

COMBATING

TORTURE AND OTHER

ILL-TREATMENT

A MANUAL FOR ACTION



**AMNESTY
INTERNATIONAL**



AMNESTY INTERNATIONAL

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FURTHER READING

AMNESTY INTERNATIONAL

- Amnesty International, [Report on torture](#) (Index: ACT 40/001/1973).
- Amnesty International, [Torture in the Eighties](#) (Index: ACT 40/001/1984).
- Amnesty International, [Torture in 2014: 30 years of broken promises](#) (Index: ACT 40/004/2014).
- Amnesty International, [Fair trial manual: Second edition](#) (Index: POL 30/002/2014).

UN AND REGIONAL HUMAN RIGHTS BODIES

Documents of the UN and regional bodies can be obtained from the following websites:

- Human Rights Council: www.ohchr.org/EN/HRBodies/HRC/Pages/HRCIndex.aspx
- Committee against Torture: www2.ohchr.org/english/bodies/cat/index.htm
- Human Rights Committee: www2.ohchr.org/english/bodies/hrc/index.htm
- UN Subcommittee on Prevention of Torture: www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIndex.aspx
- Other UN treaty bodies: www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx
- Special Rapporteur on torture: www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx
- Other UN Special Procedures: www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx
- The African Commission on Human and Peoples' Rights: www.achpr.org
- The Committee for the Prevention of Torture in Africa: www.achpr.org/mechanisms/cpta/
- The Special Rapporteur on prisons, conditions of detention and policing in Africa: www.achpr.org/mechanisms/prisons-and-conditions-of-detention/
- The African Court on Human and Peoples' Rights: en.african-court.org/
- The Inter-American Commission on Human Rights: www.oas.org/en/iachr/
- The Inter-American Court of Human Rights: www.corteidh.or.cr/
- The European Court of Human Rights: www.echr.coe.int/echr/homepage_EN
- The European Committee for the Prevention of Torture: www.cpt.coe.int/en/

For more information about UN bodies and standards:

- OHCHR, [The UN Human Rights Treaty Bodies](#) (Fact Sheet No. 30/Rev.1), 2012.
- B. Ramcharan, *The UN Human Rights Council*, 2011.

- M. Nowak and E. MacArthur, *The United Nations Convention against Torture: A Commentary*, 2008. This contains a detailed analysis of each of the Articles of the Convention against Torture and its Optional Protocol.
- Y. Tyagi, *The UN Human Rights Committee: Practice and Procedure*, 2011.
- C. Gifford and P. Tepina, *The Torture Reporting Handbook, Second Edition*, 2015. This contains details of how to report to the main international and regional mechanisms dealing with torture.

AFRICA

For more information about the African human rights bodies:

- R. Murray and D. Long, *The Implementation of Findings of the African Commission on Human and Peoples' Rights*, 2015.
- F. Viljoen, *International Human Rights in Africa, Second Edition*, 2012.
- R. Murray and M. Evans, *Documents of the African Commission on Human and Peoples' Rights, Second Edition*, 2007.

AMERICAS

For more information about the Inter-American human rights bodies:

- J.M. Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights, Second Edition*, 2013.
- D. Contreras Garduno, 'The Inter-American System of Human Rights', in *The SAGE Handbook of Human Rights* (A. Mihr and M. Gibney, eds), 2014, pp. 596-614.
- M. Serrano and V. Popovski, 'Human Rights regimes in the Americas', 2010.
- D. Rodríguez-Pinzón and C. Martin. 'The prohibition of torture and ill-treatment in the Inter-American Human Rights System: A handbook for victims and their advocates', 2006.

EUROPE

For more information about the European human rights bodies:

- D.J. Harris, M. O'Boyle, C. Warbrick and E. Bates, *Law of the European Convention on Human Rights*, 2014.
- Council of Europe, *The CPT at 25: Taking Stock and Moving Forward*, 2015.
- R. Morgan and M. Evans, *Combating torture in Europe: The work and standards of the European Committee for the Prevention of Torture (CPT)*, 2001.

DEVELOPMENT OF INTERNATIONAL STANDARDS

For more information about the development of standards on the treatment of persons deprived of their liberty and the prevention of torture:

- N. Rodley and M. Pollard, *The Treatment of Prisoners under International Law, Third Edition*, 2009. See the General Introduction and Chapters 1 and 2.
- University of Essex Human Rights Centre, *Preventing Torture in the 21st Century: Essex Human Rights Review Special Issue*, (Vol. 6 No. 1), 2009.

- APT and IHHR, *Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Implementation Manual, Second Edition*, 2010. Available at: www.apt.ch
- M. Evans, 'Getting to Grips with Torture', in *International and Comparative Law Quarterly*, Vol. 51 No. 2, 2002, pp. 365-383.
- Y. Ginbar, *Why Not Torture Terrorists?: Moral, Practical, and Legal Aspects of the 'Ticking Bomb' Justification for Torture*, 2010.

STANDARDS CITED AND ABBREVIATIONS USED

AFRICAN CHARTER

African Charter on Human and Peoples' Rights

AFRICAN CHARTER ON THE RIGHTS OF THE CHILD

African Charter on the Rights and Welfare of the Child

AFRICAN COMMISSION

African Commission on Human and Peoples' Rights

AFRICAN COURT

African Court on Human and Peoples' Rights

AFRICAN YOUTH CHARTER

AMERICAN CONVENTION

American Convention on Human Rights

AMERICAN DECLARATION

American Declaration of the Rights and Duties of Man

APARTHEID CONVENTION

International Convention on the Suppression and Punishment of the Crime of Apartheid

ARAB CHARTER

Arab Charter on Human Rights, 2008

BANGKOK RULES

United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders

BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS

BASIC PRINCIPLES ON THE INDEPENDENCE OF THE JUDICIARY

BASIC PRINCIPLES ON THE ROLE OF LAWYERS

BASIC PRINCIPLES ON USE OF FORCE

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

BEIJING RULES

Standard Minimum Rules for the Administration of Juvenile Justice

BODY OF PRINCIPLES

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

CAT (IN FOOTNOTES)

Committee against Torture

CEDAW

Convention on the Elimination of All Forms of Discrimination against Women

CEDAW COMMITTEE

Committee on the Elimination of Discrimination against Women

CERD (IN FOOTNOTES)

Committee on the Elimination of Racial Discrimination

CESCR (IN FOOTNOTES)

Committee on Economic, Social and Cultural Rights

CHR (IN FOOTNOTES)

United Nations Commission on Human Rights

CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS**COE**

Council of Europe

COE GUIDELINES ON ERADICATING IMPUNITY

Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations

COE GUIDELINES ON HUMAN RIGHTS AND COUNTER-TERRORISM

Council of Europe Guidelines on human rights and the fight against terrorism

COE RULES ON REMAND IN CUSTODY

Council of Europe Rules on the use of remand in custody, the conditions in which it takes place and the provision of safeguards against abuse

COMMITTEE AGAINST TORTURE**COMMITTEE FOR THE PREVENTION OF TORTURE IN AFRICA****COMMISSION ON HUMAN RIGHTS**

United Nations Commission on Human Rights

CONVENTION AGAINST RACISM

International Convention on the Elimination of All Forms of Racial Discrimination

CONVENTION AGAINST TORTURE

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CONVENTION ON ENFORCED DISAPPEARANCE

International Convention for the Protection of All Persons from Enforced Disappearance

CONVENTION ON PERSONS WITH DISABILITIES

Convention on the Rights of Persons with Disabilities

CONVENTION ON THE RIGHTS OF THE CHILD**CPT (IN FOOTNOTES)**

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CPT STANDARDS

Standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

CRC (IN FOOTNOTES)

Committee on the Rights of the Child

DEATH PENALTY SAFEGUARDS

Safeguards guaranteeing protection of the rights of those facing the death penalty (1984)

DECLARATION AGAINST TORTURE

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

DECLARATION OF GENEVA

Declaration of Geneva (Physician's Oath)

DECLARATION OF TOKYO

Declaration of Tokyo – Guidelines for Physicians Concerning Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment

DECLARATION ON DISAPPEARANCE

Declaration on the Protection of All Persons from Enforced Disappearance

DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN

ELEMENTS OF CRIMES

Elements of Crimes adopted under the Rome Statute of the International Criminal Court

EU GUIDELINES ON THE DEATH PENALTY

EUROPEAN COMMISSION

European Commission of Human Rights

EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

EUROPEAN CONVENTION

(European) Convention for the Protection of Human Rights and Fundamental Freedoms

EUROPEAN CONVENTION FOR THE PREVENTION OF TORTURE

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

EUROPEAN CONVENTION ON MIGRANT WORKERS

European Convention on the Legal Status of Migrant Workers

EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM

EUROPEAN COURT

European Court of Human Rights

EUROPEAN PRISON RULES

FIRST GENEVA CONVENTION

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field

FOURTH GENEVA CONVENTION

Geneva Convention relative to the Protection of Civilian Persons in Time of War

GENEVA CONVENTIONS

Geneva Conventions of August 12, 1949

GENOCIDE CONVENTION

Convention on the Prevention and Punishment of the Crime of Genocide

GUIDELINES FOR ACTION ON CHILDREN IN THE CRIMINAL JUSTICE SYSTEM**GUIDELINES ON THE CONDITIONS OF ARREST, POLICE CUSTODY AND PRE-TRIAL DETENTION IN AFRICA****GUIDELINES ON THE ROLE OF PROSECUTORS****HRC (IN FOOTNOTES)**

Human Rights Committee

HUMAN RIGHTS COUNCIL (IN FOOTNOTES)

United Nations Human Rights Council

ICC REGISTRY REGULATIONS

International Criminal Court, Regulations of the Registry

ICC REGULATIONS

International Criminal Court, Regulations of the Court

ICC RULES OF PROCEDURE AND EVIDENCE

International Criminal Court, Rules of Procedure and Evidence

ICCPR

International Covenant on Civil and Political Rights

ICESCR

International Covenant on Economic, Social and Cultural Rights

ICTR (IN FOOTNOTES)

International Criminal Tribunal for Rwanda

ICTY (IN FOOTNOTES)

International Criminal Tribunal for the former Yugoslavia

INTER-AMERICAN COMMISSION

Inter-American Commission on Human Rights

INTER-AMERICAN CONVENTION AGAINST TORTURE

Inter-American Convention to Prevent and Punish Torture

INTER-AMERICAN CONVENTION ON DISAPPEARANCE

Inter-American Convention on Forced Disappearance of Persons

INTER-AMERICAN CONVENTION ON VIOLENCE AGAINST WOMEN

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

INTER-AMERICAN COURT

Inter-American Court of Human Rights

ISTANBUL PROTOCOL

Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

MANDELA RULES

United Nations Standard Minimum Rules for the Treatment of Prisoners

MIGRANT WORKERS CONVENTION

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

MINNESOTA PROTOCOL

United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

OHCHR

Office of the High Commissioner for Human Rights

OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE

Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

PARIS PRINCIPLES

Principles relating to the Status of National Institutions

PRINCIPLES OF MEDICAL ETHICS

Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

PRINCIPLES ON FAIR TRIAL IN AFRICA

Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa

PRINCIPLES ON LEGAL AID

UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

PRINCIPLES ON PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS

Principles and Best Practices on the Protection of Persons Deprived of their Liberty in the Americas

PRINCIPLES ON THE INVESTIGATION OF TORTURE

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

PROTOCOL I

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts

PROTOCOL II

Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts

PROTOCOL 6 TO THE EUROPEAN CONVENTION

Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty

PROTOCOL AMENDING THE EUROPEAN CONVENTION ON THE SUPPRESSION OF TERRORISM

PROTOCOL TO THE AFRICAN CHARTER ON THE RIGHTS OF WOMEN IN AFRICA

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS TO ABOLISH THE DEATH PENALTY

ROBBEN ISLAND GUIDELINES

Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa

ROME STATUTE

Rome Statute of the
International Criminal Court

RWANDA RULES

Rules of Procedure and Evidence,
International Criminal Tribunal for Rwanda

RWANDA STATUTE

Statute of the International
Criminal Tribunal for Rwanda

RWANDA TRIBUNAL

International Criminal Tribunal for Rwanda

SECOND GENEVA CONVENTION

Convention (II) for the Amelioration
of the Condition of Wounded, Sick
and Shipwrecked Members of Armed
Forces at Sea

**SECOND OPTIONAL PROTOCOL
TO THE ICCPR**

Second Optional Protocol to the
International Covenant on Civil and
Political Rights, aiming at the abolition
of the death penalty

SIRACUSA PRINCIPLES

The Siracusa Principles on the Limitation
and Derogation Provisions in the
International Covenant on Civil and
Political Rights

**SPECIAL RAPPORTEUR ON
EXTRAJUDICIAL EXECUTIONS**

Special Rapporteur on extrajudicial,
summary or arbitrary executions

**SPECIAL RAPPORTEUR ON HUMAN
RIGHTS AND COUNTER-TERRORISM**

Special Rapporteur on the promotion
and protection of human rights and
fundamental freedoms while
countering terrorism

**SPECIAL RAPPORTEUR ON PRISONS,
CONDITIONS OF DETENTION AND
POLICING IN AFRICA****SPECIAL RAPPORTEUR ON TORTURE**

Special Rapporteur on torture and other
cruel, inhuman or degrading treatment
or punishment

**SPECIAL RAPPORTEUR ON VIOLENCE
AGAINST WOMEN**

Special Rapporteur on violence against
women, its causes and consequences

SPT (IN FOOTNOTES)

Subcommittee on Prevention of Torture
and Other Cruel, Inhuman or Degrading
Treatment or Punishment

**STATUTE OF THE SPECIAL COURT FOR
SIERRA LEONE****SUBCOMMITTEE ON PREVENTION
OF TORTURE**

Subcommittee on Prevention of Torture
and Other Cruel, Inhuman or Degrading
Treatment or Punishment

**SUPPLEMENTARY CONVENTION
ON SLAVERY**

Supplementary Convention on the
Abolition of Slavery, the Slave Trade,
and Institutions and Practices Similar
to Slavery

THIRD GENEVA CONVENTION

Geneva Convention relative to
the Treatment of Prisoners of War

TOKYO RULES

United Nations Standard Minimum
Rules for Non-custodial Measures

UNIVERSAL DECLARATION

Universal Declaration of Human Rights

UN RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY

VIENNA CONVENTION ON CONSULAR RELATIONS

VIENNA CONVENTION ON THE LAW OF TREATIES

WGAD (IN FOOTNOTES)

Working Group on Arbitrary Detention

WGEID (IN FOOTNOTES)

Working Group on Enforced
or Involuntary Disappearances

YOGYAKARTA PRINCIPLES

Yogyakarta Principles on the
Application of International Human
Rights Law in relation to Sexual
Orientation and Gender Identity

YUGOSLAVIA RULES

Rules of Procedure and Evidence
of the International Tribunal for the
Prosecution of Persons Responsible
for Serious Violations of International
Humanitarian Law Committed in the
Territory of the Former Yugoslavia

YUGOSLAVIA STATUTE

Statute of the International Criminal
Tribunal for the former Yugoslavia

YUGOSLAVIA TRIBUNAL

International Criminal Tribunal
for the former Yugoslavia

FOREWORD

by Juan E. Méndez, UN Special Rapporteur on torture, 2010-2016

The absolute prohibition of torture and other cruel, inhuman or degrading treatment (“other ill-treatment”) is a bedrock principle of international law. The legal framework around this subject is one of the most developed in international human rights law. While acts of torture and other ill-treatment are proscribed in the main international and regional legal instruments, the prohibition is also a norm of customary international law and enjoys the rare status of a *jus cogens* or peremptory norm of international law, along with the prohibition of slavery and genocide.

Yet torture continues to be inflicted around the world today. Throughout my career and in particular during my six-year mandate as the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, I have observed that torture and other ill-treatment occurs in many forms, under various circumstances, and in different jurisdictions. What unites it is that it typically takes place in the shadows, hidden from people’s eyes and ears. Suspects or detainees are beaten and kicked by their guards behind the thick walls of police stations, hung from the ceiling or administered electro-shocks in remote detention locations, threatened with execution or with the rape of their families by unidentified interrogators, or kept in prolonged solitary confinement without access to their families or lawyers.

Victims believe that they are forgotten. They believe that nobody knows of their suffering, or that nobody cares.

It is therefore of utmost importance to bring such abhorrent practices into view and to make it impossible for governments to cover them up.

As the UN Special Rapporteur on torture, I have the specific mandate to monitor and cast light on such practices, and to advise and publicly report on states’ practices and on their progress in preventing torture and other ill-treatment. During fact-finding visits in various countries, I inspect prisons, pre-trial detention centres, police stations, mental health institutions, juvenile detention centres and immigration detention centres, and speak to inmates in private about the treatment they receive. My visits to prisons are unannounced and unmonitored. The fact that authorities do not know where and when my team and I will knock on a facility’s door allows me to expose violations of the prohibition of torture. It allows me to give victims hope, and perhaps also a voice.

In the aftermath of the terrorist attacks of 11 September 2001, the world saw some disturbing setbacks in the global fight against torture, including a blatant attempt at weakening the universal moral condemnation of torture. Before 9/11, there was a clear moral consensus around the world that torture was unacceptable and that no circumstance could justify it. Following 9/11 and in a climate of fear, states around the world resorted to or were complicit in the torture and other ill-treatment of suspects in misguided attempts to tackle the threat of terrorism. Suddenly, there was a sense that “torture was inevitable”, that “it is ugly but often necessary”, or “the lesser evil”. Claims that “torture works” also became popular, despite reasonable and scientific evidence that while this is almost always true on TV, it is seldom, if ever, so in real life.

Paradoxically, however, such setbacks in fact demonstrate the relevance and resilience of international legal norms prohibiting torture. Indeed, the very attempts of governments that resorted to torture and other ill-treatment to deny and cover up their actions – or to use euphemisms to avoid calling torture by its name – demonstrate that these practices remain unequivocally prohibited in both a legal and a moral sense. Eventually, international courts and mechanisms have pronounced the unlawfulness of such actions and some states have admitted their wrongdoing and, albeit only in some isolated cases, provided reparations to victims.

At the same time, it is important to remember that most victims of torture and other ill-treatment around the world are not suspected terrorists or other high-profile prisoners, but rather come from poor and marginalized populations; they are people who get beaten, humiliated or raped by police and other officials when there is no one to protect them or hear their cries for help. It is equally important that we prevent, expose and condemn such torture, but also that we bring it to the attention of world media, public opinion and decision-makers, precisely because the victims are not famous or notorious.

There have also been significant success stories in the fight against torture worldwide. The Convention against Torture is one of the most widely adopted treaties in international law with 158 ratifications, and its Optional Protocol, aiming at preventing torture and ill-treatment by establishing a combined national and international monitoring system of places of detention, is fast gaining momentum. General understanding of what constitutes torture and other cruel, inhuman or degrading treatment or punishment is also evolving and expanding. Following intense pressure, solitary confinement beyond 15 days is now widely considered a form of mental ill-treatment or even torture, as the complete lack of social contact has come to be viewed as a cruel and extreme measure. Certain abusive practices in health care settings, such as involuntary psychiatric therapies, forced radical drug addiction treatment, forced sterilization, denial of legally available health services like abortion and post-abortion care, as well as forced abortion, have also come to be understood as ill-treatment or torture. Today, it is widely held that acts by private persons or institutions can also invoke state responsibility for torture or other ill-treatment under certain circumstances.

The struggle against torture and other ill-treatment is an uphill one, and many challenges remain before it is truly stamped out, but setbacks and success stories also highlight the need and relevance of continuing to fight.

While prohibition of torture and other ill-treatment is first and foremost a state obligation, I want to emphasize that we all can and must play a role in combating it and bringing acts of torture out from their hiding places. In order to eradicate and abolish torture, we need more than domestic and international law – we need to foster and support a change in public opinion so that the absolute prohibition on torture and other ill-treatment is fully understood as a moral and social imperative by all persons. It must become clear to all that victims experience severe pain and suffering which tends to continue and wield devastating consequences on their lives, long after the acts of torture stop. And that beyond the suffering of the victims, the use of torture and other ill-treatment also corrodes the rule of law, undermines the criminal justice system, and erodes citizens' trust in public institutions and the state they represent.

If we passively allow our governments to employ such methods and take away the dignity and humanity of other human beings, we are bound to lose some of our own humanity.

Bringing atrocities to light is, however, merely the first step. For me, the only real way to eliminate torture is to ensure that those responsible are brought to justice. It is the cycle of impunity that keeps torture alive.

More than 30 years after the Convention against Torture came into force, the international framework on torture and other ill-treatment has seen many positive developments and is today one of the most complete and detailed in international law. Torture is among the few human rights violations where states' obligations explicitly include the investigation, prosecution and punishment of each and every act, and ensuring that survivors are rehabilitated, compensated and afforded other means of redress. In addition, states are obliged to either prosecute suspected perpetrators who are found in their jurisdiction or else transfer the suspect to a court (domestic or international) with jurisdiction to try that particular offence. The "peremptory" nature of the norm strictly precludes any opting out of these obligations by any state in any circumstances. As a result of this principle, states can open up their courts under principles of universal jurisdiction to prosecute perpetrators even when the crime was committed in a foreign territory and when neither the victims nor the perpetrators are nationals of the prosecuting state.

The real challenge remains to make the existing legal framework a reality, and to ensure that states take aggressive and decisive action to prevent, investigate, prosecute and punish all perpetrators of torture, as well as provide reparations to victims. In that fashion they will contribute to ending the cycle of impunity and to suppressing torture once and for all. A variety of other measures, not least the visiting and monitoring

system established by the Optional Protocol to the Convention against Torture, if properly implemented, will help root out the full range of human rights violations that constitute torture or other cruel, inhuman or degrading treatment or punishment.

The elimination and prevention of torture and other ill-treatment in our time will continue to require dedicated, multi-disciplinary and well-synergized efforts by many actors. I am heartened and encouraged by the tireless efforts of civil society organizations, human rights defenders, legal practitioners and other advocates to address the issue of torture and ill-treatment throughout the world. *Combating torture and other ill-treatment: A manual for action*, presented here in its second and much expanded edition, provides a wealth of information and analysis and will no doubt become an important tool for all those who struggle against torture and other ill-treatment – the lawyer, the human rights campaigner, the torture survivor, the academic, the lawmaker, the prosecutor and the activist in the field. Torture and other ill-treatment will not be eradicated overnight, but it can happen. I am hopeful that by continuing to join efforts, we will be able to continue making a difference.

INTRODUCTION

“They put me into the shabeh position, but backwards... They hung me like this four times. They tie your hands behind your back with a rope and make you stand on a chair. Then they attach the rope to a hook on the wall and tighten it, and then they push the chair away, so you hang with your shoulders up, your feet not touching the ground.

“When they first push the chair, you will fall and you will get a shock in your head and in your eyes. You lose consciousness briefly. And then the pain in your shoulder. It is so painful. You shout and scream but then you become thirsty, because you sweat. They hit me with a hosepipe while in this position. It’s too much pain, you can’t really think. But you can’t remove some pictures in your mind of your family.

“You blame yourself, you think, ‘maybe I’m stupid, I brought this on myself, why did I protest?’ But you can’t think rationally because of the pain and the thirst. If a guard brings you some water or food, you feel like you’re in love with him. They put me in this position for two hours.”

– Ali Mulhem, a medical doctor from Homs, Syria, speaking to Amnesty International in 2016.

This manual seeks to support the global efforts to prevent and eradicate torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment). It is the second edition of Amnesty International’s *Combating torture: A manual for action*, first published in 2003. It updates the first edition by including recent developments in international law such as new treaties, standards, jurisprudence, findings and observations of human rights bodies, and expert opinions. It is designed to be a practical guide to international and regional standards that prohibit and seek to prevent torture and other ill-treatment worldwide. The manual provides advice on the implementation of these standards, drawing upon the ideas, activities and achievements of anti-torture activists and experts around the world. Amnesty International’s positions on specific issues are also provided. It is hoped that the manual will be of use not only to Amnesty International staff but to anyone working to expose and combat torture and other ill-treatment, including other human rights defenders, lawyers, judges, law enforcement officers and other public officials, legislators, health professionals and the media.

Chapter 1 outlines the key events in international efforts to tackle torture and other ill-treatment worldwide and the main activities by Amnesty International to combat these forms of abuse over the years. It also introduces the main international and regional bodies and mechanisms concerned with torture and other ill-treatment. Lastly, this chapter explains why there is a continuing need for robust action globally to tackle these forms of abuse.

Chapter 2 explains the nature and scope of the absolute prohibition of torture and other ill-treatment under international law. It examines in detail the numerous international and regional standards that have emerged to prohibit these forms of abuse, as well as the definitions of torture and other ill-treatment that exist. It also considers specific forms of torture or other ill-treatment such as the death penalty, and judicial and administrative corporal punishment. In addition this chapter looks at issues of particular concern such as gender-based violence and the link between discrimination and poverty and torture and other ill-treatment. Lastly, it considers non-state (private) actors and the prohibition of torture and other ill-treatment.

Chapter 3 sets out the numerous safeguards under international law and standards which have been developed to protect and prevent people deprived of their liberty from being tortured and otherwise ill-treated. It looks not only at safeguards for people detained within the context of the criminal justice system but also other forms of deprivation of liberty such as administrative detention, detention on immigration grounds or due to mental health issues, as well as detention during times of armed conflict. It considers the use of force in law enforcement, as well as torture and other ill-treatment within law enforcement, military and security services.

Chapter 4 examines the right of persons deprived of their liberty to be treated with humanity and with respect for the inherent dignity of the human person. It details the numerous international standards relating to conditions of detention and the measures that need to be taken to provide humane conditions. It looks at both the physical and psychological aspects of the treatment of detainees, including the standards and procedures concerning discipline and security.

Chapter 5 considers the obligation of states to prevent torture and other ill-treatment. It examines the role of international, regional and national mechanisms that have been established to promote, ensure and enforce the prevention of torture and other ill-treatment. It also emphasizes the important role that national actors such as national human rights institutions, national preventive mechanisms, non-governmental organizations, faith-based organizations, the judiciary, lawyers and health professionals can play in preventing these forms of abuse.

Chapter 6 looks at efforts to hold states and individuals accountable for acts of torture and other ill-treatment under international law. It sets out the obligations for states to investigate allegations, bring those responsible to justice and provide reparation

to victims. It also considers the role played by the UN and regional treaty bodies and human rights courts when no national efforts are made to bring perpetrators to account, or when national efforts fail. Lastly it looks at the role of the International Criminal Court and ad hoc international and internationalized criminal tribunals in holding individuals accountable for acts of torture and other ill-treatment.

Chapter 7 suggests forms of action that can be taken to combat torture and other ill-treatment. It draws upon a range of strategies and actions taken by human rights defenders working towards a world without torture and other ill-treatment.

The manual cites the most important relevant standards and cases and gives ideas for practical implementation. It also includes links to a wealth of texts, websites and other sources of information that can help readers to stay abreast of developments.

As will be demonstrated in this manual, there have been significant developments and achievements in the fight against torture and other ill-treatment. However, these forms of abuse have not ended. Amnesty International's global [Stop Torture](#) campaign, launched in 2014, highlighted the broken promises made by governments worldwide and urged them to live up to their commitments and respect international law. It is hoped that the information and ideas in this manual can support the efforts of those fighting against torture and other ill-treatment worldwide and ultimately ensure that governments finally implement protective mechanisms to prevent and punish this appalling practice.

We would welcome any suggestions, comments and queries on the manual's content. Please send any such comments to ais-ctm@amnesty.org

CHAPTER 1

TORTURE AND OTHER ILL-TREATMENT: A GLOBAL PROBLEM

Torture and other ill-treatment are outrages upon the inherent dignity of the person. Amnesty International has campaigned to stamp out torture and other ill-treatment for more than 50 years and was at the forefront of campaigning for the creation of the UN Convention against Torture, which came into force in 1984. Internationally and regionally, a number of other treaties, standards and mechanisms to prohibit and prevent torture and other ill-treatment have been developed since the Second World War, under both international human rights law and international humanitarian law. These continue to develop in the face of old and new challenges in combating torture and other ill-treatment, including corruption, discrimination and the threat of terrorism and other abuses by armed groups.

- 1.1 **Key events in international efforts to combat torture and other ill-treatment**
 - 1.1.1 The origins of international action against torture and other ill-treatment
 - 1.1.2 Action in the 1970s
 - 1.1.3 Action in the 1980s
 - 1.1.4 Action in the 1990s
 - 1.1.5 21st century challenges and action
- 1.2 **The establishment of international and regional bodies and mechanisms to implement the obligation to prohibit and prevent torture and other ill-treatment**
 - 1.2.1 Key international bodies and mechanisms concerned with torture and other ill-treatment
 - 1.2.2 Key regional bodies and mechanisms concerned with torture and other ill-treatment
- 1.3 **Freedom from torture and the inherent dignity of persons under international law**
 - 1.3.1 Freedom from torture and the inherent dignity of persons under human rights law
 - 1.3.2 Inherent dignity of persons under international humanitarian law
 - 1.3.3 Torture and discrimination
- 1.4 **Ongoing challenges to the absolute prohibition of torture and other ill-treatment**
 - 1.4.1 Poverty, corruption and torture and other ill-treatment
 - 1.4.2 A failure to criminalize torture under national law
 - 1.4.3 Torture today

1.1 KEY EVENTS IN INTERNATIONAL EFFORTS TO COMBAT TORTURE AND OTHER ILL-TREATMENT

Torture and other ill-treatment are outrages upon the inherent dignity of the person and combating these forms of abuse has been integral to Amnesty International's mission for many decades.

Article 5 of the [Universal Declaration](#) states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The adoption of the Universal Declaration by the UN General Assembly in 1948 signified a consensus among states that everyone has a right not to be tortured or otherwise ill-treated. Since the adoption of the Universal Declaration, international action to combat torture and other ill-treatment has focused on developing standards, establishing mechanisms and procedures to monitor state compliance with these standards, and bringing those responsible for such abuses to justice. Amnesty International’s actions against torture and other ill-treatment over the years have influenced and responded to these international efforts.

Amnesty International’s work to combat torture and other ill-treatment includes exposing allegations of torture or other ill-treatment, campaigning, and other advocacy to ensure that the obligation to prohibit and prevent these acts is implemented, victims receive reparation and those responsible are brought to justice. For more than 50 years, Amnesty International has been at the forefront of global efforts to stamp out torture, including leading the campaign for a worldwide commitment to combat torture resulting in the UN [Convention against Torture](#) in 1984. Amnesty International’s most recent global campaign to “[Stop Torture](#)” was launched in 2014. (See below and [Chapter 7](#).)

As this chapter will demonstrate, combating torture is part of Amnesty International’s history, it is our legacy and – until the final torture chamber closes for business – it is our future.

Timeline for international action against torture and other ill-treatment

- 1948:** The Universal Declaration of Human Rights is adopted by the UN General Assembly.
- 1955:** The UN Standard Minimum Rules for the Treatment of Prisoners are adopted at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders.
- 1961:** Peter Benenson launches a worldwide campaign – Appeal for Amnesty 1961.
- 1966:** The UN adopts the International Covenant on Civil and Political Rights (ICCPR).
- 1972:** On 10 December Amnesty International launches its first Campaign for the Abolition of Torture.
- 1973:** Amnesty International publishes its *Report on Torture* and issues its first full Urgent Action for an individual at risk.
- 1975:** The UN adopts a Declaration on Torture, as campaigned for by Amnesty International.
- 1976:** The ICCPR and the International Covenant on Economic, Social and Cultural Rights (ICESCR) enter into force.
- 1980:** Amnesty International launches its first campaign against the death penalty.
- 1981:** Amnesty International launches a campaign against “disappearances”.
- 1984:** The UN General Assembly adopts the UN Convention against Torture. Amnesty International launches its second global campaign against torture – Torture in the Eighties – which includes Amnesty International’s 12-Point Programme for the Prevention of Torture.
- 1985:** The Organization of American States adopts the Inter-American Convention to Prevent

and Punish Torture. The mandate for the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment is established.

- 1987:** On 10 December the UN Convention against Torture enters into force. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is adopted.
- 1989:** Amnesty International launches a new campaign against the death penalty. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment is established.
- 1993:** Amnesty International launches *The Lives Behind the Lies*, an international campaign on political killings, enforced disappearances and extrajudicial executions.
- 1995:** Amnesty International launches its campaign *Stop the Torture Trade*.
- 1996:** Amnesty International convenes an International Conference on Torture. Amnesty International campaigns for a permanent International Criminal Court. The African Commission on Human and Peoples' Rights establishes the mandate of the Special Rapporteur on prisons, conditions of detention and policing in Africa.
- 1998:** UN General Assembly adopts the Rome Statute establishing an International Criminal Court.
- 2000:** Amnesty International launches its third global campaign against torture – *Take a Step to Stamp Out Torture*.
- 2001:** Attacks in the USA trigger a so-called “war on terror”, which challenges the absolute prohibition of torture and other ill-treatment.
- 2002:** The Optional Protocol to the Convention against Torture is adopted by the UN General Assembly. The African Commission on Human and Peoples' Rights adopts the *Robben Island Guidelines* for the prevention of torture in Africa.
- 2004:** Amnesty International launches its *Stop Violence against Women* campaign. The Inter-American Commission establishes the Rapporteur on the rights of persons deprived of liberty in the Americas. The African Commission on Human and Peoples' Rights establishes the Committee for the Prevention of Torture in Africa.
- 2006:** Amnesty International launches a new campaign – *Counter Terror with Justice*. The Optional Protocol to the Convention against Torture enters into force.
- 2008:** The Inter-American Commission on Human Rights approves the *Principles on Persons Deprived of Liberty in the Americas*.
- 2011:** Amnesty International launches a worldwide campaign – *Security with Human Rights*.
- 2014:** Amnesty International launches its global [Stop Torture](#) campaign, aimed at exposing governments' failure to end torture and other ill-treatment and calling for concrete action.
- 2015:** The UN Standard Minimum Rules for the Treatment of Prisoners are revised. The revised rules are known as the [Mandela Rules](#).

1.1.1 THE ORIGINS OF INTERNATIONAL ACTION AGAINST TORTURE AND OTHER ILL-TREATMENT

The atrocities committed during the Second World War led to a range of initiatives by the international community to promote peace and prevent such human suffering in the future. The decision to form the United Nations in 1945 was a key

step in the advancement of human rights worldwide and the UN was concerned with human rights from the outset. Article 1 of the [UN Charter](#), adopted in 1945, establishes that one of the purposes of the UN is “[t]o achieve international co-operation... in promoting and encouraging respect for human rights”.

The first major effort of the UN’s human rights programme was the drafting of the [Universal Declaration of Human Rights](#). This was a ground-breaking document adopted by UN member states at the General Assembly on 10 December 1948. (The continuing importance and relevance of the Universal Declaration is marked worldwide every year on 10 December, which is known internationally as Human Rights Day.) The Universal Declaration sets out a range of rights to which everyone is entitled and establishes the basic principles at the heart of the human rights movement.

Article 5 of the Universal Declaration states that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

While the Universal Declaration is a declaration and therefore not formally legally binding on states, by adopting it the member states of the UN agreed that everyone is entitled to certain fundamental human rights. The Universal Declaration recognizes at the outset that the inherent dignity and the equal and inalienable rights of all human beings “is the foundation of freedom, justice and peace in the world.”¹ In other words, respect for these rights is a common goal and necessary for the stability of the international community as a whole. These rights apply everywhere, not just in those countries whose governments may choose to respect them. Furthermore, the fact that governments together adopted the Universal Declaration signals that violations of human rights are of concern to all governments. It follows from this principle that all governments must respect, protect and fulfil the rights of people under their jurisdiction, and that a person whose human rights are violated has a claim against the government that violated them.

This early effort of the UN to codify a set of agreed fundamental human rights was mirrored by efforts to strengthen gaps exposed by the atrocities of the Second World War in international humanitarian law (the body of law which regulates the behaviour of parties to armed conflicts, also known as the “laws of war”). The level of human suffering endured, particularly by civilians, during the Second World War led governments to adopt the four Geneva Conventions of 12 August 1949, following an initiative of the International Committee of the Red Cross (ICRC). The Geneva Conventions of 1949 all expressly prohibit torture and other ill-treatment.² (It is important to note that the prohibition of torture and other ill-treatment under international human rights law is not supplanted by international humanitarian law. The prohibition under international human rights law is absolute and cannot

1 See Preamble to the [Universal Declaration](#).

2 See Article 12 of [First Geneva Convention](#); Article 12 of [Second Geneva Convention](#); Articles 17 and 87 of [Third Geneva Convention](#); and Article 32 of [Fourth Geneva Convention](#).

be derogated under any circumstance and therefore is equally applicable during times of conflict as well as peace.)

Article 5 of the Universal Declaration established a consensus among states that everyone has the right not to be subjected to torture or other ill-treatment, and this right has been reaffirmed in numerous subsequent international and regional instruments. In particular, similar language to Article 5 of the Universal Declaration can be found in Article 3 of the [European Convention on Human Rights](#) (1950), Article 5 of the [American Convention on Human Rights](#) (1969), Article 5 of the [African Charter on Human and Peoples' Rights](#) (1981) and Article 8 of the [Arab Charter on Human Rights](#) (2008).

Following the adoption of the Universal Declaration, the next major step taken by the UN towards tackling torture and other ill-treatment was the adoption in 1955 of the [UN Standard Minimum Rules for the Treatment of Prisoners](#) at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (First Crime Congress). More than 50 governments and 500 participants took part in this Congress, which concluded with the adoption of the Standard Minimum Rules. This text was subsequently endorsed by the UN Economic and Social Council in 1957. An addition to the original text was concluded in 1977 to ensure that the Rules were applicable also to persons arrested or imprisoned without charge. From 2010, the Rules were revised extensively in a process which was finalized in 2015 and became known as the [Mandela Rules](#).

The Mandela Rules are not legally binding on states as such but instead set out a series of rules that represent good principle and practice in the treatment of prisoners and the management of penal institutions. They state that they are not intended to describe in detail a model system of penal institutions but represent, as a whole, the minimum conditions which are accepted as suitable by the UN. The Rules now contain an explicit prohibition of torture and other ill-treatment (which was absent in the original Rules), a number of provisions which specifically regulate the treatment of prisoners, and a range of measures relating to the management of penal institutions which are preventive in nature and if observed create an environment in which torture and other ill-treatment are unlikely to occur.

The next significant milestone in UN action against torture and other ill-treatment was the adoption of the [ICCPR](#) in 1966. The ICCPR, together with the [ICESCR](#), put the rights enshrined in the Universal Declaration into documents which are binding on states that ratify them. Article 7 of the [ICCPR](#) prohibits torture and other ill-treatment, a prohibition which applies in all circumstances, and Article 10(1) states that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Thus on becoming a party to the ICCPR, a state is legally bound to respect these rights.

1.1.2 ACTION IN THE 1970S

As an organization originally formed in 1961 to campaign for the release of prisoners of conscience,³ Amnesty International was becoming increasingly aware of the problem of torture through the information it received from prisoners and other sources in different parts of the world. On 10 December 1972, Human Rights Day, Amnesty International launched its first worldwide Campaign for the Abolition of Torture. The overall aim of Amnesty International's first campaign was to raise awareness of the problem of torture and other ill-treatment worldwide and to encourage more robust action against these forms of abuse. As part of this campaign Amnesty International launched its [Report on Torture](#), published in 1973, which contained information on torture and other ill-treatment in more than 70 countries and territories in the period from 1970 to mid-1973.

On 10 and 11 December 1973, Amnesty International also organized a Conference for the Abolition of Torture, which took place in Paris. The outcome of this conference was a series of recommendations for action against torture and other ill-treatment. One of the recommendations was for Amnesty International to establish a procedure which would alert its members to individuals in imminent danger of torture. Thus, Amnesty International devised an "Urgent Action network" of members around the world who could begin immediate campaigning on behalf of individuals under threat of torture and other human rights violations. Issuing Urgent Actions remains a fundamental part of Amnesty International's work today.

The campaign also supported and influenced efforts at the UN level for a General Assembly resolution on the question of torture and other cruel, inhuman or degrading treatment or punishment, which was passed on 2 November 1973.⁴ By adopting this resolution, member states of the UN recognized that torture was still being practised in various parts of the world and rejected any form of torture. The resolution also placed the issue of torture and other ill-treatment formally on the agenda of the UN General Assembly and contained a commitment for the issue to be considered at a future session. This resolution therefore provided the building blocks for more concrete action by UN member states to tackle the problem of torture and other ill-treatment, in particular by developing a declaration against torture.

Thus, at the 29th UN General Assembly in 1974, a further resolution was adopted which called for the Fifth UN Crime Congress to consider "rules for the protection of all persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment".⁵

3 Amnesty International considers a prisoner of conscience to be any person imprisoned solely because of their political, religious or other conscientiously held beliefs, ethnic origin, sex, sexual orientation, gender, gender identity, colour, language, national or social origin, economic status, birth, or other status, who have not used violence or advocated violence or hatred.

4 See [UN General Assembly resolution 3059 \(XXVIII\)](#) adopted at the 28th session of the UN General Assembly on 2 November 1973.

5 UN General Assembly resolution 3218 (XXIX), adopted at the 29th session of the UN General Assembly on 6

One of the outcomes of the Fifth UN Crime Congress was a draft text for a Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ([Declaration against Torture](#)). This draft was submitted to the UN General Assembly and following one minor amendment was adopted by consensus on 9 December 1975. The Declaration against Torture is not legally binding on states as such but was a crucial advance as it set out for the first time detailed measures which governments had agreed should be taken to prevent torture, and contained the first internationally agreed definition of torture. It also confirmed that torture and other ill-treatment are offences to human dignity which cannot be permitted at any time, including in times of emergency.

The Declaration against Torture marked the beginning of a phase of intense activity at the UN around the development of a range of instruments that would address specific human rights issues. Thus, this Declaration was followed soon after by the adoption of UN instruments dealing with the prohibition of torture in relation to the police and medical professionals.⁶ Work also began on the development of the [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#) (Body of Principles). While the Declaration against Torture contained provisions relating to the protection of detainees or prisoners it did not address all aspects relevant to their humane treatment. Thus, the aim of developing the Body of Principles was to address this gap and set out comprehensive safeguards for and humane treatment of all persons deprived of their liberty.

Another significant event for action against torture and other ill-treatment during this decade was the entry into force of the [ICCPR](#) in 1976, 10 years after it had been adopted by the UN General Assembly.

The adoption of the [Declaration against Torture](#) was an important measure, seen by some UN member states, Amnesty International and other NGOs as a first step towards the development of a legally binding instrument that would set out in detail a range of obligations for states aimed at prohibiting and preventing torture and other ill-treatment. Thus, in 1977 a resolution was adopted by the UN General Assembly which called for the UN Human Rights Commission to draft a convention against torture and other cruel, inhuman or degrading treatment or punishment. A UN working group was established in 1979 to negotiate such a draft.

1.1.3 ACTION IN THE 1980S

In 1981 the UN General Assembly established the United Nations' Voluntary Fund for Victims of Torture, an international fund for the provision of humanitarian assistance to torture victims and their families.

November 1974.

6 See [UN Code of Conduct for Law Enforcement Officials](#), adopted in 1979; and the [Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), adopted in 1982.

In 1984 Amnesty International launched its second global campaign for the abolition of torture with the publication of [Torture in the Eighties](#), documenting or referring to reports of torture and other ill-treatment in 98 countries in the period from 1980 to mid-1983. One of the major achievements of this campaign was the development of Amnesty International's [12-Point Programme for the Prevention of Torture](#), which set out the fundamental measures that states should take to prevent such acts. The 12-Point Programme has been slightly revised subsequently but remains a blueprint for effective action to prevent torture and other ill-treatment.

During this time Amnesty International also continued to support efforts at the UN for a convention against torture. The UN working group met periodically between 1979 and 1984 to develop a draft and on 10 December 1984 the UN General Assembly adopted by consensus the [Convention against Torture](#).

The adoption of the Convention against Torture was a major milestone in the UN's action against torture. The Convention against Torture contains a range of measures for states parties to prohibit and prevent torture and other ill-treatment. It contains a definition of torture, and sets out a series of obligations for states parties to criminalize torture, to hold persons accountable for acts of torture, and a range of other measures aimed at the prevention of torture and other ill-treatment. The Convention against Torture also established the [Committee against Torture](#) to monitor states parties' compliance with the Convention.⁷ The Convention against Torture entered into force in 1987.

In 1985, following extensive lobbying from Amnesty International and others, the UN also appointed a [Special Rapporteur on torture](#), whose work includes sending urgent appeals to governments in countries where a person is allegedly at risk of being subjected to torture, and undertaking fact-finding visits.⁸

Negotiations on the [Body of Principles](#) were also completed during this period and on 9 December 1988 the UN General Assembly adopted a text. While the Body of Principles are not legally binding on states as such, they are nevertheless an important complement to the Convention against Torture as they address more extensively the humane treatment of all persons deprived of their liberty.

At a regional level, in 1985 the Organization of American States (OAS) adopted the [Inter-American Convention against Torture](#), which similarly to the UN Convention against Torture sets out a range of measures for states parties to take to prohibit and prevent torture and other ill-treatment. In addition, in 1987 the [European Convention for the Prevention of Torture](#) was adopted by the Council of Europe. This established an expert body, the [European Committee for the Prevention of Torture](#),

7 For more information on the work of the Committee against Torture, see: www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx

8 For more information on the work of the Special Rapporteur on torture, see: www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx

which is empowered to visit all places where people are deprived of their liberty under the jurisdiction of states party to that Convention.⁹

1.1.4 ACTION IN THE 1990S

In 1993 the UN World Conference on Human Rights adopted the [Vienna Declaration and Programme of Action](#) stating that “one of the most atrocious violations against human dignity is the act of torture, the result of which destroys the dignity and impairs the capability of victims to continue their lives and their activities”.¹⁰ The Conference urged “all States to put an immediate end to the practice of torture and eradicate this evil forever”.¹¹

The World Conference also recommended the establishment of a High Commissioner for Human Rights, after persistent campaigning by Amnesty International. The UN General Assembly created the post in 1993. The [Office of the High Commissioner for Human Rights](#) (OHCHR) continues to provide leadership and support to the UN human rights programme.¹²

In 1996 Amnesty International convened an international conference on torture in Stockholm, Sweden, bringing together human rights defenders and experts from around the world. One of its tasks was to examine practical means of implementing the various standards that had been adopted over the years. An important message emerging from the conference was that since many governments had not fulfilled their obligation to stop torture, it was time for NGOs to join forces and hold governments accountable.

During the 1990s the [International Criminal Tribunal for the former Yugoslavia](#) (Yugoslavia Tribunal)¹³ and the [International Criminal Tribunal for Rwanda](#) (Rwanda Tribunal)¹⁴ were established as UN courts of law dealing with war crimes, crimes against humanity and acts of genocide committed, respectively, in the Balkans in the 1990s and in Rwanda in 1994.

In 1998, after a lengthy drafting process in which Amnesty International took an active part, the [Rome Statute of the International Criminal Court](#) was adopted at a diplomatic conference. This laid the groundwork for the establishment of the [International Criminal Court](#), a permanent court mandated to investigate and prosecute acts of genocide, crimes against humanity and war crimes, in particular when national authorities are unable or unwilling to do so, thereby helping to end impunity for perpetrators of these crimes and provide justice for victims.

9 For more information about the CPT, see: www.cpt.coe.int/en/

10 [Vienna Declaration and Programme of Action](#), UN Doc. A/Conf.157/23 (12 July 1993) §55.

11 [Vienna Declaration and Programme of Action](#), §57.

12 For more information about the work of the OHCHR, see: www.ohchr.org/EN/Pages/WelcomePage.aspx

13 The Yugoslavia Tribunal was established in 1993. For more information see: www.icty.org/en/about

14 The Rwanda Tribunal was established in 1995. For more information see: www.unictf.org/en/tribunal

Throughout the 1990s Amnesty International also supported efforts, most notably by the [Association for the Prevention of Torture](#) and the [International Commission of Jurists](#), for the UN to develop an Optional Protocol to the Convention against Torture. The original idea behind the Optional Protocol was to strengthen the Convention against Torture and efforts aimed at the prevention of torture and other ill-treatment by the establishment of an expert UN body with the mandate to visit all places of detention and to make recommendations to states parties for the effective prevention of torture and other ill-treatment at the national level. In 1992 a UN working group was established to draft a text, and negotiations took place periodically between 1992 and 2002.

1.1.5 21ST CENTURY CHALLENGES AND ACTION

Amnesty International launched its third worldwide campaign against torture – Take a Step to Stamp Out Torture – in October 2000. The campaign's strategy was to achieve progress in three major areas: preventing torture, confronting discrimination, and overcoming impunity. In particular, the campaign highlighted the link between torture and discrimination, and the use of torture and other ill-treatment against members of groups within society that are particularly exposed to discrimination. Among other things, the campaign aimed at enhancing collaboration between local and international NGOs in combating torture. It also sought to publicize the obligation of states, under the legal prohibition of torture and other ill-treatment, to take effective measures to protect people against violence in the community and the family.

In 2001 the UN also established a working group to develop a convention on enforced disappearances. Since the 1980s Amnesty International had campaigned tirelessly against the practice of enforced disappearances and therefore supported the development of a legally binding instrument to tackle this problem. The UN General Assembly adopted the [Convention on Enforced Disappearance](#) on 20 December 2006. This Convention, which entered into force on 23 December 2010, sets out, in some cases for the first time, a range of obligations for states parties that are aimed at preventing enforced disappearances, uncovering the truth when they do occur, punishing the perpetrators and providing reparations to the victims and their families.

Amnesty International also continued to support efforts at the UN to develop an Optional Protocol to the Convention against Torture. After 10 years of negotiations the [Optional Protocol](#) was finally adopted by the UN General Assembly in 2002 and entered into force in 2006. The Optional Protocol to the Convention against Torture aims to prevent torture and other ill-treatment through a unique, dual system of regular, unannounced and unrestricted visits to all places of detention undertaken by a UN treaty body, the [Subcommittee on Prevention of Torture](#), and national monitoring bodies – National Preventive Mechanisms – which states parties are obligated to put in place.

At the regional level, significant recent developments have included the adoption in 2002 of the [Robben Island Guidelines](#) by the African Commission. The Robben Island Guidelines are not legally binding on states as such but provide guidance for African states on how to implement the obligation to prohibit and prevent torture and other ill-treatment. The African Commission also established an expert committee, the [Committee for the Prevention of Torture in Africa](#), with a mandate to advise on the implementation of the Robben Island Guidelines.

Similar developments have taken place in the Inter-American human rights system. In 2004 the Inter-American Commission established the [Rapporteur on the rights of persons deprived of liberty in the Americas](#). The Rapporteur is mandated to highlight and examine concerns relating to the treatment of persons deprived of their liberty in the Americas. In 2008 the Inter-American Commission also approved the [Principles on Persons Deprived of Liberty in the Americas](#). These Principles are not binding on states as such but, similarly to the UN Body of Principles, set out a range of measures required to ensure that persons deprived of their liberty are treated humanely.

Notwithstanding these significant developments, the turn of the century signalled a period marked by vigorous challenges to the absolute prohibition of torture and other ill-treatment. Amnesty International condemned the attacks in the USA on 11 September 2001 as crimes against humanity and called on all governments to ensure that they respect human rights in their efforts to bring those responsible to justice and to provide security against future attacks. Amnesty International did so based on its longstanding research on and experience of the use of torture and other ill-treatment by governments in the name of “national security”. Regrettably, the counter-terrorism policies and actions of the USA and some other governments in response to the attacks on 11 September 2001 undermined the absolute prohibition of torture and other ill-treatment, using as a justification the so-called global “war on terror”.

Amnesty International responded by exposing the human rights abuses being committed in the name of security. In 2006 Amnesty International launched its Counter Terror with Justice campaign, calling for the closure of the US detention facility in Guantánamo Bay, Cuba, and an end to “renditions” (illegal transfers of suspected terrorists), secret detention, torture and other abuses.

In April 2011, to follow on from the Counter Terror with Justice campaign, Amnesty International launched its Security with Human Rights campaign. This campaign continued to call for an end to human rights violations committed in the context of terrorism, anti-terrorism efforts and national security. It also campaigned for the rights of victims, whether they are the victims of violations committed by states or the victims of attacks on civilians by armed groups. The campaign exposed violations

of human rights in the name of national security or “counter-terrorism” and called for those responsible to be held to account.

In 2014, Amnesty International launched the worldwide Stop Torture campaign, prompted by the continuing betrayal by governments around the world of their commitments to stamp out torture, three decades after the Convention against Torture was adopted in 1984. The campaign showed how, despite a robust international legal framework being built up and supported by the international community, these commitments have not been followed through by many in practice. Amnesty International’s research exposed governments’ failure to put in place and implement protective mechanisms to prevent and punish torture – such as proper medical examinations, prompt access to lawyers, independent checks on places of detention, independent and effective investigations of torture allegations, the prosecution of suspects and proper redress for victims.¹⁵ The Stop Torture campaign called for the establishment and implementation of effective safeguards against torture at the national level as a key route to change. (See [Chapter 7](#) for more information on Amnesty International’s Stop Torture campaign.)

Amnesty International’s research and global campaigning against torture and other ill-treatment is ongoing, both during and between global campaigns.

1.2 THE ESTABLISHMENT OF INTERNATIONAL AND REGIONAL BODIES AND MECHANISMS TO IMPLEMENT THE OBLIGATION TO PROHIBIT AND PREVENT TORTURE AND OTHER ILL-TREATMENT

This section provides an overview of the international and regional bodies that have been established since the formation of the UN in 1945 and that are particularly relevant to the prohibition and prevention of torture and other ill-treatment. These bodies include political bodies comprising state representatives such as the UN Human Rights Council; human rights bodies where members sit in a personal, expert capacity independent of any state representation such as the African Commission and Inter-American Commission; and courts or tribunals comprised of independent judges such as the African Court on Human and Peoples’ Rights, the European Court of Human Rights, the Inter-American Court of Human Rights, the Rwanda Tribunal, the Yugoslavia Tribunal and the International Criminal Court. They also include treaty bodies that have been established to monitor compliance with the obligations under their respective treaty and Special Procedures or Special Mechanisms – independent experts with a mandate to examine the human rights situation in a particular country or to address a specific thematic issue.

NGOs play an important part in the work of these bodies and mechanisms by supplying them with information and analysis, facilitating the submission of individual complaints,

15 For more information about the 2014 Stop Torture campaign, see Amnesty International’s media briefing, [Torture in 2014: 30 years of broken promises](#) (Index: ACT 40/004/2014) and visit: www.amnesty.org/en/stoptorture

publicizing their findings and recommendations, and pressing for action. Detailed information and ideas for action to combat torture are set out in Chapter 7.

1.2.1 KEY INTERNATIONAL BODIES AND MECHANISMS CONCERNED WITH TORTURE AND OTHER ILL-TREATMENT

At the international level the following bodies and mechanisms have particular roles to play in addressing torture and other ill-treatment:

- The [UN Human Rights Council](#): this is the primary political organ of the UN to consider human rights issues. The Human Rights Council was created in 2006 to replace the Human Rights Commission as the principal human rights political body of the UN. The Human Rights Council is an inter-governmental body composed of 47 UN member states elected by the General Assembly (13 members from the African Group, 13 from the Asia-Pacific Group, six from the Eastern European Group, eight members from the Latin American and Caribbean Group, and seven members from the Western European and Others Group). The Council meets regularly three times a year in Geneva and can also arrange additional Special Sessions.

The Human Rights Council undertakes a range of activities including examining situations of particular concern in individual countries, drafting new human rights standards and reviewing the human rights record of UN member states, most notably through the Universal Periodic Review (UPR) process. For the most part, the Council operates by holding debates and passing resolutions or making decisions that generally call on specific or all states to take action to strengthen human rights protection. The Human Rights Council regularly adopts resolutions and recommendations addressing the issue of torture and other ill-treatment. The Council's confidential complaint procedure also allows individuals and organizations to bring complaints about a consistent pattern of gross violations of human rights, including torture and other ill-treatment, to the attention of the Council.

- The [Office of the UN High Commissioner for Human Rights](#) (OHCHR): this is part of the UN Secretariat and was established in 1993. The OHCHR undertakes a vital function by supporting the work of the Human Rights Council and the treaty bodies set up to monitor state parties' compliance with international human rights treaties. The High Commissioner for Human Rights is the highest-ranking official within the UN human rights system and is its public face.
- The [Committee against Torture](#): this is the treaty body established by the [Convention against Torture](#) to monitor states parties' compliance with the obligations contained in that treaty. It first met in 1988. It consists of 10 experts elected by states parties but who serve in a personal, independent capacity. The Committee against Torture has a number of important functions. First it considers reports from states parties on the measures they have taken to implement their obligations under the Convention against Torture. These "periodic" reports (after

the initial one) are reviewed by the Committee in the presence of representatives of the governments concerned. NGOs and others can also submit their own reports to the Committee with their independent review of the measures taken to implement the obligations in the Convention against Torture, and can attend the review of a state party's report. After hearing the government representatives and putting questions to them, the Committee prepares "Concluding Observations", which include its own assessment of the situation of torture and other ill-treatment in the country and any recommendations for improvement.

Another important function of the Committee against Torture is to consider complaints (known as "communications") concerning torture or other ill-treatment alleged to have been committed within or by a state party from either another state party or an individual. However, the Committee can only hear a complaint if the state or states concerned have made declarations under Articles 21 and 22 of the Convention against Torture, accepting that such communications can be considered by the Committee. The Committee can also develop detailed statements known as "General Comments" to help explain and interpret the obligations and measures required to implement the Convention against Torture. For example the Committee has adopted General Comments on the prevention of torture and other ill-treatment¹⁶ and the right of victims to reparation.¹⁷

There is also an inquiry procedure under Article 20 of the Convention against Torture which allows the Committee against Torture on its own initiative to look into allegations of the "systematic practice" of torture in a state party, with the possibility of visiting the country. The Committee has clarified that it considers torture to be practised "systematically" when reports of torture are "seen to be habitual, widespread and deliberate in at least a considerable part of the territory of a State Party".¹⁸ However, in practice this procedure is used rarely.

- The [Subcommittee on the Prevention of Torture](#): this is the treaty body established by the [Optional Protocol to the Convention against Torture](#). The Subcommittee was established in 2007 and now consists of 25 independent experts elected by states parties. The Subcommittee is unlike other UN treaty bodies in that its mandate is not to consider states parties' reports or complaints. The Subcommittee's focus is, rather, on the prevention of torture and other ill-treatment and it has three central, practical functions. First, it is mandated to undertake unrestricted visits to all places of detention under the jurisdiction and control of states parties to the Optional Protocol. Second, it is empowered to make recommendations on measures required to prevent torture and other ill-treatment. Third, it has an advisory function providing assistance and advice both to states parties and National Preventive Mechanisms. National Preventive Mechanisms are independent national visiting bodies with similar mandates to the Subcommittee,

16 [CAT General Comment 2](#).

17 [CAT General Comment 3](#).

18 Report of CAT (Addendum), [UN Doc. A/48/44/Add.1](#) (15 November 1993) §39.

which under the Optional Protocol states parties are obligated to put in place at the domestic level. (For more information see [Chapter 5.2.3](#).)

- The [Human Rights Committee](#): this is the treaty body established by the [ICCPR](#) to monitor the implementation of that Covenant. Similarly to the Committee against Torture, the Human Rights Committee reviews periodic reports submitted by states parties on measures taken to implement the ICCPR. The Human Rights Committee can also consider complaints of violations from individuals if a state party to the ICCPR ratifies the [First Optional Protocol to the ICCPR](#). The Human Rights Committee has also adopted General Comments that interpret particular aspects of the ICCPR. Most notably here, [General Comment 20](#) provides important guidance on the prohibition of torture and other ill-treatment under Article 7 of the ICCPR.¹⁹
- [The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment](#): this is a Special Procedure of the Human Rights Council. The Special Rapporteur on torture is an individual expert who reports annually to the UN Human Rights Council and General Assembly on torture and other ill-treatment. The Special Rapporteur on torture can address the government of any state which is a member of the UN or has observer status. Acting on information received from NGOs and other sources, the Special Rapporteur on torture sends urgent appeals to governments concerning individuals feared to be undergoing or at risk of torture, as well as other messages to governments regarding concerns of torture and other ill-treatment. The Special Rapporteur on torture also carries out visits to countries at the invitation of the government concerned to examine first-hand the extent of torture and other ill-treatment, the measures taken against ill-treatment and related matters. The Special Rapporteur produces reports of these country visits with a report and recommendations to the state concerned. The Special Rapporteur also produces an annual report to the UN Human Rights Council and the General Assembly, in addition to providing expert opinion on key issues relating to torture and other forms of ill-treatment.

This list of relevant bodies should not be seen as exhaustive and other UN treaty bodies and Special Procedures may deal with practices of torture and other ill-treatment in the course of their work. Similarly the [International Criminal Court](#), the [Rwanda Tribunal](#) and the [Yugoslavia Tribunal](#) have also considered allegations of torture and other ill-treatment during the course of their work (see [Chapter 6](#)).

¹⁹ [HRC General Comment 20](#).

1.2.2 KEY REGIONAL BODIES AND MECHANISMS CONCERNED WITH TORTURE AND OTHER ILL-TREATMENT

At the regional level the following bodies and mechanisms have particular roles to play in addressing torture and other ill-treatment:

Africa

- **The African Commission on Human and Peoples' Rights:** this body was established by the [African Charter on Human and Peoples' Rights](#) (African Charter) in 1987 and is the main body in Africa mandated to monitor states' compliance with their obligations under this treaty. The African Commission has established a number of procedures by which it carries out its mandate, namely: the consideration of periodic state reports; individual and inter-state communications; and "promotional" and fact-finding missions to states.

The African Commission can adopt resolutions or make statements on situations of concern in a particular country or on themes. Issues relating to torture and other ill-treatment have been considered under all of these procedures. The African Commission has also created Special Mechanisms for particular thematic issues, along lines similar to the UN Special Procedures. Over the years the African Commission has adopted a number of resolutions and documents that address the problem of torture and other ill-treatment, most notably the [Robben Island Guidelines](#) in 2002.

- **The African Court on Human and Peoples' Rights** (African Court): this court was established by a [protocol](#) to the African Charter, which was adopted by member states of what was then the Organization of African Unity (OAU) and entered into force in 2004. The Court has jurisdiction to hear cases and disputes concerning the interpretation and application of the African Charter, the protocol and any other relevant human rights instruments ratified by the states concerned.

The Court is composed of 11 judges, who must be nationals of member states of the African Union. The work of the African Court is aimed at complementing the work of the African Commission.²⁰ The African Court is a relatively new regional human rights body and is gradually developing its jurisprudence but it has the potential to be an important additional body to consider allegations of torture and other ill-treatment.

- **The Committee for the Prevention of Torture in Africa:** this is a Special Mechanism of the African Commission. It was established in 2004 and is composed of five independent members elected by the members of the African Commission.²¹ The broad aim of the Committee, formerly known as the Follow-up Committee

20 See Article 2 of [the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights](#).

21 For more information see: www.achpr.org/mechanisms/cpta

on the Robben Island Guidelines, is to provide advice to states and the African Commission on measures required to implement Article 5 of the [African Charter](#) and the [Robben Island Guidelines](#) on the prohibition and prevention of torture and other ill-treatment.

Since the establishment of the Committee for the Prevention of Torture in Africa, its members have carried out a number of training and awareness-raising activities in various countries and have undertaken missions to a few states. The Committee requires the consent of the state concerned in order to conduct a mission. The Committee submits progress reports on its activities to the African Commission at its ordinary sessions.

- [Special Rapporteur on prisons, conditions of detention and policing in Africa](#): this is a Special Mechanism of the African Commission and was established in 1996. This Special Rapporteur is an individual expert who is mandated to examine the situation of persons deprived of their liberty within the territories of states parties to the [African Charter](#). The mandate of the Special Rapporteur does not only cover prisons but can include other places of detention such as police stations, juvenile detention centres and mental health institutions.

The Special Rapporteur on prisons, conditions of detention and policing in Africa aims to promote compliance with the African Charter and international standards concerning the rights and conditions of persons deprived of their liberty. The Special Rapporteur can examine the content and implementation of national law and regulations to ensure conformity with the African Charter and international standards and, with the consent of the state concerned, undertake visits to countries. The Special Rapporteur can also issue interventions through “urgent actions” and provide assistance to the African Commission when it is considering communications relevant to the mandate of the Special Rapporteur. Lastly, the Special Rapporteur can conduct studies on relevant thematic issues. Recently the Special Rapporteur was involved in the drafting and adoption of the [Luanda Guidelines](#) on arrest, police custody and pre-trial detention by the African Commission in 2014.²²

In Africa there are also sub-regional bodies which may in the course of their work consider allegations of torture or other ill-treatment. For example the [Community Court of Justice for the Economic Community of West African States \(ECOWAS\)](#) was given the competence to hear human rights cases from individuals in 2005 and has since issued a number of rulings on torture.²³ The ECOWAS Court is composed of seven members who sit as full-time judges. Unlike the African Commission and Court, there is no requirement that individuals exhaust domestic remedies before bringing a case before the ECOWAS Court.

²² See [Final Communiqué of the 55th Ordinary Session of the African Commission on Human and Peoples' Rights](#), Luanda, Angola, 28 April to 12 May 2014, p. 13, §33(d).

²³ See for example, [Saidykhan v Gambia](#) (2010).

The Americas

- The [Inter-American Commission on Human Rights](#): this is the principal body of the Organization of American States (OAS), whose mandate is to promote and protect human rights in the Americas. The Inter-American Commission started operating in 1960 and is composed of seven independent members who serve in their personal capacity.

The Inter-American Commission has three main functions. First, it considers individual cases alleging violations of human rights by OAS member states and can issue provisional measures in serious and urgent situations where there is an imminent risk of irreparable harm to individuals or groups of people. Second, it monitors the human rights situation in OAS member states. Third, it raises awareness of human rights, in particular by developing reports on thematic issues. The Inter-American Commission has also adopted a number of documents that address the problem of torture and other ill-treatment, in particular the [Principles on Persons Deprived of Liberty in the Americas](#) in 2008 and an extensive [report on the human rights of persons deprived of their liberty in the Americas](#) in 2011. The Inter-American Commission also established the position of [Rapporteur on the rights of persons deprived of liberty in the Americas](#) in 2004 (see below).

- The [Inter-American Court of Human Rights](#): this court was established under the American Convention in 1979. It is comprised of seven judges, who act in a personal capacity. The Court has a dual role. First, it has the power to determine whether a state is responsible for a violation of rights enshrined in the American Convention. It may, however, only hear cases against states which have accepted its jurisdiction, and only the Inter-American Commission or states parties to the American Convention may submit a case to the Court. An individual cannot independently bring a case to be considered by the Court. Second, the Court plays an advisory role, issuing advisory opinions regarding the interpretation of the American Convention or other treaties concerning the protection of human rights in the Americas. Similarly to the Inter-American Commission, the Court may issue provisional measures in cases of extreme gravity and urgency and when necessary to avoid irreparable damage to persons.
- [Rapporteur on the rights of persons deprived of liberty in the Americas](#): this position was created in 2004 by the Inter-American Commission. The Rapporteur has a broad mandate which includes: conducting visits to member states of the OAS to obtain information and to monitor the treatment of persons deprived of their liberty and conditions of detention; publishing country and thematic reports; issuing recommendations to improve the situation of persons deprived of their liberty; issuing urgent actions where necessary; promoting the adoption of legislative, judicial, administrative, or other types of measures to guarantee

the rights of persons deprived of liberty and their families; and raising awareness of the rights of persons deprived of their liberty.²⁴

Europe

- **The European Court of Human Rights:** this court considers complaints of violations of the [European Convention](#) and its Protocols by states parties. Such complaints may be submitted directly to the Court by individuals or by other states parties to the Convention. Article 3 of the European Convention prohibits torture and other ill-treatment and, over the years, the Court has developed a substantial amount of jurisprudence interpreting the obligations of states parties under this Article.
- **The European Committee for the Prevention of Torture:** this is an expert body of the Council of Europe concerned with preventing torture and other ill-treatment.²⁵ The Committee was established in 1989 in accordance with Article 1 of the [European Convention for the Prevention of Torture](#). The aim of the Committee is to conduct visits to places where people are deprived of their liberty under the jurisdiction of states parties in order to prevent torture and other ill-treatment. The Committee is composed of one independent expert member from each state party to the Convention.²⁶ (Protocol No. 1 to the Convention, which entered into force on 1 March 2002, also provides for non-member states of the Council of Europe to accede to the Convention.)
- The European Committee for the Prevention of Torture makes periodic, scheduled visits to each state party to the Convention as well as unscheduled visits. Following a visit the Committee transmits its findings with recommendations to the state concerned, which is required to respond within a set time limit. The reports are confidential, but in practice most states have eventually agreed to their publication. Over the years the Committee has developed a set of standards in order to give guidance on its recommendations regarding the treatment of persons deprived of their liberty and conditions of detention.²⁷ The reports and recommendations of the Committee have also been referred to in the jurisprudence of the European Court.

In Europe there are also sub-regional bodies that are engaged in human rights issues and may consider issues relating to torture and other ill-treatment. For example within the European Union the [Court of Justice of the European Union](#), which was established in 1952, can hear complaints from individuals, companies and organizations that their rights have been infringed by an EU member state. Similarly, the [Subcommittee on Human Rights of the European Parliament](#) may also address relevant issues.

24 For more information about the Rapporteur on the rights of persons deprived of liberty in the Americas, see: www.oas.org/en/iachr/pdl/mandate/mandate.asp

25 For more information about the CPT, see: www.cpt.coe.int/en/about.htm

26 For more information on the members of the CPT, see: www.cpt.coe.int/en/members.htm

27 See [European Committee for the Prevention of Torture Standards](#)

1.3 FREEDOM FROM TORTURE AND THE INHERENT DIGNITY OF PERSONS UNDER INTERNATIONAL LAW

1.3.1 FREEDOM FROM TORTURE AND THE INHERENT DIGNITY OF PERSONS UNDER HUMAN RIGHTS LAW

The principle of human dignity is enshrined in the preambles of the [UN Charter](#) and the [Universal Declaration](#). Article 1 of the Universal Declaration states that all human beings are born “equal in dignity and rights”. Similar statements can be found in the preambles of the [ICCPR](#), the [ICESCR](#) and the [Convention against Torture](#).

Torture and other ill-treatment are universally recognized as outrages upon human dignity. The UN [Declaration against Torture](#) states:

“Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights”.²⁸

International instruments and bodies have also expressly linked the prohibition of torture and other ill-treatment with the concept of the inherent dignity of human beings.

For example, the Human Rights Committee has stated that the aim of the prohibition of torture and other ill-treatment under Article 7 of the [ICCPR](#) “is to protect both the dignity and the physical and mental integrity of the individual”.²⁹

People deprived of their liberty are particularly at risk of being subjected to torture or other ill-treatment because they are wholly in the power of the detaining authority. It is during the initial stages of detention that the “incentives” and opportunities for the detaining authorities to torture an individual, for example to obtain a confession or information, or to beat them as a form of “instant punishment”, are most prevalent. Persons deprived of their liberty are also dependent on the detaining authorities for their most basic needs including food, water, clothing, shelter and sanitary facilities.

It is clear under international law that persons deprived of their liberty must be treated with dignity and humanity. For example, Article 10 of the [ICCPR](#) states that all persons deprived of their liberty must be treated “with humanity and with respect for the inherent dignity of the human person”. This right is absolute and cannot be restricted under any circumstances.³⁰

The Human Rights Committee has made clear that whatever the resource constraints within a country, it is essential that governments afford people certain basic requirements to ensure respect for their inherent dignity when they deprive them of their

28 See Article 2 of the UN [Declaration against Torture](#).

29 See [HRC General Comment 20](#), §2.

30 See [HRC General Comment 29](#), §13.

liberty.³¹ Poor or harsh conditions of detention can amount to cruel, inhuman or degrading treatment or – when imposed intentionally and purposefully – to torture.³² Governments that allow such conditions to persist are violating their obligations under international law to prohibit and prevent ill-treatment and ensure respect for human dignity.

Regional human rights instruments and bodies have also reaffirmed the link between the prohibition of torture and other ill-treatment and human dignity.³³ In the African and Inter-American system this link is explicit within their respective main human rights treaties; thus Article 5 of the [African Charter](#), which prohibits torture and other ill-treatment, opens with this statement: “Every individual shall have the right to the respect of the dignity inherent in a human being.” Similarly, Article 5 of the [American Convention](#) states:

“1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

1.3.2 INHERENT DIGNITY OF PERSONS UNDER INTERNATIONAL HUMANITARIAN LAW

Torture and other ill-treatment are absolutely prohibited under international human rights law and therefore the right not to be subjected to such treatment must be respected and protected at all times, including during times of emergency or conflict. In addition to the human rights instruments and approaches outlined above, the Geneva Conventions of 1949 and their Additional Protocols contain provisions which expressly link the prohibition of torture and other ill-treatment with the inherent dignity of persons under international humanitarian law. [Common Article 3](#) of the Geneva Conventions states that “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” and “outrages upon personal dignity, in particular humiliating and degrading treatment... are and shall remain prohibited at any time and in any place whatsoever”.³⁴ [Protocol I](#) also qualifies certain acts which seriously endanger the “physical or mental health or integrity” of persons in the hands

31 See [HRC General Comment 21](#), §4.

32 Concluding Observations of CAT: [Spain](#), UN Doc. CAT/C/CR/29/3 (2002) §11(d); HRC: [Buffo v Uruguay](#), UN Doc. CCPR/C/OP/1 (1984) §63; [Carmen Amendola Masslotti and Graciela Baritussio v Uruguay](#), UN Doc. Supp. No. 40 (A/37/40) (1982) §187; [Hiber Conteris v Uruguay](#), UN Doc. Supp. No. 40 (A/40/40) (1985) §196; African Commission: [Huri-Laws v Nigeria](#), (2000) §40; [Ouko v Kenya](#), (2000) §§24-25; European Court: [Dougov v Greece](#) (40907/98), (2001) §46; [Gavazov v Bulgaria](#) (54659/00), (2008) §§103-116; [Trepashkin v Russia](#) (36898/03), (2007) §§93-95; [Karalevičius v Lithuania](#) (53254/99), (2005) §36.

