Legal Resources
2010	*Periodic visit* APARDOR-CH Centre for Legal Resources Romanian Group for the Defence of Human Rights Independent Romanian Human Rights Society Transcena
2009	*Ad hoc visit* None listed
2006	*Periodic visit* APADOR Centre for Legal Resources Independent Romanian Human Rights Society Romanian Refugee Council League for the Defence of Human Rights Romanian League for Mental Health Representatives of the Bucharest Bar
2004	*Ad hoc visit* None listed
2003	*Ad hoc and period visit* APADOR-CH Romanian League for Mental Health Romanian Forum for Refugees and Migrants Solidarity for Abandoned Romanian Children
2001	*Ad hoc visit* None listed
1999	*Periodic visit* APADOR-CH Save the Children Romanian Association League for the Defence of Human Rights Romanian League for Mental Health

Table 2: CSOs with whom the CPT held meetings during its monitoring visits (Source: CPT reports). Organisation names translated from the French by the author.

The local Helsinki Committee, known in Romania as APADOR-CH, is the leading organisation dealing with detainees in the criminal justice system, while the Centre for Legal Resources works with inmates in residential institutions. Romani Criss has at times been active in relation to the rights of Roma (including taking cases to the

ECtHR), but did not respond to requests for an interview in March 2017 and was not believed to be very active at this period.

Using Brysk's typology, we see the predominance of *institutional reformers* and *advocates*.[10] *Affected populations* play a less prominent role, although some Roma-centred organisations have been active at various points, as noted in the case of Romani Criss. There is some involvement by *norm promoters*, such as the representatives of the Bucharest Bar.

While Romania is the biggest country in the case study, both in terms of geography and population, this was not matched by a proportionately larger NGO community: interviewees noted that it was hard for new NGOs to establish themselves and to attract funding. The NGOs that currently work in this area find it logistically challenging, slow and expensive to reach places of detention around the country.[11]

Challenges for civil society

None of the NGO staff members interviewed in the course of this research reported being directly threatened by the state in the course of their work, although relations were sometimes chilly. In 2005, a Romani CRISS representative reported harassment by police and city hall officials while monitoring an eviction case.[12] An interviewee in March 2017 said that local authorities had threatened to sue his organisation.[13]

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[10] Discussed in chapter 3. See Alison Brysk, 'Human Rights Defenders and Activism', in Anja Mihr and Matthew Gibney (eds), *The Sage Handbook of Human Rights* (Sage 2014) 346-347.
[11] Interview with author, Bucharest, March 2017.
[12] US State Department *Country Reports on Human Rights Practices for 2005: Romania* (2005). Available at https://www.state.gov/j/drl/rls/hrrpt/2005 (accessed 6 February 2017).
[13] Interview with author, Bucharest, March 2017.

Government wariness regarding the power of civil society increased in early 2017, when it attempted to pass legislation protecting state officials from investigation on corruption charges. There was a huge public outcry, with over half a million people turning out to demonstrate. The protest was successful, with the decree being repealed. In the aftermath, the government barely survived a no-confidence vote in Parliament. One NGO-based observer says that the state "panicked" at the realization that civil society could hold it to account.[14] There were attempts to introduce a law criminalising "attempts to impede the constitutional order", which would effectively make public protests illegal; another draft law mandated the closure of any NGO which failed to publish twice annual reports on its operating budget.[15] In November 2017, the Senate passed a law requiring NGOs to report their sources of revenue, and stripping them of eligibility for taxpayer funding if they were deemed to have engaged in political advocacy within the last two years. In March 2018, an amendment to the NGO law (Government Ordinance no. 26/2000) increased reporting requirements for NGOs, requiring them to report on the detail of their work, including the names of their beneficiaries, with substantial fines applicable to organisations that failed to comply.[16] An NGO commentator said "Romania's civil society is being strangled" by these proposed measures.[17] The environment is a very difficult one for civil society.

[14] Jonathan Day, 'Romanian NGOs on Tenterhooks as Government Takes Aim at Civil Liberties', 30 August 2017, *Liberties*, available at https://www.liberties.eu/en/news/romanian-shrinking-space-civil-society/12830 (accessed 18 March 2018).
[15] Ibid.
[16] CIVICUS, 'State Proposes Further Restrictions on NGOs in Latest Amendment to NGO Law', 13 March 2018, https://monitor.civicus.org/country/romania/ (accessed 18 March 2018).
[17] Orsolya Reich, 'Romania's Civil Society is Being Strangled', 13 March 2018, available at https://www.liberties.eu/en/campaigns/romanian-civil-society-freedom-under-threat-campaign/263 (accessed 18 March 2018).

As common in the region, some of the anti-NGO rhetoric took the form of attacks on Soros: a political party leader was reported as saying of Soros in January 2017 that "This man and the foundations and structures he has set up….have furthered evil in Romania".[18] Soros was accused of the government-affiliated Romania TV of "paying dogs to protest" in the earlier anti-corruption demonstrations of 2016. The television station was subsequently fined, but the allegations feed into the backlash rhetoric that civil society lacks legitimacy and independence, and is anti-patriotic.[19]

Interviewees distinguished between their relationships with the central authorities, such as government ministries, and local authorities. While partnerships were often workable with the former, relations with the latter were more contentious. There are 47 local authorities with a degree of autonomy in how they operate in terms of managing institutions, police and prosecutors, with central intervention being rare. Local authorities were reportedly much less willing to treat the NGOs as partners, slower to allow access to institutions under their control, more antagonistic, and less receptive to NGO recommendations. Prosecutors often treated the NGOs as an adversary, not taking their evidence into consideration and not accepting that they have common goals.[20]

As in Bulgaria, with EU accession, NGOs encountered a new set of difficulties involving funding. At this point, international donors withdrew funding in the expectation that EU funding would be available. EU structural funds were almost

[18] Jacob Grandstaff, 'George Soros' Romanian Ghosts, Part Two', online article, Capital Research Center, 8 January 2018, available at https://capitalresearch.org/article/george-soross-romanian-ghosts-part-two/ (accessed 4 March 2018).
[19] Emily Tamkin, 'Who's Afraid of George Soros', Foreign Policy website, 10 October 2017, available at http://foreignpolicy.com/2017/10/10/whos-afraid-of-george-soros/ (accessed 4 March 2018).
[20] Interview with author, Bucharest, March 2017.

entirely directed at public agencies and companies. Although NGOs are eligible beneficiaries (thanks to the lobbying of the Romanian NGOs Coalition for Structural Funds), in practice, the conditions for eligibility make this very difficult. Even aside from the difficulty of obtaining this funding, NGOs wanting to maintain a critical stance regarding the state may fear being compromised by accessing money distributed through the state.[21]

One interviewee reported that Romanian politicians were deliberately limiting NGO access to EU funding. According to this view, politicians feel threatened by a strong civil society, and fear it will block decisions they want to take, so they make it as hard as possible for NGOs to get financial support for their projects. In particular, the state introduced a condition that an organisation applying for funding had to implement at least 50% of the project. NGOs struggled to find resources (or access credit) to pay for projects upfront and then claim the money back from structural funds. Funding difficulties are therefore restricting the activities of the NGOs. The difficulty in accessing funding was not as a result of EU rules – it should in principle have been easier for NGOs to access EU funding than funding from private donors, as EU rules only require a 2% contribution by the recipient compared to a typical 10% contribution required by private donors. The difficulty was created as a result of local rules introduced by the Romanian government, leading to the conclusion that it represents a state attitude of suspicion towards NGOs, and a desire to limit the influence of civil society over the state.

[21] NGOs working on trafficking reportedly encountered similar problems with political interference – NGOs that were critical of the authorities or of the national agency were less likely to be able to access the funding disseminated via the national agency (interview with author, Bucharest, March 2017).

Civil Society strategies

As in Bulgaria and Albania, civil society more often pursues *depth* strategies (expert input into government strategies) rather the *breadth* (attempting to mobilise public sympathy). However, there have been instances where abuses have received public attention: for example, in 2005 Viorel Gionea was severely beaten by two police officers in Constanta, while two other police officers watched. He died of his injuries several days later. Local television stations showed amateur footage of the beating. The four officers were disciplined, with one being dismissed from the police force.[22] In 2014, a local chief of police resigned after surveillance camera footage showed him slapping and kicking a 14-year-old girl at police headquarters. The Directorate for the Investigation of Organized Crimes and Terrorism initiated an investigation. Tellingly, the 2014 incident also resulted in an investigation aimed at identifying the person who had disseminated the footage, suggesting potential victimisation of anyone publicising abuses in this way, and rendering it a risky approach for organisations.[23] It is further evidence of a state that reacts to criticism by attempt to quash the criticism rather than remove the cause. Such an attitude necessarily pushes civil society towards an *outsider* approach. Civil society cannot take an insider stance where the government pushes it away.[24]

The relative success of the anti-corruption protests show that an *inward-facing* strategy, ie. aimed at a domestic audience, can be successful, although the subsequent

[22] IHF, *Annual Report on Human Rights Violations (2006): Romania*, 8 June 2006.
[23] US State Department *Country Reports on Human Rights Practices for 2014: Romania* (2015). Available at https://www.state.gov/j/drl/rls/hrrpt/2014/ (accessed 8 February 2018).
[24] The IHF 2003 report recounts how APADOR-CH was invited to a hearing of the Senate's Human Rights Committee to present cases of police misconduct it had investigated. APADOR-CH duly gave its testimony. The Senate committee responded by issuing a press statement casting doubt on the credibility of some of the cases raised. What might have been an invitation to a CSO to take an insider stance thus ended with it being pushed back into an outsider position: IHF, *Annual Report on Human Rights Violations (2003): Romania*, 24 June 2003.

attempts by the government to subdue civil society demonstrate the risks. The role of the EU means that an *outwards-facing* advocacy strategy is also crucial for civil society. The government is using EU anti-money laundering requirements as a pretext for imposing onerous reporting requirements on NGOs: civil society is therefore attempting to persuade the EU that it must resist the application of its rules by states in this manner. The Open Society Justice Initiative produced a legal briefing for this purpose: drafted by an international organisation, the document was endorsed by over 40 local Romanian NGOs, an example of transnational activism in operation.[25]

As seen in the previous two chapters, *international* organisations played a key role in putting concerns about torture on the agenda during the early stages of independence, followed by an increasingly prominent role for *local* organisations. In the early 1990s international organisations such as Human Rights Watch and Amnesty International used their reports to draw attention to torture and ill-treatment within the country. The Helsinki Watch (later to become HRW) report 1993 noted a "consistent pattern of abuse and physical mistreatment" based on its interviews with detainees.[26] In January 1994, the same organisation issued a report on police lock ups in Romania, which found that "[n]early every arrestee reported having been beaten by police investigators before arriving at the lockups." Amnesty International agreed: its 1993 report referred to "credible accounts of police brutality contributing to the death of at least two detainees". In 1995 it released a special report on ill-treatment in

[25] See for example Open Society Justice Initiative, *Legal Briefing: European Union Law and Romanian Draft Law 140/2017 on Associations and Foundations*, 31 January 2018, available at https://www.opensocietyfoundations.org/sites/default/files/romania-legal-briefing-20180205.pdf (accessed 18 March 2018).
[26] Helsinki Watch, *Romania report 1993.*

Romania.[27] It reported that the Romanian authorities had taken its concerns seriously, responding in October the same year with reports from the Ministry of the Interior, the General Prosecutor's Office and the Ministry of Justice. These reports contained updates on the cases highlighted in AI's original report, including information that new investigations into police abuse had been initiated in some of those cases. AI welcomed this opportunity for "constructive dialogue".[28]

Over the next few years, these international organisations relied less on their own independent investigations, and provided a platform to disseminate the findings of local organisations. For example, the HRW 2000 report drew on the statistics provided by APADOR-CH which showed that in 90 percent of the police abuse cases APADOR-CH had monitored over the previous six years, the Military Prosecutor's Office had decided not to prosecute.[29]

Parau notes that while civil society had an unprecedented opportunity to change the behaviour of the executive in the run-up to the EU accession, the context of a weak domestic civil society and a strong executive meant that local activists needed considerable input from transnational activist networks in order to be effective.[30] As grassroots organisations in particular have limited capacity to network, she observes that they were reliant on their transnational allies proactively initiating them into the right networks rather than doing so of their own initiative.[31]

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[27] AI, *Romania: Broken Commitment to Human Rights* May 1995. EUR 39/01/95.
[28] AI *Romania: Update to May 1995 Report*, September 1995 EUR 39/19/95.
[29] HRW, *World Report 2000: Romania.*
[30] *Cristina Parau* (2009) '*Impaling Dracula:* how EU *accession empowered civil society* in *Romania'. West European Politics*, 32 (1) 119-141.
[31] Ibid.

3. Categories of Activism

(i) *Information-based activities*

As with its counterparts in Bulgaria and Albania, APADOR-CH publishes annual reports on its human rights activities, including information about torture. Whereas it was noted in the previous chapter that the Albanian Helsinki Committee report for 2014 and 2016 contained language praising the state for its attempts to engage with the issue, the APADOR-CH report for 2015 reported that "police abuse has grown instead of diminishing in spite of numerous ECHR condemnations…" and features a photograph of a man with facial injuries resulting from a police beating.[32] The difference in tone between the Albanian and Romanian reports illustrates the difference between organisations pushed into insider and outsider positions. The same year, APADOR-CH published findings from its "Eyes on Police Abuse" project on the proportion of complaints of police abuse reaching the courts.[33] In comparison to the Bulgarian Helsinki Committee's survey data, this information obtained through freedom of information requests submitted to police and judicial authorities. The General Inspectorate of Romanian Police refused to respond until APADOR-CH took legal action to require them to do so. Compared to Bulgaria, cooperation by the authorities with NGO information-gathering appears to be much more reluctant.

(ii) *Dialogue activities*

Investigating NGOs' relationships with the Romanian Parliament in the context of securing the implementation of ECtHR judgements, Donald and Leach found that "NGO representatives almost invariably expressed scepticism about the value of

[32] APADOR-CH, *2015 report*, 9.
[33] APADOR-CH, *Cu ochii pe abuzurile poliţei* (July 2015) available at http://www.apador.org/en/sunt-abuzurile-politei-descurajate-de-autoritati/# (accessed 8 July 2018).

engaging with parliament on matters of human rights implementation".[34] They reported the view of Romani Criss that it was "fruitless and inefficient" to engage with deputies and senators. An APADOR-CH representative explained that the difficulty was with the implementation rather than the letter of the law, so it was more important to engage with the administration and executive: the parliament was seen as having little influence.[35] Where members of Parliament refer to ECtHR judgements, many do so in a "self-interested, partisan, and media-driven" way, and may in fact misrepresent the judgements where expedient to do so.[36] In addition, "policymakers frequently ignore recommendations that originate from NGO coalitions".[37] The government has also been criticised for its frequent use of emergency ordinances, which allows it to adopt legislation without the prior scrutiny of parliament.

(iii) Strategic litigation

Romanian prosecutors remain reluctant to take action in the case of alleged abuses. APADOR-CH found that of the 3,034 abuse complaints filed against police between 2012 and 2014, only 14 went to court and 4 resulted in a conviction for abuse. In 2015, of 828 complaints about police brutality, only one complaint reached a court.[38]

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[34] Alice Donald and Philip Leach, *Parliaments and the European Court of Human Rights* (Oxford University Press 2016), 208.
[35] Ibid 208-209.
[36] Ibid 200.
[37] Ibid 94, quoting Freedom House, *Nations in Transit: Romania* 525, and USAID, *Civil Society Organization Sustainability Index 2013 – Romania*.
[38] APADOR-CH, *Cu ochii pe abuzurile poliţei* (July 2015) available at http://www.apador.org/en/sunt-abuzurile-politei-descurajate-de-autoritati/# (accessed 8 July 2018). Figures provided in English by APADOR-CH in an open letter to Nils Muižnieks, Commissioner for Human Rights of the Council of Europe and Dacian Cioloş, Prime Minister of Romania, dated 10 October 2016. See APADOR-CH, 'The Romanian Prosecutor's Office (POHCCJ) combats police violence through secret strategy", available at http://www.apador.ch/en/parchetul-combate-abuzurile-politei-printr-o-strategie-secreta/ (accessed 3 September 2018).

Unsurprisingly, many cases involving a claim of failure to carry out an effective investigation end up at the ECtHR. There have been many repetitive cases, where the Romanian authorities have failed to properly execute the judgment.

One interviewee noted that the knowledge base of prosecutors and police did not seem to be improving: they lacked knowledge and capacity regarding how to apply legislation and abide by international treaties. According to this interviewee, over the last decade, "things are worse if anything". In the past, when there was an alleged abuse, and where the prosecutor decided against bringing a case or the court found no violation, at least there was a detailed prosecution resolution or a proper reasoned judgement. "Now it's just two sentences. Even the appearance of legality is diminishing."[39] The suggestion is that training is needed both in relation to technical knowhow, but also in relation to influencing underlying attitudes. Another indication of incomplete socialisation was offered by a different interviewee. This interviewee recounted a conversation with a Norwegian NGO counterpart, who said that when a negative ECtHR decision is made, judges and lawyers are embarrassed and want to avoid it again. The interviewee felt that there was no equivalent of this shaming effect in Romania.

NGOs have filed applications related to deaths in psychiatric hospitals (including winning the right to represent a deceased victim),[40] attacks on Roma communities

[39] Interview with author, Bucharest, March 2017.
[40] *The Centre for Legal Resources on Behalf of Valentin Câmpeanu v Romania* ECtHR App. No. 47848/08– a landmark case in setting a precedent allowing NGOs to lodge a case on behalf of victims who would not otherwise be able to bring a case. The victim died in a psychiatric hospital at the age of 18. With no other representative, the Court allowed the NGO Centre for Legal Resources to act on his behalf to argue a violation of Article 2 ECHR.

(the *Moldovan* case being a particularly important pilot judgment),[41] and attacks on gay pride marches as well as cases of torture and ill-treatment by police. In *Notar v Romania*, declared admissible in 2003, APADOR-CH assisted the applicant, who was ill-treated while still a minor by police officers. Even though the case was settled, it led to an important change for complainants: the authorities agreed to change tax arrangements for individuals who attempted to sue for damages in domestic courts in respect of police abuse. Before then, the complainant was required to pay advance taxes for approximately 10% of the compensation being claimed. This obviously represented a deterrent to cases, as many would-be complainants could not afford the payment, in particular as there was no guarantee of being successful in their claim.[42] In recent years there have been huge numbers of cases on prison conditions – while not usually brought by NGOs as part of a litigation strategy, NGO monitoring reports are regularly referred to in the official ECtHR decisions.[43]

The Committee of Ministers was tasked with supervising the execution of a group of cases involving attacks on Roma, known as the *Barbu Anghelescu* (no. 46430/99)

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[41] *Moldovan v Romania (no.2)* ECtHR No. 41138/98 and 64320/01. Of the two judgments, one related to a friendly settlement. Budapest-based organisation ERRC represented applicants in this case, which related to a mob attack on Roma in 1993. Alongside the destruction of homes, there were physical attacks on individuals, including one person being burnt alive. In the friendly settlement the government offered financial compensation and also to take measures to ensure the respect of rights guaranteed under the ECHR. This included: *Moldovan v Romania (no 1)* para 29: enhancing school curriculum to fight discrimination; drawing up programmes for public information to challenge stereotypes about Roma; stimulating Roma participation in local society by promoting mutual assistance and community development projects; identifying and taking preventative measures in relation to conflicts likely to lead to ethnic violence; attempting to improve social conditions for Roma generally and this community (in Hădăreni) in particular. Implementation was supervised by the Council of Ministers. The subsequent cases of *Kalanyos and others v Romania*, ECtHR App. No. 57884/00 and in *Gergely v Romania* ECtHR App. No. 57885/00, involving complaints that the police failed to protect applicants, of Roma origin, from attack by non-Roma villagers, were struck out on technical grounds, with reference to the fact that the government had been required to take a number of measures as a result of the earlier case.

[42] IHF, *Annual Report on Human Rights Violations (2005): Romania*, 27 June 2005.

[43] For references to NGO reports on detention monitoring, see for example *Constantin Tudor v Romania*, ECtHR App. No. 43543/09, para 52; *Geanopol v Romania*, ECtHR App. No. 1777/06, para 37; *Vartic v Romania*, ECtHR App. No. 12152/05 para 34; *Mazâlu v Romania*, ECtHR App. No. 24009/03 para 40; *Lăutaru v Romania*, ECtHR App. No. 13099/04 para 78; 8 *Goh v Romania*, ECtHR App. No. 9643/03 para 3.

group. In its 2013 report, the Committee of Ministers noted that the awareness raising measures and training required by the state as part of its implementation of the judgements had failed to eradicate torture and ill-treatment against the Roma. It found that there was still "progress to be made" in order for criminal investigations to be deemed effective, and observed that "no conviction for acts prohibited by Articles 2 and 3 was reported during the reference period (2003 – 2012)." In 2016, the Committee of Ministers closed its supervision of the state's execution of these judgements. APADOR-CH, European Roman Rights Centre and Romani Criss jointly protested that this was premature, due to the ongoing lack of effective procedural safeguards against ill-treatment and of an independent investigating body.[44]

(iv) Practical Safeguards

The joint statement by APADOR-CH, European Roman Rights Centre and Romani Criss about the implementation of the *Barbu Anghelescu* group of cases summarises ongoing civil society concerns in relation to the practical safeguards. They flag up two areas of especial concern: the failure to carry out a prompt initial medical examination of individuals at the point when they are taken into custody, and the obstacles to accessing a forensic medical examination where a detainee alleges ill-treatment. They also note ongoing difficulties with conservation of and access to CCTV footage from places of detention.[45]

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[44] APADOR-CH, European Roman Rights Centre and Romani Criss, *Memorandum on the implementation of the judgments in the group of cases Barbu Anghelescu (no. 46430/99) concerning police brutality in Romania*, June 2016 available at http://www.errc.org/cms/upload/file/joint-submission-to-the-council-of-europe-on-implementation-of-police-brutality-judgments-in-romania-june-2%20016.pdf (accessed 18 March 2018).

[45] Ibid. Here the Memorandum cites Alston, in his *Report of the Special Rapporteur on extreme poverty and human rights on his mission to Romania* (April 2016) https://documentsdds-ny.un.org/doc/UNDOC/GEN/G16/072/54/PDF/G1607254.pdf?OpenElement

Police training on human rights is limited, and there does not appear to be a strong tradition of civil society delivery of training to the police. Although there have been some training initiatives, including by NGOs, they are simply not reaching a critical mass. As noted in chapter 2, small countries perform unexpectedly well on human rights, and it is possible that one reason is that it is easier to influence a critical mass of police officers in a state with a smaller population such as Albania, than in a state with a larger population such as Romania.

With regard to monitoring, as noted earlier in the chapter, APADOR-CH is able to carry out both announced and unannounced inspections of prisons and police stations, while organisations attempting to visit state-run residential homes and deportation centres find it much more difficult to gain access. One interviewee reported that once an individual has been formally charged, he or she is processed in the police lock-up by specialised staff. Knowing that there have been convictions for ill-treatment, those staff members are keen not to have people in their custody with signs of violence, in case they are blamed, and so will readily call doctors and prosecutors where needed.[46] APADOR-CH has been involved in a European project led by the Irish Council for Civil Liberties with the aim of embedding observers in police stations for periods of up to three months to monitor if rights are respected in practice, for example, whether detainees are informed of the right to a doctor, whether a lawyer actually turns up when summoned and so on. At the time of the research visit in 2017, attempts were underway to get permission from the relevant ministry/prosecutor's offices to put pressure on the police to allow access, as the police themselves were reportedly not proving to be very open to access requests.[47]

[46] Interview with author, Bucharest, March 2017.
[47] Ibid.

