

Article 03

By Julie Gilbert and Frédéric Choffat

Julie Gilbert and Frédéric Choffat's film presents an individual whose nationality and origins are not disclosed. He is seen in a bus, and seems to be closed in on himself. The camera and soundtrack suggest that he has suffered physical or verbal violence at some point in his life, but we do not know where this took place or for what reasons. He leaves his nightmarish thoughts and gets off the bus.

We can imagine that the directors of this film wished to show us that we know nothing of the past of another person, nothing of his memories and the traumas he has perhaps endured.

It is clear that the person in the film has known times in his life when he has been imprisoned and the victim of brutality, although we do not know where or in what exact circumstances. With regard to the *Universal Declaration of Human Rights* (see *Bouly, A Camper Meets the Eternal*) and international human rights law in general, the film raises questions related to liberty and security of the person, torture, arbitrary detention, and political asylum in the case of a foreigner.

Torture

The prohibition against torture flows directly from the central idea of the *Universal Declaration of Human Rights*, which is “the recognition of the inherent dignity . . . of all members of the human family” (preamble, §1). This results in the prohibition of infringing the physical integrity of the human person and therefore the prohibition of torture, which is absolute. This means that no situation (emergency, exceptional circumstances, etc.) can justify its infringement. Neither can one invoke the order of a superior or of a public authority to justify acts of torture. In summary, the prohibition against torture is one of the rights and freedoms which may in no circumstances be breached.

In addition to the *Universal Declaration of Human Rights* (article 5) the prohibition against torture figures in a number of international treaties whose authority is mandatory: the *International Covenant on Civil and Political Rights* (article 7), the *European Convention on Human Rights* (article 3) and, above all, the *Convention against Torture and Other Cruel, Inhuman or Degrading*

Treatment, adopted by the General Assembly of the United Nations in 1984 and ratified by 141 States. The Prohibition against torture also appears in article 10 §3 of the *Swiss Constitution*, which provides that “Torture and any other cruel, inhuman or degrading treatment or punishment are prohibited”.

Torture is defined by the Convention against Torture so as to contain the following elements:

- an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person;
- by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity;
- with a view to 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.

State obligations go beyond this definition. Not only are they prohibited from carrying out torture and from arranging for it be carried out but they are equally obliged to protect the people living in their territory against acts of torture from whatever source.

In addition to torture, any acts considered cruel, inhuman or degrading are considered in the same way. However although torture has been more or less well defined, this other treatment is less so. It can be said that it is less serious than torture, that inhuman treatment is more serious than degrading treatment, and that in defining prohibited treatment the context of the act can be important: the conditions, duration, physical consequences, age, sex and state of health of the victim.

By ratifying the *Convention against Torture*, States also prohibit themselves from removing or extraditing people to a State where they risk being tortured (article 3 §1). This law is taken up by the *Swiss Constitution* which states that: “Refugees may not be removed by force or extradited to a state in which they are persecuted” (Article 25 § 3).

Arbitrary Detention

Depriving someone of their liberty is one of the most serious infringements of human rights. Thus it is authorised only under the strictest of conditions which are found in similar terms in the most important international treaties dealing with this issue. The *Universal Declaration of Human Rights* sets out firstly in article 3 that “everyone has the right to life, liberty and security of person”. It then draws the logical consequence of this, that “no one shall be subjected to arbitrary arrest, detention or exile” (article 9).

The prohibition of arbitrary detention is provided for in the *International Covenant on Civil and Political Rights* (articles 9, 10, 14 and 15) as well as in the *European Convention on Human Rights* (articles 5, 6 and 7). It also features in articles 29 to 32 of the *Swiss Constitution*. To summarise these provisions:

- one can be deprived of one's liberty only for reasons and according to procedures provided for under the law; a person who is arrested must also be given the reasons for such arrest;
- the person arrested has the right to make application to a court for a ruling as to the legality of such detention;
- a person arrested for a criminal offence must appear before a judge as quickly as possible, that is within three days of the arrest;
- a person arrested is presumed to be innocent until definitively proven guilty (that is after the exhaustion of all right to appeal) by an independent, impartial court of law before which the person has had the right to representation;
- a person cannot be convicted for acts which were not illegal at the time of their commission;
- a person who has been illegally arrested or detained has the right to compensation.

Asylum

Everyone subject to persecution in their own country has the right to request asylum in another country. The procedure for such asylum is set out by the *Convention relating to the Status of Refugees*. This document sets out the conditions needed to obtain the status of a political refugee. Once such conditions are met, a State is under the obligation to accept the claimant. This right to asylum is open to any person faced with persecution by reason of race, religion, nationality, membership of a particular social group or political opinion. However paragraph 2 of article 14 of the *Universal Declaration of Human Rights* makes clear that the right to asylum may not be invoked in the case of prosecutions genuinely arising from non-political crimes (theft, murder etc.) or from acts contrary to the purposes and principles of the United Nations: appeal to racial hatred, war crimes, and crimes against humanity. For more information, see the website of the United Nations High Commissioner for Refugees [www.http://unhcr.org](http://unhcr.org).

It should also be noted that the *Swiss Constitution* prohibits the removal or extradition of a person "to a State in which they are persecuted" (article 25 § 2).