33 See for example: African Commission: [Huri-Laws v Nigeria](#), (2000) §40; [Ouko v Kenya](#), (2000) §§24-25; European Court: [Tyrrer v UK](#) (5856/72), (1978) §33; [Tomasi v France](#) (12850/87), (1992) §115; [Ribitsch v Austria](#) (18896/91), (1995) §§35-38; [Mejia v Peru](#) (10.970), Inter-American Commission (1996); [Hilaire, Constantine et al v Trinidad and Tobago](#), Inter-American Court (2002) §§153-172.

34 See [Common Article 3](#) of the Geneva Conventions of 1949.

of a foreign power in an international armed conflict as grave breaches of the Protocol, punishable as war crimes.³⁵ (See [Chapter 2.2](#) on the prohibition of torture under international humanitarian law.)

The [Rwanda Statute](#) also expressly links violations of the prohibition of torture and other ill-treatment with the inherent dignity of persons. Article 4 of the Statute states that the Rwanda Tribunal has the power to prosecute persons committing or ordering “[o]utrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault” among the list of violations for which people may be prosecuted.³⁶

Similarly, Article 8 of the [Rome Statute](#) lists “committing outrages upon personal dignity, in particular humiliating and degrading treatment” as among the war crimes for which people may be prosecuted by the International Criminal Court.³⁷

1.3.3 TORTURE AND DISCRIMINATION

Linked to the principle of the inherent dignity of human beings is the right to be free from discrimination. Discrimination is an assault on the very notion of human rights and is absolutely prohibited. It denies certain people or groups their full human rights because of who they are or what they believe.

Under Article 1 of the [Convention against Torture](#), which defines what is meant by torture under that treaty, the intentional infliction of severe pain or suffering “for any reason based on discrimination” is recognized as an act of torture. The Committee against Torture has stated that “discrimination of any kind can create a climate in which torture and ill-treatment of the ‘other’ group subjected to intolerance and discriminatory treatment can more easily be accepted”.³⁸

Amnesty International’s third global campaign against torture and other ill-treatment – [Take a Step to Stamp Out Torture](#) – which was launched in 2000, highlighted the close connection between the existence of discrimination and the occurrence of torture. It demonstrated that torture feeds off discrimination. All torture involves the dehumanization of the victim and this can be easier if victims come from a disadvantaged social, political or ethnic group. Discrimination paves the way for torture by allowing the victim to be seen as less human or even as an object who can, therefore, be treated inhumanely.

Amnesty International’s campaign demonstrated that discrimination against certain groups heightens their risk of being subjected to torture in a number of different ways.

35 Article 11 of [Protocol I](#).

36 Article 4 of the [Rwanda Statute](#).

37 Article 8(2)(b)(xxi) and 8(2)(c)(ii) of the [Rome Statute](#).

38 Contribution of the Committee against Torture to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, [UN Doc. A/CONF.189/PC.2/17](#) (26 February 2001) p. 2.

Discrimination enshrined in law (for example, where the law criminalizes homosexuality or restricts women's fundamental freedoms) can act as a licence to torture. Discriminatory enforcement of laws may also affect both a person's chances of coming into contact with the criminal justice system and their treatment once in its hands. For example, victims from marginalized groups may have limited access to legal remedies. Thus discrimination reinforces impunity, lessening the likelihood of any official action in cases of torture or other ill-treatment.

Discrimination also means that certain groups are denied equal protection of the law against violence inflicted on them in the community and the family, such as racist attacks, domestic violence against women, and homophobic hate crimes. These violent manifestations of prejudice are often facilitated and encouraged by a failure of the authorities to take action to protect people from such abuse or to hold those responsible accountable.

Amnesty International has continued to emphasize the link between discrimination and torture. For example the Stop Violence against Women campaign, launched in 2004, and the Demand Dignity campaign, launched in 2009, highlighted the connection between discrimination and violence against women. It is well established under international law that gender-specific violence can and indeed often does fall within the definition of torture under Article 1 of the [Convention against Torture](#), and international and regional human rights bodies have recognized that states have a duty to protect persons not only from acts by state officials but also those committed by "non-state actors", including private individuals. (See [Chapter 2.9](#) on non-state actors.)

For more information about UN and regional bodies and the development of standards on the treatment of persons deprived of their liberty and the prevention of torture, please visit the Further Reading section of this manual.

1.4 ONGOING CHALLENGES TO THE ABSOLUTE PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT

While much has been achieved since the adoption of the [Universal Declaration](#) in 1948 and the [Convention against Torture](#) in 1984, the fight against torture and other ill-treatment is just as relevant today as it was in the last century. Amnesty International continues to receive reports of torture and other ill-treatment occurring throughout the world. This raises the question of why, despite universal condemnation and the absolute prohibition of torture and other ill-treatment under international law, do these forms of abuse persist?

1.4.1 POVERTY, CORRUPTION AND TORTURE AND OTHER ILL-TREATMENT

While torture and other ill-treatment are still used by governments against real or perceived security threats (see below) and as a form of repression against

political opponents and human rights defenders, the overwhelming majority of those subjected to torture and other ill-treatment are ordinary criminal suspects and those convicted of criminal offences, many of whom are poor. As the Special Rapporteur on torture has noted:

“Many people think that torture is primarily the fate of political and other ‘high-ranking’ prisoners. In reality, most of the victims of arbitrary detention, torture and inhuman conditions of detention are usually ordinary people who belong to the poorest and most disadvantaged sectors of society, including those belonging to the lowest classes, children, persons with disabilities and diseases, gays, lesbians, bisexuals, transgender persons, drug addicts, aliens and members of ethnic and religious minorities or indigenous communities.”³⁹

As noted earlier, people are most at risk of being subjected to torture and other ill-treatment when deprived of their liberty, because they are totally dependent on the detaining authority for their wellbeing. In particular, persons detained on suspicion of having committed a criminal offence face a particular risk of being subjected to torture or other ill-treatment because one of the common purposes of such abuse is to force people to “confess” or to give information.

This risk is increased by an over-reliance in many countries on a confession-based approach to criminal justice. Thus in order to obtain a “confession” or information, many of the safeguards that should be in place to protect people held in custody are ignored or deliberately flouted. Such safeguards include: access to a lawyer; access to family members; access to a doctor; the right to challenge the lawfulness of the detention before a court; and the right to be tried without undue delay. (See [Chapter 3](#) for details of the safeguards for persons deprived of their liberty.)

Furthermore, detention while awaiting trial should be the exception rather than the rule⁴⁰ but frequently there is an overuse of pre-trial detention, which places more people at risk of torture and other ill-treatment. Such overuse can lead to problems including overcrowding, resulting in poor conditions of detention, which can themselves amount to cruel, inhuman or degrading treatment.

This problem can be compounded by a lack of investment in the adequate care of persons deprived of their liberty and is often accompanied by other systemic problems within the criminal justice system, including: poorly trained and poorly paid police, prison or other staff in charge of the care of persons deprived of their liberty; widespread corruption; a judiciary that lacks independence; poor case management; and a culture of impunity.

Similarly, the UN [Working Group on Arbitrary Detention](#), when reviewing conditions of detention, observed “that the majority of persons in detention come from a poor

39 [Interim Report](#) of the Special Rapporteur on torture, UN Doc. A/64/215 (2009) UN Doc. A/64/215, §40.

40 Article 9(3) of the [ICCPR](#).

milieu and that a large number of them are in pretrial detention⁴¹ and has expressed concern that these detainees do not enjoy the guarantees established in instruments such as the Universal Declaration, ICCPR and Body of Principles, and are deprived of their most basic needs, which has repercussions on their rights to life and to physical and moral integrity.⁴²

Expert bodies have also acknowledged the disproportionate impact that corruption has on those belonging to particular groups, including those living in poverty who, for example, are unable to afford bribes to secure better conditions of detention; access to a lawyer or other third parties; access to medical treatment; basic amenities; or even to secure their freedom. As the Subcommittee on Prevention of Torture has stated:

“There is a strong correlation between the levels of corruption within a State and the levels of torture and ill-treatment found there. One reason is that in States with high levels of corruption there may be less likelihood of torture and ill-treatment being either discovered or prosecuted. The struggle to promote human rights and the campaign against corruption share a great deal of common ground.”⁴³

Poverty, corruption and torture are inextricably linked. Future strategies aimed at combating torture and other ill-treatment must also be aimed at addressing violations of economic, social and cultural rights that marginalize sections of society and make people more vulnerable to violence, including at the hands of state officials or agents or with their consent or acquiescence.

1.4.2 A FAILURE TO CRIMINALIZE TORTURE UNDER NATIONAL LAW

Many states have failed to criminalize torture as a specific offence under national law and/or in a manner that is consistent with the definition of torture in Article 1 of the [Convention against Torture](#). Consequently, the Committee against Torture has expressed concerns on numerous occasions within its concluding observations on state party reports that torture has not been criminalized in conformity with the provisions of the Convention.⁴⁴ A lack of a specific criminal offence of torture and adequate sanctions that reflect the gravity of the crime creates an environment which fosters impunity, where perpetrators are not held to account and victims are denied recourse to an effective remedy.

41 Report of WGAD, [UN Doc. A/HRC/4/40](#) (2007) §61.

42 Report of WGAD, [UN Doc. A/HRC/4/40](#) (2007) §§61 and 65.

43 Seventh Annual Report of the Subcommittee on Prevention of Torture, [UN Doc. CAT/C/52/2](#) (2014) §82.

44 See for example Concluding Observations of CAT: [Sweden, UN Doc. CAT/C/SWE/CO/6-7](#) (2014) §6; [Ukraine, UN Doc. CAT/C/UKR/CO/6](#) (2014) §7; [USA, UN Doc. CAT/C/USA/CO/3-5](#) (2014) §9; [Armenia, UN Doc. CAT/C/ARM/CO/3](#) (2012) §10; [Cuba, UN Doc. CAT/C/CUB/CO/2](#) (2012) §7; [Czech Republic, UN Doc. CAT/C/CZE/CO/4-5](#) (2012) §7; [Greece, UN Doc. CAT/C/GRC/CO/5-6](#) (2012) §7; [Rwanda, UN Doc. CAT/C/RWA/CO/1](#) (2012) §7.

Torture and “security”

At the beginning of the 21st century one of the most marked challenges to the absolute prohibition of torture and other ill-treatment under international law was the actions of states in the name of protecting national security or combating “terrorism”.

Torture and other ill-treatment have historically been used as forms of repression under the guise of protecting national security or combating “terrorism” in violation of international law. However, the response of several states in the aftermath of the attacks in the USA on 11 September 2001 led to a particular challenge to the framework of human rights in the name of the so-called “war on terror”.

The actions of the US administration of the time, under President George W. Bush, as well as the actions of other governments, challenged the absolute prohibition of torture and other ill-treatment, and violated other human rights. In response, international and regional human rights bodies, Amnesty International and other human rights defenders expressed concern about (and in the case of Amnesty International also campaigned against) the use of torture and other ill-treatment; secret detention; enforced disappearance; indefinite detention without charge or trial; and a range of other human rights violations in the context of the so-called “war on terror”.⁴⁵

Individuals were transferred and detained without due process at the US naval base at Guantánamo Bay, Cuba; in Bagram base in Afghanistan; and across Iraq. Some people were held in secret places of detention in other parts of the world. The then US administration authorized and used interrogation methods that violate the international legal prohibition on torture and other ill-treatment, including stress positions, isolation, sensory deprivation and “waterboarding” (inflicting the experience of drowning).⁴⁶

Some individuals were transferred from one state to another outside the framework of the law (known as “rendition” or “extraordinary rendition”) and sent to countries where they faced torture and enforced disappearance. States around the world have been implicated in the USA’s rendition and secret detention programme, either by turning a blind eye or being directly involved in the practice of renditions or secret detention.⁴⁷

Some states, for example Austria, Canada, Germany, Italy, the Netherlands, Russia, Sweden, Switzerland, Turkey, the UK and the USA, sent individuals to states

45 See for example the following Amnesty International reports: [The backlash: Human rights at risk throughout the world](#) (Index: ACT 30/027/2001); [Rights at risk: Amnesty International’s concerns regarding security legislation and law enforcement measures](#) (Index: ACT 30/001/2002); [USA: Military Commissions Act of 2006 – turning bad policy into bad law](#) (Index: AMR 51/154/2006); [USA: Out of sight, out of mind, out of court? – The right of Bagram detainees to judicial review](#) (Index: AMR 51/021/2009).

46 See for example Amnesty International, [USA: Human dignity denied – Torture and accountability in the ‘war on terror’](#) (Index: AMR 51/145/2004).

47 See for example, Amnesty International, [Open secret: Mounting evidence of Europe’s complicity in rendition and secret detention](#) (Index: EUR 01/023/2010).

after asking for diplomatic assurances that they would not be tortured.⁴⁸ Amnesty International has vigorously campaigned against the use of such assurances, which undermine the obligation of all states to protect all individuals from torture and other ill-treatment without discrimination, and their use has been criticized by international and regional human rights bodies and experts.⁴⁹ (See [Chapter 2.5](#) for more information about diplomatic assurances.)

These actions by states have challenged the absolute prohibition of torture and other ill-treatment and Amnesty International has continued to campaign against violations of rights committed in the context of terrorism, anti-terrorism measures and national security. In particular, Amnesty International has exposed violations and has campaigned for an end to unlawful detentions; for governments and individuals to be accountable for violations of human rights they have committed; and for respect of the rights of victims of terrorism and armed groups.

While authorities in a few states have taken steps to hold to account those responsible for abuses committed in the name of “security” or “combating terrorism”, many have not. Some states have also exploited the climate created by the “war on terror” to intensify long-standing patterns of human rights violations or to justify new ones. Thus, Amnesty International continues to campaign for those responsible for such violations, past or present, to be accountable. This means calling for investigations, including public inquiries, in order that those responsible for human rights violations can be brought to justice in fair proceedings and for states to ensure that victims – including the families of victims – of terrorism and human rights violations receive redress for their suffering and loss.

Amnesty International also continues to urge all armed groups to end attacks that target civilians or are indiscriminate; demanding that governments thoroughly investigate all such attacks on civilians and bring those responsible to justice in proceedings that meet international standards of fairness. Amnesty International is also working to build a campaign of solidarity and support, working with victims of such attacks to promote respect for their rights.

48 See Amnesty International, [Dangerous deals: Europe's reliance on 'diplomatic assurances' against torture](#) (Index: EUR 01/012/2010).

49 See for example: CAT: [Agiza v Sweden](#), UN Doc. CAT/C/34/D/233/2003 (2005) §§13.4-13.5; [Pelit v Azerbaijan](#), UN Doc. CAT/C/38/D/281/2005 (2007) §11; Concluding Observations: [USA](#), UN Doc. CAT/C/USA/CO/2 (2006) §21; HRC: Concluding Observations: [USA](#), UN Doc. CCPR/C/USA/CO/3 (2006) §16; [Alzery v Sweden](#), UN Doc. CCPR/C/88/D/1416/2005 (2006) §11.5; Interim Report of the Special Rapporteur on Torture, UN Doc. A/60/316 (2005) §51; Report of the Council of Europe's Committee on Legal Affairs, [Alleged secret detentions and unlawful inter-state transfers of detainees involving Council of Europe member states](#), PACE Doc. 10957 (2006) §260; Report of the Council of Europe Commissioner for Human Rights, [Sweden](#), CommDH(2004)13 (2003) §19; Amnesty International, [Dangerous deals: Europe's reliance on 'diplomatic assurances' against torture](#) (Index: EUR 01/012/2010).

1.4.3 TORTURE TODAY

Although there have been significant achievements over the years to combat torture and other ill-treatment, governments continue to be duplicitous – *prohibiting torture in law, but facilitating it in practice*.

In 2014, 30 years after the adoption of the Convention against Torture, Amnesty International launched its latest global campaign to stop torture (see [Chapter 7](#)). This campaign is aimed at exposing governments' continuing hypocrisy and betrayal of their obligations to prohibit and prevent torture and other ill-treatment. Since 1984, more than 150 states have ratified the Convention against Torture, yet since 2009 Amnesty International has reported on torture or other ill-treatment in 141 countries – three-quarters of the world. As high as this number is, the secretive nature of torture means the true number of countries that torture or otherwise ill-treat people is likely to be higher still.

The [Stop Torture](#) campaign is a rallying call from Amnesty International to expose the hypocrisy of governments around the world and demand that effective safeguards are put in place at the national level to prevent torture and other ill-treatment, punish perpetrators and ensure justice for survivors. The campaign is yet another chapter in Amnesty International's long-standing history of fighting against torture.⁵⁰

50 For more information about the Stop Torture campaign, see Amnesty International's media briefing, [Torture in 2014: 30 years of broken promises](#) (Index: ACT 40/004/2014).

CHAPTER 2

THE PROHIBITION OF TORTURE AND OTHER ILL-TREATMENT UNDER INTERNATIONAL LAW

Torture and other ill-treatment are prohibited absolutely under international law. The prohibition is non-derogable. This means that it applies in all circumstances, including in situations of armed conflict, during anti-terrorist operations, or other public emergency. The absolute prohibition is a peremptory rule of customary international law, meaning that every state is bound by it even if they are not party to particular treaties containing the prohibition. States are obligated not only to protect people from torture and other ill-treatment by public officials but also from similar acts by private individuals (non-state actors). All acts of torture constitute a crime under international law. States have obligations to bring to justice everyone responsible for any act of torture. Certain acts which constitute other cruel, inhuman or degrading treatment or punishment are also crimes under international law.

- 2.1 The prohibition of torture under international human rights law**
 - 2.1.1 General human rights instruments
 - 2.1.2 Specialized instruments on the prohibition and prevention of torture and other ill-treatment
 - 2.1.3 Other specialized human rights treaties
 - 2.1.4 Prohibition under customary international law
- 2.2 The prohibition of torture under international humanitarian law**
- 2.3 What conduct is prohibited?**
 - 2.3.1 Definitions of torture
 - 2.3.2 What is other cruel, inhuman and degrading treatment and punishment?
- 2.4 The link between discrimination and torture**
- 2.5 Specific forms of torture and other ill-treatment**
 - 2.5.1 Corporal punishment
 - 2.5.2 Rape by state agents
 - 2.5.3 Other forms of sexual abuse and humiliation by state agents
 - 2.5.4 Criminalization of abortion
 - 2.5.5 The threat of violence as a form of torture or other ill-treatment
 - 2.5.6 Life imprisonment without the possibility of parole
 - 2.5.7 Destruction of property
- 2.6 The death penalty**
 - 2.6.1 The death penalty under international human rights law
 - 2.6.2 Practices of the death penalty constituting torture or other ill-treatment

- 2.6.3 The death penalty in itself as torture or other ill-treatment
- 2.7 **No international transfers that contravene the protection against torture and other ill-treatment**
- 2.8 **Violence based on gender or sexual orientation**
- 2.9 **Non-state (private) actors**
 - 2.9.1 States' obligations under international law for acts committed by non-state actors
 - 2.9.2 Violence in the family and community

2.1 THE PROHIBITION OF TORTURE UNDER INTERNATIONAL HUMAN RIGHTS LAW

Key points:

- The prohibition of torture and other ill-treatment has been included in many international and regional human rights treaties.
- The **Convention against Torture** is the primary UN treaty that is focused solely on prohibiting, preventing and combating torture and other ill-treatment.
- Torture and other ill-treatment can never be justified under any circumstances.
- The prohibition of torture is a rule of customary international law, binding on all states even if they are not party to treaties containing the provision.

The prohibition of torture and other ill-treatment was recognized in 1948 in the [Universal Declaration](#). The prohibition has been included in many subsequent international and regional human rights treaties and other instruments. Many of these instruments, as well as prohibiting torture and other ill-treatment, also require measures to prevent such abuses; to investigate alleged cases; to bring to justice those responsible; and to afford reparation to victims.

These treaties and standards explicitly recognize that the prohibition of torture and other ill-treatment is absolute and non-derogable. Torture and other ill-treatment can never be justified, whether on the basis of “exceptional circumstances”, “superior orders”, “necessity” or other such defences. No derogation (temporary suspension or limitation) from the prohibition is permitted, even in time of public emergency that threatens the very life of the nation.¹

The prohibition of torture is also a rule of customary international law, binding on all states whether or not they are parties to particular treaties which contain the prohibition. It is one of a small number of peremptory norms of general international law (*jus cogens* rules). Thus, international law leaves no room for states or individuals ever to try to justify any act of torture or other ill-treatment, anywhere, at any time, against any person, for any reason.

1 See for example Article 2 of the [Convention against Torture](#); [CAT General Comment 2](#), §§1-2; [HRC General Comment 20](#), §3; Rule 1 of the [Mandela Rules](#); Articles 4-5 of the [Inter-American Convention against Torture](#); Guidelines 9-11 of the [Robben Island Guidelines](#); European Court: *Saadi v Italy* (37201/06), Grand Chamber (2008) §127; *Chahal v UK* (22414/93), Grand Chamber (1996) §§78-79; *Tomasí v France* (12850/87), (1992) §115.

2.1.1 GENERAL HUMAN RIGHTS INSTRUMENTS

The prohibition of torture and other ill-treatment is included among the range of rights recognized under the main general international and regional human rights treaties.

Relevant standards

Article 5 of the [Universal Declaration](#):

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Article 7 of the [ICCPR](#):

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

Article 5 of the [African Charter](#):

“Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

Article 5 of the [American Convention](#):

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

Article 8 of the [Arab Charter](#):

1. No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment.
2. Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation.”

Article 3 of the [European Convention](#):

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

These specific prohibitions of torture and other ill-treatment are often reinforced by aspects of other rights protected by these general human rights treaties. For example, under the [ICCPR](#), other rights that overlap with or complement Article

7 include: Article 2 on the obligation to respect and ensure human rights; Article 6 on the right to life; Article 9 on the right to liberty and security of person; Article 10 on the right of persons deprived of liberty to be treated with humanity and respect for human dignity; and Article 14 on the right to a fair trial.

2.1.2 SPECIALIZED INSTRUMENTS ON THE PROHIBITION AND PREVENTION OF TORTURE AND OTHER ILL-TREATMENT

As well as the prohibition of torture and other ill-treatment contained in the main general international and regional human rights treaties, specialized instruments have been adopted by the UN and regional inter-governmental organizations.

Specialized instruments on torture and other ill-treatment:

- [Convention against Torture](#)
- [Optional Protocol to the Convention against Torture](#)
- [Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa \(Robben Island Guidelines\)](#)
- [Inter-American Convention against Torture](#)
- [European Convention for the Prevention of Torture.](#)

i. The Convention against Torture

The [Convention against Torture](#) is the primary UN treaty that is focused solely on prohibiting, preventing and combating torture and other ill-treatment. It was adopted by the UN General Assembly in 1984 in response to the continued widespread and systematic practice of torture and is binding on all states parties. The aim of the Convention against Torture is stated in the Preamble as “to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world”.

Article 1 of the Convention defines what is meant by torture under that treaty (see [section 2.3.1](#) on definitions). It then sets out a series of obligations for states parties regarding prevention, investigation, bringing those responsible to justice both domestically and across borders, and affording reparation to victims. A core element of the Convention is the principle of universal jurisdiction: the requirement that all states parties co-operate to bring to justice anyone accused of responsibility for torture, regardless of the nationality of the person or where the torture occurred. The Convention also requires states to take measures to prevent “other cruel, inhuman or degrading treatment or punishment”, and specifies some of the same obligations as apply to torture, without ruling out the application of the treaty’s other obligations.

For instance, although the Convention does not expressly make other provisions such as those referring to criminalization, prosecution and the exercise of universal jurisdiction of torture equally applicable to other forms of ill-treatment, neither does it rule out such application. The Convention against Torture also established

a specific expert body, the Committee against Torture, to monitor states parties' compliance with the obligations contained within the Convention against Torture, and sets out its powers and functions. (See [Chapter 1.2.1.](#))

ii. The Optional Protocol to the Convention against Torture

The [Optional Protocol to the Convention against Torture](#) relies on the increased openness of places of detention to the outside world as a means of preventing torture and other ill-treatment. The Optional Protocol was adopted by the UN General Assembly in 2002 and was drafted as a means to assist states to better implement their obligations to prevent torture and other ill-treatment under the Convention against Torture. Only a state that is a party to the Convention can become a party to the Optional Protocol. The Optional Protocol aims to prevent torture and other ill-treatment by establishing a system of visits to all places of detention under the jurisdiction or control of states parties.² These visits are undertaken by a UN treaty body – the Subcommittee on Prevention of Torture, which is made up of 25 expert members – and independent National Preventive Mechanisms that each state party is obligated to put in place at the domestic level.

As well as conducting visits, the Subcommittee on Prevention of Torture and National Preventive Mechanisms have a specific mandate to make recommendations to the authorities on issues relating to the prevention of torture and other ill-treatment generally. Unlike other UN treaty bodies, the Subcommittee does not require consent from a state party before conducting a visit to that country; the state, by ratifying the Optional Protocol, gives its consent to accept visits by the Subcommittee at any time. Similarly, National Preventive Mechanisms must be enabled to conduct visits to any place of detention of their choosing at any time (see [Chapter 5.2](#)).

iii. Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines)

Within the African human rights system the primary instrument specializing in the prohibition and prevention of torture and other ill-treatment is the resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa ([Robben Island Guidelines](#)). The Robben Island Guidelines were adopted by the African Commission in 2002 and approved by the African Union in 2003.³ They are set of non-binding guidelines that elaborate upon the general obligation to prohibit torture and other ill-treatment under Article 5 of the [African Charter](#).

The Robben Island Guidelines are divided into three main sections setting out a range of measures aimed at a) prohibiting torture and other ill-treatment; b) preventing torture and other ill-treatment; and c) responding to the needs of victims. The promotion

² See Articles 1 and 4 of the [Optional Protocol to the Convention against Torture](#).

³ [African Commission document ACHPR/Res. 61\(XXXII\) 02 \(2002\)](#), approved by the Conference of Heads of State and Government of the African Union held in Maputo, Mozambique, in July 2003.

and implementation of the Robben Island Guidelines is monitored by the Committee for the Prevention of Torture in Africa, a Special Mechanism of the African Commission (see [Chapter 1.2.2](#)).⁴

Although the Robben Island Guidelines are contained within a resolution of the African Commission and therefore not binding on states, they do include obligations found in binding instruments such as the Convention against Torture and the ICCPR as well as rules of customary international law.⁵

iv. The Inter-American Convention against Torture

Within the Organization of American States (OAS), the key treaty specializing in the prohibition and prevention of torture is the [Inter-American Convention against Torture](#). This Convention was adopted in 1985 and is a binding instrument that elaborates on the general obligation to prohibit torture and other ill-treatment contained in Article 5 of the [American Convention](#). Similarly to the Convention against Torture, the Inter-American Convention against Torture sets out a range of obligations for states parties to prevent and punish acts of torture as defined in the treaty. The Inter-American Convention also requires states parties to prevent other forms of ill-treatment.⁶

v. The European Convention for the Prevention of Torture

In Europe the main instrument specializing in the prevention of torture and other ill-treatment is the [European Convention for the Prevention of Torture](#). This Convention does not contain standards aimed at the prohibition and prevention of torture and other ill-treatment; its sole purpose was to establish the European Committee for the Prevention of Torture, an expert body empowered to conduct regular and ad hoc visits to places where people are deprived of their liberty in states parties to that Convention. The Committee was established in 1989. It has since conducted hundreds of visits and subsequently published its visit reports.⁷ The Committee provided the blueprint for the Optional Protocol for the Convention against Torture. (See [Chapter 5.2](#).)

2.1.3 OTHER SPECIALIZED HUMAN RIGHTS TREATIES

Torture and other ill-treatment is also explicitly prohibited under a number of specialized human rights treaties which apply to specific groups of people or in specific circumstances.

4 For more information about the Committee for the Prevention of Torture in Africa see the African Commission website: www.achpr.org/mechanisms/cpta/

5 See for example Guidelines 9-12 and 29 of the [Robben Island Guidelines](#) which mirror Articles of the [Convention against Torture](#); and Guidelines 25-27 and 31-32 which mirror Articles 9 and 14 of the [ICCPR](#).

6 Article 6 of the [Inter-American Convention against Torture](#).

7 CPT documents can be downloaded from: www.cpt.coe.int/en/docspublic.htm

Relevant international standards

Article 5(b) of the [Convention against Racism](#):

“The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution...”

Article 37 of the [Convention on the Rights of the Child](#):

“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”

Article 10 of the [Migrant Workers Convention](#):

“No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

Article 15 of the [Convention on Persons with Disabilities](#):

“1. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.
2. States parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”

Relevant regional standards

Article 16 of the [African Charter on the Rights of the Child](#):

“1. States parties to the present Charter shall take specific legislative, administrative, social and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child.”

Article 4 of the [Protocol to the African Charter on the Rights of Women in Africa](#):

“1. Every woman shall be entitled to respect for her life and the integrity and security of her person. All forms of exploitation, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

Article 4 of the [Inter-American Convention on Violence against Women](#):

“Every woman has the right to the recognition, enjoyment, exercise and protection of all human rights and freedoms embodied in regional and international human rights instruments. These rights include, among others:

- a. The right to have her life respected;
- b. The right to have her physical, mental and moral integrity respected;
- c. The right to personal liberty and security;
- d. The right not to be subjected to torture;
- e. The rights to have the inherent dignity of her person respected and her family protected.”

In addition to these provisions contained in specific treaties, the Committee established under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) lists in its [General Recommendation 19](#) on violence against women the right to not to be subject to torture or other ill-treatment as among the rights that are impaired or nullified by gender-based violence. (For more information on gender-based violence see [section 2.8.](#))⁸

Other international human rights treaties also contain provisions that in effect prohibit torture and other ill-treatment. Article II (b) of the [Genocide Convention](#) prohibits “[c]ausing serious bodily or mental harm” to members of a national, ethnical, racial or religious group with intent to destroy the group as such in whole or in part. Article 5 of the [Supplementary Convention on Slavery](#) prohibits “mutilating, branding or otherwise marking a slave or a person of servile status” in countries where slavery still exists. Torture or other ill-treatment is also included as a component of the crime of apartheid in Article II of the [Apartheid Convention](#).

2.1.4 PROHIBITION UNDER CUSTOMARY INTERNATIONAL LAW

As well as being expressly stated in international treaties and other instruments, the prohibition of torture and other ill-treatment is also recognized as a rule of customary international law.⁹ A rule of customary international law is formed when the vast majority of states concerned are consistent in a specific practice over time and explain the reason for doing so in terms of a legal obligation, an approach also supported by the views of legal experts. Customary international law is binding on all states whether or not they are parties to particular treaties that contain the prohibition.¹⁰ For decades states have officially maintained that they regard torture and other ill-treatment as unlawful, have denied that they practise such abuses and have officially condemned other states when acts of torture or other ill-treatment occur.

Indeed, the prohibition of torture is widely recognized as one of a relatively small number of particularly fundamental and almost immutable peremptory norms of general international law (*jus cogens* rules).¹¹ Any treaty or other international obligation that is inconsistent with a peremptory norm is invalid, and all states are under special

8 See CEDAW [General Recommendation 19](#), §7(b).

9 See for example: International Court of Justice: [Questions Relating to the Obligation to Prosecute or Extradite \(Belgium v Senegal\)](#), Judgment of 20 July 2012, §99; [Case Concerning Ahmadou Sadio Diallo \(Republic of Guinea v Democratic Republic of the Congo\)](#), Judgment of 30 November 2010, §87; UN General Assembly resolution 66/150, third preambular paragraph; [Prosecutor v Furundzija](#) (IT-95-17/1) ICTY, Trial Judgment (1998) §§137-146.

10 Particular states can avoid becoming subject to some rules of customary international law if they can demonstrate that they have “persistently objected” to its application to them during the period the rule developed and since it has been in force. However, states are not permitted to avoid those special rules recognised as “peremptory norms” in this way. Nor is there any record of any state explicitly arguing persistently during the past decades that it is not subject to an absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment under international law.

11 International Court of Justice, [Questions Relating to the Obligation to Prosecute or Extradite \(Belgium v Senegal\)](#), Judgment of 20 July 2012, §99; UN General Assembly resolution 66/150, third preambular paragraph; [Prosecutor v Furundzija](#) (IT-95-17/1), ICTY, (1998) §§153-157.

obligations not to assist, and indeed must co-operate to end, any breach of peremptory norms by a state.¹²

While the overall prohibition that includes other forms of cruel, inhuman or degrading treatment or punishment has not been so widely recognized as to constitute a peremptory norm, the International Court of Justice has said that:

“There is no doubt, moreover, that the prohibition of inhuman and degrading treatment is among the rules of general international law *which are binding on States in all circumstances*, even apart from any treaty commitments.”
[Emphasis added.]¹³

The Inter-American Court has also on several occasions affirmed that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is, as a whole, a peremptory norm of international law.¹⁴

2.2 THE PROHIBITION OF TORTURE UNDER INTERNATIONAL HUMANITARIAN LAW

Key points:

- **Torture and other ill-treatment are prohibited at all times under international human rights and humanitarian law.**
- **The four Geneva Conventions all expressly prohibit torture and other ill-treatment in all situations of armed conflict, and regard such acts as grave breaches of the Conventions (war crimes).**
- **The prohibition of torture and other ill-treatment in armed conflict is a norm of customary international law – binding on all states, independent of any particular treaty. Torture and some forms of ill-treatment constitute war crimes under customary international humanitarian law, whether committed in an international or non-international armed conflict.**
- **All parties to any armed conflict – whether fighting on behalf of a state or on behalf of a non-state armed group – are bound by the absolute prohibition of torture and other ill-treatment.**

Torture and other ill-treatment are prohibited in all circumstances under international humanitarian law – the body of international law which regulates the behaviour of parties to armed conflicts, also known as the laws of war.

12 See *Vienna Convention on the Law of Treaties*, Article 53; International Law Commission, *Responsibility of States for Internationally Wrongful Acts*, (2001) Articles 41-2.

13 *Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v Democratic Republic of the Congo)*, International Court of Justice, Judgment of 30 November 2010, §87.

14 See *Caesar v Trinidad and Tobago*, Inter-American Court of Human Rights (2005) §70 and §100; *Fernán Ramírez v Guatemala*, Inter-American Court of Human Rights (2005) §117. Subsequent judgments have reaffirmed the peremptory status of the prohibition of torture, but have not further commented on the peremptory status of other ill-treatment.

The four Geneva Conventions all prohibit torture and other ill-treatment, including biological experiments,¹⁵ and “wilfully causing great suffering or serious injury to body or health”¹⁶ of persons protected by these Conventions. Rape of women is also expressly prohibited under Article 27 of the [Fourth Geneva Convention](#). (Although it is not expressly listed as a grave breach of that Convention, subsequent jurisprudence has held that rape by combatants constitutes torture, and that rape also constitutes a distinct war crime under customary international humanitarian law.)¹⁷

All of the Geneva Conventions identify acts of torture or inhuman treatment, including biological experiments, or wilfully causing great suffering or serious injury to body or health, as “grave breaches”¹⁸ of the Conventions if committed against “protected persons”¹⁹ in an international armed conflict. States parties are required by the Conventions to exercise universal criminal jurisdiction over grave breaches (see [Chapter 5.1](#)).

In addition, common Article 3 of the four Geneva Conventions expressly prohibits “violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture” as well as “outrages upon personal dignity, in particular humiliating and degrading treatment”. Common Article 3 applies to all armed conflicts “not of an international character”; that is, conflicts between state armed forces and non-state armed groups, or conflicts only between non-state armed groups. In such conflicts, the acts listed in common Article 3 are “prohibited at any time and in any place whatsoever” against anyone “taking no active part in the hostilities, including members of armed forces who have laid down their arms” and those removed from active combat “by sickness, wounds, detention, or any other cause”. Common Article 3 has been described as a “convention in miniature”.²⁰

Two Protocols additional to the Geneva Conventions expand the list of specific prohibited acts for states that have ratified a particular Protocol.

15 See Article 12 of [First Geneva Convention](#); Article 12 of [Second Geneva Convention](#); Articles 17 and 87 of [Third Geneva Convention](#); Article 32 of [Fourth Geneva Convention](#).

16 See Article 50 of [First Geneva Convention](#); Article 51 of [Second Geneva Convention](#); Article 130 of [Third Geneva Convention](#); and Article 147 of [Fourth Geneva Convention](#).

17 See [ICRC Customary IHL Study, Rule 93](#).

18 See Article 50 of [First Geneva Convention](#); Article 51 of [Second Geneva Convention](#); Article 130 of [Third Geneva Convention](#); and Article 147 of [Fourth Geneva Convention](#).

19 Persons protected by the Geneva Conventions in international armed conflicts are, chiefly: wounded and sick members of armed forces in the field ([First Geneva Convention](#)); wounded, sick and shipwrecked members of armed forces at sea ([Second Geneva Convention](#)); prisoners of war ([Third Geneva Convention](#)); and civilians in occupied territories or elsewhere who “find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals” ([Fourth Geneva Convention](#), Article 4). Common Article 3, applicable in non-international armed conflicts, protects “[p]ersons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause”.

20 See [ICRC commentary](#) to Common Article 3.

[Protocol I](#), relating to international armed conflicts, expands the list of grave breaches (see Articles 11 and 85). It reaffirms the prohibition of “violence to the life, health, or physical or mental well-being of persons”, in particular “torture of all kinds, whether physical or mental”, corporal punishment and mutilation, and “enforced prostitution and any form of indecent assault”, committed against “persons who are in the power of a Party to the conflict”.²¹ It also requires the protection of women against rape, forced prostitution and any other form of indecent assault;²² and of children against indecent assault.²³

[Protocol II](#), relating to non-international armed conflicts, prohibits “violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment” and “rape, enforced prostitution and any form of indecent assault” committed against “persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted.”²⁴ The Geneva Conventions and their Protocols also establish safeguards and standards for detention and measures for the protection of women and children, many of which are similar to those found in international human rights standards.²⁵

The obligations set out in the Geneva Conventions and their Protocols are binding on states parties to these instruments. All states are parties to the Geneva Conventions, and the majority are parties to the Protocols. Furthermore, non-state armed groups taking part in a non-international armed conflict are also bound to apply the provisions of common Article 3 and, where applicable, of Protocol II.²⁶

The International Court of Justice has held that under the “fundamental general principles of international humanitarian law”, the rules set out in common Article 3 constitute a “minimum yardstick” which applies to international as well as non-international armed conflicts.²⁷ In accordance with this ruling, torture and other ill-treatment as prohibited under common Article 3 would, if inflicted in any armed conflict against any person (including individuals who technically may not meet the definition of “protected persons” under the main provisions of the Geneva Conventions), be a violation of customary international law. The study of customary international humanitarian law commissioned by the International Committee of the Red Cross (ICRC) also concluded that “torture, cruel or inhuman treatment and outrages upon personal dignity, in particular humiliating and degrading treatment” are prohibited by customary international law in all circumstances as concerns all persons in all kinds of armed

21 Article 75 of [Protocol I](#).

22 Article 76 of [Protocol I](#).

23 Article 77 of [Protocol I](#).

24 Article 4 of [Protocol II](#).

25 See for example Article 24 of the [Fourth Geneva Convention](#); Articles 76 and 77 of [Protocol I](#); Article 4 of [Protocol II](#).

26 [Common Article 3](#) states that “each Party to the conflict shall be bound to apply, as a minimum” its provisions.

27 *Nicaragua v United States of America*, International Court of Justice (1986) §218-220.

conflict.²⁸ Rules of customary law apply to all states, whether or not they are parties to a treaty expressly containing the rule (see [section 2.1.4](#)).

2.3 WHAT CONDUCT IS PROHIBITED?

Key points:

- **Acts of torture and other cruel, inhuman or degrading treatment or punishment are absolutely prohibited; there can be no justification whatsoever for any such act.**
- **Attempts to commit torture, as well as acts of complicity or participation in torture, aiding and assisting another state to perpetrate torture, or for public officials to instigate, consent to, or acquiesce in torture, are also prohibited.**
- **In assessing the responsibility of states for violations of the prohibition, it is often unnecessary to draw distinctions between torture and other forms of cruel, inhuman and degrading treatment or punishment. They form a group of prohibited behaviour. Distinctions may become more important in relation to individual criminal responsibility.**
- **While torture and other ill-treatment are all equally prohibited, some provisions of the Convention against Torture and the Inter-American Convention against Torture refer only to torture; for example, the mandatory exercise of universal jurisdiction.**
- **If necessary, torture may be distinguished from other ill-treatment by the existence of intent to inflict suffering for a purpose or by the severity of the suffering caused. Pain or suffering inflicted accidentally cannot constitute torture.**

Article 5 of the [Universal Declaration](#) states that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”. This wording has served as a model for provisions in other human rights instruments. The prohibition of torture and other ill-treatment and the terms “cruel”, “inhuman”, “degrading”, “treatment” and “punishment” have been incorporated into other international instruments such as Article 7(1) of the [ICCPR](#) (which replicates Article 5 of the Universal Declaration word for word) and in all the main regional human rights instruments.²⁹ The wording in Article 5 of the Universal Declaration has also been replicated in many national constitutions.

Often there is no need to distinguish between torture and other cruel, inhuman or degrading treatment or punishment, since the entire class of behaviour – torture and other forms of ill-treatment – is absolutely prohibited. Therefore, it is often not necessary to assign specific meanings to the various elements of the phrase “torture or other cruel, inhuman or degrading treatment or punishment” or to establish overlapping categories among the elements in order to make a finding of a violation for the purpose of establishing state responsibility or individual civil responsibility.

²⁸ ICRC *Customary IHL Study*, [Rule 90](#).

²⁹ The European Convention on Human Rights omits the word “cruel” but this has been deemed not to have any legal consequences.

The Committee against Torture has stated that in practice, the definitional threshold between other ill-treatment and torture is often not clear.³⁰ Similarly, the Human Rights Committee has noted that it does not consider “it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.”³¹

However, certain distinguishing criteria will be needed if torture is to be defined as a crime under national law, as required by the Convention against Torture, and certain obligations are only applicable expressly to torture; for example, the exercise of universal jurisdiction (see [Chapter 6.4.1](#)). Thus, in certain circumstances it may be necessary to distinguish torture from other forms of ill-treatment.

2.3.1 DEFINITIONS OF TORTURE

As noted above, in practice it is not always necessary or desirable to distinguish between torture and other ill-treatment because they are all forms of conduct which are absolutely prohibited. Yet specific definitions of torture are contained in the [Convention against Torture](#) and the [Inter-American Convention against Torture](#), as well as (for more limited purposes) the [Rome Statute](#), and have also emerged from the jurisprudence and other findings of UN and regional treaty bodies, as well as international criminal tribunals. The Special Rapporteur on torture has also sought to interpret elements which may distinguish torture from other ill-treatment.³²

While the existence of various definitions of torture and other ill-treatment under international law and the jurisprudence of treaty bodies can be confusing, there are elements that are common to most definitions of torture under international law, namely:

- Torture results in physical and/or mental pain or suffering serious enough to be considered severe;³³
- Torture is inflicted intentionally;
- Torture is inflicted for a purpose or on the basis of discrimination;³⁴ and
- Officials are involved, either directly or indirectly, in the infliction of torture.

When bringing a case or conducting other advocacy activities before a particular human rights body, it is important to know the definitions and approach which that body

30 [CAT General Comment 2](#), §3.

31 [HRC General Comment 20](#), §4.

32 Annual Reports of the Special Rapporteur on torture: [UN Doc. A/HRC/13/39/Add.5](#) (2010) pp.12-15; [UN Doc. E/CN.4/2006/6](#) (2006) §34-41.

33 Note that the [Inter-American Convention against Torture](#) does not require that the pain and suffering be severe.

34 The definition of torture as a crime against humanity under the [Rome Statute](#) does not expressly include an element of purpose. However, to qualify as a crime against humanity under the Rome Statute, it must be established that the torture was “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack” (Article 7), which comes close to requiring that the act be purposeful, discriminatory or both.

will apply when considering issues relating to the prohibition and prevention of torture and other ill-treatment. These are set out in the following sections.

i. Convention against Torture

Article 1 of the Convention against Torture

“(1) For the purposes of this Convention, the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person 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, when such pain or suffering is 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. (2) This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.”

Article 1 of the [Convention against Torture](#) sets out a definition of torture for the purposes of that Convention, but which has been used far beyond the confines of the Convention. It defines the elements of the crime of torture for the purpose of bringing torturers to justice in accordance with the provisions of the Convention. For example, Article 4 requires each state party to the Convention to ensure that “all acts of torture are offences under its criminal law”. Article 8 requires states parties to deem offences of torture to be extraditable offences between them, while Articles 5-7 deal with the application of the criminal justice system and the exercise of universal jurisdiction over torture.

The definition of torture in Article 1 of the Convention against Torture has served as a model for subsequent definitions such as Article 2 of the [Inter-American Convention against Torture](#). It has assumed ever greater importance with the increasing number of states parties to the Convention against Torture; the increasing number of states which incorporate the elements of the definition in national laws prohibiting torture; the increasing tendency of the regional human rights courts and the Rwanda and Yugoslavia Tribunals to draw from it in making findings of torture; and authoritative references to key elements of the definition as matters of customary international law.³⁵

The definition of torture under Article 1 of the Convention against Torture has five key elements:

³⁵ See Yugoslavia Tribunal: *Prosecutor v Delalić and others* (IT-96-21-A), (1998) §459; *Prosecutor v Furundžija*, (IT-95-17/1-T), (1998) §§159-161; *Prosecutor v Kunarać and others*, Appeal judgment, (IT-96-23 & IT-96-23/1-A), (2002) §§142-156 (see also *trial judgment* (2001), §§482-485, 497); *Prosecutor v Akayesu* (ICTR-96-4-T), Rwanda Tribunal (1998) §§593-594.

- a) Torture involves the infliction of **pain or suffering, whether physical or mental**;
- b) The pain or suffering is **severe**;
- c) It is **inflicted intentionally**. Pain or suffering inflicted accidentally cannot constitute torture;
- d) It is inflicted **for a purpose** such as those listed in Article 1, or for any reason based on discrimination of any kind; and
- e) It is 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**.

The definition of the crime of torture under domestic law, if it does not directly incorporate the actual language of the Convention definition, must at least cover all the conduct covered by this definition.

a) Infliction of physical or mental pain or suffering

The term “act” in Article 1 is interpreted broadly to include omissions, at least intentional ones.³⁶ The Committee against Torture in its [General Comment 2](#) affirmed that “States bear international responsibility for the acts and omissions of their officials and others”.³⁷ This means that conduct such as intentionally depriving someone of, for example, food, water or medical attention, would fall within the definition of torture under the Convention if the other elements of the definition are present.³⁸

Depictions of torture in popular culture frequently emphasize the infliction of physical pain, and this is indeed a feature of much torture in the real world. The inclusion of the notion of mental suffering is however extremely important as it acknowledges that mental suffering no less intense than physical pain can be inflicted upon individuals with or without actual physical contact. Thus certain acts which may cause severe mental suffering such as sleep deprivation, sensory deprivation or manipulation techniques can amount to torture.³⁹

Instructively, the definition from the Inter-American Convention against Torture does not include a requirement of “severe pain or suffering,” and expressly includes “the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish”. (See [section 2.3.1.iii](#) below.)

The Committee against Torture has also affirmed that the understanding of psychological torture should not be limited to acts that cause “prolonged mental

³⁶ M. Nowak and E. McArthur, *The United Nations Convention against Torture*, Oxford University Press, 2008, p.66, §92.

³⁷ [CAT General Comment 2](#), §15.

³⁸ N. Rodley and M. Pollard, ‘Criminalisation of torture: state obligations under the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, *European Human Rights Law Review* (2006) p.120.

³⁹ See for example, CAT Annual Report, [UN Doc. A/56/44](#) (2001) §§42-43; and Concluding Observations of CAT: [Israel](#), [UN Doc. A/52/44](#) (1997) §257.

harm”, but constitute a wider category of acts, which cause severe mental suffering.⁴⁰ In other words, psychological torture not only encompasses acts that are inflicted in a systematic or prolonged way but can encompass a single act which causes severe mental suffering; for example, a single mock execution or a threat of violence (see [section 2.5.5](#)).

b) Severity of pain or suffering

Under all definitions (except for that found in the Inter-American Convention against Torture), to constitute torture the suffering or pain inflicted must be severe. In practice the Committee against Torture has not applied a strict general approach to assessing the severity of suffering caused but will look at the circumstances of each case to see whether all of the definitional elements in Article 1 are present. In its jurisprudence when finding that an act of torture has occurred, the Committee against Torture will generally make reference to the wording in Article 1 as a whole and state that the treatment can be characterized as severe pain or suffering intentionally inflicted by public officials for a specific purpose.⁴¹

c) Intentionally inflicted

Article 1 simply requires that the perpetrator intended to inflict pain or suffering. It would not be in keeping with that definition to require proof that the torturer knew that the conduct inflicted or would be likely to inflict pain or suffering which was severe; it should be sufficient that the torturer intended the conduct which inflicted on the victim severe pain or suffering.⁴² Acts performed accidentally cannot amount to torture.⁴³

d) For a purpose

Article 1 makes it clear that torture is the intentional infliction of severe suffering for a purpose (or because of discrimination) and lists examples of purposes for which torture is often inflicted. However, the inclusion of the term “such as” makes it clear that this list is not exhaustive and is only indicative of the common purposes or “incentives” for torture.

This enables the Committee against Torture to have a flexible approach and does not tie it down to previous decisions, thus ensuring that the Convention against Torture is a “living instrument”; that is, able to respond to new challenges and possibly widen the scope of protection. The express reference, following the list of purposes in Article 1, to torture committed “for any reason based on discrimination of any

40 Concluding Observations of CAT: [USA](#), UN Doc. CAT/C/USA/CO/2 (2006) §13.

41 See for example: CAT: [Danilo Dimitrijevic v Serbia and Montenegro](#), UN Doc. CAT/C/35/D/172/2000 (2005) §7.1; [V.L v Switzerland](#), UN Doc. CAT/C/37/D/262/2005 (2006) §8.10.

42 This interpretation is confirmed by Article 7(1)(f) of the Elements of Crimes, which states that it is not necessary for the perpetrator of torture as a crime against humanity to have known that the harm inflicted was severe.

43 The requirement in Article 1 of the Convention against Torture that the infliction of pain or suffering be intentional was to exclude pain or suffering which was “the result of an accident or of mere negligence”; see J. H. Burgers and H. Danelius, *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1988, p.118.

kind”, recognized that discrimination could pave the way for torture. As stated by the Committee against Torture, “discrimination of any kind can create a climate in which torture and ill-treatment of the ‘other’ group subjected to intolerance and discriminatory treatment can more easily be accepted”.⁴⁴ (See [section 2.4.](#))

e) By or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity

The last element of Article 1 states that torture is “committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. The Convention against Torture imposes obligations on states, not individuals. Therefore, the purpose of this requirement is to establish the scope of state responsibility under this Convention.⁴⁵ (Note that similar language is also used in respect of other forms of ill-treatment not amounting to torture under Article 16 of the Convention – see [section 2.3.2.](#))

This requirement is broadly worded and over the years the nature and scope of states parties’ obligations under the Convention against Torture have been clarified. In its [General Comment 2](#), the Committee against Torture has confirmed that states parties “bear international responsibility for the acts and omissions of their officials and other actors, including agents, private contractors, and others acting in official capacity or acting on behalf of the state, in conjunction with the state, under its direction or control, or otherwise under colour of law.”⁴⁶

The terms “consent” and “acquiescence” in Articles 1 and 16 have been interpreted by the Committee against Torture as ensuring that states will also be responsible for acts committed by non-state actors (private individuals) where they have failed to take steps to adequately protect against such acts and prevent them. The Committee against Torture has noted that where “State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts” [emphasis added].⁴⁷ (See [section 2.9.](#))

In the special context of armed conflict, international humanitarian law applies to all parties to the conflict, including non-state actors not acting at the behest of or with the acquiescence of any government. As such, the “public official” requirement of the

⁴⁴ Contribution of CAT to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, [UN Doc. A/CONF.189/PC.2/17](#) (2001) p.2.

⁴⁵ [CAT General Comment 2](#), §15.

⁴⁶ [CAT General Comment 2](#), §15.

⁴⁷ [CAT General Comment 2](#), §18.

Convention against Torture has been held not to apply in situations of armed conflict.⁴⁸ A broader test applies also in the context of crimes against humanity.⁴⁹

f) The exclusion of lawful sanctions

The last sentence of Article 1(1) of the Convention against Torture states that the definition does not include “pain or suffering arising only from, inherent in or incidental to lawful sanctions”.⁵⁰ Through the practice of the Committee against Torture, in particular in relation to the imposition of corporal punishment, “lawful” must be understood as meaning lawful not only under domestic law, but also in conformity with international law and standards.⁵¹ This approach is consistent with the rule of international law that a state “may not invoke provisions of its internal law as justification for its failure to perform a treaty”.⁵²

Similarly, the Special Rapporteur on torture has stated that this sentence “must necessarily refer to those sanctions that constitute practices widely accepted as legitimate by the international community, such as deprivation of liberty through imprisonment, which is common to almost all penal systems”.⁵³ This approach is supported by the fact that the equivalent language in the predecessor to the Convention against Torture, the 1975 [Declaration against Torture](#), stated that the definition of torture “does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners”. The reference to the Standard Minimum Rules was not included in the Convention against Torture because it was felt to be improper for a treaty to refer to a non-binding non-treaty standard in that manner.⁵⁴

To read the “lawful sanctions” clause as permitting states to exclude any act from the definition of torture so long as the state regards it as legal under national law, would deprive the concept of torture under international law of any substantive or independent meaning, a result that would clearly be at odds with the object and purpose of the Convention, and inconsistent with customary international law.

48 See for example, *Prosecutor v Kunarac and others* (IT-96-23 & IT-96-23/1-A), Yugoslavia Tribunal Appeal judgment (2002) §142-156; *Elements of Crimes*, “torture as a war crime”, §8(2)(c)(i)-4.

49 See for example Article 7(1)(a) and (e) of the [Rome Statute](#).

50 Article 1(1) of the [Convention against Torture](#).

51 Peter Kooijmans, the UN Special Rapporteur on torture, stated in his 1988 report that the fact that “sanctions are accepted under domestic law does not necessarily make them ‘lawful sanctions’ in the sense of article 1 of the Convention against Torture... It is international law and not domestic law which ultimately determines whether a certain practice may be regarded as ‘lawful’”. See Report of the Special Rapporteur on torture, UN Doc. E/CN.4/1988/17 (1988) §42; K. Bennoune, ‘A Practice which Debases Everyone Involved’: Corporal Punishment under International Law’, *20 Ans Consacrés à la Réalisation d’une Idée: Recueil d’Articles en l’Honneur de Jean-Jacques Gautier* (1997) pp.203-229.

52 Article 27 of the [Vienna Convention on the Law of Treaties](#). This provision is now considered part of customary international law.

53 Annual Report of the Special Rapporteur on torture, [UN Doc. E/CN.4/1997/7](#) (1997) §8.

54 Article 1 of the [Declaration against Torture](#); N. Rodley and M. Pollard, *The Treatment of Prisoners under International Law*, 3rd edition, Oxford University Press, 2009, p.445.

ii. ICCPR

As noted earlier, Article 7 of the [ICCPR](#) prohibits “torture and cruel, inhuman or degrading treatment or punishment”. The treaty does not include a definition of any of these terms.

The Human Rights Committee, mandated by the ICCPR to interpret and oversee the implementation of its provisions by states parties, pointed out in 1992 that because all such treatment is absolutely prohibited under the ICCPR, there is in general little reason for it to draw “sharp distinctions” between torture and other forms of prohibited abuse; the Committee said simply that any distinctions depend on “the nature, purpose and severity of the treatment applied”.⁵⁵ However, the Committee has noted that it nonetheless “considers it appropriate to identify treatment as torture if the facts so warrant” and that in so doing “it is guided by the definition of torture found in the Convention against Torture”.⁵⁶

Similarly to the Committee against Torture, the Human Rights Committee also interprets states’ obligations in relation to the prohibition of torture under the ICCPR as extending to acts perpetrated by private actors, at least where the state authorities knew or should have known that torture was being carried out and did not take adequate steps to try to prevent and respond. The Human Rights Committee has said that it is “implicit in article 7 that States parties have to take positive measures to ensure that private persons or entities do not inflict torture or cruel, inhuman or degrading treatment or punishment on others within their power.”⁵⁷

iii. Inter-American Convention against Torture

Article 2 of the Inter-American Convention against Torture

“For the purposes of this Convention, torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.”

While Article 5 of the [American Convention](#) does not define torture, Article 2 of the [Inter-American Convention against Torture](#) does contain a definition. Similarly to the

⁵⁵ [HRC General Comment 20](#), §4.

⁵⁶ [Giri v Nepal](#), HRC, UN Doc. CCPR/C/101/D/1761/2008 (2011) §7.5.

⁵⁷ [HRC General Comment 31](#), §8.

Convention against Torture, the definition in the Inter-American Convention serves mainly to establish the elements of the crime of torture. This definition differs from that found in the Convention against Torture in a number of ways, which in practice means that when dealing with states that are party to the Inter-American Convention, it may be possible to invoke this definition to cover a wider range of conduct than might be possible under the Convention against Torture.⁵⁸

First, the Inter-American definition of torture does not require that the suffering inflicted must be severe in order to constitute torture, and explicitly extends the definition to acts that are “intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish”.⁵⁹

The Inter-American Court has stated that “the personal features of an alleged victim of torture or cruel, inhuman, or degrading treatment should be taken into consideration when determining whether his or her personal integrity has been violated, for such features may change the insight of his or her individual reality and, therefore, increase the suffering and the sense of humiliation when the person is subjected to certain types of treatment.”⁶⁰ In practice this means that the Court’s assessment of whether an act amounts to torture or other ill-treatment includes a range of individual factors, including subjective ones.

Second, similarly to the Convention against Torture, Article 2 of the [Inter-American Convention against Torture](#) does include the requirement that torture be committed for a purpose, although it contains potentially broader language than the Convention against Torture with the inclusion of the phrase “for any other purpose”. (As noted above, the purposes mentioned in the Convention against Torture definition are not exhaustive but the use of “such as” does seem to imply certain categories of purposes rather than “any” purpose.)

While the definition in Article 2 of the Inter-American Convention against Torture does not include the requirement for the direct or indirect involvement of state officials or persons acting in an official capacity, Article 3 of this Convention uses the terms “public servant or employee” in describing those individuals that must be held guilty of the crime of torture under the Convention.⁶¹

The Inter-American Court held early on in its jurisprudence that “[a]n illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the

58 Note that Article 1(2) of the [Convention against Torture](#) “is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.”

59 Article 2 of the [Inter-American Convention against Torture](#).

60 *Ximenes-Loes v Brazil*, Inter-American Court (2006) §127.

61 Although Article 3 does not mention “acquiescence”, it does include a public servant or employee who “being able to prevent [the use of torture], fails to do so”.

State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention”.⁶² This gives a similar scope to the definition of torture in relation to non-state perpetrators adopted by the Committee against Torture and the Human Rights Committee. (See [section 2.9](#).)

iv. African Commission on Human and Peoples’ Rights

Article 5 of the [African Charter](#) prohibits torture and other ill-treatment, but does not define these acts. Neither has the African Commission tried to elaborate strict definitions of torture and other ill-treatment within its opinions on communications. However, the Commission has sometimes drawn on the Convention against Torture and other instruments when interpreting the nature of states parties’ obligations under the African Charter. For example, in the case of [Zimbabwe Human Rights NGO Forum v Zimbabwe](#) the Commission cited the definition of torture contained in Article 1 of the Convention against Torture in its opinion.⁶³ The [Robben Island Guidelines](#) also rely on this definition.⁶⁴

v. European Court of Human Rights

Article 3 of the [European Convention](#) prohibits torture and inhuman or degrading treatment or punishment, but contains no definitions of these acts. However, the opinions of the now defunct European Commission of Human Rights⁶⁵ and the rulings of the European Court have over the years elaborated on the meaning of the terms “torture”, “inhuman”, and “degrading” treatment or punishment under Article 3. The intensity of the pain or suffering and the presence of a relevant purpose are for the European Court the two key elements of torture.

As regards the intensity of pain and suffering, in order for any act to fall within the scope of Article 3 it must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as:

- The duration of the treatment;
- Its physical and/or mental effects; and
- In some cases the sex, age or state of health of the victim.⁶⁶

If an act attained the minimum level of severity so as to fall within the scope of Article 3, the European Court would then consider whether the act constitutes degrading treatment or punishment, inhuman treatment or punishment (or both – inhuman and degrading), or else torture. The European Court has held that the states that adopted the European Convention intended “the special stigma of ‘torture’ to attach only to deliberate inhuman treatment causing very serious and cruel

62 [Velásquez Rodríguez v Honduras](#), Inter-American Court (1988) §172.

63 [Zimbabwe Human Rights NGO Forum v Zimbabwe](#) (245/02), African Commission (2006) §180.

64 Guideline 4 of the [Robben Island Guidelines](#).

65 The European Commission of Human Rights was abolished in 1998 when the European Court of Human Rights was enlarged and made a full-time body.

66 See for example [El Masri v Former Yugoslav Republic of Macedonia](#) (39630/09), European Court Grand Chamber (2012) §196, citing [Ireland v UK](#) (5310/71), European Court (1978) §162.

suffering”.⁶⁷ The Court appears therefore to assert that for an act to be categorized as torture it must cause severe suffering.⁶⁸

The thresholds the Court applied for inhuman treatment or punishment and for degrading treatment or punishment were therefore something less than “severe”.⁶⁹ However, even those severity thresholds no longer appear to apply in all cases.

In 2015, in *Bouyid v Belgium*, the Grand Chamber of the Court ruled that behaviour by officials can be in violation of Article 3 even when that “severity threshold... has not been attained”. The Grand Chamber ruled that:

“any conduct by law-enforcement officers *vis-à-vis* an individual which diminishes human dignity constitutes a violation of Article 3 of the Convention. That applies in particular to their use of physical force against an individual where it is not made strictly necessary by his conduct, whatever the impact on the person in question.”⁷⁰

The Court has also explicitly affirmed that the degree of pain or suffering required for an act to constitute torture is simply “severe” pain and suffering as referenced in the definition in Article 1 of the Convention against Torture.⁷¹ When determining whether treatment caused severe pain and suffering, the Court has applied the same approach as to falling within the scope of Article 3 as a whole, looking at all of the circumstances of the case including any vulnerabilities of the particular individual.⁷²

As regards purpose, the Court has explicitly affirmed that for an act to constitute torture, one or more purposes similar to those listed in Article 1 of the Convention against Torture must be present.⁷³

The European Court has called the European Convention a “living instrument which must be interpreted in the light of present-day conditions”,⁷⁴ and has specifically held that “certain acts which were classified in the past as ‘inhuman and degrading treatment’ as opposed to ‘torture’ could be classified differently in future” in part because “the increasingly high standard being required in the area of the protection

67 *El Masri v Former Yugoslav Republic of Macedonia* (39630/09), European Court Grand Chamber (2012) §197, citing *Aksoy v Turkey* (21987/93), European Court (1996) §62.

68 See for example *Selmouni v France* (25803/94), European Court Grand Chamber (1999) §100.

69 The European Court found particular treatment to amount to inhuman or degrading treatment rather than torture on the basis of the relative severity of suffering, for example in: *Ireland v UK* (5310/71), (1978) §167; *Tomasi v France* (12850/87), (1992) §115; *Gafgen v Germany* (22978/05), Grand Chamber (2010) §108.

70 *Bouyid v Belgium* (23380/09), European Court Grand Chamber (2015) §101. The case concerned the slapping by police officers of two men who were detained for several hours at a police station.

71 See for example *Selmouni v France* (25803/94), European Court Grand Chamber (1999) §100.

72 *Ireland v UK* (5310/71), European Court (1978) §162.

73 See *El Masri v Former Yugoslav Republic of Macedonia* (39630/09), European Court Grand Chamber (2012) §197, citing *Ilhan v Turkey* (22277/93), European Court Grand Chamber (2000) §85. As early as 1969, the European Commission had already stated “Torture... has a purpose, such as the obtaining of information or confessions, or the infliction of punishment”, see *The Greek Case* (3321/67,3322/67,3323/67 and 3344/67), European Commission (1969) §17.

74 *Tyler v UK* (5856/72), European Court (1978) §31.

of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies”.⁷⁵

As regards states parties’ obligations under the European Convention with respect to torture and other ill-treatment by private actors, the European Court has held that states must “take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment, including such ill-treatment administered by private individuals”.⁷⁶ It has held that “the State’s responsibility may therefore be engaged where the authorities fail to take reasonable steps to avoid a risk of ill-treatment about which they knew or ought to have known.”⁷⁷ It thus takes a similar approach to the other bodies referenced above.

2.3.2 WHAT IS OTHER CRUEL, INHUMAN AND DEGRADING TREATMENT AND PUNISHMENT?

Key points:

- **Other forms of cruel, inhuman and degrading treatment and punishment are absolutely prohibited under international law, just like torture.**
- **The prohibition of other forms of ill-treatment is interpreted broadly and aims to secure respect for the physical and mental integrity of all individuals at all times.**
- **Unlike torture, most treaties do not include a definition of other forms of ill-treatment. However, judgments of national and international courts and expert bodies suggest some general characteristics, and specific examples, of other cruel, inhuman and degrading treatment and punishment.**

i. Amnesty International’s position: What distinguishes “torture” from “cruel, inhuman or degrading treatment or punishment”?

Unlike torture, “cruel, inhuman or degrading treatment or punishment” has not been defined in international treaties. This phrase originated in the [Universal Declaration](#),⁷⁸ and was incorporated unchanged into the [ICCPR](#) (adopted in 1966), the [Declaration against Torture](#) (adopted in 1975) and the [Convention against Torture](#) (adopted in 1984).⁷⁹ In approaching the question of what distinguishes such ill-treatment from torture, Amnesty International is guided by the principle

⁷⁵ *Selmouni v France* (25803/94), European Court Grand Chamber (1999) §101.

⁷⁶ *Z and others v the United Kingdom* (29392/95), European Court Grand Chamber (2001) §73.

⁷⁷ *Mahmut Kaya v Turkey* (22535/93), European Court (2000) §115.

⁷⁸ The term “cruel, inhuman or degrading treatment or punishment” in its exact present form was adopted first by the Commission on Human Rights during the drafting of the Universal Declaration in June 1948. The formulation was suggested by Belgium, as part of deliberations on what was then Article 8 of the draft, which dealt with fair trial rights. See [Universal Declaration](#), UN Doc. E/CN.4/SR.54 (10 June 1948) pp.15-16.

⁷⁹ Article 16(1) of the [Convention against Torture](#).

that “[t]he term ‘cruel, inhuman or degrading treatment or punishment’ should be interpreted so as to extend the widest possible protection against abuses”.⁸⁰

The extent of the protection against and prohibition of other ill-treatment can be gleaned from the Geneva Conventions which bind all states and which, in the extreme emergency that is armed conflict, prohibit “in all circumstances”⁸¹ ill-treatment of detainees including “all acts of violence or threats thereof... insults and public curiosity”⁸² and any “physical or moral coercion... against protected persons, in particular to obtain information from them or from third parties.”⁸³ It cannot reasonably be argued that the protection against ill-treatment which states must provide in peacetime under human rights law⁸⁴ is weaker, or narrower, than such protection during war.

Amnesty International considers, in line with much of the jurisprudence of international and regional human rights monitoring bodies, that cruel, inhuman or degrading treatment or punishment may generally be described negatively in relation to torture, that is, as ill-treatment which “do[es] not amount to torture” because it lacks one or more of the key elements of the torture definition described above.⁸⁵ An act, or instance, of ill-treatment would therefore constitute cruel, inhuman or degrading treatment or punishment rather than torture either if it lacks the required intention, the required purpose (or discrimination), or if the pain or suffering it causes is not considered to be “severe”.⁸⁶

For example, harsh conditions of detention within the prison system, such as those resulting from overcrowding and poor sanitation, may cause prisoners severe pain or suffering, but in the absence of evidence that they are imposed for a purpose (or discrimination) of the type contained in the definition of torture, would constitute cruel, inhuman or degrading treatment.⁸⁷ On the other hand, where an individual prisoner

80 See Principle 6 of the [Body of Principles](#).

81 Common Article 1 of the Geneva Conventions.

82 Article 13 of the [Third Geneva Convention](#); Article 27 of the [Fourth Geneva Convention](#).

83 Article 31 of the [Fourth Geneva Convention](#). See also Articles 5, 27, 32 and 37.

84 Human rights law applies both in peacetime and during armed conflict, whereas international humanitarian law applies during armed conflicts only.

85 In the case of cruel, inhuman or degrading *punishment* this is obvious, since this term includes the purpose of “punishment”, and if it were to meet all other Article 1(1) criteria, this provision would be identical to torture as punishment, and therefore redundant.

86 Article 16 of the [Convention against Torture](#) explicitly includes the remaining element, that of official involvement, using the same language as Article 1(1). It should be remembered, however, that both torture and other forms of ill-treatment directly carried out by non-state actors are envisaged in other contexts, for example international humanitarian law.

87 Compare the Report of the Special Rapporteur on torture on the Russian Federation, [Un Doc. E/CN.4/1995/34/Add.1](#) (1994) §71, where the Rapporteur, commenting on conditions of detention in certain prison cells, states: “The conditions are cruel, inhuman and degrading; they are torturous. To the extent that suspects are confined there to facilitate the investigation by breaking their wills with a view to eliciting confessions and information, they can properly be described as being subjected to torture.”

Professor Sir Nigel S. Rodley, who was then Special Rapporteur, later explained that without evidence of purpose, he could not make a positive finding of torture, and legally described the conditions as cruel, inhuman and degrading; “torturous” then, it would appear, being an expression of the Special Rapporteur’s revulsion rather than a legal finding. See N.S. Rodley, ‘The Definition(s) of Torture in International Law’, 55 *Current Legal Problems* 465 (2002) p.482.

is punished by means of prolonged solitary confinement or similar harsh conditions causing severe pain or suffering, the “purposive” requirement is fulfilled and the treatment would amount to torture.⁸⁸

When officials use abusive interrogation methods, which by their nature are intentional and have the purpose of “obtaining... information or a confession”, thus fulfilling the other elements of the torture definition, but these methods occasion pain or suffering – be it mental or physical – that is not judged to be severe, they would constitute cruel, inhuman or degrading treatment but would not amount to torture.⁸⁹

Amnesty International is concerned that alternatives to this position, that is, pinning the distinction between torture and other ill-treatment solely on one element, could result in weakening the protection against torture and other ill-treatment. The reason lies in the logic of such a claim: since intention, severe pain or suffering and purpose are all required for a finding of torture, then if ill-treatment is considered identical to torture in all but one requirement, this significantly narrows the scope of what constitutes ill-treatment. For example, if purpose is deemed to be the one and only distinguishing element, then the other two requirements – in this case intention and severity – still need to be met, which would necessarily mean that acts cannot qualify as ill-treatment unless they cause severe pain or suffering. In turn this would mean that acts inflicting “milder” pain are no longer violations of the prohibition of cruel, inhuman or degrading treatment or punishment at all.

Similarly, claiming that only the severity element distinguishes between torture and other ill-treatment would imply that only deliberate acts (acts that have intention and purpose) can be considered cruel, inhuman or degrading, thereby excluding a variety of forms of official negligence from the prohibition.

In many instances it is not necessary to make a distinction between torture and cruel, inhuman or degrading treatment or punishment – all of these acts are absolutely prohibited under international law. However, when a distinction is made, Amnesty International’s position is that an act may constitute cruel, inhuman or degrading treatment or punishment rather than torture because it lacks any one or more of the following key elements: intention, purpose (or discrimination), or severe pain or suffering.

88 Compare the Interim Report of the Special Rapporteur on torture, [UN Doc. A/66/268](#) (2011) §70.

89 Compare for instance *Tomasi v France*, European Court, Series A, No. 241-A (1993), judgment of 27 August 1992, §115. Tomasi, suspected of terrorism offences, was beaten during interrogation, and the Court found that he had been subjected to “inhuman or degrading treatment”. In a subsequent case, involving severe beatings and humiliation, the Court found that “the physical and mental violence, considered as a whole, committed against the applicant’s person caused severe pain and suffering and was particularly serious and cruel. Such conduct must be regarded as acts of torture for the purposes of Article 3 of the Convention”. See *Selmouni v France* (25803/94), European Court Grand Chamber (1999) §105.

ii. The approach of UN treaty bodies and the African and American human rights bodies

As discussed in Amnesty International's position above, and in [section 2.1](#), the prohibition of torture and other cruel, inhuman or degrading treatment or punishment as a whole is absolute and non-derogable, and helps to protect the physical and mental integrity and inherent human dignity of all persons.⁹⁰ For example Rule 1 of the [Mandela Rules](#) stipulates that “[a]ll prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification”.

Particularly given that torture and other ill-treatment are part of a single unified prohibition, the Committee against Torture, the Human Rights Committee, the Inter-American Commission and Inter-American Court of Human Rights and the African Commission have generally found it unnecessary to define other forms of ill-treatment.⁹¹ For the most part, these bodies develop the meaning of the terms cruel treatment or punishment, inhuman treatment or punishment, and degrading treatment or punishment only indirectly, through the results of individual complaints or comments on particular countries or situations. They do, however, sometimes comment on the general characteristics of “other ill-treatment”.