Romania was notably tardy in its implementation of the requirement to appoint a National Preventive Mechanism (NPM). It ratified the relevant protocol in 2009 and asked for three years rather than the usual two to implement it. Three years later, it still had not done so and had to seek a further extension. After considering creating a new institution for this role, it ended up by rushing through arrangements to add the role of NPM to the existing Ombudsman's office in 2014. As seen in the other case studies, including the NPM within the mandate of the Ombudsman can work well: an advantage is that the Romanian Ombudsman's office has sixteen regional offices, making it accessible to victims outside the capital. At the time of appointment, however, the Ombudsman's Office had no experts, no training, and no dedicated resources. The staff assigned to this role had to learn from the more experienced NGO monitors how to carry out monitoring. While a lack of resources also affects the NPM in Bulgaria, a significant difference in Romania is the Ombudsman's (and therefore the NPM's) lack of independence. In Romania, the Ombudsman is politically appointed, and Ombudsmen have been dismissed in the past for political reasons. There is a real concern over its willingness and capacity to be independent and criticise the state. The Romanian Ombudsman has been criticised for its failure to comply with the Paris Principles: in response, in January 2018, the state introduced a legislative amendment announcing its commitment to ensure full compliance with the Paris Principles.[48] It remains to be seen if this will be implemented in practice. Initially the NPM indicated that it would confine itself to pre-announced visits to places of detention. This would have reduced the ability of monitors to identify abuses, although it would at least have served as "norm patrol", in the sense of

[48] Romanian Ombudsman, "**National Human Rights Institution", undated statement on website, available at** http://avpoporului.ro/index.php?option=com_content&view=article&id=441&Itemid=283&lang=en **(accessed 18 March 2018).**

offering a regular reminder of the expectation of norm-compliant behaviour. The NPM subsequently amended its approach so it now does a combination of announced and unannounced visits. Having initially announced that its monitoring teams would be made up only of government officials, it yielded to NGO protests that this would undermine its independence. It now invites NGOs to take part in monitoring visits, although the basis on which invitations are issued is not always clear: some of the NGOs invited lack relevant experience of detention monitoring. In addition, while other members of the monitoring teams have their expenses for these visits covered, this financial support is not extended to the NGO representatives, which makes their participation more financially difficult for the organisations to sustain.

4. Conclusion

While civil society faces challenges in Bulgaria, its advocacy has attained a degree of traction that is not in evidence in Romania. State hostility to civil society, and the restrictions it imposes, has hindered civil society's ability to act as a conduit through which the state internalises human rights norms, including the prohibition on torture and ill-treatment. When criticised for a human rights violation, the state's habitual reaction is to turn on its critics rather than the perpetrator. Romania appears to be taking lessons from countries such as Hungary and Poland in taking measures to repress civil society, both in terms of disproportionate reporting requirements and in manipulating the dispersal of EU structural funds; such measures are symptomatic of a lack of willingness to work in genuine partnership with NGOs.

Parau found the prospect of EU accession did allow civil society to wield greater influence than previously as a result of new linkages to transnational advocacy networks, together with executive self-restraint in anticipation of EU accession.[49] She detects that some elements of "persuasion, social influence, socially constructed identities, and learning" did take place – the sociological aspect of state change highlighted by constructivist theories – and did help to shape state behaviour to a degree. However, examining civil society in Romania post-accession, it seems fair to conclude that these changes have not become well-embedded. The prospect of EU accession led to hopes that Romania would adopt a more norm-compliant approach, learned from its neighbours. However, there is a competing type of "contagion" in the region, whereby states such as Hungary and Poland pass on to their neighbours their strategies to suppress civil society. Romania currently appears more susceptible to the latter than the former.

The difference in outcome in Bulgaria and Albania on the one hand, and Romania on the other hand, does not seem attributable to less-valid strategic choices on the part of Romanian civil society. The strategies used by APADOR-CH are relatively similar to those used by its Bulgarian counterpart, but the outcomes are not the same. One difference is BHC's annual survey of ill-treatment in detention, arguably a uniquely effective tool that could be usefully adopted in a context such as Romania. Given the access issues, however, along with Romania's attempts to conceal incidents of ill-treatment, it is not clear that its use would be permitted by the state authorities. It is telling that where access to places of detention is possible (eg. APADOR-CH access to prisons), there has reportedly been some improvement. Where access has been

[49] *Cristina Parau* (2009) '*Impaling Dracula:* how EU *accession empowered civil society* in *Romania'*. *West European Politics*, 32(1) 119-141.

denied (other closed institutions), there does not seem to have been improvement. This is important evidence to support the contention that a sufficient degree of access is a scope condition for successful activism.

Referring back to the indicators of internalisation, Romania's progress can be summarised as follows:

Indicator	**Situation in Romania**	**Progress?**
Actors invoking the norm	Norm invoked by organisations such as APADOR-CH, and by international and regional bodies such as UNCAT and CPT; used by Romanian lawyers in the context of ECtHR. See however Donald and Leach's finding that Members of Parliament sometimes misrepresent ECtHR findings for their political advantage.	Some progress but a mixed picture
Domestic accountability	State's response to allegations defaults to denial rather than investigation	Problematic
Positive role played by NPM	Lack resources, expertise and independence	Problematic

Compared to Bulgaria and Albania, Romania demonstrates more resistance to the involvement of civil society, and consequently seems to have made little or no progress along the path leading to internalisation of the norm.

Chapter 8 Macedonia

Of the four states examined in this research, Macedonia experienced the most notable decline in its civil society advocacy score, which dropped steadily from 2007 onwards. As will be explored in this chapter, this period was marked by a political climate which was very hostile to civil society. Macedonia was initially considered an early contender for EU accession, but its political crisis saw its progress halted. It began the period with the best record on torture, as the only one of the four states receiving the middle CIRI score in 2000. As of 2011, it still appeared to be a middle performer on torture. This chapter will consider whether as advocacy declined post-2011, its performance on torture also declined.

The country's political history has been somewhat tumultuous: for much of its short history as an independent state, it has been marked by ethnic tensions, including resentment from ethnic Albanians who have often felt excluded from political participation. The police were politicized to the extent that Macedonia has been described as essentially a police state during the years 1998-2002.[50] This small state experienced a large-scale influx of refugees arising from the 1999 conflict in Kosovo, and 2001 saw the eruption of conflict in Macedonia itself, including serious abuses by a special police rapid response unit, known as the Lions. A peace deal, the Ohrid agreement, was struck by the end of 2001. International players such as the EU, NATO and OSCE were keen to avoid another lengthy Balkan conflict and were

[50] Biljana Vankovsk, 'Security Sector Reform in Macedonia', in Fluri and Trapans (eds), *Defence and Security*, vol. 2, 26-28, cited in Eirin Mobekk, 'Police Reform in South East Europe: An Analysis of the Stability Pact Self-Assessment Studies'. *Defence and Security Sector Governance and Reform in South East Europe Self-Assessment Studies: Regional Perspectives Police Reform in South East Europe by Nomos*, Geneva Centre for the Democratic Control of Armed Forces (DCAF) (2005): 155-168.

prepared to support the state to re-establish itself on a peaceful footing. For the first few years, the government seemed to be performing reasonably well on human rights, with the provisions of the Ohrid agreement largely being implemented. Macedonia submitted its candidacy for EU membership in 2004 and was formally recognised as a candidate in 2005.

The political climate changed in 2008 when Greece resisted Macedonia's entry into NATO on the basis that its name implies territorial aspirations in relation to the Greek region which also carries the name of Macedonia. Greece has adopted the same attitude in respect of Macedonian aspirations to join the EU, despite Macedonia's success in securing an ICJ ruling that Greece's actions were incorrect. The (then) ruling party, the Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity (VMRO-DPMNE), responded by increasing its insistence on the ancient Macedonian lineage of the majority of the population and with increasing levels of intolerance for criticism, conflating criticism of the party with a failure in patriotism towards the state. Its hostility to civil society criticism is explored in more detail below. From 2010 the government embarked on an expensive campaign (known as "Skopje 2014") to affirm the country's identity through the erection of huge statues and museums in the capital (considered by many Macedonians to be at least partly a money-laundering exercise). In December 2012 there were physical scuffles between government and opposition MPs within the parliament. A phone-tapping scandal became public in 2015. The EU Commission described Macedonia in 2016 as a captured state.[51]

[51] "Concerns about state capture affecting the functioning of democratic institutions and key areas of society persist": European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2016 Communication on EU Enlargement Policy*, Brussels, 9.11.2016 COM(2016) 715 final,

There were mass protests in 2015 and 2016, with the latter sometimes referred to as the "Colorful Revolution"; traces of paintballs on public buildings (and at the entrance to the Macedonian Helsinki Committee office) were visible at the time of the research visit in May 2017. Anti-government rallies were countered by pro-government rallies. In March 2017, the EU warned the Macedonian government that its ethnically divisive rhetoric amounted to "playing with fire".[52] April 2017 saw Macedonian nationalists breaking into the assembly and attacking members of Parliament in protest against the election of an ethnic Albanian Speaker. A breakthrough came in May 2017, when the ruling party agreed to the peaceful transfer of power to a new coalition government, which included ethnic Albanian representation.

Interviewees in May 2017 were optimistic that the installation of a new government would lead to a positive human rights "bounce", at least in the short-term. They felt criticism of human rights practices would be acceptable for the next few years because it would reflect on the previous government, as an inherited problem, rather on than the current one. The new government would want to demonstrate its legitimacy by implementing visible reforms. Membership of organisations such as NATO and EU would be a renewed possibility if such reforms could be demonstrated. There was renewed hope that civil society would be able to engage in proper dialogue with government, that its legitimacy will be accepted, that access to places of detention would again become possible, that there would be new

12. By contrast, on the same page of the report the European Commission commends Albania's "steady progress" and the fact that "Fundamental rights continue to be broadly respected in the country."

[52] Andrew Rettman, 'EU to Macedonia: "Stop playing with fire"', *EU Observer*, Brussels 22 March 2017, available at https://euobserver.com/foreign/137332 (accessed 31 March 2018).

opportunities for funding, and that proper independent accountability mechanisms would be put in place.[53]

1. Trends in torture and advocacy

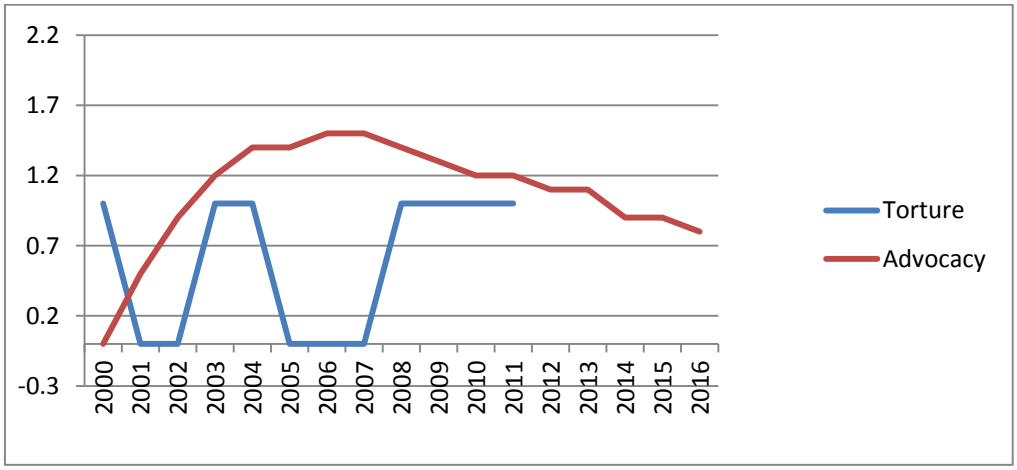

Figure 2 *Torture (CIRI scores) and Advocacy in Macedonia (USAID scores)*

During the period, the political backdrop sketched above affected the opportunities both for civil society advocacy, and the state's performance on torture. The graph shows that advocacy steadily increased in the run-up to the state's recognition as an EU candidate in 2005, peaking in 2006 and 2007. As with the other states, there is recognition by civil society that the prospect of EU accession represents an important opportunity to influence the state. With the change in the political climate from 2008 onwards, advocacy began a notable downward trajectory.

In relation to torture, the state's record deteriorates in 2001, at the time of the conflict. This is consistent with the findings in chapter 2 that conflict is strongly associated with worse state performance on torture. The score improves again in 2003, which

[53] Interviews with author, Skopje, May 2017.

may be largely attributable to the end of the conflict rather than to any specific torture-related intervention. After a further decline in performance in 2005-2007, the score improves again from 2008-2011. If we considered state performance only at the time of the CIRI cut-off point in 2011, Macedonia could be considered a relative success story, performing on par with Bulgaria and Albania, with all three achieving the medium score of 1 as compared to Romania's score of 0. However, if we attempt to evaluate state performance on torture after that date, the picture becomes quite different. Unfortunately, there is no Macedonian equivalent of the annual Bulgarian Helsinki Committee annual survey of abuse reported by detainees. As with Albania and Romania, it is necessary to resort to the wording of the annual US State Department Report on Country Practices on Human Rights in order to examine trends.

Year	*US State Dept Country Report description of torture in Macedonia*
2000	"police occasionally used excessive force during the apprehension of criminal suspects, and they occasionally abused prisoners, especially members of ethnic minorities"
2001	"police frequently used excessive force during the apprehension of criminal suspects and often tortured and abused prisoners, especially members of the ethnic-Albanian minority. Police beatings of ethnic-Albanian males were common and frequently were conducted with implements such as wooden bats, batons, iron bars, and steel cables; such beatings occasionally resulted in the death of the victims"
2002	"police at times used excessive force during the apprehension of criminal suspects and sometimes tortured and abused prisoners"
2003	Ditto
2004	Ditto
2005	"police at times used excessive force during the apprehension of criminal suspects and sometimes abused prisoners"
2006	Ditto
2007	"there were credible reports that police at times used excessive force during the apprehension of criminal suspects and that they abused prisoners"
2008	Ditto
2009	Ditto
2010	Ditto
2011	Ditto
2012	Ditto
2013	Ditto
2014	Ditto
2015	Ditto
2016	Ditto

From 2011 onwards, the situation with regards to torture and ill-treatment seems to be one of stasis and failure to improve. The Committee for the Prevention of Torture issued a report in 2016 that supports this contention. It is highly critical, categorising its relationship with the state as "profoundly dissatisfactory" on the basis that the state had repeatedly failed to implement the recommendations that the CPT had been making over the years of its visits. It noted that in Idrizovo Prison in particular, "prisoners are not safe". The CPT accused the authorities of indifference to this situation.[54]

2. Civil Society in Macedonia

According to the 2011 CIVICUS civil society index report, civil society in Macedonia was most active in the area of human rights as compared to other areas such as poverty eradication.[55] The sector was strongly networked, and benefitted from diverse sources of funding, both from international donors such as the EU, from the state, and from membership fees.[56] However, as with the case studies in previous chapters, there was "insufficient involvement" by the public in civil society activities, in a society marked by low trust and low inclusion.[57] Low availability of paid roles in CSOs alongside low volunteering rates limited the human capital available within the sector, threatening the sustainability of activities. As with the other states examined

[54] CPT, *Report to the Government of 'the former Yugoslav Republic of Macedonia' on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 9 December 2016*, CPT/Inf (2017) 30 Strasbourg, 12 October 2017, 23.
[55] CIVICUS, *Civic Engagement – Long Road to Go: CIVICUS Civil Society Index Report for the Republic of Macedonia* (Macedonian Center for International Cooperation, Skopje March 2011) 51.
[56] Ibid.
[57] Ibid 52.

in this research, accountability was primarily construed in terms of foreign donors rather than a local constituency.[58]

As in the other states examined here, a limited number of NGOs work on the issue of torture and ill-treatment. During its ad hoc and period visits, the Committee for the Prevention of Torture met the following organisations:

Year	*Organisations met*
2016	*Ad hoc* None listed
2014	*Periodic* Macedonian Helsinki Committee Poraka (Centre for the Support of Persons with Mental Disabilities)
2011	*Ad hoc* None listed
2010	*Periodic* Centre for support of persons with intellectual disability - PORAKA Civil Society Research Centre Macedonian Helsinki Committee
2008	*Follow up to the 2006 and 2007 visits* Macedonian Helsinki Committee
2007	*Ad hoc* None listed
2006	*Periodic* Macedonian Helsinki Committee Centre for support of persons with intellectual disability - PORAKA Organisation for Support of People with Mental Illnesses "Welcome" Civil Society Research Center
2004	*Ad hoc* Macedonian Helsinki Committee for Human Rights Civic Society Resource Centre (CSRC)
2002	*Periodic* Macedonian Helsinki Committee for Human Rights Civic Society Resource Centre (CSRC) Macedonian Psychiatric Association
2001	*Ad hoc* Local - Association for Human Rights Protection of Roma - Civil Society Resource Centre

[58] Ibid.

	- Macedonian Helsinki Committee for Human Rights - Natyra <u>International</u> - Human Rights Watch

Table 2: CSOs with whom the CPT held meetings during its monitoring visits (Source: CPT reports). The names are reproduced as they appear in the CPT reports, so in some cases are reproduced differently across different visits.

Using Brysk's typology, we again see a leading role for *institutional reformers* such as the Helsinki Committee. There are *advocates*, a "conscious constituency" prepared to lobby governments on behalf of victims who cannot speak for themselves (Human Rights Watch in 2001). *Affected populations* include a Roma-centred organisation (Association for Human Rights Protection of Roma) and Pareko, an organisation of the parents and families of individuals with intellectual disabilities. There is a professional *norm promoter* in the form of the Macedonian Psychiatric Association.

Challenges for Civil Society

Across the sector as a whole, activism is often associated with political and ethnic allegiances. The Macedonian Centre for European Training argues that the ruling political party has deliberately stymied the development of authentic local civic activism that transcends such ethnic or party concerns. It has done so by manipulating the public discourse to discredit genuine social movements; where protests have taken place, the ruling party has also responded by sponsoring counter-protests aimed at serving the party's own purposes.[59] An example of this response

[59] Macedonian Centre for European Training, *Traitors, Hirelings and Sandwich-Protestors: Civil Activism in the Macedonian Public Discourse* (Foundation Open Society - Macedonia 2013), 5 et seq. One interviewee pointed out that the organisation responsible for researching and writing this publication perceives itself as the victim of the government actions it describes: this report should not necessarily be read as an objective, academic account of the situation. However, NGOs' own

was seen in the protests that followed the killing of a young man named Martin Neskovski by a police officer on the night of 5-6 June 2011, during celebrations for VMRO-DPMNE's electoral victory in the city centre. The Ministry of the Interior first denied the incident, admitting it only two days after the event. The perception of an official cover-up led to street protests over the rest of the summer. According to the Macedonian Center for European Training, the governing party claimed that the protestors belonged to the opposition and were cynically making political capital out of the death: a governing party-backed counter-protest duly took place outside the opposition headquarters, denouncing the politicisation of the young man's death.[60] The culprit received a 14-year prison sentence, and the case was noted in the European Commission's Progress Report for the Republic of Macedonia 2011, but the other demands of the protesters against police brutality, such as increased civil oversight in relation to the Ministry of the Interior, were not met.

According to the analysis of the Macedonian Center for European Training, much of the coverage in government-backed media focused on anti-NGO narratives, even though NGOs were not part of the initial protests.[61] One newspaper article referred to the perils presented by "a strong non-governmental sector, which in our country could be disastrous. A strong non-governmental sector in a weak country can create chaos".[62] Colonising the high moral ground, commentators accused NGOs of distastefully "attempt[ing] to score political points on the brutal murder of an innocent young man".[63]

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perceptions of their working environment are relevant to this account: all references to this publication should be understood in this context.

[60] Ibid 22.

[61] Ibid 24-25.

[62] Ibid 25. English translation by the author of the report.

[63] Ibid and ditto.

As in Bulgaria and Romania, the figure of Soros represented a bogeyman in the government-backed media: protestors were "Soros vultures" and Soros was portrayed as bankrolling protest lacking genuine indigenous roots.[64] Individuals motivated to protest police brutality were portrayed as "sorosoid-instigated, ill-intended, politically motivated".[65] In the view of the Macedonian Center for European Training, this discouraged potential protestors, and "controlled the hegemonic discourse".[66] The fact that the MHC supported the protest along with the main opposition party led to suggestions of a conspiracy to overthrow the ruling party.[67] Activists were stigmatised as the Other, as dangerous agitators: criticism of the ruling coalition was conflated with criticism of the state, so protestors became portrayed as anti-patriotic - traitors to their homeland. Then Prime Minister Gruevski argued that instead of looking to foreign donors, local civil society should rely only on government funding, a measure which would have significantly eroded the independence of the sector.[68]

According to CIVICUS, other government-backed attempts to colonise the civil society space include Stop Operation Soros (SOS), launched in January 2017 to promote claims that Soros was bankrolling the opposition by channelling funding through NGOs; the pseudo-protest movements Movement Tvrdokorni and Ilinden 4: Civic Initiative for Common Macedonia (holding protests which promoted the government agenda); and the registration of two new pro-government organisations, the Association National Front – Prilep Municipality and Foundation Macedonian

[64] Ibid 26.
[65] Ibid 28.
[66] Ibid.
[67] Ibid 25-26.
[68] Ellery Roberts Biddle and Filip Stojanovski, 'Despite regime change, Macedonia still reeling from persecution', IFEX, 4 January 2018, available at https://www.ifex.org/macedonia/2018/01/04/civi-society-persecuted/ (accessed 31 March 2018)

Heritage Todor Aleksandrov.[69] This phenomenon of GONGOS – government-organised "NGOs" – was previously noted in chapter 4.[70]

Government suspicion and hostility has also found expression through aggressive financial inspections. According to the US State Department report 2016, shortly before the December elections, the Public Revenue Office announced it would audit NGOs associated with the civil society-led campaigns "We Decide," "We Deserve Better," and "The Citizens of Macedonia". The opposition party SDSM subsequently stated that forty-two members of the opposition who had expressed criticism of the previous government were themselves subject to audits and investigations. The US State Department noted that "Critics of the audits, including the ombudsman, called them a 'witch hunt' and urged public institutions not to serve the interests of the political parties or their members."[71] The Public Prosecutor attempted to establish funding link with USAID/Soros to make a case that MHC was financially backed to support the opposition.[72] The Tax Revenue office came to Macedonian Helsinki Committee office to inspect its accounts and, at the time of the research visit in May 2017, was still present in their offices after seven months.

Assessing the situation of Roma health activists, Abdikeeva and Covaci note that these individuals too "face harassment and pressures in the form of audits and

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[69] CIVICUS, 'Foundation Open Society Macedonia: "Civil Society Under Unprecedented Attack"', CIVICUS Monitor website, 5 April 2017, available at https://monitor.civicus.org/newsfeed/2017/04/05/foundation-open-society-macedonia-civil-society-under-unprecedented-attack/ (accessed 31 March 2018).
[70] See Julia Kreienkamp, *Responding to the Global Crackdown on Civil Society*, Policy Brief September 2017, Global Governance Institute 8.
[71] US State Department Reports on States Human Rights Practices 2016.
[72] Interview with author, Skopje, May 2017. See also Civicus Monitor 'Foundation Open Society Macedonia: "Civil Society Under Unprecedented Attack"', 5 April 2017, https://monitor.civicus.org (accessed 28 May 2017) and OMCT *Urgent Intervention - Macedonia: Smear campaign and administrative harassment against the Macedonian Helsinki Committee (MHC)*, 28 February 2017.

negative media coverage aimed at stifling their activism", with some activists facing further threats, "such as the prospect of family members losing their jobs, and even threats of violence if they continue participating in rallies and demonstrations."[73] In April 2017, the Executive Director of Foundation Open Society Macedonia described Macedonia civil society as facing "unprecedented attack", resulting in a closing of the available civil space.[74]

The ruling party's agreement to a peaceful transfer of power in May 2017 ended the political deadlock affecting the country, with a coalition government taking power. In June 2017, twenty-one NGOs affected by the "unwarranted, multiple financial inspections" described above held a press conference to demand "an impartial inquiry into the unjustified political pressure placed on civil society under the previous government" and for clarification and reform of the grounds on which the authorities could inspect NGOs. The sector expressed optimism that the new coalition government would offer a more welcoming and enabling environment for civil society activism.[75] In July 2017, the new government published its "Plan 3-6-9", which explicitly referred both to the recommendation of EU institutions and consultations with civil society, pledging *inter alia* that:

> The Government will treat the civil society as an equal partner and corrector of its decisions, with the full right of the civil society to participate in the policy-making

[73] Alphia Abdikeeva and Alina Covaci, 'The Impact of Legal Advocacy Strategies to Advance Roma Health: The Case of Macedonia' (2017) *Health and Human Rights Journal* 19(2), 99–110.
[74] CIVICUS Monitor, 'Foundation Open Society Macedonia: "Civil Society Under Unprecedented Attack" ', CIVICUS Monitor website, 5 April 2017, available at https://monitor.civicus.org/newsfeed/2017/04/05/foundation-open-society-macedonia-civil-society-under-unprecedented-attack/ (accessed 31 March 2018).
[75] Balkan Civil Society Development Network, 'Cautious signs of improvements in respect for freedom of association', CIVICUS Monitor website, 31 July 2017, available at https://monitor.civicus.org/newsfeed/2017/07/31/cautious-signs-improvements-respect-freedom-association/ (accessed 31 March 2018).

> process, to suggest and to criticize. The Government intends to make the dialogue with the civil society continued, transparent and fully inclusive.[76]

At the time of writing, it is too early to say how long it will take civil society to fully recover from the difficulties faced over the last few years. If the new government fulfils its commitment, Macedonia may be able to offer a hopeful example to show that the narrowing of civil space need not be a permanent one.

Civil Society Strategies

As with the case studies, much of the advocacy on torture and ill-treatment is carried out by a small number of experts in CSOs: the *depth* strategy discussed previously. However, the protests against police brutality that followed the death of Martin Neskovski show that wider public mobilisation has also played a role (*breadth* strategy). While it did little to change the actions of the then government, it created expectations for what the successor government would need to do in order to be legitimate.[77]

The government's hostility to the civil society sector up to 2017 has made it virtually impossible for organisations to adopt an *insider* approach (save for government-sponsored organisations with no real independence or willingness to criticise the authorities). CSOs were forced into an *outsider* approach. The findings here support

[76] Government of the Republic of Macedonia, 'Plan 3-6-9', 4 July 2017, downloaded in English via Ellery Roberts Biddle and Filip Stojanovski, 'Despite regime change, Macedonia still reeling from persecution', IFEX, 4 January 2018, available at https://www.ifex.org/macedonia/2018/01/04/civi-society-persecuted/ (accessed 31 March 2018).

[77] "These protests have tended to shape public opinion in becoming critical of the government's policies rather than in persuading the government to reverse its decisions" - Aneta Cekik and Lidija Hristova, 'The current state of civil society in Macedonia and its distinctive patterns of development' in Danica Fink-Hafner (ed) *The Development of Civil Society in the Countries on the Territory of the Former Yugoslavia since the 1980s* (Faculty of social sciences, Ljubljana 2015), 199.

Kitschelt's argument, set out in chapter 3, that the strategies used by social movements are largely determined by the political openings in the state in question.[78] He notes that activists tend to preferentially use insider strategies where possible, and are most effective where they have the most access to formal political decision-making. The outsider stance is adopted *faute de mieux* rather than as a matter of choice. The sector's outsider strategies was a manifestation of its tense relationship with the state: while there was little opportunity to change governmental policy or actions in the short-term, when viewed over the longer term, the sector's demands helped to frame expectations for the new government once it took power. With the new government's expressed openness to civil society from 2017 onwards, it is to be expected that CSOs will move to more insider strategies, although it is too early to identify whether this is in fact taking place.

The sector's criticism of the VMRO-DPMNE government can be understood in terms of the boomerang model: *inwards-facing* activism directed at the state gained little or no traction, but *outwards-facing* critiques directed at the EU and other actors were redirected back towards the state (see for example the EU's warning that the state was "playing with fire" in 2017) and eventually made its position untenable.

The three previous case studies featured a pattern whereby in the early 1990s, *international* organisations drew attention to the issue of torture and ill-treatment, with *local* organisations subsequently leading the way in reporting on the issue. Amnesty International noted in its country reports in 1994 and 1995 and again in 1998 that the torture and ill-treatment of ethnic Albanian detainees was a particular

[78] Herbert Kitschelt, 'Political Opportunity Structures and Political Protest: Anti-nuclear Movements in Four Democracies' (1986) *British Journal of Political Science* 16(1), 57-85.

concern, and it issued a full-length report on this issue in 2000.[79] In 2001 and 2002, it published reports focusing on the ill-treatment of Roma.[80] In 2002, the organisation issued a report on abuses by paramilitaries,[81] and in 2002 and 2003 it published reports on the ill-treatment of ethnic minorities (ethnic Albanians, ethnic Turkish and Roma).[82] Amnesty's focus then shifted to issues such as the state's complicity in the US rendition programme,[83] attacks on gay people,[84] and the abuse of migrants and asylum-seekers.[85] Its 2017/18 report reproduces information provided by the Hungarian-based European Roma Rights Centre and the European Committee for the Prevention of Torture.[86] Human Rights Watch has followed a similar trend: a report on police violence in 1998,[87] concerns about attacks on LGBTI activists,[88] and more recently concern regarding police violence against refugees and migrants.[89]

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[79] AI, *FYR of Macedonia: After the Aracinovo murders - Torture, ill-treatment and possible extrajudicial execution*, 22 June 2000, EUR 65/003/2000.
[80] AI, *Former Yugoslav Republic of Macedonia: Collecting blows - The alleged ill-treatment of Roma in Sasavarlija*, 1 November 2001, EUR 65/008/2001and AI, *Ex-République Yougoslave de Macédoine: Allégations de mauvais traitements infligés à deux femmes rom par la police de Strumitsa*, 1 August 2002, EUR 65/004/02.
[81] AI, *Former Yugoslav Republic of Macedonia: The 'lions' beat tonight: alleged ill-treatment of Macedonian citizens by paramilitary police*, 1 December 2002, EUR 65/025/2002,
[82] AI, *Former Yugoslav Republic of Macedonia: Police allegedly ill-treat members of ethnic minorities*, 22 January 2003, EUR 65/001/2003 and AI, *Former Yugoslav Republic of Macedonia: Continuing failure by the Macedonian authorities to confront police ill-treatment and torture*, 1 June 2003, EUR 65/008/2003.
[83] AI, *Open secret: Mounting evidence of Europe's complicity in rendition and secret detention*, 15 November 2010, EUR 01/023/2010 and AI, *Written submissions on behalf of Amnesty International and the International Commission of Jurists regarding El-Masri v "The Former Yugoslav Republic of Macedonia"*, 29 March 2012, EUR 65/001/2012.
[84] AI, *Macedonia must prevent homophobic attacks*, 23 April 2013, EUR 65/002/2013; AI, *Macedonia: Escalation in anti-LGBTI attacks in Macedonia*, 12 July 2013, EUR 65/004/2013; AI, *Macedonia: Same-sex marriage ban will entrench discrimination*, 20 January 2015.
[85] AI, *Barring refugees from Balkans is discriminatory*, 30 November 2015, AI, *Refugee Crisis: Balkans border blocks leave thousands stranded*, 20 November 2015; AI, *Macedonia: Tear gas and rubber bullets as border tensions mount*, 3 December 2015; AI, *Lockdown at the Macedonian border – illegal pushbacks of refugees to Greece*, 17 December 2015.
[86] AI, *Amnesty International Report 2017/18 - Macedonia*, 22 February 2018
[87] HRW, *Macedonia: Police Violence: Official Thumbs Up*, 1 April 1998.
[88] HRW, *Macedonia: Spate of Anti-Gay Attacks*, 10 July 2013.
[89] HRW, *Macedonia: Stop Police Violence Against Migrants*, 22 August 2015; HRW, *"As Though We Are Not Human Beings": Police Brutality against Migrants and Asylum Seekers in Macedonia*, 21 September 2015.

The situation differs from the states examined in previous chapters in that there is less evidence for the reporting baton being handed over to local organisations in recent years. While AI's 2017/18 report referred to two other sources (European Roma Rights Centre and CPT), neither are local to Macedonia. It is instructive to compare how the US State Department cites the Macedonian Helsinki Committee compared to its citations of Bulgarian Helsinki Committee in its 2016 reports. For Bulgaria, the US State Department makes multiple references to the BHC's reports on the situation of detainees (along with a reference to the attack on BHC President Krasimir Kanev). For Macedonia, the US State Department does not quote from the Macedonian Helsinki Committee's reports, but mentions its limited access to detainees, the arrest of one of its former members, and the questioning of some of its current members in connection with the protests. In Bulgaria, the local organisation has more obviously taken over as the primary monitor and reporter of abuses, while in Macedonia this is not the case, and the organisation features in this international reportage more as a victim of abuse than a source of information about the abuse of others. In another instance of the role that international organisations continue to play given the constraints on local organisations, the CPT met HRW during its monitoring visit to Macedonia in 2001. The CPT more commonly meets only locally-based organisations during its visits.

3. Categories of Activism

(i) *Information activities*

NGOs' ability to investigate and disseminate information about abuses was constrained by their lack of access to places of detention, described in more detail in the section on monitoring, below. While the Macedonian Helsinki Committee's September 2015 report refers to police abuses in a prison, the organisation is repeating the outcome of recent decisions by the ECtHR rather than providing new information based on its own findings.[90] MHC published a 2013 report based on its visits to psychiatric institutions,[91] and as of 2018 was publishing monthly reports on the situation of refugees, migrants and asylum-seekers,[92] but the denial of access to police stations and prisons severely restricted its ability to acquire and publish direct information about abuses in the criminal justice system.

As in Romania, organisations were able to make use of freedom of information requests to uncover some useful data. In 2015, the Macedonian Helsinki Committee wrote to all 26 courts and 22 public prosecutors' offices, receiving replies from about 75%. They were informed that from 2009-2015 there were approximately 70 complaints lodged relating to torture, leading to 30 investigations and 8 convictions, none of which resulted in time being served (any sentences were suspended).[93]

[90] MHC, *Quarterly Report on Human Rights in the Republic of Macedonia*, September 2015, 4.
[91] MHC *Report on the visit of the Helsinki Committee to the special institutions and psychiatric hospitals in the Republic of Macedonia for 2011 and 2012*, 12 February 2013.
[92] Available on website at www.mhc.org.mk/pages/ (accessed 8 July 2018).
[93] Interview with author, Skopje, May 2017.

Further inhibiting information strategies is the fact that, as in Romania, prisoners reportedly fear that reporting abuse will lead to reprisals.[94] The CPT's report of its 2011 visit stated that "prisoners were clearly convinced that complaining would aggravate their situation and lead to reprisals." According to one of the interviewees for this research, even when torture is obvious, it gets covered up.[95] Where organisations are prevented from carrying out their own monitoring, they are in a much weaker position to refute state denials about abuse. They may uncover individual instances, but it is harder to make the case that it is part of a systematic problem, and harder to propose system-wide solutions.

(ii) Dialogue strategies

The state's willingness to engage in dialogue with NGOs also shows a similar downward trajectory over the period under scrutiny. In its response to the CPT's 2001 visit, the state said that three working meetings were held between representatives of the uniformed police and those of the civil society, with the purpose of improving cooperation between NGOs and police.[96] By contrast, there is no equivalent in the state's response to the CPT's 2016 visit. It is evident that once

[94] CPT, *Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 to 24 November 2011*, CPT/Inf (2012) 38, Strasbourg, 20 December 2012, 7.

[95] Interview with author, Skopje, May 2017. The interviewee cited the case of an individual taken to hospital after a beating in prison, with injuries such that his kidney and spleen had to be removed. The prosecutor treated it as an assault rather than torture, which led to a 6-month sentence for the perpetrator of the beating, later increased on appeal. The perpetrator was held under house arrest from which he managed to abscond and leave the country, so did not serve his sentence.

[96] *Response of the Government of "the former Yugoslav Republic of Macedonia" to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or punishment (CPT) on its visit to "the former Yugoslav Republic of Macedonia" from 21 to 26 October 200*1, CPT/Inf (2003) 4, Strasbourg, 16 January 2003, 4.

the political climate became more hostile in 2008, NGOs had reduced opportunities to engage in training and dialogue with state agents.

(iii) Strategic litigation

Prior to the Criminal Code of 2013, if a prosecutor refused to bring charges, an individual could still take the complaint to court. This happened a few times, although with little success, and trials were unduly extended. Since the introduction of this Code, an individual may not bring a case in lieu of the prosecutor, so everything depends on the prosecutor's decision. If the prosecutor is not willing to bring charges, this decision cannot be appealed. The only recourse is ECtHR, and there have been a number of cases where the victim successfully established a breach of Article 3 due to the state's failure to investigate.[97] Most cases are brought by individual lawyers rather than NGOs as part of a litigation strategy: MHC's difficulty in getting access to prisoners and prisoners' fear of retribution mean that this is not a significant part of their strategy. The Budapest-based European Roma Rights Centre has however successfully taken cases to the ECtHR and in at least one case, it worked alongside a local Macedonian organisation, the Štip Association for the Protection of Roma Rights.[98]

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[97] *Asllani v The Former Yugoslav Republic of Macedonia*, ECtHR App. no. 24058/13; *Hajrulahu v The Former Yugoslav Republic of Macedonia*, ECtHR App. no. 37537/07; *Andonovski v The Former Yugoslav Republic of Macedonia*, ECtHR App. No. 24312/10; *Ilievska v The Former Yugoslav Republic of Macedonia*, ECtHR App. No. 20136/11; *Kitanovski* v *The Former Yugoslav Republic of Macedonia*, ECtHR App. no. 15191/12; *Trajkoski* v *The Former Yugoslav Republic of Macedonia*, ECtHR App. no. 13191/02.

[98] ERRC and the Štip Association for the Protection of Roma Rights both supported the applicant in *Dzeladinov v The Former Yugoslav Republic of Macedonia*, ECtHR App. no. 13252/02. ERRC supported the applicant in *Sulejmanov v The Former Yugoslav Republic of Macedonia*, ECtHR App. no. 69875/01 and *Jasar v The Former Yugoslav Republic of Macedonia*, ECtHR App. no.69908/01. In April 2017, ERRC reported that it would be bringing another case to the ECtHR after "the second case in less than a month involving the suspicious death of a young Romani man…..There were accusations from sources within the prison….that he was being mistreated by the prison guards and doctors. He was reportedly not getting enough food as the guards were taking it away from him…..The doctor is

(iv) Practical safeguards

The years immediately after the Ohrid agreement of 2001 saw opportunities for training, along with international support in areas such as police reform. The US-run International Criminal Investigative Training Assistance Program had already started providing technical expertise to the police and training the trainers in 2000 and developed a professional standards unit. The OSCE created a Police Development Unit assigning trainers and advisers to field stations. By July 2003, around 1270 police officers had undertaken training by the OSCE together with the Ministry of the Interior.[99] The state reported to the CPT that local NGOs were involved in these training initiatives: in 2002 the Macedonian Helsinki provided a 2-day workshop on police powers to stop and search, and led work to create a human rights manual for Macedonian police.[100] The same year, the NGO Center for Open Communication ran a seminar on policing multi-ethnic communities, with Open Society Institute funding.[101] By contrast, in the state's response to the CPT after its 2016 visit, it lists a number of training initiatives, but makes no reference to NGO involvement.[102]

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alleged to have told Jusinov that he was faking his condition, called him 'gypsy bastard', and refused to treat him". From ERRC press release 5 April 2017, "Another Romani Man Dies in a Macedonian Prison", http://www.errc.org/article/another-romani-man-dies-in-macedonian-prison/4564 (accessed 12 May 2017).

[99] Eirin Mobekk, 'Police Reform in South East Europe: An Analysis of the Stability Pact Self-Assessment Studies'. *Defence and Security Sector Governance and Reform in South East Europe Self-Assessment Studies: Regional Perspectives Police Reform in South East Europe by Nomos*, Geneva Centre for the Democratic Control of Armed Forces (DCAF) (2005): 155-168.

[100] *Response of the Government of "the former Yugoslav Republic of Macedonia" to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or punishment (CPT) on its visit to "the former Yugoslav Republic of Macedonia" from 21 to 26 October 2001*, CPT/Inf (2003) 4, Strasbourg, 16 January 2003, 4.

[101] Ibid, 5.

[102] *Response of the Government of "the former Yugoslav Republic of Macedonia" to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to "the former Yugoslav Republic of Macedonia" from 6 to 9 December 2016*, CPT/Inf (2017) 31 Strasbourg, 12 October 2017. It is not the case that all NGO involvement abruptly ceased from 2008 onwards: the state's reply to the CPT's report of its 2010 visit notes that in 2010, there were two workshops on the topic of human rights in policing, one involving the NGO Coalition for Fair Trials and the other involving ARKA Roma Rights Forum. *Response of the Government of "the former Yugoslav Republic of Macedonia" to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit*

Much of the state training is led by internal staff, although their response mentions the involvement of "three international consultants"[103] and a study visit to Ireland.[104] While potentially valuable, international training support is necessarily limited in duration, in contrast to the ongoing engagement of domestic civil society. Domestic civil society engagement helps to build relationships between local NGOs and with state actors: police, prison officers and Ministry officials, both senior and frontline staff, as well as with the NPM, as evident in the Albania case study. Where the same organisations carry out detention monitoring and also training activities, the knowledge derived from their monitoring visits helps to ensure that the training addresses the kind of problems that arise in practice within the local context. Chapter 6 notes that in the course of delivering training, the Albanian Helsinki Committee identified problematic attitudes by some police officers towards the ill-treatment of prisoners, and drew this to the attention of the Minister of Interior and the Director General of the State Police. Training carried out primarily or exclusively by international actors lacks this dimension. If norms are presented as international expectations rather than local demands, state officials remain subject to rationalist logic: standards must be met to appease external observers. It represents a missed opportunity to support the internalisation of norms, so that the new "logic of appropriateness" can take over in line with the constructivist approach.

In the report of its 2014 visit, the CPT noted that there had been improvement in the rights of access to a lawyer and a doctor, the right to have a third party notified of the detention, and the right to be informed of these rights, but "more remains to be

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to "the former Yugoslav Republic of Macedonia" from 21 September to 1 October 2010, CPT/Inf (2012) 5, Strasbourg, 25 January 2012, 7-8.

[103] Ibid 5.

[104] Ibid.

done".[105] Many detainees alleged that they were denied access to a lawyer during the initial 24-hour detention period, while some said that there were not allowed to consult their lawyer at any point prior to the court hearing.[106] Without a state-wide system of legal aid, access to a lawyer was "purely theoretical" for many.[107] Some, although not all, interviewees reported being granted access to a doctor; police officers were reportedly present during all medical examinations of police detainees, which is likely to inhibit allegations of ill-treatment.[108] The right to have a third party such as a family member informed of one's detention was not always applied in practice.[109] The CPT delegation noted that it was positive that police were now providing information sheets on the rights of detainees in multiple languages at the police stations visited, but it continued to receive complaints from some individuals that they had not been provided with this information.[110]

From 2004, the OSCE supported the Human Rights Project, which brought together five civil society organisations to support victims of police mistreatment. The project enabled the provision of legal assistance to victims; organisations took complaints to relevant bodies, such as the internal police oversight mechanism/Ombudsman/Office of the Public Prosecutor. In light of ECtHR cases criticising Macedonia for a procedural breach of art 3 ECHR (failure to investigate), OSCE pushed for the creation of independent oversight mechanisms, including the creation of a special unit within the public prosecutor's office or and independent commission and an oversight

[105] CPT, *Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 17 October 2014*, CPT/Inf (2016) 8, Strasbourg, 17 March 2016, 20.
[106] Ibid.
[107] Ibid.
[108] Ibid 21.
[109] Ibid 22.
[110] Ibid.

mechanism at parliamentary level. It also supported capacity-building at the Ombudsman's office.

With regard to monitoring, according to the US State Department report 2016, doctors, diplomatic representatives, the CPT and the ICRC have access to pre-trial detainees, with the approval of the investigative judgement. NGOs such as the Helsinki Committee have much more limited access: there needs to be a direct request from the individual detainee. This represents a significant curtailment of the organisation's previous right to monitor: it used to visit prisons until 2011, when the Director for the Execution of Sanctions (a member of the ruling party) refused them further access. In 2013, MHC was allowed to meet prisoners in visiting rooms, but this access was also withdrawn. At the time of the research visit in 2017, MHC was unable to carry out detention monitoring in police stations and prisons, although it was able to visit psychiatric institutions.[111]

In its account of its 2014 visit, the CPT noted with concern that the state commission which had been tasked with conducting monitoring visits to oversee the implementation of the 2006 Law on Execution of Sanctions had still not been established, more than eight years after the legislation was passed.[112] Macedonia ratified OPCAT in December 2008 and designated the Ombudsman as NPM. The NPM began operation in 2011, but had no dedicated budget line until 2013. At the time of CPT's 2014 visit there were three NPM positions, one of which was vacant. While it could invite professional experts to assist it with its monitoring visits, its

[111] Interview with author, Skopje, May 2017.
[112] CPT, *Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 7 to 17 October 2014*, CPT/Inf (2016) 8, Strasbourg, 17 March 2016, 50.

budget was insufficient to cover such costs.[113] In its June 2016 report, the NPM noted that two members had left and one was on long-term sickness leave. The Ministry of Finance was not acceding to the Ombudsman's request to have the vacant post filled. While the NPM was managing to do some visits thanks to a seconded member of staff from elsewhere in the Ombudsman's office, this lack of personnel clearly impacted the NPM's ability to carry out its monitoring functions. As a result of the influx of refugees and migrants, UNHCR was providing funding to the NPM as of mid-2017 on a short-term basis (funded till the end of the year), but its staff were reportedly young and inexperienced, and much of their detention monitoring focused (in line with the funding arrangement) on places where migrants and refugees were held.[114]

3. Conclusion

Chapter one noted that certain scope conditions need to be met in order for civil society activism to be successful in constraining torture and ill-treatment. Amongst other conditions, there needs to be sufficient democracy to incentivize political elites to accede to demands to restrain abuses. While this criterion was met at the start of the period under examination, this was no longer the case from 2008, with the capture of the state by ethnic Macedonian interests. In such a context, activism struggled to make an impact. The state offers an example of how actors hostile to human rights changes may counter-mobilise by means of a competing discourse based on stability and sovereignty. Civil society actors were delegitimized through their portrayal as cat's paws for sinister international actors: they were unpatriotic "Sorosoids", and the

[113] Ibid 15.
[114] Interview with author, Skopje, May 2017.

civil society sector required “deSorosification”. As in Romania, it was not possible for civil society to achieve the purchase needed to influence the state.

NGOs were prevented from accessing places of detention, and thus unable to undertake the process of norm patrol. The government attempted to show that it was complying with international requirements by designating the Ombudsman as NPM, but the NPM struggled to work effectively given the lack of funds and personnel. The CPT was allowed to access places of detention, but in 2016 was reporting that its recommendations were not being followed. As in Romania, detainees were fearful of reprisals in response to complaints.

A negative inference can be drawn here: the lack of monitoring has led to a lack of progress in tackling concerns related to torture and ill-treatment. The lack of monitoring means that abuses are not detected and reported, and there is also no real deterrence. It also limits the opportunities for civil society actors to build up relationships with the police and prison service. It blocks off channels through which norms can become internalised by state agents. Inability to monitor also limits other forms of activism – even if a CSO was invited to participate in training and dialogue with the state, it has less to contribute when it does not have the intimate knowledge of the context derived from monitoring activities. Strategic litigation is difficult where there is reduced access to detainees and where detainees fear retribution.

Applying the indicators of internalisation set out in the Introduction, Macedonia’s record is as follows:

Indicator	Situation in Macedonia	Progress?
Actors invoking the norm	Invoked by civil society and other actors; however the state has made efforts to discredit/delegitimise those invoking human rights norms as unpatriotic.	Problematic
Domestic accountability	Few examples of effective accountability measures.	Problematic
Positive role played by NPM	Extremely curtailed by lack of resources and relevant expertise.	Problematic

Macedonia is the negative case that supports the hypothesis: civil society has been blocked from taking the actions (especially detention monitoring) that are associated with improvements in the state's performance on torture and ill-treatment. In this environment, progress accordingly stalled, according to the evidence of the CPT reports.

EU support and the prospect of EU accession were important in ending the 2001 conflict and the state's improved record in the years immediately afterwards. Greece's opposition to Macedonian membership first of NATO, then of the EU, led to an angry backlash by the government. Chapter 1 noted Goodman and Jinks' suggestion that a state's compliance with norms on the basis of its desire to join the EU could be an instance of external incentives crowding out internal motivation.[115] If a state was carrying out reforms in order to position itself for EU membership, what would happen, they asked, when EU membership becomes less attainable or less desirable? Would the impetus for reform also drop away? The answer in the Macedonian context seems to yes, at least in the short term.

[115] Ryan Goodman and Derek Jinks, 'How to Influence States: Socialization and International Human Rights Law' (2004), *Duke Law Journal*, vol. 54 no 3, 621; Ryan Goodman and Derek Jinks, *Socializing States: Promoting Human Rights Through International Law* (OUP 2013).