As a guiding principle, the UN General Assembly's [Body of Principles](#) direct that: “The term ‘cruel, inhuman or degrading treatment or punishment’ should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including the holding of a detained or imprisoned person in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time.”⁹²

The Body of Principles is not in itself legally binding, but it reflects the views of UN member states about their legal obligations, and several of its provisions have been cited by international human rights bodies in interpreting and applying specific treaty obligations.⁹³

Article 16(1) of the [Convention against Torture](#) requires states parties to: “undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture

90 See for example Article 2 of the [Convention against Torture](#); [CAT General Comment 2](#), §§1-2; [HRC General Comment 20](#), §3; See also Rule 1 of the [Mandela Rules](#); Articles 4-5 of the [Inter-American Convention against Torture](#); Guidelines 9-11 of the [Robben Island Guidelines](#); [Saadi v Italy](#) (37201/06), European Court Grand Chamber (2008) §127; [Tomasi v France](#) (12850/87), European Court (1992) §115; [Chahal v UK](#) (22414/93), European Court Grand Chamber (1996) §§78-79.

91 See for example [CAT General Comment 2](#), §3; [HRC General Comment 20](#), §4.

92 Principle 6 of the [Body of Principles](#).

93 See for example [Huri-Laws v Nigeria](#) (225/98), African Commission (2000) §40; [HRC General Comment 21](#), §5; Inter-American Court: [Neptune v Haiti](#), (2008) §129; [Díaz Peña v Venezuela](#), (2012) §137.

as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

An act that is cruel, inhuman or degrading would “not amount to torture as defined in article 1” of the Convention against Torture when it was not intentionally done for a relevant purpose or the pain or suffering is not considered to be severe.⁹⁴ Torture and other ill-treatment under the Convention do share one common definitional element; to fall within the scope of the treaty they must be committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The Committee against Torture and other bodies have deliberately not developed exhaustive lists of acts that would be classified as either torture or other forms of ill-treatment to ensure that the Convention against Torture and other instruments remain “living instruments”, enabling them to respond to changing practices (and perhaps, as the European Court suggested, progress towards wider protection). Thus, over the years the Committee against Torture has expressed concern in relation to Article 16 over a range of acts or omissions affecting prisoners, including: poor conditions of detention;⁹⁵ prolonged solitary confinement;⁹⁶ excessive use of force during riots and demonstrations;⁹⁷ the practice of chaining prisoners together while they carry out work outside of prison (chain-gangs);⁹⁸ use of electro-shock stun belts;⁹⁹ and the use of restraint chairs.¹⁰⁰

iii. The approach of the European Court

The European Court more frequently (although not always) draws distinctions between degrading treatment and inhuman treatment.¹⁰¹

a) Degrading treatment or punishment

As stated above, in order for an act to be regarded as degrading treatment in breach of Article 3 of the European Convention, the person must have “undergone – either in the eyes of others or in his own eyes – humiliation or debasement attaining a minimum level of severity”.¹⁰² As described earlier (see [section 2.3.1.v](#)), the Court

94 See [CAT General Comment 2](#), §3 and §10; [Keremedchiev v Bulgaria](#), CAT, UN Doc. CAT/C/41/D/257/2004 (2008) §9.3.

95 See for example CAT Summary Records: [Paraguay](#), UN Doc. CAT/C/SR.418 (2001) §18 and §38; [Brazil](#), UN Doc. CAT/C/SR.471 (2001) §25; CAT Concluding Observations: [Nepal](#), UN Doc. CAT/C/NPL/CO/2 (2007) §31.

96 See for example Concluding Observations of CAT: Switzerland, [UN Doc. A/49/44](#) (1994) p. 21, §133.

97 See for example Concluding Observations of CAT: Denmark, [UN Doc. A/52/44](#) (1997) p. 29, §182; United Kingdom, [UN Doc. A/54/44 \(Supp\)](#) (1999) p. 10, §76(g); Canada, [UN Doc. A/56/44](#) (2001) p. 26, §58(a).

98 Concluding Observations of CAT: USA, [UN Doc. A/55/44](#) (2000) §179(g).

99 Concluding Observations of CAT: USA, [UN Doc. A/55/44](#) (2000) §179(e).

100 Concluding Observations of CAT: USA, [UN Doc. A/55/44](#) (2000) §179(e).

101 The European Convention does not mention “cruel treatment”, but this has not been held to create any substantial difference between the scope of its provisions and the provisions in other treaties that do specifically mention “cruel treatment”.

102 See for example [Campbell and Cosans v UK](#) (7511/76 and 7743/76), European Court (1982) §28; see also [Ireland v UK](#) (5310/71), European Court (1978) §162.

will take into consideration a range of relative factors and all the circumstances of the case to determine whether the suffering was sufficiently severe as to fall within the scope of Article 3.¹⁰³

According to the rulings of the European Court and the opinions of the now defunct Commission, “treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will or conscience”. The Court has also deemed treatment to be degrading when “it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them”.¹⁰⁴

When considering whether a punishment or treatment is degrading within the meaning of Article 3, the Court will consider whether the intent was to humiliate or debase the person concerned. However, a lack of any intent to humiliate or debase the victim will not necessarily rule out a finding of a violation.¹⁰⁵ The Court has found a violation of the [European Convention](#) even where there was no evidence that there had been any intent to degrade the victim.¹⁰⁶

b) Inhuman treatment or punishment

Treatment has been held by the European Court to be inhuman for reasons including that it was premeditated, was applied for hours at a time, and caused either actual bodily injury or intense physical and mental suffering.¹⁰⁷

However, the Court does not always distinguish between inhuman and degrading acts and has in some circumstances described treatment as both inhuman and degrading. For example, in the case of [I.I. v Bulgaria](#) the Court held that the poor conditions of detention “amounted to inhuman and degrading treatment contrary to Article 3 of the Convention”.¹⁰⁸

c) Inhuman or degrading treatment and “lawful sanctions”

The European Court has occasionally stated that “in order for a punishment or treatment associated with it to be ‘inhuman’ or ‘degrading’, the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment

103 See for example [El Masri v Former Yugoslav Republic of Macedonia](#) (39630/09), European Court Grand Chamber (2012) §196, citing [Ireland v UK](#) (5310/71), European Court (1978) §162.

104 See for example [Kudła v Poland](#) (30210/96), European Court Grand Chamber (2000) §92; [Jalloh v Germany](#) (58410/00), European Court Grand Chamber (2006) §68.

105 [Jalloh v Germany](#) (58410/00), European Court Grand Chamber (2006) §68.

106 [Price v UK](#) (33394/96), European Court (2001) §30 (although an absence of intent might still be relevant in determining the amount of compensation to award the victim, see §34); [V v UK](#) (24888/94), European Court (1999) §71.

107 European Court: [Ireland v UK](#) (5310/71), (1978) §167; [Jalloh v Germany](#) (58410/00), Grand Chamber (2006) §68.

108 European Court: [I.I. v Bulgaria](#) (44082/98), (2005) §79; [Aslakhanova and others v Russia](#), (Applications nos. 2944/06 and 8300/07, 50184/07, 332/08, 42509/10), (2012) §143; [El Masri v Former Yugoslav Republic of Macedonia](#) Grand Chamber (2012) §204.

or punishment”.¹⁰⁹ In other words, the Court applies something similar to the “lawful sanctions” exclusion provision in the definition of torture in Article 1 of the Convention against Torture. For example, the very fact of being imprisoned may in itself cause suffering or humiliation, even if the conditions and treatment in prison comply fully with international standards such as the UN Standard Minimum Rules for the Treatment of Prisoners (the [Mandela Rules](#)), and this generally will not violate Article 3 of the [European Convention](#).

2.4 THE LINK BETWEEN DISCRIMINATION AND TORTURE

Key points:

- **Under Article 1 of the Convention against Torture the intentional infliction of severe pain or suffering for any reason based on discrimination of any kind is recognized as an act of torture.**
- **Discrimination against certain groups increases their risk of torture or other ill-treatment and violence in the community and family.**
- **Discrimination can reinforce impunity by denying certain groups equal protection under law.**
- **States are under an obligation to prevent and protect all persons from discrimination and ensure that their laws are applied in practice equally to all persons.**

Discrimination systematically denies certain individuals or groups their full human rights because of who they are or what they believe.¹¹⁰ It is an attack on the fundamental principle underlying the [Universal Declaration](#), namely that human rights are universal and apply to all without distinction.

Discrimination paves the way for torture by allowing the victim to be seen not as human but as an object, who can therefore be treated inhumanely. Under Article 1 of the Convention against Torture, the intentional infliction of severe pain or suffering “for any reason based on discrimination of any kind” is recognized as an act of torture. All major international and regional human rights instruments contain provisions prohibiting discrimination on a number of grounds.¹¹¹

Specifically, the Committee against Torture has stated that:

“States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political

109 See *Saadi v Italy* (37201/06), European Court Grand Chamber (2008) §135, citing *Labita v Italy* (26772/95), European Court Grand Chamber (2000) §120.

110 According to the HRC, “the term ‘discrimination’ as used in the [ICCPR] should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.” [HRC General Comment 18](#), §7.

111 See for example Article 2(1) of the ICCPR and Article 2(1) of the ICESCR.

or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction.”¹¹²

The Committee against Torture has also stated that “the principle of non-discrimination is a basic and general principle in the protection of human rights and fundamental to the interpretation and application of the Convention... The Committee emphasizes that the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture”.¹¹³

The Committee has also emphasized that “[t]he protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment.”¹¹⁴ Discrimination by the state or the state’s failure to prevent discrimination by private actors or to challenge stereotypes that fuel discrimination is a violation of human rights and can be a contributing element in acts of torture or other cruel, inhuman or degrading treatment. (See [section 2.9](#).)

Discrimination against certain groups heightens their risk of torture or other ill-treatment by state officials in a number of ways. Discrimination enshrined in law (for example, where the law criminalizes consensual same-sex sexual conduct or restricts women’s fundamental freedoms) can act as a licence to torture since the victim, in contravening the discriminatory law, may be seen by officials to be responsible for or deserving of the torture they experience.¹¹⁵ (See [section 2.9](#).) Discriminatory enforcement of laws may affect both a person’s chances of coming into contact with the criminal justice system and their treatment once in its hands.¹¹⁶ As noted by the Committee against Torture, “discrimination undercuts the realization of equality of persons before the law”.¹¹⁷

The victim’s identity or status may also affect the nature and consequences of their ill-treatment. For example, as noted in [Chapter 2.5.2](#), children held in custody with adults are particularly vulnerable to rape and sexual violence. Victims from marginalized groups may have limited access to legal remedies.¹¹⁸ Discrimination also reinforces

112 [CAT General Comment 2](#), §21. See also Report of the UN Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §6.

113 [CAT General Comment 2](#), §20.

114 [CAT General Comment 2](#), §21. See also Report of the UN Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §11.

115 See Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §§14-15; Report of the SPT, [UN Doc. CAT/OP/C/57/4](#) (2016) §§57-58.

116 See Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §18; Report of the SPT, [UN Doc. CAT/OP/C/57/4](#) (2016) §58.

117 Contribution of the Committee against Torture to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, [UN Doc. A/CONF.189/PC.2/17](#) (2001) p.2.

118 See Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §18; Report of the SPT, [UN Doc. CAT/C/54/2](#) (2015) §74.

impunity by making it less likely that complaints will be dealt with appropriately in cases of torture or ill-treatment.¹¹⁹

Discrimination also denies certain groups equal protection of the law against violence inflicted on them in the community and the family, such as violence against women, attacks against street children, and racist and homophobic hate crimes. These violent manifestations of prejudice which result in torture and other ill-treatment are often facilitated and encouraged by official inaction.¹²⁰ Accordingly, the Committee against Torture has stated that “States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection”.¹²¹ (See [section 2.9](#).)

Regarding the links between torture and racism, the Committee against Torture has expressed concern over instances of police brutality and excessive use of force by law enforcement officials, in particular against immigrants and persons belonging to certain racial and ethnic groups, as well as racial profiling by police and immigration officials.¹²² The Committee has recommended among other things that states:

“take all necessary steps to ensure that public officials, including law enforcement officers... do not manifest contempt, racial hatred or xenophobia which may lead them to commit acts amounting to torture or ill-treatment” against “ethnic, racial, religious, linguistic or national minorities, asylum-seekers or refugees, or on the basis of any other status”.¹²³

The Committee has also emphasized “the vital importance of having transparent and effective official procedures through which individuals can raise complaints of ill-treatment and torture perpetrated on the basis of discrimination, unequal access to justice and related concerns”.¹²⁴

The Committee has called on states to combat manifestations of racial discrimination, xenophobia and related violence, including by publicly condemning such acts and sending a clear and unambiguous message that racist or discriminatory acts, including by police and other public officials, are unacceptable, and by prosecuting and punishing the perpetrators of such acts.¹²⁵ In accordance with its [General Comment](#)

119 Report of the SPT, [UN Doc. CAT/OP/C/57/4](#) (2016) §58.

120 See Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §§11-12.

121 [CAT General Comment 2](#), §21.

122 Concluding Observations of CAT: USA, [UN Doc. CAT/C/USA/CO/3-5](#) (2014) §26; Greece, [UN Doc. CAT/C/GRC/CO/5-6](#) (2014) §12; Slovakia, [UN Doc. CAT/C/SVK/CO/2](#) (2009) §15.

123 Contribution of the Committee against Torture to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, [UN Doc. A/CONF.189/PC.2/17](#) (2001) p.2.

124 Contribution of the Committee against Torture to the preparatory process for the World Conference against Racism, Racial Discrimination, Xenophobia, and Related Intolerance, [UN Doc. A/CONF.189/PC.2/17](#) (2001) p.3.

125 Concluding Observations of CAT: Greece, [UN Doc. CAT/C/GRC/CO/5-6](#) (2014) §12; Spain, [UN Doc. CAT/C/ESP/CO/5](#) (2009) §11.

2, the Committee has reiterated that states parties should take effective measures to prevent discrimination against and ensure protection of all minorities, recognized or not, and that such measures should include an increase in recruitment from minority groups to public administration roles, including law enforcement agencies.¹²⁶

2.5 SPECIFIC FORMS OF TORTURE AND OTHER ILL-TREATMENT

This section considers a number of specific issues which, as international law and standards have developed, are increasingly viewed as falling under the prohibition of torture and other ill-treatment.

2.5.1 CORPORAL PUNISHMENT

Key points:

- **The prohibition of torture and other ill-treatment is recognized as including corporal punishment under international human rights law.**
- **Domestic law which permits judicial corporal punishment cannot be justified as a lawful sanction and is incompatible with the absolute prohibition of torture and other ill-treatment.**
- **Corporal punishment cannot be imposed as an administrative disciplinary measure.**
- **States have an obligation to protect children from corporal punishment including within schools and the family setting.**
- **Corporal punishment is expressly prohibited under international humanitarian law.**

There are two broad forms of corporal punishment: judicial and administrative. Judicial corporal punishments are those provided by law as penalties for crimes. Administrative corporal punishments are carried out as a disciplinary measure, for example in prisons or in schools. Victims of corporal punishment can experience pain, fear and humiliation. The punishments can cause long-term or permanent physical injury and/or mental suffering. The Human Rights Committee has stated that the prohibition of torture and other ill-treatment under Article 7 of the [ICCPR](#) “must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure”.¹²⁷ Corporal punishment is also prohibited under international humanitarian law.¹²⁸

Corporal punishment can include acts such as amputation (sometimes “cross-amputation” – amputation of a foot on one side of the body and a hand on the other); branding (physically marking the body); stoning; and flogging, beating or whipping with a wooden cane, knotted rope, or other objects.

i. Judicial corporal punishment

¹²⁶ Concluding Observations of CAT: Greece, [UN Doc. CAT/C/GRC/CO/5-6](#) (2014) §12.

¹²⁷ [HRC General Comment 20](#), §5.

¹²⁸ See Articles 75(2)(iii) and 4(2)(a) of [Protocol II](#). See also Article 87 of the [Third Geneva Convention](#); Articles 32 and 100 of the [Fourth Geneva Convention](#).

Victims of judicial corporal punishments such as amputation, mutilation and branding are permanently maimed with the intention of also causing them permanent humiliation. This form of punishment is fundamentally incompatible with the requirement of humane treatment and the essential aim of “reformation and social rehabilitation” of offenders as recognized, for example, in Article 10 of the ICCPR. In addition, sentences of corporal punishment are frequently imposed following unfair trials in which the rights of the defendant have been severely curtailed, although such sentences are unlawful irrespective of the fairness of the trial.¹²⁹

Both the Human Rights Committee and the Committee against Torture have called for the abolition of judicial corporal punishment.¹³⁰ The Human Rights Committee has stated that “irrespective of the nature of the crime to be punished or the permissibility of corporal punishment under domestic law, corporal punishment constitutes cruel, inhuman and degrading treatment or punishment contrary to article 7 of the Covenant”.¹³¹ The Human Rights Committee has also recognized that the imposition of a sentence of corporal punishment violates Article 7 of the ICCPR regardless of whether or not the sentence is carried out.¹³²

The Committee against Torture has similarly expressed concern in relation to “the sentencing to, and imposition of, corporal punishment by judicial and administrative authorities, including, in particular, flogging and amputation of limbs, that are not in conformity with the Convention”.¹³³

Further, the Special Rapporteur on torture has stated that “corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment”.¹³⁴

The regional human rights bodies in Africa, the Americas and Europe have condemned the use of judicial corporal punishment. The African Commission, in relation to a case involving the imposition of a sentence to receive lashes using wire and a plastic whip, has stated that:

“there is no right for individuals, and particularly the government of a country to apply physical violence to individuals for offences. Such a right would

129 See for example Amnesty International, [Sudan: End stoning, reform the criminal law](#) (Index: AFR 54/035/2012); Amnesty International, [A blow to humanity: Torture by judicial caning in Malaysia](#) (Index: ASA 28/013/2010).

130 See *Osbourne v Jamaica*, HRC, UN Doc. CCPR/C/68/D/759/1997 (2000) §3.3; Concluding Observations of CAT: Namibia, UN Doc. A/52/44 (1997) §250; Saudi Arabia, UN Doc. CAT/C/CR/28/5 (2002) §8(b).

131 See HRC: *Osbourne v Jamaica*, UN Doc. CCPR/C/68/D/759/1997 (2000) §3.3; *Higginson v Jamaica*, UN Doc. CCPR/C/74/D/792/1998 (2002) §4.6; *Sooklal v Trinidad and Tobago*, UN Doc. CCPR/C/73/D/928/2000 (2001) §4.6; *Errol Pryce v Jamaica*, UN Doc. CCPR/C/80/D/793/1998 (2004) §6.2.

132 *Higginson v Jamaica*, UN Doc. CCPR/C/74/D/792/1998 (2002) §4.6.

133 Concluding Observations of CAT: *Saudi Arabia*, UN Doc. CAT/C/CR/28/5 (2002) §4.

134 Annual Reports of the Special Rapporteur on torture: UN Doc. E/CN.4.1997/7 (1997) §6; UN Doc. A/60/316 (2005) §§18-28.

be tantamount to sanctioning torture under the [African] Charter and contrary to the very nature of this human rights treaty”.¹³⁵

The Inter-American Court has held that “corporal punishment by flogging constitutes a form of torture and, therefore, is a violation per se of the right of any person submitted to such punishment to have his physical, mental and moral integrity respected, as provided in Article 5(1) and 5(2), in connection with Article 1(1) of the [American] Convention.”¹³⁶

Similarly, the European Court has held that the imposition of judicial corporal punishment can amount to a violation of Article 3 of the European Convention. For example, in the case of *Tyler v UK* involving a juvenile court’s sentence of birching (whipping with a cane) of a boy aged 15, the European Court held that it “constituted an assault on precisely that which it is one of the main purposes of Article 3... to protect, namely a person’s dignity and physical integrity”.¹³⁷

Governments that retain judicial corporal punishments have sought to justify them by claiming that, because they are provided for by domestic law, the punishments constitute a “lawful sanction” not covered by the international prohibition of torture and other ill-treatment. However, as noted in [section 2.3.1\(f\)](#) above, the term “lawful sanctions” under Article 1(1) of the [Convention against Torture](#) must be understood to mean sanctions which are lawful under both national and international law.

The “lawful sanctions” provision was primarily intended to address any mental or physical suffering inevitably associated with a sentence of imprisonment even when implemented in full accordance with, for instance, the [Mandela Rules](#). To allow a state to exclude any form of punishment it wishes from the scope of the prohibition of torture and other cruel, inhuman or degrading punishment, merely by providing for it in national legislation, would be incompatible with the object and purpose of the international prohibition itself. Thus the position of the Committee against Torture, the Human Rights Committee and other treaty bodies is that domestic law that provides for judicial corporal punishment is incompatible with the absolute prohibition of torture and other ill-treatment.

In relation to forms of corporal punishment claimed to be imposed in line with Islamic law (Shari’a), the Special Rapporteur on torture has specifically stated:

“as there is no exception envisaged in international human rights or humanitarian law for torturous acts that may be part of a scheme of corporal punishment, the Special Rapporteur must consider that those States applying religious law are bound to do so in such a way as to avoid the application of pain-inducing acts of corporal punishment in practice. In this connection, he draws attention

135 *Curtis Francis Doebbler v Sudan* (236/2000), African Commission (2003) §42.

136 *Caesar v Trinidad and Tobago* (12.147), Inter-American Court (2001) §73.

137 *Tyler v UK* (5856/72), European Court (1978) §33.

to the axiomatic doctrine that a State may not invoke the provisions of its national law to justify non-compliance with international law.”¹³⁸

ii. Administrative corporal punishment

Corporal punishment is also inflicted as an administrative punishment, that is, as a disciplinary measure, outside of any criminal or other judicial process. The infliction of corporal punishment for disciplinary offences in places of custody is contrary to Rule 43(1)(d) of the [Mandela Rules](#). Principle 1 of the [Principles on Persons Deprived of Liberty in the Americas](#) expressly states that all persons shall be protected from corporal punishment.¹³⁹ The [European Prison Rules](#) state that “collective punishments and corporal punishment, punishment by placing in a dark cell, and all other forms of inhuman or degrading punishment shall be prohibited”.¹⁴⁰

In relation to the infliction of corporal punishment as a disciplinary measure in places other than places of custody, the Human Rights Committee has stated that “article 7 protects, in particular, children, pupils and patients in teaching and medical institutions”.¹⁴¹ The Committee against Torture has also expressed concern at the use of corporal punishment in schools and other public institutions and the absence of an oversight mechanism to monitor these institutions.¹⁴² (See [section 2.9](#).)

Article 37 of the [Convention on the Rights of the Child](#) prohibits torture and other cruel, inhuman or degrading treatment or punishment. States parties are obligated “to ensure that school discipline is administered in a manner consistent with the child’s human dignity”,¹⁴³ and to protect children from “all forms of physical or mental violence” while in the care of any person.¹⁴⁴ Corporal punishment has been defined by the Committee on the Rights of the Child as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light”.¹⁴⁵ The Committee on the Rights of the Child regards the use of corporal punishment of children in schools as incompatible with the Convention. It has stated “that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline”.¹⁴⁶

In respect of corporal punishment of children in the home, the Committee on the Rights of the Child has made it clear that corporal punishment, including within the family,

138 Annual Report of the Special Rapporteur on torture, [UN Doc. E/CN.4.1997/7](#) (1997) §10.

139 Principle 1 of the [Principles on Persons Deprived of Liberty in the Americas](#).

140 Rule 60.3 of the [European Prison Rules](#).

141 [HRC General Comment 20](#), §5.

142 Concluding Observations of CRC: [South Africa](#), UN Doc. CAT/C/ZAF/CO/1 (2006) §25.

143 Article 28 of the [Convention on the Rights of the Child](#).

144 Article 19 of the [Convention on the Rights of the Child](#).

145 [CRC General Comment 8](#), §11.

146 [CRC General Comment 8](#), §7.

should be prohibited under domestic law.¹⁴⁷ The Committee on the Rights of the Child has also rejected faith-based justifications for corporal punishment of children.¹⁴⁸

The European Court, with reference to the Convention on the Rights of the Child, has held that the obligation of states parties to the European Convention to secure freedom from torture and other ill-treatment can extend to acts of corporal punishment in independent as well as state-run schools.¹⁴⁹ The European Court has also found specific instances of corporal punishment in the home to constitute degrading punishment contrary to Article 3 of the European Convention.¹⁵⁰ (See [section 2.9.2](#) for more information on the nature of states' obligations in relation to violence in the community.)

iii. Corporal punishment under international humanitarian law

Corporal punishment is also prohibited under international humanitarian law. Article 87 of the [Third Geneva Convention](#) and Article 32 of the [Fourth Geneva Convention](#) expressly list corporal punishment as a prohibited form of punishment against prisoners of war and civilians respectively.

The prohibition of the use of corporal punishment is also recognized as among the fundamental guarantees for all persons under Protocols I and II to the Geneva Conventions.¹⁵¹ Under these Protocols, corporal punishment is forbidden at any time and in any place whatsoever, whether committed by civilian or by military agents. The ICRC has concluded that corporal punishment is prohibited by customary international humanitarian law during both international and non-international armed conflicts.¹⁵² Corporal punishment also constitutes a war crime in non-international armed conflicts under the Rwanda Statute¹⁵³ and the Statute of the Special Court for Sierra Leone.¹⁵⁴

2.5.2 RAPE BY STATE AGENTS

Key points:

- **Acts of rape by state officials always constitute acts of torture under international law.**
- **For an act of rape by a state official to constitute torture it does not have to take place within a place of detention.**
- **Rape can also constitute a war crime, a crime against humanity or genocide.**
- **The denial of access to legal abortion for women who become pregnant as a result of rape violates the prohibition of torture and other ill-treatment.**

147 [CRC General Comment 8](#), §39.

148 [CRC General Comment 8](#), §29.

149 *Costello Roberts v UK* (13134/87), European Court (1993) §28.

150 *A v UK* (100/1997/884/1096), European Court (1998) §24.

151 See Article 75(2)(iii) of [Protocol I](#) and Article 4(2)(a) of [Protocol II](#).

152 ICRC *Customary IHL Study, Rule 91*, pp. 319-320.

153 Article 4 of the [Rwanda Statute](#).

154 Article 3 of the [Statute of the Special Court of Sierra Leone](#).

- **The denial of emergency contraception to rape survivors can also violate the prohibition of torture and other ill-treatment.**

Acts of rape by state officials always constitute acts of torture under international law. (For the law surrounding acts of sexual assault and other violence by non-state (private) actors in the community or family see [section 2.9](#).)

Rape has been defined in the ICC [Elements of Crimes](#) as follows:

1. “The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.”¹⁵⁵
2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.”¹⁵⁶

International and regional human rights bodies and experts recognize rape by state officials as torture. In the case of [Mejia v Peru](#), the Inter-American Commission found that rape by a member of the security forces constituted torture, noting that the victim “was raped with the aim of punishing her personally and intimidating her”.¹⁵⁷ In the case of [Aydın v Turkey](#), the European Court ruled that rape and other mental and physical violence inflicted on a 17-year-old girl detained by the Turkish security forces amounted to torture.¹⁵⁸

The Committee against Torture has also recognized rape by state officials as an act of torture. In the case of [C.T. and K.M. v Sweden](#) the Committee stated that “the Committee considers that the first named complainant was repeatedly raped in detention and as such was subjected to torture”.¹⁵⁹

155 Element 1 of the [Elements of Crimes](#) relating to Article 7(1)(g)-1, Article 8(2)(b)(xxii)-1, Article 8(2)(e)(vi)-1. A footnote here reads: “The concept of ‘invasion’ is intended to be broad enough to be gender-neutral.”

156 Element 2 of the [Elements of Crimes](#) relating to Article 7(1)(g)-1, Article 8(2)(b)(xxii)-1, Article 8(2)(e)(vi)-1. A footnote here reads: “It is understood that a person may be incapable of giving genuine consent if affected by natural, induced or age-related incapacity.”

157 [Mejia v Peru](#) (10.970), Inter-American Commission (1996).

158 [Aydın v Turkey](#) (23178/94), European Court Grand Chamber (1997) §86. See also [Malawi African Association and others v Mauritania](#), African Commission (2000) Comm. Nos. 54/91, 61/91, 98/93, 164/97 à 196/97 and 210/98, §§117 and 18.

159 [C.T. and K.M. v Sweden](#), CAT, UN Doc. CAT/C/37/D/279/2005 (2006) §7.5.

International jurisprudence also makes it clear that for an act by a state official to amount to torture it does not have to take place within a place of detention; thus conduct, including rape, by state officials outside of a detention facility can amount to torture.¹⁶⁰ Furthermore, the term “state official” is to be interpreted broadly to cover not only law enforcement, prison or military officials but also other actors “including agents, private contractors, and others acting in official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under colour of law”.¹⁶¹ (See [section 2.3.1.i\(e\)](#).)

International criminal tribunals have also brought charges of torture against perpetrators of rape. For example, in the case of *Prosecutor v Kunarac, Kovac and Vukovic* the Yugoslavia Tribunal Appeals Chamber held that: “Severe pain or suffering, as required by the definition of the crime of torture, can thus be said to be established once rape has been proved, since the act of rape necessarily implies such pain or suffering.”¹⁶² The Yugoslavia Tribunal has convicted several defendants of torture as a war crime for the rape of women who were under interrogation.¹⁶³ The Rwanda Tribunal and Yugoslavia Tribunal have convicted defendants of rape as a war crime,¹⁶⁴ as a crime against humanity and as genocide.¹⁶⁵

Successive Special Rapporteurs on torture have not only identified rape as torture,¹⁶⁶ but have also highlighted the particular consequences of rape for women in terms of the stigma, health risks to pregnant victims, unwanted pregnancies, miscarriages, forced abortions or denial of abortion and even prosecution for unlawful sexual conduct, and have emphasized that rape is used to cause humiliation and destroy families and communities.¹⁶⁷ The CEDAW Committee has also identified gender-based violence, which includes rape, as a violation of the right not to be tortured.¹⁶⁸ The denial of access to safe abortion for women who have been raped has been acknowledged as a violation of the prohibition of torture and other ill-treatment.¹⁶⁹ (See [sections 2.5.4](#) and [2.9](#).) The Committee against Torture has also expressed concern about

160 See for example *V. L. v Switzerland*, CAT, UN Doc. CAT/C/37/D/262/2005 (2007) §8.10; *Fernández Ortega et al. v Mexico*, Inter-American Commission (2010) §128; *Case of El-Masri v The Former Yugoslav Republic of Macedonia* (39630/09), European Court Grand Chamber (2012) §205-11.

161 CAT General Comment 2, §15.

162 *Prosecutor v Kunarac, Kovac and Vukovic* (IT-96-23 & IT-96-23/1-A), ICTY (2002) §151.

163 ICTY: *Prosecutor v Delalić and others* (IT-96-21-T), (1998) §§942, 943, 964, 965; *Prosecutor v Furundžija* (IT-95-17/1-T), (1998) §269.

164 *Prosecutor v Akayesu* (ICTR-96-4-T), ICTR (1998) §§696, 734; *Prosecutor v Furundžija* (IT-95-17/1-T), ICTY (1998) §275.

165 *Prosecutor v Akayesu* (ICTR-96-4-T), ICTR (1998) §§696, 734.

166 Reports of the Special Rapporteur on torture: UN Doc. E/CN.4/1986/15 (1986) p. 29 §119; UN Doc. E/CN.4/1995/34 (1995) §15-24; UN Doc. A/HRC/7/3 (2008) §§26, 34-36; UN Doc. A/HRC/31/57 (2016) §51.

167 Reports of the Special Rapporteur on torture: UN Doc. E/CN.4/1995/34 (1995) §19-22; UN Doc. A/HRC/7/3 (2008) §36; UN Doc. A/HRC/31/57 (2016) §§43-44.

168 CEDAW General Recommendation 19, §7.

169 See Annual Report of the Special Rapporteur on torture, UN Doc. A/HRC/22/53 (2013) §§49-50; HRC General Comment 28, §11; Concluding Observations of HRC: *Argentina*, UN Doc. CCPR/CO.70/ARG §14.

the lack of access to oral emergency contraception for survivors of rape, framing the practice as potential torture or other ill treatment.¹⁷⁰

It is recognized that lesbian, gay, bisexual, transgender and intersex (LGBTI) persons are particularly vulnerable to rape and other forms of sexual violence “in order to ‘punish’ them for transgressing gender barriers or for challenging predominant conceptions of gender roles”.¹⁷¹ (See [section 2.8.](#))

Children held in detention facilities along with adults are also particularly vulnerable to rape and sexual violence. Therefore international safeguards requiring the separation of children deprived of their liberty from adults must be observed to protect them from abuse. (See [Chapter 4.3.2.](#))

2.5.3 OTHER FORMS OF SEXUAL ABUSE AND HUMILIATION BY STATE AGENTS

Other forms of sexual abuse by state officials also constitute torture or other ill-treatment. Such abuse includes sexual threats, “virginity testing”, forced sterilization, fondling and unjustifiable bodily searches.¹⁷² Acts of sexual humiliation, for example depriving persons of clothes; parading naked individuals in front of others; forcing individuals to perform sexual acts; forcing persons to pose in sexually explicit positions; forcing men to wear women’s underwear; forcing individuals to watch pornography; and using sexually explicit language are designed to degrade and humiliate an individual and induce feelings of shame and fear, and constitute torture or other ill-treatment under international law.¹⁷³ (See also [section 2.9.](#))

In the case of *Castro v Peru*, the following sexual assaults were all identified as sexual aggression: vaginal inspections by police of female prisoners and female visitors; threats of sexual acts; “touching”; sexual insults; forced nudity; beating on the breasts, between the legs and buttocks; and beating to the wombs of pregnant women.¹⁷⁴ It was

170 [Concluding Observations of CAT: Peru](#), UN Doc. CAT/C/PER/CO/6 (2012) §15.

171 Annual Report of the Special Rapporteur on torture, UN Doc. A/56/156 (2001) §17; See also [Concluding Observations of CAT: USA](#), UN Doc. CAT/C/USA/CO/2 (2006) §32.

172 See Report of the Special Rapporteur on torture, UN Doc. A/HRC/31/57 (2016) §§19, 23 and 45.

173 See for example [Concluding Observations of CAT: USA](#), UN Doc. CAT/C/USA/CO/2 (2006) §24; *The Taguba Report* into the Abu Ghraib prisoner abuse by United States military forces in Iraq, [Article 15-6 Investigation of the 800th Military Police Brigade](#), p.16; Amnesty International, [USA: Human dignity denied – torture and accountability in the ‘war on terror’](#) (Index: AMR 51/145/2004) pp. 33, 36-39; CAT: *Abdelmalek v Algeria*, UN Doc. CAT/C/52/D/402/2009 (2014) §§11.2-11.3; *Saadia Ali v Tunisia*, UN Doc. CAT/C/41/D/291/2006 (2008) §§3.8 and 15.4. See also Report of the SPT, UN Doc. CAT/OP/C/57/4 (2016) §§63 and 66; SPT visit report: [Maldives](#), UN Doc. CAT/OP/MDV/1 §§194, 201; Annual Report of the Special Rapporteur on torture: UN Doc. A/HRC/7/3 (2008) §34; [CPT Standards](#), Combating impunity Extract from the 14th General Report CPT/Inf (2004) 28, §29; CPT visit reports: [Ukraine](#), CPT/Inf (2002) 19, §21; [Turkey](#), CPT/Inf (2007) 9, §8; [Czech Republic](#), CPT/Inf (2014) 3, §91; [Czech Republic](#), CPT/Inf (99) 7, §86; European Court: *Aydin v Turkey*, (23178/94) Grand Chamber (1997) §§77, 84; *Valasinas v Lithuania* (44558/98) (2001) §§26, 114, 117; *Iwańczuk v Poland* (25196/94), (2001) §§15, 18, 48, 58-9; *Egyptian Initiative for Personal Rights and Interights v Egypt* (323/06), African Commission (2011) §§182, 184, 198, 201, 202, 208.

174 *Miguel Castro-Castro Prison v Peru*, Inter-American Court (2006) §260 (y)-(z).

also held that “finger vaginal examination”, conducted abruptly and simultaneously by several persons, constituted a form of rape and torture.¹⁷⁵

Similarly, anal examinations, which have no medical or scientific value, are often committed against men who are suspected of being gay or having engaged in anal sex.¹⁷⁶ Sometimes such examinations are ordered by courts in order to “prove” homosexuality. The Working Group on Arbitrary Detention has stated that “forced anal examinations contravene the prohibition of torture and other cruel, inhumane and degrading treatment, whether... they are employed with a purpose to punish, to coerce a confession, or to further discrimination.”¹⁷⁷

The Subcommittee on Prevention of Torture has expressed concern at intrusive and humiliating search procedures in place for prison visitors, including elderly women and children, who were requested to undergo strip searches and intimate searches. The Subcommittee stated that “intrusive vaginal or anal searches shall be forbidden by law”.¹⁷⁸ (See also [Chapter 4.5.4](#) on searches.)

2.5.4 CRIMINALIZATION OF ABORTION

The denial of access to legal abortion for women who have been raped has been recognized as a violation of the prohibition of torture and other ill-treatment.¹⁷⁹

Using criminal law to enforce the withholding of reproductive medical services with knowledge of the pain and suffering it causes is punitive in effect and intent. Criminalization of abortion forces women and girls to either seek clandestine, unsafe abortions or continue pregnancies; both of which can risk their life or health and compound the harm they suffer. Criminalization of abortion exacerbates physical pain, fear, stigma and depression that girls and women experience when they confront a pregnancy that is problematic for various reasons. In some cases, suffering may be so great it leads to their death, including by suicide.

States frequently declare that by prohibiting abortions they are merely trying to protect foetal life; however, the purported intent of the state does not override the human rights impact on pregnant women and the clearly punitive effect and intent. The Committee against Torture has stated: “The elements of intent and purpose in Article 1 do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances.”¹⁸⁰ In its 2011 review of Paraguay, for example, the Committee expressed concern about the long-

175 [Miguel Castro-Castro Prison v Peru](#), Inter-American Court (2006) §312.

176 Annual Report of the Special Rapporteur on torture, [UN Doc. A/56/156](#) (2001) §§17-25.

177 Report of WGAD: *Addendum: Opinions adopted by the Working Group on Arbitrary Detention*, [UN Doc. A/HRC/16/47/Add.1](#) (2011): Opinion No. 25/2009 (Egypt): Communication addressed to the Government on 18 May 2009, §28. See also Report of the SPT, [UN Doc. CAT/OP/CJ/57/4](#) (2016) §61.

178 SPT visit reports: [Brazil](#), [UN Doc. CAT/OP/BRA/1](#) §§118-9; [Argentina](#), [UN Doc. CAT/OP/ARG/1](#) §§71-72.

179 See Annual Report of the Special Rapporteur on torture, [UN Doc. A/HRC/22/53](#) (2013) §§49-50; [HRC General Comment 28](#), §11; Concluding Observations of HRC: [Argentina](#), [UN Doc. CCPR/CO.70/ARG](#) §14.

180 [CAT General Comment 2](#), §9.

standing psychological consequences of banning abortion in cases of sexual violence and incest.¹⁸¹ The Committee made similar findings in its review of Nicaragua in 2009, stating that legislation that denies access to abortion in cases of sexual violence leads to “constant exposure to the violation... and causes serious traumatic stress and a risk of long-lasting psychological problems such as anxiety and depression”, recommending that the country liberalize its laws to allow for abortion in cases of sexual violence as a means of relieving trauma.¹⁸²

The Human Rights Committee has held that the criminalization of abortion can violate Article 7 of the ICCPR (the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment).¹⁸³

In *KL v Peru*, KL, a girl aged 17, discovered several weeks into her pregnancy that the foetus had the medical condition anencephaly. Anencephaly affects the development of the brain, and babies born with this condition live for only a few hours or days after birth. On receiving the diagnosis, KL tried to avail herself of her right to an abortion under Peru’s only exception within its anti-abortion law: to protect the life or the physical or mental health of the woman. The hospital denied her request, stating that it fell outside the permitted criteria for an abortion, and the case was brought to the Human Rights Committee. The Committee found several violations of KL’s rights: her right to special protection as a child; her right to private life; and her right to be free from cruel, inhuman or degrading treatment. This last finding was justified because of the trauma and depression she suffered from having to carry her pregnancy to term. This pain and suffering, the Committee found, “could have been foreseen” and prevented by the authorities.¹⁸⁴

In the case of *LMR v Argentina*, the Human Rights Committee found that the state’s failure to lawfully terminate the pregnancy of LMR, a young woman with a mental age of between eight and 10 years who had been raped by her uncle, constituted a violation of Article 7 of the ICCPR. This was due to the physical and mental suffering LMR experienced “that was made especially serious by the victim’s status as a young girl with a disability”. While Argentinean law permits abortion in instances of rape when the woman is mentally disabled, the Human Rights Committee urged the state to amend their abortion laws to permit abortion in all cases of rape.¹⁸⁵

2.5.5 THE THREAT OF VIOLENCE AS A FORM OF TORTURE OR OTHER ILL-TREATMENT

As noted in [section 2.3.1](#), mental suffering is a component of the definition of torture under Article 1 of the [Convention against Torture](#) and other definitions, and intimidation

181 Concluding Observations of CAT: [Paraguay](#), UN Doc. CAT/PRY/CO/4-6 (2011) §22.

182 Concluding Observations of CAT: [Nicaragua](#), UN Doc. CAT/C/NIC/CO/1 (2009) §16.

183 See HRC: *KL v Peru*, UN Doc. CCPR/C/85/D/1153/2003 (2005); *LMR v Argentina*, UN Doc. CCPR/C/101/D/1608/2007 (2011); Concluding Observations of HRC: [Morocco](#), UN Doc. CCPR/CO/82/MAR (2004) § 29; [Sri Lanka](#), UN Doc. CCPR/CO/79/LKA (2003) §12.

184 *KL v Peru*, HRC, UN Doc. CCPR/C/85/D/1153/2003 (2005) §6.3.

185 *LMR v Argentina*, HRC, UN Doc. CCPR/C/101/D/1608/2007 (2011) §§9.2, 14.

is one of the possible purposes of torture named under the Convention against Torture and Article 2 of the [Inter-American Convention against Torture](#). Fear induced by the threat of harm to an individual themselves or to a third person can constitute torture or other ill-treatment. The Special Rapporteur on torture has pointed out that “the fear of physical torture may itself constitute mental torture”,¹⁸⁶ and has called for “the judiciary to be made more aware of other forms of torture, such as intimidation and other threats”.¹⁸⁷

Threats of violence have been considered in the case law of the various treaty bodies, although often in these cases threats are not made in isolation and the victims have also been subjected to physical violence. For example in [Estrella v Uruguay](#), as well as being subjected to physical violence, the victim was subjected to the threat of torture and death, the threat of violence to relatives and friends, the threat of being returned to his home country to be executed, and the threat of making him witness the torture of friends. In its decision the Human Rights Committee held that the complainant “was subjected to severe physical and psychological torture, including the threat that [his] hands would be cut off by an electric saw, in an effort to force him to admit subversive activities”.¹⁸⁸

In the case of [Maritza Urrutia v Guatemala](#), the victim was subjected to a range of abuses. She was shown photographs of individuals who had signs of torture or had been killed in combat and was threatened that she would be found by her family in the same way. The state agents also threatened to torture her physically or to kill her or members of her family if she did not collaborate. To this end, they showed her photographs of herself and her family and correspondence from her to her former husband. The Inter-American Court found a violation of Article 5 of the American Convention and Articles 1 and 6 of the Inter-American Convention against Torture.¹⁸⁹

Similarly, the European Court, and previously the European Commission, have held that “a threat of conduct prohibited by Article 3, provided it is sufficiently real and immediate, may fall foul of that provision. Thus, to threaten an individual with torture may constitute at least inhuman treatment”.¹⁹⁰ Whether a threat of harm is defined as inhuman treatment rather than torture by the European Court depends on the particular circumstances of the case and “notably, the severity of the pressure exerted and the intensity of the mental suffering caused”.¹⁹¹ For example in the case of [Gäfgen v Germany](#), where the individual was threatened with torture to force him to disclose the whereabouts of a missing child, the European Court confirmed that “a threat of torture can amount to torture, as the nature of torture covers both physical pain and mental suffering. In particular, the fear of physical torture may itself constitute

186 Visit Report of the Special Rapporteur on torture: [Azerbaijan](#), UN Doc. E/CN.4/2001/66/Add.1 §115.

187 Report of the Special Rapporteur on torture: [UN Doc. A/56/156](#), (2001), §7

188 [Estrella v Uruguay](#), HRC, UN Doc. CCPR/C/OP/2 (1990) §8.3.

189 [Maritza Urrutia v Guatemala](#), Inter-American Court (2003) §§85, 92, 98.

190 [Campbell and Cosans v UK](#) (7511/76; 7743/76), European Court (1982) §26.

191 [Gäfgen v Germany](#) (22978/05), European Court Grand Chamber (2010) §108.

mental torture.”¹⁹² In this instance the Court held that the threats complained of were “sufficiently serious to amount to inhuman treatment prohibited by Article 3, but that it did not reach the level of cruelty required to attain the threshold of torture”.¹⁹³

2.5.6 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE

The imposition of criminal sentences of life imprisonment without the possibility of parole (sometimes called natural-life sentences, whole-life tariffs, or life imprisonment with no opportunity of early release), raises serious human rights concerns. While international human rights jurisprudence on this issue is limited, one regional human rights court has determined that such imprisonment violates the prohibition against inhuman or degrading punishments, a position which Amnesty International shares.

The European Court has held that in order for a life sentence to be compatible with the European Convention, domestic law must provide for the possibility that a whole-life sentence is reducible as a matter of law and practice. It must provide both a possibility of review by the authorities and some prospect of release. The reviews, which should be periodic and start no later than 25 years after imposition of the sentence, should consider the appropriateness of commutation, remission, termination or conditional release in light of the individual's progress towards rehabilitation. This is because the continued imprisonment of an individual without possibility of release, when it can no longer be justified on penal grounds, is inconsistent with Article 3 of the European Convention, and incompatible with human dignity.¹⁹⁴ In addition, the European Court has found that extradition of a person to a state where he could face an irreducible life sentence would also violate Article 3 of the European Convention.¹⁹⁵

While the Rome Statute provides for life imprisonment, such terms are to be reviewed by the court after 25 years to determine whether they should be reduced.¹⁹⁶

The imposition of life imprisonment without parole on juvenile offenders – persons who were under 18 at the time of the crime – is explicitly prohibited under international law.¹⁹⁷

192 *Gäfgen v Germany* (22978/05), European Court Grand Chamber (2010) §108.

193 *Gäfgen v Germany* (22978/05), European Court Grand Chamber (2010) §108.

194 European Court: *Kafkaris v Cyprus* (21906/04), Grand Chamber (2008) §§97-99; *Vinter and Others v United Kingdom* (66069/09, 130/10, 3896/10), Grand Chamber (2013) §§103-122; *Hutchinson v United Kingdom* (57592/08), (2015) §§18-26. See also CPT Reports: Malta, *CPT/Inf (2011) 5* §121; Bulgaria, *CPT/Inf (2015) 12* §84.

195 *Trabelsi v Belgium* (140/10), European Court (2014) §§136-139.

196 See Articles 77(1)(b), 110(3) and 110(5) of the [Rome Statute](#).

197 Article 37(a) of the [Convention on the Rights of the Child](#); Concluding Observations of HRC: USA, UN Doc. CCPR/C/USA/CO/4 (2014) §23; USA, UN Doc. CCPR/C/USA/CO/3/Rev.1 (2006) §34; Concluding Observations of CAT: USA, UN Doc. CAT/C/USA/CO/3-5 (2014) §24; Concluding Observations of CERD: USA, UN Doc. CERD/C/USA/CO/6 (2008) §21; Human Rights Council resolution [19/37](#) §51, 52.

2.5.7 DESTRUCTION OF PROPERTY

The destruction of property by state officials or agents has also in certain circumstances been considered to be a violation of the right not to be subjected to torture and other ill-treatment. For example, the Committee against Torture has stated that house demolition and “closures” may in certain instances amount to cruel, inhuman or degrading treatment or punishment, in violation of Article 16 of the [Convention against Torture](#).¹⁹⁸

In the case of *Hajrizi Dzemajl et al. v Yugoslavia*, which concerned a complaint of violence against a Roma community during which a mob set fire to houses and cars belonging to Roma people and destroyed farm equipment while the police failed to intervene and the authorities failed to conduct an impartial investigation, the Committee against Torture found that these acts constituted cruel, inhuman and degrading treatment or punishment. The Committee found that this was “further aggravated” by “the fact that the acts were committed with a significant level of racial motivation”.¹⁹⁹ In an Individual Opinion, two Committee members said they considered the suffering of the victims was enough to qualify as torture. Their reasoning included the racial motivation for the acts and the situation of Roma in many parts of Europe, which meant that the state had an obligation to provide them with greater protection.²⁰⁰ (See [section 2.4](#) on discrimination and torture.)

The Human Rights Committee has concluded that the demolition of property and houses of families, some of whose members were suspected of involvement in terrorist activities or suicide bombings, had contravened, among other rights, Article 7 of the [ICCPR](#).²⁰¹

The Special Rapporteur on adequate housing has noted that the destruction of homes, civilian property and infrastructures has a devastating impact on civilians, particularly women and children, and create insecurity and psychological trauma.²⁰²

In the case of *Selçuk and Asker v Turkey*, where security forces had deliberately burned the homes and most of the property of two villagers, depriving them of their livelihoods and forcing them to leave their village, the European Court held that the two victims “must have been caused suffering of sufficient severity for the acts of the security forces to be categorised as inhuman treatment within the meaning of Article 3”.²⁰³

198 Conclusions Observations of CAT: [Israel](#), UN Doc. CAT/C/XXVII/Concl.5 (2001) §6; *Hajrizi Dzemajl et al. v Yugoslavia* (161/2000), CAT (2002) §9.2.

199 *Hajrizi Dzemajl et al. v Yugoslavia* (161/2000), CAT (2002) §9.2-3.

200 *Hajrizi Dzemajl et al. v Yugoslavia* (161/2000), CAT (2002) Annex: Individual Opinion by Mr. Fernando Mariño and Mr. Alejandro González Poblete.

201 Concluding Observations of HRC: [Israel](#), UN Doc. CCPR/CO/78/ISR (2003) §16.

202 Special Rapporteur on adequate housing, [UN Press Release, 10 November 2006](#).

203 *Selçuk and Asker v Turkey* (23184/94, 23185/94), European Court (1998) §78.

2.6 THE DEATH PENALTY

Key points:

- The death penalty is not currently prohibited under international law universally. However, the death penalty has been abolished in law or in practice in the majority of states.
- Under international law, the death penalty is prohibited for certain categories of people.
- The death penalty is prohibited absolutely under the Council of Europe's human rights system.
- Amnesty International opposes the death penalty absolutely, in all cases without exception, regardless of the nature or circumstances of the crime; guilt, innocence or other characteristics of the individual; or the method used by the state to carry out the execution.
- Amnesty International is of the view that the death penalty always violates the right to life, and is the ultimate cruel, inhuman and degrading punishment.
- Pending full abolition of the death penalty, states must immediately remove from their law any death penalty provisions that are in breach of international human rights law and standards, including the prohibition of torture and other ill-treatment.
- Any violation of the prohibition of torture and other ill-treatment that results in the death penalty also constitutes a violation of the right to life.

2.6.1 THE DEATH PENALTY UNDER INTERNATIONAL HUMAN RIGHTS LAW

The right to life, like the prohibition of torture and other ill-treatment, is included in the [Universal Declaration](#) (Article 3), the [ICCPR](#) and the general regional human rights treaties. Treaty law then generally defines the death penalty as an exception to this right, while strictly limiting the circumstances in which it may lawfully be applied, and encouraging progressive restriction and eventual abolition.²⁰⁴ Limitations are contained in Article 6 of the [ICCPR](#), Article 4 of the [American Convention](#) and Article 6 of the [Arab Charter](#). Article 2 of the [European Convention](#), despite its wording, has been judged as having been amended so as to now prohibit the death penalty in all circumstances.²⁰⁵

Furthermore, like the prohibition of torture and other ill-treatment, the prohibition of arbitrary deprivation of life is non-derogable, and a peremptory norm of international law.²⁰⁶ Some specific international treaties, both global and regional, prohibit the death penalty outright in certain circumstances, or require its abolition.

Treaties providing for prohibition or abolition of the death penalty:

- [Convention on the Rights of the Child](#)
- [Second Optional Protocol to the ICCPR](#), aiming at the abolition of the death penalty

204 See W.A. Schabas, *The Abolition of the Death Penalty in International Law*, 3rd edition, 2002, p. 70.

205 *Al-Saadoon and Mufdhi v United Kingdom* (61498/08), European Court (2010) §§115-117, 120.

206 [HRC General Comment 24](#), §10.

- [Protocol to the American Convention on Human Rights to Abolish the Death Penalty](#)
- [Protocol 6](#) and [Protocol 13](#) to the European Convention
- [European Charter of Fundamental Rights](#).

The international community, regional inter-governmental organizations, national and international courts, human rights bodies and experts encourage abolition of the death penalty, and have called on states that have not yet abolished it to establish a moratorium on executions as a first step.²⁰⁷

The Committee against Torture, in examining the reports of states parties, has referred to the continuing use of the death penalty as a subject of concern. It has welcomed the abolition of the death penalty and moves towards abolition in several countries, and urged states to ratify the Second Optional Protocol to the ICCPR.²⁰⁸

Numerous limitations on the use of the death penalty have been established since the adoption of the ICCPR in 1966. Among these are the [Death Penalty Safeguards](#) adopted by the UN Economic and Social Council (ECOSOC) in 1984, which state among other things: “Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering”.²⁰⁹ In 1996 ECOSOC elaborated that member states in which the death penalty might be carried out should effectively apply the Standard Minimum Rules for the Treatment of Prisoners (now the [Mandela Rules](#)) in order to keep to a minimum the suffering of prisoners under sentence of death and to avoid any exacerbation of such suffering.²¹⁰

2.6.2 PRACTICES OF THE DEATH PENALTY CONSTITUTING TORTURE OR OTHER ILL-TREATMENT

A violation of the [Convention against Torture](#) or Article 7 of the [ICCPR](#), for example through convictions based on coerced “confessions”,²¹¹ can result in the unlawful deprivation of life if the death penalty is applied. Furthermore, certain methods of execution have been found by international and domestic human rights and judicial bodies to violate the right not to be subjected to torture and other ill-treatment (see below). If this occurs, it also constitutes per se a violation of standards on the right to life such as Article 6 of the [ICCPR](#), as “sentence of death may be imposed

207 UN General Assembly resolution [UN Doc. 69/186](#) (2014) §5(f); Commission on Human Rights resolution, The Question of the Death Penalty, [UN Doc. E/CN.4/RES/2005/59](#) §5(a); Concluding Observations of HRC: [Sierra Leone](#), UN Doc. C/PR/C/SLE/CO/1 (2014) §18; [HRC General Comment 6](#), §6; Parliamentary Assembly of the OSCE, [Vilnius Declaration](#) (2009) p. 53 §39; African Commission: [Study on the question of the death penalty in Africa](#), 10 April 2012, and resolution [136\(XXXIII\)](#).08 (2008) §2; Inter-American Court, [Advisory Opinion OC-3/83](#) (1983) §57; Inter-American Commission [Report OEA/Ser.L/V/II. Doc. 68](#) (2011).

208 See, for example, Concluding Observations of CAT: [Japan](#), UN Doc. CAT/C/JPN/CO/2 (2013) §15; [Bolivia](#), UN Doc. CAT/C/BOL/CO/2 (2013) §25; [Kenya](#), UN Doc. CAT/C/KEN/CO/2 (2013) §33; [USA](#), UN Doc. CAT/C/USA/CO/3-5 (2014) §25.

209 [ECOSOC resolution 1984/50](#), §9.

210 [ECOSOC resolution 1996/15](#), §7. The Standard Minimum Rules were revised in 2015; see the [Mandela Rules](#).

211 See section 2.4.1(ii)(a) below.

only... not contrary to the provisions of the present Covenant”.²¹² By the same token, the imposition and enforcement of the death penalty in breach of the internationally recognized safeguards on the death penalty, such as Article 6(2-5) of the [ICCPR](#), is a violation per se of the prohibition of torture and other cruel, inhuman or degrading treatment.²¹³

Amnesty International opposes the death penalty absolutely, regardless of the method used by the state to carry out the execution and of whether or not it is carried out in conformity with international safeguards.

a) Imposition of the death penalty following unfair trials

Article 6(2) of the [ICCPR](#) mandates that in “countries which have not abolished the death penalty, sentence of death may be imposed... not contrary to the provisions of the present Covenant”.²¹⁴ This means that, first, any application of the death penalty following proceedings in violation of fair trial standards as laid out in Article 14 of the [ICCPR](#), automatically also constitutes a violation of the right to life.²¹⁵ In addition, the Human Rights Committee and regional human rights bodies have held that a death sentence passed after an unfair trial also violates the prohibition of inhuman or degrading treatment or punishment.²¹⁶

A particular violation of international standards of fair trial is the use of “confessions” obtained by torture or other ill-treatment. Such coerced “confessions” are inadmissible as evidence in court, and reliance on them violates the right not to be compelled to incriminate oneself and the presumption of innocence. (See [Chapter 3.9.1.](#))

b) Mandatory death penalty

The Human Rights Committee, international judicial bodies and national courts around the world have ruled that mandatory death sentences violate human rights because they remove the ability of the courts to take into account relevant evidence, different degrees of moral reprehensibility, and potentially mitigating circumstances when sentencing an individual.²¹⁷ The Human Rights Committee and the Inter-American

212 Article 6(2) of the [ICCPR](#); Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, [UN Doc. A/HRC/4/20](#) (2007) §55 n. 140.

213 Report of the Special Rapporteur on torture, [UN Doc. A/67/279](#) (2012) §58.

214 See also HRC [General Comment 6](#), §7; [ECOSOC resolution 1984/50](#), §5.

215 HRC: [General Comment 32](#), §59; [Domukovsky et al v Georgia](#), UN Doc. CCPR/C/62/D/623,624,626,627/1995 (1998) §18.10; [Kelly v Jamaica](#), UN Doc. CCPR/C/47/D/253/1987 (1991) §5.14; [Earl Pratt and Ivan Morgan v Jamaica](#), (1989) §15; Inter-American Court: [Dacosta Cadogan v Barbados](#), (2009) §§47, 85; [Advisory Opinion OC-16/99](#), (1999) §§135-137; [Advisory Opinion OC-3/83](#) (1983) §55; Inter-American Commission: [Report on Terrorism and Human Rights](#), (2002) §94. See also Special Rapporteur on the independence of judges and lawyers, [UN Doc. A/62/207](#) (2007) §62.

216 HRC: [Larrañaga v Philippines](#), UN Doc. CCPR/C/87/D/1421/2005 (2006) §7.11; [Mwamba v Zambia](#), UN Doc. CCPR/C/98/D/1520/2006 (2010) §6.8; European Court: [Öcalan v Turkey](#) (46221/99), Grand Chamber (2005) §§166-169; [Bader and Kanbar v Sweden](#) (13284/04), (2005) §§42-48. See also [Javier Suarez Medina v US](#), Inter-American Commission (2005) §92.

217 See also Commission on Human Rights Resolution, The Question of the Death Penalty: [UN Doc. E/CN.4/RES/2005/59](#) (2005) §7(f).

Court see the mandatory imposition of death sentences as a violation of the right to life.²¹⁸ Some regional and national courts have also declared that it constitutes a violation of the prohibition of torture and other ill-treatment, or equivalent provisions under domestic law.²¹⁹ The Judicial Committee of the Privy Council in the UK has stated that “it is common ground that the mandatory death sentence is cruel and unusual punishment”.²²⁰

The Special Rapporteur on extrajudicial executions has stated that “in death penalty cases, individualized sentencing by the judiciary is required to prevent cruel, inhuman or degrading punishment and the arbitrary deprivation of life” and that “[t]he mandatory death penalty which precludes the possibility of a lesser sentence being imposed regardless of the circumstances, is inconsistent with the prohibition of cruel, inhuman or degrading treatment or punishment”.²²¹ The Special Rapporteur on torture considers the mandatory death penalty to violate due process and constitute inhumane treatment.²²²

- 218 Concluding Observations of HRC: *Botswana*, UN Doc. CCPR/C/BWA/CO/1 (2008) §13; HRC: *Johnson v Ghana*, UN Doc. CCPR/C/110/D/2177/2012 (2014) §7.3; *Larrañaga v The Philippines*, UN Doc. CCPR/C/87/D/1421/2005 (2006) §7.2; *Mwamba v Zambia*, UN Doc. CCPR/C/98/D/1520/2006 (2010) §6.3; *Carpo et al v The Philippines*, UN Doc. CCPR/C/77/D/1077/2002 (2003) §8.3; *Pagdayawon Rolando v Philippines*, UN Doc. CCPR/C/82/D/1110/2002 (2004) §5.2; *Thompson v Saint Vincent*, UN Doc. CCPR/C/70/D/806/1998 (2000) §8.2; *Ramil Rayos v Philippines*, UN Doc. CCPR/C/81/D/1167/2003 (2004) §7.2; *Hussain et al. v Guyana*, UN Doc. CCPR/C/85/D/862/1999 (2005) §6.2; *Raymond Persaud and Rampersaud v Guyana*, UN Doc. CCPR/C/86/D/812/1998 (2006) §7.2; *Kennedy v Trinidad and Tobago*, UN Doc. CCPR/C/74/D/845/1998 (2002) §7.3; *Lawrence Chan v Guyana*, UN Doc. CCPR/C/85/D/913/2000 (2006) §6.5; Inter-American Court: *Hilaire and Others v Trinidad and Tobago*, (2002) §108; *Raxcacó Raxcacó-Reyes v Guatemala*, (2005) §82; *Dacosta Cadogan v Barbados*, (2009) §57; *Boyce et al v Barbados*, (2007) §62; Inter-American Commission: *Jacob v Grenada*, (2002) §§77-79 (also finding a violation of the prohibition of torture and other ill-treatment and the right to fair trial); *Paul Lallion v Grenada* (11.765), (2002) §71; Inter-American Commission Report, OEA/Ser.L/V/II. Doc. 68 (2011) §25; Bombay High Court, *Indian Harm Reduction Network and Malik v The Union of India et al.*, Criminal Writ Petition nos. 1784 and 1790 of 2010, judgment of 16 June 2011 (following the Indian Supreme Court in *Mithu v State of Punjab*, 2 S.C.R. 690, 704 (1983)); Report of the Special Rapporteur on extrajudicial executions, *UN Doc. A/HRC/11/2/Add.6* (2009) §83.
- 219 Eastern Caribbean Court of Appeal: *Newton Spence v The Queen* (Criminal Appeal No. 20 of 1998); *Peter Hughes v The Queen* (Court of Appeal, Criminal Appeal No.14 of 1997); *Bangladesh Legal Aid and Services Trust and another v Bangladesh* (Writ Petition No. 8283 of 2005), Supreme Court of Bangladesh High Court Division (2010) pp. 29-30; *Godfrey Mutiso v Republic* (Criminal Appeal No. 17 of 2008), Court of Appeal of Kenya §36; *Kafantayeni v Malawi* (Constitutional Case No. 12 of 2005), High Court of Malawi (2007); *Woodson et al. v North Carolina* (428 U.S. 280), US Supreme Court (1976) p. 295, 305. In some instances, a violation of the right to fair trial was also found; see: *AG v Susan Kigula & 417 others*, Supreme Court of Uganda (2009); Inter-American Commission: *Rudolph Baptiste v Grenada* (11.743), (2000) §90; *Dave Sewell v Jamaica* (12.347), (2002) §99; *McKenzie v Jamaica* (12.023), (2000) §§235, 269, 294; *Knights v Grenada* (12.028), (2001); *Edwards v Bahamas* (12.067), (2001).
- 220 Judicial Committee of the Privy Council: *Nimrod Miguel v The State*, (UKPC 14), (2011) §51; *Roodal v The State* (UKPC 78), Court of Appeal of the Privy Council (2003); *Reyes v The Queen (Belize)* (2 AC 235), (2002); *Fox v The Queen (St Christopher and Nevis)* (2 AC 284), (2002); *The Queen v Hughes (St Lucia)* (2 AC 259), (2002); see also judgments where it was held to be generally “unconstitutional”. Judicial Committee of the Privy Council: *Forrester Bowe Jr and Trono Davies v The Queen (Bahamas)* (UKPC 10), (2006); *Coard v The Attorney General* (UKPC 7), (2007).
- 221 Reports of the Special Rapporteur on extrajudicial executions: *UN Doc A/HRC/4/20*, p. 2 §4; *UN Doc. E/CN.4/2005/7* (2004) §80; *UN Doc. E/CN.4/1999/39*, (1999) §§63, 82.
- 222 Report of the Special Rapporteur on torture, *UN Doc. A/67/279* (2012) §59.

c) The application of the death penalty to vulnerable persons

International law and standards restrict the imposition of the death penalty on people in certain categories, by effectively exempting specific groups of protected persons from capital punishment. These include: persons below 18 years of age;²²³ persons over 70 years of age;²²⁴ pregnant women and nursing mothers;²²⁵ and persons with mental or intellectual disabilities.²²⁶

d) Treatment while imprisoned under sentence of death

Conditions of imprisonment, including for people under sentence of death, must not violate the absolute prohibition against torture and other ill-treatment, or the right to be treated with respect for the inherent dignity of the human person (see [Chapter 3](#)).²²⁷

The Committee against Torture has stated that prisoners under sentence of death may not be detained in isolation, kept handcuffed or shackled, or denied adequate food. The Committee has also stated that overcrowding and an excessive length of time on death row can render detention cruel, inhuman or degrading.²²⁸ According to the Special Rapporteur on torture: “Solitary confinement used on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or punishment or even torture.”²²⁹

The revised EU [Guidelines on the Death Penalty](#) (2013) state that the conditions of imprisonment after having been sentenced to death, which should not be inferior

223 Article 6(5) of the [ICCPR](#); Article 37(a) of the [Convention on the Rights of the Child](#); Article 5(3) of the [African Charter on the Rights of the Child](#); Article 4(5) of the [American Convention](#); HRC General Comment 24, §8; UN General Assembly resolution, [UN Doc. 69/186](#) (2014), §5(d); Human Rights Council resolutions: [UN Doc. A/HRC/RES/19/37](#), (2012) §51; [UN Doc. A/HRC/RES/26/2](#), (2014) §1; [ECOSOC resolution 1984/50](#), (1984) §3.

224 Article 4(5) of the [American Convention](#).

225 Article 4(2) of the [Protocol to the African Charter on the Rights of Women in Africa](#); Article 4(5) of the [American Convention](#); HRC General Comment 24, §8; UN General Assembly resolution, [UN Doc. 69/186](#) (2014) §5(d); [ECOSOC resolution 1984/50](#) (1984) §3.

226 UN General Assembly resolution, [UN Doc. 69/186](#) (2014) §5(d); [ECOSOC resolution 1984/50](#) (1984) §3. See also Special Rapporteur on torture: [UN Doc. A/HRC/10/44](#) (2009) §43; [UN Doc. A/67/279](#) (2012) §§62-64.

227 See also HRC: [Kelly v Jamaica](#), UN Doc. CCPR/C/41/D/253/1987 (1991) §5.7; [Henry and Douglas v Jamaica](#), UN Doc. CCPR/C/37/D/571/1994 (1996) §9.5; [Linton v Jamaica](#), UN Doc. CCPR/C/46/D/255/1987 (1992) §8.5; [Deidrick v Jamaica](#), UN Doc. CCPR/C/62/D/619/1995 (1998) §9.3; [Colin Johnson v Jamaica](#), UN Doc. No. CCPR/C/64/D/653/1995 (1998) §8.2; [Howell v Jamaica](#), UN Doc. CCPR/C/79/D/798/1998 (2003) §6.2; [Hylton v Jamaica](#), U.N. Doc. CCPR/C/51/D/407/1990 (1994) §9.3; [Kurbanov v Tajikistan](#), UN Doc. CCPR/C/79/D/1096/2002 (2003) §§7.4, 7.8; Concluding Observations of HRC: [Uzbekistan](#), UN Doc. CCPR/CO/71/UZB (2001) §10; [Japan](#), UN Doc. CCPR/CO/79/Add.102 (1998) §21; Inter-American Court: [Hilaire and Others v Trinidad and Tobago](#), (2002) §§76(b) 169; [Raxcaco-Reyes v Guatemala](#), (2005) §§94-102; Inter-American Commission: [Paul Lallion v Grenada](#) (11.765), (2002) §§88, 90; [Chad Roger Goodman v The Bahamas](#) (12.265), (2007) §§84-88.

228 Concluding Observations of CAT: [Zambia](#), UN Doc. CAT/C/ZMB/CO/2 (2008) §19; [Mongolia](#), UN Doc. CAT/C/MNG/CO/1 (2010) §16. See also Visit Report of the Special Rapporteur on torture: [Mongolia](#), [UN Doc. E/CN.4/2006/6/Add.4](#) (2005) §53.

229 Report of the Special Rapporteur on torture, [UN Doc. A/67/279](#) (2012), §48.

to those of other inmates, “may constitute forms of torture or inhumane or degrading treatment or punishment”.²³⁰

e) Duty of transparency

The UN Secretary-General has concluded that “States have an obligation not to practise the death penalty in secrecy”.²³¹ The duty of states to be transparent has multiple dimensions, including to make public general information and statistics,²³² as well as with regard to condemned individuals and their families.²³³

The Human Rights Committee has stated that the following policies or actions by states towards prisoners and also towards their family members may be violations of Article 7 of the ICCPR:²³⁴

- Where states fail to provide reasonable advance notice of the date and time of an upcoming execution to condemned inmates and their families;
- Where uncertainty persists about the circumstances that lead to an execution, as well as the location of the grave, together with the refusal to hand over the body to the family;
- Where those under sentence of death are placed in a “death cell” for two weeks after a warrant of execution was issued, which implies the daily possibility of an imminent execution, without a detailed explanation by the state as to the reasons for the prolonged stay;²³⁵
- Where a state, once an execution warrant is issued, delays informing the prisoner that a stay has been granted until shortly before the scheduled time of the execution.²³⁶

The Committee against Torture has requested states parties to provide information and statistics on the death penalty; declassify information on the death penalty; and provide relevant information to the families of persons who were executed.²³⁷ It has further referred to the uncertainty of many people under sentence of death in a country

230 *Guidelines on the Death Penalty*, p. 12; see also *Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment* (2012), p. 8; *Soering v the United Kingdom* (14038/88), European Court (1989) §104.

231 Report on Moratoriums on the Use of the Death Penalty, *UN Doc. A/65/280* (2010) §72.

232 UN General Assembly resolution, *UN Doc. A/RES/ 69/186* (2014) §5(c); see also *ECOSOC resolution 1989/64*, §5; Commission on Human Rights resolution, *The Question of the Death Penalty*, *UN Doc. E/CN.4/RES/2005/59* (2005) §5(c).

233 Report of the Special Rapporteur on extrajudicial executions, *UN Doc. A/67/275* (2012) §103; Human Rights Council resolution, *UN Doc. A/HRC/RES/19/37* (2012) §69.

234 Concluding Observations of HRC: *Botswana*, *UN Doc. CCPR/C/BWA/CO/1* (2008) §13; HRC: *Vladislav Kovalev et al. v Belarus*, *UN Doc. CCPR/C/106/D/2120/2011* (2012) §11.10; *Natalia Schedko (and Anton Bondarenko) v Belarus*, *UN Doc. CCPR/C/77/D/886/1999* (2003) §10.2; *Mariya Staselovich (and Igor Lyashkevich) v Belarus*, *UN Doc. CCPR/C/77/D/887/1999* (2003) §9.2; *Aliboev v Tajikistan*, *UN Doc. CCPR/C/85/D/985/2001* (2005) §6.7.

235 See also *Hilaire and others v Trinidad and Tobago*, Inter-American Court (2002) §§168-9.

236 *Earl Pratt and Ivan Morgan v Jamaica*, HRC, *UN Doc. Supp. No. 40 (A/44/40)* at 222 (1989) §13.7.

237 Concluding Observations of CAT: *Japan*, *UN Doc. CAT/C/JPN/CO/2* (2013) §15; *Yemen*, *UN Doc. CAT/C/YEM/CO/2* (2009) §16; *Belarus*, *UN Doc. CAT/C/BLR/CO/4* (2011) §27; *Mongolia*, *UN Doc. CAT/C/MNG/CO/1* (2011) §19; *Ethiopia*, *UN Doc. CAT/C/ETH/CO/1* (2011) §24.

where the death penalty is in the process of being abolished as “amounting to cruel and inhuman treatment in breach of article 16 of the [Convention against Torture]”.²³⁸

The Special Rapporteur on extrajudicial executions has explained that “[transparency] is essential wherever the death penalty is applied”, and that secrecy surrounding the death penalty violates, among other things, the prohibition of cruel, inhuman and degrading treatment.²³⁹ The Special Rapporteur on torture has stated that: “Secrecy and the refusal to hand over remains to families are especially cruel features of capital punishment, highlighting the need for total transparency and avoidance of harm to innocents in the whole process”.²⁴⁰

f) Execution methods

The UN Economic and Social Council’s [resolution 1984/50](#) (1984) urged UN member states: “Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering”.²⁴¹ The Human Rights Committee has stated that any method of execution provided for by law must be designed in such a way as to avoid conflict with Article 7 of the [ICCPR](#), and that, when imposing capital punishment, the sentence “must be carried out in such a way as to cause the least possible physical and mental suffering”.²⁴² International bodies have explicitly declared execution methods such as stoning²⁴³ and gas asphyxiation²⁴⁴ as violating human rights, including the prohibition of torture and other ill-treatment.