However, identity formation is complex and far from unidirectional. When the new coalition government took power in 2017, its "Plan 3-6-9" reiterated its commitment to EU accession and to engagement with civil society. At this point at least, both elements were posited as aspects of the state's revised self-identity as a modern European state of good standing in the international community, a suggestion that there is an opportunity for the logic of constructivism to take hold, and that the state will be prepared to adhere to norms because norm-compliant behaviour fits with its preferred self-perception. Such an outcome is of course far from inevitable: the counter-narrative that uses ethnic chauvinism to appeal to sovereignty remains a threat for the future. At the time of writing, however, Macedonia offers hope that the narrowing of civic space across the region and beyond is reversible.

Chapter 9 Conclusions

The overarching purpose of this research has been to explore when and how civil society activism can act as a driver for a better state performance on torture. What are the pathways for this influence, and what conditions must exist for the activism to have an impact?

1. *Summary of Findings*

Chapter one noted the existence of a number of scope conditions for reform, including the absence of armed conflict, the existence of a demand that the state restrain abuse, and the presence of a sufficient level of democracy to incentivise political elites to pay heed to that demand, along with a civil society capable of articulating that demand effectively. Political will to end abuse must be accompanied by institutional capacity to bring about the required change. Chapter two demonstrated that states with higher levels of civil society advocacy usually have a better record on torture. Controlling for conflict, population size and levels of democracy, the evidence also showed that states with more openness to civil society activism also tend to perform better on torture than states that are less receptive to civil society input. Tracking progress over a five-year period, changes in the openness to activism score tend to be reflected in a corresponding change in the torture score.

Building on these findings, chapter three examined the mechanisms through which civil society exerts influence over state practices, including a typology of organisational strategies. This set the scene for the four country case studies: did their

differential levels of advocacy predict their outcomes on torture? On paper, conditions for reform seemed ripe in the four states at the outset of the period. All aspired to EU membership during the period, and two achieved it. All four states were therefore materially and socially vulnerable to international influence. Aspiring EU member states are subject to rhetorical entrapment in relation both to human rights and to the principle of civic participation, creating space for civil society actors to assert that torture reform matters for the "Europeanisation" process. Despite these important similarities, however, the states did not all demonstrate the same trajectory. State performance on torture improved in Bulgaria and Albania, but not in Romania and Macedonia. The fact that the two states which acceded to the EU (Bulgaria and Romania) performed differently to each other, as did the two states which aspire to accession but who have not achieved it (Albania and Macedonia) is significant, because it shows that torture performance is not satisfactorily explained by a state's efforts to meet EU accession criteria or ongoing conditionality measures once membership is achieved, or by the phenomenon of post-accession backsliding. The outcomes are in line with the prediction derived from the hypothesis that more advocacy means better state performance on torture: the two states with the best advocacy scores in 2016 are also the two states demonstrating the most improvement relation to torture. *EU accession creates an opportunity for change, but a sufficient level of civil society engagement is required in order to capitalise on this opportunity.*

Of the two states which failed to demonstrate progress, Romania and Macedonia, the issue is not the non-existence or incompetence of local civil society organisations. In both cases, there are NGOs with the interest and capacity to carry out the necessary advocacy activities. The problem is that *the scope condition of access* is not fulfilled.

This is a key finding of the research. Access is more important than choice of organisational positioning or strategy: the states with better levels of access, Bulgaria and Albania, have seen greater improvement, despite locating themselves differently on the insider v outsider spectrum, and a differing use of strategies such as litigation. Access here encompasses *access to decision-makers, to frontline state agents, and to persons deprived of their liberty*. This is a more expansive understanding of access than used elsewhere, as includes access to victims and potential victims while they are still deprived of their liberty.[564] An NGO which has been denied access to places of detention can still advocate for victims, for example, by taking legal action on behalf of victims who seek their support. Access to places of detention puts the NGO in a stronger position, however: it has a better overview of what is happening on the ground; its reports have more credibility; it can make more tailored recommendations; it has a better and more nuanced grasp of the prevalence of abuse. Many victims will not approach an NGO, for varied reasons including distrust, because they do not know their rights have been violated (expecting violence to occur in such settings), because of the stigmatisation of NGOs, out of fear of reprisals and/or a sense that little will be gained, or because they live far from the NGO base and there are logistical and financial hurdles. An NGO that can survey the entire population of a prison, as the Bulgarian Helsinki Committee has been doing, has a much firmer evidence base for its assertions, and can develop a clearer sense of what the practical challenges are and what concrete actions need to be taken in order to address abuses.

Beyond these practical points lies the *phenomenon of norm patrol*: through its regular visits to places where individuals are deprived of their liberty, the civil society actors

[564] Access is often framed as access to decision-makers: see for example Jutta Joachim, 'Framing Issues and Seizing Opportunities: the UN, NGOs, and Women's Rights' (2003) *International Studies Quarterly* 47 (2) 247-274; Jutta Joachim, *Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights* (Georgetown University Press 2007).

function as punctual reminders of the expectation that detainees' rights will be respected. NGO monitors can begin to build relationships with frontline staff and identify where problematic attitudes persist, but also where practical measures can encourage staff to act in appropriate ways (as seen in the Albania case study). What might initially seem a remote high-level commitment, the signing of an international treaty, becomes ever more familiar as a local expectation, particularly where it is backed up by the threat of a local sanction. It is not proposed that we become so reliant on the constructivist aspect ("This is what we do because this is the done thing") that we abandon the realist faith in sanctions ("This is what we do because there are negative consequences if we don't"). This applies both at the level of individual officials, such as police and prison officers, and also at the level of states – even the most ardent constructivist does not argue that a day will come when we can excuse states from the jurisdiction of supranational human rights courts, because they have so far internalised their human rights obligations that a violation has become unthinkable. Ultimately, the debate over whether constructivist theories or rationalist theories carry more explanatory power leads to the conclusion that both matter, although the relative weight varies according to the individual state context. Whether abuse happens or not is predicated on a complex web of decision-making, by individuals, institutions and states, and the strands are made up both of incentive-based reasoning (rationalist) and ideation (constructivist). With the exposure to expectations of compliance over time, the proportion of the latter motivation may increase compared to the former.

This concept of norm patrol adds to the conventional portrayal of NGOs as norm creators and norm disseminators: it highlights the symbolic importance of activities

such as detention monitoring as well as its practical utility. If international organisations are sometimes criticised for their short span of attention,[565] the local organisations examined here have demonstrated their constancy over two decades, day after day and year after year reaffirming their expectations of state behaviour. It is contended that this long-term process of reiteration by domestic actors is key to the socialisation of state actors. A senior police officer may attend a daylong training seminar by an international organisation explaining the international law on torture, and may be motivated to bring about change within the police station under his command. However, it is contended that real lasting change is more likely to occur when a local organisation visits that same police station year after year, reiterating the expectation of compliance, and flagging up all the instances where this expectation is not met. It takes time to reach a critical mass of state actors. Where NGOs are denied this access, such as residential institutions and closed centres for migrants in Romania, and more generally in Macedonia, their impact is much reduced. As they have less insight into what is happening, their reporting is compromised, and the training they provide (if they are permitted the opportunity to offer any) is less well adapted to the situation on the ground.

In the states where civil society had good access (Bulgaria and Albania), NGOs were able to carry out norm patrol, and states demonstrated both an improvement in their torture scores and met indicators for internalisation of the norm. Where access was more problematic (Romania and Macedonia), civil society norm patrol was greatly reduced, and the indicators for internalisation of the norm were not met.

[565] Philip Alston and Colin Gillespie, 'Global Human Rights Monitoring, New Technologies, and the Politics of Information' (2012) *European Journal of International Law* 23(4), 1089-1123, 1105.

The importance of transnational networks has often been lauded: international partnerships help with credibility, funding, and what Risse et al term the "boomerang effect": advocating outwards beyond the boundaries of the state so that the advocacy is reflected back inwards. What this research underlines is the indispensability of the local organisations: their long-term presence, the knowledge and expertise build up over decades, their actions, day in and day out, to patrol the norms and to make them of local relevance and importance. International activism on its own is not enough. Local organisations have deep local knowledge, understanding local power structures, legal systems, media priorities. With regards to detention monitoring, they can visit more places more often. They are accessible to victims. They speak the local language both literally and figuratively. They have the motivation; they are not going to be distracted by a media-friendly crisis on the other side of the world.

The case studies have explored the difficulties faced by local organisations. The practical obstacles should not be under-estimated, including their financial viability. In this regard, EU accession brings some challenges, at least in the short-term, for organisations. Their traditional donors pull out, leaving them to negotiate new funding arrangements: as seen in Romania, the state can manipulate access to EU funding in an attempt to hamstring its critics.

NGOs must often also contend with political hostility. The case studies outline how NGOs and NGO staff have been subjected to attack, physical, financial and reputational. Backlash manifests itself in accusations that such organisations are anti-patriotic, agents of the demonized Soros. Macedonia in particular experienced a dramatic closing of civil space in the years from 2008, although at the time of writing,

there is hope that this may be reversed after the transition of power in May 2017. Having found that civil society is crucial to realizing the opportunities of reform offered by the EU accession process, the conclusion is that the EU must considerably increase its efforts to counter the closing of civil space in the region. As well as advocating for rights, it must demand respect for rights advocates.

International human rights treaties matter, of course, but they are spades, not magic wands: tools that must be used, not magic artefacts that bring about change through their mere existence. Ultimately, it is this steady, unshowy, long-term persistence of local activists, drawing on international instruments, mechanisms and partners, and exploiting moments of state vulnerability, that makes all the difference.

Returning to the hypotheses set out in the Introduction, the evidence therefore supports all three:

1. Where scope conditions are met, states with higher levels of civil society activism perform better on torture than states with lower levels of civil society activism.
2. Access to decision-makers, state agents on the frontline, and individuals deprived of their liberty is an important additional scope condition for successful civil society activism in the area of torture and ill-treatment.
3. Access enables civil society actors carry out "norm patrol", which is an important pathway towards the socialisation of state actors.

4. Examining alternative explanations

Does civil society matter (1): is the prospect of EU accession itself sufficient to bring about state reform?

The differing trajectories of Bulgaria and Romania demonstrate that EU accession by itself does not bring about lasting state reform on torture in and of itself: it represents an opportunity for reform, but this opportunity needs to be exploited by a set of actors for whom genuine reform is a goal, and who will not be satisfied with apparent reform offered up as a signal of state respectability. These actors are found within civil society. Without effective NGO activism, the opportunity for reform offered by EU accession is missed.

Civil society contributes much-needed expertise on the local context. It identifies how abstract ideals need to be translated into concrete local practice. Its monitoring and reporting activities identify where reforms claimed by states are merely window-dressing, so the state is pushed to do more than otherwise would. Given the fact that the EU does not carry out significant human rights reporting in its own right, and UN and regional human rights bodies rely on the input of local organisations, where these organisations did not exist, the state would find it easier to fob off EU institutions with unsubstantiated claims of reform, undermining the value of pre- and post-accession monitoring mechanisms.

The same point applies to post-accession conditionality. Both Bulgaria and Romania were subject to conditionality requiring continuing reform in the area of justice and home affairs, although improved performance on torture did not feature strongly as a criterion. Dimitrova and Buzogany previously found that after accession, both Romania and Bulgaria remained sensitive to naming and shaming before EU institutions, and that NGOs could leverage this sensitivity to achieve more democratic

policy-making and implementation.[566] They concluded that these efforts were more successful in Bulgaria, where activists were more highly mobilised compared to Romania.[567] Their findings, which relate to environmental activism, are replicated here: EU accession and post-accession conditionality represent opportunities to make the state do the right thing, but they do not mean that that the state will spontaneously start doing the right thing. This moment of state vulnerability must be exploited by norm entrepreneurs with a clear vision of the change that is needed and the clout to bring its influence to bear.

Does civil society matter (2): is the existence of an NPM sufficient to bring about state reform?

The fact that the NPM was nominated by the state and has authority derived from an international treaty makes it harder for the state to dismiss its criticisms. We have seen in previous chapters that the relationship between NGOs and NPM appears to function well in Bulgaria and Albania, while in Romania and Macedonia, the state pre-empts meaningful criticism by the NPM by compromising its independence (for Romania in particular) and depriving it of resources. Given the association between effective NPMs and improved state performance, could progress have occurred due to the NPM alone, without NGO input?

In Bulgaria and Albania, the evidence shows the NPMs have benefited from working with NGOs, from their technical expertise and the knowledge acquired over years of detention monitoring and analysis of local legal arrangements. Organisations such as

[566] Antoaneta Dimitrova and Aron Buzogany, 'Post-Accession Policy-Making in Bulgaria and Romania: Can Non-state Actors Use EU Rules to Promote Better Governance?' (2014) *Journal of Common Market Studies* 52(1), 139–156.
[567] Ibid 152-3.

BHC and AHC have a much longer history than the local NPMs, and have been carrying out monitoring visits to more sites over a longer period. It may be possible in a different country context to identify an NPM that has driven reform independently of civil society, but certainly in states where the NPM is relatively new and inexperienced and with restricted resources (the case in all states examined here), the NGO contribution is extremely important in enabling them to carry out their mandate. There is an amplification effect where criticism emanates from more than one source: where concerns are expressed both by NGOs and the NPM, they reinforce one another.

Does civil society matter (3): could state institutions drive reform by themselves?

An important indicator of state internalisation of a norm is its institutionalisation. It is conceivable that in mature democracies with well-established institutions, such institutions can correct state abuses by themselves. With regard to US abuses in the context of the so-called "war on terror", it has been argued that it was state institutions – first the courts, then the change of regime through the usual democratic process – that halted torture, rather than the campaigning of human rights organisations.[568] According to Sikkink, there was some protest in transnational networks and through domestic mobilisation against US torture in Abu Ghraib/Guantanamo Bay, but ultimately change happened "primarily because the domestic institutions of a liberal domestic state forced the government back into compliance with human rights".[569] But at least where state institutions have limited capacity and lack independence, rigour and public trust, civil society is required to fill the gap. Over time, as state

[568] Kathryn Sikkink, 'The United States and torture: does the spiral model work?' in Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds), *The Persistent Power of Human Rights* (Cambridge University Press 2013)
[569] Ibid 290.

socialisation occurs, NGOs may become, not perhaps redundant, but less essential as the state institutions genuinely take responsibility. If this does happen, it does not imply that abuse will never happen, but it means that the state's own investigation and response mechanisms should kick in so the state becomes self-correcting. Even in relatively sophisticated democracies, however, state institutions will sometimes fail, and civil society still takes a watchdog role. To take a UK example, while a death in custody will lead to a state-initiated inquest, NGOs such as Inquest continue to play a role in highlighting patterns and demanding specific reforms.

Having considered these alternative explanations, it can be concluded that the hypotheses explored in this research retain persuasive explanatory power.

5. *Areas of possible future research*

Chapter two identified that, globally, there are a number of states with low openness to activism that still performed anomalously well in relation to torture. It has been conjectured that this surprising outcome is due to low reporting, limited local human rights expertise, and/or to the fact that complete autocracies experience little threat to tenure so that political elites feel little need to resort to torture. This last point is logical in terms of politically-motivated torture, but less so in relation to torture in the criminal justice sector. Unthreatened autocrats may lack a strong incentive to intimidate political rivals, but why should they care about the rights of individuals caught up in the criminal justice system? Many of the anomalous states have small populations, and it has also been theorized that smaller states may perform relatively better because they are more socially vulnerable, are less at risk of the principal/agent

control issue, may have fewer social cleavages, and that leaders may be more accessible to any activists that do operate. There may be more scope for quiet diplomacy, which leaves less trace on the record compared to, say, multiple public reports about violations. Further research could unpick which of these explanations carries most explanatory power within a specific context. In such states, there is the opportunity to explore whether there is an alternative mechanism to civil society, or whether civil society manifests itself in subtle ways that are less easily identified.

Returning to Europe, and in relation to the narrowing of civil space and its consequences, the Eastern Europe region offers fruitful opportunities for many further case studies. An obvious follow-up to this current research is an inquiry into whether Macedonia successfully reverses its narrowing of civil space after the 2017 political transition, and whether this results in measurable improvements in the state's performance on torture. In the region more generally, has the narrowing of civil space in Hungary and Poland been matched with a decline in their performance on torture? Will the EU follow through with threats to invoke Article 7 of the Treaty on European Union (enforced suspension of EU membership) and what will the consequences be? Will Bulgaria succumb to contagion by its neighbours and reduce the scope for civil society activism, and if so, will its record on torture consequently become worse? Chapter five noted that in 2017 Bulgarian Helsinki Committee reported that government departments had refused to renew an agreement regarding the monitoring of psychiatric hospitals, children's institutions and social care homes for adults with mental disabilities, a worrying sign that access is under threat. The progress of each of the four states over the next few years will continue to throw light on the effectiveness of civil society under very particular political conditions.

6. Policy Implications

Simmons has suggested that a "well-advised policy plan" is to focus on regional efforts to improve human rights, exploiting the multiplier effect by which states are likely to emulate their neighbours' performance on rights.[570] This advice is echoed here, with the added warning that backsliding in one state is also likely to be replicated by neighbours. The stratagems of backlash in one state may be borrowed by another: see for example the reoccurrence of tactics such as hostile tax inspections, and the anti-Soros rhetoric featuring in Macedonia, Bulgaria and Romania as well as other countries in the region.

Given this contagion effect, the narrowing of political space in one state is of course a concern both in relation to the state itself, but also in terms of the potential implications for other states in the region. The EU can and must do much more to combat this challenge within its member states and candidate states. It needs to take a firmer position on associational and organisational rights: the right to have rights. In the interests of its own future survival, the EU needs to counter the charge of democratic deficit, and should therefore have a strong self-interest in insisting that states be open to dialogue with their own civil society. It seems both an achievable and highly desirable position for the EU to take.

[570] Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009), 376.

With regard to EU candidate states, a state's respect for its own civil society (a genuinely independent civil society, not GONGOs directed by the state) should be a condition of its accession, and remain part of any conditionality arrangements post-accession. The EU should also be mindful of the funding challenges for local NGOs at the time of accession. It is not enough to make funding available to the state to pass on to civil society: the manner in which the funding is channelled must be carefully scrutinised to ensure the state does not exploit the opportunity to silence critical voices. International donors can also play a role in this regard: rather than simply withdraw funding on the assumption that NGOs will be able to access EU funding, they should work with the recipients of their funding to ensure that they are well prepared for the transition, and their future sustainability is real rather than just apparent.

Local organisations in states acceding to the EU should in turn scrutinise very carefully the national arrangements through which EU funding will be made available. They need to identify potential impediments such as requirements for unattainable levels of upfront investment by organisations out of their own funds as a precondition for seeking EU funding for a given project. With regard to advocacy strategies, this research has found that there is not necessarily a single right way to do advocacy: local organisations are best placed to understand what strategies are feasible and likely to be effective in the local context. However, in the spirit of positive regional contagion, organisations should share good practice across borders to see if there are particular strategies that can usefully be replicated. For example, the Bulgarian Helsinki Committee's illuminating annual survey of prisoners might usefully be implemented elsewhere.

Looking beyond the region, this research establishes that even where external incentives for reform are particularly compelling, domestic civil society remains central to embedding better human rights practices. By extension, international donors cannot rely on external incentives such as aid conditionality to bring about reform in third countries: external incentives may create an opportunity for change, but a sufficient level of domestic civil society engagement will be required in order to capitalise on this opportunity. International donors must emphasise the value of domestic civil society within the states they wish to reform.

7. Human rights: a failure to matter where needed most?

Despite the potentially propitious context of these four case studies, progress has been partial: while two of the states improved their record on torture, none of the four has achieved the best possible score on torture according to CIRI. If change is slow and difficult even under favourable conditions, what hope then for the citizens of states where there is less leverage for reform? Must we resign ourselves to the "failure of international human rights law to matter where needed most," that is, in states committing the worst violations?[571] What can be done in situations where scope conditions are not met?

Chapter one noted the somewhat pessimistic views of Bueno de Mesquita et al regarding states where the scope conditions for reform are not (yet) met. They observe that would-be international human rights reformers may have to wait for years until the conditions are ripe for a particular state to change; in the meantime, the

[571] Emilie M. Hafner-Burton and K Tsutsui ,'Justice Lost! The Failure of Human Rights Law to Matter Where Needed Most' (2007) *Journal of Peace Research* 407-425.

would-be reformers can support local activists and lobby internationally, but the authors suggest these efforts will yield little reward until the state reaches a sufficient level of democracy.[572] The implication is that such situations are simply too hard, such that it is hardly worth bothering: the international reformer can realistically only come back later, when the state is ready.

To many activists, this would be an oddly passive viewpoint. Activism has a more dynamic relationship with democracy than is implied in this description. Activists do not wait for the right scope conditions before they make any effort to bring about change: they "make the road by walking".[573] Democratic space is not granted by a state to a passive civil society as a gesture of largesse; it is actively claimed by an activist civil society, often in the face of state opposition. The act of claiming rights, including the right not to be tortured, is in itself a claiming of the space to make those demands. Achieving rights requires democracy, but the process of demanding rights contributes to the creation of democracy. As Joachim observes, at the beginning of the agenda-setting process, NGOs have limited influence, and their resources may be inadequate in the face of structural obstacles. Over time, however, their efforts alter the context, opening up new political opportunities. Their framing of issues is fiercely resisted at the start, but over time gains acceptance and legitimacy.[574] The rules of the game may work against them at the start, but NGOs help to change the rules of the game over the course of play. As seen in Macedonia, even if NGO

[572] Bruce Bueno de Mesquita, George W. Downs, Alastair Smith, 'Thinking Inside the Box: A Closer Look at Democracy and Human Rights' *(*2005) *International Studies Quarterly* 49, 439-457, at 456.
[573] The phrase is derived from a poem by Spanish poet Antonio Machado, and was used as a metaphor for the process of bringing about social change in Myles Horton and Paulo Freire, *We Make the Road by Walking: Conversations on Education and Social Change* (Temple University Press 1990).
[574] Jutta Joachim, 'Framing Issues and Seizing Opportunities: the UN, NGOs, and Women's Rights' (2003) *International Studies Quarterly* 47(2) 247-274; Jutta Joachim, *Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights* (Georgetown University Press 2007).

criticism of state abuse does not change state behaviour in the short term, it helps frame expectations for the next set of political leaders.

A riposte to Bueno de Mesquita et al on practical grounds is that local organisations, which feature strongly in this research for the sheer durability of their commitment, do not have the luxury of finding an easier state to work with. Their aim is not to tick off easy wins, but to bring about genuine change where they are. As Gorvin argues:

> To put forward solely easy-to-implement recommendations – low-hanging fruit – for the sake of being able to say that advocacy works is to trivialize the enterprise, and risks making the work of taking on the truly difficult human rights issues harder.[575]

Bringing about human rights improvements is a long, slow struggle. Acknowledging the obstacles is not a counsel of despair, but one of fortitude: nobody ever said human rights progress would be easy.

[575] Ian Gorvin, 'Producing the Evidence that Human Rights Advocacy Works: First Steps towards Systemized Evaluation at Human Rights Watch' (2009) *Journal of Human Rights Practice* 1(3) 477-487 at 482.