As stated at the outset of this section, Amnesty International opposes the death penalty absolutely, regardless of the method used by the state to carry out the execution. The organization also has concerns about attempts to make executions more “humane” through a change of method or protocol, because of the inescapability of serious mental suffering in the period preceding and at least at the beginning of any execution, and of the risk of diverting attention from the inherent cruelty of all executions.

238 Concluding Observations of CAT: [Armenia](#), UN Doc. A/56/44(SUPP) (2001) §39(g); see also Visit Report of the Special Rapporteur on extrajudicial executions: [Nigeria](#), UN Doc. E/CN.4/2006/53/Add.4 (2006) §31; Parliamentary Assembly of the Council of Europe [recommendation 1760](#) (2006) §6.

239 Special Rapporteur on extrajudicial executions: UN Doc. E/CN.4/2005/7 (2004) §§57, 87; UN Doc. E/CN.4/2006/53/Add.3 (2006) §§26, 32; UN Doc. A/67/275 (2012) §124.

240 Report of the Special Rapporteur on torture, UN Doc. A/67/279 (2012) §§40, 52, 80(c) and (f). See also: Visit Report of the Special Rapporteur on torture: [Uzbekistan](#), UN Doc. E/CN.4/2003/68/Add.2 (2003) §65; Follow-up Report of the Special Rapporteur on torture, UN Doc. A/HRC/13/39/Add.6 (2010) p. 251.

241 [ECOSOC resolution 1984/50](#) (1984) §9.

242 [HRC General Comment 20](#), §6; see [Kindler v Canada](#), HRC, UN Doc. CCPR/C/48/D/470/1991 (1993), where the HRC noted that: “In determining whether, in a particular case, the imposition of capital punishment could constitute a violation of article 7, the Committee will have regard to... whether the proposed method of execution is particularly abhorrent” (§15.3).

243 Commission on Human Rights resolution, The Question of the Death Penalty, UN Doc. E/CN.4/RES/2005/59 (2005) §7(i); Concluding Observations of HRC: [Sudan](#), UN Doc. CCPR/C/79/Add.85 (1997) §9; [Yemen](#), UN Doc. CCPR/CO/84/YEM (2005) §15. See also Visit Report of the Special Rapporteur on torture, [Nigeria](#), UN Doc. A/HRC/7/3/Add.4 (2007) summary p. 2 §56; Report of the Special Rapporteur on torture, UN Doc. A/HRC/7/3 (2008) §40; [Jabari v Turkey](#) (40035/98), European Court (2000) §§41-2.

244 [Chitat Ng v Canada](#), HRC, UN Doc. CCPR/C/49/D/469/1991 (1994) §16.3.

g) Executions in public

Carrying out executions in public is a violation of the prohibition against cruel, inhuman or degrading treatment or punishment.²⁴⁵ The UN Commission on Human Rights has urged all states that still maintain the death penalty “to ensure that, where capital punishment occurs, it... shall not be carried out in public or in any other degrading manner”.²⁴⁶ The Human Rights Committee has called on states to refrain from public execution, stating: “Public executions are... incompatible with human dignity”.²⁴⁷

h) Transfer to a place where a real risk of the death penalty exists

Abolitionist states are absolutely prohibited from extraditing or otherwise transferring persons to the jurisdiction of a prosecuting state in all cases in which there is a real risk of imposition or implementation of the death penalty, as among other things this would constitute ill-treatment.²⁴⁸ States that maintain the death penalty may not transfer persons to a place where they would face a real risk of serious violations of human rights law and standards on the use of the death penalty, including those contained in Articles 6 and 7 of the ICCPR.²⁴⁹ (See [section 2.7](#).)

i) Length of detention on death row (“death row phenomenon”)

Some regional and domestic judicial institutions have declared the so-called “death row phenomenon”, with varying definitions, to be a violation of the prohibition of torture and other ill-treatment. This is based on the holding by the European Court that conditions of prisoners under sentence of death involving a “very long period of time spent on death row”, under a stringent custodial regime, “with the ever present and mounting anguish of awaiting execution of the death penalty”, constitute inhuman or degrading treatment or punishment.²⁵⁰

245 UN General Assembly resolution, [UN Doc. A/RES/65/225](#) (2010) §1(a)(i); Special Rapporteur on extrajudicial executions, [UN Doc. E/CN.4/2006/53/Add.3](#) (2006) §43.

246 Commission on Human Rights resolution, The Question of the Death Penalty, [UN Doc. E/CN.4/RES/2005/59](#) §7(i).

247 Concluding Observations of HRC: [Nigeria](#), UN Doc. CCPR/C/79/Add.65 (1996) §16; [Democratic People's Republic of Korea](#), UN Doc. CCPR/CO/72/PRK (2001) §13.

248 [Judge v Canada](#), HRC, UN Doc. CCPR/C/78/D/829/1998 (2003) §10.4; Special Rapporteur on extrajudicial executions, [UN Doc. A/67/275](#) (2012) §74; Concluding Observations of CAT: [Belgium](#), UN Doc. CAT/C/BEL/CO/2 (2009) §10; Article 19(2) of the [EU Charter of Fundamental Rights](#); European Court: [Soering v United Kingdom](#) (14038/88), (1989) §§85-86; [Al-Saadoon and Mufdhi v United Kingdom](#) (61498/08), (2010) §143; [Mohamed v President of the Republic of South Africa](#) (2001 (3) SA 895 CC), Constitutional Court of South Africa, §49, upheld in [Minister of Home Affairs and Others v Tsebe and Others](#) (2012 ZACC 16); [US v Burns](#) (1 S.C.R. 283, 2001 SCC 7), Supreme Court of Canada, §130.

249 [Chitat Ng v Canada](#), HRC, UN Doc. CCPR/C/49/D/469/1991 (1993) §16.4; [HRC General Comment 31](#), §12; Report of the Special Rapporteur on torture, [UN Doc. A/67/279](#) (2012) §81.

250 [Soering v the UK](#) (14038/88), European Court (1989) §§56, 81, 111; at the time the average period between trial and execution in the US state of Virginia was six to eight years.

The Inter-American Commission has stated that the death row phenomenon constitutes cruel, inhuman and degrading treatment, characterized by a prolonged period of detention while awaiting execution.²⁵¹ The Judicial Committee of the Privy Council²⁵² and some national courts²⁵³ have ruled that any execution taking place after an extensive period of delay and detention on death row after sentencing – with time periods varying between three and six years – would constitute cruel, inhuman or degrading treatment, and that such death sentences should be commuted to life imprisonment.

In contrast, the Human Rights Committee has consistently observed that prolonged judicial proceedings or periods of detention under a severe custodial regime do not generally constitute cruel, inhuman and degrading treatment, even if they can be a source of mental strain for the convicted persons, in the absence of further compelling circumstances.²⁵⁴ The Committee is of the view that imposing rigid time limits for the conclusion of all appeals and requests for clemency would be dangerous and may actually work against the person on death row by accelerating the process towards execution.

Amnesty International is of the view that the anguish of waiting to be executed is another aspect of the cruelty of the death penalty.²⁵⁵ However, because prisoners on death row have the right to use the courts and other channels to maximum effect to annul their death sentence or postpone execution, and because Amnesty International opposes the death penalty in all circumstances, the organization does not believe that there is any “appropriate” length of time a prisoner can be held before execution. Amnesty International therefore refrains from setting any specific time limits beyond which detention on death row would constitute cruel, inhuman or degrading treatment. In particular, the organization would not call for a speeding up of appeals procedures, as this could lead to undermining the right to a fair trial of the convicted person and, ultimately, to executions being carried out sooner.

251 *Hilaire and others v Trinidad and Tobago*, Inter-American Court, (2002) §§167, 168; Inter-American Commission on Human Rights Report, OEA/Ser. L/V/II. Doc. 68 (2011) §136.

252 *Pratt and Morgan v the Attorney General of Jamaica*, Privy Council, (1993).

253 *AG v Susan Kigula & 417 others*, Supreme Court of Uganda (2009); *Catholic Commission for Justice and Peace in Zimbabwe v the Attorney General & Others*, Supreme Court of Zimbabwe (1993) 2LRC 277; *Godfrey Mutiso v Republic*, Court of Appeal of Kenya (2010). See also *US v Burns*, Supreme Court of Canada, 2001 SCC 7, §§118-123.

254 HRC: *Earl Pratt and Ivan Morgan v Jamaica*, UN Doc. Supp. No. 40 (A/44/40) at 222 (1989) §13.6; *Kindler v Canada*, UN Doc. CCPR/C/48/D/470/1991 (1993) §15.2; *Francis v Jamaica*, UN Doc. CCPR/C/54/D/606/1994, (1995) §§9.1, 9.2; *Wilfred Pennant v Jamaica*, UN Doc. CCPR/C/64/D/647/1995 (1998) §8.5; *Randolph Barrett & Clyde Sutcliffe v Jamaica*, UN Doc. CCPR/C/44/D/271/1988 (1992) §4; *Errol Johnson v Jamaica*, UN Doc. CCPR/C/56/D/588/1994 (1996); *LaVende v Trinidad and Tobago*, UN Doc. CCPR/C/61/D/554/1993 (1997).

255 See Amnesty International, *Human rights v the death penalty: Abolition and restriction in law and practice* (Index: ACT 50/013/1998): “The cruelty of the death penalty is manifest not only in the execution but in the time spent under sentence of death, during which the prisoner is constantly contemplating his or her own death at the hands of the state.”

2.6.3 THE DEATH PENALTY IN ITSELF AS TORTURE OR OTHER ILL-TREATMENT

In recent years, two Special Rapporteurs on torture have questioned whether the death penalty itself violates the prohibition of torture and other ill-treatment, independent of special practices, conditions or methods of executions, but have not given a final opinion on this matter.²⁵⁶ In 2012, Special Rapporteur Juan Méndez expressed his opinion “that there is an evolving standard whereby States and judiciaries consider the death penalty to be a violation per se of the prohibition of torture or cruel, inhuman or degrading treatment”.²⁵⁷

This view has found some acceptance in international and regional bodies, but is not yet universally shared. Within the Human Rights Committee, some individual members have expressed similar positions.²⁵⁸ The Chairperson of the African Commission’s Working Group on the Death Penalty wrote in 2012 that:

“capital punishment is cruel and inhumane and represents a most grave violation of fundamental human rights, in particular the right to life under Article 4 and the right not to be subjected to any form of cruel, inhuman or degrading punishment and treatment under Article 5 of the African Charter”.²⁵⁹

The European Court in 2010 indicated that the death penalty could be considered inhuman or degrading treatment within the meaning of Article 3 of the European Convention, and concluded that, in the light of the abolition of the death penalty in the member states of the Council of Europe and the near-universal ratification of Protocols 6 and 13 to the European Convention, Article 2(1) of the [European Convention](#) (the right to life) had been amended so as to prohibit the death penalty in all circumstances.²⁶⁰ The Parliamentary Assemblies of the Council of Europe and of the OSCE have declared that the death penalty constitutes torture and inhuman or degrading punishment.²⁶¹ The revised [EU Guidelines on the Death Penalty](#) (2013) state that capital punishment is inhumane.²⁶²

256 Reports of the Special Rapporteur on torture: [UN Doc. A/HRC/10/44](#) (2009) §§34-38 ; [UN Doc. A/67/279](#) (2012) §§53, 56, 65-72.

257 Interim Report of the Special Rapporteur on torture, [UN Doc. A/67/279](#) (2012) §72.

258 See *Chitat Ng v Canada*, HRC, UN Doc. CCPR/C/49/D/469/1991 (1994), dissenting opinions of Fausto Pocar and Francisco José Aguilar Urbina.

259 Chairperson of the African Commission’s Working Group on the Death Penalty in Africa, [Intersessional Activity Report](#), 51st Ordinary Session (2012) §16.

260 *Al-Saadoon and Mufdhi v UK* (61498/08), European Court, (2010) §120. In particular, the Court stated: “Whatever the method of execution, the extinction of life involves some physical pain. In addition, the foreknowledge of death at the hands of the State must inevitably give rise to intense psychological suffering” and “the Court does not consider that the wording of the second sentence of Article 2 § 1 [the explicit exception to the right to life permitting capital punishment under certain conditions] continues to act as a bar to its interpreting the words ‘inhuman or degrading treatment or punishment’ in Article 3 as including the death penalty”, §§115-120.

261 Parliamentary Assembly of the Council of Europe, [Resolution 1253 \(2001\)](#) §1; confirmed in Parliamentary Assembly of the Council of Europe, [Resolution 1349 \(2003\)](#) §2; Parliamentary Assembly of the OSCE, [Resolution on Abolition of the Death Penalty](#), (2009) §9.

262 [Revised EU Guidelines on the Death Penalty](#) (2013) p. 5.

Domestic courts in some jurisdictions, including constitutional courts in Albania, Lithuania, South Africa and Ukraine, have also held that the death penalty as such violates the prohibition of torture and other ill-treatment, or variations of this principle as enshrined in domestic law.²⁶³

2.7 NO INTERNATIONAL TRANSFERS THAT CONTRAVENE THE PROTECTION AGAINST TORTURE AND OTHER ILL-TREATMENT

Key points:

- States must not forcibly send any person to another country or territory where he or she would be at risk of torture or other ill-treatment (*refoulement*).
- The principle of *non-refoulement* applies to everyone irrespective of the reasons for a state wishing to expel or return them.
- The principle of *non-refoulement* is expressly stated in various treaties. It is also recognized as part of customary law and therefore binding on all states.
- Amnesty International opposes any use of diplomatic assurances that a person will not be subjected to torture or other ill-treatment if they are sent to another country or territory. Amnesty International considers that these assurances do not provide a reliable safeguard against serious human rights violations.

International law, including the [Convention against Torture](#), requires governments to prosecute or extradite for prosecution those involved in certain crimes under international law, including torture, and provide reparations to victims. It is therefore important that states are able to lawfully transfer people suspected of crimes – including torture and other acts of ill-treatment – to jurisdictions where they can be brought to justice in fair procedures. Nevertheless, one of the obligations which follow from the absolute prohibition of torture and other ill-treatment is an obligation on states not to send any person forcibly to another country or territory where he or she would be at risk of torture or other ill-treatment (known as *refoulement*).

Article 3 of the Convention against Torture states:

“1. No State party shall expel, return (*‘refouler’*) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”²⁶⁴

Protection against *refoulement* is afforded also under the UN [Refugee Convention](#).

Article 33(1) of the Refugee Convention states:

²⁶³ For specific references, see Report of the Special Rapporteur on torture, [UN Doc. A/HRC/10/44](#) (2009) §45.

²⁶⁴ Article 3 of the [Convention against Torture](#).

“No Contracting State shall expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”²⁶⁵

“Transfer” encompasses measures including, but not limited to, extradition, deportation, collective expulsion, rejection at the frontier, interception at sea, and rendition. The prohibition also includes “chain” or “indirect” *refoulement*, in which individuals are transferred to a place from which they might be subsequently transferred to another jurisdiction where they are at risk of serious human rights violations.²⁶⁶ It is important to note that in the context of transfers, diplomatic assurances from one government to another do not provide a reliable safeguard against serious human rights violations, notably torture and other ill-treatment. The UN Special Rapporteur on torture has stated repeatedly that “diplomatic assurances related to torture are nothing but an attempt to circumvent the absolute nature of the principle of *non-refoulement*”.²⁶⁷

Amnesty International opposes any use of diplomatic assurances that a person transferred would not be subjected to torture or other ill-treatment as it undermines the universality of the prohibition of torture and cannot be considered reliable.²⁶⁸

The principle of *non-refoulement* plays a critical role in the international protection against torture and other ill-treatment, as well as other serious human rights violations. The United Nations High Commissioner for Refugees, for instance, has recognized that *non-refoulement* is a fundamental and inherent component part of the prohibition of torture.²⁶⁹ The principle of *non-refoulement* is expressly stated in a range of international and regional human rights instruments and recognized by human rights bodies.²⁷⁰

265 Article 33(1) of the [Refugee Convention](#).

266 UNHCR: [Note on the Principle of Non-Refoulement](#) (1997); [Note on Diplomatic Assurances](#) (2006) §8; [HRC General Comment 31](#), §12; [CAT General Comment 1](#), §§2-3; *Ti v the UK* (43844/98), European Court (decision as to admissibility), (2000) p. 15; UNHCR, [EXCOM Conclusion No. 58 \(XL\)](#) (1989) §f(i).

267 Annual Report of the Special Rapporteur on torture: [UN Doc. A/HRC/13/39](#) (2010) p.18 §67.

268 Amnesty International, [Dangerous deals: Diplomatic assurances in Europe](#) (Index: EUR 01/012/2010) p.8.

269 UNHCR, [Advisory Opinion on the Extraterritorial Application of Non-refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol](#) §21.

270 Article 3 of the [Convention against Torture](#); Article 16 of the [Convention on Enforced Disappearances](#); Article 13 of the [Inter-American Convention against Torture](#); Article 5 of the [European Convention on the Suppression of Terrorism](#), ETS No. 90 (1977), as amended by Article 4 of the [Protocol amending the European Convention on the Suppression of Terrorism](#), ETS No. 190 (2003); Article 4(3) of the [Inter-American Convention on Extradition](#); Article 19(2) of the [Charter of Fundamental Rights of the European Union](#); [HRC General Comment 20](#), §9; [CPT Standards](#) p.74 §94; Guideline 15 of the [Robben Island Guidelines](#).

The principle is also part of customary international law and as such is applicable to all states, regardless of whether they are parties to the relevant treaties.²⁷¹

States are bound by this principle whenever they exercise effective control over a person. Where state agents operate outside their state's territory, and exercise control or authority over an individual, the state has jurisdiction and is under an obligation to secure the human rights of the individual concerned.²⁷² The Committee against Torture has affirmed that the Convention's protection extends to all territories under the jurisdiction of a state party, including all areas under the "de facto control" of the state party's authorities.²⁷³

In terms of assessing the risk of torture or other ill-treatment if an individual was to be forcibly sent or returned to another country, the Committee against Torture has stated that a person seeking protection against refoulement "must establish that he/she would be in danger of being tortured", that "the grounds for so believing are substantial" and that "such danger is personal and present".²⁷⁴ The risk of torture or other ill-treatment will be assessed by the Committee "on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable".²⁷⁵

A range of factors have been identified by the Committee against Torture as being useful when assessing the risk, such as:

- (a) Is the State concerned one in which there is evidence of a consistent pattern of gross, flagrant or mass violations of human rights?
- (b) Has the author been tortured or maltreated by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity in the past? If so, was this the recent past?
- (c) Is there medical or other independent evidence to support a claim by the author that he/she has been tortured or maltreated in the past? Has the torture had after effects?
- (d) Has the situation referred to in (a) above changed? Has the internal situation in respect of human rights altered?
- (e) Has the author [the individual claimant] engaged in political or other activity within or outside the State concerned which would appear to make him/her particularly

271 UNHCR: *The Principle of Non-refoulement as a Norm of Customary International Law: Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93* (1994); Advisory Opinion on the Extraterritorial Application of Non-refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (2007) §15. See also, UNHCR EXCom, Conclusion No. 6 (XXVIII) Non-refoulement (1977) §a; A. Duffy, 'Expulsion to Face Torture? Non-Refoulement in International Law' in *International Journal of Refugee Law* Vol.20 Issue 3 (2008).

272 *Hirsi Jamma and others v Italy* (27765/09), European Court Grand Chamber (2012) §§74, 81.

273 Concluding Observations of CAT: USA, UN Doc. CAT/C/USA/CO/2 (2006) §20; UK, UN Doc. CAT/C/CR/33/3 (2004) §4(b).

274 CAT General Comment 1, §7.

275 CAT General Comment 1, §6.

- vulnerable to the risk of being placed in danger of torture were he/she to be expelled, returned or extradited to the State in question?
- (f) Is there any evidence as to the credibility of the author?
- (g) Are there factual inconsistencies in the claim of the author? If so, are they relevant?"²⁷⁶

Human rights bodies have made it clear that the principle of *non-refoulement* applies to everyone irrespective of the reasons for a state wishing to expel or return them. For example, even if it is claimed that an individual has carried out an undesirable or dangerous act, such as an act of terrorism, the principle of *non-refoulement* cannot be circumvented.²⁷⁷ The Special Rapporteur on torture has also expressed concern in cases where there is a lack of protection from persecution and respect for the principle of *non-refoulement* for those who risk torture if returned to their home countries on account of their sexual orientation, gender identity or HIV status.²⁷⁸

Under international humanitarian law, the [Third Geneva Convention](#) allows the transfer of prisoners of war only to a High Contracting party to the Convention, and only after the sending state has satisfied itself of the willingness and ability of the receiving state to apply the Convention.²⁷⁹ The [Fourth Geneva Convention](#) contains a similar provision, applicable to civilian protected persons.²⁸⁰ Furthermore, Article 3 common to all four Geneva Conventions – which prohibits torture and other ill-treatment – has been interpreted by some scholars as prohibiting all parties to a conflict from acting in ways that would result in the transfer of any individuals to a real risk of treatment prohibited by Common Article 3.²⁸¹

2.8 VIOLENCE BASED ON GENDER OR SEXUAL ORIENTATION

Key points:

- **Gender-based violence is distinguished from other forms of violence because it specifically targets individuals or groups on the basis of their gender.**
- **Women and girls are the primary victims of gender-based violence which is fuelled by the existence of discriminatory laws or practices against them within states.**
- **Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons are also particularly at risk of being subjected to torture or other ill-treatment on the basis of their sexual orientation or gender identity.**
- **States must take positive measures to prevent and protect people from gender-based violence whether committed by state officials or private actors.**

276 [CAT General Comment 1](#), §8.

277 European Court Grand Chamber: [Chahal v UK](#) (22414/93), (1996) §80; [Saadi v Italy](#) (37201/06), (2008) §127; [Ramirez Sanchez v France](#) (59450/00), (2006) §116; [Labita v Italy](#) (26772/95), (2000) §119.

278 Report of the Special Rapporteur on torture, [A/HRC/19/61/Add.4](#) (2012) §§168, 172.

279 Article 12 of the [Third Geneva Convention](#).

280 Article 45 of the [Fourth Geneva Convention](#).

281 [Common Article 3](#) to the Geneva Conventions; See for example C. Droegge, 'Transfers of detainees: Legal framework, non-refoulement and contemporary challenges' in *International Review of the Red Cross* (2008) p. 675.

Gender-based violence can be distinguished from other forms of violence because it is violence that specifically targets individuals or groups of individuals on the basis of their gender or that impacts them disproportionately.²⁸² It is recognized that women and girls are the primary victims of gender-based violence. Nevertheless, men and boys may also be subjected to specific forms of violence on the basis of their gender.²⁸³ For example, acts directed at male Muslim detainees by USA military officials in Iraq's Abu Ghraib prison, such as enforced nudity in front of female officers; forcing male detainees to wear women's underwear; and enforced masturbation; can be considered to be forms of gender-based violence designed to humiliate and induce feelings of fear and emasculation in the male detainees.²⁸⁴

However, much of the discourse on gender-based violence centres on violence against women and girls as the primary victims of such violence. Gender-based violence has been defined by the CEDAW Committee as:

“Violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the [CEDAW] Convention, regardless of whether those provisions expressly mention violence.”²⁸⁵

The underlying cause of violence against women lies in discrimination which denies women equality with men in all areas of life. Violence is both rooted in discrimination and serves to reinforce discrimination.²⁸⁶ (See [section 2.4.](#)) The UN [Declaration on the Elimination of Violence against Women](#) states that violence against women is a “manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men” and that “violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men”.²⁸⁷

The Committee against Torture has recognized gender as being a key factor placing women and girls at risk of torture and other ill-treatment. It has stated that:

“Being female intersects with other identifying characteristics or status of the person such as race, nationality, religion, sexual orientation, age, immigrant status etc. to determine the ways that women and girls are subject to or at risk of torture or ill-treatment and the consequences thereof. The contexts in which

282 See Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §7.

283 See Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §7.

284 See ‘The Taguba Report’ into the Abu Ghraib prisoner abuse by US military forces in Iraq, [Article 15-6 Investigation of the 800th Military Police Brigade](#) p. 16; Concluding Observations of CAT: USA, UN Doc. CAT/C/USA/CO/2 (2006) §24; Amnesty International, [USA: Human dignity denied – torture and accountability in the ‘war on terror’](#) (Index: AMR 51/145/2004) pp. 33, 36-39.

285 [CEDAW General Comment 19](#), UN Doc. A/47/38 (1992) §6. See also Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §9.

286 See Amnesty International, [It's in our hands: Stop violence against women – summary](#) (Index: ACT 77/003/2004) p. 3.

287 See Preamble to the [Declaration on the Elimination of Violence against Women](#).

females are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes.”²⁸⁸

The Special Rapporteur on torture has stated that:

“The purpose and intent elements of the definition of torture... are always fulfilled if an act is gender-specific or perpetrated against persons on the basis of their sex, gender identity, real or perceived sexual orientation or non-adherence to social norms around gender and sexuality... A gender-sensitive lens guards against a tendency to regard violations against women, girls, and lesbian, gay, bisexual and transgender persons as ill-treatment even where they would more appropriately be identified as torture.”²⁸⁹

Sometimes state officials such as members of the police or security forces are directly responsible for acts of violence against women, for example rape and “virginity tests” (see [sections 2.5.2](#) and [2.5.3](#)). Laws and practices may exist within a state which discriminate against women, facilitating violence against them and creating a culture of impunity (see [section 2.5.4](#)). For example, the Human Rights Committee has indicated in its [General Comment 28](#) that forced abortion, forced sterilization, female genital mutilation, domestic violence against women and a lack of access to safe abortion for women who have become pregnant as a result of rape can give rise to violations of the right not to be subjected to torture or other ill-treatment.²⁹⁰

In recognition of this, the Human Rights Committee has stated that to assess compliance with Article 7 of the ICCPR (on the right not to be subjected to torture or other ill-treatment):

“the Committee needs to be provided information on national laws and practice with regard to domestic and other types of violence against women, including rape. It also needs to know whether the State party gives access to safe abortion to women who have become pregnant as a result of rape. The States parties should also provide the Committee with information on measures to prevent forced abortion or forced sterilization. In States parties where the practice of genital mutilation exists information on its extent and on measures to eliminate it should be provided. The information provided by States parties on all these issues should include measures of protection, including legal remedies, for women whose rights under article 7 have been violated.”²⁹¹

The Human Rights Committee has also stated that women should not be deported to countries where they may be subjected to practices of genital mutilation and other traditional practices which “infringe upon the physical integrity or health of women”.²⁹²

288 [CAT General Comment 2](#), §22.

289 Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §8.

290 HRC [General Comment 28](#), §11.

291 HRC [General Comment 28](#), §11.

292 Concluding Observations of HRC: [The Netherlands](#), UN Doc. CCPR/CO/72/NET (2001) §11.

It has also indicated that the shackling of women detainees during childbirth violates Article 7 of the ICCPR.²⁹³

However, in many cases of violence against women and girls, the perpetrator is not an agent of the state but a private individual, group of individuals or organization. Violence against women frequently occurs within the community and family. Under international law, states have an obligation to take positive measures to prohibit and prevent acts of violence against women by both state and private actors. (See [section 2.9](#).)

In relation to violence based on sexual orientation or gender identity, the Special Rapporteur on torture has noted that lesbian, gay, bisexual, transgender and intersex (LGBTI) people appear to be:

“disproportionately subjected to torture and other forms of ill-treatment, because they fail to conform to socially constructed gender expectations. Indeed, discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place.”²⁹⁴

Similarly, the Committee against Torture has expressed concern at harassment and violence perpetrated against LGBTI people by police and other state officials,²⁹⁵ as well as by non-state actors,²⁹⁶ and has repeatedly encouraged states to ensure that the perpetrators of hate crimes – including homophobic and transphobic hate crimes – are brought to justice.²⁹⁷ Other Special Rapporteurs – including those working on human rights defenders,²⁹⁸ violence against women,²⁹⁹ and the right to freedom of opinion³⁰⁰ – have also expressed their concerns about homophobic and transphobic violence. (See also [section 2.9](#).)

The criminalization in some countries of consensual sexual acts between adults of the same sex also places individuals at risk of being tortured and otherwise ill-treated.³⁰¹ In these countries, individuals who are – or are perceived to be – lesbian, gay, bisexual, transgender or intersex are frequently at risk of being arbitrarily arrested and detained for long periods, sometimes on the basis of denunciations by friends,

293 Concluding Observations of HRC: [USA](#), UN Doc. CCPR/C/USA/CO/3 (2006) §33.

294 Reports of the Special Rapporteur on torture: [UN Doc. A/56/156](#) (2001) §19; [UN Doc. A/HRC/31/57](#) (2016) §13.

295 Concluding Observations of CAT, [Peru](#), UN Doc. CAT/C/PER/CO/5-6 (2013) §22.

296 Concluding Observations of CAT, [Kuwait](#), UN Doc. CAT/C/KWT/CO/2 (2011) §25.

297 Concluding Observations of CAT: [Mongolia](#), UN Doc. CAT/C/MNG/CO/1 (2011) §25; [Kuwait](#), UN Doc. CAT/C/KWT/CO/2 (2011) §25.

298 Report of the Special Rapporteur on human rights defenders, [Mission to Honduras](#), UN Doc. A/HRC/22/47/Add.1 (2012) §§64, 90-91, 113.

299 Report of the Special Rapporteur on violence against women, [UN Doc. A/HRC/20/16](#) (2012) §§71-72.

300 Special Rapporteur on freedom of opinion: Summary of cases, [UN Doc. A/HRC/17/27/Add.1](#) (2011) §§2238, 2241-2.

301 See Report of the SPT, [UN Doc. CAT/OP/C/57/4](#) (2016) §§57-58. See also Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §§14-15.

neighbours and colleagues. Specifically, the Special Rapporteur on torture has noted that in some countries “lesbian, gay, bisexual and transgender individuals are often subjected to solitary confinement as a form of ‘protective custody’”.³⁰² Transgender individuals convicted of crimes may be housed with prisoners of their birth sex, which can put them at risk of violence.³⁰³

The Committee against Torture has also expressed concern about the arbitrary detention and physical abuse of LGBTI persons in police stations with denial of fundamental legal safeguards,³⁰⁴ as well as allegations of discrimination against LGBTI people in prisons.³⁰⁵ The Committee against Torture has recommended that states:

“should take necessary measures to eliminate any form of violence or discrimination against detainees based on sexual orientation or nationality, including all abusive and discriminatory actions taken by prison inmates against other detainees”.³⁰⁶

As noted in [section 2.5.3](#) above, men who are suspected of being gay or having engaged in anal sex are sometimes subjected to anal examinations, which have no medical or scientific value.³⁰⁷ These forced anal examinations violate the prohibition of torture and other ill-treatment.³⁰⁸

Furthermore, some countries’ laws require transgender people seeking legal recognition of their identified gender to undergo medical treatments or sterilization.³⁰⁹ The Special Rapporteur on torture has called on states to

“repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, ‘reparative therapies’ or ‘conversion therapies’, when enforced or administered without the free and informed consent of the person concerned”.³¹⁰

(See also [Chapter 5.4](#).)

302 Interim Report of the Special Rapporteur on torture, [UN Doc. A/66/268](#) (2011) §69. See also Report of the SPT, [UN Doc. CAT/OP/C/57/4](#) (2016) §64.

303 See for example, Report of the Special Rapporteur on violence against women, [UN Doc. A/HRC/17/26/Add.2](#) (2011) §§28-29. See also Report of the SPT, [UN Doc. CAT/OP/C/57/4](#) (2016) §66.

304 See for example, Concluding Observations of CAT: [Peru](#), UN Doc. CAT/C/PER/CO/5-6 (2013) §22. See also Report of the SPT, [UN Doc. CAT/OP/C/57/4](#) (2016) §§60-65.

305 See for example, Concluding Observations of CAT: [Paraguay](#), UN Doc. CAT/C/PRY/CO/4-6 (2011) §19.

306 Concluding Observations of CAT, [Armenia](#), UN Doc. CAT/C/ARM/CO/3 (2012) §19. See also Report of the SPT, [UN Doc. CAT/OP/C/57/4](#) (2016) §§61-62, 71-82.

307 See for example, Reports of the Special Rapporteur on torture: [UN Doc. A/HRC/22/53](#) (2013) §76; [UN Doc. A/56/156](#) (2001) §§17-25.

308 See WGAD report, [UN Doc. A/HRC/16/47/Add.1](#), Opinion No. 25/2009 (Egypt), Communication addressed to the Government on 18 May 2009 (2011) p. 20 §28.

309 See for example, Amnesty International, [The state decides who I am: Lack of legal gender recognition for transgender people in Europe](#) (Index: EUR 01/001/2014).

310 Special Rapporteur on torture, health-care settings report, [UN Doc. A/HRC/22/53](#) (2013) §88. See also Report of the SPT, [UN Doc. CAT/OP/C/57/4](#) (2016) §§68-70.

The Committee against Torture has stated explicitly that states are obligated to protect all persons – regardless of their sexual orientation or transgender identity – from torture or other ill-treatment.³¹¹

2.9 NON-STATE (PRIVATE) ACTORS

Key points:

- An act committed by a private individual can constitute torture or other ill-treatment within the meaning of international and regional human rights law and standards.
- Everyone has the right not to be subjected to torture or other ill-treatment whether at the hands of public officials or private individuals.
- The obligation of states to respect and ensure the prohibition of torture and other ill-treatment entails, alongside the obligation to prevent torture and other ill-treatment by public officials, an obligation to take measures to protect people under their jurisdiction from acts of torture and other ill-treatment committed by private individuals.
- States must ensure that the framework of the law provides adequate protection against torture and other ill-treatment, and take reasonable steps to avoid a risk of torture and other ill-treatment of which the authorities know or should know.

2.9.1 STATES' OBLIGATIONS UNDER INTERNATIONAL LAW FOR ACTS COMMITTED BY NON-STATE ACTORS

The prohibition of torture and other ill-treatment in the [Universal Declaration](#) and other instruments was conceived initially as a vital protection for all individuals against abuses of state power. Over the years, especially in the fields of women's and children's rights, much attention has been focused on the need to also protect people against abuses by non-state (private) actors.

The obligation of states to take action against certain forms of violence by non-state actors has been established explicitly in several human rights treaties to address racial discrimination,³¹² the rights of the child³¹³ and discrimination against women.³¹⁴ These instruments recognize that discrimination, social disadvantage and other factors may render particular groups in society vulnerable to violence at the hands of private individuals, as well as state officials. Their provisions therefore aim to reinforce the principles of non-discrimination and equal protection of the law in the enjoyment of human rights.

In its General Comment 2 the Committee against Torture set out the nature of states parties' obligations in relation to non-state actors as follows:

311 [CAT General Comment 2](#), §21. See also Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §6; Report of the SPT, [UN Doc. CAT/OP/C/57/4](#) (2016) §71.

312 Article 5 of the [Convention against Racism](#).

313 Article 2 of [CEDAW](#).

314 Article 37 of the [Convention on the Rights of the Child](#).

“The Committee has made clear that where State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State’s indifference or inaction provides a form of encouragement and/ or de facto permission. The Committee has applied this principle to States parties’ failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.”³¹⁵

The Human Rights Committee has also linked the right not to be subjected to torture or other ill-treatment under Article 7 of the [ICCPR](#) to an obligation to provide protection, through “legislative and other measures”, against torture and other ill-treatment inflicted by private individuals:

“The aim of the provisions of article 7 of the International Covenant on Civil and Political Rights is to protect both the dignity and the physical and mental integrity of the individual. It is the duty of the State party to afford everyone protection through legislative and other measures as may be necessary against the acts prohibited by article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”³¹⁶

In the case of [A v UK](#), the European Court considered a complaint concerning a nine-year-old boy whose stepfather had repeatedly beaten him with a garden cane as a punishment. The stepfather had been brought to trial but was acquitted under the defence of “moderate and reasonable chastisement” as provided under English law. The Court, referring to the beatings, found that “treatment of this kind reaches the level of severity prohibited by Article 3” of the European Convention (prohibiting torture and other ill-treatment).³¹⁷ It considered that:

“the obligation on the High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment or punishment, including such ill-treatment administered by private individuals”.³¹⁸

315 [CAT General Comment 2](#), §18. See also Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §§10-11.

316 [HRC General Comment 20](#), §2.

317 [A v UK](#) (100/1997/884/1096), European Court (1998) §21.

318 [A v UK](#) (100/1997/884/1096), European Court (1998) §22.

In this case, the Court held that:

“the law did not provide adequate protection to the applicant against treatment or punishment contrary to Article 3... In the circumstances of the present case, the failure to provide adequate protection constitutes a violation of Article 3 of the Convention.”³¹⁹

The Court has clarified that:

“State responsibility may... be engaged where the framework of law fails to provide adequate protection... or where the authorities fail to take reasonable steps to avoid a risk of ill-treatment [about] which they knew or ought to have known”.³²⁰

Similarly, in the case of *Velásquez Rodríguez v Honduras*, the Inter-American Court held that the obligation of states parties to the American Convention to ensure the exercise of rights recognized by that Convention

“implies the duty of States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights”

and that

“[a]n illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention”.³²¹

2.9.2 VIOLENCE IN THE FAMILY AND COMMUNITY

Much of the jurisprudence relating to states' obligations for acts committed by private actors has been developed in relation to the issue of domestic violence (violence in the family). As noted in [section 2.9.1](#) above, if a state does not exercise due diligence and equal protection in preventing and punishing domestic violence, then it bears responsibility for the abuses.

The physical and psychological abuse inflicted in many cases of violence in the family is similar in both nature and severity to acts of torture inflicted in custody. Rape is common in both contexts. Domestic violence is often intentionally inflicted for purposes such as those listed in Article 1 of the Convention against Torture – to punish women for alleged transgressions, to obtain information from them, to intimidate them – and, as with torture by officials, to break their will and enforce their submission.

319 *A v UK* (100/1997/884/1096), European Court (1998) §24.

320 *Mahmut Kaya v Turkey* (22535/93), European Court (2000) §115. See also *Z v UK* (29392/95), European Court (2001) §§74-75.

321 *Velásquez Rodríguez v Honduras*, Inter-American Court (1988) §§166, 172.

It has thus been argued that the key elements of torture as defined in the Convention against Torture (see [section 2.3.1](#)) are often present in domestic violence. Although the perpetrators may not be state officials, the pervasive impunity surrounding such violence engages the state's responsibility. The "complicity", "consent" or "acquiescence" of public officials could be present where, for example, the so-called "defence of honour" or the defence of marriage in marital rape cases exempts violence against women from legal sanction. The state's failure to exercise due diligence to prevent, to punish and to provide remedies for abuse in the family as set out in international standards could also breach the obligation under human rights treaties to ensure the right not to be subjected to torture or other ill-treatment.³²²

The CEDAW Committee, in its [General Recommendation 19](#), affirms that states parties to CEDAW may be "responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence". They may also be responsible for providing compensation. General Recommendation 19 lists a range of preventive, protective and remedial measures which states should take "to overcome all forms of gender-based violence, whether by public or private act".³²³

The state's failure to recognize or act on a known risk of violence can amount to a violation of the prohibition on torture and other ill-treatment. In the case of *Opuz v Turkey*, the European Court addressed the failure of the state to protect the applicant and her mother from domestic violence. The court stated that "the State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional".³²⁴ The Court found there was a "general and discriminatory judicial passivity" in Turkey that "created a climate that was conducive to domestic violence". Statistical information about the situation in Turkey showed that domestic violence affected mainly women and the court considered that the violence suffered by Opuz and her mother "may be regarded as gender-based violence which is a form of discrimination against women." That, taken together with "the overall unresponsiveness of the judicial system", indicated to the court that "there was insufficient commitment to take appropriate action to address domestic violence" and led the court to find a violation of Article 14 (the right to non-discrimination) in conjunction with the right not to be subjected to torture or inhuman or degrading treatment or punishment.³²⁵

In the case of rape, the European Court has found that states have positive obligations under Article 3 of the European Convention to penalize and effectively prosecute any non-consensual sexual act and to enact criminal-law provisions effectively punishing rape and apply them in practice through effective investigation and prosecution.³²⁶

322 See Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §§55-56.

323 CEDAW [General Recommendation 19](#), §24. See also Article 3 of the [Inter-American Convention on Violence against Women](#).

324 *Opuz v Turkey* (33401/02), European Court (2009) §191.

325 *Opuz v Turkey* (33401/02), European Court (2009) §§198-202.

326 See also *MC v Bulgaria* (39272/98), European Court (2003) §§153, 166, 187.

In the case of *González et al. ("Cotton Field") v Mexico* the Inter-American Court cited the acknowledgement by the state that there was a "culture of discrimination" that had led to a failure by the authorities to perceive the disappearances of women and girls as a major problem that required their urgent investigation. The court heard evidence "that officials of the state of Chihuahua and the municipality of Juárez made light of the problem and even blamed the victims for their fate based on the way they dressed, the place they worked, their behaviour, the fact that they were out alone, or a lack of parental care".³²⁷

The court highlighted the role of stereotyping, stating:

"the subordination of women can be associated with practices based on persistent socially-dominant gender stereotypes, a situation that is exacerbated when the stereotypes are reflected, implicitly or explicitly, in policies and practices and, particularly, in the reasoning and language of the judicial police authorities, as in this case. The creation and use of stereotypes becomes one of the causes and consequences of gender-based violence against women".

It found that the violence experienced by the women was a form of discrimination and ruled that Mexico had violated the rights of the victims not to be discriminated against in relation to their rights to life, to "physical, mental, and moral integrity" (Article 5.1) and the right not to "be subjected to torture or to cruel, inhuman, or degrading punishment or treatment" (Article 5.2).³²⁸ The Court highlighted that in the context of structural discrimination, the reparations "must be designed to change this situation". It set out a range of transformative measures "designed to identify and eliminate the factors that cause discrimination" and "adopted from a gender perspective, bearing in mind the different impact that violence has on men and on women".³²⁹

The Human Rights Committee has also raised concerns under Article 7 of the ICCPR regarding forms of violence in the community or family such as child abuse³³⁰ and trafficking in children,³³¹ and has indicated that female genital mutilation and domestic violence against women can give rise to violations of the right not to be subjected to torture or other ill-treatment.³³² (See [sections 2.5.3](#) and [2.8](#).)

As noted in [section 2.8](#) above, the Committee against Torture has also recognized the particular risk of torture and other ill-treatment faced by women and girls.³³³ The Committee has called on states to take effective measures to prevent and punish

327 *González et al. ("Cotton Field") v Mexico*, Inter-American Court (2009) §§152-154.

328 *González et al. ("Cotton Field") v Mexico*, Inter-American Court (2009) §§401-402.

329 *González et al. ("Cotton Field") v Mexico* Inter-American Court (2009) §§450-451.

330 Concluding Observations of HRC: *Netherlands*, UN Doc. E/2007/22 §§585-586.

331 Concluding Observations of HRC: *Guatemala*, UN Doc. C/PR/CO/72/GTM (2001) §15.

332 HRC [General Comment 28](#), §11.

333 CAT [General Comment 2](#), §22.

trafficking of women and other forms of violence against women,³³⁴ and the establishment of programmes to prevent and combat violence against women, including domestic violence.³³⁵

In relation to female genital mutilation, defined by the World Health Organization as “all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons”,³³⁶ the Committee against Torture has called on states to eradicate the practice, including through the intensification of nationwide awareness raising campaigns, and to punish the perpetrators of such acts.³³⁷ States should take all necessary measures to eradicate female genital mutilation, including through prohibiting and punishing the practice, in line with human rights standards.

Similarly, the Special Rapporteur on torture has noted that violence within the family and the community can “encompass different types of so-called traditional practices (such as dowry-related violence, widow-burning, etc.), violence in the name of honour, sexual violence and harassment, as well as slavery-like practices often of a sexual nature... domestic violence (in the form of intimate partner violence), female genital mutilation and human trafficking”,³³⁸ as well as child and forced marriages.³³⁹

Likewise the Special Rapporteur on violence against women has referred to cultural practices such as female genital mutilation, honour killings, bride-burning and “any other form of cultural practice that brutalizes the female body” as practices which “involve ‘severe pain and suffering’ and may be considered ‘torture like’ in their manifestation”.³⁴⁰

In relation to acts of violence against children by private actors, the Committee on the Rights of the Child has made numerous recommendations regarding the prevention of violence against children within the family, at school and in society at large when reviewing states’ reports on their compliance with the Convention on the Rights of the Child.³⁴¹ It has expressed concern about “the acceptance in the legislation of the use of corporal punishment... within the family” and has stressed “the incompatibility of corporal punishment, as well as any other form of violence, injury, neglect, abuse

334 CAT report, [Ukraine](#), UN Doc. A/57/44(SUPP) (2001) §D(m). Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §41.

335 CAT report, [Zambia](#), UN Doc. A/57/44(SUPP) (2001) §E(h).

336 World Health Organization, [Factsheet no. 241](#) (2010).

337 Concluding Observations of CAT: [Kenya](#), UN Doc. CAT/C/KEN/CO/2 (2013) §26.

338 Reports of the Special Rapporteur on torture: [UN Doc. A/HRC/7/3](#) (2008) §44; [UN Doc. A/HRC/31/57](#) (2016) §§58-62.

339 Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §§63-64.

340 Report of the Special Rapporteur on violence against women, [UN Doc. E/CN.4/2002/83](#) (2002) §6.

341 CRC report, [UN Doc. A/55/41](#) (2000) §1390. Concluding Observations of CRC: [Holy See](#), UN Doc. CRC/C/VAT/CO/2 (2014).

or degrading treatment, with the provisions of the Convention, in particular articles 19, 28, paragraph 2, and 37".³⁴²

The Committee has called on states to enact legislation prohibiting "all forms of violence, however slight, within the family and in schools, including as a form of discipline"; the establishment of effective monitoring systems and complaint mechanisms, with legal advice and assistance for children; public awareness-raising campaigns; and training in child rights for relevant professional groups including social workers, health professionals, law enforcement officials and the judiciary.³⁴³

The Committee against Torture has also reaffirmed that states parties' obligations to prohibit and prevent torture and other ill-treatment also apply to other contexts of custody or control such as hospitals, schools and other institutions that engage in the care of children.³⁴⁴ In particular, the Committee against Torture and the Human Rights Committee have both expressed concern over the use of corporal punishment against children as a disciplinary measure.³⁴⁵ The Committee on the Rights of the Child has stated that the use of corporal punishment does not respect the inherent dignity of the child.³⁴⁶

342 CRC report, [UN Doc. A/53/41](#) (1998) §77.

343 CRC report, [UN Doc. A/57/41](#) (2002) §87, recommendations 15, 21, 23 and 33.

344 CAT [General Comment 2](#), §15.

345 HRC [General Comment 20](#), §5. Concluding Observations of CAT: [South Africa](#), UN Doc. CAT/C/ZAF/CO/1 (2006) §25.

346 CRC [General Comment 8](#), §39.

CHAPTER 3

SAFEGUARDS AGAINST TORTURE AND OTHER ILL-TREATMENT

States have a responsibility to respect, protect and fulfil human rights. This includes preventing torture and other ill-treatment, including through criminalization, protecting people from such abuse and bringing to justice those who perpetrate it, and ensuring reparations for victims and survivors. A range of safeguards exists to protect people from torture and other ill-treatment while deprived of their liberty, namely during arrest, during questioning, in pre-trial detention and in prison. Additional safeguards exist to protect specific categories of people, including those detained during armed conflict.

3.1 What must states do?

3.2 Safeguards at arrest

3.2.1 Grounds and procedures for arrest

3.2.2 Informing individuals of the reasons for their arrest and of their rights

3.2.3 Notifying family members or others of an arrest

3.2.4 Safeguards during transport to and from a place of detention

3.2.5 Records of arrest

3.3 Enforced disappearance and secret detention

3.4 Bringing detainees promptly before a judicial authority

3.5 Right to legal counsel

3.6 Right to challenge the lawfulness of detention and other judicial remedies

3.7 Access to the outside world

3.7.1 Incommunicado detention

3.8 Access to medical examinations and medical care

3.8.1 Medical documentation of torture and other ill-treatment

3.9 Safeguards during questioning

3.9.1 Prohibition of the use of statements and other evidence obtained through torture or other ill-treatment and other coercive measures

3.9.2 Prohibited interrogation techniques and practices

3.9.3 Presence of a lawyer during questioning

3.9.4 Right to an interpreter

3.9.5 Records of all periods of questioning

3.9.6 Separation of the authorities responsible for detention from those in charge of questioning

3.10 Safeguards for specific categories of persons deprived of liberty in the criminal justice system

3.10.1 Pre-trial detainees

3.10.2 Children

3.10.3 Persons with disabilities

- 3.10.4 Elderly persons
- 3.10.5 Women
- 3.10.6 Lesbian, gay, bisexual, transgender and intersex people
- 3.10.7 Foreign nationals
- 3.10.8 Asylum-seekers and immigration detainees
- 3.11 **Safeguards at release**
- 3.12 **Protection for persons deprived of their liberty in other contexts**
 - 3.12.1 Administrative detention on security grounds
 - 3.12.2 Institutions for asylum-seekers and immigration detention
 - 3.12.3 Institutions for people with mental or physical disabilities
- 3.13 **Use of force in law enforcement**
 - 3.13.1 Police weapons and devices
 - 3.13.2 Control of trade in weapons, devices and instruments
 - 3.13.3 Torture and other ill-treatment within the law enforcement, military and security services
- 3.14 **Safeguards during armed conflict**
 - 3.14.1 Safeguards for prisoners of war
 - 3.14.2 Safeguards for other detainees during conflict

3.1 WHAT MUST STATES DO?

Key points:

- **Under international law, states must respect, protect and fulfil human rights.**
- **It is not enough to simply prohibit and criminalize torture and, where appropriate, other acts of ill-treatment under national law; states must take a range of measures to protect people and prevent these forms of abuse.**
- **If torture or other ill-treatment does occur, states also have obligations to take measures to investigate such acts; to hold those responsible to account; and to provide victims with a remedy, including compensation and rehabilitation.**

Under international law it is understood that states assume obligations to respect, protect and fulfil human rights.¹ In practice this means that states must:

- **Respect:** by ensuring that state organs, officials and agents do not violate human rights themselves.
- **Protect:** by taking measures aimed at protecting individuals and groups against human rights abuses committed by state officials or agents, as well as by non-state (private) actors.
- **Fulfil:** by taking positive steps that enable people to receive the full benefit entailed by these rights in practice.

States' human rights obligations are also sometimes described in terms of "negative obligations" and "positive obligations". Negative obligations require states

1 See: Preamble to the [Universal Declaration](#); Article 2 of the [ICCPR](#); Article 1 of the [African Charter](#); Article 1 of the [American Convention](#); Article 2 of the [Arab Charter](#); Article 1 of the [European Convention](#).

not to do anything that would violate a human right. Positive obligations require states to take steps to protect people from human rights violations and safeguard their rights.

Applying this concept to the right not to be subjected to torture or other ill-treatment, it is recognized that states have negative obligations to ensure that none of its organs, officials or agents carry out torture and other ill-treatment, as well as corresponding positive obligations to protect people from such abuse, including from acts committed by non-state actors. (See Chapter 2.9.)

The [Convention against Torture](#) and the [Inter-American Convention against Torture](#) contain specific provisions that spell out what states must do to ensure that the right not to be subjected to torture and other ill-treatment is respected, protected and fulfilled in practice.

In addition, states' obligations have been clarified by international and regional human rights bodies and experts. In its [General Comment 20](#) on Article 7 of the [ICCPR](#), the Human Rights Committee has stated that "it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime" and goes on to refer to the need for prevention, investigation, punishment and reparation.²

Thus, states must take a range of measures to ensure that this right is not violated. Such measures will include creating and maintaining an effective legal framework which:

- Criminalizes torture and other acts of ill-treatment;
- Puts in place safeguards for persons deprived of their liberty and ensures these safeguards are observed in practice;
- Ensures that no-one is extradited, expelled or returned to a state where there is a real risk that torture or other ill-treatment may occur (*refoulement*);
- Protects people against discrimination;
- Protects against violence by non-state actors;
- Ensures that there is an independent and effective judiciary.

Other measures will be aimed at creating an environment where torture and other ill-treatment are unlikely to occur, for example:

- By providing training and decent working conditions for law enforcement and other officials;
- Regularly reviewing interrogation rules, instructions, methods and practices;
- Monitoring interrogations;
- Systematic and regular record-keeping;
- Ensuring that there is a system of independent oversight for places of detention and the treatment of persons deprived of their liberty.

² [HRC General Comment 20](#), §8.

If a violation does occur then states have obligations under international law to ensure that action is taken:

- There must be a prompt, independent and impartial investigation;
- Those responsible for acts of torture or other ill-treatment must be held accountable;
- Victims must be provided with an adequate remedy, including compensation and rehabilitation;
- Measures must be taken to prevent a recurrence of the abuse, for example by the provision of training, changes in the management of penal institutions, putting in place a means of independent oversight, and adopting, changing or repealing legislation.

In most reported cases, torture and other ill-treatment is inflicted on people who have been deprived of their liberty by law enforcement officials or other state agents. The safeguards set out in this chapter are designed to protect persons deprived of their liberty and reduce the risk as well as the opportunities for torture and other ill-treatment to occur. States' obligations to ensure the rights of people deprived of their liberty also apply to privately run detention facilities and prisons. States remain directly responsible including when private security personnel act beyond the authority delegated by the state or contravene its instructions.³

Many of the safeguards involve establishing proper procedures concerning arrest and detention and ensuring that these procedures are followed.⁴ The task of ensuring that they are followed should be assigned to the law enforcement agencies and to other state institutions, including the judiciary. However, sometimes there is a wilful failure to follow proper procedures on the part of the agencies in question, countenanced by higher authorities. At other times, failure is the result of neglect and apathy by state officials. Therefore a range of bodies and individuals have a role to play in ensuring that the procedures are observed in practice. (For more information on monitoring bodies, see [Chapter 5.2.](#))

3.2 SAFEGUARDS AT ARREST

Key points:

- **Everyone has the right to personal liberty.**
- **Secret detention is absolutely prohibited.**
- **People may only be lawfully deprived of their liberty on grounds and according to procedures established by law, which must conform to international standards.**
- **Arrests and detentions must be carried out only by people authorized to do so by law.**

3 [CAT General Comment 2](#), §17; Articles 5 and 7 of State Responsibility for Internationally Wrongful Acts, International Law Commission (2001), commended to governments by UN General Assembly resolution 65/19, [UN Doc. A/65/19](#) (2011); *Cabal and Pasini Bertran v Australia*, HRC, UN Doc. CCPR/C/78/D/1020/2001 (2003) §7.2; Concluding Observations of HRC: [New Zealand](#), UN Doc. CCPR/C/NZL/CO/5 (2010) §11.

4 See Amnesty International, [Fair trial manual: Second edition](#) (Index: POL 30/002/2014).

- **People must be informed of the reasons for their arrest at the time of arrest and be promptly informed of any charges in a language and way that they understand.**
- **People must be informed of their rights on arrest in a language and way that they understand.**
- **An official record of the arrest or detention must be kept by the detaining authorities.**
- **People arrested must have access to legal advice and to family members, doctors and lawyers.**
- **Remand in custody pending trial (pre-trial detention) must be the exception rather than the norm.**

Torture and other ill-treatment sometimes begin very soon after arrest,⁵ or even during arrest. Therefore it is essential that safeguards are put in place and observed from the moment a person comes into contact with the law enforcement system. It is also important that certain fundamental safeguards for the prevention of torture and other ill-treatment, such as the opportunity to challenge the lawfulness of detention, are never suspended, even during times of emergency.

Many of the fundamental rights for persons deprived of their liberty are contained in the [ICCPR](#), including freedom from torture and other ill-treatment (Article 7); rights on arrest (Article 9); and fair trial rights (Article 14). Article 10(1) of the ICCPR also states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The ICCPR is only binding on those states that have become a party to it; however, the safeguards for persons deprived of their liberty set out in the ICCPR are also found in other instruments, in particular the [Body of Principles](#), which although not in themselves binding, provide authoritative guidance on safeguards for and treatment of persons deprived of their liberty.

3.2.1 GROUNDS AND PROCEDURES FOR ARREST

Under international law everyone has the right to personal liberty.⁶ Article 9(1) of the [ICCPR](#) states:

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

The Human Rights Committee has confirmed that Article 9(1) “is applicable to all deprivations of liberty, whether in criminal cases or in other cases such as, for example,

⁵ In the [Body of Principles](#), “arrest” means the “act of apprehending a person for the alleged commission of an offence or by the action of an authority”. The term is used in a similar way in this manual.

⁶ See Article 3 of the [Universal Declaration](#); Article 9 of the [ICCPR](#); Article 37(b) of the [Convention on the Rights of the Child](#); Article 16(1) of the [Migrant Workers Convention](#); Article 6 of the [African Charter](#); Article 7 of the [American Convention](#); Article 14(1) of the [Arab Charter](#); Article 5 of the [European Convention](#); Section M(1) of the [Principles on Fair Trial in Africa](#); Article 1 of the [American Declaration](#).

mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc.”⁷

There are similar provisions in other international and regional human rights instruments,⁸ and many states provide for these rights under their national constitutions and other legislation. People may only be lawfully deprived of their liberty on grounds and according to procedures established by law.⁹ Such laws must conform to international standards.¹⁰

Arbitrary arrest or detention (deprivation of liberty on improper grounds or with improper procedures) is therefore consistently prohibited under international human rights treaties. The Working Group on Arbitrary Detention has stated that the prohibition constitutes a peremptory norm of international law, meaning that no derogations from it are permitted.¹¹ Under customary international humanitarian law, arbitrary detention is prohibited in both international and non-international armed conflict.¹²

Arbitrary detention facilitates torture and other ill-treatment, enforced disappearances and other abuses. An important means of preventing these abuses is to ensure that proper grounds and procedures for deprivation of liberty are adhered to at all times.

An arrest or detention that is permitted under domestic law may nonetheless be arbitrary under international standards, for example if the law is vague, over-broad, or incompatible with other human rights. In addition, detention may become arbitrary as a result of violation of the detainee's fair trial rights.¹³ Enforced disappearance and secret detention are arbitrary per se and are absolutely prohibited under international law.¹⁴ (See [Chapter 3.3.](#))

7 [HRC General Comment 8](#), §1.

8 See Article 16(1) of the [Migrant Workers Convention](#); Article 6 of the [African Charter](#); Article 7 of the [American Convention](#); Article 14(1) of the [Arab Charter](#); Article 5 of the [European Convention](#); Section M(1) of the [Principles on Fair Trial in Africa](#); Article 1 of the [American Declaration](#). See also Article 37(b) of the [Convention on the Rights of the Child](#).

9 See Article 9(1) of the [ICCPR](#); Article 37(b) of the [Convention on the Rights of the Child](#); Article 17(2a) of the [Convention on Enforced Disappearance](#); Article 6 of the [African Charter](#); Articles 7(2) and 7(3) of the [American Convention](#); Article 14(2) of the [Arab Charter](#); Article 5(1) of the [European Convention](#); Section M(1b) of the [Principles on Fair Trial in Africa](#); Article XXV of the [American Declaration](#); Principle IV of the [Principles on Persons Deprived of Liberty in the Americas](#).

10 European Court: [Bozano v France](#) (9990/82), (1986) §54; [Kemmache v France \(No. 3\)](#) (17621/91), (1994) §37; [Lukanov v Bulgaria](#) (21915/93), (1997) §41; [Baranowski v Poland](#) (28358/95), (2000) §§50-52; [Medvedev and Others v France](#) (3394/03), Grand Chamber (2010) §§79-80; [Gangaram-Panday v Suriname](#), Inter-American Court (1994) §§46-47; [Alfonso Martin Del Campo Dodd v Mexico](#), Inter-American Commission, Report 117/90, (2009) §22; [A v Australia](#), HRC, UN Doc. CCPR/C/59/D/560/1993 (1997) §9.5.

11 [HRC General Comment 24](#), §8; [HRC General Comment 29](#), §11; WGAD Deliberation No.9, UN Doc. [A/HRC/22/44](#) (2012) §§37-76.

12 ICRC [Customary IHL Study](#), [Rule 99](#) (Deprivation of Liberty).

13 WGAD Deliberation No.9, UN Doc. [A/HRC/22/44](#) (2012) §38; [WGAD Fact Sheet 26](#), Section IV (A)-(B).

14 See Articles 1, 2 and 17(1) of the [Convention on Enforced Disappearance](#).

In accordance with international standards, arrest, detention or imprisonment may only be carried out by people authorized to do so.¹⁵ The authorities who arrest people, keep them in detention or investigate their cases may exercise only the powers granted to them under the law. The use of these powers must be subject to supervision by a judicial or other authority.¹⁶

Principle 4 of the [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#) states that law enforcement officials, in carrying out their duty (for example in making an arrest), shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. (See [section 3.13](#) below on use of force in law enforcement.) The use of force is only permitted if other means remain ineffective or without any promise of achieving the intended result, and any force used must meet strict criteria as to necessity and proportionality.¹⁷

Officials carrying out an arrest should identify themselves to the person arrested and, on demand, to others witnessing the procedure. Police officers and other officials who make arrests should wear name tags or numbers so that they can be clearly identified.¹⁸ Police vehicles should be clearly identified as such and should carry number plates at all times.¹⁹

The Subcommittee on Prevention of Torture has recommended that police officers who do not wear uniforms when carrying out police duties (“plainclothes” officers) are “obliged to identify themselves by name, surname and rank at the time of arrest and transfer of persons deprived of their liberty. As a general rule, police officers responsible for enforcing deprivation of liberty or who have persons deprived of their liberty under their custody should be identified in the appropriate registers.”²⁰

3.2.2 INFORMING INDIVIDUALS OF THE REASONS FOR THEIR ARREST AND OF THEIR RIGHTS

Anyone who is arrested must be informed of the reasons for their arrest and of their rights. This is an essential safeguard against arbitrary arrest and detention and to help anyone arrested to challenge the lawfulness of their detention, as well as to prepare an adequate defence.

15 Article 17(2)(b) of the [Convention on Enforced Disappearance](#); Principle 2 of the [Body of Principles](#); Article 12 of the [Declaration on Disappearance](#); Section M1(c-d) and (g) of the [Principles on Fair Trial in Africa](#).

16 Principle 9 of the [Body of Principles](#).

17 Principle 4 of the [Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#). See also Article 3 and commentary of the [UN Code of Conduct for Law Enforcement Officials](#); Guideline 3(c) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

18 See *Hristovi v Bulgaria* (42697/05), European Court (2011) §§92-93; Guideline IV (4) of the [CoE Guidelines on eradicating impunity](#); Guideline 3(b) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

19 See Guideline 3(b) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

20 Subcommittee on Prevention of Torture visit report: [Paraguay](#), UN Doc. CAT/OP/PRY/1 (2010) §278.

Article 9(2) of the [ICCPR](#) states:

“Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”²¹

The reasons given for an arrest must be specific and include a clear explanation of both the legal provision under which the person is held and the essential factual basis for the arrest or detention.²²

As well as being told the reason for their arrest, people must also be informed of their rights and how to exercise them.²³ These rights will include:

- The right to notify a third person;²⁴
- The right to legal counsel;²⁵
- The right to medical assistance;²⁶
- The right to challenge the lawfulness of detention;²⁷
- The right to remain silent and to not incriminate oneself;²⁸
- The right to complain and to recourse for complaints about torture and other ill-treatment.²⁹

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- 21 Similar language is found in Principle 10 of the [Body of Principles](#); Section M(2)(a) of the [Principles on Fair Trial in Africa](#); Provisions 25 and 26 of the [Robben Island Guidelines](#); Guideline 5 of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Article 14(3) of the [Arab Charter](#). Article 5(2) of the [European Convention](#) and Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#) require “prompt” notification of reasons for arrest.
 - 22 European Court: *Shamayev and Others v Georgia and Russia* (36378/02), (2005) §413; *Kortesis v Greece* (60593/10), (2012) §§58-62; *Nechiporuk and Yonkalo v Ukraine* (42310/04), (2011) §§209-211; *Kelly v Jamaica* (253/1987), HRC, UN Doc. CCPR/C/41/D/253/1987 (1991) §5.8. The Inter-American Court has clarified that the right to be informed in Article 7(4) of the American Convention requires both the accused and their lawyer to be informed; see *Tibi v Ecuador*, Inter-American Court, (2004) §109.
 - 23 Principles 13 and 14 of the [Body of Principles](#); Guidelines 2(42)(c) and 3(43)(i) of the [Principles on Legal Aid](#); Section M(2)(b) of the [Principles on Fair Trial in Africa](#); Guideline 4 of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Guideline 20(d) of the [Robben Island Guidelines](#). See also Articles 55(2) and 60(1) of the [Rome Statute](#).
 - 24 Principle 16 of the [Body of Principles](#); Section M(1)(c) of the [Principles on Fair Trial in Africa](#).
 - 25 Principles 17 and 18 of the [Body of Principles](#); Principle 8(29) of the [Principles on Legal Aid](#); Section M(1)(b) of the [Principles on Fair Trial in Africa](#); Guideline 4(f) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).
 - 26 Principles 24 and 25 of the [Body of Principles](#); Guideline 4(d) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).
 - 27 Article 9(4) of the [ICCPR](#); Principle 32 of the [Body of Principles](#); Guideline 4(g) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).
 - 28 Guideline 2(42)(d) of the [Principles on Legal Aid](#); Concluding Observations of HRC: [France](#), UN Doc. CCPR/C/FRA/CO/4 (2008) §14; [Netherlands](#), UN Doc. CCPR/C/NLD/CO/4 (2009) §11; Concluding Observations of CAT: [Mexico](#), UN Doc. CAT/C/75 (2003) §220 (e); Guideline 4(i) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); *Kelly v Jamaica*, HRC, UN Doc. CCPR/C/41/D/253/1987 (1991) §5.8; Guideline 4(c) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).
 - 29 Principle 33 of the [Body of Principles](#); Guideline 4(k) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

The information must also be given in a language and way that the person understands;³⁰ if necessary, the services of an interpreter should be provided free of charge.³¹ (Additional safeguards for children; foreign nationals; persons with disabilities; women; and lesbian, gay, bisexual, transgender and intersex persons who are detained are discussed in [section 3.10](#) below.)

The Subcommittee on Prevention of Torture and the European Committee for the Prevention of Torture have also recommended that the detained person be given written notice of their rights and the individual should then be asked to sign a document stating that they have been informed of their rights.³² Information on the rights of arrested or detained persons should also be made available to the public.³³

3.2.3 NOTIFYING FAMILY MEMBERS OR OTHERS OF AN ARREST

Anyone who is arrested, detained or imprisoned must be informed of their right to notify or have the authorities notify someone in the outside world that they have been arrested and where they are being held.³⁴ This ensures that there is an official acknowledgement of the fact of the arrest and place of detention, and that contact with the outside world is maintained.

Principle 16(1) of the [Body of Principles](#) states:

“Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.”

A relative, or other person, is to be informed of the arrest immediately or at least promptly.³⁵ In practice this means that there should not be undue delay in notifying a third person of the arrest. In exceptional cases, notification of a third person of the arrest may be delayed but only if absolutely necessary to ensure the effectiveness of the criminal investigation, for example to prevent the destruction of evidence or the flight of accomplices.³⁶ However, any exception to the right to inform a third person promptly of the arrest must be clearly defined and strictly limited in time; it should not exceed

30 Article 5(2) of the [European Convention](#); Article 16(5) of the [Migrant Workers Convention](#); Principle 14 of the [Body of Principles](#); Guideline 20(d) of the [Robben Island Guidelines](#); Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#).

31 Principle 14 of the [Body of Principles](#).

32 SPT visit report: [Maldives](#), UN Doc. CAT/OP/MDV/1 (2009) §§95-98; [European Committee for the Prevention of Torture Standards](#), p.8 §16.

33 Principle 8 of the [Principles on Legal Aid](#).

34 Article 17(2)(d) of the [Convention on Enforced Disappearance](#); Principle 16(1) of the [Body of Principles](#); Rule 68 of the [Mandela Rules](#); [CAT General Comment 2](#), §13; CoE Committee of Ministers [Rec \(2012\)12](#), Appendix §15.2; Guideline 4(f) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

35 Concluding Observations of HRC: [Thailand](#), UN Doc. CCPR/CO/84/THA (2005) §15. See also Guidelines 4(f) and 31(c)(i) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

36 Principle 16(4) of the [Body of Principles](#).

a matter of days.³⁷ Any delay must not be used to suspend other rights of an arrested person and should be accompanied by specific safeguards, including written records of the reasons for the delay and the approval of a senior police officer unconnected with the case, or a prosecutor or judge.³⁸ (See [sections 3.4, 3.6 and 3.7](#) below.)

The right to notify relatives of the detention is complemented by the right of people in the outside world to obtain information about them. In particular this is an essential safeguard against enforced disappearances – where the state refuses to acknowledge the detention or conceals the fate or whereabouts of the individual. (See [sections 3.3 and 3.7](#) below.)

Article 18 of the [Convention on Enforced Disappearance](#) guarantees to any person with a legitimate interest, such as relatives of the person deprived of liberty, their representatives or their counsel, access to at least the following information:

- The identity of the authority that ordered the deprivation of liberty;
- The authority responsible for supervising the deprivation of liberty;
- The date, time and place where the person was deprived of their liberty and admitted to the place of deprivation of liberty;
- The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer;
- The date, time and place of release;
- Elements relating to the state of health of the person deprived of liberty;
- In the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains.³⁹

The Human Rights Committee has clarified that the intentional failure of the authorities to disclose the fate of an arrested person for a prolonged period effectively places them outside the protection of the law. In cases of enforced disappearance, it concluded that such practices violate rights including the right to be recognized as a person before the law.⁴⁰

3.2.4 SAFEGUARDS DURING TRANSPORT TO AND FROM A PLACE OF DETENTION

Torture and other ill-treatment sometimes occur while in transit to an initial place of detention, such as a police station, or during subsequent transfers for example to and from court or to another place of detention.⁴¹

37 Principle 15 of the [Body of Principles](#).

38 [European Committee for the Prevention of Torture 12th General Report](#) (2002) p.15 §43.

39 Article 18 of the [Convention on Enforced Disappearance](#).

40 HRC: *Grioua v Algeria*, UN Doc. CCPR/C/90/D/1327/2004 (2007) §§7.8-7.9; *Djebrouni v Algeria*, UN Doc. CCPR/C/103/D/1871/2008 (2012) §8.9; [WGEID General Comment on the right to recognition before the law](#) (2011).

41 Note this is distinct from states' obligations in relation to international transfers that may violate the prohibition of torture and other ill-treatment, which is examined in Chapter 2.7.

People are at risk of abuse during these times as often it is the first period during which they are in the power of the detaining authorities. Also, during transport there is limited opportunity for scrutiny inside a vehicle. Often, victims are beaten or otherwise ill-treated in a police vehicle; sometimes they are taken to a private place and tortured there. Such practices are absolutely forbidden under the general prohibition of torture and other ill-treatment.

Persons under arrest or detention must, moreover, be transported in humane conditions. Rule 73(2) of the [Mandela Rules](#) states: “The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.”⁴²

To prevent torture and other ill-treatment in transit, the authorities should:

- Ensure that detainees are taken directly to the initial place of detention without delay;
- Require the authorities responsible for the place of detention to certify that the detainees arrived in good condition;
- Institute proper means of surveillance and supervision of the actions of officials during transport;
- Ensure that detainees are not transported under inhuman, dangerous or life-threatening conditions, for instance in poorly ventilated, overcrowded or dangerous vehicles;
- Ensure that procedures for the safe transport of detainees are supported by proper record-keeping, including records of the time of arrest and the subsequent time of arrival at a place of detention.⁴³

Similar precautions should be taken to avoid torture and other ill-treatment during transfers from one place of detention to another, or between a place of detention and the court. Family members and legal representatives must also be informed about the transfer prior to it taking place.⁴⁴

Specifically, during transfers from one detaining agency to another, the Special Rapporteur on torture has recommended that: “It should not be possible for persons to be handed over from one police or security agency to another police or security agency without a judicial order.”⁴⁵

42 Rule 73(2) of the Mandela Rules. Expert bodies have also expressed concern at poor conditions during transit; see for example the visit report of the Special Rapporteur on torture: [Republic of Equatorial Guinea](#), UN Doc. A/HRC/13/39/Add.4 (2003) §40; European Committee for the Prevention of Torture visit reports: [Greece](#), CPT/Inf (2010) 33, §153; [Ireland](#), CPT/Inf (2011) 3, §107; [Ukraine](#), CPT/Inf (2011) 29, §44; [UK](#), CPT/Inf (2009) 30, §111; [Lithuania](#), CPT/Inf (2009) 22, §91; [Slovenia](#), CPT/Inf (2008) 7, §91; [Azerbaijan](#), CPT/Inf (2004) 36, §§152-153; SPT visit report: [Paraguay](#), UN Doc. CAT/OP/PRY/1 (2010) §§67, 134.

43 See Guideline 25(i) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

44 See Guideline 25(i) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

45 Visit report of the Special Rapporteur on torture: [Pakistan](#), UN Doc. E/CN.4/1997/7/Add.2 (1996) §106.

It is also important that independent bodies with a mandate to conduct visits to places of detention are also able to examine the facilities and vehicles for transporting persons arrested or detained. This is essential to ensure that such vehicles comply with international standards for the humane treatment of detainees, and that they are not being used to remove detainees during visits in an attempt to deny that a particular individual is being held or to temporarily reduce overcrowding within a place of detention. (See [Chapter 5.2.](#))

3.2.5 RECORDS OF ARREST

Proper arrest procedures need to be backed up by accurate and comprehensive record-keeping. The existence of official records that are open to scrutiny helps to ensure that proper procedures are followed and that law enforcement officials can be held accountable for their actions.