Appendix One – Country Scores

I. CSO SCORES ON ADVOCACY (USAID) COMPARED WITH STATE SCORES ON TORTURE (CIRI)

		2000		2001		2002		2003		2004		2005		2006		2007		2008		2009		2010		USAID total
		USAID	CIRI	USAID	CIRI	USAID	CIRI	USAID	CIRI	USAID	CIRI	USAID	CIRI	USAID	CIRI	USAID	CIRI	USAID	CIRI	USAID	CIRI	USAID	CIRI	
High CSO score	Estonia	2.0	2	1.8	1	2.1	1	2.0	1	2.0	1	2.0	1	1.9	1	1.8	1	1.8	1	1.8	1	1.7	1	20.9
	Poland	2.0	0	2.0	1	2.2	2	1.9	1	1.9	1	1.8	1	1.8	1	2.0	1	1.9	1	1.8	1	1.8	1	21.1
	Lithuania	2.0	1	2.0	0	1.8	1	1.6	1	2.0	1	1.9	1	2.0	1	2.0	1	2.0	1	2.1	1	2.0	1	21.4
	Slovakia	1.5	0	1.5	1	1.6	1	1.6	0	2.2	1	2.3	2	2.4	1	2.5	1	2.6	1	2.6	1	2.5	1	23.3
	Czech Rep	2.0	1	1.8	2	1.8	2	2.0	1	2.2	1	2.2	1	2.4	1	2.4	1	2.4	1	2.3	1	2.2	2	23.7
	Latvia	3.0	1	2.2	0	2.0	1	2.0	1	2.0	0	2.0	1	2.0	1	2.0	1	2.3	1	2.2	1	2.2	1	23.9
	Bulgaria	3.0	0	3.0	0	2.5	0	2.5	0	2.5	0	2.5	1	2.4	0	2.4	0	2.6	1	2.6	1	2.6	1	28.6
Med CSI score	Croatia	2.5	1	3.0	1	3.0	2	3.0	1	3.4	1	3.5	1	3.4	2	3.2	2	3.2	2	3.2	2	3.1	1	34.5
	Ukraine	4.0	0	4.0	0	3.5	0	3.4	0	3.1	0	3.1	0	3.0	0	2.9	0	2.9	0	2.8	0	2.7	0	35.4
	Hungary	3.0	2	3.5	1	3.5	1	3.3	1	3.3	1	3.2	1	3.2	1	3.3	0	3.2	1	3.1	1	3.1	0	35.7
	Macedonia	4.5	1	4.0	0	3.6	0	3.3	1	3.1	1	3.1	0	3.0	0	3.0	0	3.1	1	3.2	1	3.3	1	37.2
	Albania	4.0	0	3.0	0	3.9	0	3.6	0	3.4	1	3.3	1	3.3	0	3.3	1	3.4	1	3.4	1	3.5	1	38.1
	Bosnia	4.5	NA	4.2	0	3.9	0	3.6	0	3.3	1	3.3	1	3.1	1	3.1	0	3.1	1	3.1	0	3.1	0	38.3
	Kyrgyzstan	3.5	1	3.0	1	3.3	1	3.8	1	4.0	1	3.8	1	3.6	0	3.6	0	3.6	1	3.5	1	3.3	0	39.0
	Romania	3.5	0	4.5	0	4.0	0	3.8	0	3.6	0	3.4	1	3.4	0	3.3	0	3.4	0	3.4	0	3.4	0	39.7
	Armenia	5.0	0	4.0	0	4.2	0	3.8	1	3.7	0	3.8	0	3.8	0	3.7	0	3.6	0	3.4	0	3.4	0	42.4
	Kazakhstan	4.5	0	4.3	0	4.0	0	3.6	0	3.6	0	3.8	0	3.8	0	3.7	0	3.8	0	3.8	0	3.9	0	42.8
Low CSO score	Georgia	2.0	1	4.0	0	4.3	0	4.0	0	3.7	0	4.0	0	4.1	0	4.2	0	4.4	1	4.4	1	4.3	0	43.4
	Moldova	5.0	0	4.2	1	4.2	1	4.1	0	4.0	0	3.9	0	3.9	0	3.8	0	3.7	0	3.7	0	3.6	0	44.1
	Russia	4.5	0	4.9	0	4.2	0	4.5	0	4.2	0	4.2	0	4.1	0	4.0	0	4.1	0	4.1	0	4.0	0	46.8
	Tajikistan	5.5	0	5.0	0	4.5	0	4.5	0	4.6	0	4.6	0	4.9	0	5.1	0	5.2	0	5.1	0	4.9	0	53.9
	Azerbaijan	5.5	0	5.0	1	5.0	0	4.8	0	4.8	0	5.1	0	5.1	0	4.9	0	4.8	0	4.6	0	4.6	0	54.2
	Uzbekistan	5.2	0	5.1	0	4.9	0	5.1	0	5.6	0	5.8	0	5.9	0	5.9	0	5.9	0	5.9	0	5.9	0	61.2
	Belarus	6.0	1	5.5	0	5.4	0	5.7	0	6.0	0	6.0	1	6.0	0	6.0	0	6.0	0	6.0	0	5.9	0	64.5
	Turkmenistan	6.3	0	6.3	1	6.1	0	6.1	0	6.1	0	6.1	0	6.1	0	6.1	0	6.1	0	6.1	0	6.0	0	67.4

This table corresponds to Figure 2 on page 76.

II. STATE OPENNESS TO ACTIVISM COMPARED WITH SCORE ON TORTURE CONTROLLING FOR CONFLICT

Data on conflict is taken from the Uppsala Conflict Data Program. The threshold for conflict is deemed to be at least 25 battle-related deaths per calendar year, across the categories of intrastate, interstate, one-sided and non-state conflict.

States without conflict

	2006		2007		2008		2009		2010	
	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI
Finland	12	2	12	2	12	2	12	2	12	2
Germany	12	2	12	2	12	2	12	2	12	2
Iceland	12	2	12	2	12	2	12	2	12	2
Kiribati	12	2	12	2	12	2	12	2	12	2
Liechtenstein	12	2	12	2	12	2	12	2	12	2
Luxembourg	12	2	12	2	12	2	12	2	12	2
Monaco	12	2	12	2	12	2	12	2	12	2
Netherlands	12	2	12	2	12	2	12	2	12	2
St Kitts & Nevis	12	2	12	2	12	2	12	2	12	2
Tuvalu	12	2	12	2	12	2	12	2	12	2
Croatia	12	2	12	2	12	2	12	2	12	1
Malta	12	2	12	2	12	1	12	2	12	2
Belgium	12	2	12	2	12	2	12	1	12	1
Norway	12	2	12	2	12	1	12	2	12	1
Uruguay	12	2	12	2	12	2	12	1	12	1
San Marino	12	2	12	1	12	2	12	1	12	1
Slovenia	12	1	12	1	12	2	12	2	12	1
Austria	12	1	12	1	12	1	12	2	12	1
Canada	12	1	12	1	12	1	12	2	12	1
Chile	12	1	12	1	12	1	12	1	12	2
Czech Rep	12	1	12	1	12	1	12	1	12	2
Dominica	12	1	12	1	12	1	12	1	12	2
Barbados	12	1	12	1	12	1	12	1	12	1
Cyprus	12	1	12	1	12	1	12	1	12	1
Estonia	12	1	12	1	12	1	12	1	12	1
France	12	1	12	1	12	1	12	1	12	1
Australia	12	1	12	1	12	1	12	1	12	1
Bahamas	12	1	12	1	12	1	12	1	12	1
Latvia	12	1	12	1	12	1	12	1	12	1
Portugal	12	1	12	1	12	1	12	1	12	1
Slovakia	12	1	12	1	12	1	12	1	12	1
Sweden	12	1	12	1	12	1	12	1	12	1
Switzerland	12	1	12	1	12	1	12	1	12	1
UK	12	1	12	1	12	1	12	1	12	1
Ireland	12	1	12	1	12	0	12	1	12	1
Italy	12	1	12	1	12	1	12	0	12	1
Hungary	12	1	12	0	12	1	12	1	12	0

Mauritius	12	0	12	0	12	0	12	1	12	1
Spain	12	0	12	0	12	0	12	0	12	1
South Africa	12	0	12	0	12	0	12	0	12	0
St Lucia	12	0	12	0	12	0	12	0	12	0
Denmark	12	2	12	2	12	2	12	1	11	2
New Zealand	11	1	11	1	11	2	11	2	12	2
South Korea	12	1	12	2	11	1	11	2	11	1
Poland	12	1	11	1	12	1	12	1	12	1
Namibia	12	0	12	1	12	1	11	1	12	1
Benin	11	1	12	0	12	0	12	0	12	0
Andorra	11	2	11	2	11	2	11	2	11	2
Nauru	11	2	11	2	11	2	11	2	11	2
Palau	11	2	11	2	11	2	11	2	11	2
Marshall Islands	11	2	11	2	11	2	11	2	11	1
Micronesia	11	1	11	1	11	1	11	1	11	2
Vanuatu	11	2	11	1	11	1	11	1	11	1
Cape Verde	11	1	11	1	11	1	11	1	11	1
Costa Rica	11	1	11	1	11	1	11	1	11	1
Lithuania	11	1	11	1	11	1	11	1	11	1
Panama	11	1	11	1	11	1	11	1	11	1
Suriname	11	1	11	1	11	1	11	1	11	1
Trinidad & Tobago	11	1	11	1	11	1	11	1	11	1
Belize	11	0	11	1	11	1	11	1	11	1
Serbia	11	0	11	1	11	1	11	1	11	1
Argentina	11	1	11	1	11	1	11	0	11	0
Bulgaria	11	0	11	0	11	1	11	1	11	1
St Vincent & Grenadines	11	1	11	1	11	1	11	0	11	0
Dominican Republic	11	0	11	0	11	0	11	0	11	0
Ghana	11	0	11	0	11	0	11	0	11	0
Greece	10	0	10	1	11	0	12	0	12	0
Taiwan	11	2	11	2	11	2	10	2	10	2
Bolivia	11	1	11	1	10	1	10	1	10	1
USA	11	0	10	1	11	1	11	1	11	1
Romania	10	0	11	0	11	0	11	0	11	0
Ukraine	10	0	10	0	10	0	11	0	11	0
Sao Tome & Principe	10	1	10	2	10	2	10	2	10	2
Samoa	10	2	10	1	10	2	10	1	10	1
Japan	10	2	10	1	10	1	10	1	10	0
Botswana	10	1	10	1	10	1	10	1	10	1
Montenegro	NA	NA	10	0	10	1	10	1	10	1
Brazil	10	0	10	0	10	0	10	0	10	0
Ecuador	11	0	11	0	11	0	10	0	9	0
Mongolia	10	0	10	0	10	0	9	0	11	0
Grenada	9	1	9	1	9	1	10	1	10	1
Solomon Islands	9	2	9	2	9	2	9	2	9	2
Seychelles	9	2	9	1	9	1	9	1	9	2
Antigua &	9	1	9	1	9	1	9	1	9	1

Barbuda										
Jamaica	9	1	9	1	9	1	9	1	9	1
Papa New Guinea	9	0	9	0	9	0	9	0	9	0
El Salvador	10	0	9	0	8	0	8	0	8	0
Burkina Faso	9	0	9	0	9	0	8	0	8	0
Indonesia	8	0	9	0	9	0	9	0	9	0
Guatemala	8	1	8	1	8	1	8	1	8	1
Guinea-Bissau	8	1	8	1	8	1	8	1	8	1
Sierra Leone	8	1	8	1	8	1	8	1	8	0
Albania	8	0	8	1	8	1	8	1	8	1
Malawi	8	0	8	0	8	0	8	1	8	1
Paraguay	8	0	8	0	8	0	8	1	8	1
Lesotho	8	1	8	1	7	1	7	1	7	1
Liberia	7	1	7	1	8	1	8	1	8	1
East Timor	8	1	7	0	7	1	7	1	7	1
Congo-Brazzaville	8	0	7	0	7	0	7	2	8	1
Bosnia-Herzegovina	8	1	8	0	8	1	7	0	7	0
Zambia	8	0	8	0	8	0	8	0	7	0
Macedonia	7	0	7	0	7	1	7	1	7	1
Mozambique	7	1	7	0	7	1	7	1	7	0
Tanzania	7	1	7	0	7	0	7	1	7	1
Nicaragua	8	0	8	1	7	1	6	1	6	0
Comoros	6	2	6	1	6	1	6	2	6	2
Morocco	6	1	6	1	6	0	6	1	6	1
Moldova	6	0	6	0	6	0	6	0	6	0
Venezuela	7	0	7	0	6	0	6	0	5	0
Gambia	6	1	6	1	6	1	6	1	5	1
Kuwait	5	1	6	1	6	1	6	1	6	1
Malaysia	6	1	6	1	5	1	6	1	6	1
Cambodia	6	0	6	0	6	0	5	0	5	0
Gabon	6	1	6	1	6	1	5	1	4	1
Armenia	5	0	5	0	5	0	5	0	5	0
Haiti	3	1	5	1	6	1	6	1	6	1
Togo	3	0	5	0	6	0	6	0	6	0
Bahrain	5	1	3	1	3	1	3	1	3	0
Jordan	5	0	5	0	5	0	4	0	3	0
Oman	4	2	3	2	3	2	3	2	3	2
Singapore	4	1	3	2	3	2	3	2	3	2
Cote d'Ivoire	3	0	4	0	4	0	4	0	4	0
Kazakhstan	4	0	4	0	4	0	4	0	3	0
Brunei	3	2	3	2	3	2	3	2	3	2
Swaziland	3	1	3	1	3	0	3	0	3	0
Azerbaijan	3	0	3	0	3	0	3	0	3	0
Bhutan	2	2	2	2	3	1	3	1	3	1
Cameroon	3	0	3	0	3	0	2	0	3	0
Egypt	3	0	2	0	2	0	2	0	2	0
Qatar	2	1	2	0	2	2	2	2	2	2
Tunisia	2	0	2	0	2	0	2	0	2	0
UAE	1	2	3	1	3	1	3	1	3	1

Vietnam	2	1	2	1	2	0	2	0	1	0
Cuba	2	0	1	0	1	0	1	0	1	0
Belarus	0	0	0	0	0	0	1	0	1	0
Saudi Arabia	0	1	0	0	0	0	0	0	0	0
Equatorial Guinea	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0
North Korea	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0
Turkmenistan	0	0	0	0	0	0	0	0	0	0
Uzbekistan	0	0	0	0	0	0	0	0	0	0

This table corresponds to Figure 3 on page 79-80.

States with conflict in one or more years

	2006		2007		2008		2009		2010	
	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI
Israel	11	0	12	0	12	0	12	0	11	0
Guyana	10	1	10	1	10	1	10	1	10	1
India	10	0	10	0	10	0	10	0	10	0
Mali	9	1	9	1	9	1	9	1	10	1
Mexico	10	0	10	0	9	0	8	0	8	0
Senegal	9	1	10	1	10	1	10	1	10	0
Peru	10	1	9	1	8	1	8	1	8	1
Kenya	9	0	9	0	9	0	9	0	8	0
Philippines	9	0	9	0	8	0	8	0	8	0
Sri Lanka	9	0	9	0	8	0	8	0	7	0
Niger	7	1	9	1	8	1	8	1	8	1
Georgia	8	0	8	0	7	1	7	1	7	0
Lebanon	7	0	8	0	8	0	8	0	8	0
Madagascar	8	1	8	1	8	1	8	0	7	0
Nigeria	7	0	7	0	8	0	8	0	8	0
Honduras	9	1	8	1	8	1	7	0	6	0
Bangladesh	8	0	8	0	6	0	8	0	8	0
Turkey	7	0	7	0	7	0	7	0	7	0
Algeria	6	0	6	0	6	1	6	1	6	1
Angola	6	0	6	0	6	0	6	0	6	0
Uganda	6	0	6	0	6	0	6	0	6	0
Central African Rep	9	0	9	0	6	0	6	0	5	0
Kyrgyzstan	8	0	8	0	7	1	5	1	5	0
Mauritania	6	1	8	0	8	0	5	0	5	0
Thailand	8	1	5	0	5	0	6	0	6	0
Colombia	7	0	7	0	6	0	5	1	5	1
Burundi	5	0	5	0	5	0	5	0	5	0
Djibouti	5	1	5	1	5	1	5	1	5	1
Fiji	9	0	4	1	4	1	4	1	4	1

Pakistan	6	0	6	0	4	0	7	0	7	0
Chad	6	1	5	1	4	0	4	0	4	0
Russia	6	0	4	0	4	0	4	0	4	0
Afghanistan	5	0	5	0	5	0	4	0	4	0
Nepal	3	0	6	0	6	0	6	0	6	0
Tajikistan	4	0	4	0	4	0	4	0	4	0
DRC	5	0	5	0	5	0	4	0	3	0
Iraq	5	0	3	0	3	0	3	0	4	0
Rwanda	3	0	3	1	3	1	3	1	4	1
Yemen	3	0	3	0	4	0	4	0	3	0
Guinea	5	1	5	0	5	0	5	0	2	0
China	2	0	2	0	2	0	2	0	3	0
Ethiopia	3	0	3	0	3	0	3	0	2	0
Iran	3	0	2	0	2	0	2	0	3	0
Zimbabwe	3	0	2	0	2	0	2	0	3	0
Sudan	1	0	3	0	3	0	3	0	2	0
Laos	1	1	1	1	1	1	1	1	1	1
Somalia	1	NA	0	NA	0	NA	0	NA	0	NA
Burma	0	0	0	0	0	0	0	0	0	0
Eritrea	0	0	0	0	0	0	0	0	0	0

This table corresponds to Figure 4 on page 82.

III. STATE OPENNESS TO ACTIVISM COMPARED WITH SCORE ON TORTURE CONTROLLING FOR DEMOCRACY

To determine level of democracy, the Freedom House score for political rights is used. States are assessed on the electoral process, political pluralism and participation, and functioning of government. The score is independent of the score for associational and organisational rights. It is a 7-point scale, with the lowest scores representing the strongest democracies. States have been divided into three categories: high democracy states (based on a Freedom House Political Rights score of 1); medium democracy states (score of 2-5) and low democracy states (score of 6-7).[576]

High Democracy states

	2006		2007		2008		2009		2010	
	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI
Finland	12	2	12	2	12	2	12	2	12	2
Germany	12	2	12	2	12	2	12	2	12	2
Iceland	12	2	12	2	12	2	12	2	12	2
Kiribati	12	2	12	2	12	2	12	2	12	2
Liechtenstein	12	2	12	2	12	2	12	2	12	2
Luxembourg	12	2	12	2	12	2	12	2	12	2
Netherlands	12	2	12	2	12	2	12	2	12	2
St Kitts & Nevis	12	2	12	2	12	2	12	2	12	2
Tuvalu	12	2	12	2	12	2	12	2	12	2
Malta	12	2	12	2	12	1	12	2	12	2
Belgium	12	2	12	2	12	2	12	1	12	1
Uruguay	12	2	12	2	12	2	12	1	12	1
Norway	12	2	12	2	12	1	12	2	12	1
San Marino	12	2	12	1	12	2	12	1	12	1
Slovenia	12	1	12	1	12	2	12	2	12	1
Canada	12	1	12	1	12	1	12	2	12	1
Austria	12	1	12	1	12	1	12	2	12	1
Chile	12	1	12	1	12	1	12	1	12	2
Czech Rep	12	1	12	1	12	1	12	1	12	2
Dominica	12	1	12	1	12	1	12	1	12	2
Australia	12	1	12	1	12	1	12	1	12	1
Bahamas	12	1	12	1	12	1	12	1	12	1
Barbados	12	1	12	1	12	1	12	1	12	1
Cyprus	12	1	12	1	12	1	12	1	12	1
Estonia	12	1	12	1	12	1	12	1	12	1
France	12	1	12	1	12	1	12	1	12	1

[576] Downloaded from https://freedomhouse.org/report/freedom-world-aggregate-and-subcategory-scores (accessed 30 November 2016).

Portugal	12	1	12	1	12	1	12	1	12	1
Slovakia	12	1	12	1	12	1	12	1	12	1
Sweden	12	1	12	1	12	1	12	1	12	1
Switzerland	12	1	12	1	12	1	12	1	12	1
UK	12	1	12	1	12	1	12	1	12	1
Ireland	12	1	12	1	12	0	12	1	12	1
Italy	12	1	12	1	12	1	12	0	12	1
Hungary	12	1	12	0	12	1	12	1	12	0
Mauritius	12	0	12	0	12	0	12	1	12	1
Spain	12	0	12	0	12	0	12	0	12	1
St Lucia	12	0	12	0	12	0	12	0	12	0
Denmark	12	2	12	2	12	2	12	1	11	2
Poland	12	1	11	1	12	1	12	1	12	1
Israel	11	0	12	0	12	0	12	0	11	0
South Korea	12	1	12	2	11	1	11	2	11	1
New Zealand	11	1	11	1	11	2	11	2	12	2
Andorra	11	2	11	2	11	2	11	2	11	2
Nauru	11	2	11	2	11	2	11	2	11	2
Palau	11	2	11	2	11	2	11	2	11	2
Marshall Islands	11	2	11	2	11	2	11	2	11	1
Micronesia	11	1	11	1	11	1	11	1	11	2
Cape Verde	11	1	11	1	11	1	11	1	11	1
Costa Rica	11	1	11	1	11	1	11	1	11	1
Lithuania	11	1	11	1	11	1	11	1	11	1
Panama	11	1	11	1	11	1	11	1	11	1
Belize	11	0	11	1	11	1	11	1	11	1
Ghana	11	0	11	0	11	0	11	0	11	0
Greece	10	0	10	1	11	0	12	0	12	0
USA	11	0	10	1	11	1	11	1	11	1
Japan	10	2	10	1	10	1	10	1	10	0
Grenada	9	1	9	1	9	1	10	1	10	1
Bosnia-Herzegovina	8	1	8	0	8	1	7	0	7	0

This table corresponds to Figure 5 on page 84.

Medium Democracy states

	2006		2007		2008		2009		2010	
	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI
Monaco	12	2	12	2	12	2	12	2	12	2
Croatia	12	2	12	2	12	2	12	2	12	1
Latvia	12	1	12	1	12	1	12	1	12	1
South Africa	12	0	12	0	12	0	12	0	12	0
Namibia	12	0	12	1	12	1	11	1	12	1
Benin	11	1	12	0	12	0	12	0	12	0
Vanuatu	11	2	11	1	11	1	11	1	11	1
Suriname	11	1	11	1	11	1	11	1	11	1
Trinidad & Tobago	11	1	11	1	11	1	11	1	11	1
Serbia	11	0	11	1	11	1	11	1	11	1
Argentina	11	1	11	1	11	1	11	0	11	0
Bulgaria	11	0	11	0	11	1	11	1	11	1
St Vincent & Grenadines	11	1	11	1	11	1	11	0	11	0
Dominican Republic	11	0	11	0	11	0	11	0	11	0
Romania	10	0	11	0	11	0	11	0	11	0
Taiwan	11	2	11	2	11	2	10	2	10	2
Bolivia	11	1	11	1	10	1	10	1	10	1
Ecuador	11	0	11	0	11	0	10	0	9	0
Ukraine	10	0	10	0	10	0	11	0	11	0
Sao Tome & Principe	10	1	10	2	10	2	10	2	10	2
Samoa	10	2	10	1	10	2	10	1	10	1
Botswana	10	1	10	1	10	1	10	1	10	1
Guyana	10	1	10	1	10	1	10	1	10	1
Montenegro	NA	NA	10	0	10	1	10	1	10	1
Brazil	10	0	10	0	10	0	10	0	10	0
India	10	0	10	0	10	0	10	0	10	0
Mongolia	10	0	10	0	10	0	9	0	11	0
Senegal	9	1	10	1	10	1	10	1	10	0
Mexico	10	0	10	0	9	0	8	0	8	0
Seychelles	9	2	9	1	9	1	9	1	9	2
Mali	9	1	9	1	9	1	9	1	10	1
Peru	10	1	9	1	8	1	8	1	8	1
El Salvador	10	0	9	0	8	0	8	0	8	0
Solomon Islands	9	2	9	2	9	2	9	2	9	2
Antigua & Barbuda	9	1	9	1	9	1	9	1	9	1
Jamaica	9	1	9	1	9	1	9	1	9	1
Papa New Guinea	9	0	9	0	9	0	9	0	9	0
Kenya	9	0	9	0	9	0	9	0	8	0
Indonesia	8	0	9	0	9	0	9	0	9	0
Philippines	9	0	9	0	8	0	8	0	8	0
Sri Lanka	9	0	9	0	8	0	8	0	7	0

Honduras	9	1	8	1	8	1	7	0	6	0
Paraguay	8	0	8	0	8	0	8	1	8	1
Guatemala	8	1	8	1	8	1	8	1	8	1
Guinea-Bissau	8	1	8	1	8	1	8	1	8	1
Sierra Leone	8	1	8	1	8	1	8	1	8	0
Albania	8	0	8	1	8	1	8	1	8	1
Malawi	8	0	8	0	8	0	8	1	8	1
Lesotho	8	1	8	1	7	1	7	1	7	1
Liberia	7	1	7	1	8	1	8	1	8	1
Georgia	8	0	8	0	7	1	7	1	7	0
Nicaragua	8	0	8	1	7	1	6	1	6	0
East Timor	8	1	7	0	7	1	7	1	7	1
Zambia	8	0	8	0	8	0	8	0	7	0
Tanzania	7	1	7	0	7	0	7	1	7	1
Macedonia	7	0	7	0	7	1	7	1	7	1
Mozambique	7	1	7	0	7	1	7	1	7	0
Turkey	7	0	7	0	7	0	7	0	7	0
Colombia	7	0	7	0	6	0	5	1	5	1
Comoros	6	2	6	1	6	1	6	2	6	2
Moldova	6	0	6	0	6	0	6	0	6	0
Kuwait	5	1	6	1	6	1	6	1	6	1
Malaysia	6	1	6	1	5	1	6	1	6	1
Burundi	5	0	5	0	5	0	5	0	5	0

This table corresponds to Figure 6 on page 84.