The [Mandela Rules](#) set out the standards for managing prisoner files, which must be kept in every place where persons are imprisoned.⁴⁶ This will include recording precise information to determine the prisoner's identity, including their name and address.⁴⁷

In addition, in relation to arrested persons, Principle 12 of the [Body of Principles](#) states that records should include:

- The reasons for the arrest;
- The time of the arrest and the time that the arrested person was taken to a place of custody, as well as that of his first appearance before a judicial or other authority;
- The identity of the law enforcement officials concerned;
- Precise information concerning the place of custody.

Principle 12(2) also states that this information must be “communicated to the detained person, or his counsel, if any, in the form prescribed by law”.

The Subcommittee on Prevention of Torture and the European Committee for the Prevention of Torture have also noted that proper record-keeping is not only a crucial safeguard against torture and other ill-treatment but also assists the work of law enforcement officials by enabling effective supervision of their activities and protection against false allegations of a failure to follow proper procedures.⁴⁸

46 See Rules 6 and 7 of the [Mandela Rules](#). See also Chapter 4.6 on records in places of detention. Details of information to be kept in registers is also set out in Guidelines 15-19 of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

47 See Rule 7(a) of the [Mandela Rules](#).

48 SPT visit report: [Maldives](#), UN Doc. CAT/OP/MDV/1 (2009) §§116-117; European Committee for the Prevention of Torture [2nd General Report](#), CPT/Inf (92) 3 (1992) §40.

In particular, the Subcommittee on Prevention of Torture has stated that a register of admissions should be kept by each place of detention which should record all of the following:

- The precise reasons for the deprivation of liberty;
- The exact time when detention began;
- The length of the period of detention;
- The authority that ordered the arrest, and the identity of the law enforcement officials concerned;
- Precise information on the place of detention;
- The chain of custody;
- The time of the detainee's first appearance before a judge or other officer authorized by law to exercise judicial power.⁴⁹

The Subcommittee on Prevention of Torture has also recommended that records should be kept of any complaints received; visits from relatives, lawyers and monitoring bodies; and the personal effects of persons detained.⁵⁰

Guideline 18 of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#) also states that records should be kept of the time and date the detained person was granted or refused unconditional release or release on summons, and the reasons for the refusal. In addition, the date and time that the detained person was notified of the charges brought against them, the right to seek release, the reason for the refusal to grant release, and the identity of the official that performed the notification, should also be recorded.

The requirement of keeping and preserving accurate and complete records of arrest and detention and making the information available when required should be incorporated in national laws and regulations. Any breach of these requirements should be met with appropriate sanctions. (See also [section 3.9.5](#) below on records of interrogations and [Chapter 4.6](#) on records in places of detention.)

3.3 ENFORCED DISAPPEARANCE AND SECRET DETENTION

Key points:

- **Enforced disappearance is absolutely prohibited as a crime under international law. There can be no justification for it whatsoever.**
- **Enforced disappearance not only increases the risk of being subjected to torture and other ill-treatment but is itself, almost invariably, a form of torture for the disappeared person and a form of ill-treatment for his or her family.**
- **Every instance of secret detention amounts to an enforced disappearance.**

Enforced disappearance is absolutely prohibited under international human rights law. Article 1 of the [Convention on Enforced Disappearance](#) states

49 SPT visit report: [Honduras](#), UN Doc. CAT/OP/HND/1 (2010) §285(a).

50 SPT visit report: [Honduras](#), UN Doc. CAT/OP/HND/1 (2010) §285(b).

that no-one is to be subjected to enforced disappearance and that this right is non-derogable, even in a state of war, threat of war, internal political instability or any other public emergency. Article 5 of the Convention also states that the widespread and systematic practice of enforced disappearance constitutes a crime against humanity. Enforced disappearance is also recognized as a crime under international law and prohibited by the Rome Statute.⁵¹

Enforced disappearance is a dehumanizing practice with long-lasting and damaging consequences for both the disappeared person and their family and other loved ones. It is a particularly cruel human rights abuse because it is of a continuous nature, with families and other loved ones of the victim often waiting years for information about the victim's fate. Accordingly, relatives of persons subjected to enforced disappearance are also considered to be victims.⁵²

Every enforced disappearance violates a range of human rights including the right not to be subjected to torture and other ill-treatment.⁵³ As enforced disappearances can violate several human rights simultaneously, they have been referred to as “multiple” or “cumulative” human rights violations. It is recognized that enforced disappearance is itself a form of torture or other ill-treatment for the disappeared person and also for their families.⁵⁴

Amnesty International distinguishes “enforced disappearance” – in which state agents are directly or indirectly involved – from “abduction” carried out by non-state actors, such as armed opposition groups, except where they are carried out in a widespread and systematic manner and amount to crimes against humanity.

In accordance with Article 2 of the [Convention on Enforced Disappearance](#), enforced disappearance occurs when:

- There is an arrest, detention, abduction or any other form of deprivation of liberty;
- That conduct is carried out by agents of the state or by persons or groups of persons acting with the authorization, support or acquiescence of the state;
- The conduct is followed either by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person;
- The objective result of the conduct is that the disappeared person is placed outside the protection of the law.⁵⁵

⁵¹ Article 7 of the [Rome Statute](#).

⁵² Article 24 of the [Convention on Enforced Disappearance](#); *Elena Quinteros Almeida and Maria del Carmen Almeida de Quinteros v Uruguay*, HRC, UN Doc. CCPR/C/OP/2 (1990) §14; European Court: *Kurt v Turkey* (24276/94), (1998) §134; *Ipek v Turkey* (25760/94), (2004) §183; *Blake v Guatemala*, Inter-American Court (1998) §116.

⁵³ *Celis Laureano v Peru*, HRC, UN Doc. CCPR/C/56/D/540/1993 (1996) §8.5; *Velásquez Rodríguez v Honduras*, Inter-American Court (1988) §187.

⁵⁴ *Elena Quinteros Almeida and Maria del Carmen Almeida de Quinteros v Uruguay*, HRC, UN Doc. CCPR/C/OP/2 (1990) §14; *Kurt v Turkey* (24276/94), European Court (1998) §134.

⁵⁵ Article 2 of the [Convention on Enforced Disappearance](#).

A similar definition is also contained in Article 2 of the [Inter-American Convention on Disappearance](#).⁵⁶ The definitions of enforced disappearance contained in the Convention on Enforced Disappearance and the Inter-American Convention on Disappearance require either the direct or indirect involvement of state agents in order to hold state parties in breach of their obligations under these treaties.

These definitions of enforced disappearance should be distinguished from the more restrictive language in Article 7 of the [Rome Statute](#). The Rome Statute lists enforced disappearance as a crime against humanity, and defines it as “the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.”⁵⁷

This definition is more restrictive than the definitions contained in the Convention on Enforced Disappearance and the Inter-American Convention on Disappearance in that it requires the perpetrator to have had the double intent to remove a person from the protection of the law and to do so for a prolonged period of time.

Under the Convention on Enforced Disappearance and the Inter-American Convention on Disappearance there is no requirement that the perpetrator specifically intended to deprive the victim of the protection of the law; any act of enforced disappearance places the victim outside the protection of the law. As stated by the Working Group on Enforced or Involuntary Disappearances, this element should be viewed as a consequence of the other constitutive elements of an enforced disappearance.⁵⁸

Neither is there a need under the Convention on Enforced Disappearance and the Inter-American Convention on Disappearance for a person to have been placed outside the protection of the law for a prolonged period. For example, when the period of time in which a person should already have been brought before a judicial authority (as required by national and international law) has elapsed, but the person has not in fact been brought before a judicial authority, there can be no question that the person has been placed outside the protection of the law, even if the period has not been “prolonged”.⁵⁹

56 Article 2 of the [Inter-American Convention on Disappearance](#) states: “For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.”

57 Article 7 of the [Rome Statute](#).

58 WGEID report, [Best practices on enforced disappearances in domestic criminal legislation](#), UN Doc. A/ HRC/16/48/Add.3 (2010) §32.

59 Amnesty International, [No impunity for enforced disappearances: Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance](#) (Index: IOR 51/006/2011) pp. 5-6.

When implementing the obligation to prohibit enforced disappearance under domestic law, it is important that states must define enforced disappearance as a crime in a way which is not narrower than the definition in Article 2 of the Convention on Enforced Disappearance. In particular, they should not include the requirements in Article 7 of the Rome Statute that the perpetrator specifically intended to remove the victim from the protection of the law and that the removal be for a prolonged period of time.⁶⁰

Under international law, anyone deprived of their liberty must be held only in a place of detention that is officially recognized.⁶¹ In some countries the practice of torture is accompanied by a practice of holding prisoners secretly in private homes or apartments, military camps, ships, or other locations which are not officially and publicly recognized as places of detention. Secret detention places people outside the protection of the law, facilitating torture, enforced disappearance and other human rights violations. Secret detention is per se arbitrary and absolutely prohibited.⁶² One of the main purposes of secret detention is to facilitate and cover up torture and other ill-treatment. Secret detention can itself constitute torture and other ill-treatment.⁶³

Every instance of secret detention amounts to a case of enforced disappearance.⁶⁴

Article 17(1) of the [Convention on Enforced Disappearance](#) states that no-one shall be held in secret detention and calls on states to ensure that national legislation guarantees that any person deprived of liberty shall be held solely in officially recognized and supervised places of deprivation of liberty.⁶⁵ This duty applies both within and beyond the state's territory.⁶⁶

As noted above, enforced disappearances violate a number of rights including the right not to be subjected to torture and other ill-treatment. In the case of [Celis Laureano v Peru](#), concerning a 17-year-old girl who had disappeared after being taken

60 Amnesty International, [No impunity for enforced disappearances: Checklist for effective implementation of the International Convention for the Protection of All Persons from Enforced Disappearance](#) (Index: IOR 51/006/2011) pp. 5-6.

61 Article 17(2)(c) of the [Convention on Enforced Disappearance](#); Section M(6)(a) of the [Principles on Fair Trial in Africa](#); Article XI of the [Inter-American Convention on Disappearance](#); HRC General Comment 20, §11; Special Rapporteur on torture, UN Doc. [E/CN.4/2003/68](#) (2002) §26(e); See [Bitiyeva and X v Russian Federation](#), (57953/00, 37392/03), European Court (2007) §118.

62 [Joint Study on Secret Detention](#), UN Doc. [A/HRC/13/42](#) (2010), §§17 and 20; WGAD Opinion Number 14, Gambia, UN Doc. [A/HRC/13/30/Add.1](#) (2010) p.344, §19.

63 [Joint Study on Secret Detention](#), UN Doc. [A/HRC/13/42](#) (2010), p.5, §§34-35; UN General Assembly resolution UN Doc. [A/RES/60/148](#) (2005) §11; UN General Assembly resolution on Extrajudicial, Summary or Arbitrary Execution, UN Doc. [A/RES/67/161](#) (2012) §23; the Human Rights Council [resolution 8/8](#) (2008) §7(c).

64 [Joint Study on Secret Detention](#), UN Doc. [A/HRC/13/42](#) (2010), §28.

65 Article 17(2)(c) of the [Convention on Enforced Disappearance](#).

66 HRC General Comment 31, §10; [Issa v Turkey](#) (31821/96), European Court (2004) §§71-74; [Advisory Opinion on legal consequences of the construction of a wall in the occupied Palestinian territory](#), International Court of Justice (2004) §109. See also [Coard v US](#), Inter-American Commission (1999) §37; and [Alejandre et al v Cuba](#), Inter-American Commission (1999) §23.

by the security forces, the Human Rights Committee concluded that “the abduction and disappearance of the victim and prevention of contact with her family and with the outside world constitute cruel and inhuman treatment”, in violation of Article 7 read together with Article 2(1) of the ICCPR.⁶⁷

Similarly, in the leading case of *Velásquez Rodríguez v Honduras*, concerning a student who disappeared after being taken by men connected with the armed forces, the Inter-American Court held that “the mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment” in violation of Article 5 of the American Convention.⁶⁸ The Special Rapporteur on torture has also stated that “prolonged incommunicado detention in a secret place may amount to torture as described in article 1 of the Convention against Torture”.⁶⁹

The suffering of relatives of disappeared persons has also been held to amount to ill-treatment. Article 24 of the [Convention on Enforced Disappearance](#) defines victims as not only the disappeared person but also “any individual who has suffered harm as the direct result of an enforced disappearance”. The Human Rights Committee has also held that “the anguish and stress caused to the mother by the disappearance of her daughter and by the continuing uncertainty concerning her fate and whereabouts”, meant that the mother of a woman who “disappeared” was herself a victim of a violation of Article 7 of the ICCPR.⁷⁰

The European Court has likewise held that a woman who had witnessed her son’s detention and was thereafter denied any official information on his fate was “herself the victim of the authorities’ complacency in the face of her anguish and distress” and had suffered a violation of Article 3 of the European Convention.⁷¹ The Inter-American Court has also made similar rulings.⁷²

3.4 BRINGING DETAINEES PROMPTLY BEFORE A JUDICIAL AUTHORITY

Key points:

- **Anyone arrested or detained must be brought promptly before a judge or other officer so that their rights can be protected.**
- **The judge must rule on the lawfulness of the arrest or detention and whether the individual should be released or detained pending trial.**
- **There is a presumption of release pending trial.**
- **The right is separate from the right of detainees to challenge the lawfulness of detention.**

67 *Celis Laureano v Peru*, HRC, UN Doc. A/51/40 (1996) §8.5.

68 *Velásquez Rodríguez v Honduras*, Inter-American Court (1988) §187.

69 Annual report of the Special Rapporteur on torture, [UN Doc. A/56/156](#) (2001) §14.

70 *Elena Quinteros Almeida and Maria del Carmen Almeida de Quinteros v Uruguay*, Inter-American Court (1983) §14.

71 *Kurt v Turkey* (24276/94), European Court (1998) §134.

72 See for example *Blake v Guatemala*, Inter-American Court, (1998), §116.

Everyone arrested or detained must be brought promptly before a judge or other judicial officer.⁷³ Article 9(3) of the [ICCPR](#) states:

“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”

This ensures that there is judicial supervision to determine that the detention is lawful and necessary. It is also a safeguard against torture and other ill-treatment, as a judge may see physical signs of torture or other ill-treatment and can hear any complaints. The obligation is on the state to ensure that people arrested or detained are brought before a court promptly; it is not dependent on a detainee challenging the detention. Thus, this procedure is distinct from procedures initiated by or on behalf of the detainee, such as habeas corpus or *amparo*, and from regular periodic review of detention.⁷⁴ (See [Chapter 3.6.](#))

While the promptness may be affected by the circumstances of each case, it is clear that persons must be brought before a judicial authority, even in extreme circumstances, within a matter of days. The Human Rights Committee has stated that “delays must not exceed a few days”.⁷⁵ In most cases, delays of more than 48 hours have been considered excessive.⁷⁶ The Human Rights Committee has indicated that the right to be brought promptly before a judge should not be restricted during times of emergency.⁷⁷

The judge, or judicial officer, must be authorized to exercise judicial power and must be objective, impartial and independent of the executive and the parties. They must have the authority to review the lawfulness of the arrest or detention and the existence of reasonable suspicion against the individual in a criminal case, and be empowered

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- 73 See in relation to persons detained on criminal charges: Article 9(3) of the [ICCPR](#); Article 16(6) of the [Migrant Workers Convention](#); Article 14(5) of the [Arab Charter](#); Article 5(3) of the [European Convention](#); Section M(3) of the [Principles on Fair Trial in Africa](#); Guideline 7(b)(i) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Article 59(2) of the [ICC Statute](#). For all people deprived of liberty: Article 7(5) of the [American Convention](#); Article XI of the [Inter-American Convention on Disappearance](#); Principles 4 and 11(1) of the [Body of Principles](#); Article 10(1) of the [Declaration on Enforced Disappearance](#); Guideline 27 of the [Robben Island Guidelines](#).
- 74 European Court: *McKay v the UK* (543/03), Grand Chamber (2006) §34; *Jecius v Lithuania* (34578/1997), (2000) §84; *De Jong, Bajjet and Van den Brink v the Netherlands* (8805/79, 8806/79, 9242/81), (1984) §§51 and 57.
- 75 [HRC General Comment 8](#), §2; See also *Aquilina v Malta* (25642/94), European Court Grand Chamber (1999) §§48-51.
- 76 Concluding Observations of HRC: *El Salvador*, UN Doc. CCPR/C/SLV/CO/6 (2010) §14; Annual reports of the Special Rapporteur on torture: UN Doc. *E/CN.4/2003/68* (2002) §26(g); UN Doc. *A/65/273* (2010) §75; Concluding Observations of CAT: *Venezuela*, UN Doc. CAT/C/CR/29/2 (2002) §6(f); *Mexico*, UN Doc. CAT/C/75 (2003) §220(b); *Kandzhov v Bulgaria* (68294/01), European Court (2008) §§66-67.
- 77 [HRC Report](#) (Volume I), annex XI (1994) p.119, §2 (also cited in footnote 9 of [HRC General Comment 29](#)); and Concluding Observations of HRC: *Israel*, UN Doc. CCPR/C/ISR/CO/3 (2010) §7(c); *Thailand*, UN Doc. CCPR/CO/84/THA (2005) §§13 and 15.

to order release if the arrest or detention is unlawful.⁷⁸ Prosecutors should not generally qualify as judicial officers for this purpose.⁷⁹

The judge or judicial officer must rule on the lawfulness of the arrest or detention, and on whether the detainee should be released or detained pending trial. In view of both the presumption of innocence and the presumption in favour of liberty, remand in custody of persons suspected of an offence must be the exception rather than the norm.⁸⁰

The state bears the burden of proving that the initial arrest or detention was lawful and that continuing detention, if requested, is necessary and proportionate. Where the person is detained pending trial they have a right to have an independent and impartial court or other judicial authority review the lawfulness of the detention at reasonable intervals.⁸¹

Principle 37 of the [Body of Principles](#) specifies two roles for a judicial or other authority when a person is brought before them after arrest:

- To decide on the lawfulness and necessity of the detention; and
- To hear any statement from the detainee on his or her treatment while in custody.

The detainee should be brought before the judge in person and be given the opportunity to speak and report any ill-treatment;⁸² the judge should not decide on the lawfulness and necessity of the detention without having seen and heard the detainee.

The detainee should be able to address the judge in an atmosphere free from intimidation. If there is any sign of torture or other ill-treatment, the judge should inquire into it without delay, even if the detainee has not volunteered any statement or information about it.⁸³ If the inquiry, or the detainee's own statement, gives reason to believe that torture or other ill-treatment was committed, the judge should

78 European Court: *Schiesser v Switzerland* (7710/76), (1979) §§25-38; *Assenov and Others v Bulgaria* (24760/94), (1998) §§146-150; *McKay v the UK* (543/03), Grand Chamber (2006) §40; *Medvedyev v France* (3394/03), Grand Chamber (2010) §124; [UN Mechanisms Joint report on Detainees at Guantánamo Bay](#), UN Doc. E/CN.4/2006/120 (2006) §28; *Bayarri v Argentina*, Inter-American Court (2008) §67.

79 HRC: *Kulomin v Hungary*, UN Doc. CCPR/C/50/D/521/1992 (1996) §11.3; *Reshetnikov v Russian Federation*, UN Doc. CCPR/C/95/D/1278/2004 (2009) §8.2; *Zheludkova v Ukraine*, UN Doc. CCPR/C/75/D/726/1996 (2002) §8.3; Concluding Observations of HRC: *Tajikistan*, UN Doc. CCPR/CO/84/TJK (2005) §12; WGAD: *China*, UN Doc. E/CN.4/2005/6/Add.4 (2004) §§32(c) and 78(a); Inter-American Court: *Acosta-Calderón v Ecuador*, (2005) §§79-81; *Chaparro Álvarez and Lapo Íñiguez v Ecuador*, (2007) §§84-86.

80 Article 9(3) of the [ICCPR](#); Article 37(b) of the [Convention on the Rights of the Child](#); Article 16(6) of the [Migrant Workers Convention](#); Article 14(5) of the [Arab Charter](#); Principle 39 of the [Body of Principles](#); Rule 6 of the [Tokyo Rules](#); Section M1(e) of the [Principles on Fair Trial in Africa](#); Guidelines 10(b) and (c) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Principle III(2) of the [Principles on Persons Deprived of Liberty in the Americas](#); Rule 3 of the [CoE Rules on remand in custody](#); Rule 65(B) of the [Rwanda Rules](#); Rule 65(B) of the [Yugoslavia Rules](#).

81 Principle 39 of the [Body of Principles](#); Guideline VIII of the [CoE Guidelines on human rights and counter-terrorism](#); Article 60(3) of the [Rome Statute](#); European Court: *Assenov and Others v Bulgaria* (24760/94), (1998) §162; *Chitayev and Chitayev v Russia* (59334/00), (2007) §177.

82 SPT visit report: [Maldives](#), UN Doc. CAT/OP/MDV/1 (2009) §88.

83 Visit report of the Special Rapporteur on torture: [Kenya](#), UN Doc E/CN.4/2000/9/Add.4 (2000) §93(k).

initiate an investigation and take effective steps to protect the detainee against any further ill-treatment, and, if the detention is unlawful or unnecessary, order the detainee's immediate release under safe conditions.⁸⁴ (See [Chapter 6.3.](#))

Where a person alleges ill-treatment, the judge should record any allegations in writing and immediately order a forensic medical examination to look for both physical and psychological evidence of torture or other ill-treatment and provide the individual concerned with any necessary medical treatment.⁸⁵ A forensic medical examination should be undertaken even without an express allegation whenever there is cause for concern that the person may have been ill-treated.⁸⁶ Where a person makes a complaint of torture or other ill-treatment, steps must be taken to protect them against reprisals.⁸⁷

3.5 RIGHT TO LEGAL COUNSEL

Key points:

- **Everyone deprived of their liberty has the right to the assistance of a lawyer.**
- **If the person does not have a lawyer of their choice, they have the right to have one assigned, free of charge if they cannot afford to pay.**
- **Detainees should have access to a lawyer from the outset of their detention, including during questioning.**
- **Individuals must be given adequate time and facilities to communicate with their lawyer, in confidence.**

The right of access to a lawyer is a fundamental safeguard against torture and other ill-treatment, and is one of the key norms for a fair trial under international human rights standards.⁸⁸ For detainees, such assistance is important to enable them to challenge their detention at an early stage and serves as an important safeguard against torture and other ill-treatment, coerced “confessions”, enforced disappearance, secret detention and other human rights violations. This right also enables individuals suspected of or charged with a criminal offence to protect their rights and begin to prepare their defence.⁸⁹

84 Annual report of CAT, [UN Doc. A/56/44](#) (2001) §169; SPT visit report: [Maldives](#), UN Doc. CAT/OP/MDV/1 (2009) §88.

85 The [Istanbul Protocol](#) recognizes the special role of judges, as the ultimate arbiters of justice, to protect detainees, see p. 9, §49. Investigations should be undertaken in conformity with the [Principles on the Investigation of Torture](#).

86 [CPT Standards](#), p. 12, §45.

87 SPT visit report: [Honduras](#), UN Doc. CAT/OP/HND/1 (2010) §31.

88 [HRC General Comment 32](#), §§10 and 32.

89 [HRC General Comment 20](#), §11; Concluding Observations of HRC: [Georgia](#), UN Doc. CCPR/C/79/Add.74 (1997) §28; [Netherlands](#), UN Doc. CCPR/C/NLD/CO/4 (2009) §11; UN Special Rapporteur on torture, UN Doc. [E/CN.4/1992/17](#) (1991) §284; [Liesbeth Zegveld and Mussie Ephrem v Eritrea](#) (250/2002), African Commission, 17th Annual Report (2003) §55; [Barreto Leiva v Venezuela](#), Inter-American Court (2009) §62; [Salduz v Turkey](#) (36391/02), European Court Grand Chamber (2008) §54.

The right to the assistance of a lawyer is set out in a range of treaty and non-treaty standards.⁹⁰ In accordance with these standards, every person who is arrested or detained must be informed of their right to have the assistance of legal counsel, either from their lawyer of choice or an appointed lawyer.⁹¹ Notice of the right to legal counsel should be provided immediately upon arrest,⁹² before any questioning – even if the individual has exercised their right to remain silent – and when an individual is charged.⁹³ (See [Chapter 3.9.3](#).)

The Human Rights Committee has stated that detained persons should have “immediate access to counsel and contact with their families”.⁹⁴ In addition, it is not enough for the authorities to inform detainees of this right; the detainee must also be provided with reasonable facilities to exercise this right.⁹⁵ For those who are not represented by counsel of their choice, a lawyer should normally be appointed to represent them, free of charge if the detainee cannot afford to pay.⁹⁶

In exceptional circumstances access to legal counsel may be delayed, but provision for this must be prescribed by law and limited to when it is considered indispensable in the particular case, in order to maintain security and good order. Any delay in access to counsel must be determined and justified on a case-by-case basis; there should be no systematic delays in access to counsel for certain categories of offences.⁹⁷ The decision should be made by a judicial or other authority. However,

90 Article 17(2)(d) of the [Convention on Enforced Disappearance](#); Articles 37(d) and 40(2)(b)(ii) of the [Convention on the Rights of the Child](#); Article 16(4) of the [Arab Charter](#); Principle 1 of the [Basic Principles on the Role of Lawyers](#); Principle 17(1) of the [Body of Principles](#); Principle 3 and Guidelines 4 and 5 of the [Principles on Legal Aid](#); Sections A(2)(f) and M(2) of the [Principles on Fair Trial in Africa](#); Guideline 20(c) of the [Robben Island Guidelines](#); Guidelines 4(d) and 8 of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#); Rule 98.1 and 98.2 of the [European Prison Rules](#); Rule 25 of the [CoE Rules on remand in custody](#); Guideline IV(1) of the [CoE Guidelines on eradicating impunity](#); Articles 55(2)(c) and 67(1)(d) of the [Rome Statute](#); Rules 117(2) and 121(2)(a) of the [ICC Rules of Procedure and Evidence](#); Article 17(3) of the [Rwanda Statute](#); Rule 42 of the [Rwanda Rules](#); Article 18(3) of the [Yugoslavia Statute](#); Rule 42 of the [Yugoslavia Rules](#).

91 [HRC General Comment 32](#), §38; [CAT General Comment 2](#), §13; Rule 98.1 of the [European Prison Rules](#) (applicable to untried people held in remand detention); CoE Committee of Ministers [Rec \(2012\)12](#), Appendix §21.1; Guideline 4(d) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

92 Article 37(d) of the [Convention on the Rights of the Child](#); Principle 17 of the [Body of Principles](#); Principle 7 of the [Basic Principles on the Role of Lawyers](#); Principle 3 and Guidelines 3(d) and 4(a) of the [Principles on Legal Aid](#); Guideline 20(c) of the [Robben Island Guidelines](#); Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#).

93 Concluding Observations of HRC: [Netherlands](#), UN Doc. CCPR/C/NLD/CO/4 (2009) §11; [CAT Article 20 report: Mexico](#), UN Doc. CAT/C/75 (2003) §220(e).

94 Concluding Observations of HRC: [Georgia](#), UN Doc. CCPR/C/79/Add.74 (1997) §28; [Netherlands](#), UN Doc. CCPR/C/NLD/CO/4 (2009) §11; [Liesbeth Zegveld and Mussie Ephrem v Eritrea](#) (250/2002), African Commission 17th Annual Report (2003) §55; [Barreto Leiva v Venezuela](#), Inter-American Court (2009) §62; [Salduz v Turkey](#) (36391/02), European Court Grand Chamber (2008) §54.

95 Principle 17 of the [Body of Principles](#).

96 See Principles 1 and 3 and Guidelines 2(42)(c) and 3(43)(b) of the [Principles on Legal Aid](#).

97 [CPT 21st General Report](#), CPT/Inf (2011) §21; [Salduz v Turkey](#) (36391/02), European Court Grand Chamber (2008) §54.

even in such cases access should begin no later than 48 hours from the time of arrest or detention.⁹⁸

3.6 RIGHT TO CHALLENGE THE LAWFULNESS OF DETENTION AND OTHER JUDICIAL REMEDIES

Key points:

- **Everyone deprived of their liberty has the right to challenge the lawfulness of their detention before a court.**
- **The court must rule without delay and order release if the detention is unlawful.**
- **The right to challenge the lawfulness of detention applies at all times, even during times of emergency.**
- **This right is guaranteed to all people deprived of their liberty.**

The right to challenge the lawfulness of detention is essential to safeguard the right to liberty and security. It provides protection against human rights violations such as torture and other ill-treatment, and can also serve as a safeguard against enforced disappearances by calling upon the courts to locate a person who has “disappeared”.

The right to challenge the lawfulness of detention differs from the right to be brought before a judge (see [Chapter 3.4](#)) principally because it is initiated by the detainee or on the detainee’s behalf, rather than by the authorities.

This right is found in a range of treaty and non-treaty instruments.⁹⁹ Article 9(4) of the [ICCPR](#) states:

“Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”

In many legal systems, the right to challenge the lawfulness of detention, and to seek remedy, is invoked by a “writ of habeas corpus” or *amparo*.¹⁰⁰ Because

98 Principle 15 and 18(3) of the [Body of Principles](#); Principle 7 of the [Basic Principles on the Role of Lawyers](#).

99 See Article 8 of the [Universal Declaration](#); Article 17(2)(f) of the [Convention on Enforced Disappearance](#); Article 37(d) of the [Convention on the Rights of the Child](#); Article 16(8) of the [Migrant Workers Convention](#); Principle 32 of the [Body of Principles](#); Article 7(1)(a) of the [African Charter](#); Section M(4) and (5) of the [Principles on Fair Trial in Africa](#); Guideline 32 of the [Robben Island Guidelines](#); Guideline 4(i) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Article 7(6) of the [American Convention](#); Article XXV of the [American Declaration](#); Article 14(6) of the [Arab Charter](#); Article 5(4) of the [European Convention](#); Guideline VII(3) of the [CoE Guidelines on human rights and counter-terrorism](#).

100 A writ of habeas corpus is a court order which requires the appropriate authorities to bring the detained person before a judge so that the lawfulness of the detention may be determined and, if appropriate, the release of the detainee ordered. While principally aimed at examining the legality of an individual’s detention, it can also serve to ensure the prisoner’s safety. *Amparo* is a prompt procedural remedy designed to give everyone recourse to a competent court for protection against acts that violate his or her fundamental rights.

of the serious risk to detainees' lives and wellbeing, the courts should act immediately on receiving a petition.¹⁰¹

The right to challenge the lawfulness of detention cannot be derogated from even in times of emergency.¹⁰² Article 17(2)(f) of the [Convention on Enforced Disappearance](#) provides that any person deprived of their liberty, or a third party, such as a lawyer or a relative, "shall, in all circumstances, be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of the deprivation of liberty and order the person's release if such deprivation of liberty is not lawful".¹⁰³

Relatives and others acting on behalf of detainees need to be able to use judicial remedies for protecting detainees, especially when detainees themselves are unable to do so.¹⁰⁴ They must have easy access to the courts, where they must be able to file petitions quickly and without intimidation or undue or prohibitive expense. The process of applying for the remedy should be as simple as possible. Relatives and others should be able to apply directly to the courts without having to use the services of a lawyer.¹⁰⁵

The role of the judge in responding to petitions challenging the lawfulness of detention should be as wide as possible. The Special Rapporteur on torture has stated: "Judges should make full use of the possibilities provided for in the law regarding the proceedings of habeas corpus (*procedimiento de amparo*). They should, in particular, seek access to the detainee and verify his/her physical condition."¹⁰⁶

3.7 ACCESS TO THE OUTSIDE WORLD

Key points:

- **All detainees have the right to communicate with the outside world.**
- **Secret detention is prohibited.**
- **Incommunicado detention facilitates torture and other ill-treatment and can itself amount to such treatment.**
- **Prolonged incommunicado detention is prohibited under international law.**
- **Detainees must be able to have access to legal counsel.**
- **Detainees must have access to their relatives or other persons of their choice.**
- **Detainees must be able to access medical services.**
- **Foreign nationals must be able to access consular services.**

101 Concluding Observations of HRC: [Dominican Republic](#), UN Doc. A/56/40 (2001) p. 56, §78(13).

102 [HRC General Comment 29](#), §16; Article 27(2) of the [American Convention](#); Article X of the [Inter-American Convention on Disappearance](#); Article 4(2) of the [Arab Charter](#); Section M5(e) of the [Principles on Fair Trial in Africa](#). See also [HRC General Comment 29](#), §16; Inter-American Court: [Advisory Opinion OC-8/87](#) (1987), and [Advisory Opinion OC-9/87](#) (1987); [UN Mechanisms Joint Report on detainees at Guantánamo Bay](#), UN Doc. A/HRC/13/42 (2010) §§46-47; WGAD, UN Doc. A/HRC/7/4 (2008) §§67 and 82(a); SPT visit report: [Honduras](#), UN Doc. CAT/OP/HND/1 (2010) §282(a) and (b); [Constitutional Rights Project and Civil Liberties Organisation v Nigeria](#) (143/95 and 150/96), African Commission 13th Annual Report (1999) §33; [Al-Moayad v Germany](#) (35865/03), (inadmissibility) Decision of European Court (2007) §101; [Othman v United Kingdom](#) (8139/09), European Court (2012) §259.

103 Article 17(2)(f) of the [Convention on Enforced Disappearance](#).

104 Article 17(2)(f) of the [Convention on Enforced Disappearance](#).

105 Principle 32 of the [Body of Principles](#).

106 Special Rapporteur on torture visit report: [Chile](#), UN Doc. E/CN.4/1996/35/Add.2 (1996) §76(1).

The right of detainees to communicate with the outside world and to receive visits is a key safeguard against torture and other ill-treatment and other human rights violations. It enables persons concerned about the wellbeing of detainees to see where they are held and their condition so as to be able to intervene on their behalf if there is reason for concern. It is also a key safeguard against enforced disappearances and extrajudicial executions: once a detainee is seen by concerned people from outside, there is less chance that he or she will “disappear” or be killed.

In accordance with Article 17(2)(d) of the [Convention on Enforced Disappearance](#), states must ensure that their legislation guarantees:

“that any person deprived of liberty shall be authorized to communicate with and be visited by his or her family, counsel or any other person of his or her choice, subject only to the conditions established by law, or, if he or she is a foreigner, to communicate with his or her consular authorities, in accordance with applicable international law.”¹⁰⁷

As well as having access to legal counsel (see [Chapter 3.5](#)), persons deprived of their liberty should also be able to communicate and have contact with family members and friends, as well as medical professionals. Access should be given subject only to reasonable conditions and restrictions, which are proportionate to a legitimate aim.¹⁰⁸

The Human Rights Committee has stated: “The protection of the detainee... requires that prompt and regular access be given to doctors and lawyers and, under appropriate supervision when the investigation so requires, to family members.”¹⁰⁹ Similarly the Committee against Torture has stated that “[c]ounsel, family members and the doctor of their own choice must be guaranteed immediate access to persons deprived of liberty”¹¹⁰ and has recommended “the free access of a person deprived of his liberty to a lawyer and to a doctor of his choice and to his relatives at all stages of detention”.¹¹¹

As noted in [section 3.2.3](#) above, anyone who is arrested, detained or imprisoned has the right to inform, or have the authorities notify, someone in the outside world that they have been taken into custody and where they are held. In addition, detainees, including those held in police custody or on remand pending trial, are to be given all reasonable facilities to communicate with and receive visits from family and friends during their

¹⁰⁷ Article 17(2)(d) of the [Convention on Enforced Disappearance](#).

¹⁰⁸ Article 17(2)(d) of the [Convention on Enforced Disappearance](#); Rule 26 of the [Bangkok Rules](#); Principle 19 of the [Body of Principles](#); Guidelines 20 and 31 of the [Robben Island Guidelines](#); Guideline 27 of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Rule 24 of the [European Prison Rules](#); Rule 38 of the [CoE Rules on remand in custody](#).

¹⁰⁹ [HRC General Comment 20](#), §11.

¹¹⁰ Concluding Observations of CAT: [Armenia](#), UN Doc. A/56/44 (2001) p.18, §39(b).

¹¹¹ Concluding Observations of CAT: [Libya](#), UN Doc. A/54/44 (SUPP) (1999) p.21, §187; [Spain](#), UN Doc. CAT/C/ESP/CO/5 (2009) §12.

deprivation of liberty.¹¹² Restrictions and supervision are permitted only if necessary in the interests of justice or security and good order in the institution.¹¹³

The right to receive visits applies to all detainees, regardless of the offence of which they are suspected or accused.¹¹⁴ Denying visits may amount to inhuman treatment.¹¹⁵

3.7.1 INCOMMUNICADO DETENTION

Detention without access to the outside world (incomunicado detention) facilitates torture and other ill-treatment and enforced disappearance and can itself amount to such practices.¹¹⁶ Incomunicado detention may also violate the rights of family members.¹¹⁷

Communications between the detainee and the outside world may be temporarily suspended only for a very short period, for example during transfer. “Prolonged” incomunicado detention has repeatedly been considered inconsistent with the right of all detainees to be treated with respect for human dignity and the obligation to prohibit torture and other ill-treatment.¹¹⁸

While there is no set definition or time limit as to what would constitute “prolonged incomunicado detention”, the Committee against Torture has expressed concern over incomunicado detention for a period of five days and has called for the practice to be abolished.¹¹⁹ Similarly, the Inter-American Court has found a violation of the

112 Article 17(2)(d) of the [Convention on Enforced Disappearance](#); Article 17(5) of the [Migrant Workers Convention](#); Rules 26-28 of the [Bangkok Rules](#); Rules 43(3), 58, 68, 106 and 107 of the [Mandela Rules](#); Article 16(2) of the [Arab Charter](#); Section M2(e) of the [Principles on Fair Trial in Africa](#); Guideline 31 of the [Robben Island Guidelines](#); Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#); Rules 24 and 99 of the [European Prison Rules](#); Regulation 100(1) of the [ICC Regulations](#); CPT 12th General Report, CPT/Inf (92) 3, §51; [Nuri Özen and Others v Turkey](#) (15672/08 et al), European Court (2011) §59.

113 Principle 19 of the [Body of Principles](#); Rule 43(3) of the [Mandela Rules](#); Section M(2)(g) of the [Principles on Fair Trial in Africa](#); Rules 24 and 99 of the [European Prison Rules](#); Regulation 100(3) of the [ICC Regulations](#); Regulation 179(1) of the [ICC Registry Regulations](#).

114 See [Marc Romulus v Haiti](#) (Case 1992), Inter-American Commission OEA/Ser.L/V/II.43, doc.21, corr.1 (1977).

115 [Civil Liberties Organisation v Nigeria](#) (151/96), African Commission 13th Annual Report (1999) §27.

116 [Joint Study on Secret Detention](#), UN Doc. A/HRC/13/42 (2010) §§28 and 32; Special Rapporteur on torture annual report, UN Doc. A/56/156 (2001) §14; [Velásquez Rodríguez v Honduras](#), Inter-American Court (1988) §187.

117 [Bashasha v Libyan Arab Jamahiriya](#), HRC, UN Doc. CCPR/C/100/D/1776/2008 (2010) §§7.4-7.5; Concluding Observations of HRC: [USA](#), UN Doc. CCPR/C/USA/CO/3/Rev.1 (2006) §12; [De La Cruz-Flores v Peru](#), Inter-American Court (2004) §§125-136; [Amnesty International and Others v Sudan](#) (48/90, 50/91, 52/91 and 89/93), African Commission 13th Annual Report (1999) §54.

118 UN General Assembly resolution UN Doc. A/Res/65/205 §21; Inter-American Court: [Maritza Urrutia v Guatemala](#), (2003) §87; [Cantoral-Benavides v Peru](#), (2000) §§83-84; [Chaparro Álvarez and Lupu Ñíguez v Ecuador](#), (2007) §171.

119 Concluding Observations of CAT: [Spain](#), UN Doc. CAT/C/ESP/CO/5 (2009) §12. This concerned Spain’s law of criminal procedure which allowed for a detainee to be held incomunicado for up to five days in all cases and for up to 13 days if suspected of terrorism-related offences. The 13-day period consists of up to five days of incomunicado detention in police custody, which can be extended by a further five days incomunicado in preventive imprisonment. An additional three days of incomunicado detention may be imposed by a judge at any time during the investigation. See Amnesty International, [Spain: Incomunicado detention – out of sight, out of mind](#) (Press release, 15 September 2009).

right to humane treatment in instances where people have been held incommunicado for four or five days.¹²⁰ The Working Group on Arbitrary Detention has clarified that the right not to be detained in prolonged incommunicado detention may not be restricted, even in times of emergency.¹²¹

Furthermore, several international human rights standards, bodies and mechanisms expressly state that incommunicado detention should be prohibited altogether.¹²² Other international standards and expert bodies allow restrictions and delays in granting detainees access to the outside world but only in exceptional circumstances and for a very short time.¹²³

The Human Rights Committee has found that the practice of incommunicado detention may violate Article 7 of the ICCPR (prohibiting torture and other ill-treatment) or Article 10 of the ICCPR (safeguards for people deprived of their liberty).¹²⁴ It has called on various states to eliminate prolonged incommunicado detention or to end the use of incommunicado detention altogether.¹²⁵

The Principles on Fair Trial in Africa state that any confession or admission made during incommunicado detention should be considered as having been obtained by coercion, and therefore must be excluded from evidence.¹²⁶ (See [Chapter 3.9.1](#) on exclusion of evidence.)

3.8 ACCESS TO MEDICAL EXAMINATIONS AND MEDICAL CARE

Key points:

- **Medical examinations of detainees at time of entry into or transfer from a place of detention are widely recommended.**
- **In all cases where a person alleges torture or other ill-treatment, a prompt and impartial inquiry, including a medical examination, must be carried out in accordance with the Istanbul Protocol.**
- **Medical examinations should be conducted out of hearing (and where feasible, out of sight) of staff.**
- **The doctor conducting the examination should prepare a confidential report to be given to the detainee or his/her lawyer.**

120 *Chaparro Álvarez and Lupo Íñiguez v Ecuador*, Inter-American Court (2007) §§166-172.

121 WGAD report, [UN Doc. E/CN.4/2005/6](#) (2004) §76; [WGAD Deliberation No.9](#), UN Doc. A/HRC/22/44 (2012).

122 Guideline 24 of the [Robben Island Guidelines](#); Principle III of the [Principles on Persons Deprived of Liberty in the Americas](#); Concluding Observations of CAT: [Yemen](#), UN Doc. CAT/C/YEM/CO.2/Rev.1 (2010) §12; [El Salvador](#), UN Doc. CAT/C/SLV/CO/2 (2009) §20; Special Rapporteur on torture, [UN Doc. A/56/156](#) (2001) §39(f); Special Rapporteur on human rights and counter-terrorism: [Spain](#), UN Doc. A/HRC/10/3/Add.2 (2008) §32, 62.

123 Concluding Observations of CAT: [Cambodia](#), UN Doc. CAT/C/CR/31/7 (2003) §6(j); *Chaparro Álvarez and Lupo Íñiguez v Ecuador*, Inter-American Court (2007) §§166-172.

124 HRC: *Womah Mukong v Cameroon*, UN Doc. CCPR/C/51/D/458/1991 (1994) §9.4; *El-Megreisi v Libyan Arab Jamahiriya*, UN Doc. CCPR/C/50/D/440/1990 (1994) §5.4; *Polay Campos v Peru*, UN Doc. CCPR/C/61/D/577/1994 (1997) §8.4.

125 HRC General Comment 20, §11; Concluding Observations of HRC: [Chile](#), UN Doc. CCPR/C/CHL/CO/5 (2007) §11; [Spain](#), UN Doc. CCPR/C/ESP/CO/5 (2009) §14; [Syria](#), UN Doc. CCPR/CO/84/SYR (2005) §9.

126 Section N6(d)(i) of the [Principles on Fair Trial in Africa](#).

- **Health care should be of a standard equivalent to that prevailing in the community.**

Medical examinations have a crucial role to play in preventing torture and other ill-treatment. International standards call for medical assistance to be given to those in detention when necessary. This starts from the moment of arrest.¹²⁷

Article 6 of the [UN Code of Conduct for Law Enforcement Officials](#) states:

“Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.”¹²⁸

Prompt and regular medical care should be provided to detainees.¹²⁹ A person injured in the course of arrest should be given medical assistance immediately. Delays of a matter of days could breach international standards.¹³⁰

The [Mandela Rules](#)¹³¹ and the [Body of Principles](#)¹³² call for detainees to be given or offered a medical examination as promptly as possible after admission to a place of detention. Other standards also specify that detainees should have a right to be examined by a doctor other than that initially provided by the state,¹³³ particularly when they are not convicted.¹³⁴ In addition, the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#) state that prior to the commencement of each questioning session, all persons detained in police custody must be afforded the right to a medical examination, with the results of each examination recorded in a separate medical file, access to which is governed by the normal rules on medical confidentiality.¹³⁵ The European Committee for the Prevention of Torture has identified the right to a medical examination by a doctor of one’s choice as a “fundamental safeguard” against torture and other ill-treatment which should apply from the outset of police custody.¹³⁶

When there is reason to believe that a detainee has been subjected to torture or other ill-treatment, the detainee should be given an immediate medical examination

127 Annual report of the Special Rapporteur on torture, [UN Doc. A/56/156](#) (2001) §39(f).

128 Article 6 of the [UN Code of Conduct for Law Enforcement Officials](#).

129 [UN General Assembly resolution on torture](#), UN Doc. A/RES/65/205 (2010) §20. See also Guideline 4(g) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

130 *Hurtado v Switzerland* (17549/90), European Court (1994) §§77 and 79; *MS v the UK* (24527/08), European Court (2012).

131 Rule 30 of the [Mandela Rules](#).

132 Principle 24 of the [Body of Principles](#).

133 Principle 25 of the [Body of Principles](#).

134 Rule 118 of the [Mandela Rules](#).

135 Guideline 9(a)(iii) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

136 [CPT Standards](#), p.6, §§36 and 37, p.10, §40 and p.11, §42.

by a doctor who is able to make an accurate report without interference from the authorities.¹³⁷

Medical personnel who see signs of abuse should take steps to protect the detainee against further ill-treatment. Such steps could include approaching the person responsible for medical care in the place of detention, or reporting the matter to appropriate authorities or international agencies who can investigate. However, they must not expose patients, their families or themselves to foreseeable serious risk of harm.¹³⁸

Where it becomes evident that a detainee has an underlying medical problem or displays signs of serious mental illness (psychosocial disability), appropriate medical or psychosocial care should be organized in a manner reflecting the urgency of the problem including, where necessary, transfer to a specialist facility.

The [Bangkok Rules](#) require that women entering prison should be assessed for mental health care needs and experience of sexual abuse and be informed of their right to seek redress for sexual abuse or other violence suffered.¹³⁹ In all cases: “Only medical staff shall be present during medical examinations unless the doctor is of the view that exceptional circumstances exist or the doctor requests a member of the prison staff to be present.”¹⁴⁰

Furthermore, female detainees have the right to request to be examined or treated by a female medical practitioner.¹⁴¹ This request is to be met to the extent possible. If a male medical practitioner undertakes the examination contrary to the wishes of the female detainee, a female staff member must be present during the examination.¹⁴²

The European Committee for the Prevention of Torture has formulated the following specific recommendations on access to a doctor as a guide to good state practice:

- Every newly arrived detainee should be properly interviewed and physically examined by a medical doctor as soon as possible after admission; preferably on the day of admission. Such medical screening on admission could also be performed by a fully qualified nurse reporting to a doctor.¹⁴³
- The right of access to a doctor should include the right of a person in custody to be examined, if the person concerned so wishes, by a doctor of his/her own

137 [HRC annual report](#), UN Doc. A/50/40 §94, (referring to Tunisia). See also [Principles on the Investigation of Torture](#), §§2 and 6(a).

138 The [Istanbul Protocol](#), p. 15, §67.

139 Rules 6(b), 6(e) and 7(1) of the [Bangkok Rules](#).

140 Rule 11 of the [Bangkok Rules](#).

141 Guideline 32(b)(v) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

142 Rule 10(2) of the [Bangkok Rules](#).

143 [CPT Standards](#), p. 39, §33 (footnote 1); Guideline 16(d) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

choosing (in addition to any medical examination carried out by a doctor called by the police).¹⁴⁴

- All medical examinations of persons in custody are to be conducted out of the hearing and – unless the doctor concerned expressly requests otherwise in a given case – out of the sight of police officers.¹⁴⁵
- The results of every examination, as well as any relevant statements by the person in custody and the doctor’s conclusions, are to be recorded in writing by the doctor and made available to the person in custody and his lawyer.¹⁴⁶
- The confidentiality of medical data is to be strictly observed.¹⁴⁷

Steps should be taken to ensure that doctors employed by the state act independently in recording and reporting signs of torture or other ill-treatment in accordance with medical ethics.¹⁴⁸ In particular, they must not be subjected to pressure to modify their findings to conform to the wishes of the police or prison officials, or face retaliation.¹⁴⁹ Professional associations should make efforts to ensure that the professional interests of prison medical staff are adequately represented.

3.8.1 MEDICAL DOCUMENTATION OF TORTURE AND OTHER ILL-TREATMENT

Prompt examination by a trained physician with suitable competence is important for the documentation of torture and other ill-treatment.

Full and accurate documentation is an important element of combating impunity by bringing evidence of torture and other ill-treatment to light so that perpetrators may be held accountable. The [Istanbul Protocol](#) was developed to assist with the full and accurate identification and documentation of torture and other ill-treatment, and investigations, including medical examinations, should be conducted in line with this Protocol. The Istanbul Protocol incorporates the UN [Principles on the Investigation of Torture](#) and sets out international guidelines for the assessment

144 CPT Standards, p. 6, §36. Where there were grounds for refusing access to a doctor of the prisoner’s choosing, the CPT has occasionally recommended the option of requesting an examination by a doctor chosen from a list “drawn up in agreement with the appropriate professional body”. See CPT visit report: [Spain](#), CPT/Inf (96) 9 (1991) §57. With respect to irregular migrants, the CPT has recommended that “all newly arrived detainees should be promptly examined by a doctor or by a fully-qualified nurse reporting to a doctor. The right of access to a doctor should include the right – if an irregular migrant so wishes – to be examined by a doctor of his/her choice; however, the detainee might be expected to meet the cost of such an examination”, see CPT Standards, p.71, §82.

145 CPT Standards, p.13, §42.

146 CPT Standards, p.6, §38; Guidelines 9(a)(iii) and 16(d) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

147 CPT visit report: [Czech Republic](#), CPT/Inf (99) (1997) §32.

148 There is increasing advocacy for prison health being made the responsibility of the Ministry of Health rather than the security, prison or interior ministry. See: [CoE Recommendation No. R \(98\) 7 Concerning the Ethical and Organisational Aspects of Health Care in Prison](#), Recommendation No. R (98) 7 (1998) §12; World Health Organization Regional Office for Europe, Moscow Declaration, [Prison health as Part of Public Health](#), 2003.

149 The Human Rights Council has urged governments “to protect medical and other personnel for their role in documenting torture or any other form of cruel, inhuman or degrading treatment or punishment and in treating victims of such acts”, [UN Doc. A/HRC/RES/16/23](#) (2011) §7(i). See also annual report of the Special Rapporteur on torture, [UN Doc. E/CN.4/1999/61/Add.1](#) §113(d).

of persons who allege torture and other ill-treatment; investigating allegations; and reporting findings to the judiciary or another investigative body.

The Committee against Torture has recommended that in all cases in which a person alleges torture or other ill-treatment, the competent authorities should initiate a prompt, impartial inquiry that includes a medical examination carried out in accordance with the Istanbul Protocol.¹⁵⁰

The Committee against Torture has also urged that in order to ensure the quality and accuracy of forensic evaluations, states should:

- Ensure that examinations are conducted in such a way as to uphold the principles of confidentiality and privacy;
- Ensure that medical experts use forms that are in line with Annex IV of the [Istanbul Protocol](#) when preparing their evaluations and that they include their interpretation of their findings; and
- Ensure that all persons who are arrested and ask to be examined by an independent physician or an official expert receive copies of their request and the medical report or expert opinion.¹⁵¹

The [Istanbul Protocol](#) also sets out important components of doctors' role in carrying out medical examinations of detainees, as well as in the prevention of torture and other ill-treatment. It states that doctors must:

- Identify themselves to patients and explain the purpose of any examination or treatment. Even when doctors are appointed and paid by a third party, they retain a clear duty of care to any patient whom they examine or treat;
- Refuse to comply with any procedures that may harm patients or leave them physically or psychologically vulnerable to harm;
- Insist on professional independence to make clinical judgments;
- Ensure that any person in custody has access to necessary treatment; and
- Ensure that both information and records are kept confidential.¹⁵²

According to the Istanbul Protocol: "Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and, in particular, must obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations must be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials."¹⁵³

150 CAT Article 20 report: [Mexico](#), UN Doc. CAT/C/75 (2003) §220(k).

151 Concluding Observations of CAT: [Mexico](#), UN Doc. CAT/C/MEX/CO/5-6 (2013) §17.

152 [Istanbul Protocol](#), pp.14-15, §67.

153 [Istanbul Protocol](#), §83. The [Istanbul Protocol](#) also states that officials should never be present in the examination room (except where there are compelling security concerns affecting the health professional, in which case security personnel should not be from the police, and should remain out of earshot), §124.

An important component of any evaluation of an allegation of torture is a review of existing medical records. However, these may not be adequate or may not be available. A forensic expert group has underscored the importance of records to the investigative process, calling them a “fundamental part of any forensic medical evaluation of allegations of torture”.¹⁵⁴ Moreover:

“The medical expert should promptly prepare an accurate written report” which includes: “An interpretation as to the probable relationship of physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment or further examination should also be given.”¹⁵⁵

The documentation of torture and other ill-treatment is vital in order to ensure that perpetrators are held accountable. It is an essential part of the obligation to conduct a full and effective investigation into allegations of torture or other ill-treatment. (See [Chapter 6.3.](#)) Medical investigations carried out in conformity with the Istanbul Protocol can provide a benchmark for the credibility of documentary medical evidence.¹⁵⁶

The Special Rapporteur on torture has recommended that reports of independent forensic specialists are “attributed the same evidentiary weight as reports prepared by State-appointed forensic experts” and that they may be submitted “without any prior approval by an investigator or a State prosecutor”.¹⁵⁷

3.9 SAFEGUARDS DURING QUESTIONING

Key points:

- **No statement or other evidence obtained by torture or other ill-treatment may be used in any proceedings – unless used against the perpetrators.**
- **Interrogation techniques and practices must be regularly reviewed.**
- **Persons have a right to a lawyer.**
- **Persons have a right to an interpreter.**
- **Persons have a right to a medical examination.**
- **A full and accurate record of all interrogations must be kept.**

One of the common purposes of torture is to force people to “confess” or to provide information. Consequently, torture and other ill-treatment is often inflicted during periods of questioning. In order to remove this “incentive” to torture, the use of statements and other evidence obtained through torture or other ill-treatment is absolutely prohibited under international law and standards, and no undue advantage

154 International Forensic Expert Group, Statement on access to relevant medical and other health records and relevant legal records for forensic medical evaluations of alleged torture and other cruel, inhuman or degrading treatment or punishment, [Torture 22 Suppl.1](#), IRCT (2012) §§39-48.

155 [Istanbul Protocol](#), §83(d).

156 European Court: *Böke and Kandemir v Turkey* (71912/01, 26968/02 and 36397/03), (2009) §48; *Mehmet Eren v Turkey* (32347/02), (2009) §§41 and 43; *Gülbahar and others v Turkey* (5264/03), (2009) §53.

157 Annual report of the Special Rapporteur on torture, [UN Doc. A/HRC/19/61/Add.2](#) (2012) §81(c).

may be taken for the purpose of compelling a person to confess, to incriminate himself or herself, or to testify against any other person. (See [Chapter 3.9.1](#).) The only exception is when such a statement is used in proceedings against the perpetrator, as evidence that the statement was taken.

In addition, a range of safeguards has been developed to protect people under interrogation and it is important that arrested or detained persons are informed of their rights and safeguards.¹⁵⁸ These include:

- The right to have a lawyer present during questioning;
- The right to an interpreter;
- The right to remain silent and not incriminate oneself;
- The identification of everyone present during questioning;
- Full and accurate recording, preferably through audio and video, of all periods of questioning;
- The right to a medical examination and medical services.

Articles 11 and 16 of the Convention against Torture oblige states parties to “keep under systematic review interrogation rules, instructions, methods and practices” with a view to preventing torture and other ill-treatment. The same requirement has been referred to by the Human Rights Committee as an effective means of preventing torture or other ill-treatment.¹⁵⁹

An excuse sometimes offered for the use of torture during interrogation is that a country’s police force is poorly trained and lacking in resources. It is important that law enforcement agencies have the scientific and technical equipment necessary to investigate crimes effectively and lawfully. While the extent to which they are provided with these means is frequently dependent on the material resources available to governments, a lack of resources is not a justification or excuse for torture or other unprofessional and unlawful behaviour. Law enforcement officials should be trained and encouraged to operate as effectively as they can within the resources available to them without breaching legal, ethical or professional standards.

In particular, law enforcement officials should be trained in the skills of interviewing victims, witnesses and those suspected of crime. In relation to suspects, these skills include the abilities to:

- Gather all available evidence in a case before interviewing a suspect;
- Plan an interview based on that evidence so that an effective interview can be conducted;
- Treat an interview as a means of gathering more information or evidence rather than as a means of securing a confession;

¹⁵⁸ See Articles 9 and 14 of the [ICCPR](#); Principles 14, 17, 21, 23 and 24 of the [Body of Principles](#); Guideline 9 of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Section N of the [Principles on Fair Trial in Africa](#).

¹⁵⁹ [HRC General Comment 20](#), §11.

- Conduct an interview in a manner that respects the suspect's rights;
- Analyze information obtained during the interview, and carry out any further investigation into the case suggested by that analysis;
- Check any admission or confession made by the suspect against available evidence;
- Evaluate each interview with a view to learning from each experience and further developing interviewing and investigative skills.

3.9.1 PROHIBITION OF THE USE OF STATEMENTS AND OTHER EVIDENCE OBTAINED THROUGH TORTURE OR OTHER ILL-TREATMENT AND OTHER COERCIVE MEASURES

Key points:

- **The use of statements or other evidence obtained by torture or other ill-treatment is absolutely prohibited under international law and standards, unless used in proceedings against perpetrators.**
- **States must not use statements or other evidence from another state which has obtained it by torture or other ill-treatment.**
- **Where it is alleged or there are reasonable suspicions that statements or other evidence have been obtained under torture or other ill-treatment, a prompt and impartial investigation must be carried out.**
- **This right is linked to the right not to be compelled to incriminate oneself or confess guilt.**
- **States must remove incentives to obtain confessions and ensure that the criminal justice system is evidence-led rather than confession-based.**

In order to remove one of the prime “incentives” for committing torture or other ill-treatment, the use of statements and other evidence obtained by torture or other ill-treatment is absolutely prohibited under international law. The only exception is when such statements are used in proceedings against the perpetrator, as evidence that the statements were taken. This is also closely linked to the right not to incriminate oneself; no-one charged with a criminal offence may be compelled to confess guilt or testify against themselves.¹⁶⁰

The Committee against Torture has stated that “the existence, in procedural legislation, of detailed provisions on the inadmissibility of unlawfully obtained confessions and other tainted evidence” is “[o]ne of the essential means in preventing torture”.¹⁶¹ This exclusionary rule also applies at all times, including during times of emergency.¹⁶²

¹⁶⁰ Article 14(3)(g) of the ICCPR; Article 40(2)(b)(iv) of the [Convention on the Rights of the Child](#); Article 18(3)(g) of the [Migrant Workers Convention](#); Article 8(2)(g) of the [American Convention](#); Article 16(6) of the [Arab Charter](#); Principle 21(1) of the [Body of Principles](#); Section N(6)(d) of the [Principles on Fair Trial in Africa](#); Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#); Article 20(4)(g) of the [Rwanda Statute](#); Article 21(4)(g) of the [Yugoslavia Statute](#); Articles 55(1)(a) and (b) and 67(1)(g) of the [Rome Statute](#).

¹⁶¹ CAT annual report, [UN Doc. A/54/44 \(SUPP\)](#) (2000) §45.

¹⁶² [HRC General Comment 32](#), §6; see [HRC General Comment 29](#), §§7 and 15; [Cabrera-García and Montiel Flores v Mexico](#), Inter-American Court (2010) §165.

Article 15 of the [Convention against Torture](#) contains an express prohibition:

“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”¹⁶³

The prohibition in Article 15 refers not only to self-incriminating statements introduced in criminal proceedings but also to statements of any kind introduced as evidence in “any proceedings”, where such statements are established to have been made under torture. The term “any proceedings” under Article 15 has been interpreted broadly by the Committee against Torture to include not only court proceedings but also non-judicial proceedings.¹⁶⁴

Although Article 15 of the Convention against Torture refers expressly only to torture, in its [General Comment 2](#) the Committee against Torture confirmed that “Articles 3 to 15 are likewise obligatory as applied to torture and ill-treatment”.¹⁶⁵ The Committee against Torture has also confirmed that the rule is non-derogable and must be observed in all circumstances.¹⁶⁶ The Human Rights Committee has also stated that the use or admissibility in judicial proceedings of statements or confessions obtained through torture or “other prohibited treatment” should be prohibited by law¹⁶⁷ and that – as regards self-incriminating statements – the law should prohibit the use of statements obtained through torture, other ill-treatment, acts which fail to respect the human dignity of detainees or “any other form of compulsion”.¹⁶⁸

Further, the Committee against Torture and the Human Rights Committee have stated that this obligation requires the exclusion not only of “statements” elicited by torture and other ill-treatment, but also of “other forms of evidence” obtained as a result of these forms of abuse.¹⁶⁹ This includes evidence, such as physical evidence of a crime, derived from information extracted through torture and other ill-treatment.

In order to ensure that the prohibition of the use of evidence obtained by torture or other ill-treatment is not circumvented, and to prevent abusive interrogation techniques being outsourced to third parties, states must not use evidence received from another

163 See also Principles 21 and 27 of the [Body of Principles](#); Article 12 of the [Declaration against Torture](#); Article 10 of the [Inter-American Convention against Torture](#); Principle F(h)(4)(c) of the [Principles on Fair Trial in Africa](#); Guideline 29 of the [Robben Island Guidelines](#); Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#).

164 CAT: *Kiti v Morocco*, UN Doc. CAT/C/46/D/419/2010 (2011) §8.8; *G.K. v Switzerland*, UN Doc. CAT/C/30/D/219/2002 (2002) §6.10; *P.E. v France*, UN Doc. CAT/C/29/D/193/2001 (2002) §3.5.4.

165 CAT [General Comment 2](#), §6.

166 CAT [General Comment 2](#), §6.

167 HRC [General Comment 20](#), §12.

168 HRC [General Comment 13](#), §14.

169 Concluding Observations of CAT: *Israel*, UN Doc. A/57/44 (Supp) (2002) §§52(k) and 53(j); *Belgium*, UN Doc. CAT/C/CR/30/6 (2003) §§5(o) and 7(n); *United Kingdom*, UN Doc. CAT/C/CR/33/3 (2004) §§4(a)(i) and 5(d); HRC [General Comment 32](#), §6; Inter-American Commission country report: *Venezuela* (2003) §364(8).

state where there is a “real risk” that it has been obtained through torture.¹⁷⁰ Similarly, evidence must also be excluded where it is obtained by the torture of persons other than the individual against whom it is to be used.¹⁷¹

When at any time in the course of a proceeding it is alleged that a statement was made under torture or other ill-treatment or when a judge has reason to suspect that evidence was obtained through torture or other ill-treatment, a prompt impartial investigation should be held.¹⁷² The alleged victim should have access to independent doctors and lawyers for assistance in securing the evidence needed to back up the claim. (See [Chapter 6.4](#) on investigations.)

The Committee against Torture has confirmed that it is the responsibility of the state concerned to “ascertain whether or not statements admitted as evidence in any proceedings for which it has jurisdiction... have been made as a result of torture”¹⁷³ and clear instructions must be given to the courts to enable them to rule that the evidence is inadmissible.¹⁷⁴ The Human Rights Committee has stated that the burden is on states to prove that statements made by the accused have been given of their own free will.¹⁷⁵

Prosecutors also have a duty to refuse to use evidence obtained through torture or other grave violation of the suspect’s human rights. Article 16 of the [Guidelines on the Role of Prosecutors](#) states:

“When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect’s human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”¹⁷⁶

Linked to the right not to be subjected to torture and other ill-treatment is the right not to be compelled to incriminate oneself or confess guilt.¹⁷⁷ This right

170 *G.K. v Switzerland*, CAT, UN Doc. CAT/C/30/D/219/2002 (2002) §6.10; *El Haski v Belgium* (649/08), European Court (2012) §85.

171 *P.E. v France*, CAT, UN Doc. CAT/C/29/D/193/2001 (2002) §3.5.4; *G.K. v Switzerland*, CAT, UN Doc. CAT/C/30/D/219/2002 (2002) §6.9; *El Haski v Belgium* (649/08), European Court (2012) §85; *Cabrera-García and Montiel Flores v Mexico*, Inter-American Court (2010).

172 See Articles 12, 13 and 16 of the [Convention against Torture](#); Articles 8 and 9 of the [Declaration against Torture](#); Concluding Observations of CAT: *Russia*, UN Doc. CAT/C/RUS/CO/4 (2007) §21.

173 See CAT: *G.K. v Switzerland*, UN Doc. CAT/C/30/D/219/2002 (2002) §6.10; *P.E. v France*, UN Doc. CAT/C/29/D/193/2001 (2002) §3.4.

174 Concluding Observations of CAT: *Russia*, UN Doc. CAT/C/RUS/CO/4 (2007) §21; *Togo*, UN Doc. CAT/C/TGO/CO/1 2006 §24.

175 [HRC General Comment 32](#), §41.

176 Article 16 of the [Guidelines on the Role of Prosecutors](#).

177 Articles 9 and 14 of the [ICCPR](#).

is broad and encompasses any form of coercion, whether direct or indirect, physical or psychological.

The Human Rights Committee has stated that the prohibition of coerced confessions requires “the absence of any direct or indirect physical or psychological pressure from the investigating authorities on the accused, with a view to obtaining a confession of guilt”.¹⁷⁸ This right applies no matter what offence the individual is suspected of committing. Individuals questioned in connection with terrorism-related offences have been at particular risk of coercion.¹⁷⁹

Coercive pressure can also be exerted through detention conditions designed to “counter resistance”. Prolonged incommunicado detention or secret detention violate the prohibition against torture and other ill-treatment and are therefore forms of prohibited coercion.¹⁸⁰ (See [sections 3.3](#) and [3.7.1](#).) Similarly, holding a person in solitary confinement before trial may be considered a form of coercion and amount to torture or other ill-treatment, including when used intentionally to obtain information or a confession.¹⁸¹ (See [Chapter 4.5.5](#).)

Criminal justice systems that rely heavily on confessions create incentives for investigating officials – who are often under pressure to obtain enough evidence to secure convictions – to use torture and other ill-treatment to coerce a confession.¹⁸² In such systems, performance evaluation based on percentage of cases solved further encourages the use of coercion. States must remove incentives to obtain confessions in any way that involves coercion and ensure that the criminal justice system is evidence-led rather than confession-based, for example by improving training for law enforcement officials and developing other investigative techniques, including scientific methods.¹⁸³ The European Committee for the Prevention of Torture has noted that the “questioning of criminal suspects is a specialist task which calls for specific training if it is to be performed in a satisfactory manner”.¹⁸⁴

178 [HRC General Comment 32](#), §§41 and 60.

179 [UN General Assembly resolution 65/221](#), §6(n), [Report on Terrorism and Human Rights](#), Inter-American Commission, §§1, 210-216.

180 [UN mechanisms Joint Study on Secret Detention](#), UN Doc. A/HRC/13/42 (2010) p. 2, p. 6 §(f), §§27, 28 and 292(f); [Joint report on Detainees at Guantánamo Bay](#), UN Doc E/CN.4/2006/120 (2006) §53; Special Rapporteur on torture, UN Doc. [A/61/259](#) (2006) §56; Special Rapporteur on human rights and counter-terrorism, UN Doc. [A/63/223](#) (2008) §§33, 45(d); [HRC General Comment 20](#), §11; [Molero Coca, Rodolfo Gerbert Asencios Lindo, Rodolfo Dynnik Asencios Lindo, Ambrosio Concha v Peru](#) (11.182), Inter-American Commission, Report 49/00 (2000) §§97-103; Section N(6)(d)(i) of the [Principles on Fair Trial in Africa](#).

181 Special Rapporteur on torture, UN Doc. [A/66/268](#) (2011) §§73, 85.

182 [CPT 12th General Report](#), CPT/Inf (2002) p. 15, §35.

183 See Concluding Observations of CAT: [Russian Federation](#), UN Doc. CAT/C/CR/28/4 (2002) §6(b); [Kazakhstan](#), UN Doc. CAT/C/KAZ/CO/2 (2008) §7(c); [CPT 12th General Report](#), CPT/Inf (2002) p. 14, §35; Concluding Observations of HRC: [Japan](#), UN Doc. CCPR/C/JPN/CO/5 (2008) §19; SPT visit reports: [Maldives](#), UN Doc. CAT/OP/MDV/1 (2009) §91; [Benin](#), UN Doc. CAT/OP/Ben/1 (2009) §§76-77; [Mexico](#), UN Doc. CAT/OP/MEX/1, (2009) §§104, 144 and 182; [Paraguay](#), UN CAT/OP/PRY/1 (2010) §§84 and 105; [Honduras](#), UN Doc. CAT/OP/HND/1 §150; Special Rapporteur on torture, UN Doc. [A/HRC/13/39/Add.5](#) (2010) §§100-101; Human Rights Council resolution, [UN Doc. A/HRC/RES/13/19](#) (2010) §7.

184 [CPT Standards](#), CPT/Inf (2002) p.9, §34.

3.9.2 PROHIBITED INTERROGATION TECHNIQUES AND PRACTICES

Certain forms of interrogation techniques constitute torture or other ill-treatment and are therefore prohibited. Such prohibited interrogation techniques include: beatings; sexual abuse; humiliation; “waterboarding” (inflicting the experience of drowning); “short shackling” (restraining the victim in a highly uncomfortable position); stress positions; use of dogs to induce fear; exploiting an individual’s phobias to induce fear;¹⁸⁵ playing of loud music; sleep deprivation; sensory deprivation, including blindfolding and hooding; threats, including threats of torture, death threats and threats of harm to loved ones; violent shaking; exposing the detainee to extreme temperatures; electrocution; suffocation (for example with plastic bags); removing fingernails and toenails; cigarette burns; and forced feeding of excrement and urine.¹⁸⁶ It should be emphasized that interrogators are often “creative” in designing different methods of torture and other ill-treatment, so this list is by no means exhaustive.

To take one example, blindfolding and hooding of detainees during interrogation can induce fear and is often used in combination with other forms of ill-treatment during interrogations in order to extract information or a “confession”.¹⁸⁷ Blindfolding and hooding also facilitate other forms of torture or other ill-treatment as they are often used in order that detainees are unable to identify persons who abuse them, thereby making it virtually impossible to hold those responsible accountable.¹⁸⁸ The Special Rapporteur on torture has noted: “Each interrogation should begin with the identification of all persons present. All interrogation sessions should be recorded, preferably video-recorded, and the identity of all persons present should be included in the record. In this regard, the practice of blindfolding and hooding should be explicitly forbidden.”¹⁸⁹ (See [section 3.9.5](#).)

The European Committee for the Prevention of Torture has expressed concern over the psychological impact of blindfolding a person:

185 Concluding Observations of CAT: [USA](#), UN Doc.CAT/C/USA/CO/2 (2006) §24.

186 See Special Rapporteur on torture: [UN Doc. A/56/156](#) (2001) §39(f); [E/CN.4/2003/68](#) (2002) §26(g); [CPT 12th General Report](#), CPT/Inf (2002) p. 15 §38. Concluding Observations of CAT: Israel, UN Doc. CAT/C/SR.297/Add.1 (1997) §8(a) and UN Doc. CAT/C/ISR/CO/4 (2009) §14; [USA](#), UN Doc. CAT/C/USA/CO/2 (2006) §§14 and 24; Concluding Observations of HRC: USA, UN Doc CCPR/C/USA/CO/3/Rev.1 (2006) §13; [Israel](#), UN Doc CCPR/CO/78/ISR (2003) §18. See also Special Rapporteur on human rights and counter-terrorism: USA, (2007) §§33-35 and 61-62; [Joint Report on Detainees at Guantánamo Bay](#), UN Doc E/CN.4/2006/120 (2006) §§46-52; [KAIING Guek Eav alias Duch](#), Extraordinary Chambers in the Courts of Cambodia, Judgment (2010) §360; European Court, [Gafgen v Germany](#) (22978/05), Grand Chamber (2010) §§90–1; [CPT 12th General Report](#), CPT/Inf (2002) p. 15, §38.

187 Concluding Observations of CAT: [Israel](#), UN Doc. A/53/44 (1998) p. 24, §239(b) and 240(a); Concluding Observations of HRC: USA, UN Doc. CCPR/C/USA/CO/3/Rev.1 (2006); [Salman v Turkey](#) (21986/93), European Court Grand Chamber §132; [Elici et al v Turkey](#) (23145/93 and 25091/94), European Court (2004) §§614, 615, 641 and 646; [Report on Terrorism and Human Rights, Inter-American Commission](#), OEA/Ser.LV/II.116 Doc. 5 rev. 1 corr (2002) §161.

188 [General Recommendations of the Special Rapporteur on torture](#), 1(g); Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, [UN Doc. A/HRC/22/56](#) (2013) p. 38, §§47, 50 and 57.

189 Visit report of the Special Rapporteur on torture: [Spain](#), UN Doc. E/CN.4/2004/56/Add.2 (2004) §68.

“Even in cases when no physical ill-treatment occurs, to blindfold a person in custody – and in particular someone undergoing questioning – is a form of oppressive conduct, the effect of which on the person concerned will frequently amount to psychological ill-treatment. The CPT recommends that the blindfolding of persons who are in police custody be expressly prohibited.”¹⁹⁰

Furthermore the European Committee for the Prevention of Torture has expressed concern over interrogation rooms of a highly intimidating nature: for example, rooms entirely decorated in black and equipped with spotlights directed at the seat used by the person undergoing interrogation. It has stated that “[f]acilities of this kind have no place in a police service”.¹⁹¹

The European Committee for the Prevention of Torture has stated that interrogation rooms need to be adequately lit, heated and ventilated, and should allow for all participants in the interview process to be seated on chairs of a similar style and standard of comfort. The interviewing officer should not be placed in a dominating (for example, elevated) or remote position in relation to the person under interrogation. Further, colour schemes should be neutral.¹⁹²

3.9.3 PRESENCE OF A LAWYER DURING QUESTIONING

All persons deprived of their liberty have the right to access legal counsel. (See [section 3.5](#).) Ensuring the presence of a lawyer during interrogation is one of the fundamental safeguards against torture and other ill-treatment. This enables a lawyer to ensure that the safeguards for the persons suspected or accused of a criminal offence are respected in practice, and in particular that torture and other ill-treatment or other forms of coercion are not applied in order to obtain information or a confession.

People suspected or accused of criminal offences who are being questioned have the right to the presence and assistance of a lawyer.¹⁹³ They have the right to speak with counsel in confidence, and an interpreter may be necessary for individuals who do not speak the local language to communicate with their lawyers.¹⁹⁴ They should be notified of these rights before being questioned.¹⁹⁵

The Human Rights Committee and the Committee against Torture have repeatedly called on states to ensure the right of all detainees to legal counsel before questioning

190 CPT Standards, p. 10, §38.

191 CPT Standards, p. 10, §37.

192 CPT Standards, p. 10, §37.

193 Special Rapporteur on the independence of judges and lawyers: UK, UN Doc. E/CN.4/1998/39/add.4 (1998) §47; Guidelines 3(43)(b) and 10(53)(b) of the [Principles on Legal Aid](#); Guideline 9(a)(ii) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

194 HRC General Comment 32, §32; Principle 18(1) of the [Body of Principles](#); Principle 7 of the [Principles on Legal Aid](#); Guideline 9(a)(iv) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#).

195 Principle 8(29) of the [Principles on Legal Aid](#); Guideline 9(a)(i) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

and to the presence of counsel during questioning.¹⁹⁶ In particular, the Committee against Torture has recommended “that counsel be permitted to be present during interrogation, especially since such presence would be in furtherance of the implementation of article 15 of the Convention”.¹⁹⁷

The Subcommittee on Prevention of Torture has stated in clear terms the importance of having a lawyer present during interrogations:

“The presence of a lawyer during police interrogation can have a deterrent effect on individuals who might otherwise try to obtain information or confessions by force from people in their custody. If the detained person has a right to consult with a lawyer in private as from the outset of custody, the detainee is also able to report any ill-treatment experienced; on the detainee’s request the lawyer can lodge a complaint. If such information is expressed under professional secrecy, it may still be used anonymously to prevent abusive practices in future. The presence of a lawyer during police questioning may also work as a protection for police officers in case they face unfounded allegations of ill-treatment.”¹⁹⁸

3.9.4 RIGHT TO AN INTERPRETER

Anyone who does not understand or speak the language used by the authorities is entitled to have the assistance of an interpreter following arrest, including during questioning, free of charge.¹⁹⁹ The interpreter should be independent of the authorities.

Principle 14 of the [Body of Principles](#) sets out the right of a detainee to an interpreter “in connection with legal proceedings subsequent to his arrest”, which will include questioning.²⁰⁰

196 Concluding Observations of HRC: [Ireland](#), UN Doc. CCPR/C/IRL/CO/3 (2008) §14; [Republic of Korea](#), UN Doc. CCPR/C/KOR/CO/3 (2006) §14; [Netherlands](#), UN Doc. CCPR/C/NL/CO/4 (2009) §11; Concluding Observations of CAT: [Turkey](#), UN Doc. CAT/C/TUR/CO/3 (2010) §11.

197 CAT annual report, [UN Doc. A/52/44](#) (1997) §68. See also European Court: [Salduz v Turkey](#) (36391/02), Grand Chamber (2008) §§54-55; [Nechiporuk and Yonkalo v Ukraine](#) (42310/04), (2011) §§262-3; [John Murray v United Kingdom](#) (18731/91), Grand Chamber (1996) §66; [Dayanan v Turkey](#) (7377/03), (2009) §§32-33; [Turkan v Turkey](#) (33086/04), (2008) §42; Inter-American Court: [Barreto Leiva v Venezuela](#) (2009) §§62-64; [Cabrera-García and Montiel-Flores v Mexico](#) (2010) §§154-155; [Report on Terrorism and Human Rights](#), Inter-American Commission §237; Guidelines 27 and 31 of the [Robben Island Guidelines](#); Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#).

198 SPT visit report: [Maldives](#), UN Doc. CAT/OP/MDV/1 (2009) §105. See also [CPT Standards](#), p. 6, §38 and p. 11, §41.

199 Article 40(2)(vi) of the [Convention on the Rights of the Child](#); Article 16(4) of the [Arab Charter](#); Article 26(2) of the [European Convention on Migrant Workers](#); Principle 14 of the [Body of Principles](#); Guideline 3(43)(f) of the [Principles on Legal Aid](#); Section N(4) of the [Principles on Fair Trial in Africa](#); Guidelines 4(h) and 9(a)(iv) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#); Article 55(1)(c) of the [Rome Statute](#); Rule 42 of the [Yugoslavia Rules](#). Applicable during criminal proceedings: Article 14(3)(f) of the [ICCPR](#); Article 8(2)(a) of the [American Convention](#); Article 6(3)(e) of the [European Convention](#); [Kamasinski v Austria](#) (9783/82), European Court (1989) §74.

200 Principle 14 of the [Body of Principles](#).

Translations should be provided of key written documents which the individual needs to understand to ensure fairness.²⁰¹ Any statement or written record signed by the detainee should be in a language they know and understand.²⁰² This is important not only for people who do not speak the language but also for people who do not read the language (even if they speak it).²⁰³ The right to interpretation and translation must extend to facilities for people with visual, hearing or other disabilities.²⁰⁴

3.9.5 RECORDS OF ALL PERIODS OF QUESTIONING

Keeping detailed records of all periods of questioning is an essential safeguard against torture and other ill-treatment. Ideally a video and/or audio recording of all periods spent in questioning should be made.²⁰⁵ This must cover not only periods of actual questioning but all periods spent in this situation, such as intervals, in order to avoid abuse. If this is not available then a written record should be kept in a manner that cannot be altered or tampered with, detailing certain minimum information about the questioning, including:

- The identity of everyone present;
- The date;
- The time of the start and finish of any period of questioning;
- The time and duration of any break periods;
- Verbatim record of the questions and answers.²⁰⁶

Access to the record of the questioning is to be given to the person being interrogated and their lawyer. Principle 23 of the [Body of Principles](#) states:

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.
2. A detained or imprisoned person, or his counsel when provided by law, shall have access to the information described in paragraph 1 of the present principle.”

All states must ensure that clear rules or guidelines exist on the manner in which questioning is to be conducted. A detainee should be informed of the identity of all those present at the interview. There should also be clear rules covering the permissible length of the interview, rest periods and breaks, places in which interviews may take place, and the questioning of persons under the influence of drugs and alcohol. It should also be required that a record be kept of the time at which interviews start

201 [Luedicke, Belkacem and Koç v Germany](#) (6210/73, 6877/75, 7132/75), European Court (1978) §48.

202 SPT visit report: [Paraguay](#), UN Doc. CAT/OP/PRY/1 (2010) §83.

203 Guideline 3(43)(f) of the [Principles on Legal Aid](#).

204 Article 13 of the [Convention on Enforced Disappearance](#).

205 Guideline 9(g) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

206 See Principle 23 of the [Body of Principles](#); Guideline 9(e) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

and end, of requests made by detainees during interviews and of persons present during interviews.²⁰⁷

3.9.6 SEPARATION OF THE AUTHORITIES RESPONSIBLE FOR DETENTION FROM THOSE IN CHARGE OF QUESTIONING

As a further safeguard against torture and other ill-treatment, the authorities responsible for detention should be separate from those in charge of questioning. This is essential to ensure that individuals do not remain in the custody of those responsible for questioning for long periods, which would make them vulnerable to torture and other ill-treatment or other human rights violations to serve the interrogators' aims.

The Working Group on Arbitrary Detention has affirmed that:

“The tasks of the authorities responsible for conducting investigations and for detaining accused individuals need to be kept quite separate if the rights of accused individuals deprived of their liberty are to be guaranteed respect”.²⁰⁸

Similarly the Committee against Torture and the Subcommittee on Prevention of Torture have stated that the detention and interrogation functions should be separated.²⁰⁹

The Special Rapporteur on torture has stated:

“Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours. They should accordingly be transferred to a pre-trial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted”.²¹⁰

3.10 SAFEGUARDS FOR SPECIFIC CATEGORIES OF PERSONS DEPRIVED OF LIBERTY IN THE CRIMINAL JUSTICE SYSTEM

Key points:

- **Detention pending trial should be the exception. Pre-trial detainees should be held separately from convicted prisoners and treated in accordance with their unconvicted status; that is, taking into account the presumption of innocence.**
- **Under international law, the death penalty and sentences of life imprisonment without the possibility of release (or parole) may not be imposed for offences committed under the age of 18.**

207 CPT Standards, p. 7, §39. See also [General Recommendations of the Special Rapporteur on torture](#) (2003) p. 2, §g.

208 WGAD report: [Latvia](#), UN Doc. E/CN.4/2005/6/Add.2 (2004) §84(g).

209 Concluding Observations of CAT: [Jordan](#), UN Doc. A/50/44 (1995) §176; SPT visit report: [Maldives](#), UN Doc. CAT/OP/MDV/1 (2009) §§77 and 79; [Mexico](#), UN Doc. CAT/OP/MEX/1 (2010) §42.

210 Annual reports of the Special Rapporteur on torture: [UN Doc. A/56/156](#) (2001) §39(f); [UN Doc. E/CN.4/2003/68](#) (2003) §26(g).

- The detention of children must be a last resort and for the shortest time possible. Children deprived of their liberty must be able to notify or have notified a parent or guardian.
- Children deprived of their liberty should, as a rule, be held separately from adults.
- Children who have not reached the minimum age of criminal responsibility must not be charged with an offence or held responsible within criminal proceedings. When a child is arrested a range of safeguards must be in place to secure their safety, wellbeing and rights, in particular providing protection against arbitrary detention, torture and other ill-treatment.
- Persons with disabilities who are held on suspicion of committing a criminal offence must be afforded the same rights as others.
- Consideration must be given to the needs of older people in detention who may require particular support, such as extra clothing in winter, mobility arrangements within facilities and cells, special protection against violence and extortion within the prison structure, and educational and vocational opportunities that are appropriate to the person's age.
- Efforts should be made to release older detainees who no longer pose a threat to public safety and who have already served a portion of their prison sentence.
- States are required to address the gender-specific needs of women deprived of their liberty. States have a duty to provide for women's particular hygiene and health care needs, including facilities for pre-natal and post-natal care.
- Women deprived of their liberty should as a rule be held separately from men. Personal searches of women must only be carried out by female staff.
- Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons must not be discriminated against. If deprived of their liberty, LGBTI persons must not be marginalized. Decisions regarding the placement of transgender or intersex persons must be appropriate to their sexual orientation or gender identity.
- Detained foreign nationals (regardless of their immigration status), have a right to contact with their embassy or consular post. If the person is a refugee or a stateless person, or is under the protection of an intergovernmental organization, they must be promptly notified of their right to communicate with the organization or with a representative of the state where they reside.
- Detained foreign nationals must be informed of their rights in a language they understand and where necessary be provided with the services of an interpreter.
- Asylum-seekers and immigration detainees should not be subject to criminal penalties solely for breaching immigration regulations. Where immigration detainees are held in penal institutions simply for having breached immigration regulations, international standards require that they be held in separate facilities from persons who are subject to the jurisdiction of the criminal law.

While the international standards outlined above apply to all persons arrested or detained, international standards also contain provisions addressing the specific needs or vulnerability of particular groups of persons deprived of their liberty.

3.10.1 PRE-TRIAL DETAINEES

Key points:

- **Detention pending trial should be the exception.**
- **Persons charged with a criminal offence that does not carry a custodial penalty shall not be subject to pre-trial detention.**
- **Persons held pending trial should be accommodated separately from convicted prisoners and treated according to their unconvicted status, taking into account the presumption of innocence.**
- **Conditions of detention for pre-trial detainees should be at least as favourable as conditions for convicted prisoners.**

As noted above, torture and other ill-treatment are most likely to occur during the initial period of detention, when the “incentives” to ill-treat are most prevalent; for example, to extract information or a “confession”. Pre-trial detainees are therefore particularly at risk of being subjected to torture and other ill-treatment, and it is imperative that the safeguards outlined in this chapter are respected in practice. It must be the exception, not the rule, if persons are detained pending trial.²¹¹ (See [section 3.4.](#)) Persons charged with a criminal offence that does not carry a custodial penalty must not be subject to pre-trial detention.²¹² Persons held in pre-trial detention must be accommodated separately from people who have been convicted and sentenced.²¹³

In accordance with international law, anyone suspected of or charged with a criminal offence who has not yet been tried must be presumed innocent;²¹⁴ they must be treated in a manner appropriate to their unconvicted status. Therefore, the treatment of pre-trial detainees should be different from that of convicted prisoners and the conditions and regime should be at least as favourable as for convicted prisoners.²¹⁵

Pre-trial detainees should be subjected only to such restrictions as are necessary and proportionate for the investigation or the administration of justice in the case and

211 Article 9(3) of the [ICCPR](#); Article 37(b) of the [Convention on the Rights of the Child](#); Article 16(6) of the [Migrant Workers Convention](#); Article 14(5) of the [Arab Charter](#); Principle 39 of the [Body of Principles](#); Rule 6 of the [Tokyo Rules](#); Section M1(e) of the [Principles on Fair Trial in Africa](#); Guideline 10(b) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Principle III(2) of the [Principles on Persons Deprived of Liberty in the Americas](#); Rule 3 of the [CoE Rules on remand](#); Rule 65(B) of the [Rwanda Rules](#); Rule 65(B) of the [Yugoslavia Rules](#).

212 See Guideline 10(c) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

213 Article 10(2)(a) of the [ICCPR](#); Rules 11(b) and 112 of the [Mandela Rules](#); Article 5(4) of the [American Convention](#); Guideline 35 of the [Robben Island Guidelines](#); Guideline 26 of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Principle XIX of the [Principles on Persons Deprived of Liberty in the Americas](#); Rule 18(8) of the [European Prison Rules](#); HRC General Comment 21, §9.

214 Article 11 of the [Universal Declaration](#); Article 14(2) of the [ICCPR](#); Article 40(2)(b)(i) of the [Convention on the Rights of the Child](#); Article 18 of the [Migrant Workers Convention](#); Principle 36(1) of the [Body of Principles](#); Article 7(1)(b) of the [African Charter](#); Article XXVI of the [American Declaration](#); Article 8(2) of the [American Convention](#); Article 16 of the [Arab Charter](#); Article 6(2) of the [European Convention](#); Article 66 of the [Rome Statute](#); Article 20(3) of the [Rwanda Statute](#); Article 21(3) of the [Yugoslavia Statute](#).

215 Article 10(2)(a) of the [ICCPR](#); Rules 111(2)-(3) and 112-120 of the [Mandela Rules](#); Article 5(4) of the [American Convention](#); Rules 94-101 of the [European Prison Rules](#).

the security of the institution.²¹⁶ In addition to the rights and safeguards to be afforded to all persons deprived of their liberty, international standards state that pre-trial detainees should be able to:

- Wear their own clothing if it is suitable,²¹⁷ or if they wear prison clothing it should be different from that worn by convicted prisoners;²¹⁸
- Wear civilian clothing in good condition for court appearances;²¹⁹
- Have access to books, writing materials and newspapers;²²⁰
- Have additional visits and phone calls;²²¹
- Have the opportunity, but not be required, to work;²²²
- Have accommodation in a single cell, as far as possible, subject to court directions, local custom or choice.²²³

In addition, a key safeguard against torture and other ill-treatment for pre-trial detainees is the separation and independence of the authorities responsible for detention from the authorities undertaking the investigation.²²⁴ (see [Chapter 3.9.6.](#))

3.10.2 CHILDREN

Article 1 of the Convention on the Rights of the Child defines children as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.²²⁵ Children who have not reached the minimum age of criminal responsibility should not be formally charged with an offence or held responsible within a criminal justice procedure. Instead, their behaviour should be addressed through special protective measures, if appropriate and in the child’s best interest.²²⁶ States must set a criminal age of responsibility that should not be unreasonably low.²²⁷

216 Principle 36(2) of the [Body of Principles](#); [Laduna v Slovakia](#) (31827/02), European Court (2011) §§59-74.

217 Rule 115 of the [Mandela Rules](#); Rule 97(1) of the [European Prison Rules](#).

218 Rule 115 of the [Mandela Rules](#); Rule 97(2) of the [European Prison Rules](#).

219 Rule 95(3) of the [European Prison Rules](#), and by implication, Rule 19(3) of the [Mandela Rules](#).

220 Rules 117 and 120(2) of the [Mandela Rules](#); Rule 99(c) of the [European Prison Rules](#).

221 Rule 99(b) of the [European Prison Rules](#).

222 Rule 116 of the [Mandela Rules](#); Rule 100(1) of the [European Prison Rules](#).

223 Rule 113 of the [Mandela Rules](#); Rule 96 of the [European Prison Rules](#).

224 WGAD, UN Doc. [E/CN.4/2005/6](#) (2004) §79.

225 Article 1 of the [Convention on the Rights of the Child](#). See also Article 2 of the [African Charter on the Rights of the Child](#). Other instruments do not define the age of a child; however, treaty bodies have applied the term to anyone under the age of 18 years: see Inter-American Court, [Advisory Opinion OC-17/2002](#) §42.

226 [CRC General Comment 10](#), §31. Neither the Convention on the Rights of the Child nor the ICCPR expressly sets a minimum age of criminal responsibility, but the CRC has concluded that 12 is the lowest internationally acceptable minimum age of criminal responsibility and the HRC has urged states that set the age at eight to 10 years to raise the minimum age. See Concluding Observations of HRC: [Zambia](#), UN Doc. [CCPR/C/ZMB/CO/3](#) (2007) §26; [Kenya](#), UN Doc. [CCPR/CO/83/KEN](#) (2005) §24; Concluding Observations of CAT: [Guyana](#), UN Doc. [CAT/C/GUY/CO/1](#) (2006) §18; [Ethiopia](#), UN Doc. [CAT/C/ETH/CO/1](#) (2010) §27; [Yemen](#), UN Doc. [CAT/C/YEM/CO/2/Rev.1](#) (2010) §25; [Indonesia](#), UN Doc. [CAT/C/IDN/CO/2](#) (2008) §17; WGAD: [Malta](#), UN Doc. [A/HRC/13/30/Add.2](#) (2010) §31. Section N(d) of the [Principles on Fair Trial in Africa](#) establishes a minimum age of criminal responsibility of 15.

227 [CRC General Comment 10](#), §31; [HRC General Comment 17](#), §4. See also [HRC General Comment 34](#), §43; Rule 4(1) of the [Beijing Rules](#); Article 17(4) of the [African Charter on the Rights of the Child](#).

Guideline 31(a)(iii) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#) states that:

“If there is uncertainty regarding the age of an arrested or detained person, but reason to believe that the person may be under the age of 18, the State must ensure that the person is to be treated as a child if and until such time as his or her age is determined to be 18 years or older. States shall have in place a process of age assessment for children.”

Article 37(a) of the [Convention on the Rights of the Child](#) expressly prohibits torture and other ill-treatment, as well as certain forms of punishment:

“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age”.

Article 37(b) goes on to state that: “no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”²²⁸ Every child deprived of liberty must be “treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.”²²⁹

When a child is arrested the following safeguards are essential to secure their safety and wellbeing, as well as providing protection against arbitrary detention and coercion:

- To guarantee the child’s right to be brought before a competent judge within 24 hours;²³⁰
- To notify the child’s parents or guardians;²³¹
- To allow the child to have contact with his or her family;²³²
- To be held separately from adults, unless it is in the child’s best interests to do otherwise;²³³
- To give the child the opportunity to confer with a lawyer as soon as possible;²³⁴

228 See also Guideline 31 of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

229 Article 37(c) of the [Convention on the Rights of the Child](#). See also Guideline 31(a)(v) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

230 [CRC General Comment 10](#), §83; Rule 10(2) of the [Beijing Rules](#).

231 Rule 10(1) of the [Beijing Rules](#); Guideline 31(c)(ii) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

232 Article 37(c) of the [Convention on the Rights of the Child](#); Guideline 31(i) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

233 Article 37(c) of the [Convention on the Rights of the Child](#); Guideline 31(d)(ii) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

234 Article 40(2)(b)(ii) of the [Convention on the Rights of the Child](#). See also [CRC General Comment 10](#), §49; Rule 15(1) of the [Beijing Rules](#); Guideline 31(g) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

- To access legal aid under the same conditions or more lenient conditions as adults.²³⁵

The right for any person arrested or detained to notify a relative or appropriate third person is all the more pressing in respect of children deprived of their liberty, who may be less able to understand the reasons for the detention and to defend themselves, and may be more susceptible to coercion. Therefore, international standards require that children deprived of their liberty must be able to notify or have notified a parent or guardian.²³⁶

In order to protect children deprived of their liberty against abuse, international standards also require that children must be held separately from adults at all times, whether following arrest, awaiting trial or serving a sentence,²³⁷ unless, exceptionally, this is counter to the child's best interest.²³⁸ The Committee on the Rights of the Child cautions that the term "in the child's best interests" does not mean "for the convenience of the states parties".²³⁹

The European Committee for the Prevention of Torture notes that:

"there may be exceptional situations (e.g. children and parents being held as immigration detainees) in which it is plainly in the best interests of juveniles not to be separated from particular adults. However, to accommodate juveniles and unrelated adults together inevitably brings with it the possibility of domination and exploitation."²⁴⁰

To comply with the prohibition on holding children with adults and in fulfilment of the aims of juvenile justice, states should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.²⁴¹ Guideline 31(i) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#) recommends that "where possible, specialised

235 Guideline 3(22) of the [Principles on Legal Aid](#); Guideline 31(g) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

236 Principle 16(3) of the [Body of Principles](#); Rule 10(1) of the [Beijing Rules](#); Guidelines 31(c)(i) and (ii) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

237 Articles 10(2)(b) and 10(3) of the [ICCPR](#); Article 37(c) of the [Convention on the Rights of the Child](#); Article 17(2)(b) of the [African Charter on the Rights of the Child](#); Articles 18(2)(b) and (c) of the [African Youth Charter](#); Section O(k) and (l)(viii) of the [Principles on Fair Trial in Africa](#); Guideline 31(d)(ii) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#); Guideline 36 of the [Robben Island Guidelines](#).

238 [HRC General Comment 17](#), §2; Preamble to Human Rights Council [resolution 10/2](#); CHR resolution on Human Rights in the Administration of Justice, in Particular of Children and Juveniles in Detention: UN Docs. [E/CN.4/RES/1998/39](#), preamble, §15; [E/CN.4/RES/2000/39](#), preamble; [E/CN.4/RES/2004/43](#), preamble; CHR, Rights of the Child: UN Doc. [E/CN.4/RES/2002/92](#), §31(b); [E/CN.4/RES/2003/86](#), §35(c); [E/CN.4/RES/2004/48](#), §35(c); [CPT 9th General Report](#), §25.

239 [CRC General Comment 10](#), §85.

240 [CPT 9th General Report](#), §25.

241 Rule 9 of the [Beijing Rules](#); [CRC General Comment 10](#), §85. See also [CPT 9th General Report](#), §28. For a summary of principles and rules relating to detention practices to be followed for children, see [UN Rules for the Protection of Juveniles Deprived of their Liberty](#); [CRC General Comment 10](#), §§85-89.

units be established in law enforcement agencies that frequently or exclusively deal with children who are in conflict with the law.”

The death penalty and sentences of life imprisonment without possibility of release (or parole) may not be imposed for offences committed under the age of 18.²⁴² The prohibition on such sentences is absolute: Article 37(a) of the [Convention on the Rights of the Child](#) forbids the imposition of such sentences for “offences committed by persons below eighteen years of age,” a formulation that leaves no latitude for states that set an earlier age of majority. Similarly, the [ICCPR](#) allows no derogation from the prohibition on the death penalty for juveniles.²⁴³

Furthermore, the Human Rights Committee and the Inter-American Commission consider that the prohibition on executing children is a peremptory norm of customary international law, which means that it is binding on all states and cannot be derogated from under any circumstances.²⁴⁴

Amnesty International opposes both the death penalty and the imposition of life sentences without the possibility of parole for people of all ages.

Corporal punishment is also inconsistent with the purposes of juvenile justice and violates the prohibition on torture and other ill-treatment.²⁴⁵ (See [Chapter 2.5.1.](#))

The UN General Assembly and the Human Rights Council, as well as its precursor the Commission on Human Rights, have repeatedly called on states to ensure that no child in detention is sentenced to forced labour.²⁴⁶

3.10.3 PERSONS WITH DISABILITIES

The [Convention on Persons with Disabilities](#) does not define disability but notes that: “Persons with disabilities include those who have long-term physical, mental,

242 Article 6(5) of the [ICCPR](#); Article 37(a) of the [Convention on the Rights of the Child](#); Article 5(3) of the [African Charter on the Rights of the Child](#); Article 4(5) of the [American Convention](#); Paragraph 3 of the [Death Penalty Safeguards](#); Rule 17.2 of the [Beijing Rules](#); Section O(o)(iv) of the [Principles on Fair Trial in Africa](#); Article 68 of the [Fourth Geneva Convention](#); Article 77(5) of [Protocol I](#); Article 6(4) of [Protocol II](#). [HRC General Comment 17](#), §2. See also [UN General Assembly resolution 65/213](#), §16; CHR: The Question of the Death Penalty, UN Docs. [E/CN.4/RES/2000/65](#), §3(a); [E/CN.4/RES/2001/68](#), §4(a); [E/CN.4/RES/2002/77](#), §4(a); [E/CN.4/RES/2003/86](#), §35(a); [E/CN.4/RES/2005/59](#), §7(a); CHR: Rights of the Child, UN Docs. [E/CN.4/RES/2004/48](#), §35(a); [E/CN.4/RES/2005/44](#), §27(c); Sub-Commission on Human Rights, [The Death Penalty in Relation to Juvenile Offenders](#), Res. 2000/17 (2000).

243 Article 4(2) of the [ICCPR](#).

244 Article 7 of the [ICCPR](#); Articles 40(1) and 37(a) of the [Convention on the Rights of the Child](#); Article 1 of the [Convention against Torture](#); Section O(o)(iv) of the [Principles on Fair Trial in Africa](#); HRC General Comment 24, §8; [Michael Domingues v United States](#) (12.285), Inter-American Commission (2002) §§84 and 85; See [Amnesty International](#), [The exclusion of child offenders from the death penalty under general international law](#) (Index: ACT 50/004/2003).

245 [CRC General Comment 10](#), §71.

246 See UN General Assembly resolutions: [UN GA Res. 63/241](#), §46, reaffirmed by [UN GA Res. 66/141](#), §19; [UN GA Res. 58/157](#), §41(c); CHR resolutions: UN Docs. [E/CN.4/RES/2001/75](#), §28(b); [E/CN.4/RES/2002/92](#), §31(b); [E/CN.4/RES/2004/48](#), §35(c); [E/CN.4/RES/2005/44](#), §27(d).

intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”²⁴⁷ In other words, it is the social reaction to impairment, together with the impairment itself, that prevents full participation and equality of rights. The World Health Organization sees “disability” as an “umbrella term for impairments, activity limitations and participation restrictions, referring to the negative aspects of the interaction between an individual (with a health condition) and that individual’s contextual factors (environmental and personal factors)”.²⁴⁸

Because of stigmatization and discrimination, persons with disabilities can be exposed to torture or other ill-treatment within the criminal justice system, as well as in health care or welfare settings.²⁴⁹ In places of detention they can be stigmatized, and physically, psychologically and sexually abused while possibly lacking the means to avoid dangerous situations or to protect themselves.²⁵⁰ (See [Chapter 3.12.3](#) for safeguards for persons with disabilities held in contexts other than the criminal justice system.)

Article 14(1) of the [Convention on Persons with Disabilities](#) requires states to ensure that all persons with disabilities, on an equal basis with others:

- “a) Enjoy the right to liberty and security of person;
- b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.”²⁵¹

In addition, Article 14(2) of the [Convention on Persons with Disabilities](#) requires states parties to ensure that “if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights law and shall be treated in compliance with the objectives and principles of this Convention, including by provision of reasonable accommodation.”²⁵² In addition, states must ensure that any persons with disabilities who are held on suspicion of committing a criminal offence must be informed of the reason for their arrest and their rights in a way that they understand. (See [Chapter 3.2.2](#).)²⁵³

Guideline 33(d)(ii) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#) states that measures should be taken to ensure

247 Article 1 of the [Convention on Persons with Disabilities](#).

248 World Health Organization, *World Report on Disability*, 2011, p. 4.

249 Interim Report of the Special Rapporteur on torture, *UN Doc. A/63/175* (2008) §38.

250 Human Rights Watch, *Ill-Equipped: US Prisons and Offenders with Mental Illness*, 2003, p. 7.

251 Article 14(1) of the [Convention on Persons with Disabilities](#).

252 Article 14(2) of the [Convention on Persons with Disabilities](#). See also Guidelines 4(i), 11(f) and 33(d) of the [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#).

253 Article 16(5) of the [Migrant Workers Convention](#); Article 5(2) of the [European Convention](#); Principle 14 of the [Body of Principles](#); Guideline 20(d) of the [Robben Island Guidelines](#); Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#).

that “[t]he physical conditions of police custody and pre-trial detention are adapted to take into account the needs of persons with physical, mental, intellectual or sensory disabilities, and that the detention of persons with disability does not amount to inhuman or degrading treatment.”

Similarly the [Mandela Rules](#) state that “[p]rison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.”²⁵⁴ Detainees with sensory disabilities should be provided with information in a manner appropriate to their needs.²⁵⁵

The [Mandela Rules](#) also state that “[t]he imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.”²⁵⁶ (See [Chapter 4.5.4](#).)

3.10.4 ELDERLY PERSONS

The proportion of older inmates in prisons is steadily increasing. The tendency to impose long sentences and particularly sentences of life without parole are certain to increase the number of prisoners over the age of 50. This raises questions about the capacity of places of detention to deal with health problems such as dementia, chronic diseases and other geriatric conditions as well as psychological problems.²⁵⁷

Older people can be progressively more at risk of abuse as their capacity to manage their own affairs and maintain personal security diminishes.²⁵⁸ Physical weakness and progressive mental deterioration can contribute to the potential of older persons to be victimized by staff and fellow detainees and diminish their capacity to defend themselves.²⁵⁹

Older persons deprived of their liberty have the right to equal treatment before the law and the same safeguards as other persons.²⁶⁰ (See [section 3.2](#).) Yet the specific needs of older detainees are overlooked in existing international human rights instruments. As the prison population gets older there is growing recognition that states

254 Rule 5(2) of the [Mandela Rules](#).

255 Rule 55(2) of the [Mandela Rules](#).

256 Rule 45(2) of the [Mandela Rules](#).

257 Human Rights Watch, [Old Behind Bars: The Aging Prison Population in the United States](#), 2012; A. Moll, [Dementia and the ageing prison population: treatment challenges and examples of good practice](#), 2013.

258 The term “elderly” is relative and there is no universally accepted definition. A UN General Assembly resolution cites 60 as an indicator age, [UN Doc. A/RES/67/139](#) (2013), although some countries opt for higher age thresholds such as 65. In many countries, life expectancy is well under 60; in 2015, at least nine countries had life expectancies at birth of less than 50 years and a further 30 countries had life expectancies at birth of less than 60 years, see UN Development Programme, [International Human Development Indicators](#), 2015.

259 See C. Cooper, A. Selwood and G. Livingston, ‘The prevalence of elder abuse and neglect: a systematic review’, in [Age and Ageing](#) (2008), §§151-160; D. Sethi, S. Wood et al (eds), [European report on preventing elder maltreatment](#), 2011.

260 Article 9 of the [ICCPR](#).

need to put in place age-specific services within prisons and other places of detention to address the needs of older detainees.²⁶¹

Article 13(1) of the [Convention on Persons with Disabilities](#) calls on states “to ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations”, which will be applicable to older persons with disabilities. However, there are still considerable gaps in international human rights law for the protection of older persons deprived of their liberty.

The UN High Commissioner for Human Rights has noted that: “Safe conditions of confinement, in particular for those older people in need of special support, demands entirely different considerations, such as extra clothing in the winter, mobility arrangements within facilities and cells, special protection against violence and extortion within [the] prison structure, and age-appropriate educational and vocational opportunities.”²⁶²

In particular, efforts should be made to release older detainees who no longer pose a threat to public safety and who have already served a portion of their prison sentence. The UN High Commissioner for Human Rights has reported that consideration must be given as to whether the continued incarceration of older persons is “a disproportionately severe punishment and whether humanitarian considerations should apply to prisoners at a certain age” and whether “alternative forms of punishment may be preferable based on financial, practical and human rights considerations involved”.²⁶³

3.10.5 WOMEN

In accordance with international standards, women in custody must be held in separate accommodation from men, either in separate institutions or segregated within an institution, under the authority of female staff.²⁶⁴ Male staff should not hold front-line positions in places where women are deprived of their liberty and should not enter the part of the institution holding women unaccompanied by a female member of staff.²⁶⁵ Personal searches of women must only be carried out by female staff.²⁶⁶

261 See for example Prison Reform Trust, *Good practice with older people in prison – the views of prison staff*, UK, 2010; Human Rights Watch, *Old Behind Bars: The Aging Prison Population in the United States*, USA, 2012.

262 UN High Commissioner for Human Rights annual report: [UN Doc. E/2012/51](#) (2012) §60.

263 UN High Commissioner for Human Rights annual report: [UN Doc. E/2012/51](#) (2012) §61.

264 Rules 11(a) and 81(1) of the [Mandela Rules](#); Section M7(c) of the [Principles on Fair Trial in Africa](#); Article 36 of the [Robben Island Guidelines](#); Principles XIX-XX of the [Principles on Persons Deprived of Liberty in the Americas](#); Regulation 105 of the [ICC Regulations](#).

265 Rule 81(2) of the [Mandela Rules](#); Concluding Observations of HRC: [Canada](#), UN Doc. CCPR/C/CAN/CO/5 (2005) §18; [USA](#), UN Doc. CCPR/C/USA/CO/3/Rev.1 (2006) §33; [Zambia](#), UN Doc. CCPR/C/ZMB/CO/3 (2007) §20; Concluding Observations of CAT: [Togo](#), UN Doc. CAT/C/TGO/CO/1 (2006) §20; [Philippines](#), UN Doc. CAT/C/PHL/CO/2 (2009) §18; Concluding Observations of CEDAW: [Argentina](#), UN Doc. CEDAW/C/ARG/CO/6 (2010) §§27–28; See [CAT General Comment 2](#), §14.

266 Rule 19 of the [Bangkok Rules](#).

International standards underscore the duty of states to address the gender-specific needs of women deprived of their liberty.²⁶⁷ They require states to provide for women's particular hygiene and health care needs, including facilities for prenatal and postnatal care.²⁶⁸ Whenever possible, arrangements should be made for children to be born in an outside hospital.²⁶⁹

Decisions on allowing children to stay with mothers in custody must be based on the best interests of the children, who should not be treated as prisoners, and special provision should be made for them.²⁷⁰ Before mothers, as well as fathers, are detained or imprisoned, they should be allowed to make arrangements for dependent children, taking into account the best interests of the children.²⁷¹

Women, as well as men, who have suffered sexual abuse or other forms of violence, before or during their detention or imprisonment, must be informed of their right to seek recourse; prison authorities must help them obtain legal assistance and ensure they have access to specialized psychological support or counselling.²⁷²

3.10.6 LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX PEOPLE

As noted in [Chapter 2.8](#), lesbian, gay, bisexual, transgender and intersex (LGBTI) persons are particularly at risk of torture and other ill-treatment as a result of discriminatory practices and attitudes. The criminalization of consensual sexual acts between adults of the same sex in some countries places individuals at risk of being arbitrarily detained and subject to abuse while in detention. States should take necessary measures to eliminate any form of violence or discrimination against detainees based on sexual orientation or gender identity.²⁷³ The Subcommittee on Prevention of Torture has noted that in cases of LGBTI persons deprived of their liberty, state authorities “must recognise specific risks, identify those who are in a vulnerable situation and protect them in ways that do not leave them isolated”.²⁷⁴

267 See in particular the [Bangkok Rules](#); Section M7(c) of the [Principles on Fair Trial in Africa](#); Rule 34.1 of the [European Prison Rules](#).

268 Rules 5-18 of the [Bangkok Rules](#); Principles X and XII of the [Principles on Persons Deprived of Liberty in the Americas](#); Rule 19.7 of the [European Prison Rules](#); [CPT 10th General Report](#), CPT/Inf (2000) 13, §§30–33; Annual report of the Special Rapporteur on torture, UN Doc. [A/HRC/7/3](#) (2008) §41.

269 Rule 28 of the [Mandela Rules](#); Article 24(b) of the [Protocol to the African Charter on the Rights of Women in Africa](#); Rule 48 of the [Bangkok Rules](#); Rule 34.3 of the [European Prison Rules](#); Regulation 104 of the [ICC Regulations](#); [CPT 10th General Report](#), CPT/Inf (2000) 13, §27.

270 Article 3 of the [Convention on the Rights of the Child](#); Rules 49-52 of the [Bangkok Rules](#); Principle X of the [Principles on Persons Deprived of Liberty in the Americas](#); Rule 36 of the [European Prison Rules](#); [CPT 10th General Report](#), CPT/Inf (2000) 13, §§28-29.

271 Rule 2(2) of the [Bangkok Rules](#).

272 Rule 7 of the [Bangkok Rules](#); Rule 34.2 of the [European Prison Rules](#).

273 See Concluding Observations of CAT: [Armenia](#), UN Doc. CAT/C/ARM/CO/3 (2012) §19. See also SPT Report, [UN Doc. CAT/OP/C/5/7/4](#) (2016) §§61-62 and 71-82.

274 SPT Report, [UN Doc. CAT/OP/C/5/7/4](#) (2016) §76.

In accordance with Principle 9 of the [Yogyakarta Principles](#), states must take the following measures with respect to LGBTI persons who are deprived of their liberty to protect them from discrimination and abuse:

- a) Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse;
- b) Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired;
- c) Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity;
- d) Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population;
- e) Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner;
- f) Provide for the independent monitoring of detention facilities by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity”.²⁷⁵

The Subcommittee on Prevention of Torture has also stated that for LGBTI persons deprived of their liberty, states need to put in place “institutional policies and methods to adequately address self-identification, classification, risk assessment and placement”.²⁷⁶ Specific policies must be developed in relation to searches, intake and interrogation. Proper screening for all incoming detainees to identify risk of sexual assault will help support procedures and decisions on housing, which should be done on a case-by-case basis and to the extent possible with the informed consent of the detainee.²⁷⁷ Measures must also be put in place to address the specific health needs of LGBTI persons, including hormone and other treatment associated with gender transition for transgender persons.²⁷⁸

Similarly, the Special Rapporteur on torture has noted that criminal justice systems tend to overlook and neglect the specific needs of LGBTI persons deprived of their

²⁷⁵ Principle 9 of the [Yogyakarta Principles](#).

²⁷⁶ SPT Report, [UN Doc. CAT/OP/C/57/4 \(2016\)](#) §66. On self-identification see also Rule 7(a) of the [Mandela Rules](#).

²⁷⁷ SPT Report, [UN Doc. CAT/OP/C/57/4 \(2016\)](#) §76.

²⁷⁸ SPT Report, [UN Doc. CAT/OP/C/57/4 \(2016\)](#) §77.

liberty, and authorities have a responsibility to take reasonable measures to prevent and combat violence against LGBTI persons.²⁷⁹

Some measures that appear to be “protective”, such as placement in solitary confinement or administrative segregation, can themselves violate the prohibition of torture and other ill-treatment.²⁸⁰

3.10.7 FOREIGN NATIONALS

Where the person detained or arrested is a foreign national (regardless of their immigration status),²⁸¹ they must be promptly informed of their right to communicate with their embassy or consular post.²⁸² If the person is a refugee or a stateless person, or is under the protection of an intergovernmental organization, they must be promptly notified of their right to communicate with the organization or with a representative of the state where they reside.²⁸³

If the arrested or detained foreign national asks the authorities to contact consular officials, then the authorities must do so without delay (but they should not do so unless the individual makes the request). They must also be informed of their rights in a language they understand and where necessary they must be provided with the services of an interpreter. (See [Chapter 3.2.2.](#))

3.10.8 ASYLUM-SEEKERS AND IMMIGRATION DETAINEES

In an attempt to discourage irregular migration, some countries have made irregular entry or presence (for example, entry without a visa or staying once a visa has expired) a criminal offence. These national immigration regulations include measures that subject immigration detainees to criminal penalties, including imprisonment. Globally, the increasing influence of criminal law in the area of immigration policy can stigmatize irregular migrants as criminals, which in turn generates stereotyped and xenophobic attitudes towards migrants and asylum-seekers in general.²⁸⁴

Asylum-seekers and immigration detainees should not be subject to criminal penalties solely for breaching immigration regulations – for instance by entering or staying in a country without legal authorization. The Refugee Convention expressly forbids states parties from imposing penalties on asylum-seekers for irregular entry or presence,

279 Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §§34–35.

280 Report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §35; SPT report, [UN Doc. CAT/OP/C/57/4](#) (2016) §64.

281 UN General Assembly resolution, [UN Doc. A/RES/65/212](#) (2010) §4(g); Human Rights Council resolution 12/6, [UN Doc. A/HRC/RES/12/6](#) (2009) §4(b).

282 Article 36(1)(b) of the [Vienna Convention on Consular Relations](#); Article 16(7)(c) of the [Migrant Workers Convention](#); Principle 16(2) of the [Body of Principles](#); Guideline 3(43)(c) of the [Principles on Legal Aid](#); Section M(2)(d) of the [Principles on Fair Trial in Africa](#); Principle V of the [Principles on Persons Deprived of Liberty in the Americas](#); Rule 37.1 of the [European Prison Rules](#).

283 See, CoE Committee of Ministers [Rec \(2012\)12](#), Annex, §§15.1, 25.1.

284 Amnesty International, [The Netherlands: The detention of irregular migrants and asylum-seekers](#) (Index: EUR 35/02/2008) p. 5.

provided that they present themselves before the state authorities and show good cause for their entry or presence.²⁸⁵

The UN Working Group on Arbitrary Detention has stated that criminalizing migrants who enter or remain in the country without authorization exceeds the legitimate interest of states to control and restrict irregular migration and can lead to unnecessary detention.²⁸⁶

Likewise, the Special Rapporteur on the human rights of migrants has affirmed:

“Infractions of immigration laws and regulations should not be considered criminal offences under national legislation... irregular migrants are not criminals per se and they should not be treated as such. Detention of migrants on the ground of their irregular status should under no circumstance be of a punitive nature.”²⁸⁷

The Special Rapporteur has also urged governments to avoid criminalizing irregular migrants in language, policies and practice, and to refrain from using incorrect terminology such as “illegal migrant”.²⁸⁸

Where immigration detainees are held in penal institutions simply for having breached immigration regulations, international standards require that they be held in separate facilities from persons who are subject to the jurisdiction of the criminal law.²⁸⁹

3.11 SAFEGUARDS AT RELEASE

Release from custody is a moment which can carry further risks. The officers in charge of an individual’s release may use the opportunity to inflict final abuse. The individual may also be at risk of being released into an unsafe environment where he or she may face violence.

International standards require that proper records are kept of the release of persons from detention, in order to ensure that the release can be verified. Article 17(3)

(h) of the [Convention on Enforced Disappearance](#) requires that a record of the date and time of release is kept. Similarly, Rule 7(c) of the [Mandela Rules](#) states that the day and hour of admission and release as well as of any transfer must be kept in custodial

²⁸⁵ Article 31(1) of the [Refugee Convention](#).

²⁸⁶ WGAD annual report, [UN Doc. A/HRC/7/4](#) (2008) §53.

²⁸⁷ Special Rapporteur on the human rights of migrants: [UN Doc. E/CN.4/2003/85](#) (2002) §§73-74; [UN Doc. A/HRC/7/12](#), §50.

²⁸⁸ Annual report of the Special Rapporteur on the human rights of migrants, [UN Doc. A/HRC/23/46](#) (2013) §89.

²⁸⁹ Rule 11(c) of the [Mandela Rules](#); Article 17(3) of the [Migrant Workers Convention](#); Guideline 8 of the [UNHCR Detention Guidelines](#), 2012; UNHCR/OHCHR, [Summary Conclusions from Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons](#), 2011, §12.

records. This information must also be made available to anyone with a legitimate interest such as relatives or legal counsel.²⁹⁰

Article 21 of the [Convention on Enforced Disappearance](#) also states that:

“Each State Party shall take the necessary measures to ensure that persons deprived of liberty are released in a manner permitting reliable verification that they have actually been released. Each State Party shall also take the necessary measures to assure the physical integrity of such persons and their ability to exercise fully their rights at the time of release, without prejudice to any obligations to which such persons may be subject under national law.”²⁹¹

To protect individuals against violations at the moment of release, governments should ensure that there is adequate surveillance and control of the actions of law enforcement officials during the process of release and the availability of effective complaint mechanisms for detainees who have been released.

To protect detainees against release into an unsafe environment, governments should ensure that officials are aware of the environment into which detainees are released and that they heed whatever fears detainees may express on that issue. Where necessary, special arrangements should be made – for example, to release detainees in the presence of a relative or another person or organization that can assure their safety.

Furthermore, the European Committee for the Prevention of Torture has stated that “persons who are released from police custody without being brought before a judge have the right to directly request a medical examination/certificate from a recognised forensic doctor”.²⁹² This would enable essential medical evidence of torture or other ill-treatment to be gathered and documented.

In addition, the Committee has also noted that where detainees have been receiving medical treatment while detained, for example for transmittable diseases commonly found in detention populations such as tuberculosis, hepatitis or HIV/AIDs, the continuation of treatment after release must be guaranteed.²⁹³

3.12 PROTECTION FOR PERSONS DEPRIVED OF THEIR LIBERTY IN OTHER CONTEXTS

Key points:

- **Amnesty International opposes all administrative detention carried out on security grounds because such detention circumvents fair trial safeguards and places people at risk of torture and other ill-treatment.**

²⁹⁰ Article 18(1)(e) of the [Convention on Enforced Disappearance](#).

²⁹¹ See also Article 11 of the [Declaration on Enforced Disappearance](#).

²⁹² [CPT Standards](#), p. 12, §42.

²⁹³ [CPT Standards](#), p. 26, §31.

- **Amnesty International opposes the routine or automatic use of detention for the purposes of immigration control.**
- **Persons with disabilities who are placed in institutions must not be discriminated against, and institutions should meet standards that guarantee the protection of the rights of those residents.**

Over the years, the settings where individuals are deprived of their liberty have been increasingly understood to go beyond traditional places of detention under the criminal justice system – police stations and prisons – to include other settings where people may be held against their will such as psychiatric hospitals; establishments for persons with disabilities; institutions for children; and centres for migrants, refugees, asylum-seekers, stateless and undocumented persons.

Deprivation of liberty and the unequal power relations generated in these settings induce vulnerability to torture and other ill-treatment, which is further enhanced by and intersects with the specific needs and vulnerabilities of the various categories of individuals detained. The vulnerability of such groups can be compounded by additional risk factors such as the economic and social status, race, age, gender and sexual orientation of the detainees. The state must take positive measures to ensure that all persons deprived of their liberty are protected from torture and other ill-treatment and discrimination.

3.12.1 ADMINISTRATIVE DETENTION ON SECURITY GROUNDS

Administrative detention refers to the detention of individuals by the state, often on security grounds, without intent to prosecute them in a criminal trial (even if there is some form of judicial review over the detention).

While not completely prohibited under international law, its use is only permitted in exceptional circumstances, subject to stringent safeguards. Administrative detention may result in arbitrary detention and if prolonged or repeated can amount to cruel, inhuman and degrading treatment or punishment. It has been used by some countries to circumvent the legal protections and due process that all detainees are entitled to under international law, increasing the risk of being subjected to torture and other ill-treatment, as well as other human rights violations.²⁹⁴ The Special Rapporteur on torture has stated that persons under administrative detention should be entitled to the same degree of protection as persons under criminal detention, and that countries should consider abolishing, in accordance with relevant international standards, all forms of administrative detention.²⁹⁵

People held as administrative detainees can spend months and sometimes years in prison without being tried and without knowing the details of the allegations against

²⁹⁴ Amnesty International, [Starved of justice: Palestinians detained without trial by Israel](#) (Index: MDE 15/026/2012) p. 11.

²⁹⁵ Annual report of the Special Rapporteur on torture, [UN Doc. E/CN.4/2001/66](#) (2001) §1316(g).

them. No criminal charges are filed and there is no intention of bringing the detainee to trial. It can therefore be impossible for detainees to defend themselves meaningfully or refute the allegations against them, and to know when they will be released.²⁹⁶

Amnesty International opposes all systems of administrative detention because they are used by states to circumvent the fair trial safeguards of criminal proceedings and thus are inherently arbitrary. Amnesty International considers that all prisoners, including those held in administrative detention, must be charged with a recognizable criminal offence, remanded (if necessary) by an independent court and given a fair trial within a reasonable time, or else released.²⁹⁷

Article 9(1) of the [ICCPR](#) states that no one should be subjected to arbitrary detention and that deprivation of liberty must be based on grounds and procedures established by law. Detainees must be informed at the time of arrest of the reasons for their arrest;²⁹⁸ and have access to a judicial authority empowered to rule without delay on the lawfulness of their detention and order their release if the detention is unlawful.²⁹⁹ (See [sections 3.4](#) and [3.6](#).) All these requirements apply to “anyone who is deprived of his liberty by arrest or detention”, and therefore apply fully to administrative detainees.

Article 4 of the [ICCPR](#) allows governments to take measures derogating from the provisions of Article 9 when they face a “public emergency which threatens the life of the nation”. Such measures can only be used “to the extent strictly required”, may not discriminate against a particular group, and may not be inconsistent with other obligations under international law. Furthermore, Article 4(2) prohibits derogation from certain rights in the [ICCPR](#) even during a state of emergency, including the right not to be subjected to torture or other ill-treatment.³⁰⁰

A state of emergency is, by definition, an exceptional and grave threat to the nation which may justify certain temporary legal responses. States of emergency therefore must not be perpetual or de facto permanent. The Human Rights Committee

296 Amnesty International, [Starved of justice: Palestinians detained without trial by Israel](#) (Index: MDE 15/026/2012) p. 12.

297 Amnesty International has documented the use and abuse of administrative detention in many countries, and campaigns against detention without charge or trial in many different contexts. For some recent Amnesty International reports focusing on administrative detention, see: [Starved of justice: Palestinians detained without trial by Israel](#) (Index: MDE 15/026/2012); [Locked away: Sri Lanka's security detainees](#) (Index: ASA 37/003/2012); [Guantánamo: A decade of damage to human rights and 10 anti-human rights messages Guantánamo still sends](#) (Index: AMR 51/103/2011); [The spring that never blossomed: Freedoms suppressed in Azerbaijan](#) (Index: EUR 55/011/2011); [Time for justice: Egypt's corrosive system of detention](#) (Index: MDE 12/029/2011); [A 'lawless law': Detentions under the Jammu and Kashmir Public Safety Act](#) (Index: ASA 20/001/2011); and [New order, same abuses: Unlawful detentions and torture in Iraq](#) (Index: MDE 14/006/2010).

298 Article 9(2) of the [ICCPR](#).

299 Article 9(4) of the [ICCPR](#).

300 Article 7 of the [ICCPR](#).

has emphasized that “[m]easures derogating from the provisions of the [ICCPR] must be of an exceptional and temporary nature”.³⁰¹

The Human Rights Committee has also made it clear that not every disturbance or catastrophe qualifies as a public emergency which threatens the life of the nation. During international or non-international armed conflict, rules of international humanitarian law become applicable and help, in addition to Articles 4 and 5 of the ICCPR, to prevent the abuse of a state's emergency powers. The ICCPR requires that, even during an armed conflict, measures derogating from the ICCPR are allowed only if and to the extent that the situation constitutes a threat to the life of the nation. If states parties consider invoking Article 4 of the ICCPR in situations other than an armed conflict, they should carefully consider the justification and why such a measure is necessary and legitimate in the circumstances.³⁰²

The Human Rights Committee further notes: “States parties may in no circumstances invoke article 4 of the [ICCPR] as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence.”³⁰³

Amnesty International does not dispute the duty of a government to safeguard the security of those under its jurisdiction, but concurs with the Human Rights Committee, and other expert bodies, that this must be done in a way that does not violate the human rights of any person.³⁰⁴

3.12.2 INSTITUTIONS FOR ASYLUM-SEEKERS AND IMMIGRATION DETENTION

Under international law, states have the right to control the entry and residence of foreign nationals within their territory. In the pursuit of this aim, asylum-seekers and migrants can be subject to immigration detention, which at times is a form of administrative detention. UNHCR, the UN refugee agency, has defined detention as “the deprivation of liberty or confinement in a closed place which [a person] is not permitted to leave at will, including, though not limited to, prisons or purpose-built detention, closed reception or holding centres or facilities”.³⁰⁵ In order to be lawful, these types of measures must comply with states’ international human rights obligations.

301 [HRC General Comment 29](#), §2.

302 [HRC Comment 29](#), §3.

303 [HRC General Comment 29](#), §11.

304 Amnesty International, [Starved of justice: Palestinians detained without trial by Israel](#) (Index: MDE 15/026/2012) p. 40.

305 [UNHCR Detention Guidelines](#) (2012) §5.

Amnesty International opposes the routine or automatic use of detention for the purposes of immigration control.³⁰⁶ Detention should only be used when lawful, necessary and proportionate, and children should never be held in immigration detention. Detention has negative effects on the physical and psychological wellbeing of detainees.³⁰⁷ Moreover, international human rights law contains a strong presumption against detention, and places clear restrictions on its use. All major international and regional human rights instruments protect the fundamental rights to liberty and security of the person,³⁰⁸ as well as freedom of movement.³⁰⁹ These rights apply equally to all human beings, regardless of their immigration, refugee, asylum-seeker or other status.³¹⁰ Furthermore, the [Refugee Convention](#) prohibits the punishment of asylum-seekers on the basis of their unlawful entry or presence, and requires states to apply only those restrictions to freedom of movement that are necessary.³¹¹

Concerns about the use of immigration detention apply with particular force in the case of especially vulnerable migrants. With respect to asylum-seekers, UNHCR has stated that their detention is “inherently undesirable”.³¹² UNHCR elaborated: “Because of the experience of seeking asylum, and the often traumatic events precipitating flight, asylum seekers may present with psychological illness, trauma, depression, anxiety, aggression, and other physical, psychological and emotional consequences. Such factors need to be weighed in the assessment of the necessity to detain... Victims of torture and other serious physical, psychological or sexual violence also need special attention and should generally not be detained.”³¹³

With respect to victims of trafficking, OHCHR has explicitly called on states to ensure “that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody”.³¹⁴ Regarding unaccompanied children, the Working Group on Arbitrary Detention has stated that they should never be detained.³¹⁵ In order to ensure that particularly vulnerable migrants are rapidly identified and treated

306 See for example Amnesty International, [Migration-related detention: A research guide on human rights standards relevant to the detention of migrants, asylum-seekers and refugees](#) (Index: POL 33/005/2007); Amnesty International, [Irregular migrants and asylum-seekers: Alternatives to immigration detention](#) (Index: POL 33/001/2009).

307 Guideline 7 of the [UNHCR Detention Guidelines](#).

308 Articles 3 and 9 of the [Universal Declaration](#); Article 9 of the [ICCPR](#); Article 6 of the [African Charter](#); Article 7 of the [American Convention](#); Articles 1 and 25 of the [American Declaration](#); Article 5 of the [European Convention](#); Article 6 of the [Charter of Fundamental Rights of the EU](#).

309 Article 12 of the [ICCPR](#); Article 12 of the [African Charter](#); Article 22 of the [American Convention](#); Article 45(f) of the [European Charter of Fundamental Rights](#).

310 [HRC General Comment 18](#); [HRC General Comment 15](#), §5.

311 Article 31(1)-(2) of the [Refugee Convention](#).

312 UNHCR, [The Detention of Refugees and Asylum-Seekers by Reason of their Unauthorised Entry or Presence](#) (2007) p. 1..

313 Guideline 9(1) of the [UNHCR Detention Guidelines](#), §49.

314 Guideline 2(6) of the [OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking](#), UN Doc. E/2002/68/Add.1.

315 WGAD visit report: [UK](#), UN Doc. E/CN.4/1999/63/Add.3 (1998) §37.

appropriately, states must put in place effective screening procedures. Inadequate screening processes can result in extremely vulnerable asylum-seekers – including torture survivors – being handcuffed and sent to detention centres.³¹⁶

For immigration detention to be justifiable under international law, certain conditions must be met. International law requires the state to demonstrate in each individual case that detention is necessary and proportionate to the objective to be achieved, which must be one of three legitimate objectives:

- Preventing absconding;
- Verifying identity;
- Ensuring compliance with a deportation order.³¹⁷

Decisions to detain must be based on a detailed individual assessment, including the individual's personal history and his or her risk of absconding.³¹⁸ State authorities must also demonstrate that less restrictive alternatives will not be effective.³¹⁹ Under international human rights law, indefinite immigration detention is arbitrary per se.³²⁰ With respect to the requirements of necessity and proportionality, in the context of immigration detention the Human Rights Committee has affirmed that authorities must consider “less invasive means of achieving the same ends”.³²¹

Indeed, states are obliged to ensure that alternatives to detention are available and accessible to migrants, in law, policy and practice, and must only employ immigration detention as a measure of last resort. UNHCR has asserted that unconditional release must be “regarded as the normative starting point against which all other measures ought to be compared”.³²²

Alternatives to immigration detention include registration and documentation requirements, release on bail, reporting requirements, and release to NGO supervision. In the European Union, the [Recast EU Directive on Asylum Reception Conditions](#) (which came into force in 2015) allows member states to detain individuals only when it is necessary after an individualized assessment in each case, and only if other

316 UNHCR, *Quality Initiative Project: Fifth Report* (Feb 2007-March 2008), p. vii, §§2.3.81,2.3.85; [The Queen \(on the applicant of EO, RA, CE, OE and RAN\) and the Secretary for the Home Department](#), UK, Queen's Bench Division of the High Court, 17 May 2013.

317 Amnesty International, *Irregular migrants and asylum-seekers: Alternatives to immigration detention* (Index: POL 33/001/2009) p.7; Concluding Observations of CERD: [Bahamas](#), UN Doc. CERD/C/64/CO/1 (2004) §§34, 35 and 37; Concluding Observations of HRC: [Australia](#), UN Doc. A/55/40 vol. I (2000) §§526 and 527; UNHCR/OHCHR, *Summary Conclusions from Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons*, 2011, §3; Guideline 4(1) of the UNHCR Detention Guidelines.

318 Amnesty International, *Irregular migrants and asylum-seekers: Alternatives to immigration detention* (Index: POL 33/001/2009) p. 7.

319 Guideline 4.2 of the [UNHCR Detention Guidelines](#); Amnesty International, *Irregular migrants and asylum-seekers: Alternatives to immigration detention* (Index: POL 33/001/2009) p. 7.

320 *A v Australia*, HRC, UN Doc. CCPR/C/59/D/560/1993 (1997) §9(4).

321 *C v Australia*, HRC, UN Doc. CCPR/C/76/D/900/1999 (2002) §8(2).

322 UNHCR, *Alternatives to Detention of Asylum Seekers and Refugees*, 2006, §79.

less coercive alternatives cannot be applied effectively.³²³ UNHCR has found that in countries where detention is the most restrictive measure on a sliding scale of options, states are more likely to ensure in practice the application of alternatives.³²⁴ Importantly, since alternative measures do interfere with individuals' fundamental rights to some degree, their use must also comply with international standards regarding legality, necessity, proportionality and non-discrimination.³²⁵

When individuals are held in immigration detention facilities, they should be confined to places especially designed for immigration detainees, and not in penal institutions. The [Mandela Rules](#) require that different categories of prisoners be kept in separate institutions, and in particular that civil prisoners be separated from persons imprisoned for committing a criminal offence.³²⁶

UNHCR has underlined that:

“Detention of asylum-seekers for immigration-related reasons should not be punitive in nature. The use of prisons, jails, and facilities designed or operated as prisons or jails, should be avoided. If asylum-seekers are held in such facilities, they should be separated from the general prison population. Criminal standards (such as wearing prisoner uniforms or shackling) are not appropriate.”³²⁷

Similarly, the Working Group on Arbitrary Detention has affirmed that:

“[Immigration] detainees should be held in special immigration detention centres in conditions appropriate to their status and not with persons charged with or convicted of criminal offences (unless so charged or convicted themselves).”³²⁸

In addition, a joint UNHCR/OHCHR study declared:

“All asylum-seekers and migrants who have not been convicted of recognizable crimes should be kept separate from convicted criminals and housed in specific facilities adapted to their particular circumstances and needs.”³²⁹

For individuals held in immigration custody, the general international legal protections for persons deprived of their liberty are applicable. Immigration detainees have the right to be treated in a humane and dignified manner.³³⁰ Torture and other ill-treatment are forbidden under any circumstances.³³¹ In order not to be arbitrary,

323 Article 8(2) of the [Recast EU Directive on Asylum Reception Conditions](#), Directive 2013/33/EU (2015).

324 UNHCR, [Alternatives to Detention of Asylum Seekers and Refugees](#), 2006.

325 [Siracusa Principles](#); Guideline 4(3) of the [UNHCR Detention Guidelines](#).

326 Rule 11 of the [Mandela Rules](#).

327 Guidelines 8(iii) of the [UNHCR Detention Guidelines](#).

328 WGAD visit report: [UK](#), UN.Doc. E/CN.4/1999/63/Add.3 (1998) §30.

329 UNHCR/OHCHR, [Summary Conclusions from Global Roundtable on Alternatives to Detention of Asylum-Seekers, Refugees, Migrants and Stateless Persons](#), 2011, §12.

330 Principle 1 of the [Body of Principles](#).

331 Principle 6 of the [Body of Principles](#).

the detention of migrants, including those in an irregular situation, must be prescribed by law, necessary in the specific circumstances and proportionate to the legitimate aim pursued.³³² Detained migrants have the right to challenge their detention and treatment, in particular with respect to torture and other ill-treatment.³³³

Finally, state authorities should take into account the special needs and circumstances of particular categories of immigration detainees. UNHCR, for example, advises authorities to have due regard to the requirements of victims of trauma or torture, among other groups.³³⁴ In the European Union, the [Recast EU Directive on Asylum Reception Conditions](#) obliges member states to “take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national legislation implementing this Directive.”³³⁵

In addition, in line with standards pertaining to all persons deprived of their liberty, the particular needs of categories of detainees such as migrant children, migrants with disabilities, women, and LGBTI detainees – as discussed in [Chapter 3.10](#) – must be protected.

3.12.3 INSTITUTIONS FOR PEOPLE WITH MENTAL OR PHYSICAL DISABILITIES

The involuntary admission and detention of a person is a de facto interference with that person’s right to liberty, which is protected under international human rights law.³³⁶ As noted above in [section 3.2.1](#), the right to liberty is not an absolute right and may be restricted in limited circumstances, provided such interference is necessary, proportionate to the legitimate aim for which it is carried out, and is carried out in accordance with a procedure set out in law. Article 14(b) of the [Convention on Persons with Disabilities](#) provides that “the existence of a disability shall in no case justify a deprivation of liberty”.

However, currently no consensus or common stance on this issue as regards persons with psychosocial disabilities can be identified, with some seeing this provision as having both direct and indirect application, while others believe that circumstances or conditions which may be associated with psychosocial disabilities (such as high risk to self or others) may constitute grounds for deprivation of liberty.³³⁷

332 *A v Australia*, HRC, UN Doc. CCPR/C/59/D/560/1993 (1997) §9.2.

333 Principle 33 of the [Body of Principles](#).

334 Guideline 9 of the [UNHCR Detention Guidelines](#).

335 Article 21 of the EU [Recast EU Directive on Asylum Reception Conditions](#), Directive 2013/33/EU (2015).

336 See Article 3 of the [Universal Declaration](#); Article 9 of the [ICCPR](#); Article 37(b) of the [Convention on the Rights of the Child](#); Article 16(1) of the [Migrant Workers Convention](#); Article 6 of the [African Charter](#); Article 7 of the [American Convention](#); Article 14(1) of the [Arab Charter](#); Article 5 of the [European Convention](#); Section M(1) of the [Principles on Fair Trial in Africa](#); Article 1 of the [American Declaration](#).

337 See Amnesty International Ireland, [Mental Health Act 2001: A review](#), 2011, p. 73.

Institutions for people with disabilities must provide care and protection, although wherever possible these should be provided within the family or community in which the person lives. However, people can be at risk of torture and other ill-treatment, as well as other human rights violations, within these institutions.³³⁸

In many countries, people with disabilities have been subject to discrimination and neglect within their communities and families, which have not always provided the care needed by those with high levels of dependency. Thus, there are many institutions providing services to people with disabilities. Pending development of the capacity and the political will to implement an effective policy of living in the community, institutions should meet standards that guarantee the protection of the human rights of residents.

This includes adequate levels of trained staff working on the basis of competence and respect for human rights and human dignity. In all countries, those with disabilities are more likely, on average, to be under-employed, be more dependent on social welfare (where it exists), be more liable to marginalization and discrimination and face additional challenges in seeking to realize their right to the highest standard of physical and mental health.

Mental health is among the most neglected elements of the right to the highest attainable standard of physical and mental health, and persons with intellectual and psychosocial disabilities are among the most neglected populations. Disabilities can place severe personal, economic, and social burdens on both individuals and their families, yet facilities intended to relieve the burden of affected individuals and their families are often places where abuses of human rights take place.

Where residents are either detained involuntarily or lack the capacity to leave (even where they are not detained as a result of a court ruling), institutions should meet the standards set out in the [Mandela Rules](#) and the [Body of Principles](#). In addition, the [Convention on Persons with Disabilities](#) sets out a number of important principles. This Convention provides, among other things, for:

- Equal recognition before the law.³³⁹
- Access to justice.³⁴⁰
- Liberty and security of the person.³⁴¹
- Freedom from torture and other ill-treatment.³⁴²
- Freedom from exploitation, violence and abuse.³⁴³

338 See Amnesty International, [Bulgaria: Arbitrary detention and ill-treatment of people with mental disabilities](#) (Index: EUR 15/008/2002).

339 Article 12 of the [Convention on Persons with Disabilities](#).

340 Article 13 of the [Convention on Persons with Disabilities](#).

341 Article 14 of the [Convention on Persons with Disabilities](#).

342 Article 15 of the [Convention on Persons with Disabilities](#).

343 Article 16 of the [Convention on Persons with Disabilities](#).

The principles of non-discrimination and reasonable accommodation (including the adaptation of facilities and practices to protect the rights of persons with disabilities) are core values.³⁴⁴ Institutions for people with disabilities should be subject to regular monitoring to ensure that these obligations and core principles are respected in practice.³⁴⁵ (See [Chapter 5](#) on monitoring.)

As noted in [Chapters 2.3.1](#) and [2.9](#), states' obligation to prevent torture and other ill-treatment applies not only to public officials, such as law enforcement agents, but also to doctors, health care professionals and social workers, including those working in private hospitals, other institutions and detention centres.³⁴⁶ The Committee against Torture has declared that the prohibition of torture must be enforced in all types of institutions and states must exercise due diligence to prevent, investigate, prosecute and punish violations by non-state officials or private actors.³⁴⁷

The Subcommittee on Prevention of Torture has highlighted the vulnerability of persons with intellectual disabilities and mental health problems, recognizing that in many countries they "are at the lowest level of the social hierarchy. Discrimination, prejudice, deprivation of fundamental human rights and violation of their dignity are widespread."³⁴⁸

The Subcommittee has emphasized that:

"the key purpose of monitoring is to prevent discrimination, deprivation of human rights, neglect and ill-treatment. This includes monitoring a country's mental health policy, allocation of funding, i.e. whether there is a shift from the outdated ideology of segregation and keeping patients in large institutions to more community-based services. The focus should also be directed towards raising public awareness in society on the rights and needs of people with mental health problems in order to overcome stereotypes, fears and prejudice concerning mental disabilities."³⁴⁹

The European Committee for the Prevention of Torture has also specifically recommended that the particular needs of disabled persons in relation to catering arrangements should be taken into account.³⁵⁰

344 See Article 3 of the [Convention on Persons with Disabilities](#).

345 Institutions where persons with disabilities are placed involuntarily or lack the capacity to leave will fall under the definition of places of detention under Article 2 of the [European Convention for the Prevention of Torture](#) and Article 4 of the [Optional Protocol to the Convention against Torture](#) and therefore will fall within the visiting mandate of the European Committee for the Prevention of Torture and UN Subcommittee on Prevention of Torture respectively.

346 Annual report of the Special Rapporteur on torture, [UN Doc. A/HRC/22/53](#) (2013) §24

347 [CAT General Comment 2](#), §§15, 17 and 18. See also annual report of the Special Rapporteur on torture, [UN Doc. A/HRC/22/53](#) (2013) §24.

348 SPT Fifth Annual Report, [UN Doc. CAT/C/48/5](#) (2012) §51.

349 SPT Fifth Annual Report, [UN Doc. CAT/C/48/5](#) (2012) §53.

350 [CPT Standards](#), p. 51, §35.

The UN Committee for the Rights of Persons with Disabilities has made a number of specific recommendations relating to persons with disabilities held in institutions, including:

- Repealing legislative provisions which allow for the deprivation of liberty on the basis of disabilities, including psychosocial or intellectual disabilities;³⁵¹
- Abolishing the administration of medical treatment, in particular sterilization, without the full and informed consent of the patient;³⁵²
- Introducing effective measures to promote the deinstitutionalization of persons with disabilities;³⁵³
- Establishing a national mechanism for the prevention of torture so that institutionalized persons with disabilities can be monitored and protected from actions that may constitute acts of torture.³⁵⁴

Procedures based on “medical need” that cause pain to people deemed to be patients in need of care have in the past been exempted from consideration as torture or other ill-treatment.³⁵⁵ This position is now coming under increasing challenge, based on the Convention on Persons with Disabilities, among others. The Special Rapporteur on torture has questioned the validity of citing medical need as a basis for disregarding respect for informed consent or the wishes of those with disabilities, notwithstanding the “good intentions” of medical practitioners.³⁵⁶

Amnesty International strongly supports the principle of informed consent but suggests that situations do occur, however rarely, where individuals, be they disabled or non-disabled, are not in the position to give consent. These include complex situations where individuals' lives might be in danger and they are unable to either make or communicate their choices. A variety of safeguards must be put in place, including through legislation, to ensure that, where unavoidable, decisions in such situations are taken professionally, compassionately and in the way that best respects the human rights of the individual concerned.³⁵⁷

Monitoring the rights of persons with disabilities and institutions where they may be held is an emerging field and OHCHR has published a guide for human rights monitors.³⁵⁸ The Project on Institutional Treatment, Human Rights and Care Assessment

351 Committee on the Rights of Persons with Disabilities: [Tunisia](#), UN Doc. CRPD/TUN/CO/1 (2011) §§24-25; [Spain](#), UN Doc. CRPD/ESP/CO/1 (2011) §§35-36; [Peru](#), UN Doc. CRPD/PER/CO/1 (2012) §§24-25.

352 Committee on the Rights of Persons with Disabilities, [Spain](#), UN Doc. CRPD/ESP/CO/1 (2011) §§37-38.

353 Committee on the Rights of Persons with Disabilities, [Argentina](#), UN Doc. CRPD/C/ARG/CO/1 (2012) §§23-24.

354 Committee on the Rights of Persons with Disabilities, [Argentina](#), UN Doc. CRPD/C/ARG/CO/1 (2012) §28.

355 [Herczegfalvy v. Austria](#) (10533/83), European Court (1992) §82.

356 Annual Report of the Special Rapporteur on torture, [UN Doc. A/HRC/22/53](#) (2013) §32.

357 See for instance the “Emergency situation” exception to informed consent in Article 8 of the [CoE Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine](#), Oviedo, 4 April 1997.

358 OHCHR, [Monitoring the Convention on the Rights of Persons with Disabilities. Guidance for human rights monitors](#), Professional training series No. 17, 2010.