Low Democracy states

	2006		2007		2008		2009		2010	
	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI
Burkina Faso	9	0	9	0	9	0	8	0	8	0
Madagascar	8	1	8	1	8	1	8	0	7	0
Nigeria	7	0	7	0	8	0	8	0	8	0
Lebanon	7	0	8	0	8	0	8	0	8	0
Central African Rep	9	0	9	0	6	0	6	0	5	0
Niger	7	1	9	1	8	1	8	1	8	1
Bangladesh	8	0	8	0	6	0	8	0	8	0
Congo-Brazzaville	8	0	7	0	7	0	7	2	8	1
Kyrgyzstan	8	0	8	0	7	1	5	1	5	0
Mauritania	6	1	8	0	8	0	5	0	5	0
Gambia	6	1	6	1	6	1	6	1	5	1
Morocco	6	1	6	1	6	0	6	1	6	1
Algeria	6	0	6	0	6	1	6	1	6	1
Venezuela	7	0	7	0	6	0	6	0	5	0
Angola	6	0	6	0	6	0	6	0	6	0
Uganda	6	0	6	0	6	0	6	0	6	0
Pakistan	6	0	6	0	4	0	7	0	7	0
Thailand	8	1	5	0	5	0	6	0	6	0

Gabon	6	1	6	1	6	1	5	1	4	1
Haiti	3	1	5	1	6	1	6	1	6	1
Cambodia	6	0	6	0	6	0	5	0	5	0
Nepal	3	0	6	0	6	0	6	0	6	0
Togo	3	0	5	0	6	0	6	0	6	0
Djibouti	5	1	5	1	5	1	5	1	5	1
Armenia	5	0	5	0	5	0	5	0	5	0
Guinea	5	1	5	0	5	0	5	0	2	0
Fiji	9	0	4	1	4	1	4	1	4	1
Afghanistan	5	0	5	0	5	0	4	0	4	0
Jordan	5	0	5	0	5	0	4	0	3	0
Chad	6	1	5	1	4	0	4	0	4	0
Russia	6	0	4	0	4	0	4	0	4	0
Tajikistan	4	0	4	0	4	0	4	0	4	0
Cote d'Ivoire	3	0	4	0	4	0	4	0	4	0
Kazakhstan	4	0	4	0	4	0	4	0	3	0
Bahrain	5	1	3	1	3	1	3	1	3	0
Oman	4	2	3	2	3	2	3	2	3	2
Singapore	4	1	3	2	3	2	3	2	3	2
Brunei	3	2	3	2	3	2	3	2	3	2
Swaziland	3	1	3	1	3	0	3	0	3	0
Azerbaijan	3	0	3	0	3	0	3	0	3	0
Cameroon	3	0	3	0	3	0	2	0	3	0
Zimbabwe	3	0	2	0	2	0	2	0	3	0
Ethiopia	3	0	3	0	3	0	3	0	2	0
Bhutan	2	2	2	2	3	1	3	1	3	1
Iraq	5	0	3	0	3	0	3	0	4	0
Rwanda	3	0	3	1	3	1	3	1	4	1
Yemen	3	0	3	0	4	0	4	0	3	0
UAE	1	2	3	1	3	1	3	1	3	1
Iran	3	0	2	0	2	0	2	0	3	0
China	2	0	2	0	2	0	2	0	3	0
Egypt	3	0	2	0	2	0	2	0	2	0
Qatar	2	1	2	0	2	2	2	2	2	2
Tunisia	2	0	2	0	2	0	2	0	2	0
Cuba	2	0	1	0	1	0	1	0	1	0
Sudan	1	0	3	0	3	0	3	0	2	0
Vietnam	2	1	2	1	2	0	2	0	1	0
Laos	1	1	1	1	1	1	1	1	1	1
Saudi Arabia	0	1	0	0	0	0	0	0	0	0
Belarus	0	0	0	0	0	0	1	0	1	0
Burma	0	0	0	0	0	0	0	0	0	0
Equatorial Guinea	0	0	0	0	0	0	0	0	0	0
Eritrea	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0
North Korea	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0
Turkmenistan	0	0	0	0	0	0	0	0	0	0
Uzbekistan	0	0	0	0	0	0	0	0	0	0

This table corresponds to Figure 7 on page 84.

IV. STATE OPENNESS TO ACTIVISM COMPARED WITH SCORE ON TORTURE CONTROLLING FOR POPULATION SIZE

Small populations

FH = Freedom House score on associational rights (0-12, with the higher score representing the higher level of openness to activism)
CIRI = Conrad and Moore torture dataset (0-2, with the higher score representing the better performance on torture).

	2006		2007		2008		2009		2010	
	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI
Kiribati	12	2	12	2	12	2	12	2	12	2
Iceland	12	2	12	2	12	2	12	2	12	2
Luxembourg	12	2	12	2	12	2	12	2	12	2
St Kitts & Nevis	12	2	12	2	12	2	12	2	12	2
Tuvalu	12	2	12	2	12	2	12	2	12	2
Monaco	12	2	12	2	12	2	12	2	12	2
Malta	12	2	12	2	12	1	12	2	12	2
San Marino	12	2	12	1	12	2	12	1	12	1
Dominica	12	1	12	1	12	1	12	1	12	2
Barbados	12	1	12	1	12	1	12	1	12	1
Bahamas	12	1	12	1	12	1	12	1	12	1
Cyprus	12	1	12	1	12	1	12	1	12	1
Estonia	12	1	12	1	12	1	12	1	12	1
St Lucia	12	0	12	0	12	0	12	0	12	0
Mauritius	12	0	12	0	12	0	12	1	12	1
Andorra	11	2	11	2	11	2	11	2	11	2
Nauru	11	2	11	2	11	2	11	2	11	2
Palau	11	2	11	2	11	2	11	2	11	2
Marshall Islands	11	2	11	2	11	2	11	2	11	1
Micronesia	11	1	11	1	11	1	11	1	11	2
Trinidad & Tobago	11	1	11	1	11	1	11	1	11	1
Vanuatu	11	2	11	1	11	1	11	1	11	1
Cape Verde	11	1	11	1	11	1	11	1	11	1
Suriname	11	1	11	1	11	1	11	1	11	1
St Vincent & Grenadines	11	1	11	1	11	1	11	0	11	0
Belize	11	0	11	1	11	1	11	1	11	1
Sao Tome & Principe	10	1	10	2	10	2	10	2	10	2
Samoa	10	2	10	1	10	2	10	1	10	1
Guyana	10	1	10	1	10	1	10	1	10	1
Grenada	9	1	9	1	9	1	10	1	10	1
Solomon Islands	9	2	9	2	9	2	9	2	9	2
Antigua &	9	1	9	1	9	1	9	1	9	1

Barbuda										
Seychelles	9	2	9	1	9	1	9	1	9	2
Guinea-Bissau	8	1	8	1	8	1	8	1	8	1
Lesotho	8	1	8	1	7	1	7	1	7	1
East Timor	8	1	7	0	7	1	7	1	7	1
Comoros	6	2	6	1	6	1	6	2	6	2
Gambia	6	1	6	1	6	1	6	1	5	1
Gabon	6	1	6	1	6	1	5	1	4	1
Djibouti	5	1	5	1	5	1	5	1	5	1
Fiji	9	0	4	1	4	1	4	1	4	1
Bahrain	5	1	3	1	3	1	3	1	3	0
Brunei	3	2	3	2	3	2	3	2	3	2
Swaziland	3	1	3	1	3	0	3	0	3	0
Bhutan	2	2	2	2	3	1	3	1	3	1
Qatar	2	1	2	0	2	2	2	2	2	2
Equatorial Guinea	0	0	0	0	0	0	0	0	0	0

This table corresponds to Figure 8 on page 88.

Medium populations

	2006		2007		2008		2009		2010	
	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI
Finland	12	2	12	2	12	2	12	2	12	2
Netherlands	12	2	12	2	12	2	12	2	12	2
Croatia	12	2	12	2	12	2	12	2	12	1
Uruguay	12	2	12	2	12	2	12	1	12	1
Belgium	12	2	12	2	12	2	12	1	12	1
Norway	12	2	12	2	12	1	12	2	12	1
Slovenia	12	1	12	1	12	2	12	2	12	1
Chile	12	1	12	1	12	1	12	1	12	2
Czech Rep	12	1	12	1	12	1	12	1	12	2
Austria	12	1	12	1	12	1	12	2	12	1
Costa Rica	11	1	11	1	11	1	11	1	11	1
Latvia	12	1	12	1	12	1	12	1	12	1
Lithuania	11	1	11	1	11	1	11	1	11	1
Panama	11	1	11	1	11	1	11	1	11	1
Portugal	12	1	12	1	12	1	12	1	12	1
Slovakia	12	1	12	1	12	1	12	1	12	1
Sweden	12	1	12	1	12	1	12	1	12	1
Switzerland	12	1	12	1	12	1	12	1	12	1
Ireland	12	1	12	1	12	0	12	1	12	1
Hungary	12	1	12	0	12	1	12	1	12	0
Denmark	12	2	12	2	12	2	12	1	11	2
Namibia	12	0	12	1	12	1	11	1	12	1
Benin	11	1	12	0	12	0	12	0	12	0
Israel	11	0	12	0	12	0	12	0	11	0

New Zealand	11	1	11	1	11	2	11	2	12	2
Serbia	11	0	11	1	11	1	11	1	11	1
Bulgaria	11	0	11	0	11	1	11	1	11	1
Greece	10	0	10	1	11	0	12	0	12	0
Dominican Republic	11	0	11	0	11	0	11	0	11	0
Romania	10	0	11	0	11	0	11	0	11	0
Ecuador	11	0	11	0	11	0	10	0	9	0
Bolivia	11	1	11	1	10	1	10	1	10	1
Botswana	10	1	10	1	10	1	10	1	10	1
Mongolia	10	0	10	0	10	0	9	0	11	0
Senegal	9	1	10	1	10	1	10	1	10	0
Mali	9	1	9	1	9	1	9	1	10	1
Jamaica	9	1	9	1	9	1	9	1	9	1
Papa New Guinea	9	0	9	0	9	0	9	0	9	0
Burkina Faso	9	0	9	0	9	0	8	0	8	0
El Salvador	10	0	9	0	8	0	8	0	8	0
Sri Lanka	9	0	9	0	8	0	8	0	7	0
Guatemala	8	1	8	1	8	1	8	1	8	1
Sierra Leone	8	1	8	1	8	1	8	1	8	0
Niger	7	1	9	1	8	1	8	1	8	1
Albania	8	0	8	1	8	1	8	1	8	1
Paraguay	8	0	8	0	8	0	8	1	8	1
Malawi	8	0	8	0	8	0	8	1	8	1
Zambia	8	0	8	0	8	0	8	0	7	0
Lebanon	7	0	8	0	8	0	8	0	8	0
Madagascar	8	1	8	1	8	1	8	0	7	0
Honduras	9	1	8	1	8	1	7	0	6	0
Liberia	7	1	7	1	8	1	8	1	8	1
Congo-Brazzaville	8	0	7	0	7	0	7	2	8	1
Georgia	8	0	8	0	7	1	7	1	7	0
Bosnia-Herzegovina	8	1	8	0	8	1	7	0	7	0
Nicaragua	8	0	8	1	7	1	6	1	6	0
Central African Rep	9	0	9	0	6	0	6	0	5	0
Macedonia	7	0	7	0	7	1	7	1	7	1
Kyrgyzstan	8	0	8	0	7	1	5	1	5	0
Mauritania	6	1	8	0	8	0	5	0	5	0
Angola	6	0	6	0	6	0	6	0	6	0
Moldova	6	0	6	0	6	0	6	0	6	0
Kuwait	5	1	6	1	6	1	6	1	6	1
Cambodia	6	0	6	0	6	0	5	0	5	0
Chad	6	1	5	1	4	0	4	0	4	0
Haiti	3	1	5	1	6	1	6	1	6	1
Togo	3	0	5	0	6	0	6	0	6	0
Burundi	5	0	5	0	5	0	5	0	5	0
Armenia	5	0	5	0	5	0	5	0	5	0
Guinea	5	1	5	0	5	0	5	0	2	0
Jordan	5	0	5	0	5	0	4	0	3	0
Tajikistan	4	0	4	0	4	0	4	0	4	0

Cote d'Ivoire	3	0	4	0	4	0	4	0	4	0
Kazakhstan	4	0	4	0	4	0	4	0	3	0
Oman	4	2	3	2	3	2	3	2	3	2
Singapore	4	1	3	2	3	2	3	2	3	2
Rwanda	3	0	3	1	3	1	3	1	4	1
Azerbaijan	3	0	3	0	3	0	3	0	3	0
Cameroon	3	0	3	0	3	0	2	0	3	0
UAE	1	2	3	1	3	1	3	1	3	1
Zimbabwe	3	0	2	0	2	0	2	0	3	0
Tunisia	2	0	2	0	2	0	2	0	2	0
Cuba	2	0	1	0	1	0	1	0	1	0
Laos	1	1	1	1	1	1	1	1	1	1
Belarus	0	0	0	0	0	0	1	0	1	0
Eritrea	0	0	0	0	0	0	0	0	0	0
Libya	0	0	0	0	0	0	0	0	0	0
Syria	0	0	0	0	0	0	0	0	0	0
Turkmenistan	0	0	0	0	0	0	0	0	0	0

This table corresponds to Figure 9 on page 88.

Large populations

	2006		2007		2008		2009		2010	
	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI	FH	CIRI
Germany	12	2	12	2	12	2	12	2	12	2
Canada	12	1	12	1	12	1	12	2	12	1
France	12	1	12	1	12	1	12	1	12	1
UK	12	1	12	1	12	1	12	1	12	1
Australia	12	1	12	1	12	1	12	1	12	1
Italy	12	1	12	1	12	1	12	0	12	1
Spain	12	0	12	0	12	0	12	0	12	1
South Africa	12	0	12	0	12	0	12	0	12	0
Poland	12	1	11	1	12	1	12	1	12	1
South Korea	12	1	12	2	11	1	11	2	11	1
Argentina	11	1	11	1	11	1	11	0	11	0
Ghana	11	0	11	0	11	0	11	0	11	0
USA	11	0	10	1	11	1	11	1	11	1
Taiwan	11	2	11	2	11	2	10	2	10	2
Japan	10	2	10	1	10	1	10	1	10	0
India	10	0	10	0	10	0	10	0	10	0
Brazil	10	0	10	0	10	0	10	0	10	0
Mexico	10	0	10	0	9	0	8	0	8	0
Indonesia	8	0	9	0	9	0	9	0	9	0
Kenya	9	0	9	0	9	0	9	0	8	0
Peru	10	1	9	1	8	1	8	1	8	1
Philippines	9	0	9	0	8	0	8	0	8	0
Nigeria	7	0	7	0	8	0	8	0	8	0
Bangladesh	8	0	8	0	6	0	8	0	8	0
Mozambique	7	1	7	0	7	1	7	1	7	0
Tanzania	7	1	7	0	7	0	7	1	7	1

Turkey	7	0	7	0	7	0	7	0	7	0
Thailand	8	1	5	0	5	0	6	0	6	0
Colombia	7	0	7	0	6	0	5	1	5	1
Morocco	6	1	6	1	6	0	6	1	6	1
Algeria	6	0	6	0	6	1	6	1	6	1
Venezuela	7	0	7	0	6	0	6	0	5	0
Pakistan	6	0	6	0	4	0	7	0	7	0
Uganda	6	0	6	0	6	0	6	0	6	0
Malaysia	6	1	6	1	5	1	6	1	6	1
Nepal	3	0	6	0	6	0	6	0	6	0
Afghanistan	5	0	5	0	5	0	4	0	4	0
Russia	6	0	4	0	4	0	4	0	4	0
DRC	5	0	5	0	5	0	4	0	3	0
Iraq	5	0	3	0	3	0	3	0	4	0
Yemen	3	0	3	0	4	0	4	0	3	0
Ethiopia	3	0	3	0	3	0	3	0	2	0
Iran	3	0	2	0	2	0	2	0	3	0
Sudan	1	0	3	0	3	0	3	0	2	0
Egypt	3	0	2	0	2	0	2	0	2	0
China	2	0	2	0	2	0	2	0	3	0
Vietnam	2	1	2	1	2	0	2	0	1	0
Saudi Arabia	0	1	0	0	0	0	0	0	0	0
Uzbekistan	0	0	0	0	0	0	0	0	0	0
North Korea	0	0	0	0	0	0	0	0	0	0

This table corresponds to Figure 10 on page 88.

III. Trends 2006-2010

Average scores – States without conflict

	CIRI	FH
2006	0.886	8.695
2007	0.845	8.563
2008	0.873	8.704
2009	0.908	8.662
2010	0.866	8.641

Average scores – States with conflict

	CIRI	FH
2006	0.271	6.188
2007	0.25	5.75
2008	0.292	5.771
2009	0.271	5.688
2010	0.208	5.542

These two tables correspond to Figure 11 on page 95.

Average scores – high democracy states

	CIRI	FH
2006	1.211	11.614
2007	1.246	11.649
2008	1.246	11.632
2009	1.246	11.684
2010	1.228	11.667

Average scores – medium democracy states

	CIRI	FH
2006	0.6719	9.141
2007	0.6	9.169
2008	0.7231	9.015
2009	0.7231	8.908
2010	0.6308	8.892

Average scores – low democracy states

	CIRI	FH
2006	0.388	4.09
2007	0.343	4.075
2008	0.328	3.851
2009	0.343	3.791
2010	0.313	3.687

These three tables correspond to Figure 12 on page 96.

Average scores – countries with small populations

	CIRI	FH
2006	1.298	9.319
2007	1.213	9.149
2008	1.255	9.149
2009	1.255	9.149
2010	1.277	9.106

Average scores – countries with medium populations

	CIRI	FH
2006	0.573	7.787
2007	0.607	7.888
2008	0.652	7.809
2009	0.663	7.663
2010	0.573	7.618

Average scores – countries with large populations

	CIRI	FH
2006	0.42	7.38
2007	0.38	7.26
2008	0.36	7.12
2009	0.34	7.16
2010	0.38	7.08

These three tables correspond to Figure 13 on page 97.

Bibliography

Articles

Abdikeeva A and Covaci A, 'The Impact of Legal Advocacy Strategies to Advance Roma Health: The Case of Macedonia' (2017) *Health and Human Rights Journal* 19(2), 99–110

Alison LJ, Alison E, Noone G, Elntib S and Christiansen P, 'Why tough tactics fail and rapport gets results: Observing Rapport-based Interpersonal Techniques (ORBIT) to generate useful information from terrorists' (2013) *Psychology, Public Policy and Law* 19(4), 411-431

Alston P and Gillespie C, 'Global Human Rights Monitoring, New Technologies, and the Politics of Information' (2012) *European Journal of International Law* 23(4), 1089-1123

Anagnostou D and Mungiu-Pippidi A, 'Domestic Implementation of Human Rights Judgments in Europe: Legal Infrastructure and Government Effectiveness Matter' (2014) *European Journal of International Law* 25, 205-227

Anderson K, 'The Ottawa Convention Banning Landmines, the Role of International Non-governmental Organizations and the Idea of International Civil Society' (2000) *European Journal of International Law* 11, 91-120

Apodaca C, 'Global Economic Patterns and Personal Integrity Rights after the Cold War' (2001) *International Studies Quarterly* 45(4), 587–602

Ariel B, Farrar WA and Sutherland A, 'The Effect of Police Body-Worn Cameras on the Use of Force and Citizens' Complaints against the Police: A Randomized Controlled Trial' (2015) *Journal of Quantitative Criminology* 31, 509-535

Berman S, 'Civil Society and Political Institutionalization' (1997) *American Behavioral Scientist* 40(5), 562-574

Bessler JD, 'Revisiting Beccaria's Vision: The Enlightenment, America's Death Penalty, and the Abolition Movement' (2009) *Northwestern Journal of Law and Social Policy* 4(2), 195-328

Blitz BK, 'Post-socialist transformation, penal reform and justice sector transition in Albania' (2008) *Southeast European and Black Sea Studies* 8(4), 345-364
Brysk A, 'Democratizing Civil Society in Latin America' (2000) *Journal of Democracy* 11(3), 151-165

Bueno de Mesquita B, Downs GW, Smith A, 'Thinking Inside the Box: A Closer Look at Democracy and Human Rights' (2005) *International Studies Quarterly* 49, 439-457

Christensen D and Weinstein JM 'Defunding Dissent: Restrictions on Aid to NGOs' (2015) *Journal of Democracy* 24(2), 77-91

Cingranelli D and Filippov M, 'Electoral Rules and Incentives to Protect Human Rights' (2010) *The Journal of Politics* 72(1), 1-15

Clark AM and Sikkink K, 'Information Effects and Human Rights Data: Is the Good News about Increased Human Rights Information Bad News for Human Rights Measures?' (2013) *Human Rights Quarterly* 35, 539-568

Cohen S, 'Government Responses to Human Rights Reports: Claims, Denials, and Counterclaims' (1996) *Human Rights Quarterly* 18(3), 517-543

Conrad CR and Moore WH, 'What Stops the Torture' (2010) *American Journal of Political Science* 54(2), 459-476

Conrad CR and Ritter EH, 'Treaties, Tenure and Torture: The Conflicting Domestic Effects of International Law' (2013) *The Journal of Politics* 75(2), 397-409

Davenport C, 'Multi-dimensional Threat Perception and State Repression: An Inquiry into why states apply negative sanctions' (1995) *American Journal of Political Science* 39(3), 683-713

Davenport C and Armstrong DA II, 'Democracy and the Violation of Human Rights: A Statistical Analysis from 1976 to 1996' (2004) *American Journal of Political Science* 48(3), 538–554

Delaplace E and Pollard M, 'Torture Prevention in Practice' (2006) *Torture* 16(3), 220-246

Dimitrova A and Buzogany A, 'Post-Accession Policy-Making in Bulgaria and Romania: Can Non-state Actors Use EU Rules to Promote Better Governance?' (2014) *Journal of Common Market Studies* 52(1), 139–156

Dodson M, 'The Human Rights Ombudsman in Central America: Honduras and El Salvador Case Studies' (2006) *Essex Human Rights Review* 3(1), 29-45

Dupuy K, Ron J and Prakash A in 'Hands Off My Regime! Governments Restrictions on Foreign Aid to Non-Governmental Organizations in Poor and Middle-Income Countries', (2016) *World Development* 84, 299-311

Encarnación OG, ‘Review: Civil Society Reconsidered’, (2006) *Comparative Politics* 38(3), 357-376

Hathaway O, ‘Do Human Rights Treaties Make a Difference?’ (2002) *Yale Law Journal* 111, 1935-2042

Fariss CJ, ‘Respect for Human Rights has Improved Over Time: Modeling the Changing Standard of Accountability’ (2014) *American Political Science Review* **108(2)**, 297–318

Fincanci SK, ‘The role of jurisdiction on persistence of torture in Turkey and public reflections (2008) *Torture* 18(1), 51-55

Finnemore M and Sikkink K, ‘International Norm Dynamics and Political Change, (1998) *International Organization* 52(4), 887-917

Flyvbjerg B, ‘Five Misunderstandings about Case-Study Research’ (2006) *Qualitative Inquiry* 12(2), 219-45

Franklin J, ‘IMF Conditionality, Threat Perception, and Political Repression: A Cross-National Analysis’ (1997) *Comparative Political Studies* 30, 576-606

Gershman C and Allen M ‘The Assault on Democracy Assistance’ (2006) *Journal of Democracy* 17(2), 36-51

Ginbar, Y. ‘‘Celebrating’ a Decade of Legalised Torture in Israel’ (2009) *Essex Human Rights Review* 6, 169-87

Goodman R and Jinks D, ‘How to Influence States: Socialization and International Human Rights Law’ (2004), *Duke Law Journal*, 54(3), 621-703

Goodman R and Jinks D, ‘International Law and State Socialization: Empirical, Conceptual and Normative Challenges’ (2005) *Duke Law Journal* 54, 983-998