(ITHACA) has also published a toolkit to provide a complete guide to monitoring human rights, including the right to health, in mental health and social care institutions.³⁵⁹

3.13 USE OF FORCE IN LAW ENFORCEMENT

Key points:

- **Most law enforcement functions do not require any use of force.**
- **Force should be used in law enforcement only when strictly necessary and should not be disproportionate to the legitimate aim to be achieved.**
- **Unnecessary or excessive use of force during law enforcement activities can amount to cruel, inhuman or degrading treatment.**
- **Firearms must not be used against persons except in self-defence or defence of others against the imminent threat of death or serious injury.**
- **The deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize harm and the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.**
- **The use of kinetic impact projectiles should be strictly limited to situations of violent disorder posing a risk of harm to persons, and only when less extreme means are insufficient to achieve this objective.**
- **Dart-firing electric-shock stun weapons should be strictly limited to “stand-off” situations where the only alternative is the use of lethal force or firearms when an officer is facing an imminent threat of death or serious injury.**

The need to avoid unnecessary or excessive use of force in custody situations is discussed in [Chapter 4.5](#). This principle also applies to law enforcement functions such as policing public assemblies and demonstrations. Most law enforcement work does not require or entail any use of force. There are only a few functions or situations in which some sort of force, or the threat to use force, may be necessary to attain an objective that is lawful, both domestically and internationally. This includes making arrests, preventing crime and managing incidents involving public disorder.³⁶⁰

The Committee against Torture has expressed concern over excessive use of force by law enforcement officials during the policing of demonstrations or crowd control,³⁶¹ including the use of dogs,³⁶² live ammunition and “heavy lethal weapons,”³⁶³ plastic bullets³⁶⁴ and chemical irritants.³⁶⁵ Similarly the Special Rapporteur on torture has recognized that the prohibition on cruel, inhuman and degrading treatment places

359 ITHACA Toolkit, 2010.

360 A. Osse, *Understanding policing: A resource for human rights activists*, 2006, p. 125. See also commentary on Article 3 of the *UN Code of Conduct for Law Enforcement Officials*, §(a).

361 Concluding Observations of CAT: [Canada](#), UN Doc. CAT/C/CAN/CO/6 (2012) §22.

362 Concluding Observations of CAT: Denmark, [UN Doc. A/52/44](#) (1997) §182; Sweden, [UN Doc. A/52/44](#) (1997) §222.

363 Concluding Observations of CAT: [Syria](#), UN Doc. CAT/C/SYR/CO/1/Add.2 (2012) §20(j).

364 Concluding Observations of CAT: UK, [UN Doc. A/54/44](#) (1999) §76(g).

365 Concluding Observations of CAT: [Canada](#), UN Doc. CAT/C/CR/34/CAN (2005) §4(i); [Canada](#), [UN Doc. A/56/44](#) (2001) §58(a).

limits on the lawful use of force by law enforcement officials,³⁶⁶ and has expressed concern over excessive use of force in crowd control situations.³⁶⁷

The use of force by law enforcement officials is strictly regulated under international human rights instruments,³⁶⁸ in particular the [UN Code of Conduct for Law Enforcement Officials](#) and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials ([Basic Principles on Use of Force](#)). These standards establish that:

- Force should be used in law enforcement only when strictly necessary;
- The use of force should not be disproportionate to the legitimate objective to be achieved; and
- Firearms must not be used against persons except in self-defence or defence of others against the imminent threat of death or serious injury.³⁶⁹

The guiding principles of necessity and proportionality are spelled out in the two instruments as follows:

- **Necessity:** Article 3 of the [UN Code of Conduct for Law Enforcement Officials](#) states that force should be used “only when strictly necessary”. In practice this means that the use of force should be “exceptional”; that force should be used only “as is reasonably necessary under the circumstances”; and that it should be used for only two purposes: “the prevention of crime” and “effecting or assisting in the lawful arrest of offenders or suspected offenders”.³⁷⁰ In no case should the provision in Article 3 “be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved”.³⁷¹
- **Proportionality:** Principle 4 of the [Basic Principles on Use of Force](#) states that: “Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”³⁷² Principle 5 establishes that: “Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; (b) Minimize damage and injury, and respect and preserve human life”.³⁷³

366 Special Rapporteur on torture annual report: [UN Doc. E/CN.4/2006/6](#) (2005) §38.

367 Special Rapporteur on torture visit report: [Morocco](#), UN Doc. A/HRC/22/53/Add.2 (2013) §§20-23, 63.

368 The term “law enforcement officials” includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention. This should be given the widest possible interpretation, and includes military and other security personnel as well as immigration officials where they exercise such powers. See Article 1 of the [UN Code of Conduct for Law Enforcement Officials](#).

369 See Article 3 of the [UN Code of Conduct for Law Enforcement Officials](#) and Principle 9 of the [Basic Principles on Use of Force](#).

370 Commentary on Article 3 of the [UN Code of Conduct for Law Enforcement Officials](#), §(a).

371 Commentary on Article 3 of the [UN Code of Conduct for Law Enforcement Officials](#), §(b).

372 Principle 4 of the [Basic Principles on Use of Force](#).

373 Principle 5 of the [Basic Principles on Use of Force](#), §§(a) and (b).

The use of firearms in law enforcement is considered an extreme measure and restrictions on their use are particularly stringent.³⁷⁴

3.13.1 POLICE WEAPONS AND DEVICES

This section looks at the use of certain weapons and devices by law enforcement officers during settings such as the policing of public assemblies and violent crime.³⁷⁵ (See [Chapter 4.5.4](#) for threats to the prohibition of torture and other ill-treatment posed by the use of certain forms of equipment and techniques during arrest or in custodial situations.)

As noted in [section 3.13](#) above, the use of force by law enforcement officers is strictly regulated by international standards which require force to be used only by designated, trained and accountable public officials in strictly defined circumstances, and only when other means have failed or are ineffective in the circumstances and when its use is lawful, necessary and proportionate for the law enforcement objective.³⁷⁶

As stated in the [Basic Principles on Use of Force](#), the protection of uninvolved persons must be given absolute priority. In terms of the use of force as a response to violence, law enforcement officials are required to distinguish between those individuals who are engaged in violence and those who are not (be they peaceful demonstrators or uninvolved bystanders) and carefully target, if at all, only those engaged in violence.³⁷⁷

Law enforcement agencies and security services use equipment that ranges from the simplest technology – batons and sticks – through to implements like handcuffs, tear gas, water cannon and “stun guns”, to control crowds and restrain people alleged to have broken the law or to be posing an imminent threat to others. Most crowd control technologies and restraint devices rely on the principle of containment through physical shock or restriction. They are prone to abuse, some more so than others.³⁷⁸

The use of lethal weapons such as firing live ammunition from firearms and discharging rubber or plastic-coated metal bullets from shotguns or similar launchers should be prohibited unless it is strictly unavoidable and used to the minimum extent necessary to protect life, in self-defence or defence of others against the imminent threat of death or serious injury. Such force should only ever be used when less extreme means are insufficient to achieve this objective, and only by fully trained firearms officers under effective regulation, monitoring and control.

374 See Commentary on Article 3 of the [UN Code of Conduct for Law Enforcement Officials](#), §(c).

375 This section has been written jointly with the Omega Research Foundation, whose recent joint publications with Amnesty International include: [The human rights impact of less lethal weapons and other law enforcement equipment](#) (Index: ACT 30/1305/2015) and [China's trade in tools of torture and repression](#) (Index: ASA 17/042/2014).

376 Article 3 of the [UN Code of Conduct for Law Enforcement Officials](#) states that: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.”

377 Principle 3 of the [Basic Principles on Use of Force](#).

378 See Amnesty International and Omega Research Foundation, [The pain merchants: Security equipment and its use in torture and other ill-treatment](#) (Index: ACT 40/008/2003) p. 5.

“Non-lethal incapacitating devices” have been developed for use by governments and law enforcement agencies and this is generally encouraged in the [Basic Principles on Use of Force](#)³⁷⁹ in order to provide a broad range of means and allow for a differentiated use of force, although the Principles state that “the deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled”.³⁸⁰ In particular, some designs are prone to cause avoidable injuries and are also sometimes used by officers arbitrarily or as tools of torture and other ill-treatment (see below and [Chapter 4.5.2](#).)

So-called “less lethal” weapon and munitions technology is increasingly used in law enforcement with a view to reducing the application of means capable of causing death or serious injury to persons. Such weapons are intended to be less injurious than firearms but nevertheless their use can be lethal. These weapons include electric-shock dart guns (“Tasers”), kinetic impact projectiles (for example rubber and plastic bullets) and their launchers, as well as chemical irritant sprays and guns, cartridges and hand-thrown grenades. To meet international standards on law enforcement such as the [Basic Principles on Use of Force](#), the evaluation, deployment and use of “less lethal” weapons should be subject to very strict regulations, operating procedures, training and accountability. (See also [Chapter 4.5.2](#).)

“Less lethal” equipment relying on kinetic energy should not be designed to penetrate the skin. For example, reducing the contact area will increase the risk of penetration. Traditional kinetic weapons used in law enforcement are the hand-held baton or truncheon, and the stick, cane and whip. However, serious injuries may still be caused by a non-penetrating impact. For example, in April 2015 the European Court ruled that the beating of a 62-year-old demonstrator by an Italian police officer with a hand-held baton amounted to torture. Although the man was being compliant and surrendering, the police officer beat him to the point where he suffered fractures and other injuries.³⁸¹ Thus, national law enforcement regulations should prohibit the resort to baton blows unless there is an imminent threat of death or life-threatening injury and other means are not available. Moreover, some types of hand-held batons, such as side-handled batons and telescopic batons, can be more difficult and dangerous to use and so require specialist training and procedures. In addition, laws and regulations should expressly prohibit any use of force whatsoever once individuals have ceased to resist.

Whips and canes, including *lathis* (long batons usually made from bamboo) and *sjamboks* (long whips made from animal skin), can lead to serious injuries. Where such instruments are used for physical punishment inflicted on the body by judicial order or as an administrative sanction, this is a form of corporal punishment

379 Principle 2 of the [Basic Principles on Use of Force](#).

380 Principle 3 of the [Basic Principles on Use of Force](#).

381 See [Cestaro v Italy](#) (6884/11), European Court (2015).

that is always prohibited as it constitutes cruel, inhuman or degrading punishment, and – if the pain or suffering inflicted is severe – amounts to torture. (See [Chapter 2.5.1](#) on corporal punishment.)

Spiked batons have reportedly been used by law enforcement officials in China and Nepal and exported from China to Cambodia and Thailand.³⁸² They are designed to increase, not decrease, the amount of pain and injury inflicted on subjects, and can cause skin tearing and puncture injuries. Such weapons have no practical use other than for the purposes of torture or other ill-treatment.³⁸³ As such they conflict with Principle 2 of the [Basic Principles on Use of Force](#) which requires that less-lethal weapons should “increasingly [restrain] the application of means capable of causing death or injury to persons”.



Left: Chinese-manufactured spiked baton © Robin Ballantyne/Omega Research Foundation.

Right: Spiked baton photographed at Jingsu Shunda Police Equipment’s stall at Security China 2010 trade show. © Robin Ballantyne/Omega Research Foundation

Other more complex “less lethal” weapon technologies have been developed, including neuromuscular incapacitating projectile electric-shock weapons (commonly called “Tasers”). Modern, more accurate, versions of dart-firing electric-shock stun weapons are used widely in “stand-off” situations.³⁸⁴

Dart-firing electric-shock stun weapons should be strictly limited to “stand-off” situations where the only alternative is the use of lethal force or firearms when an officer is facing or trying to prevent an imminent threat of death or serious injury. Given the extreme pain often inflicted by one discharge and the danger of death or serious injury resulting from the stun, such weapons should only administer one short shock. Regulations should require officers to avoid additional shocks and prohibit continuous and simultaneous shocks. Regulations should also prohibit the use of such weapons on subjects who are restrained, and on individuals who are more vulnerable, including children, the elderly, and pregnant women. (See also [Chapter 4.5.2](#).)

Amnesty International has expressed concern that devices which enable the use of direct hand-applied electric-shock stuns, an optional function on Tasers, are open

382 Amnesty International and Omega Research Foundation, [From words to deeds: Making the EU ban on the trade in ‘torture tools’ a reality](#) (Index: EUR 01/004/2010) p. 20.

383 Amnesty International, [European Union: Stopping the trade in tools of torture](#) (Index: POL 34/001/2007), p. 9.

384 Taser International, [‘Taser International Statistics’](#), 2016.

to abuse, including being used to commit torture and other ill-treatment. Such stun devices and functions should be suspended from use in law enforcement unless further independent expert studies on the medical and other effects of this type of device demonstrate that it can be used consistently in line with international human rights law and standards applicable to law enforcement. (See also [Chapter 4.5.2.](#))

Less-lethal non-metallic projectiles or baton rounds and stun (sound) grenades should also be prohibited unless the projectiles are sufficiently accurate not to cause any avoidable or serious injury. Some types pose much greater risks because they have a high velocity of impact and low degree of accuracy. Also, the practice of “skip-firing” by deliberately bouncing rubber or plastic projectiles off the ground merely increases inaccuracy and the likelihood of hitting bystanders and of causing serious injuries to the head and upper body.

Thus, the use of kinetic impact projectiles should be strictly limited to situations of violent disorder posing a serious risk of harm to persons, where the projectiles are used in order to contain and stop the violence and only when less extreme means are insufficient to achieve this objective. The projectiles must be carefully targeted and aimed only at persons directly involved in such violence and must never be aimed at the head, upper body or groin areas. They should not be intentionally rebounded off the ground before striking the target.

Whenever possible, clear warnings should be given before they are fired. Medical care must be promptly made available to anyone injured by such projectiles. Only fully trained firearms officers operating subject to effective regulation, monitoring and control should be allowed to discharge projectiles as an alternative to the use of lethal force. Only projectiles and launchers positively tested for a high level of accuracy and consistency of appropriate kinetic impact should be used. Multiple projectile launching systems are inaccurate, cannot be targeted only to an individual engaged in violence and cause avoidable injury, and therefore must not be used in law enforcement operations.

Chemical irritants or riot control agents are also likely to pose a risk of unnecessary harm or avoidable injury, serious injury or even death to persons targeted. Hand-held chemical sprays and aerosols are among the most commonly deployed forms of chemical irritant, intended to be used against an individual or a small number of people, rather than in a crowd control situation. Also, wide-area chemical irritant sprays and dispensers, including through water cannon, are sometimes deployed in law enforcement, particularly for riot control, and can have indiscriminate effects on protesters and bystanders. This can amount to cruel, inhuman or degrading treatment or to torture.³⁸⁵

385 See Physicians for Human Rights, *Weaponizing Tear Gas: Bahrain's Unprecedented Use of Toxic Chemical Agents Against Civilians*, 2012.



ALS Technologies' "Top Cop" tear gas sprayer. © Robin Ballantyne/Omega Research Foundation

Grenades and wide-area use of chemical irritants should only be deployed when the level of violence has reached such a degree that law enforcement officials cannot contain the threat by directly targeting individual violent persons. Hand-held chemical irritant sprays should only be used, where strictly necessary, against violent individuals or individuals posing an imminent threat of violence.³⁸⁶ Officers should consider alternative use of force options, for example the appropriate use of batons or open-hand techniques³⁸⁷ especially on individuals whom they know, or have reason to suspect, have heightened vulnerability to irritants (for example, people with asthma).

Water cannon can be free-standing, vehicle-mounted, building-mounted or backpack-style, and are essentially high-pressure pumping systems designed to shoot jets of water at people. The pressure of the water can be varied from low pressure to soak the person and deter or demoralize, to high pressure in order to impart a blunt trauma that can push back a person or knock them to the ground. The power of water cannon discharges can cause physical injuries and their use against public assemblies is indiscriminate and can affect peaceful demonstrators and bystanders. The effect is sometimes enhanced by adding substances to the water, including dye (for later identification of persons, which may lead to harassment or arbitrary detention), or a range of chemical irritants.

386 The guidance of the Association of Chief Police Officers in the UK states that: "use of the spray is one of a number of tactical options available to an officer who is faced with violence or the threat of violence". ACPO, [Guidance on the Use of Incapacitant Spray](#), 2009, 2.6.1.

387 It will not always be possible to use batons or open-hand techniques instead of sprays or aerosols, as officers will sometimes need to maintain their distance from, for example, armed suspects. However, officers should consider other such options where these are feasible. This is particularly important to stress as many police forces put irritant spray in the same position as batons in their list of use-of-force options, or at a lower level of response than batons, for example as a response to verbal abuse. However, in some cases, with some individuals, the use of spray may cause more pain and injury than would open-hand or baton techniques, and thus represent a use of greater force. See O. Adang and J. Mensink, "Pepper spray: An unreasonable response to suspect verbal resistance" in [Policing: An International Journal of Police Strategies and Management](#), Vol. 27, Issue 2 (2004).



Riot control vehicle water cannon on outside display stand at China Police 2006 Exhibition, Beijing.
© Robin Ballantyne/Omega Research Foundation

The use of a mixture of water and chemicals makes it impossible to deliver accurate targeted doses of the irritant. Therefore, an independent body of scientific, legal and other experts should examine the inherent effects and the proper use of water cannon, and agree rules for the legitimate and safe use of each type of device that are consistent with international human rights law and standards.

In addition to these weapons and devices which are widely used, new technologies are being developed for law enforcement functions, which have the potential to cause harm.

Acoustic weapons are being introduced into law enforcement. These produce loud noises at various frequencies, with some ability to target the sound to particular areas. While they can function as a loudhailer, and are often promoted as such, they can also produce a high-pitched alert noise, designed to cause discomfort and induce behaviour change. There are reportedly a number of health risks associated with the use of acoustic weapons, particularly at close range, loud volume, over excessive periods of time or when using a combination of these tactics. The sound produced by some acoustic weapons can be louder than relevant safety standards allow.³⁸⁸

³⁸⁸ For example, in *Canadian Civil Liberties Association v Toronto Police Service* (2010 ONSC 3525), Superior Court of Justice, Ontario (2010), where it was considered that the alert function on some models, “on balance... permit the exposure of demonstrators to an undue risk of hearing damage”, §137.



*A remotely operated loudhailer on display on the LRAD Corporation stand at a trade show in 2011.
© Robin Ballantyne/Omega Research Foundation*

Millimetre wave weapons are another class of directed-energy weapons that are designed to enforce compliance through physical shock, by heating water in the target's skin, causing incapacitating pain. They include the Active Denial System (ADS), developed in the USA.



Active Denial System being fine-tuned. © Randy Montoya

Although the ADS is targetable and the beam can be focused on a part of an individual's body, the beam can also be widened to result in potentially lethal full-body exposure, or to target more than one person, risking affecting peaceful demonstrators or bystanders. Concerns also arise due to the technical aspects of the beam. It makes no sound and is invisible, making it difficult to avoid. The target may not be able to escape the effects of the beam, either because they are

restricted or confined in a crowd or by their surroundings. Lethal and other injurious effects on individuals from the use of the ADS have been reported as a result of overexposure.³⁸⁹

3.13.2 CONTROL OF TRADE IN WEAPONS, DEVICES AND INSTRUMENTS

Law enforcement weapons and devices should never be supplied to recipients who are likely to use them for torture, other ill-treatment or other human rights violations. Although this principle is already incorporated in many policies of individual states and regional organizations, its application in law and practice needs to be considerably strengthened. It is crucial that trade in equipment of the types discussed in [Chapters 3.13.1](#) and [4.5.2](#) is strictly regulated, and that law enforcement and correctional officials are fully trained and accountable regarding the appropriate, and inappropriate, ways to use such equipment.

In 2006, the EU introduced the world's first multilateral trade controls to prohibit the international trade in equipment which has no practical use other than for the purposes of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment; and to control the trade in a range of policing and security equipment misused for such violations of human rights.³⁹⁰ The regulation covers the trade of 28 EU member states and introduced unprecedented, binding controls on a range of equipment not usually included on EU member states' military or dual-use export control lists. After further calls to tighten the EU regulation, a new legally-binding EU regulation adopted in July 2014 expanded the list of equipment that must be banned and the list of security equipment that must be strictly controlled. The list of prohibited goods now includes weighted leg restraints, restraint chairs and whips.³⁹¹

The UN General Assembly has also repeatedly called upon all states to "take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that have no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment."³⁹² This decision opens the way for more states to introduce national and regional trade controls similar to those of the EU.

In this regard, the entry into force of the [Arms Trade Treaty](#) on 24 December 2014 provides an opportunity to develop some common transfer control systems. Although at present the scope of the Arms Trade Treaty covers international transfers

389 See J. Altmann, *Millimetre waves, lasers, acoustics for non-lethal weapons? Physics analyses and inferences*, 2008, p. 18.

390 [Council Regulation \(EC\) No 1236/2005](#) of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, published in the Official Journal of the European Union, L200/1, 30 July 2005.

391 [EC Regulation No 775/2014](#), 16 July 2014.

392 See for example UN General Assembly resolutions [UN Doc. A/Res/66/150](#) (2011) §24; [UN Doc. A/Res/67/161](#) (2012) §25; [UN Doc. A.Res/68/156](#) (2013) §30.

in conventional arms, including firearms and corresponding ammunition, states parties are also encouraged to apply the Treaty to the “broadest range of conventional arms”,³⁹³ including munitions and ammunition, as well as parts and components for assembly of weapons. The most comprehensive multilateral arms trade control lists, such as the munitions list of the [Wassenaar Arrangement](#) which is used by more than 50 states including virtually all of the world’s major exporters, do already cover chemical irritants and other projectiles. Such control lists could be amended to plug the gaps in police weapons and new technologies.

Amnesty International has repeatedly urged governments to suspend the use and transfer of weapon systems intended for law enforcement whose medical and other effects are not fully known, pending a rigorous and independent inquiry on the effects of each type and sub-type of the weapon by appropriate legal, police and other experts based on international human rights law and standards. The results of the inquiry on each type and sub-type of such weapon should be published, and law enforcement authorities should have to demonstrate before the legislature in each case that the effects of each weapon are fully consistent with international human rights law and standards before any decision is made to deploy that weapon.

3.13.3 TORTURE AND OTHER ILL-TREATMENT WITHIN THE LAW ENFORCEMENT, MILITARY AND SECURITY SERVICES

In some countries police, military and security cadets are subjected to harsh and abusive techniques during training (sometimes known as “hazing”).³⁹⁴ These practices may amount to torture or other ill-treatment. In addition, abuse of cadets during training breeds a culture of violence; it normalizes and legitimizes similar treatment of detainees.

The Committee against Torture has expressed concern over the “hazing” and brutal treatment of cadets and has called for there to be “zero-tolerance” of the practice, for investigations to be carried out into allegations and where there is evidence of the practice, and for those responsible to be held accountable.³⁹⁵ Similarly, the Human Rights Committee has urged that “stringent measures be adopted to ensure an immediate end to mistreatment and abuse of army recruits by their officers and fellow soldiers”.³⁹⁶

³⁹³ Article 5(3) of the [Arms Trade Treaty](#).

³⁹⁴ Amnesty International: [Armenia: No space for difference](#) (Index: EUR 54/002/2013) p. 8; Urgent Action: [Canada: Dean William Walcott \(m\), conscientious objector](#) (Index: AMR 20/008/2009); Joint Public Statement: [Russia](#), (Index: EUR 46/028/2006); Press Release: [Armenia: Time to work towards ending torture](#) (Index: EUR 54/011/2000); Newsletter: [Failures at fifty: Impunity for torture and ill-treatment in Europe on the 50th anniversary of the European Convention on Human Rights](#) (Index: EUR 01/004/2000) p. 40.

³⁹⁵ Concluding Observations of CAT: [Armenia](#), UN Doc. CAT/C/ARM/CO/3 (2012) §9; [Russia](#), UN Doc. CAT/C/RUS/CO/5 (2012) §16.

³⁹⁶ See HRC annual report, [UN Doc. A/50/40](#) (1995) §400.

In order to avoid such practices, the training of police, military and security cadets must be carried out in a way that guarantees their human rights and ensures respect for the rights of others.³⁹⁷

3.14 SAFEGUARDS DURING ARMED CONFLICT

Key points:

- **Torture and other ill-treatment are absolutely prohibited at all times, including during armed conflict.**
- **During armed conflict the prohibition of torture and other ill-treatment under international human rights continues to apply. In addition, prohibitions set out in international humanitarian law will apply to all parties – state and non-state – to an armed conflict.**
- **International humanitarian law sets out specific safeguards for persons deprived of their liberty within the context of armed conflict, including prisoners of war and civilian internees.**
- **Anyone deprived of their liberty must be treated humanely in all circumstances and protected from torture and other ill-treatment.**

During times of armed conflict, the prohibition of torture and other ill-treatment under international human rights law continues to apply. This is supplemented by obligations set out in international humanitarian law. As well as a general prohibition of torture and other ill-treatment, international humanitarian treaties set out specific safeguards for particular categories of persons, including those deprived of their liberty, to protect them from abuse during armed conflict. Many of these safeguards are considered part of customary international humanitarian law and therefore apply regardless of whether a state is party to a particular treaty.³⁹⁸

3.14.1 SAFEGUARDS FOR PRISONERS OF WAR

International humanitarian law affords practical protection against torture and other ill-treatment to prisoners of war. The status of prisoner of war only applies during international armed conflict and those who have prisoner-of-war status are entitled to certain safeguards and treatment.³⁹⁹

Regarding the designation of prisoner-of-war status, the basic rule is that members of the armed forces acquire prisoner-of-war status upon capture and are afforded this status from the moment they fall into enemy hands, irrespective of whether they have been formally registered as prisoners of war or whether their capture has been

397 For more information on policing and human rights, see A. Osse: [Understanding policing: A resource for human rights activists](#), 2006.

398 ICRC [Customary IHL Study](#): Rules 87-105 (Fundamental Guarantees); Rules 118-128 (Persons Deprived of Their Liberty).

399 See Article 14 of the [First Geneva Convention](#); Article 44(5) of [Protocol I](#); [The Hague Regulations 1907](#); the [Third Geneva Convention](#) as supplemented by [Protocol I](#).

formally recognized by their own government. Prisoner-of-war status continues until the final release and repatriation of the prisoner.⁴⁰⁰

The conditions in which prisoners of war are detained during captivity should be as reasonable as the circumstances of the armed conflict will allow and, at the very least, meet the minimum standards set down in the [Third Geneva Convention](#).⁴⁰¹ Prisoners of war must be humanely treated and their person and dignity respected at all times.⁴⁰² They should be held separately from people held in criminal cases.

Women prisoners of war “shall be treated with all the regard due to their sex and shall in all cases benefit by treatment as favourable as that granted to men”.⁴⁰³ Due regard must be given to women’s physical strength and biological factors such as menstruation, pregnancy and childbirth and the need to protect them from rape, indecent assault and forced prostitution.⁴⁰⁴

The International Committee of the Red Cross must be granted regular access to prisoners of war to verify their detention conditions and facilitate contact with their families.⁴⁰⁵

The [Third Geneva Convention](#) states that prisoners of war must at all times be protected from:

- Any form of torture, cruelty or inhuman treatment;⁴⁰⁶
- Any unlawful act or omission causing death or serious injury to health;⁴⁰⁷
- Insults and public curiosity;⁴⁰⁸
- Physical mutilation or scientific experiments (even with consent);⁴⁰⁹
- Any medical treatment, even with the prisoner of war’s consent, including removal of tissue or organs for transplantation, unless it is:
 - Necessitated by the health of the person concerned;
 - Consistent with generally accepted medical standards; and
 - Applied in similar circumstances to those which would apply to nationals of the detaining power.

Interrogation of a prisoner of war by the detaining power is permitted to elicit tactical or strategic information but no physical or mental torture or any other form of coercion

400 Article 5 of the [Third Geneva Convention](#); Articles 3(b) and 44(1) of [Protocol I](#).

401 [Third Geneva Convention](#).

402 Article 13 of the [Third Geneva Convention](#); Article 11 of [Protocol I](#).

403 Article 14 of the [Third Geneva Convention](#).

404 See [Commentary](#) on Article 14 of the [Third Geneva Convention](#).

405 Article 126 of the [Third Geneva Convention](#).

406 Articles 87 and 130 of the [Third Geneva Convention](#).

407 Article 13 of the [Third Geneva Convention](#).

408 Article 13 of the [Third Geneva Convention](#).

409 Article 13 of the [Second Geneva Convention](#); Article 11 of [Protocol I](#).

can be used and the prisoner of war must not be threatened, insulted or exposed to any unpleasant or disadvantageous treatment of any kind.⁴¹⁰

3.14.2 SAFEGUARDS FOR OTHER DETAINEES DURING CONFLICT

As well as prisoners of war, other persons may at any time and for any reason find themselves “in the hands of a Party to the conflict or Occupying Power of which they are not nationals”,⁴¹¹ and are to be afforded protection.

Specifically in relation to persons deprived of their liberty as a result of armed conflict, the [Fourth Geneva Convention](#) and [Protocol I](#) provide protection for civilian internees during international armed conflicts. Internment is a security measure, and cannot be used as a form of punishment. This means that internment may be ordered only if the security of the detaining power makes it absolutely necessary,⁴¹² and the internee has the right to have the internment reconsidered and reviewed at least twice yearly.⁴¹³ Rules governing the treatment and conditions of detention of civilian internees are very similar to those applicable to prisoners of war, and include an obligation to give the International Committee of the Red Cross access to internees.⁴¹⁴

In non-international armed conflict, Common Article 3 to the Geneva Conventions of 1949 and Protocol II provide that all persons who are taking no active part in the hostilities, whether or not they are deprived of their liberty, must be treated humanely in all circumstances and in particular, are protected against murder and torture, as well as cruel, humiliating or degrading treatment.⁴¹⁵

[Common Article 3](#) and [Protocol II](#) to the Geneva Conventions set out a list of fundamental guarantees for persons whose liberty has been restricted, including:

- To be treated humanely.⁴¹⁶
- Respect for their physical or mental health and integrity. It is prohibited to subject persons to any medical procedure which is not indicated by the state of health of the person concerned, and which is not consistent with the generally accepted medical standards applied to free persons under similar medical circumstances.⁴¹⁷
- To be provided with food and drinking water, to the same extent as the local population, and be afforded safeguards as regards health and hygiene and protection against the rigours of the climate and the dangers of the armed conflict.⁴¹⁸

410 Article 17 of the [Third Geneva Convention](#).

411 Article 4 of the [Fourth Geneva Convention](#).

412 Article 42 of the [Fourth Geneva Convention](#).

413 Article 43 of the [Fourth Geneva Convention](#).

414 Articles 76 and 143 of the [Fourth Geneva Convention](#).

415 [Common Article 3](#); [Protocol II](#).

416 [Common Article 3](#); Articles 4 and 5(3) of [Protocol II](#).

417 Article 5(2)(e) of [Protocol II](#).

418 Article 5(1)(b) of [Protocol II](#).

- To receive individual or collective relief.⁴¹⁹
- To be allowed to practise their religion and, if requested and appropriate, to receive spiritual assistance from persons, such as chaplains, performing religious functions.⁴²⁰
- Except when men and women of a family are accommodated together, women shall be held in quarters separated from those of men and shall be under the immediate supervision of women.⁴²¹
- The benefit of medical examinations.⁴²²

419 Article 5(1)(c) of [Protocol II](#).

420 Article 5(1)(d) of [Protocol II](#).

421 Article 5(2)(a) of [Protocol II](#).

422 Article 5(2)(d) of [Protocol II](#).

CHAPTER 4

CONDITIONS OF DETENTION

All persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person. This right is applicable regardless of the material wealth of a country – all states must at least ensure certain basic standards for persons deprived of their liberty. Conditions in detention must as far as possible reflect those existing in the community at large. Poor or harsh conditions of detention may constitute cruel, inhuman or degrading treatment or torture. Independent oversight bodies should be established to monitor conditions of detention and treatment of detainees.

- 4.1 The right to humane conditions of detention
- 4.2 Reducing the use of custody and imprisonment
- 4.3 Accommodation
 - 4.3.1 Physical conditions of accommodation
 - 4.3.2 Separation of categories of detainees
 - 4.3.3 Location of accommodation
 - 4.3.4 Sanitation, hygiene, clothing and beds
- 4.4 Other aspects of treatment
 - 4.4.1 Food and drink
 - 4.4.2 Exercise, recreation and other facilities
- 4.5 Discipline and security
 - 4.5.1 Use of force
 - 4.5.2 Restraint techniques and devices
 - 4.5.3 Disciplinary punishments
 - 4.5.4 Searches
 - 4.5.5 Solitary confinement
 - 4.5.6 Preventing inter-prisoner violence
- 4.6 Record-keeping

4.1 THE RIGHT TO HUMANE CONDITIONS OF DETENTION

Under international law all people deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person.¹ This right overlaps with and complements the right not to be subjected to torture and other ill-treatment. States are obliged to ensure that detainees have access to necessities and services that satisfy their basic needs, including adequate and suitable food, washing and sanitary facilities, bedding, clothing, health care, access to natural light,

¹ See Article 10 of the [ICCPR](#); Article 17 of the [Migrant Workers Convention](#); Article 5 of the [African Charter](#); Article 5 of the [American Convention](#); Article 20(1) of the [Arab Charter](#); Principle 1 of the [Body of Principles](#); Section M(7) of the [Principles on Fair Trial in Africa](#); Article XXV of the [American Declaration](#); Rules 1 and 72.1 of the [European Prison Rules](#).

recreation, physical exercise, facilities to allow religious practice, and communication with others, including those in the outside world.

Article 10(1) of the [ICCPR](#) sets out the general obligation for the humane treatment of persons deprived of liberty:

“All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”²

The specific provision for humane treatment and respect for prisoners’ inherent dignity is unique to the ICCPR. Other human rights treaties, such as the [Convention against Torture](#), the [Optional Protocol to the Convention against Torture](#) and regional human rights treaties, do not contain separate provisions for the treatment of persons deprived of liberty. However, violations of the rights of such persons, including poor conditions of detention, are nevertheless routinely addressed, with monitoring bodies addressing these violations mostly under the provisions prohibiting torture and other ill-treatment (see below). Thus, the visiting and reporting mechanisms established under the [Optional Protocol to the Convention against Torture](#), and within Europe under the [European Convention for the Prevention of Torture](#), come under the legal framework of preventing torture and other ill-treatment rather than that of humane treatment. It is therefore important not to confuse the absence of explicit provisions in these treaties for the treatment of persons deprived of liberty with an absence of protection for the full range of human rights of such persons.

The Human Rights Committee has stated that the right to humane treatment is a fundamental and universally applicable rule and a norm of general international law not subject to derogation,³ which means it applies to all states, at all times, in all circumstances, and cannot lawfully be restricted in times of emergency.⁴ It has also stated that “the appropriateness of the conditions prevailing in detention to the purpose of detention is sometimes a factor in determining whether detention is arbitrary within the meaning of article 9,”⁵ and that “[c]ertain conditions of detention (such as denial of access to counsel and family) may result in procedural violations of paragraphs 3 and 4 of article 9”.⁶ (See also [Chapter 3.7](#).)

According to the Human Rights Committee, Article 10(1) of the [ICCPR](#) imposes on states parties a “positive obligation” towards persons deprived of their liberty and complements the prohibition of torture and other ill-treatment contained in Article 7 of the [ICCPR](#).⁷ Thus, persons deprived of their liberty must not be subjected to torture or other ill-treatment, nor “may they be subjected to any hardship or constraint other

2 Article 5(1) of the [American Convention](#) contains a similar provision.

3 [HRC General Comment 21](#), §4.

4 [HRC General Comment 29](#), §13(a). See also Article 27(2) of the [American Convention](#); Article 4(2) of the [Arab Charter](#); Principle I of the [Principles on Persons Deprived of Liberty in the Americas](#).

5 [HRC General Comment 35](#), §59.

6 [HRC General Comment 35](#), §59.

7 [HRC General Comment 21](#), §3.

than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons".⁸ Similarly, the Committee against Torture has called on states to recognize the "normality principle", according to which the conditions in places of detention must be similar as far as possible to those existing in the community at large.⁹

Conditions of detention that violate Article 10 of the ICCPR can also amount to cruel, inhuman and degrading treatment or punishment, or to torture. This will depend on a number of factors. Often it is the cumulative effect of poor or harsh conditions that will be taken into account in determining whether they amount to cruel, inhuman or degrading treatment or punishment.¹⁰

The obligation to treat all persons deprived of their liberty with humanity and with respect for their dignity is not dependent on the material resources available in a state.¹¹ Whatever the resource constraints of a state, it is essential that governments afford people deprived of their liberty at least certain basic requirements. According to the Human Rights Committee, "certain minimum standards regarding the conditions of detention must be observed regardless of a State party's level of development".¹² These standards include the minimum floor space and cubic content of air for each prisoner, adequate sanitary facilities, clothing which shall be in no manner degrading or humiliating, provision of a separate bed and provision of food of nutritional value adequate for health and strength.¹³

In relation to individuals detained in connection with international armed conflicts, the [Third Geneva Convention](#) and [Fourth Geneva Convention](#) contain additional specific provisions on the treatment of prisoners of war and of interned civilians in occupied territories and aliens in the territory of a party to the conflict.¹⁴ (See [Chapter 3.14.](#))

In addition to the broad provisions contained in general human rights treaties, the UN and other intergovernmental organizations have developed comprehensive standards on conditions of detention over the years. Key instruments include:

8 [HRC General Comment 21](#), §3.

9 Concluding Observations of CAT: [Finland](#), UN Doc. A/51/44 (SUPP) (1996) §124.

10 See for example Concluding Observations of CAT: [Spain](#), UN Doc. CAT/C/CR/29/3 (2002) §11(d); HRC: [Buffo v Uruguay](#), UN Doc. CCPR/C/OP/1 (1984) §63; [Carmen Amendola Masslotti and Graciela Baritussio v Uruguay](#), UN Doc. Supp. No. 40 (A/37/40) (1982) §187; [Hiber Conteris v Uruguay](#), UN Doc. Supp. No. 40 (A/40/40) (1985) §196; European Court: [Dougou v Greece](#) (40907/98), (2001) §46; [Gavazov v Bulgaria](#) (54659/00), (2008) §§103-116; [Trepashkin v Russia](#) (36898/03), (2007) §§93-95; [Karalevičius v Lithuania](#) (53254/99), (2005) §36.

11 [HRC General Comment 21](#), §4; Rule 4 of the [European Prison Rules](#).

12 [Albert Womah Mukong v Cameroon](#), HRC, UN Doc. CCPR/C/51/D/458/1991 (1994) §9.3.

13 See [Albert Womah Mukong v Cameroon](#), HRC, UN Doc. CCPR/C/51/D/458/1991 (1994) §9.3. Note that the numbering of the rules of the Standard Minimum Rules referred to in this case now correspond to Rules 13, 15, 19, 21 and 22, respectively, following the 2015 revision of the UN Standard Minimum Rules for the Treatment of Prisoners ([Mandela Rules](#)).

14 See [Third Geneva Convention](#) and [Fourth Geneva Convention](#).

- The UN Standard Minimum Rules for the Treatment of Prisoners (the [Mandela Rules](#));¹⁵
- The UN [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#);
- The [UN Rules for the Protection of Juveniles Deprived of their Liberty](#);
- The UN [Standard Minimum Rules for the Administration of Juvenile Justice \(Beijing Rules\)](#);
- The UN [Basic Principles for the Treatment of Prisoners](#);
- The UN [Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders \(Bangkok Rules\)](#).

Guidelines and principles on conditions of detention and the treatment of detainees have also been developed at a regional level; for example the [European Prison Rules](#); the [Kampala Declaration on Prison Conditions in Africa](#); the [Ouagadougou Declaration and Plan of Action on Accelerating Prisons and Penal Reforms in Africa](#); and the [Principles on Persons Deprived of Liberty in the Americas](#). These complement or expand on the international instruments and are a useful additional guide for state practice within a particular region.

Although these instruments are not legally binding on states as such, they are important as they represent consensus on good practice for the treatment of detainees. Also, some of the standards reflect customary international rules, such as those prohibiting torture and other ill-treatment, and these standards therefore are legally binding. The standards elaborate on the general obligation to treat persons deprived of their liberty with humanity and respect for the inherent dignity of the person, which overlaps with and complements the obligation to prohibit torture and other ill-treatment, and are therefore a vital resource to guide and monitor state practice.

In order to ensure that these standards are observed in practice, all states should incorporate them into their laws, prison regulations, policies and practices, including training of staff. States should also establish a system of regular visits of inspection to all places of detention by independent expert bodies, in addition to internal inspection mechanisms. Regular monitoring of conditions within places of detention and the treatment of detainees by independent expert bodies is known to be an effective way to prevent torture and other ill-treatment and address areas of concern before they escalate. (See [Chapter 5.2](#) for more information on monitoring places of detention.)

15 The Standard Minimum Rules were adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955 and approved by the UN Economic and Social Council in 1957. In 1977 the Economic and Social Council added Rule 95 which extended the scope of the Rules to people arrested or detained without charge. Following an extensive review process, a revised version of the Standard Minimum Rules (the Nelson Mandela Rules) was adopted by the UN General Assembly on 17 December 2015, see [UN Doc. A/RES/70/175](#) (Annex).

In addition, everyone detained or imprisoned has the right to request improvements in their treatment or to complain about their treatment. The authorities must reply promptly, and if the request or complaint is refused, it may be brought to a judicial or other authority.¹⁶

4.2 REDUCING THE USE OF CUSTODY AND IMPRISONMENT

Key points:

- **Deprivation of liberty must always be carried out on grounds established by law.**
- **Overcrowding gives rise to other human rights violations and can amount to cruel, inhuman and degrading treatment.**
- **Non-custodial measures should be developed and applied wherever possible.**
- **Persons should generally be released pending trial.**
- **Pre-trial detention should be the exception and for the shortest time possible.**
- **Measures should be developed to reduce periods spent in prison following conviction whenever possible and assist early re-integration into society.**

Overcrowding is one of the most serious problems in places of detention today. Reducing the number of people held in custody and imprisonment can help to reduce overcrowding and improve conditions of detention.

The Special Rapporteur on torture has noted that:

“Overcrowding gives rise to other human rights violations such as poor quality and quantity of food, poor hygiene, lack of adequate sleeping accommodation, insufficient air ventilation, a high risk of contamination of diseases, as well as very limited access to medical treatment, recreational activities or work opportunities... These conditions constitute in themselves a form of cruel, inhuman and degrading treatment”.¹⁷

Similarly, the European Committee for the Prevention of Torture has held that:

“All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint”.¹⁸

Arbitrary and excessive pre-trial detention contributes to overcrowding within places of detention. Pre-trial detainees form a large proportion of the global prison population; in some countries pre-trial detainees account for almost 70% of the prison population.¹⁹ The Subcommittee on Prevention of Torture has noted that:

¹⁶ Principle 33 of the [Body of Principles](#).

¹⁷ UN News Centre, ‘[Independent UN expert urges Ghana to re-think criminal justice, mental health practices](#)’, 18 November 2013. See also SPT Fourth Annual Report, [UN Doc. CAT/C/46/2](#) (2011) §52.

¹⁸ [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 17, §46.

¹⁹ For global, regional and country statistics on the prison population, see: [World Prison Brief](#), [International Centre](#)

“the overuse – and misuse – of pretrial detention is a general problem that needs to be tackled as a matter of priority. It creates or contributes to the problem of endemic overcrowding, which is known to be rife in many States parties.”²⁰

In accordance with international standards, persons awaiting trial should generally be released pending trial.²¹ Pre-trial detention should be an exception and where it is used it should be applied for as short a period as possible (see [Chapters 3.4](#) and [3.10.1](#)).²² The European Court has stated that pre-trial detention “can be justified in a given case only if there are specific indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect for individual liberty”.²³

International standards encourage states to develop alternatives to custody and imprisonment and to consider the rehabilitation of offenders. In particular, the [Tokyo Rules](#) set out various non-custodial measures and alternatives to imprisonment. At the outset these Rules call on states to “develop non-custodial measures within their legal systems to provide other options, thus reducing the use of imprisonment”.²⁴ They go on to state that: “Consideration shall be given to dealing with offenders in the community avoiding as far as possible resort to formal proceedings or trial by a court, in accordance with legal safeguards and the rule of law”.²⁵

The [Tokyo Rules](#) state that pre-trial detention must only be used as a means of last resort in criminal proceedings.²⁶ They also set out various alternatives to custodial sentences following conviction, such as verbal sanctions; conditional discharge; fines; suspended or deferred sentences; probation; and community service orders.²⁷ Further, the Tokyo Rules suggest a range of post-sentencing measures that may replace or shorten imprisonment and assist offenders in their early re-integration into society such as work or education release, “half-way houses”, parole, remission and pardon.²⁸

Specific provisions apply to the consideration of non-custodial measures for children and women. In relation to non-custodial measures for children, Article 37(b) of the [Convention on the Rights of the Child](#), states: “The arrest, detention or imprisonment of a child... shall be used only as a measure of last resort and for

for [Prison Studies](#).

20 SPT Fourth Annual Report, [UN Doc. CAT/C/46/2](#) (2011) §52.

21 Article 9(3) of the [ICCPR](#); Article 37(b) of the [Convention on the Rights of the Child](#); Article 16(6) of the [Migrant Workers Convention](#); Article 14(5) of the [Arab Charter](#); Principle 39 of the [Body of Principles](#); Rule 6 of the [Tokyo Rules](#); Section M1(e) of the [Principles on Fair Trial in Africa](#); Principle III(2) of the [Principles on Persons Deprived of Liberty in the Americas](#); Rule 3 of the [CoE Rules on remand in custody](#); Rule 65(B) of the [Rwanda Rules](#).

22 Article 9(3) of the [ICCPR](#); HRC General Comment 35, §37.

23 [W v Switzerland](#) (14379/88), European Court (1993) §30; [Górski v Poland](#) (28904/02), European Court (2005) §51.

24 Rule 1.5 of the [Tokyo Rules](#).

25 Rule 2.5 of the [Tokyo Rules](#).

26 See Rules 5 and 6 of the [Tokyo Rules](#).

27 See Rule 8 of the [Tokyo Rules](#).

28 Rule 9 of the [Tokyo Rules](#). See also Article 18 of the [Guidelines on the Role of Prosecutors](#).

the shortest appropriate period of time.”²⁹ In addition, whenever possible, detention pending trial must be replaced by alternative measures, such as close supervision, specialized care, or placement with a family or in an educational setting or home.³⁰

In relation to women offenders, Rule 58 of the [Bangkok Rules](#) states that:

“Taking into account the provisions of rule 2.3 of the Tokyo Rules, women offenders shall not be separated from their families and communities without due consideration being given to their backgrounds and family ties. Alternative ways of managing women who commit offences, such as diversionary measures and pretrial and sentencing alternatives, shall be implemented wherever appropriate and possible.”³¹

4.3 ACCOMMODATION

Key points:

- **Detainees must be kept in conditions that ensure their physical and mental wellbeing. In particular they must not be held in overcrowded conditions and must have access to natural light and the open air.**
- **Detainees must be held in facilities that are specifically intended for that purpose.**
- **Special consideration must be given to accommodation for pregnant women, women with infants and breastfeeding women in detention.**
- **International standards require certain categories of detainees to be separated, such as pre-trial detainees from convicted persons; male and female detainees; and children from adult detainees.**

4.3.1 PHYSICAL CONDITIONS OF ACCOMMODATION

It is essential that detainees are kept in conditions that ensure their physical and mental wellbeing. They should not be kept in overcrowded conditions, or subjected to extremes of heat or cold. They must have access to natural light and fresh air.³² Various bodies have made recommendations regarding cell size; however there is no agreed universal standard.³³

Rule 13 of the [Mandela Rules](#) states:

“All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”³⁴

29 Article 37(b) of the [Convention on the Rights of the Child](#). See also, Preliminary Observation 4(2) of the [Mandela Rules](#); Rule 17 of the [UN Rules for the Protection of Juveniles Deprived of their Liberty](#).

30 Rule 13.2 of the [Beijing Rules](#). See also Rule 70 of the [UN Rules for the Protection of Juveniles Deprived of their Liberty](#); Guideline 15 of the [Guidelines for Action on Children in the Criminal Justice System](#).

31 Rule 58 of the [Bangkok Rules](#).

32 Rules 13, 14 and 23 of the [Mandela Rules](#); [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 25, §30.

33 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 8, §43.

34 Rule 13 of the [Mandela Rules](#).

Rule 14 of the [Mandela Rules](#) states:

“In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.”³⁵

Rules 12(1) and 113 of the [Mandela Rules](#) provide for detainees to sleep singly in separate rooms. However, in some countries there may be various cultural and other factors that would make it preferable for detainees to sleep in multi-occupancy accommodation rather than individual cells.³⁶

Rule 12(2) of the [Mandela Rules](#) states that: “Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions”. The European Committee for the Prevention of Torture has acknowledged that multi-occupancy accommodation for detainees rather than individual cells may be preferable in some instances but has warned that the use of large-capacity dormitories can entail problems such as insufficient facilities, inter-prisoner violence and the difficulty of maintaining control.³⁷ Similarly, the Special Rapporteur on torture has noted that dormitory-type facilities might jeopardize individual security of detainees.³⁸

It must also be noted that those deprived of their liberty are to be held in facilities that are specifically intended for that purpose. The Committee against Torture has stated that holding pre-trial detainees and convicted prisoners for long periods in police stations and other places not adequately equipped for long periods of detention could violate the prohibition of cruel, inhuman or degrading treatment or punishment under the [Convention against Torture](#).³⁹

Similarly, in relation to practices of detention in Jamaica, the Special Rapporteur on torture has stated:

“The overall conditions in police stations reflected a complete disregard for the dignity of detainees. Police lock-ups are designed for only very short time of detention, but in practice, these cells are used as pre-trial detention facilities, holding detainees suspected of crimes for up to four or five years in absolutely appalling conditions. Detention for several weeks or even months in these conditions amounts to inhuman and degrading treatment.”⁴⁰

35 Rule 14 of the [Mandela Rules](#). See also [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 25, §30.

36 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 24, §29.

37 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 24, §29.

38 Visit report of the Special Rapporteur on torture: Kazakhstan, UN Doc. [A/HRC/13/39/Add.3](#) (2009) §26.

39 CAT report, UN Doc. [A/56/44](#) (2001) §119(b), referring to Brazil.

40 Visit report of the Special Rapporteur on Torture: Jamaica, UN Doc. [A/HRC/16/52/Add.3](#) (2010) §70.

Special consideration must also be given to accommodation for pregnant women, women with infants and breastfeeding women in detention. Rule 28 of the [Mandela Rules](#) calls for “special accommodation for all necessary prenatal and postnatal care and treatment” in women’s prisons. Rule 42 of the [Bangkok Rules](#) states that:

“The regime of the prison shall be flexible enough to respond to the needs of pregnant women, nursing mothers and women with children. Childcare facilities or arrangements shall be provided in prisons in order to enable women prisoners to participate in prison activities.”

4.3.2 SEPARATION OF CATEGORIES OF DETAINEES

As stated in [Chapter 3.10](#), international standards require certain categories of detainees to be afforded particular safeguards, including segregation, in order to ensure their protection and safeguard their rights. (Notwithstanding restrictions on solitary confinement, see [section 4.5.5](#) below.) In particular:

- Pre-trial detainees should be held separately from convicted persons.⁴¹ (See [Chapter 3.10.1](#).)
- Children should, in most instances, be held separately from adults.⁴² (See [Chapter 3.10.2](#).)
- Male and female detainees should, in most instances, be held separately. (See [Chapter 3.10.5](#).)
- Prisoners of war in international armed conflicts should be held separately from people held in criminal cases.⁴³
- Detained asylum-seekers and other immigration detainees should be held separately from people held in criminal cases.⁴⁴ (See [Chapter 3.10.8](#).)

Rule 11 of the [Mandela Rules](#) states: “The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment.” It provides for the separation of civil detainees from people imprisoned for a criminal offence.

In most instances, children who are deprived of their liberty should be kept separate from adults (see [Chapter 3.10.2](#)).⁴⁵ However, there may be instances where it is in the child’s best interest to hold them together with their parents or certain other adults.⁴⁶ Specifically in relation to children who are not offenders themselves but who are allowed

41 Article 10(2) of the [ICCP](#).

42 Article 10 of the [ICCP](#); Rules 11 and 112(2) of the [Mandela Rules](#); Article 37(c) of the [Convention on the Rights of the Child](#); [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 76, §100.

43 Article 22 of the [Third Geneva Convention](#).

44 The detention of asylum-seekers and migrants should be an exception and for the shortest time necessary. (See [Chapter 3.10.8](#).) See Article 16(4) of the [Migrant Workers Convention](#); Article 31(2) of the [Refugee Convention](#); Guideline 3 of the [UNHCR Detention Guidelines](#); Report of the Special Rapporteur on the human rights of migrants, [UN Doc. E/CN.4/2003/85](#) (2002) §75(c).

45 Article 10 of the [ICCP](#); Article 37(c) of the [Convention on the Rights of the Child](#); Rules 11 and 112(2) of the [Mandela Rules](#).

46 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 76, §100.

to stay with their mothers in prison, they must never be treated as prisoners,⁴⁷ and the environment provided for such children's upbringing must be as close as possible to that of a child outside prison.⁴⁸

Decisions as to when a child is to be separated from its mother must be based on individual assessments and the best interests of the child within the scope of relevant national laws.⁴⁹

The removal of the child from prison must be undertaken with sensitivity, only when alternative care arrangements for the child have been identified and, in the case of foreign-national detainees, in consultation with consular officials.⁵⁰ After children are separated from their mothers and placed with immediate family or relatives or in other alternative care, women detainees must be given the maximum possible opportunity and facilities to meet with their children, when it is in the best interests of the children and when public safety is not compromised.⁵¹

Although male and female detainees should as a general rule be held in separate premises (see [Chapter 3.10.5](#)),⁵² the European Committee for the Prevention of Torture has welcomed

"arrangements for couples (both of whom are deprived of their liberty) to be accommodated together, and/or for some degree of mixed gender association in prisons... provided that the prisoners involved agree to participate, and are carefully selected and adequately supervised".⁵³

Consideration should also be given to the protection of lesbian, gay, bisexual, transgender and intersex (LGBTI) detainees, who can be at risk of physical and sexual abuse if placed within the general prison population.⁵⁴ It must be ensured that any decision in relation to the placement of LGBTI detainees within a place of detention should avoid further marginalizing them within the prison community or rendering them at further risk of torture or other ill-treatment. (See [Chapter 3.10.6](#).)⁵⁵

Transgender detainees should normally be held in accommodation based on their preferred gender identity. Rights to intimate visits should be granted on an equal basis to all detainees, regardless of the sex of their partners.

47 Rule 49 of the [Bangkok Rules](#).

48 Rule 51(2) of the [Bangkok Rules](#).

49 Rule 52(1) of the [Bangkok Rules](#).

50 Rule 52(2) of the [Bangkok Rules](#).

51 Rule 52(3) of the [Bangkok Rules](#).

52 Rule 11 of the [Mandela Rules](#).

53 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 94, §24.

54 Reports of the Special Rapporteur on torture: UN Doc. [A/HRC/13/39/Add.5](#) (2010) §231; UN Doc. [A/56/156](#) (2001) §23.

55 Visit report of the Special Rapporteur on torture, Jamaica, UN Doc. [A/HRC/16/52/Add.3](#) (2010) §47.

Other classes of detainees should also be held separately where this is necessary to prevent violence and the spread of infectious disease, to maintain discipline and to facilitate rehabilitation.

Rule 93 of the [Mandela Rules](#) provides for the classification of detainees and the separation of different classes. Under Rule 93(1), the purposes of classification are to separate those posing a risk to other prisoners and to facilitate social rehabilitation.

In addition to the criteria specified in the Mandela Rules, Rule 18 of the [European Prison Rules](#) recommends that pre-trial detainees must be separated from sentenced prisoners, males separated from females, and young adults separated from older prisoners. Beyond this, when deciding how to accommodate prisoners, authorities should take into account the suitability of individual prisoners to be accommodated together, as well as, to the extent possible, prisoners' own wishes.

4.3.3 LOCATION OF ACCOMMODATION

Detainees should normally be held in facilities near their homes, if possible, in order to facilitate contact with relatives. Proximity makes it easier for people outside to take steps to help protect a detainee from torture and other ill-treatment. Separations of long distances make it difficult for detainees to maintain contact with their families.⁵⁶

Principle 20 of the [Body of Principles](#) states: "If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence."

Rule 59 of the [Mandela Rules](#) provides that: "Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation."

In relation to women detainees, Rule 4 of the [Bangkok Rules](#) specifies that:

"Women prisoners shall be allocated, to the extent possible, to prisons close to their home or place of social rehabilitation, taking account of their caretaking responsibilities, as well as the individual woman's preference and the availability of appropriate programmes and services".⁵⁷

4.3.4 SANITATION, HYGIENE, CLOTHING AND BEDS

Places of custody need to maintain proper standards of sanitation and hygiene to avoid disease. Inadequate sanitary facilities can constitute ill-treatment in some circumstances.⁵⁸

⁵⁶ In the absence of reasonable grounds, such separations could constitute arbitrary interference with prisoners' right to family life, in violation, for instance, of Article 17 of the [ICCPR](#); see visit report of the Special Rapporteur on torture visit, Kazakhstan, UN Doc. [A/HRC/13/39/Add.3](#) (2009) §30.

⁵⁷ Rule 4 of the [Bangkok Rules](#).

⁵⁸ CPT Visit Report: Latvia, [CPT/Inf \(2013\) 20](#) (2011) §28.

International minimum standards for sanitation, hygiene, clothing and beds are set out in the [Mandela Rules](#).⁵⁹ Regional standards such as the [European Prison Rules](#) and the [Principles on Persons Deprived of Liberty in the Americas](#) also set out detailed provisions on these issues, which will also guide practice within those regions.

Rule 15 of the [Mandela Rules](#) states: “The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.”

The European Committee for the Prevention of Torture has stated:

“Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment. In this connection, the [Committee] must state that it does not like the practice found in certain countries of prisoners discharging human waste in buckets in their cells (which are subsequently ‘slopped out’ at appointed times). Either a toilet facility should be located in cellular accommodation (preferably in a sanitary annex) or means should exist enabling prisoners who need to use a toilet facility to be released from their cells without undue delay at all times (including at night).”⁶⁰

Rule 17 of the [Mandela Rules](#) states: “All parts of a prison regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.” Rule 16 calls for the provision of adequate bathing and shower installations.⁶¹ Rule 18(1) calls for the provision of water for washing and of toilet articles. Rule 21 states that detainees must be provided with separate beds and clean bedding.

In relation to clothing, Rule 19(1) of the [Mandela Rules](#) calls for the provision of suitable clothing, which “shall in no manner be degrading or humiliating”,⁶² and Rule 19(2) states that clothing must be “clean and kept in proper condition”. In particular, pre-trial detainees should be allowed to wear their own clothing if it is clean and suitable.⁶³ If a pre-trial detainee wears prison dress, it must be different from that supplied to convicted prisoners.⁶⁴

International standards recognize that in some respects the hygiene and health needs of women deprived of their liberty differ significantly from those of men, and require that the needs of women are adequately addressed.⁶⁵ Specifically, ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items such as sanitary towels and tampons,

59 Rules 15-21 of the [Mandela Rules](#).

60 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 18, §49.

61 Rule 16 of the [Mandela Rules](#). See also CPT visit report: [Latvia](#), CPT/Inf (2013) 20 (2011) §66.

62 Rule 19 of the [Mandela Rules](#). See also [Albert Womah Mukong v Cameroon](#), HRC, UN Doc. C/PR/C/51/D/458/1991 (1994) §§2.3, 9.1 and 9.3; [Cantoral-Benavides v Peru](#), Inter-American Court, (Ser. C) No. 69 (2000), §§85 and 89.

63 Rule 115 of the [Mandela Rules](#).

64 Rule 115 of the [Mandela Rules](#).

65 Rule 5 of the [Bangkok Rules](#); [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 96, §30.

are of particular importance.⁶⁶ The European Committee for the Prevention of Torture has stated that a failure to provide such basic necessities can amount, in itself, to degrading treatment.⁶⁷

4.4 OTHER ASPECTS OF TREATMENT

Key points:

- **All detainees must be provided with food and water of a sufficient quality and quantity to ensure their physical and mental wellbeing.**
- **Withholding or reducing food or water should never be applied as a disciplinary measure.**
- **Detainees must have access to exercise, recreational, religious and other facilities. In particular, detainees must be able to have access to the open air daily if weather permits.**
- **Detainees should be able to undertake suitable work, if they choose to, and receive remuneration.**

4.4.1 FOOD AND DRINK

In practice, many countries do not provide detainees with adequate food and drinking water. It is often the case that detainees are expected to be fed by their families, posing great difficulties for those who have no family or none nearby, and placing a strain on families' time and resources.⁶⁸ In some places there is no provision for feeding people held in police stations. A lack of access to adequate food and water can constitute cruel, inhuman or degrading treatment.⁶⁹ To deliberately withhold food or water for certain purposes could constitute torture.⁷⁰ Withholding or reducing food or drinking water must never be applied as a disciplinary measure.⁷¹

Rule 22 of the [Mandela Rules](#) sets out the universal requirement regarding food and drinking water:

“Every prisoner shall be provided by the prison administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served. Drinking water shall be available to every prisoner whenever he or she needs it.”⁷²

66 Rule 5 of the [Bangkok Rules](#); [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 96, §31.

67 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 96, §31.

68 Special Rapporteur on prisons, conditions of detention and policing in Africa, [Prisons in the Central African Republic](#), Series IV No.7, 2000, p. 33, recommendation 12; see also SPT visit report: [Benin](#), UN Doc. CAT/OP/BEN/1 (2011) §79.

69 *Cyprus v Turkey* (6780/74 and 6950/75), European Commission, §405; Special Rapporteur on torture report, UN Doc. [A/HRC/13/39/Add.5](#) (2010) §34.

70 Report of the Special Rapporteur on torture, UN Doc. [A/HRC/13/39/Add.5](#) (2010) §31.

71 Principle XI of the [Principles on Persons Deprived of Liberty in the Americas](#). Note that Rule 43(1)d of the [Mandela Rules](#) now prohibits as a disciplinary sanction “the reduction of a prisoner’s diet or drinking water”.

72 Similar requirements are found in Principle XI of the [Principles on Persons Deprived of Liberty in the Americas](#).

At a regional level, Rule 22 of the [European Prison Rules](#) states:

- “22.1 Prisoners shall be provided with a nutritious diet that takes into account their age, health, physical condition, religion, culture and the nature of their work.
- 22.2 The requirements of a nutritious diet, including its minimum energy and protein content, shall be prescribed in national law.
- 22.3 Food shall be prepared and served hygienically.
- 22.4 There shall be three meals a day with reasonable intervals between them.
- 22.5 Clean drinking water shall be available to prisoners at all times.
- 22.6 The medical practitioner or a qualified nurse shall order a change in diet for a particular prisoner when it is needed on medical grounds.”

The European Committee for the Prevention of Torture has stated that detainees should “be given food at appropriate times, including at least one full meal (i.e. something more substantial than a sandwich) every day”.⁷³

In addition, the [Principles on Persons Deprived of Liberty in the Americas](#) state that the diet should give due consideration to the cultural and religious concerns of detainees.⁷⁴

It must also be noted that the [Bangkok Rules](#) contain specific provisions regarding food for women detainees who are pregnant or breastfeeding:⁷⁵

- “Pregnant or breastfeeding women prisoners shall receive advice on their health and diet under a programme to be drawn up and monitored by a qualified health practitioner. Adequate and timely food, a healthy environment and regular exercise opportunities shall be provided free of charge for pregnant women, babies, children and breastfeeding mothers.”

The European Committee for the Prevention of Torture has been more specific by requiring that: “Every effort should be made to meet the specific dietary needs of pregnant women prisoners, who should be offered a high protein diet, rich in fresh fruit and vegetables.”⁷⁶

4.4.2 EXERCISE, RECREATION AND OTHER FACILITIES

Out-of-cell activities are vital for the physical and mental wellbeing of detainees, and concerns have been expressed when detainees are confined to their cells for most of the day.⁷⁷ Standards regarding exercise, recreation, education, religious services and other features of life in detention are set out in the [Mandela Rules](#);⁷⁸ the [Body](#)

73 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 7, §42, p. 13, §47.

74 Principle XI of the [Principles on Persons Deprived of Liberty in the Americas](#).

75 Rule 48 of the [Bangkok Rules](#).

76 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 95, §26.

77 *Csaba Párkányi v Hungary*, HRC, UN Doc. CCPR/C/45/D/410/1990 (1992) §8.3.

78 Rules 12-23 and 58-66 of the [Mandela Rules](#).

of Principles;⁷⁹ the [European Prison Rules](#)⁸⁰ and the [Principles on Persons Deprived of Liberty in the Americas](#).⁸¹

In relation to physical exercise, Rule 23(1) of the [Mandela Rules](#) states: “Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.”⁸² Similarly, the European Committee for the Prevention of Torture has stated that “all prisoners without exception (including those undergoing cellular confinement as a punishment) should be offered the possibility to take outdoor exercise daily”. When the weather does not permit outdoor exercise, alternative arrangements must be made.⁸³

The European Committee for the Prevention of Torture has also stated that a “satisfactory program of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners”, including both convicted prisoners and those awaiting trial.⁸⁴

As well as the ability to exercise and have access to the open air, detainees should be given access to other recreational, cultural, educational and religious facilities and services such as books, newspapers and writing materials,⁸⁵ radio,⁸⁶ television,⁸⁷ religious services and pastoral visits.⁸⁸ The [Mandela Rules](#) also emphasize that “social rehabilitation and reintegration of persons deprived of their liberty shall be among the essential aims of the criminal justice system”.⁸⁹ Accordingly, Rule 88(1) of the [Mandela Rules](#) states that community agencies should be enlisted wherever possible to assist prison staff in the task of social rehabilitation of prisoners. In addition, provision should also be made for programmes aimed at rehabilitating convicted offenders and preparing them for re-integration into society, including vocational guidance and training, social casework to help prisoners cope more effectively with any problems they may have with functioning in society,

79 Principle 19 and 28 of the [Body of Principles](#).

80 Rules 18-29 and 39-48 of the [European Prison Rules](#).

81 Principles XI–XVIII of the [Principles on Persons Deprived of Liberty in the Americas](#).

82 See also Rule 27.1 of the [European Prison Rules](#); Principle XII of the [Principles on Persons Deprived of Liberty in the Americas](#).

83 See also Rule 27.2 of the [European Prison Rules](#).

84 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 17, §47.

85 Rules 64, 66 and 117 of the [Mandela Rules](#); Rules 24.10, 28.5 and 99(c) of the [European Prison Rules](#); and Principle XIII of the [Principles on Persons Deprived of Liberty in the Americas](#).

86 CPT visit reports: [Romania](#), (2002/2003), available in French only, CPT/Inf (2004) p. 10, §73; [Turkey](#), CPT/Inf (2008) p. 13, §13; [Ireland](#), CPT/Inf (2007) p. 40, §93; [Ukraine](#), CPT/Inf (2009) p. 15, §25; [Armenia](#), CPT/Inf (2007) p. 47, §§48 and 67.

87 CPT visit reports: [Ireland](#), CPT/Inf (2007) p. 40, §93, [Armenia](#), CPT/Inf (2007) p. 47, §§48 and 67; [Montenegro](#), CPT/Inf (2010) 3, p. 38, §60.

88 Rule 65 of the [Mandela Rules](#); Rule 29.2 of the [European Prison Rules](#); Principle XV of the [Principles on Persons Deprived of Liberty in the Americas](#).

89 See UN General Assembly [resolution 70/175](#) on the [Mandela Rules](#), preamble and §12. See also Rule 4(1) of the [Mandela Rules](#).

and employment counselling.⁹⁰ However states must not infringe on individuals' autonomy to justify policies such as "re-education through labour".

Detainees should be able to undertake suitable work and receive remuneration.⁹¹ However, work must not be used as a punishment nor be of an "afflictive nature".⁹²

4.5 DISCIPLINE AND SECURITY

Key points:

- **Prison staff may not use force except in self-defence or in cases of attempted escape or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident.**
- **Some equipment, such as handcuffs and leg-cuffs, if designed and used carefully in law enforcement, can have legitimate uses that meet international standards; however, they must not be used deliberately to facilitate torture and other ill-treatment.**
- **Some instruments, such as thumb-screws, shackles and body chains, have unnecessarily injurious, painful, inhumane or degrading effects, or no practical purpose other than as instruments of torture or other ill-treatment, and should be prohibited.**
- **Law enforcement and prison officials must be fully trained and accountable regarding the appropriate, and inappropriate, ways to use equipment.**
- **Disciplinary measures should only be used as a last resort.**
- **Certain punishments are expressly prohibited under international law, including collective disciplinary punishments, corporal punishment and confinement in a dark cell.**
- **Prolonged solitary confinement can amount to torture or other cruel, inhuman or degrading punishment.**
- **Searches of detainees must be as unobtrusive as possible. In particular any personal or body searches must be carried out only if absolutely unavoidable and undertaken by staff of the same gender as the prisoner.**

4.5.1 USE OF FORCE

As discussed in [Chapter 3.13](#), the [UN Code of Conduct for Law Enforcement Officials](#) and the [Basic Principles on Use of Force](#) establish that force should be used in law enforcement only when strictly necessary, that the use of force should not be disproportionate to the legitimate objective to be achieved, and that firearms should not be used except as an extreme measure in a restricted range

90 See Rule 92 of the [Mandela Rules](#); Principles XIII and XIV of the [Principles on Persons Deprived of Liberty in the Americas](#).

91 Rules 96-103 of the [Mandela Rules](#); Rules 100.1, 100.2, 103.4(a) and 105 of the [European Prison Rules](#); Principle XIV of the [Principles on Persons Deprived of Liberty in the Americas](#).

92 Rule 97(1) of the [Mandela Rules](#); see also Rule 26.1 of the [European Prison Rules](#); and Principle XIV of the [Principles on Persons Deprived of Liberty in the Americas](#).

of situations. These standards are applicable to the use of force in places of detention, as any legitimate use of force by guards there would be in connection with a law enforcement function.

In addition, the [Mandela Rules](#) also contain specific provisions on the use of force by prison officers. Rule 82 states:

- “1. Prison staff shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Prison staff who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the prison director.
2. Prison staff shall be given special physical training to enable them to restrain aggressive prisoners.
3. Except in special circumstances, prison staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, prison staff should in no circumstances be provided with arms unless they have been trained in their use.”

4.5.2 RESTRAINT TECHNIQUES AND DEVICES

The use of instruments and techniques of restraint may sometimes be necessary if other methods of control fail. When designed and used carefully in restraining prisoners for legitimate purposes, the use of handcuffs, leg-cuffs and other equipment can meet international standards. However, even safe restraint devices can be used to facilitate torture or other ill-treatment, and poorly designed restraints result in unwarranted injuries and suffering.⁹³

In accordance with Rule 47 of the [Mandela Rules](#), instruments of restraint may only be used when authorized by law and in the following circumstances:

- “(a) As a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority;
- (b) By order of the prison director, if other methods of control fail, in order to prevent a prisoner from injuring himself or herself or others or from damaging property; in such instances, the director shall immediately alert the physician or other qualified health-care professionals and report to the higher administrative authority”.

In addition, Rule 43(2) of the [Mandela Rules](#) stipulates that “instruments of restraint shall never be applied as a sanction for disciplinary offences”.

When instruments are applied, the [Mandela Rules](#) also state that:

⁹³ An introduction to this issue is provided by Amnesty International and the Omega Research Foundation, [The human rights impact of less lethal weapons and other law enforcement equipment](#) (Index: ACT 30/1305/2015).

“(a) Instruments of restraint are to be imposed only when no lesser form of control would be effective to address the risks posed by unrestricted movement;
(b) The method of restraint shall be the least intrusive method that is necessary and reasonably available to control the prisoner’s movement, based on the level and nature of the risks posed;
(c) Instruments of restraint shall be imposed only for the time period required, and they are to be removed as soon as possible after the risks posed by unrestricted movement are no longer present.”⁹⁴

Moreover, instruments of restraint should never be used on women who are in labour, during birth and immediately after birth. The European Committee for the Prevention of Torture has also expressed concern about restraining individuals when receiving a medical consultation or intervention except in exceptional cases.⁹⁵

When applied, the use of restraints should be recorded and the individual restrained must be kept under constant supervision.⁹⁶

Some instruments have unnecessarily injurious, painful, inhumane or degrading effects, or no practical purpose other than as instruments of torture or other ill-treatment. These include thumb-screws, shackles and body chains, and should be prohibited. A thumb-screw is a torture device designed to inflict pain and injury by compressing the thumb (or finger). Other restraint instruments such as thumb-cuffs (shown below) and finger-cuffs pose significant risks of unwarranted injury when used in stress positions. Much safer and more humane alternatives to such restraint devices are available. Thus, such devices should not be used in law enforcement.



Left: Thumb-cuffs photographed in Taiwan in 2008. Right: Thumb-cuffs in use. Both ©Robin Ballantyne

In accordance with Rule 47(1) of the [Mandela Rules](#), it is prohibited to use chains, irons or other instruments of restraint which are inherently degrading or painful.⁹⁷ The term

⁹⁴ Rule 48(1) of the [Mandela Rules](#).

⁹⁵ CPT visit report, [Slovak Republic](#), CPT/Inf (2010) p. 1, §105.

⁹⁶ Concluding Observations of CAT: [New Zealand](#), UN Doc. CAT/C/NZL/CO/5 (2009) §9; [CPT 2nd General Report](#), CPT/Inf (92) p. 3, §53.

⁹⁷ Rule 47(1) of the [Mandela Rules](#).