Goodman R and Jinks D, ‘Incomplete Internalization and Compliance with Human Rights Law: A Rejoinder to Roda Mushkat’ (2009) *European Journal of International Law* 20(2), 443-446

Gorvin I, ‘Producing the Evidence that Human Rights Advocacy Works: First Steps towards Systemized Evaluation at Human Rights Watch’ (2009) *Journal of Human Rights Practice* 1(3), 477-487

Grosso CM, ‘International Law in the Domestic Arena: The Case of Torture in Israel’ (2000) *Iowa Law Review* 86, 305-37

Haas P, ‘Introduction: Epistemic Communities and International Policy Coordination’ (1992) *International Organization* 46, 1-35

Hafner-Burton EM, ‘Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem’ (2008) *International Organization* 62(4), 689-716

Hafner-Burton EM, LeVeck BL and Victor DG, ‘How Activists Perceive the Utility of International Law*’* (2016) *The Journal of Politics* 78(1), 167-180

Hafner-Burton EM and Ron J, *‘*Seeing Double: Human Rights Impact through Qualitative and Quantitative Eyes’ (2009) *World Politics* 61(2), 360-401

Hafner-Burton EM and Tsutsui K, ‘Justice Lost! The Failure of Human Rights Law to Matter Where Needed Most’ (2007) *Journal of Peace Research* 407-425

Hathaway O, ‘Do Human Rights Treaties Make a Difference?’ (2002) *Yale Law Journal* 111, 1935-2042

Hendrix CS and Wong WH ‘When is the Pen Truly Mighty? Regime Type and the Efficacy of Naming and Shaming in Curbing Human Rights Abuses’, (2013) *British Journal of Political Science* 43(03), 651-672

Fein H, ‘More Murder in the Middle: Life Integrity Violations and Democracy in the World’ (1995) *Human Rights Quarterly* 17, 170-191

Heyns C and Viljoen F, ‘The Impact of the United Nations Human Rights Treaties on the Domestic Level’ (2001) *Human Rights Quarterly* 23(3), 483-535

Joachim J, ‘Framing Issues and Seizing Opportunities: the UN, NGOs, and Women’s Rights’ (2003) *International Studies Quarterly* 47(2), 247-274

Kim, Hunjoon and Sikkink, Kathryn, ‘Explaining the Deterrence Effect of Human Rights Prosecutions for Transitional Countries’ (2010) *International Studies Quarterly* 54(4), 939-963

Kitschelt H, ‘Political Opportunity Structures and Political Protest: Anti-nuclear Movements in Four Democracies’ (1986) *British Journal of Political Science* 16(1), 57-85

Koch S, ‘A Typology of Political Conditionality Beyond Aid: Conceptual Horizons Based on Lessons from the European Union’ (2015) *World Development* 75, 97-108

Landman T, ‘Review Article: The Political Science of Human Rights’ (2005) *British Journal of Political Science* 35, 549-572

Levitz P and Pop-Eleches G, ‘Why No Backsliding? The European Union’s Impact on Democracy and Governance Before and After Accession’ (2010) *Comparative Political Studies* 43(4), 457-485

Lowell AL, ‘The Judicial Use of Torture Part I’ (1897) *Harvard Law Review* 11(4), 220-233

Lutz E and Sikkink K, ‘The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America’ (2001), *Chicago Journal of International Law* 2(1), 1-33

McQuigg R, ‘How Effective is the United Nations Committee against Torture?’ (2011) *European Journal of International Law* 22(3), 813-828

Meernik J, Aloisi, R , Sowell M and Nichols A, ‘The Impact of Human Rights Organizations on Naming and Shaming Campaigns’ (2012) *Journal of Conflict Resolution* 56(2), 233-256

Merry SE, ‘Transnational Human Rights and Local Activism: Mapping the Middle’ (2006) *American Anthropologist* 108(1), 38-51

Mitchell NJ, Carey SC and Butler CK, ‘The Impact of Pro-Government Militias on Human Rights Violations’ (2014) *International Interactions* 40(5), 812-836

Mungiu-Pippidi A, ‘Is East-Central Europe Backsliding? EU Accession is No ‘End of History’’ (2007) *Journal of Democracy* 4, 8-16

Murray R, ‘National Preventive Mechanisms under the Optional Protocol to the Torture Convention: One Size Does Not Fit All’ (2008) *Netherlands Quarterly of Human Rights* 26(4), 485-506

Neumayer E, ‘Do International Human Rights Treaties Improve Respect for Human Rights?’ (2005) *Journal of Conflict Resolution* 49(6) 925-953

Parau C, ‘Impaling Dracula: How EU accession empowered civil society in Romania’ (2009) *West European Politics* 32(1), 119-141

Phinnemore, D, ‘And We’d Like to Thank….Romania’s Integration into the European Union, 1989-2007’ (2010) *Journal of European Integration* 32(3), 291-308

Poe SC and Tate CN, ‘Repression of Human Rights to Personal Integrity in the 1980s: A Global Analysis’ (1994) *American Political Science Review* 88(4), 853-872

Poe SC, Tate CN and Keith LC, ‘Repression of the Human Right to Personal Integrity Revisited: A Global Crossnational Study Covering the Years 1976-1993’ (1999) *International Studies Quarterly* 43(2), 291-315

Poe SC, Carey SC and Vasquez TC, ‘How are These Pictures Different? A Quantitative Comparison of the U.S. State Department and Amnesty International Human Rights Reports, 1976-95’ (2001) *Human Rights Quarterly* 23(3), 650-677

Price R, ‘Transnational Civil Society and Advocacy in World Politics’ (2003) *World Politic* 55(4), 579-606

Qian N and Yanagizawa D, ‘The Strategic Determinants of U.S. Human Rights Reporting: Evidence from The Cold War’ (2009) *Journal of the European Economic Association*, 7(2-3), 446-457

Ramos H, Ron J and Thomas ONT, ‘Shaping the Northern Media’s Human Rights Coverage, 1986-2000’ (2007) *Journal of Peace Research* 44(4), 385-406

Richards DL, ‘Perilous Proxy: Human Rights and the Presence of National Elections’ (1999) *Social Science Quarterly* 80(4), 648-665

Risse T, ‘”Let’s Argue!”: Communicative Action in World Politics’ (2000) *International Organization* 54(1), 1-39

Rodley NS, ‘Reflections on Working for the Prevention of Torture’ (2009) *Essex Human Rights Review* 15, 21-30

Ron J, ‘Varying Methods of State Violence’ (1997) *International Organization* 51(2), 275-300

Rowe M, Pearson G and Turner E, ‘Body-Worn Cameras and the Law of Unintended Consequences: Some Questions arising from Emergent Practice’ (2017) *Policing: A Journal of Policy and Practice* 12(1), 83-90

Rutzen D, ‘Civil Society under Assault’ (2015) *Journal of Democracy* 26(4), 28-39

Sharma M, Massagé I and McDonald K, ‘Lawyers’ Intervention at Pretrial Stage Helps to Prevent Torture, Illegal Detention and Other Human Rights Violations: Experiences of Advocacy Forum-Nepal’ (2012) *Journal of Human Rights Practice* 4(2), 253-272

Stobb M, ‘A Shield in Battle: the Contingent Value of Human Rights Treaties to INGOs in autocracies’ (2018) *The International Journal of Human Rights* DOI: 10.1080/13642987.2018.1513401

Tarrow S, ‘Making Social Science Work Across Space and Time: A Critical Reflection on Robert Putnam's *Making Democracy Work’* (1996) *American Political Science Review* 90, 389-97

Tusalem R, ‘A Boon or a Bane? The Role of Civil Society in Third- and Fourth-Wave Democracies’ (2007) *International Political Science Review* 28(3), 361-386

Vreeland JR, ‘Political Institutions and Human Rights: Why Dictatorships Enter into the United Nations Convention against Torture’ (2008) *International Organization* 62(1), 65-101

White G, ‘Civil Society, Democratization and Development: Clearing the Analytical Ground’ (1994) *Democratization* 1(3), 375-390

Wood RM. and Gibney M, ‘The Political Terror Scale (PTS): A Re-introduction and a Comparison to CIRI’ (2010) *Human Rights Quarterly*, 32(2), 367-400

Wu, W and Vander Beken, T, ‘Police Torture in China and its Causes: A Review of the Literature’ (2010) *Australian and New Zealand Journal of Criminology*, 43(3), 557-579

Book chapters

Anagnostou, D and Skleparis, D, ‘Human Rights in European Prisons: Can the Implementation of Strasbourg Court Judgements Influence Penitentiary Reform Domestically?’ in Daems T and Robert L (eds), *Europe in Prisons: Assessing the Impact of European Institutions on National Prison Systems* (Palgrave Macmillan 2017)

Brysk A, ‘Human Rights Defenders and Activism’, in Mihr A and Gibney M (eds), *The Sage Handbook of Human Rights* (Sage 2014)

Cassese A, ‘A Plea for a Global Community Grounded in a Core of Human Rights’, in Cassese A (ed), *Realizing Utopia: The Future of International Law* (Oxford University Press 2012)

Cekik A and Hristova H, ‘The current state of civil society in Macedonia and its distinctive patterns of development’ in Fink-Hafner D (ed), *The Development of Civil*

Society in the Countries on the Territory of the Former Yugoslavia since the 1980s (Faculty of Social Sciences, Ljubljana 2015)
Conant L, 'Compelling criteria? Human rights in the European Union' in Kelemen RD, Menon A and Slapin J (eds), *The European Union: Integration and Enlargement* (Routledge 2015)

Conrad, CR and DeMerrit J, 'Unintended Consequences: The Effect of Advocacy to End Torture on Empowerment Rights Violations' in Lightcap T and Pfiffner (eds), *Examining Torture: Empirical Studies of State Repression*, (Palgrave MacMillan 2014)

Goodman R and Jinks D, 'Social mechanisms to promote international human rights', in Risse T, Ropp SC and Sikkink K, *The Persistent Power of Human Rights* (Cambridge University Press 2013)

Hicks P, 'Human Rights Diplomacy: The NGO role' in O'Flaherty M, Zdzislaw K, Műller A and Ulrich G (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Brill 2011)

Johnson R, 'Advocates and Activists: Conflicting Approaches on Nonproliferation and the Test Ban Treaty', in Florini A (ed), *The Third Force: The Rise of Transnational Civil Society* (Japan Center for International Change and Carnegie Endowment for International Peace 1999)

Keane J, 'Civil Society, Definitions and Approaches' in Anheier, H. K., Toepler, S., and List, R. (eds.), *International Encyclopedia of Civil Society* (Springer 2009)

Lehners J, 'Pleading for a New History of Human Rights' in Mihr A and Gibney M (eds), *The Sage Handbook of Human Rights* (Sage 2014)

Lokaneeta J and Jesani A, 'India' in Carver R and Handley L, *Does Torture Prevention Work?* (Liverpool University Press 2016)

Mitchell NJ and Flett BN, 'Human Rights Research and Theory', in Mihr A and Gibney M (eds), *The Sage Handbook of Human Rights* (Sage 2014)

Mutua M, 'Human Rights International NGOs: A Critical Evaluation' in Claude E Welch Jr, *NGOs and Human Rights: Promise and Performance* (University of Pennsylvania 2001)

Quigley KFF, 'Lofty Goals, Modest Results: Assisting Civil Society in Eastern Europe', in Ottaway M and Carothers T, *Funding Virtue: Civil Society Aid and Democratization* (Carnegie Endowment for International Peace 2000)

Rorty R, 'Human Rights, Rationality and Sentimentality', in Shute S and Hurley S (eds), *On Human Rights: The Oxford Amnesty Lectures 1993* (BasicBooks 1994)
Schmitz HP, 'Transnational NGOs and Human Rights in a Post-9/11 World', in. Goodhart M and Mihr A (eds), *Human Rights in the 21st Century: Continuity and Change since 9/11* (Palgrave 2011)

Schmitz HP, 'Non-State Actors in Human Rights Promotion', in Mihr A and Gibney M (eds), *The Sage Handbook of Human Rights* (Sage 2014)

Sikkink K, 'The United States and torture: does the spiral model work?' in Risse T, Ropp SC and Sikkink K (eds), *The Persistent Power of Human Rights* (Cambridge University Press 2013)

Books

Abouharb MR and Cingranelli D, *Human Rights and Structural Adjustment* (Cambridge University Press 2007)

Ahmed S and Potter DM, *NGOs in International Politics* (Kumarian Press 2006)

Anagnostou D (ed), *Rights and Courts in Pursuit of Social Change: Legal Mobilisation in the Multi-level European System* (Hart Publishing 2014)

Armony AC, *The Dubious Link: Civic Engagement and Democratization (*Stanford University Press 2004)

Boulding C, *NGOs, Political Protest and Civil Society* (Cambridge University Press 2014)

Buzan B, Wæver O, de Wilde J, *Security: A New Framework for Analysis* (Lynne Rienner Publishers 1998)

Calnan S, *The Effectiveness of Domestic Human Rights NGOs. A Comparative Study* (Martinus Nijhoff 2005)

Cannoy-Smith H, *Insincere Commitments: Human Rights Treaties, Abusive States and Citizen Activism* (Georgetown Press 2012)

Cardenas S, *Conflict and Compliance: State Responses to International Human Rights Pressure* (University of Pennsylvania Press 2007)

Carver R and Handley L, *Does Torture Prevention Work?* (Liverpool University Press 2016)

Clark A, *Diplomacy of Conscience: Amnesty International and Changing Human Rights Norms* (Princeton University Press 2001)

Cohen S, *Denial and Acknowledgement: The Impact of Information about Human Rights Violations* (Center for Human Rights, The Hebrew University 1995)

Cohen S, *States of Denial: Knowing about Atrocities and Suffering* (Polity Press 2001)

Donald A and Leach P, *Parliaments and the European Court of Human Rights* (Oxford University Press 2016)

Donnelly J, *International Human Rights* (2nd edn, Westview Press 1998)

Encarnacion OG, *The Myth of Civil Society* (Palgrave Macmillan US 2003)

Evangelista M, *Unarmed Forces: The Transnational Movement to End the Cold War* (Cornell University Press 1999)

Fish, MS, *Democracy Derailed in Russia: The Failure of Open Politics* (Cambridge University Press 2005)

Florini A (ed), *The Third Force: The Rise of Transnational Civil Society* (Japan Center for International Change and Carnegie Endowment for International Peace 1999)

George AL and Bennett A, *Case Studies and Theory Development in the Social Sciences* (MIT Press 2005)

Gill G, *The Dynamics of Democratization: Elites, Civil Society and the Transition Process* (St Martin's Press 2000)

Goodman R and Jinks D, *Socializing States: Promoting Human Rights Through International Law* (OUP 2013).

Hawkins D, *International Human Rights and Authoritarian Rule in Chile* (University of Nebraska Press 2002)

Hopgood S, *Keepers of the Flame: Understanding Amnesty International* (Cornell University Press 2006)

Hopgood S, Snyder J and Vinjamuri L (eds), *Human Rights Futures* (Cambridge University Press 2017)

Horton M and Freire P, *We Make the Road by Walking: Conversations on Education and Social Change* (Temple University Press 1990)

Huntingdon S, *Political Order in Changing Societies* (Yale University Press 1968)

Huntingdon S, *The Third Wave: Democratization in the Late Twentieth Century* (University of Oklahoma Press 1991)

Ignatieff, M, *The Lesser Evil: Political Ethics in an Age of Terror* (Princeton University Press 2005)

Joachim, J, *Agenda Setting, the UN, and NGOs: Gender Violence and Reproductive Rights* (Georgetown University Press 2007)

Korey W, *NGOs and the Universal Declaration of Human Rights: A Curious Grapevine* (Macmillan 1998)

Landman T, *Protecting Human Rights: A Comparative Study* (Georgetown University Press 2005)

Murray R, Steinerte E, Evans MD and Hallo de Wolf A, *The Optional Protocol to the UN Convention against Torture* (Oxford University Press 2011)

Ottaway M and Carothers T, *Funding Virtue: Civil Society Aid and Democratization* (Carnegie Endowment for International Peace 2000)

Putnam R, *Making Democracy Work* (Princeton University Press 1993)

Rejali DM, *Torture and Democracy* (Princeton University Press 2007)

Risse T, Ropp SC and Sikkink K (eds), *The Power of Human Rights: International Norms and Domestic Change* (Cambridge University Press 1999)

Risse T, Ropp SC and Sikkink K (eds), *The Persistent Power of Human Rights: From Commitment to Compliance* (Cambridge University Press 2013)

Sikkink K, *The Justice Cascade: How Human Rights Prosecutions are Changing World Politics* (WW Norton 2011)

Simmons B, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009)

Smith-Cannoy H, *Insincere Commitments: Human Rights Treaties, Abusive States and Citizen Activism* (Georgetown University Press 2012)
Snyder SB, *Human rights activism and the end of the Cold War: a transnational history of the Helsinki network.* (Cambridge University Press 2011)

Tashakorri, A. and Teddlie, C. *Mixed Methodology: Combining Qualitative and Quantitative Approaches* (Sage Publications 1998)

Warren M, *Democracy and Association* (Princeton University Press 2001)

Yin R, *Case Study Research: Design and Methods* (Sage Publications 2003)

Conference Papers, Working Papers and Manuals

Acharya A, 'Local and Transnational Civil Society as Agents of Norm Diffusion', Paper presented to the Global Governance Workshop, 1-3 June 2012, Department of International Development, Queen Elizabeth House, University of Oxford

Anderson K and Rieff D, '"Global Civil Society": A Sceptical View', Washington College of Law Research Paper no. 2008-69

Benedek W and Nikolova M, *Understanding Human Rights: Manual on Human Rights Education* (Human Security Network 2003)

Council of Europe/Association for the Prevention of Torture, *New Partnerships for Torture Prevention in Europe: Proceedings of the Conference, Strasbourg, 6 November 2009* (Council of Europe 2010)

Davenport C, Moore WH. and Armstrong DA, 'Waterboarding and Democracy: Do Democratic Institutions Inhibit Torture?' (2008) Paper presented at the Annual Meeting of the International Studies Association, 28 February-3 March 2007, Chicago, IL

Donno D, *Legalization and Leverage: Human Rights Conditionality in the European Union's Economic Agreements.* (Report of APSA Annual Meeting 2012)

Frasheri E, *Of Knights and Squires: European Union and the Modernization of Albania,* 2016, Working Paper no 81, Center for International Development at Harvard University

Guasti P and Mansfeldová Z, C*entral and Eastern Europe after Enlargement: Successes and Failures*. Paper proposed for 41st ECPR Joint Sessions of Workshops, Workshop 12, 'From the Outside In – International Relations' Effects on Domestic Public Attitudes', Johannes Gutenburg Universität, Mainz, 11-16 March 2013

Hafner-Burton EM and Ron J, 'The Latin Bias: Regions, the Western Media and Human Rights 1981-2000' *ILAR Working Paper* 10 August 2011

Heikkilä M, Mustaniemi-Laakso M, Egan S, Finlay G, Lewis T, Heschl L, Salomon S, Planitzer Jand Sax H, *Report Critically Assessing Human Rights Integration in AFSJ policies* (FRAME 2015)

Karakushi A, 'Albania: Shrinking Spaces, Battles and Striving to Foster Trust in Civic Activism' in Heinrich Böll Foundation, *Shrinking Spaces in the Western Balkans* (Sarajevo 2016), 47-52

Kreienkamp J, *Responding to the Global Crackdown on Civil Society*, Policy Brief September 2017, Global Governance Institute

Lazeri M, *Renegotiating Albania Identity: European Transformations* (unpublished manuscript, Utrecht University, The Netherlands), http://www.inclusionexclusion.eu/site/wp-content/uploads/2014/11/Marina-Lazeri.pdf

MacDonald, Morag, Country Report for Romania (1-8 February 2004), Research Project for the Central and Eastern European Network of Drug Services in Prison in cooperation with The European Institute for Crime Prevention and Control, affiliated with the UN, University of Central England, 2004

Mavrikos-Adamou, T, *The Role Played by Local Culture in the Democratization Process: Comparing FYR Macedonia, Bulgaria and Albania*. Paper presented at the annual meeting of the American Political Science Association, Sept 1-4, 2005, Washington DC

Mobekk E, 'Police Reform in South East Europe: An Analysis of the Stability Pact Self-Assessment Studies'. *Defence and Security Sector Governance and Reform in South East Europe Self-Assessment Studies: Regional Perspectives Police Reform in South East Europe by Nomos*, Geneva Centre for the Democratic Control of Armed Forces (DCAF) (2005): 155-168

Niklewicz, K, *The Long March Towards the EU: Candidates, Neighbours and the Prospects for Enlargement* (Wilfred Martens Centre for European Studies 2016)

Satterthwaite ML (2015) 'Coding Personal Integrity Rights: Assessing Standards-Based Measures against Human Rights Law and Practice', *New York University Public Law and Legal Theory Working Papers*, Paper 548

Wallig CB and Waltz S (2011), *Human Rights: From Practice to Policy. Proceedings of a Research Workshop, Gerald R. Ford School of Public Policy, University of Michigan, October 2010*

NGO publications

Albanian Helsinki Committee, *Monitoring Report on the Situation of Respect for Human Rights in Albania for 2011*, Tirana January 2012

Albanian Helsinki Committee, *Report on the Situation of Human Rights at Police Directorates and Commissariats, and Pre-trial Facilities and Institutions for the Enforcement of Criminal Sentences, during the period of May-November 2012,* Tirana December 2012

Albanian Helsinki Committee, *Report on the Situation of Human Rights at Police Directorates and Police Stations, and Pre-trial Facilities and Institutions for the Enforcement of Criminal Sentences, during the period of June-November 2013,* Tirana December 2013

Albanian Helsinki Committee, *Report on the Situation of Respect for Human Rights in Albania during 2014*, Tirana December 2014

Albanian Helsinki Committee, *Report on the Human Rights Situation of Liberty Deprived Persons in the Police Directories and Stations and in Detention and Prisons,* Tirana December 2014

Albanian Helsinki Committee, *Report on the Situation of Respect for Human Rights and Freedoms in Albania during 2016,* Tirana April 2017

Albanian Rehabilitation Center for Trauma and Torture, *Annual report 2011*, Tirana 2011

Amnesty International, *Romania: Broken Commitment to Human Rights* 22 May 1995. EUR 39/01/95

Amnesty International, *Romania: Update to May 1995 Report*, September 1995 EUR 39/19/95

Amnesty International, *Bulgaria: Bulgarian Authorities Respond to Amnesty International's June 1996 Report*

Amnesty International, *A Summary of Amnesty International's concerns related to the Bolivian Governments implementation of the International Covenant on Civil and Political Rights* (March 1997), AMR 18/0597

Amnesty International, *FYR of Macedonia: After the Aracinovo murders - Torture, ill-treatment and possible extrajudicial execution*, 22 June 2000, EUR 65/003/2000

Amnesty International - *Albania: Torture and ill-treatment - an end to impunity?* 18 May 2001, EUR 11/001/2001

Amnesty International, *Former Yugoslav Republic of Macedonia: Collecting blows - The alleged ill-treatment of Roma in Sasavarlija*, 1 November 2001, EUR 65/008/2001

Amnesty International - *Albania: Alleged ill-treatment of detainees by police*, 1 May 2002, EUR 11/006/2002

AI, *Amnesty International Report 2002 – Albania*, 28 May 2002, available at http://refworld.org/docid/3cf4bc1028.html (accessed 6 May 2015).

Amnesty International, *Ex-République Yougoslave de Macédoine: Allégations de mauvais traitements infligés à deux femmes rom par la police de Strumitsa*, 1 August 2002, EUR 65/004/02

Amnesty International, *Former Yugoslav Republic of Macedonia: The "lions" beat tonight: alleged ill-treatment of Macedonian citizens by paramilitary police*, 1 December 2002, EUR 65/025/2002

Amnesty International, *Combating Torture: A Manual for Action* (Amnesty International Publications 2003)

Amnesty International, *Albania: Inhuman and degrading detention conditions in police stations - steps towards reform*, 19 February 2004, EUR 11/001/2004

Amnesty International and others, Albania: *What happened to Remzi Hoxha?* 21 Oct 2004, AI Index EUR 11/004/2004

Amnesty International, *Albania: Obligations Under the UN Convention against Torture - A Gap Between Law and Practice*, 1 February 2005, EUR 11/001/2005

Amnesty International, *Albania: The role of the People's Advocate and other human rights defenders in combating torture and ill-treatment is crucial*, 25 November 2008, EUR 11/004/2008

Amnesty International, *Bulgaria: Investigations into alleged excessive use of force during Sofia protests must be prompt and thorough*, 1 August 2013, EUR 15/001/2013

Amnesty International, *Global Survey on Attitudes to Torture* (2014) www.amnesty.org/Act40 (accessed 30 August 2016)

Amnesty International, *Fenced Out: Hungary's Violations of the Rights of Refugees and Migrants*, EUR 27/2614/2015

APADOR-CH, *2015 Report*, available at http://www.apador.org/wp-content/uploads/2016/02/Raport-APADOR-CH-2015-EN.pdf (accessed 10 March 2018)

APADOR-CH, European Roman Rights Centre and Romani Criss, *Memorandum on the implementation of the judgments in the group of cases Barbu Anghelescu (no. 46430/99) concerning police brutality in Romania*, June 2016 available at http://www.errc.org/cms/upload/file/joint-submission-to-the-council-of-europe-on-implementation-of-police-brutality-judgments-in-romania-june-2%20016.pdf (accessed 18 March 2018)

APADOR-CH, 'The Romanian Prosecutor's Office (POHCCJ) combats police violence through secret strategy", 10 October 2016, http://www.apador.ch/en/parchetul-combate-abuzurile-politei-printr-o-strategie-secreta/ (accessed 3 September 2018)

APADOR-CH, 'Romania Moves to Muzzle Civil Society Groups', 24 November 2017**,** https://www.liberties.eu/en/news/political-campaign-of-silencing-ngo-in-romania/13649 **(**accessed 10 March 2018)

APADOR-CH, 'The government uses a European directive on anti-money laundering to close down NGOs', 7 March 2018, published on its website, http://www.apador.org/en/guvernul-foloseste-o-directiva-europeana-ca-nou-pretext-pentru-desfiintarea-de-ong-uri/ (accessed 10 March 2018)

Bulgarian Helsinki Committee, Funding page, undated, available at http://www.bghelsinki.org/en/about-us/funding/ (accessed 16 February 2018)

Bulgarian Helsinki Committee, 'BHC Condemns Authorities' Inaction against Harassment and Discriminatory Rhetoric', *Liberties*, 25 September 2014 https://www.liberties.eu/en/news/ngo-harassment-bulgaria/1744 (accessed 20 February 2018)

Bulgarian Helsinki Committee, *Written Comments of the Bulgarian Helsinki Committee Concerning Bulgaria for Consideration by the United Nations Committee on the Elimination of Racial Discrimination at its 92nd Session*, March 2017

Bulgarian Helsinki Committee, *Alternative Report on the Implementation of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Bulgaria*, July 2017. Available at http://www.bghelsinki.org/media/uploads/documents/reports/special/2017-alternative_report_cat.pdf (accessed 16 February 2018)

Bulgarian Prisoners' Association, 'The New Bulgarian Penitentiary System Law', 14 March 2017, available at http://bpra.info/en/the-new-bulgarian-penitentiary-system-law/ (accessed 16 February 2018)

CIVICUS, *Civil Society Without the Citizens: As Assessment of Bulgarian Civil Society 2003-2005* (CIVICUS 2005)

CIVICUS and Civil Society Development Foundation, *Dialogue for Civil Society: Report on the state of civil society in Romania* (CIVICUS 2005)

CIVICUS, IDM and UNDP, *Civil Society Index for Albania: In Search of Citizens and Impact*, (IDM 2010)

CIVICUS, *Cutting the Diamond: A first look at the quantitative data of the CIVICUS Civil Society Index, 2008-2011* (CIVICUS 2011)

CIVICUS and Open Society Institute Sofia, *Civil Society Index 2008-2010. Civil Society in Bulgaria: Citizen Actions Without Engagement* (Open Society Institute 2011)

CIVICUS, *Civic Engagement – Long Road to Go* (Macedonian Center for International Cooperation 2011)

CIVICUS Monitor, *Albania Overview*, 14 April 2014, available at https://monitor.civicus.org/newsfeed/2016/04/14/Albaniaoverview/ (accessed 18 February 2018)

CIVICUS, 'Foundation Open Society Macedonia: Civil Society Under Unprecedented Attack', CIVICUS Monitor website, 5 April 2017, available at

https://monitor.civicus.org/newsfeed/2017/04/05/foundation-open-society-macedonia-civil-society-under-unprecedented-attack/ (accessed 31 March 2018)

Damjanovski I, *Analysis of public opinion on Macedonia's accession process to the European Union (2014-2016)*, IDCS 2016

Helsinki Watch, *Romania report 1993*

Human Rights Watch, *Human Rights in Post-Communist Albania*, 1 March 1996, 1606, available at: http://www.refworld.org/docid/3ae6a7f30.html (accessed 18 February 2018)
Human Rights Watch, *Children of Bulgaria - Police Violence and Arbitrary Confinement* , 1 September 1996, 1-56432-200-9, available at: http://www.refworld.org/docid/3ae6a7dc4.html (accessed 11 May 2014)

Human Rights Watch, *World Report 2000: Romania.*

International Helsinki Federation *Annual Report on Human Rights Violations (2001): Romania*, 26 June 2001, available at: http://www.refworld.org/docid/469242890.html (accessed 5 January 2017)

International Helsinki Federation for Human Rights (IHF), International Helsinki Federation *Annual Report on Human Rights Violations (2003): Romania*, 24 June 2003, available at: http://www.refworld.org/docid/469243cc0.html (accessed 5 January 2017)

International Helsinki Federation for Human Rights (IHF), International Helsinki Federation, *Annual Report on Human Rights Violations (2004): Romania*, 23 June 2004, available at: http://www.refworld.org/docid/4692446ed.html (accessed 6 January 2017)

International Helsinki Federation for Human Rights (IHF), International Helsinki Federation, *Annual Report on Human Rights Violations (2005): Romania*, 27 June 2005, available at: http://www.refworld.org/docid/4694f8420.html (accessed 6 January 2017)

International Helsinki Federation for Human Rights (IHF), International Helsinki Federation, *Annual Report on Human Rights Violations (2006): Romania*, 8 June 2006, available at: http://www.refworld.org/docid/469392970.html (accessed 6 January 2017)

International Helsinki Federation for Human Rights (IHF), International Helsinki Federation, *Annual Report on Human Rights Violations (2007): Romania*, 27 March

2007, available at: http://www.refworld.org/docid/469399c50.html (accessed 6 January 2017)

Kabakchieva P and Hristova D, *Civil Society in Bulgaria: NGOs v. Spontaneous Civic Activism (*2012), Open Society Institute Sofia and Trust for Civil Society in Central and Eastern Europe

Kukova S, *The Normative and Practical Obstacles to Effective Prosecution of Ill-Treatment by Official Persons*, BHC Sofia 2016

Macedonian Centre for European Training, *Traitors, Hirelings and Sandwich-Protestors: Civil Activism in the Macedonian Public Discourse* (Foundation Open Society - Macedonia 2013)

OMCT, *Urgent Intervention - Macedonia: Smear campaign and administrative harassment against the Macedonian Helsinki Committee (MHC)* 28 February 2017

Open Society Justice Initiative, *Legal Briefing: European Union Law and Romanian Draft Law 140/2017 on Associations and Foundations*, 31 January 2018., available at https://www.opensocietyfoundations.org/sites/default/files/romania-legal-briefing-20180205.pdf (accessed 18 March 2018)

Refugee Solidarity Network, *2017 Bulgaria Field Report*, 2 March 2017

Youth Initiative for Human Rights, International Rehabilitation Council for Torture Victims, Rehabilitation Centre for Trauma and Torture, Youth Initiative for Human Rights, *Mechanisms for the Prevention of Torture in the Western Balkans, Sub Regional Report: Albania, Montenegro and Serbia 2016*

Online media

Anonymous, '"Soros" network in Albania has a strong influence in Macedonia', *Republika* website, 11 February 2017, http://english.republika.mk/soros-network-in-albania-has-a-strong-influence-in-macedonia/ (accessed 19 February 2018)

Anonymous, 'A Macedonian breakdown gets Europe's attention', 9 May 2017, The Economist, https://www.economist.com/news/europe/21718549-tensions-countrys-albanian-politicians-could-deteriorate-conflict-macedonian (accessed 18 February 2018)

Balkan Civil Society Development Network, 'Cautious signs of improvements in respect for freedom of association', CIVICUS Monitor website, 31 July 2017,

available at https://monitor.civicus.org/newsfeed/2017/07/31/cautious-signs-improvements-respect-freedom-association/ (accessed 31 March 2018)

Biddle ER and Stojanovski F, 'Despite regime change, Macedonia still reeling from persecution', IFEX, 4 January 2018, available at https://www.ifex.org/macedonia/2018/01/04/civi-society-persecuted/ (accessed 31 March 2018)

Bowen S '"Full-spectrum" human rights: Amnesty International rethinks', 2 June 2005, *openDemocracy*, http://www.opendemocracy.net/democracy-think_tank/amnesty_2569.jsp (accessed 14 January 2012)

Byrne A, 'Hungary steps up anti-Soros rhetoric with "national consultation", Financial Times (London 3 Oct 2017)

Cheresheva, Mariya, 'Bulgaria Helsinki Chief Links Assault to Nationalism', www.balkaninsight.com, 28.10.16 (accessed 22 May 2017)

Day, Jonathan, 'Romanian NGOs on Tenterhooks as Government Takes Aim at Civil Liberties', 30 August 2017, Liberties, available at https://www.liberties.eu/en/news/romanian-shrinking-space-civil-society/12830 (accessed 18 March 2018)

Democracy Ranking Association, www.democracyranking.org/wordpress/2016-full-dataset/ (accessed 14 January 2018)

Gologanova, Kristina, 'No state support, little funding: how Bulgaria centre manages to treat torture victims in trying times', https://worldwithouttorture.org>2013/03 (accessed 14 February 2018)

Grandstaff, Jacob 'George Soros' Romanian Ghosts, Part Two', online article, Capital Research Center, 8 January 2018, available at hppts://capitalresearch.org/article/george-soross-romanian-ghosts-part-two/ (accessed 4 March 2018)

Hervey Ginger and Livingstone Emmet, 'What is Article 7?', Politico website, https://www.politico.eu/article/hungary-eu-news-article-7-vote-poland-rule-of-law/ (accessed 4 March 2018)

Hoban M, 'Personalized News Feeds: The Dark Side of "Have It Your Way", Fast Company, online article dated 28 Feb 2011, https://www.fastcompany.com/1732527/personalized-news-feeds-dark-side-have-it-your-way (accessed 7 January 2018)

Hopgood S, ‘Amnesty International: The politics of morality’, 22 March 2010, *openDemocracy*, http://www.opendemocracy.net/democracy-think_tank/amnesty_morality_3625.jsp (accessed 14 January 2012)

Miller S, ‘Torture’, The Stanford Encyclopedia of Philosophy (Winter 2008 Edition), Edward N. Zalta (ed.), http://plato.stanford.edu/archives/win2008/entries/torture/ (accessed 14 January 2012)

Pegram T, ‘State Restrictions on Civil Society and the Free Flow of Information’, 13 May 2017, available online at http://tompegram/2017/05/state-restrictions-civil-society-free-flow-information/ (accessed 24 Dec 2017)

Reich O, ‘Romania’s Civil Society is Being Strangled’, 13 March 2018, available at https://www.liberties.eu/en/campaigns/romanian-civil-society-freedom-under-threat-campaign/263 (accessed 18 March 2018)

Rettman A ‘EU to Macedonia: ‘Stop playing with fire’’, *EU Observer*, Brussels 22 March 2017, available at https://euobserver.com/foreign/137332 (accessed 31 March 2018)

Szirtes G, ‘If you doubt Europe still matters, ask a young Hungarian’, *The Guardian* (London 29 April 17)

Tamkin, Emily, ‘Who’sAfraid of George Soros’, Foreign Policy website, 10 October 2017, available at http://foreignpolicy.com/2017/10/10/whos-afraid-of-george-soros/ (accessed 4 March 2018)

Travis A and Weaver M, ‘G4S abuse claims prompt call for contract suspension’, *The Guardian* (London 1 September 2017)

International/intergovernmental organisation publications

Committee of Ministers, *Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights* (Council of Europe 2010)

European Commission, *Communication from the Commission, Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania*, Brussels, 26.9.2006, COM (2006) 549 final

European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the*

Committee of the Regions, 2016 Communication on EU Enlargement Policy, Brussels, 9.11.2016 COM(2016) 715 final

European Committee for the Prevention of Torture, *Report of Periodic Visit to Romania, 05/06/2014-17/06/2014* (in French only).

European Committee for the Prevention of Torture, *Public Statement concerning Bulgaria*, Strasbourg, 26.03.15, CPT/Inf (2015) 17

European Committee for the Prevention of Torture, *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 20 February 2015*

European Committee for the Prevention of Torture, *Report to the Government of 'the former Yugoslav Republic of Macedonia' on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 9 December 2016*, CPT/Inf (2017) 30 Strasbourg, 12 October 2017, 23.

European Parliament Policy Department, *Study Shrinking Space for civil society: the EU response,* April 2017, EP/EXPO/B/COMMITTEE/FWC/2013-08/Lot8/12

European Parliament, Directorate-General for Communication, Public Opinion Monitoring Unit, October 2017, *Parlemeter 2017, A Stronger Voice, Citizen's Views on Parliament and the EU, Part II Complete Survey Results.* PE608.759

Muižnieks N, *The Shrinking Space for Human Rights Organisations, The Commissioner's Human Rights Comments,* Strasbourg 04/04/2017, available at https://www.coe.int/en/commissioner/-/the-shrinking-space-for-human-rights-organisations (accessed 20 Dec 2017)

OHCHR, *National Human Rights Institutions. History, Principles, Roles and Responsibilities*, Professional Training Series no. 4, 2010

OHCHR, *National Preventive Mechanisms*, undated, http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx (accessed 11 May 2014)

OHCHR, *Committee against Torture begins examination of report of Bulgaria*, press release dated 8 Nov 2011 www.newsarchive.ohchr.org (accessed 28 Jan 2017)

OHCHR, *Committee against Torture begins examination of report of Albania*, press release dated 8 May 2012 www.newsarchive.ohchr.org (accessed 28 Jan 2017)

OHCHR, *Committee against Torture considers the report of Romania*, press release dated 24 April 2015 www.newsarchive.ohchr.org (accessed 28 Jan 2017)

OHCHR, *Committee against Torture considers the report of the Former Yugoslav Republic of Macedonia*, press release dated 5 May 2015 www.newsarchive.ohchr.org (accessed 28 Jan 2017)

OSCE/ODIHR, *The Fight against Torture: The OSCE Experience* (ODIHR 2009)

UN Committee against Torture, *Concluding observations of the Committee against Torture: Bulgaria*, Forty-seventh session, 31 October–25 November 2011

UN Committee against Torture, *Concluding observations on the sixth periodic report of Bulgaria*, Sixty-second session, 6 November – 6 December 2017

UN Human Rights Committee, *Concluding observations on the third periodic report of Bulgaria, Addendum, Information received from Bulgaria on follow-up to the concluding observations,'* 13 January 2014, CCPR/C/BGR/CO/3/Add.1

UN Special Rapporteur, *Report of the Special Rapporter, Mr Nigel S Rodley, submitted pursuant to Commission on Human Rights resolution 1997/98,* E/CN.4/1998/38, 24 December 1997

World Bank Operations Policy Department, *Working with NGOs: A Practical Guide to Operational Collaboration between the World Bank and Non-governmental Organizations* (World Bank 1995)

State agency and NPM reports

Ombudsman for Bulgaria, *Annual Report of the Ombudsman as a National Preventive Mechanism* 2014, http://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/BulgariaAnnualReport2014.pdf (accessed 16 February 2018)

Romanian Ombudsman, '**National Human Rights Institution', undated statement on website, available at** http://avpoporului.ro/index.php?option=com_content&view=article&id=441&Itemid=283&lang=en **(accessed 18 March 2018)**

USAID, 'CSO Sustainability Index Methodology', 19 February 2016, https://www.usaid.gov/what-we-do/democracy-human-rights-and-governance/cso-sustainability-index-methodology (accessed 4 February 2018)

USAID, *CSO Sustainability Index for Central and Eastern Europe and Eurasia*, 20th edition, July 2017

US State Department *Country Reports on Human Rights Practices for 1994: Albania* (1995). Available at http://dosfan.lib.uic.edu/ (accessed 5 April 2015)

US State Department *Country Reports on Human Rights Practices for 1994: Bolivia* (1995). Available at http://dosfan.lib.uic.edu/ (accessed 5 May 2013)

US State Department *Country Reports on Human Rights Practices for 1995: Albania* (1996). Available at http://dosfan.lib.uic.edu/ (accessed 6 April 2015)

US State Department *Country Reports on Human Rights Practices for 1996: Albania* (1997). Available at http://dosfan.lib.uic.edu/ (accessed 6 April 2015)

US State Dept 1997. US State Department *Country Reports on Human Rights Practices for 1997: Albania* (1998). Available at http://dosfan.lib.uic.edu/ (accessed 12 April 2015)

US State Department *Country Reports on Human Rights Practices for 1997: Bolivia* (1998). Available at http://dosfan.lib.uic.edu/ (accessed 5 May 2013)

US State Dept 1997. US State Department *Country Reports on Human Rights Practices for 1998: Albania* (1999). Available at http://dosfan.lib.uic.edu/ (accessed 12 April 2015)

US State Department *Country Reports on Human Rights Practices for 1999: Bulgaria* (2000). Available at http://dosfan.lib.uic.edu/ (accessed 5 February 2015)

US State Department *Country Reports on Human Rights Practices for 2000: Bulgaria* (2001). Available at http://dosfan.lib.uic.edu/ (accessed 5 February 2015)

US State Department *Country Reports on Human Rights Practices for 2001: Albania* (2002). Available at https://www.state.gov/j/drl/rls/hrrpt/2001/ (accessed 12 April 2015)

US State Department *Country Reports on Human Rights Practices for 2001: Bulgaria* (2002). Available at https://www.state.gov/j/drl/rls/hrrpt/2001/ (accessed 6 February 2015)

US State Department *Country Reports on Human Rights Practices for 2002: Albania* (200). Available at https://www.state.gov/j/drl/rls/hrrpt/2002/ (accessed 12 April 2015)

US State Department *Country Reports on Human Rights Practices for 2004: Albania* (2005). Available at https://www.state.gov/j/drl/rls/hrrpt/2005/ (accessed 12 April 2015)

US State Department *Country Reports on Human Rights Practices for 2004: Bulgaria* (2005). Available at https://www.state.gov/j/drl/rls/hrrpt/2004/41674.htm (accessed 6 February 2015)

US State Department *Country Reports on Human Rights Practices for 2005: Romania* (2005). Available at https://www.state.gov/j/drl/rls/hrrpt/2005 (accessed 6 February 2017)

US State Department *Country Reports on Human Rights Practices for 2012: Bulgaria* (2013). Available at https://www.state.gov/j/drl/rls/hrrpt/2012/ (accessed 8 February 2015)

US State Department *Country Reports on Human Rights Practices for 2014: Romania* (2015). Available at https://www.state.gov/j/drl/rls/hrrpt/2014/ (accessed 8 February 2018)

Legal cases

A and others v. the Secretary of State for the Home Department [2005] UKHL 71

Andonovski v The Former Yugoslav Republic of Macedonia, ECtHR App. No. 24312/10 23 July 2015

Anguelova v Bulgaria ECtHR App. No. 38361/97 13 June 2002

Asllani v The Former Yugoslav Republic of Macedonia, ECtHR App. No. 24058/13 10 December 2015

Association for European Integration and Human Rights and Ekimdzhiev v Bulgaria, ECtHR App. No. 62540/00 28 June 2007

AT v Hungary, CEDAW Communication 2/2003, 26 January 2005

Aydin v Turkey, ECtHR App. No. 25660/94 4 August 2005

Barbu Anghelescu v Romania, ECtHR App. No. 46430/99 5 October 2004

Bekirski v Bulgaria ECtHR App. No. 71420/01 2 September 2010

Bulgarian Helsinki Committee v Bulgaria, ECtHR Chamber decision 21 July 2016

Ceka v Albania, ECtHR App. No. 26872/05 23 October 2012

Centre for Legal Resources on Behalf of Valentin Câmpeanu v Romania ECtHR App. No. 47848/08 17 July 2014

Da Penha v Brazil, Case 12.051, Report no. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. (2000)

Dimitrov v Bulgaria ECtHR App. No. 31365/02 15 January 2009
Dybeku v Albania ECtHR App. No. 41153/06 18 December 2007

Dzeladinov v The Former Yugoslav Republic of Macedonia, ECtHR App. No. 13252/02 10 April 2008

E v UK ECtHR App. No. 33218/96 26 November 2002

ES v Slovakia, ECtHR App. No. 8227/04 15 September 2009

Filártiga v Peňa-Irala, 630 F 2D 876 (CA, 2 Cir. 1980)
Geanopol v Romania, ECtHR App. No. 1777/06 5 March 2013

Georgiev v Bulgaria ECtHR App. No. 61275/00 16 October 2008

Gergely v Romania app. No. 57885/00, ECtHR App. No. 57885/00 26 April 2007

Goh v Romania, ECtHR App. No. 9643/03 21 June 2011

Grori v Albania ECtHR App. No. 25336/04 7 July 2009

Gutsanovi v Bulgaria, ECtHR App. No. 34529/10 15 October 2013

Hajrulahu v The Former Yugoslav Republic of Macedonia, ECtHR App. No. 37537/07 29 October 2015

Ilievska v The Former Yugoslav Republic of Macedonia, ECtHR App. No. 20136/11 7 May 2015

Ireland v UK, ECtHR App. No. 5310/17 18 January 1978

Ivanov v Bulgaria ECtHR App. No. 69138/01 22 July 2008

Jasar v The Former Yugoslav Republic of Macedonia, ECtHR App. No. 69908/01 11 April 2006

Kaçiu and Kotorri v Albania ECtHR App. No. 33192/07 and 33194/07 25 June 2013

Kalanyos and others v Romania, ECtHR App. No. 57884/00 19 May 2005

Keremedchiev v. Bulgaria, Comm. 257/2004, U.N. Doc. A/64/44 (CAT 2008)

Kitanovski v *The Former Yugoslav Republic of Macedonia*, ECtHR App. no. 15191/12 22 January 2015

Lăutaru v Romania, ECtHR App. No. 13099/04 18 January 2012

Mazâlu v Romania, ECtHR App. No. 24009/03 12 January 2012

Moldovan v Romania (no.2) ECtHR App. no. 41138/98 and 64320/01) 13 July 2005

Neshkov and others v Bulgaria ECtHR Chamber decision 27 January 2015

Ognyanova and Choban v Bulgaria ECtHR App. No. 46317/99 23 February 2006

Petrov v Bulgaria ECtHR ECtHR App. No. 22926/04 24 January 2012

Public Committee against Torture in Israel v Government of Israel, High Court of Justice, 5100/94, 1999

Rashid v Bulgaria ECtHR App. No. 47905/99 18 January 2007

Selmouni v France, ECtHR App. No. 25803/94 28 July 1999

Sulejmanov v The Former Yugoslav Republic of Macedonia, ECtHR App. No. 69875/01 24 April 2008

Toteva v Bulgaria ECtHR App. No. 42027/98 19 May 2004

Trajkoski v *The Former Yugoslav Republic of Macedonia*, ECtHR App. No. 13191/02 7 February 2008

Tudor v Romania, ECtHR App. No. 43543/09 18 June 2013

Vartic v Romania, ECtHR App. No. 12152/05 10 October 2012

Vasilev v Bulgaria ECtHR App. No. 48130/99 12 April 2007

Yankov v Bulgaria ECtHR App. No. 39084/97 11 December 2003

Z v UK ECtHR App. No. 29392/95 10 May 2001

Websites

Cingranelli and Richards' Human Rights Data Project: http://www.humanrightsdata.org/index.asp

Democracy Ranking Association: www.democracyranking.org/wordpress/2016-full-dataset/

European Court of Human Rights: www.echr.coe.int

Freedom House Country Scores: https://freedomhouse.org

UCDP/PRIO Armed Conflict Dataset version 17.2, available from http://ucdp.uu.se/downloads/ (accessed 13 January 2018)

US Department of State, Annual Country Reports on Human Rights Practices: https://www.state.gov/j/drl/rls/

World Bank: http://data.worldbank.org/indicator/NY.GNP.PCAP.PP.CD