“chains” has been understood narrowly to mean the restraint of one or more individuals directly with a metal chain or chains, while the term “irons” is usually equated with shackles or fetters made of metal that are either bolted onto ankles, are connected by an iron bar or both. However, sometimes similar items are described as leg-cuffs and leg irons.

Any restraint manufactured from a resistant material has the potential to cause pain or serious injury, but additional risks of harm are associated with the use of metal leg restraints. These include: (a) physical pain, discomfort and infection caused by the metal bumping and rubbing against the ankles and causing abrasions;⁹⁸ (b) a risk of the cuffs around the ankle tightening if they are not double locked, which is a common issue with several types of restraint devices; and (c) psychological effects of humiliation.⁹⁹ Some design features on leg restraints cause unwarranted injury and pain or discomfort, such as being specially weighted to restrict movement.

Amnesty International considers that weighted leg irons and leg-cuffs, as well as leg-cuffs with a fixed bar, should be prohibited.

In any case, the use of leg restraints should be avoided in all but the most extreme cases that cannot be dealt with using more humane alternative forms of restraint (for example to protect an individual from self-harm), and must never be applied for prolonged periods.¹⁰⁰ The use of restraint chairs does not meet any legitimate law enforcement objectives that cannot be effectively accomplished with safer alternatives and should be prohibited. The Committee against Torture has called on states to “[a]bolish... restraint chairs as methods of restraining those in custody. Their use almost invariably leads to breaches of article 16 of the Convention [against Torture]”.¹⁰¹

Plastic restraints can also be easily over-tightened, and many types cannot be double locked, loosened or removed without being cut off. The narrow width of the cuffs can also, in certain conditions (such as prolonged or over-tight application), exacerbate the risk of fractures and nerve damage associated with any kind of handcuff use.¹⁰² Furthermore, some police and correctional agencies have used, or are authorized

98 *Namunjepo and Others v Commanding Officer, Windhoek Prison and Another* (SA 3/98), Namibia Supreme Court (1999).

99 For example the Namibia Supreme Court noted “the practice to use chains and leg-irons on human beings is a humiliating experience which reduces the person... to the level of a hobbled animal... [it is] a strong reminder of days gone by when people of this continent were carted away in bondage to be sold like chattels”, see *Namunjepo and Others v Commanding Officer, Windhoek Prison and Another* (SA 3/98), Namibia Supreme Court (1999), §23.

100 Amnesty International UK, *Out of control: The case for a complete overhaul of enforced removals by private contractors* (2011), p. 16.

101 Concluding Observations of CAT: USA, UN Doc. A/55/44(SUPP) (2000) §180(c).

102 See B. Steiner-Birmanns, ‘Tight Handcuffs – Memorandum to The Public Committee against Torture in Israel’ in The Public Committee Against Torture in Israel, Periodic Report, *Shackling as a form of torture and abuse*, 2009, p. 16.

to use, equipment such as plastic cable ties not originally designed or intended for use on humans.¹⁰³



Left: Plastic disposable restraints demonstrated at IWA 2010 (International Waffen Ausstellung trade fair 2010). Right: Plastic disposable restraints. © Robin Ballantyne/Omega Research Foundation

Amnesty International therefore considers that law enforcement agencies should ensure that only specially designed plastic restraints are used, and are authorized for use. Furthermore, law enforcement agencies should set standards for the minimum width of plastic cuffs based on independent medical evidence,¹⁰⁴ and all officers using plastic restraints should carry a means to immediately remove them if necessary to prevent injury or pain. Following arrest, wherever possible, and at the earliest opportunity, officers should replace plastic cuffs with alternatives less prone to cause injury, if there is a continued need for restraint. Fabric restraint systems, appropriately tested and selected in line with human rights standards, could provide a more humane yet effective alternative to the use of “metal on skin” devices.



Left: Fabric leg-cuffs. © Robin Ballantyne/Omega Research Foundation.

¹⁰³ See Regulation 18(1)(d) of [South Africa's Correctional Services Regulations](#), *Regulations Gazette*, Vol. 562, issue 35277, 25 April 2012, p. 32.

¹⁰⁴ The Public Committee against Torture in Israel recommends that “the IDF [Israel Defense Forces] must replace the type of handcuffs currently used (narrow plastic handcuffs that can only be tightened) with handcuffs that apply less severe pressure... and that may also be loosened”, see *Shackling as a form of torture and abuse*, 2009, p. 68.

Rigid bar handcuffs used improperly or for prolonged periods, or used in ways that cause excessive strain on wrist joints by over-tightening or by dragging detainees by the wrists, can result in unwarranted injuries.¹⁰⁵ Medical evidence suggests that using rigid handcuffs for leverage can cause “considerable trauma to the structures around the wrist... [including] fractures, lacerations, and injuries to... nerves”, and that such injuries can, in certain conditions, be “persistent and severe [and] extremely debilitating”.¹⁰⁶

Amnesty International therefore considers that where the only practical method of handcuffing is for officers to use metal handcuffs, preference should be given to chain link models, as evidence suggests these are less prone to cause injury than rigid bar handcuffs. If it is operationally necessary to use rigid cuffs,¹⁰⁷ officers must not use such devices to drag or manoeuvre detainees. Officers must also remove metal restraints at the earliest possible moment and replace them with secure fabric restraints where it is absolutely necessary to keep the person detained in restraints.

Officers should not use riot control agents or electric-shock weapons on individuals who are handcuffed or otherwise restrained unless they pose an immediate threat of death or serious injury that cannot be contained by less extreme measures.

Body-worn electric-shock devices, including so-called “stun belts” or “shock belts”, encircle the restrained person’s body, including the waist, and deliver a high-voltage electric shock when a remote control is activated. The electrical current not only causes incapacitation but also serious pain, and may cause short- and long-term physical effects, including muscular weakness, loss of control over urination and defecation, heartbeat irregularities, and seizures.¹⁰⁸ The mere possibility that such a device or weapon could be activated keeps the wearer in a constant state of anxiety.

105 Amnesty International UK, *Out of Control: The case for a complete overhaul of enforced removals by private contractors*, 2011. See also C. Granville-Chapman, E. Smith and N. Moloney, ‘Excessive force during removal of immigration detainees’ in *Journal of Clinical Forensic Medicine*, Vol. 12, Issue 4, 2005.

106 ‘Complaints of pain after use of handcuffs should not be dismissed’, letter from F.S Haddad, N.J. Goddard, R.N. Kanvinde and F. Burke to the *British Medical Journal*, Vol. 318, Issue 7175, 1999, p. 55.

107 Rigid cuffs are favoured in certain arrest scenarios because they can be quicker and easier to apply than chain link cuffs.

108 One survivor of use of a stun belt described it as inflicting “very intense shocking pain... so intense I thought that I was actually dying”. P.K. Yoon, ‘The “Stunning” Truth: Stun Belts Debilitate, They Prejudice, and They May Even Kill’ *Capital Defense Journal*, Vol 15, Issue 2, 2003, p. 389.



Anti-Scape Stun Belt (Force Group, South Africa). The device comprises a belt (note D-rings for handcuffs), shocking unit and remote control. © Company image

Such devices, by combining restraints with electric-shock weapons, are more injurious than other restraints, and potentially in breach of the requirement of Principle 2 of the [Basic Principles on Use of Force](#) that “non-lethal incapacitating weapons” should be developed with a view to “increasingly restraining the application of means capable of causing death or injury to persons”. The Committee against Torture¹⁰⁹ and the European Committee for the Prevention of Torture,¹¹⁰ among others, have stated that such devices are unacceptable. All stun belts and other electric-shock stun devices designed for attachment to the body of a prisoner or detainee should be prohibited for manufacture, transfer and use.¹¹¹ (See also [Chapter 3.13.1](#) on other electric-shock weapons.)

4.5.3 DISCIPLINARY PUNISHMENTS

Disciplinary measures should only be used as a last resort. Only conduct likely to constitute a threat to good order, safety or security may be defined as a disciplinary offence.¹¹² No detainee may be subjected to disciplinary punishment within an institution except in accordance with clear rules and procedures established by law or regulation.¹¹³ The law or regulation must also set out the conduct constituting a disciplinary offence; the types and duration of punishment permissible; and the authority competent to impose it.¹¹⁴

109 Cited in Amnesty International, [The pain merchants: Security equipment and its use in torture and other ill-treatment](#) (Index: ACT 40/008/2003) p. 45.

110 Council of Europe press release, ‘Council of Europe anti-torture committee calls for strict regulation of electrical discharge weapons’, 2010.

111 See Amnesty International: [The pain merchants: Security equipment and its use in torture and other ill-treatment](#) (Index: ACT 40/008/2003) p. 46; [From words to deeds: Making the EU ban on tools of torture a reality](#) (Index: EUR 01/004/2010), p. 27.

112 Rules 56-57(1) of the [European Prison Rules](#).

113 [CPT 2nd General Report](#), CPT/Inf (92) p. 3, §55.

114 Principle 30 of the [Body of Principles](#); Rule 37 of the [Mandela Rules](#); Rule 57(2) of the [European Prison Rules](#); Principle XXII(1)-(2) of the [Principles on Persons Deprived of Liberty in the Americas](#).

Rule 36 of the [Mandela Rules](#) states: “Discipline and order shall be maintained with no more restriction than is necessary to ensure safe custody, the secure operation of the prison and a well-ordered community life.” No detainee may be employed by the institution in a disciplinary capacity or otherwise given responsibility for exercising disciplinary measures on another detainee.¹¹⁵

The competent authorities must conduct a thorough examination of the alleged disciplinary offence. They must inform the individual(s) concerned of the alleged offence and give them an opportunity to present a defence,¹¹⁶ with legal assistance if required in the interests of justice,¹¹⁷ and an interpreter when necessary. An individual has the right to have disciplinary decisions reviewed by an independent higher authority.¹¹⁸ If the alleged disciplinary offence constitutes a criminal offence under national law or international standards, the full range of fair trial rights apply.

Before imposing disciplinary sanctions, prison administrations must consider whether and how a prisoner’s mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act underlying the disciplinary charge. Prison administrations shall not sanction any conduct of a prisoner that is considered to be the direct result of his or her mental illness or intellectual disability.¹¹⁹ Solitary confinement is prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures.¹²⁰

The severity of the punishment must be proportionate to the offence, and the punishment itself consistent with international law and standards. No disciplinary punishment on a remand detainee may have the effect of extending the period of detention or interfering with the preparation of their defence.¹²¹

The state remains responsible for defining and regulating disciplinary measures and procedures even when it contracts out the running of an institution to a private company.¹²²

115 Rule 40 of the [Mandela Rules](#); Rule 62 of the [European Prison Rules](#); Principle XXII(5) of the [Principles on Persons Deprived of Liberty in the Americas](#).

116 Principle 30(2) of the [Body of Principles](#); Rules 37 and 39 of the [Mandela Rules](#); Rules 58-59 of the [European Prison Rules](#), Principle XXII of the [Principles on Persons Deprived of Liberty in the Americas](#); [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 19, §55.

117 Rule 59(c) of the [European Prison Rules](#).

118 Principle 30 of the [Body of Principles](#); Principle XXII(1) of the [Principles on Persons Deprived of Liberty in the Americas](#); Rule 61 of the [European Prison Rules](#).

119 Rule 39(3) of the [Mandela Rules](#).

120 Rule 45(2) of the [Mandela Rules](#).

121 Rule 41 of the [CoE Rules on remand in custody](#).

122 Rule 88 of the [European Prison Rules](#).

Certain punishments are expressly prohibited as disciplinary measures under international law and standards including:

- Torture or other cruel, inhuman or degrading treatment or punishment;¹²³
- Indefinite or prolonged solitary confinement;¹²⁴
- Collective disciplinary punishments;¹²⁵
- Corporal punishment;¹²⁶
- Reduction of a prisoner's diet or drinking water;¹²⁷
- Confinement in a dark cell or a constantly lit cell;¹²⁸
- Prohibition of family visits;¹²⁹
- Close confinement or segregation of pregnant women or new mothers.¹³⁰

Under the [Mandela Rules](#), health care personnel must not have any role in the imposition of disciplinary sanctions or other restrictive measures. They must, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily basis and providing prompt medical assistance and treatment at the request of the prisoner or prison staff.¹³¹

Health care personnel must also report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and must advise the director if they consider it necessary to terminate or alter the measures for physical or mental health reasons.¹³² (See [Chapter 5.5](#) on the role of health professionals in the prevention of torture and other ill-treatment.)

4.5.4 SEARCHES

Searches of cells, detainees, visitors and staff must be regulated, with the situations in which such searches are necessary and their nature defined by national law.¹³³ Searches should be as unobtrusive as possible, strictly limited to aims such as security and detecting contraband, and must avoid humiliation. Any personal and body searches of detainees and visitors must be necessary, reasonable and proportionate.¹³⁴ They should only be carried out by trained staff of the same gender and in a manner

123 Rule 43(1) of the [Mandela Rules](#); Principles XI and XXII of the [Principles on Persons Deprived of Liberty in the Americas](#); Rule 60.3 of the [European Prison Rules](#).

124 Rules 43(1)(a) and (b) of the [Mandela Rules](#).

125 Rule 43(1)(e) of the [Mandela Rules](#); Rule 60.3 of the [European Prison Rules](#); Principles I and XXII (4) of the [Principles on Persons Deprived of Liberty in the Americas](#).

126 Rule 43(1)d of the [Mandela Rules](#); Rule 60.3 of the [European Prison Rules](#).

127 Rule 43(1)d of the [Mandela Rules](#).

128 Rule 43(1)c of the [Mandela Rules](#); Rule 60.3 of the [European Prison Rules](#).

129 Rule 43(3) of the [Mandela Rules](#); Rule 23 of the [Bangkok Rules](#); Rule 60.4 of the [European Prison Rules](#).

130 Rule 22 of the [Bangkok Rules](#); Principle XXII(3) of the [Principles on Persons Deprived of Liberty in the Americas](#).

131 Rule 46(1) of the [Mandela Rules](#).

132 Rule 46(2) of the [Mandela Rules](#).

133 Rule 54 of the [European Prison Rules](#).

134 Rule 54 of the [European Prison Rules](#); Principle XXI of the [Principles on Persons Deprived of Liberty in the Americas](#).

consistent with the dignity of the person being searched.¹³⁵ (See also [Chapters 2.5.3](#) and [2.8](#).)

The European Committee for the Prevention of Torture has emphasized that:
“persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender”.¹³⁶

According to the [Mandela Rules](#), searches must be “conducted in a manner that is respectful of the inherent human dignity and privacy of the individual being searched, as well as the principles of proportionality, legality and necessity”. They must not be used “to harass, intimidate or unnecessarily intrude upon a prisoner’s privacy”. Records of all searches must be kept.¹³⁷

Intimate physical searches may be carried out only by a medical practitioner.¹³⁸ The practitioner should not normally be the person who provides medical care to the individual.¹³⁹ Strip searches and invasive body searches carried out in a humiliating manner can constitute torture or other ill-treatment.¹⁴⁰ According to the [Mandela Rules](#), intrusive body searches may only be undertaken where absolutely necessary. Body cavity searches may be “conducted only by qualified health-care professionals other than those primarily responsible for the care of the prisoner or, at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety”.¹⁴¹ Such searches must not be carried out on children.¹⁴²

As noted in [Chapters 2.5.3](#) and [2.8](#), certain forms of intimate searches or examinations, such as “virginity tests” on women or anal examinations of men who are suspected of being gay or having engaged in anal sex, violate the prohibition of torture and other ill-treatment.¹⁴³ The [Principles on Persons Deprived of Liberty in the Americas](#) state that intrusive vaginal or anal searches must be forbidden by law.¹⁴⁴

135 HRC General Comment 16, §8; [CPT 10th General Report](#), CPT/Inf (2000) p. 13, §23. See also Concluding Observations of CAT: [France](#), UN Doc. CAT/C/FRA/CO/4-6 (2010) §28; [Hong Kong](#), UN Doc. CAT/C/HKG/CO/4 (2008) §10.

136 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 94, §23.

137 Rules 50-51 of the [Mandela Rules](#).

138 [CPT 3rd General Report](#), CPT/Inf (93) p. 12, §73; World Medical Association, [Statement on Body Searches of Prisoners](#); Concluding Observations of CAT: [Hong Kong](#), UN Doc. CAT/C/HKG/CO/4 (2008) §10.

139 Rule 54 of the [European Prison Rules](#).

140 [Boodoo v Trinidad and Tobago](#), HRC, UN Doc. CCPR/C/74/D/721/1996 (2002) §§6.5, 6.7; Concluding Observations of CAT: [Qatar](#), UN Doc. CAT/C/QAT/CO/1 (2006) §21; [López-Álvarez v Honduras](#), Inter-American Court (Ser. C) No. 149 (2006) §§54(12), §107.

141 Rule 52 of the [Mandela Rules](#).

142 Rule 60(2) of the [Mandela Rules](#).

143 See [Miguel Castro-Castro Prison v Peru](#), Inter-American Court (Ser. C) No. 160 (2006) §312; Report of WGAD, Addendum: Opinions adopted by the Working Group on Arbitrary Detention, [UN Doc. A/HRC/16/47/Add.1](#) (2011), Opinion No. 25/2009 (Egypt): Communication addressed to the Government on 18 May 2009, p. 20; Special Rapporteur on torture report, [UN Doc. A/56/156](#) (2001) §§17-25.

144 Principle XXI of the [Principles on Persons Deprived of Liberty in the Americas](#).

Alternative screening methods such as scans should be developed to replace strip searches and invasive body searches.¹⁴⁵

4.5.5 SOLITARY CONFINEMENT

Rule 44 of the Mandela Rules defines solitary confinement as “the confinement of prisoners for 22 hours or more a day without meaningful human contact”.¹⁴⁶ (Note that solitary confinement is not the same as incommunicado detention. Detainees are considered to be held incommunicado when they are denied contact with the outside world, whether or not they have contact with other detainees. See [Chapter 3.7.1.](#))

Although solitary confinement is not completely prohibited under international law, it can be damaging to the physical and mental health of a detainee. The Human Rights Committee has noted that:

“solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with article 10, paragraph 1, of the Covenant.”¹⁴⁷

Furthermore, the Special Rapporteur on torture has noted that the practice of solitary confinement is “contrary to one of the essential aims of the penitentiary system, which is to rehabilitate offenders and facilitate their reintegration into society”.¹⁴⁸

International standards state that solitary confinement must never be imposed on children,¹⁴⁹ on pregnant women or those with young children,¹⁵⁰ or on people with mental disabilities.¹⁵¹ Furthermore, some human rights bodies have stated that solitary confinement should not be imposed by a court as part of a sentence,¹⁵² and that solitary confinement in punishment cells should be prohibited.¹⁵³

International standards and experts increasingly favour restriction or even elimination of solitary confinement, in particular as a punishment. Article 7 of the [Basic Principles](#)

145 Rule 20 of the [Bangkok Rules](#); Principle XXI of the [Principles on Persons Deprived of Liberty in the Americas](#); Concluding Observations of CAT: [Hong Kong](#), UN Doc. CAT/C/HKG/CO/4 (2008) §10; [France](#), UN Doc. CAT/C/FRA/CO/4-6 (2010) §28.

146 See similarly, Report of the Special Rapporteur on torture, [UN Doc. A/66/268](#) (2011) §26.

147 Concluding Observations of HRC: [Denmark](#), UN Doc. CCPR/CO/70/DNK (2000) §12. See also [Rosa Espinoza de Polay v Peru](#), HRC, UN Doc. CCPR/C/61/D/577/1994 (1997) §8.6.

148 Report of the Special Rapporteur on torture, [UN Doc. A/66/268](#) (2011) §79.

149 Principle XXII(3) of the [Principles on Persons Deprived of Liberty in the Americas](#); [CRC General Comment 10](#), §89; Rule 67 of the [UN Rules for the Protection of Juveniles Deprived of their Liberty](#); SPT Country Visit Report: [Paraguay](#) (2010) §185.

150 Rule 22 of the [Bangkok Rules](#); Principle XXII (3) of the [Principles on Persons Deprived of Liberty in the Americas](#).

151 Special Rapporteur on torture, [UN Doc. A/66/268](#) (2011) §§79-101; SPT Country Visit Report: [Paraguay](#) (2010) §185.

152 [CPT 21st General Report](#) (2011) §§56(a).

153 Principle XXII (3) of the [Principles on Persons Deprived of Liberty in the Americas](#); Concluding Observations of CAT: [Bolivia](#), UN Doc. A/56/44 (2001) §95(g).

for the [Treatment of Prisoners](#) states that: “Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged.”¹⁵⁴

In accordance with international standards, when solitary confinement is used it should only be as an exceptional measure, for as short a time as possible, under judicial supervision, and with adequate review mechanisms including the possibility of judicial review.¹⁵⁵ Steps should be taken to minimize its harmful effects on the detainee by ensuring they have access to adequate exercise and social and mental stimulation, and that their health is regularly monitored.¹⁵⁶

Depending on the specific reason for its application, conditions, length, effects and other circumstances, solitary confinement can constitute torture or other ill-treatment.¹⁵⁷ In particular it is acknowledged that prolonged solitary confinement may amount to torture or other ill-treatment.¹⁵⁸ The Special Rapporteur on torture and the [Mandela Rules](#) have defined prolonged solitary confinement as lasting more than 15 days.¹⁵⁹

As noted in [Chapter 3.9.1](#), holding a person in solitary confinement before trial may be considered a form of coercion, and when it is used intentionally to obtain information or a confession and inflicts severe pain or suffering it amounts to torture.¹⁶⁰

Not only may the use of solitary confinement itself amount to torture or other ill-treatment, it also increases the risk that other acts of torture and ill-treatment will go undetected and unchallenged.¹⁶¹

154 Article 7 of the [Basic Principles for the Treatment of Prisoners](#). See also report of the Special Rapporteur on torture, [UN Doc. A/66/268](#) (2011) §84; Concluding Observations of CAT: [Peru](#), [UN Doc. A/55/44](#) (2000) §61(c); SPT Country Visit Report: [Paraguay](#) (2010) §185; Principle XXII(3) of the [Principles on Persons Deprived of Liberty in the Americas](#).

155 Principle XXII(3) of the [Principles on Persons Deprived of Liberty in the Americas](#); Rules 51, 53, 60.5 and 70 of the [European Prison Rules](#); [Ramirez Sanchez v France](#) (59450/00), European Court Grand Chamber (2006) §§138–145; [A. B. v Russia](#) (1439/06), European Court (2010) §108; Concluding Observations of CAT: [Azerbaijan](#), [UN Doc. CAT/C/AZE/CO/3](#) (2009) §13; [Denmark](#), [UN Doc. CAT/C/DNK/CO/5](#) (2007) §14; [Israel](#), [UN Doc. CAT/C/ISR/CO/4](#) (2009) §18; [Norway](#), [UN Doc. CAT/C/CR/28/3](#) (2002) §4(d).

156 [CPT 21st General Report](#) (2011) §§61-63; Special Rapporteur on torture, [UN Doc. A/66/268](#) (2011) §§83, 100–101.

157 Special Rapporteur on torture report, [UN Doc. A/66/268](#) (2011) §80.

158 [HRC General Comment 20](#), §6; Special Rapporteur on Torture report, [UN Doc. A/66/268](#) (2011) §81; Concluding Observations of CAT: [New Zealand](#), [UN Doc. CAT/C/CR/32/4](#) (2004) §§5(d) and 6(d); [USA](#), [UN Doc. CAT/C/USA/CO/2](#) (2006) §36; [Japan](#), [UN Doc. CAT/C/JPN/CO/1](#) (2007) §18; [McCallum v South Africa](#), HRC, [UN Doc. CCPR/C/100/D/1818/2008](#) (2010) §6.5; SPT Country Visit Report: [Paraguay](#) (2010) §185; Inter-American Court: [Miguel Castro-Castro Prison v Peru](#), (Ser. C) No. 160 (2006) §323; [Velásquez Rodríguez v Honduras](#), (Ser. C) No. 4 (1988) §187; [Castillo Petruzzi and Others v Peru](#), (Ser. C) No. 52 (1999) §198; [Van der Ven v The Netherlands](#) (50901/99), European Court (2003) §51; [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 20, §56.

159 Report of the Special Rapporteur on torture, [UN Doc. A/66/268](#) (2011) §26; Rule 44 of the [Mandela Rules](#).

160 See report of the Special Rapporteur on torture, [UN Doc. A/66/268](#) (2011) §§73 and 85.

161 Report of the Special Rapporteur on torture, [UN Doc. A/66/268](#) (2011) §80.

Amnesty International's position on solitary confinement is that the organization broadly supports the views of international human rights bodies and experts on this issue, and welcomes the elaboration of international standards under the Mandela Rules, but wishes to clarify the following: Amnesty International considers that solitary confinement must not be imposed by courts, although decisions to impose solitary confinement may be appealable to courts. Nor may solitary confinement be imposed under any circumstances as a means of intimidating or coercing detainees or prisoners, for instance to co-operate with interrogators or stop hunger strikes.

Solitary confinement within places where people are deprived of their liberty may only be imposed in exceptional circumstances and as a last resort in two instances:

1. As an emergency measure to protect other prisoners or prison staff, used only when no other measure can provide such protection and strictly for as long as is deemed absolutely necessary and for no longer than a few days; or
2. As a disciplinary punishment for serious infringements within the prison, as a last resort and only for a very short period lasting no more than a few days; it must never be prolonged.

In this, the position of Amnesty International largely follows the [Mandela Rules](#). Of particular relevance are the rules prohibiting prolonged solitary confinement – that which exceeds 15 days – under all circumstances.¹⁶²

In Amnesty International's view, which corresponds to the [Mandela Rules](#),¹⁶³ all prolonged solitary confinement constitutes cruel, inhuman or degrading treatment or punishment and in certain circumstances may amount to torture; therefore prolonged solitary confinement must not be imposed under any circumstances.

Prison authorities may therefore subject certain detainees, as a last resort, to solitary confinement, but only for a limited and specified time which must in no case exceed the maximum limit set by national laws and may under no circumstances whatsoever exceed 15 days. In imposing solitary confinement the authorities must always take into account the specific circumstances of the individual concerned.

All cases of solitary confinement must be subject to regular, substantive and independent review, where the prisoner's views are heard and his or her interests

162 Rules 43(b) and 44 of the [Mandela Rules](#).

163 Rule 43 states: "In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:

- (a) Indefinite solitary confinement;
- (b) Prolonged solitary confinement..."

The Mandela Rules therefore consider indefinite and prolonged solitary confinement to be forms of torture or other ill-treatment.

are represented. Periods of solitary confinement must not be imposed consecutively or in quick succession.

Prisoners subjected to all forms of disciplinary punishment, including solitary confinement, must otherwise be held in the same conditions and treated in the same way as other prisoners. In particular their rights to adequate food, access to adequate medical care, personal hygiene, visits, exercise and access to fresh air and natural light must continue to be fully respected at all times. This is in accordance with Rule 42 of the [Mandela Rules](#):

“General living conditions addressed in these rules, including those related to light, ventilation, temperature, sanitation, nutrition, drinking water, access to open air and physical exercise, personal hygiene, health care and adequate personal space, shall apply to all prisoners without exception.”

Where it is absolutely necessary to place a prisoner in a separate cell and isolate him or her from the general prisoner population for longer periods, this must not amount to solitary confinement, may only be done as a last resort, strictly in the interest of the prisoner’s safety or that of others towards whom he or she poses a concrete danger, and be subject to ongoing and individual risk assessment. To ensure that such isolation or separation¹⁶⁴ does not constitute solitary confinement, the prison authorities must provide or facilitate daily, unmediated, meaningful and sustained human contact for the prisoner, be it with prison staff, individual prisoners, family, friends or others. The prisoner must not be subjected to more restrictions than are absolutely necessary and must be provided with access to personal belongings as well as to educational, vocational and therapeutic programmes. The decision to continue such separation and isolation must be subjected to regular, substantive independent review where the prisoner’s views are heard and his or her interests are represented. Decisions to hold or to continue holding prisoners in isolation or separation should be subject to appeal.

The fact that prolonged and indefinite solitary confinement have been recognized internationally as amounting to torture or other ill-treatment implies that neither states nor non-state parties to an armed conflict may subject individuals to prolonged or indefinite solitary confinement, as doing so would violate the prohibition of torture and other ill-treatment under international humanitarian law.

4.5.6 PREVENTING INTER-PRISONER VIOLENCE

States must take measures to prevent inter-prisoner violence and ensure a safe environment for detainees. The Special Rapporteur on torture has stated:

“Countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing

¹⁶⁴ Rule 37(d) of the [Mandela Rules](#) refers to “involuntary separation from the general prison population”.

those responsible, and offering protective custody to vulnerable individuals, without marginalizing them from the prison population more than necessitated by the needs of protection and without rendering them at further risk of ill-treatment. Training programmes should be considered to sensitize prison officials as to the importance of taking effective steps to prevent and remedy prisoner-on-prisoner abuse and to provide them with the means to do so.”¹⁶⁵

Thus, the Special Rapporteur has noted that “inter-prisoner violence can amount to torture or ill-treatment if the State fails to act with due diligence to prevent it”.¹⁶⁶

Similarly, the European Committee for the Prevention of Torture has stated: “The duty of care which is owed by custodial staff to those in their charge includes the responsibility to protect them from other inmates who wish to cause them harm.” According to the Committee:

“Tackling the phenomenon of inter-prisoner violence requires that prison staff be placed in a position, including in terms of staffing levels, to exercise their authority and their supervisory tasks in an appropriate manner. Prison staff must be alert to signs of trouble and be both resolved and properly trained to intervene when necessary. The existence of positive relations between staff and prisoners... is a decisive factor in this context; this will depend in large measure on staff possessing appropriate interpersonal communication skills.”¹⁶⁷

Certain groups of detainees may be at higher risk of violence from other prisoners. These include members of particular racial, ethnic or national groups, lesbian, gay, bisexual, transgender and intersex people, and persons convicted or suspected of sexual crimes. Where necessary, detainees especially vulnerable to attack or intimidation should be separated from likely attackers, in accordance with the principles on separation of detainees described above. (See [section 4.3.2.](#))

All instances of inter-prisoner violence should be thoroughly investigated and perpetrators of violence should be prosecuted and punished with appropriate penalties, in conformity with international human rights standards, including fair trial rights.¹⁶⁸ Victims of inter-prisoner violence or their families should be able to receive compensation.¹⁶⁹

4.6 RECORD-KEEPING

Key points:

165 Special Rapporteur on torture report, [UN Doc. A/56/156](#) (2001) §39(i).

166 Special Rapporteur on torture visit report: [Kazakhstan](#), UN Doc. A/HRC/13/39/Add.3 (2009) §28.

167 [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. 2015, p. 23, §27.

168 Concluding Observations of HRC: [Bosnia and Herzegovina](#), UN Doc. CCPR/C/BIH/CO/2 (2012) §11; Concluding Observations of CAT: [Netherlands](#), UN Doc. CAT/C/NLD/CO/5-6 (2013) §23; [Mozambique](#), UN Doc. CAT/C/MOZ/CO/1 (2013) §15; [Latvia](#), UN Doc. CAT/C/LVA/CO/3-5 (2013) §20.

169 Concluding Observations of CAT: [Netherlands](#), UN Doc. CAT/C/NLD/CO/5-6 (2013) §23.

- **In every place where people are deprived of their liberty an official record should be kept of all relevant information relating to every detainee.**
- **Records should be kept in a permanent form that cannot be tampered with, such as a bound book with numbered pages or electronic equivalents.**
- **Staff should be trained in the use of record-keeping.**
- **Records should be made available on request by prisoners or their lawyers, oversight mechanisms and other persons with a legitimate interest.**

Accurate record-keeping is an essential element of the proper administration of prisons and other places of detention, including police stations and military bases. Official records establish where detainees are held and who is responsible for them. The existence of official records that are open to review helps to ensure that proper procedures are followed when people are deprived of their liberty and that public officials involved in the treatment of people deprived of liberty can be held accountable for their actions.

Prisoner file management is required under Rules 6 to 10 of the [Mandela Rules](#). (See [Chapters 3.2.5](#) and [3.11](#) for details of the information to be recorded on arrest and release.) This requirement applies to all categories of detainees, untried or convicted, including people arrested or imprisoned without charge.¹⁷⁰

Rule 7 of the [Mandela Rules](#) states:

“No person shall be received in a prison without a valid commitment order.

The following information shall be entered in the prisoner file management system upon admission of every prisoner:

- Precise information enabling determination of his or her unique identity, respecting his or her self-perceived gender;
- The reasons for his or her commitment and the responsible authority, in addition to the date, time and place of arrest;
- The day and hour of his or her admission and release as well as of any transfer;
- Any visible injuries and complaints about prior ill-treatment;
- An inventory of his or her personal property;
- The names of his or her family members, including, where applicable, his or her children, the children’s ages, location and custody or guardianship status;
- Emergency contact details and information on the prisoner’s next of kin.”

In addition, Rule 8 of the [Mandela Rules](#) states that:

“The following information shall be entered in the prisoner file management system in the course of imprisonment, where applicable:

- Information related to the judicial process, including dates of court hearings and legal representation;
- Initial assessment and classification reports;

¹⁷⁰ Preliminary Observation 3(1) and Rule 122 of the [Mandela Rules](#).

- (c) Information related to behaviour and discipline;
- (d) Requests and complaints, including allegations of torture or other cruel, inhuman or degrading treatment or punishment, unless they are of a confidential nature;
- (e) Information on the imposition of disciplinary sanctions;
- (f) Information on the circumstances and causes of any injuries or death and, in the case of the latter, the destination of the remains.”

The Subcommittee on Prevention of Torture has also recommended that standardized and unified records should be developed for immediately and comprehensively registering all key information about every individual's deprivation of liberty, and that staff be trained to use this appropriately and consistently.¹⁷¹

The Subcommittee has recommended that the following information should be recorded:

- The precise reasons for the deprivation of liberty;
- The exact time when detention began;
- The length of the period of detention;
- The authority that ordered the arrest, and the identity of the law enforcement officials concerned;
- Precise information on the place of detention;
- The chain of custody;
- The time of the detainee's first appearance before a judge or other officer authorized by law to exercise judicial power.¹⁷²

Finally, the Subcommittee recommends that all entries in the registers be monitored and countersigned by the directors of each of the establishments.¹⁷³

To avoid any tampering with the information, records should be kept in a permanent form such as a registration book with numbered and signed pages or an electronic database of records, as required under Rule 6 of the [Mandela Rules](#). In addition to the items specified above, other information to be kept in detainees' records should include requests and complaints made by detainees or on their behalf, and key information about risks to particular detainees such as serious mental health problems or illnesses requiring attention. Instances of use of force against detainees or violence by detainees against guards, interrogators or other detainees should also be recorded. Evidence of injuries sustained in custody in the absence of any such record would be an indication that these injuries were more likely to be the result of illegal violence used by officials than of any above-mentioned (but unrecorded) causes.

The requirement of keeping and preserving accurate and complete custodial records and making the information available when required should be incorporated in national

171 SPT visit report: [Benin](#), UN Doc. CAT/OP/BEN/1 (2011) §64.

172 SPT visit reports: [Honduras](#), UN Doc. CAT/OP/HND/1 (2010) §285(a); [Benin](#), UN Doc. CAT/OP/BEN/1 (2011) §64.

173 SPT visit report: [Benin](#), UN Doc. CAT/OP/BEN/1 (2011) §64.

laws and regulations. Any breach of these requirements should incur appropriate sanctions.

CHAPTER 5

PREVENTING TORTURE AND OTHER ILL-TREATMENT

States must take effective legislative, administrative, judicial or other measures to prevent acts of torture and other ill-treatment. They have a duty to act with due diligence to protect individuals from acts of torture and ill-treatment committed by private actors. Ensuring that procedural safeguards for persons deprived of their liberty are in place and respected will help to prevent torture and other ill-treatment, as will ratifying and implementing the Optional Protocol to the Convention against Torture. Regular visits to places of detention by independent bodies is one of the most effective means to prevent torture and other ill-treatment.

- 5.1 The obligation to prevent torture and other ill-treatment**
- 5.2 Monitoring treatment and conditions within places of detention**
 - 5.2.1** The Optional Protocol to the Convention against Torture
 - 5.2.2** The UN Subcommittee on Prevention of Torture
 - 5.2.3** National Preventive Mechanisms
- 5.3 Other international monitoring mechanisms**
 - 5.3.1** The European Committee for the Prevention of Torture
 - 5.3.2** The International Committee of the Red Cross (ICRC)
- 5.4 The role of the judiciary and legal professionals in the prevention of torture and other ill-treatment**
- 5.5 The role of health professionals in the prevention of torture and other ill-treatment**
 - 5.5.1** Ethics standards for individual health professionals
 - 5.5.2** Obligations on professional bodies: the role of the health professions
 - 5.5.3** Legal decisions on the role of health professionals

5.1 THE OBLIGATION TO PREVENT TORTURE AND OTHER ILL-TREATMENT

Key points:

- States have obligations to ensure that state agents do not commit acts of torture and other ill-treatment, and to take preventive measures to stop abuses occurring.
- States' obligations also include preventing acts of torture and other ill-treatment by private individuals.
- States must implement not only the measures to prevent torture that are set out in legal instruments, but also any other measures which would be effective in preventing torture.

As discussed in [Chapter 3.1](#), states have a “negative” obligation to ensure that state officials and other state agents do not commit acts of torture and other ill-treatment,

and a “positive” obligation to take measures to prevent such abuses from occurring.¹ This includes the obligation to ensure, through enabling legal, policy and regulatory frameworks and practices, that persons are not subjected to acts of torture or other cruel, inhuman or degrading treatment committed by private individuals, and if they are, that they have access to effective remedies. (See below and [Chapter 2.9](#).) The Committee against Torture has stated that efforts to eradicate torture and other ill-treatment should “first and foremost be concentrated on prevention”.²

The UN Subcommittee on Prevention of Torture has also stressed that:

“Whilst the obligation to prevent torture and ill-treatment buttresses the prohibition of torture, it also remains an obligation in its own right and a failure to take appropriate preventive measures which were within its power could engage the international responsibility of the State, should torture occur in circumstances where the State would not otherwise have been responsible.”³

The general obligation to prevent torture and other ill-treatment is set out in Articles 2(1) and 16(1) of the Convention against Torture:

“Article 2(1):

States must take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”

“Article 16(1):

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.”⁴

While Article 16(1) makes reference to certain Articles of the Convention against Torture which are expressly applicable to preventing other forms of ill-treatment not amounting

1 Articles 2(1) and 16(1) of the [Convention against Torture](#); [HRC General Comment 20](#); [Z v UK](#) (29392/95), European Court Grand Chamber (2001) §§73-4; [A v UK](#) (100/1997/884/1096), European Court (1998) §22; [Mahmut Kaya v Turkey](#) (22535/93), European Court (2000) §115; [Velásquez Rodríguez v Honduras](#), Inter-American Court (1988) §§148, 172-173. See also the general obligation to prevent human rights violations in Article 2(2) of the [ICCPR](#); Article 1 of the [African Charter](#); Article 1(1) of the [American Convention](#); Article 1 of the [European Convention](#).

2 CAT Annual Report, [UN Doc. A/58/44](#), (2003) p.10, §14.

3 ‘The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, (Concept of Prevention), UN Doc. CAT/OP/12/6 (2010) §1.

4 Similar general obligations to prevent torture and other ill-treatment are also contained in Article 4 of the [Declaration against Torture](#) and Articles 1 and 6 of the [Inter-American Convention against Torture](#).

to torture, the Committee against Torture has clarified that the obligation to prevent other ill-treatment is not limited to these specific Articles.⁵ The Committee against Torture has stated that:

“Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment”.⁶

In addition to the general obligation to prevent torture and other ill-treatment set out in Articles 2(1) and 16(1), the Convention against Torture contains a number of specific obligations that are aimed at prevention. These include:

- To ensure that no one is expelled, returned or extradited by a state to another state where they are at risk of being tortured (Article 3).
- To criminalize torture as a specific crime distinct from common assault or other crimes (Article 4).
- To prosecute and punish, or extradite, persons responsible for torture (Articles 5-8).
- To provide education and training for law enforcement officers and other personnel regarding the prohibition of torture and other ill-treatment (Article 10).
- To systematically review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty (Article 11).
- To prohibit any statement obtained using torture being invoked as evidence in any proceedings – except proceedings against the suspected torturers (Article 15).

Furthermore, the Committee against Torture has noted that the obligation to prevent torture and other ill-treatment goes beyond these measures explicitly contained in the Convention against Torture, and states must therefore implement a range of measures that are known to be effective in preventing torture and other ill-treatment.⁷

The UN Subcommittee on Prevention of Torture has also stressed that:

“there is more to the prevention of torture and ill-treatment than compliance with legal commitments. In this sense, the prevention of torture and ill-treatment embraces – or should embrace – as many as possible of those things which in a given situation can contribute towards the lessening of the likelihood or risk of torture or ill-treatment occurring.”⁸

5 CAT General Comment 2, §3.

6 CAT General Comment 2, §3.

7 CAT General Comment 2, §§3 and 25. CAT provided as examples: educating the public and law enforcement officials on the non-derogability of the prohibition, and adapting the concept of monitoring conditions to prevent torture and ill-treatment to situations where violence is inflicted privately (§25).

8 See The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [UN Doc. CAT/OP/12/6](#) (2010) §3.

Similarly, the Human Rights Committee has confirmed that in relation to the ICCPR that:

“it is not sufficient for the implementation of article 7 to prohibit such treatment or punishment or to make it a crime. States parties should inform the Committee of the legislative, administrative, judicial and other measures they take to prevent and punish acts of torture and cruel, inhuman and degrading treatment in any territory under their jurisdiction.”⁹

A wide range of measures can prevent torture and other ill-treatment in practice. For example, the safeguards for persons deprived of their liberty outlined in [Chapter 3](#) are designed to prevent the occurrence of torture and other ill-treatment and create an environment in which these forms of abuse are unlikely to occur and are not tolerated.¹⁰ Similarly, making sure that persons deprived of their liberty are held in humane conditions will also protect individuals from torture and other ill-treatment (see [Chapter 4](#)). Ensuring that persons responsible for acts of torture and other ill-treatment are held accountable can also have a deterrent effect, preventing others from committing similar acts (see [Chapter 6](#)).

Prevention has many aspects and should be an interdisciplinary endeavour. It must be informed by the knowledge and experience of people from a wide range of backgrounds, including those from legal, medical, educational, community, political and policing backgrounds and the detention system.¹¹

Both inside and outside of the context of deprivation of liberty, vulnerability to torture and other ill-treatment may be aggravated by the marginalization or discrimination of particular individuals or groups of individuals within a society.¹² The protection of minority or marginalized individuals or groups is therefore a critical part of the obligation to prevent torture and other ill-treatment.¹³ Individuals and groups particularly vulnerable to torture and other ill-treatment should be included in the design, implementation and evaluation of measures adopted to prevent the use of these practices against them.¹⁴ (See [Chapter 2.4](#).)

9 [HRC General Comment 20](#), §8.

10 See also [HRC General Comment 20](#), §11; The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [UN Doc. CAT/OP/12/6](#) (2010) §5(c).

11 See The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [UN Doc. CAT/OP/12/6](#) (2010) §5(i).

12 See reports of the Special Rapporteur on torture: [UN Doc. A/HRC/31/57](#) (2016) §9; [UN Doc. A/HRC/22/53](#) (2013) §26; SPT report, [UN Doc. CAT/OP/C/57/4](#) (2016) §48.

13 [CAT General Comment 2](#), §21; *Ximenes-Lopes v Brazil*, Inter-American Court (2006) §103. See also [Annual Report 2013](#) of the Special Rapporteur on torture, §26.

14 See specifically in relation to lesbian, gay, bisexual, transgender and intersex persons: SPT report, [UN Doc. CAT/OP/C/57/4](#) (2016) §71.

Linked to this, as discussed in [Chapters 2.8](#) and [2.9](#), under international law states have a duty to act with “due diligence” to ensure that persons are not subjected to torture and other ill-treatment committed by private individuals. In practice this means that a state may be held responsible for acts of torture or other ill-treatment committed by private individuals where the legal framework fails to provide adequate protection or where the authorities fail to take reasonable steps to avoid a risk of ill-treatment about which they knew or ought to have known.¹⁵ For example, treaty bodies have held that states have a duty to protect individuals from violent crowds,¹⁶ violent inmates,¹⁷ domestic violence,¹⁸ state officials acting outside of their official powers (*ultra-vires*),¹⁹ and agents of another state operating in its own territory even when it might not be under its effective control.²⁰

5.2 MONITORING TREATMENT AND CONDITIONS WITHIN PLACES OF DETENTION

Key points:

- **Visits to places of detention by independent bodies are one of the most effective ways to prevent torture and other ill-treatment.**
- **“Preventive” visits aim to address the root causes of torture and other ill-treatment and identify problems before they can escalate.**
- **A system of regular and ad hoc visits to places of detention by independent bodies should be established by all states.**
- **For visits to be effective, independent bodies must as a minimum be given the power to conduct regular and unannounced visits; to choose the places to visit and persons to interview; and be able to access all areas and facilities within places of detention.**
- **The Optional Protocol to the Convention against Torture assists states parties to the Convention to put in place and operate an effective system of preventive visits.**

15 See for example [CAT General Comment 2](#), §18; [CAT General Comment 3](#), §7; [HRC General Comment 20](#), §2; [HRC General Comment 28](#), §11; [HRC General Comment 31](#), §8; [CEDAW General Recommendation 19](#), §24; Article 3 of the [Inter-American Convention on Violence against Women](#); Concluding Observations of CAT: [Croatia, UN Doc. CAT/C/HRV/CO/4-5](#) (2014) §8; [Indonesia, UN Doc. CAT/C/IDN/CO/2](#) (2008) §§16, 19 and 20; [Sierra Leone, UN Doc. CAT/C/SLE/CO/1](#) (2014) §§14 and 15; [Thailand, UN Doc. CAT/C/THA/CO/1](#) (2014) §§16 and 17; [Kenya, UN Doc. CAT/C/KEN/CO/2](#) (2013) §26; [Chad, UN Doc. CAT/C/TCD/CO/1](#) (2009) §§20, 30, 31 and 32; [Kaba v Canada](#), HRC, UN Doc. CCPR/C/98/D/1465/2006 (2010) §10.2; Concluding Observations of HRC: [Netherlands, UN Doc. E/2007/22](#) (2007) §§585-586; [Guatemala, UN Doc. CCPR/CO/72/GTM](#) (2001) §15; report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §§11-12; European Court: [Mahmut Kaya v Turkey](#) (22535/93), (2000) §115; [Osman v UK](#) (87/1997/871/1083), Grand Chamber (1998) §§115-116; [Opuz v Turkey](#) (33401/02), (2009) §§198-202; Inter-American Court: [Velásquez Rodríguez v Honduras](#), (1988) §§148, 172-173; [González et al. \(“Cotton Field”\) v Mexico](#), (2009) §§401-402.

16 [Hajrizi Dzemajl et al. v Yugoslavia](#), CAT, UN Doc. CAT/C/29/D/161/2000 (2002) §9.2.

17 [Daley v Jamaica](#), HRC, UN Doc. CCPR/C/63/D/750/1997 (1998) §7.6.

18 European Court: [Z v UK](#) (29392/95), Grand Chamber (2001) §§73-4; [A v UK](#) (100/1997/884/1096), (1998) §22; [Opuz v Turkey](#) (33401/02), (2009) §§191, 198-202; [CAT General Comment 2](#), §18. See also report of the Special Rapporteur on torture, [UN Doc. A/HRC/31/57](#) (2016) §§11-12.

19 [Velásquez Rodríguez v Honduras](#), Inter-American Court (1988) §§148, 172-173; [Mahmut Kaya v Turkey](#) (22535/93), European Court (2000) §91..

20 [Ilaşcu and Others v Moldova and Russia](#) (48787/99), European Court (2004) §§318-319.

Many states have internal oversight mechanisms for the police and prison services which are directly connected to the criminal justice agencies and/or government ministries and have an important role to play in ensuring that safeguards, procedures and practices are followed. However, although places of detention are by their very nature “closed” institutions, this should not mean that they are not open to external, independent scrutiny. Effective accountability and protection requires both internal and external checks and balances aimed at ensuring that safeguards for persons deprived of their liberty are observed in practice. Regular inspection of places of detention by independent bodies is therefore recognized as one of the most effective means to prevent torture and other ill-treatment.

Principle 29(1) of the Body of Principles states:

“In order to supervise the strict observance of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.”

Similarly, Rule 83 of the [Mandela Rules](#) states:

“1. There shall be a twofold system for regular inspections of prisons and penal services: (a) Internal or administrative inspections conducted by the central prison administration; (b) External inspections conducted by a body independent of the prison administration, which may include competent international or regional bodies.

2. In both cases, the objective of the inspections shall be to ensure that prisons are managed in accordance with existing laws, regulations, policies and procedures, with a view to bringing about the objectives of penal and corrections services, and that the rights of prisoners are protected.”

Article 11 of the Convention against Torture requires states parties to systematically review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture and other ill-treatment. In addition, the Committee against Torture and the Human Rights Committee have interpreted the duty to prevent torture and other ill-treatment as including an obligation to establish a system of regular and independent inspections of all places of detention.²¹ In order to be effective as a preventive measure, the inspecting body should be authorized to carry out visits without prior notice²²

21 See [CAT General Comment 2](#), UN Doc. CAT/C/51/4 (2008) §13; CAT Observations on the revision of the United Nations Standard Minimum Rules for the Treatment of Prisoners, [UN Doc. CAT/C/51/4](#) (2015) §57; HRC General Comment 35, [UN Doc. CCPR/C/GC/35](#) (2014) §58. See also report of the Special Rapporteur on torture, [UN Doc. A/61/259](#) (2006) §68.

22 See SPT Guidelines on national preventive mechanisms, [UN Doc. CAT/OP/12/5](#) (2010) §25; Report of the Special Rapporteur on torture, [UN Doc. A/65/273](#) (2010) §80.

and should be independent from authorities responsible for places of detention and law enforcement agencies such as the police.²³

Visits to places of detention conducted with the primary aim of preventing torture or other ill-treatment must be distinguished from visits conducted for other reasons such as in response to a complaint, which are by nature reactive. “Preventive” visits are proactive and designed to identify risks at an early stage and address the root causes of torture and other ill-treatment.²⁴

One of the primary aims of preventive visits is to enable the visiting bodies to identify not only existing policies and practices already amounting to torture and other ill-treatment but also any factors which if left unchecked could develop into torture or other ill-treatment.²⁵ It is not the intention to “catch” people in the act of committing torture; instead, frequent visits to places of detention enable the monitors to observe first-hand the overall conditions of detention and treatment of detainees, as well as the working conditions for the staff. As a result the visiting bodies can raise any immediate concerns with the relevant authorities and identify any factors that may increase the risk of torture or other ill-treatment.

Problems observed by visiting bodies may be either specific to an institution or the result of system-wide failures and therefore preventive visiting will also look at the legal framework and system as a whole in order to address any gaps in protection.²⁶ As noted by the Subcommittee on Prevention of Torture, whether or not torture or other ill-treatment occurs in practice, there is always a need for states to be vigilant in order to prevent it.²⁷

In order to be effective, bodies with a mandate to carry out visits to places of detention with the aim of preventing torture and other ill-treatment should have the following minimum guarantees and powers:²⁸

- Independence from criminal justice agencies and government departments, including control over its own budget and employment of members and staff;
- To conduct periodic and unannounced visits to places of detention;
- To choose the places of detention to visit and have access to all installations and facilities within these places;
- To choose persons they wish to interview, and conduct interviews in private;
- Unrestricted access to information concerning the number and location of all places of detention;
- Unrestricted access to all information concerning persons deprived of their liberty that is relevant to their treatment and conditions of detention.

23 See SPT Guidelines on national preventive mechanisms, [UN Doc. CAT/OP/12/5](#) (2010) §18; HRC [General Comment 21](#), §5; Report of the Special Rapporteur on torture, [UN Doc. A/56/156](#) (2001) §39(e).

24 See SPT annual report, [UN Doc. CAT/C/40/2](#) (2008) §12.

25 SPT annual report, [UN Doc. CAT/C/40/2](#) (2008) §12.

26 See SPT annual report, [UN Doc. CAT/C/40/2](#) (2008) §12.

27 SPT annual report, [UN Doc. CAT/C/40/2](#) (2008) §12.

28 See Articles 14, 18 and 20 of the [Optional Protocol to the Convention against Torture](#); Article 8 of the [European Convention for the Prevention of Torture](#); Report of the Special Rapporteur on torture, [UN Doc. E/CN.4/2003/68](#) (2002) §26(f).

Many states have established mechanisms at the domestic level that have a mandate to conduct visits to places of detention, including National Preventive Mechanisms established in accordance with the Optional Protocol to the Convention against Torture (see [section 5.2.1](#)), national human rights institutions, and judicial inspectorates of correctional services. National NGOs, faith-based organizations and other civil society organizations may also be able to conduct visits to places of detention and have a crucial role to play in preventing torture and other ill-treatment. In order to ensure the most effective system of prevention, states should set up, facilitate and encourage different visiting schemes, which should be seen as complementary of each other, not mutually exclusive.²⁹

In addition to any national bodies that may exist with a mandate to conduct visits, international mechanisms have also been established with a specific mandate to conduct visits to places of detention with the aim of preventing torture and other ill-treatment, namely the Subcommittee on Prevention of Torture and the European Committee for the Prevention of Torture. In addition, as described in [Chapter 5.3.2](#) below, the International Committee of the Red Cross (ICRC) has a mandate that includes visiting prisoners of war and civilian detainees in international armed conflict, as well as people detained in other situations of violence, in order to ensure their humane treatment and to prevent abuse.

5.2.1 THE OPTIONAL PROTOCOL TO THE CONVENTION AGAINST TORTURE

Key points:

- **The Optional Protocol to the Convention against Torture establishes a dual system of regular visits to all places of detention, by a UN treaty body and by national bodies.**
- **The Optional Protocol sets out internationally recognized standards and working practices for effective visits to places of detention to prevent torture and other ill-treatment.**
- **By ratifying the Optional Protocol, a state is giving an open invitation to the monitoring bodies to conduct visits to all places of detention under the state's jurisdiction and control.**
- **Places of detention are defined broadly under the Optional Protocol in order to cover all forms of deprivation of liberty.**
- **The Optional Protocol bodies can make recommendations to address problems in particular places of detention, as well as system-wide failures in the protection against torture and other ill-treatment.**

The Optional Protocol to the Convention against Torture is a crucial instrument for the prevention of torture and other ill-treatment as it establishes a system of preventive

²⁹ See The approach of the Subcommittee on Prevention of Torture to the concept of prevention of torture and other cruel, inhuman or degrading treatment or punishment under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, [UN Doc. CAT/OP/12/6](#) (2010) §5(h)-(i); SPT Summary on the discussion on the on-going process to amend the United Nations Standard Minimum Rules for the Treatment of Prisoners, [UN Doc. CAT/OP/4](#) (2013) §16.

visits to places of detention by both an independent international body and a national body (or bodies). The Optional Protocol is designed to help states parties to the Convention against Torture to put into effect their existing obligation to prevent torture and other ill-treatment.

The Optional Protocol entered into force in 2006 and established a new treaty body, the UN Subcommittee on Prevention of Torture, with the mandate to conduct visits to places of detention in states parties. In addition to allowing visits by the Subcommittee on Prevention of Torture, the Optional Protocol also requires each state party to “set up, designate or maintain”, at the domestic level, at least one National Preventive Mechanism.³⁰ The combination of an international treaty body and national bodies dedicated to the prevention of torture and other ill-treatment is an innovative feature of the Optional Protocol and is designed to ensure that visits to places of detention are carried out with sufficient frequency, independence and professionalism to be effective as a means to prevent torture and other ill-treatment. The Subcommittee on Prevention of Torture and the National Preventive Mechanisms have complementary powers to communicate with each other in order to strengthen co-operation and aid implementation of the Optional Protocol.³¹

Only states that have ratified the Convention against Torture can ratify the Optional Protocol.³² When a state ratifies the Optional Protocol, it gives its consent to allow the Subcommittee on Prevention of Torture and National Preventive Mechanisms to visit all places of detention under its “jurisdiction and control” and to make recommendations concerning the protection of persons deprived of their liberty against torture and other ill-treatment.³³ In practice, this means that no prior invitation or confirmation by a state party is required for the Subcommittee and National Preventive Mechanisms to conduct visits, and they can also conduct unannounced visits.³⁴

The term “places of detention” is defined broadly by the Optional Protocol in order to ensure the full protection of all persons deprived of liberty.³⁵ This means that the Subcommittee on Prevention of Torture and National Preventive Mechanisms can visit not only prisons and police stations but also other places where people are deprived of their liberty, for example: detention centres for migrants and asylum-seekers; transit zones in airports; checkpoints in border zones; detention facilities in military stations; and children’s homes; as well as medical and psychiatric institutions. It also necessarily includes places where people “may be deprived of their liberty” and therefore extends

30 Article 3 of the [Optional Protocol to the Convention against Torture](#).

31 Articles 11(b)(ii) and Article 20(f) of the [Optional Protocol to the Convention against Torture](#).

32 States that have signed but not yet ratified the Convention against Torture can sign the Optional Protocol. Once they have ratified the Convention they can then ratify the Optional Protocol.

33 Articles 11(1) and 19(b) of the [Optional Protocol to the Convention against Torture](#).

34 This is implied by Articles 2, 4, 12 and 20 of the [Optional Protocol to the Convention against Torture](#) and the overall preventive objective of the Optional Protocol.

35 Article 4 of the [Optional Protocol to the Convention against Torture](#).

to unofficial places of detention, where people are particularly at risk of torture and other ill-treatment.³⁶

The places of detention must be under the jurisdiction and control of a state party in order to be covered by the Optional Protocol. The Subcommittee on Prevention of Torture has stated that “the jurisdiction of the State extends to all those places over which it exercises effective control”.³⁷ Similar language is used to describe the scope of states’ obligations under the Convention against Torture and the ICCPR, and states are under an obligation to prevent torture and other ill-treatment in any territory under its jurisdiction.³⁸

The Committee against Torture has explained that the reference to “any territory under its jurisdiction” in Article 2(1) of the Convention against Torture requires that each state party must take effective measures to prevent acts of torture not only in its sovereign territory but also in “all areas where the State party exercises, directly or indirectly, in whole or in part, *de jure* or *de facto* effective control, in accordance with international law.”³⁹ Thus it refers not only to the ordinary territory of the state but also, for example, to a ship or aircraft registered to the state concerned, during military occupation or peacekeeping operations and in such places as embassies, military bases, detention facilities, or other areas over which a state exercises control, and perhaps even a structure resting on the continental shelf of the relevant state party, such as an oil or gas platform or a sea fort.⁴⁰

5.2.2 THE UN SUBCOMMITTEE ON PREVENTION OF TORTURE

The Subcommittee on Prevention of Torture consists of 25 members who, similarly to other UN treaty bodies, are appointed by states parties to the Optional Protocol but act as independent, impartial experts.⁴¹ In addition to conducting visits, the Subcommittee on Prevention of Torture meets three times a year for one week in Geneva.

The Subcommittee on Prevention of Torture is mandated to carry out the following functions:

- To conduct visits to all places of detention;
- To make recommendations concerning the protection of persons deprived of their liberty;
- To provide advice on the implementation of the Optional Protocol, including the establishment of National Preventive Mechanisms;
- To maintain contact with National Preventive Mechanisms.⁴²

36 Article 4 of the [Optional Protocol to the Convention against Torture](#).

37 SPT annual report, [UN Doc. CAT/C/46/2](#) (2011) §86.

38 Articles 2 and 16 of the [Convention against Torture](#), Articles 2(3) and 7 of the [ICCPR](#).

39 [CAT General Comment 2](#), §16.

40 [CAT General Comment 2](#), §16; Concluding Observations of CAT: [USA](#), [UN Doc. CAT/C/USA/CO/3-5](#) (2014) §10; [UK](#), [UN Doc. CAT/C/GBR/CO/5](#) (2013) §9; see also HRC General Comment 31, §10.

41 Articles 5-9 of the [Optional Protocol to the Convention against Torture](#).

42 Article 11 of the [Optional Protocol to the Convention against Torture](#).

The Subcommittee on Prevention of Torture is also expected to co-operate with relevant UN bodies and international, regional and national bodies for the prevention of torture and other ill-treatment. The Subcommittee on Prevention of Torture has stated that co-operative activities with other bodies include awareness-raising, information exchange, co-ordination, participation and partnerships.⁴³

Visits by the Subcommittee on Prevention of Torture

To fulfil its visiting mandate, the Subcommittee on Prevention of Torture draws up a programme of visits to states parties. This programme is made public at the conclusion of the session at which it is adopted (the programme can also be modified if deemed necessary by the Subcommittee).⁴⁴ Unlike other UN bodies, the Subcommittee on Prevention of Torture does not need to first seek the approval of a state party before visiting it. However, the Subcommittee may inform the state party concerned of the planned dates in order to enable it to make the necessary practical arrangements for the visit to be carried out effectively.⁴⁵ The dates of each visit are made public one week after the notification of such dates to the state party.⁴⁶ The Subcommittee will also contact National Preventive Mechanisms, NGOs and other relevant national actors in preparation for a visit.

In accordance with Article 14 of the Optional Protocol, the Subcommittee is to be granted the following guarantees:

- Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their locations;
- Unrestricted access to all information referring to the treatment of detainees as well as their conditions of detention;
- Unrestricted access to all places of detention and their installations and facilities;
- The opportunity to have private interviews with detainees and any other persons;
- The liberty to choose the places to visit and persons to interview.⁴⁷

The state party must allow the Subcommittee on Prevention of Torture into their territory and all places of detention. An objection to a visit to a particular place of detention may only be made on urgent and strictly limited grounds.⁴⁸ Furthermore, if one of the legitimate grounds exists this may only temporarily postpone a visit to that particular place of detention and cannot be used to block access to all places of detention or its territory.

43 SPT Fourth Annual Report 2010, UN Doc. CAT/C/46/2 (2011) §114(a-e).

44 See Article 13(1) of the [Optional Protocol to the Convention against Torture](#); Guideline 2 of the Guidelines of the SPT on Visits to State parties under Article 11 of the OPCAT, [UN Doc. CAT/OP/5](#) (2015) §§2, 4.

45 Guideline 2 of the Guidelines of the SPT on Visits to State parties under Article 11 of the OPCAT, [UN Doc. CAT/OP/5](#) (2015) §5.

46 Guideline 2 of the Guidelines of the SPT on Visits to State parties under Article 11 of the OPCAT, [UN Doc. CAT/OP/5](#) (2015) §6.

47 Article 14 of the [Optional Protocol to the Convention against Torture](#).

48 Article 14(2) of the [Optional Protocol to the Convention against Torture](#).

During a visit the Subcommittee on Prevention of Torture will meet with senior government officials and those in charge of the care of persons deprived of their liberty, as well as National Preventive Mechanisms, NGOs and other actors who may have information relevant to the Subcommittee's mandate. The Subcommittee conducts visits to places of detention and interviews in order to build an accurate as possible picture of the conditions and treatment of persons deprived of their liberty.

At the end of a visit the Subcommittee holds a final meeting with senior officials of the relevant ministries and bodies. This meeting is an opportunity for the Subcommittee delegation to present its preliminary observations and identify issues and situations requiring immediate action, as well as other elements of law, system and practice requiring improvement.⁴⁹

Following a regular visit, the Subcommittee writes a report with its findings and then submits this confidentially to the relevant state authorities. The report remains confidential unless the state party concerned gives its consent to publication, publishes part of the report or fails to co-operate with the Subcommittee.⁵⁰ The concept of confidentiality is designed to establish a constructive dialogue with the state party concerned in an effort to encourage implementation of its recommendations. This approach is influenced by the experience and work of the ICRC and the European Committee for the Prevention of Torture. (See [section 5.3](#).)

The Subcommittee on Prevention of Torture has established a follow-up procedure to its visit reports; following a visit, state parties are requested to provide the Subcommittee with a response within six months, giving a full account of actions taken to implement the recommendations contained in the visit report.⁵¹

In addition to these "regular visits", the Optional Protocol enables the Subcommittee to conduct a "short follow-up visit".⁵² The purpose of this visit is to follow up directly on the observations and recommendations of a regular visit. It is a procedure that can be used to focus on and react to specific issues of concern, and to assist with the implementation of the Subcommittee's recommendations and the Optional Protocol generally. The Subcommittee has also established the procedure of "advisory visits on National Preventive Mechanisms" (see below).

Recommendations of the Subcommittee on Prevention of Torture

The Subcommittee on Prevention of Torture is mandated to make recommendations "concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment".⁵³ As well as making

49 Guideline 5 of the Guidelines of the SPT on Visits to State parties under Article 11 of the OPCAT, [UN Doc. CAT/OP/5](#) (2015) §23-25.

50 Article 16(1) of the [Optional Protocol to the Convention against Torture](#).

51 SPT annual report, [UN Doc. CAT/C/46/2](#) (2011) §19.

52 Article 13(4) of the [Optional Protocol to the Convention against Torture](#).

53 Article 11(1) of the [Optional Protocol to the Convention against Torture](#).

recommendations following a visit, the Subcommittee has an important advisory function for the implementation of the Optional Protocol to the Convention against Torture and an obligation to prevent torture and other ill-treatment generally. Therefore the Subcommittee can make recommendations and observations outside the context of a visit. The Subcommittee has established the procedure of issuing general guidance and observations and also uses its annual reports as a means to address a range of issues relating to its mandate, for example the use of human rights education as a preventive tool,⁵⁴ legal aid and public defence systems,⁵⁵ the role of judicial reviews and due process,⁵⁶ and systems of justice in Indigenous communities.⁵⁷

Advisory role of the Subcommittee on Prevention of Torture in relation to National Preventive Mechanisms

The Subcommittee on Prevention of Torture also has a vital advisory role to play in the establishment, designation and functioning of National Preventive Mechanisms. With regard to National Preventive Mechanisms, the Subcommittee is mandated under Article 11(b) of the [Optional Protocol to the Convention against Torture](#) to:

- Advise and assist states parties in the establishment of National Preventive Mechanisms;
- Maintain direct contact with National Preventive Mechanisms and offer them training and technical assistance;
- Advise and assist National Preventive Mechanisms in evaluating the needs and necessary means to improve safeguards against ill-treatment; and
- Make necessary recommendations and observations to states parties with a view to strengthening the capacity and mandate of the National Preventive Mechanisms.

The Subcommittee engages with and provides an advisory role in relation to National Preventive Mechanisms in a number of ways. During a regular visit to a state party, the Subcommittee will make contact with National Preventive Mechanisms as a matter of course. As noted above, the Subcommittee has also established the procedure of conducting “advisory visits on National Preventive Mechanisms”. These advisory visits allow the Subcommittee to focus on the legal and practical framework within which the National Preventive Mechanism is working and enable the Subcommittee to engage directly both with the National Preventive Mechanism, other national institutions and civil society so that these bodies can learn more about the Subcommittee’s work in practice. Where the state has yet to designate its National Preventive Mechanism, the Subcommittee will use their meeting with state authorities, National Human Rights Institutions, civil society and others to identify the challenges to designating a National Preventive Mechanism and explore ways to overcome the obstacles.⁵⁸

54 SPT annual report, [UN Doc. CAT/C/48/3](#) (2012) §§65-76.

55 SPT annual report, [UN Doc. CAT/C/48/3](#) (2012) §§77-82.

56 SPT annual report, [UN Doc. CAT/C/50/2](#) (2013) §§70-80.

57 SPT annual report, [UN Doc. CAT/C/50/2](#) (2013) §§81-94.

58 See [Outline of SPT advisory visits to National Preventive Mechanisms](#).

The Subcommittee has also issued guidelines on National Preventive Mechanisms in order to assist states and National Preventive Mechanisms to fulfil their obligations under the Optional Protocol. These guidelines set out a number of basic principles which should inform all aspects of the work of a National Preventive Mechanism and provide advice to states on the establishment and practical functioning of National Preventive Mechanisms.⁵⁹ The Subcommittee has also developed an “analytical self-assessment tool” to assist National Preventive Mechanisms in the development of their strategy and delivery of their mandate.⁶⁰

5.2.3 NATIONAL PREVENTIVE MECHANISMS

States parties to the Optional Protocol to the Convention against Torture have an obligation to establish National Preventive Mechanisms, which are independent national bodies for the prevention of torture and other ill-treatment at the domestic level.⁶¹ States must designate a National Preventive Mechanism within one year of ratifying the Optional Protocol,⁶² unless at the time of ratification they make a declaration under Article 24 of the Optional Protocol to postpone doing so for up to three years.⁶³

The National Preventive Mechanisms play a vital role in the implementation of the Optional Protocol as they represent the “face” of the Optional Protocol in states parties. By being located at the national level, National Preventive Mechanisms can visit all places of detention more frequently than the Subcommittee and therefore provide a practical means by which international standards on the prevention of torture and other ill-treatment can be implemented and regularly monitored at the national level.

The Optional Protocol does not define the form that these mechanisms must take; this gives states parties flexibility to decide on the most appropriate structure for their particular country context. States parties can designate one or several bodies to carry out the mandate; they can designate existing bodies or they can create new specialized bodies. However, irrespective of the form the National Preventive Mechanism takes, it must comply with the minimum guarantees and powers set out in the Optional Protocol.⁶⁴ This is important to ensure that all National Preventive Mechanisms, regardless of their form, carry out the same mandate and function effectively. The Subcommittee on Prevention of Torture has stated that “the development

59 SPT Guidelines on National Preventive Mechanisms, [UN Doc. CAT/OP/12/5](#) (2010).

60 SPT Analytical Self-Assessment Tool for National Preventive Mechanisms, [UN Doc. CAT/C/OP1/Rev.1](#) (2016).

61 Article 17 of the [Optional Protocol to the Convention against Torture](#).

62 Article 17 of the [Optional Protocol to the Convention against Torture](#). In practice few states comply with this deadline.

63 Article 24 of the [Optional Protocol to the Convention against Torture](#). Under Article 24, states can make a declaration to postpone their obligations either in respect of the National Preventive Mechanisms or the SPT, but not both, for a maximum of three years. This provision is most likely to be used by states to give time to consider how to put a National Preventive Mechanism in place. After the maximum period of three years has elapsed, it may be possible to extend the postponement for a further two years but this requires the consent of the CAT.

64 Articles 18-20 of the [Optional Protocol to the Convention against Torture](#).

of national preventive mechanisms should be considered an ongoing obligation, with reinforcement of formal aspects and working methods refined and improved incrementally".⁶⁵ Therefore it is important that the functioning of National Preventive Mechanisms is systematically reviewed and monitored by states parties, the National Preventive Mechanisms themselves, the Subcommittee and civil society, in order to ensure that they are working effectively, independently and in compliance with the Optional Protocol.

Furthermore, the National Preventive Mechanism should complement rather than replace existing systems of oversight and its establishment should not preclude the creation or operation of other such systems.⁶⁶

In order to be effective as a mechanism to prevent torture and other ill-treatment it is essential that National Preventive Mechanisms function independently. Ensuring functional independence entails an open, transparent and inclusive process for the selection and appointment of members of the National Preventive Mechanism and making adequate budgetary provisions.⁶⁷ In order to ensure that National Preventive Mechanisms act independently, the Optional Protocol sets out, for the first time in an international treaty, specific guarantees and safeguards in respect of national visiting bodies that must be respected by states.⁶⁸

In addition, Article 18(4) of the Optional Protocol provides that when establishing National Preventive Mechanisms, states must give due consideration to the Principles relating to the Status of National Institutions (the Paris Principles). The Paris Principles provide guidance on the independence and effective functioning of national human rights institutions. While the Paris Principles do provide general guidance on how functional independence can be achieved, because these are aimed at national institutions with broad human rights mandates some aspects of the Paris Principles do not translate directly into the mandate of the National Preventive Mechanism, and some are superseded by more detailed provisions within the Optional Protocol.

Many states have designated existing national human rights institutions to carry out the National Preventive Mechanism functions on top of their other duties. However, it must be remembered that compliance with the Paris Principles does not automatically mean that a national human rights institution will necessarily comply with the other provisions of the Optional Protocol and can be designated as a National Preventive Mechanism without the need for further changes to its mandate, structure and resources.⁶⁹

65 SPT Analytical Self-Assessment Tool for National Preventive Mechanisms, UN Doc. [CAT/C/OP1/Rev.1](#) (2016) §5.

66 SPT Guidelines on National Preventive Mechanisms, UN Doc. [CAT/OP/12/5](#) (2010) §5.

67 Article 18 of the [Optional Protocol to the Convention against Torture](#).

68 Article 18 of the [Optional Protocol to the Convention against Torture](#).

69 See Amnesty International, [Checklist for the effective implementation of the OPCAT: Establishment of National Preventive Mechanisms](#) (Index: IOR 50/001/2014).

For more information on the establishment and designation of National Preventive Mechanisms, see also: SPT

The National Preventive Mechanism mandate

National Preventive Mechanisms have a broad preventive mandate similar to that of the Subcommittee on Prevention of Torture, which includes:

- To regularly examine the treatment of persons deprived of their liberty;
- To make recommendations to improve the treatment of and conditions for persons deprived of their liberty and to prevent torture and other ill-treatment;
- To submit proposals and observations concerning existing or draft legislation.⁷⁰

Thus the mandate of National Preventive Mechanisms includes both visiting and advisory roles in relation to the prevention of torture and other ill-treatment.

In accordance with Articles 1 and 19 of the Optional Protocol to the Convention against Torture, states parties must allow National Preventive Mechanisms to conduct visits to all places of detention as defined in Article 4. In order to give effect to the preventive objective of the Optional Protocol, the Subcommittee on Prevention of Torture has stated that National Preventive Mechanisms should not require prior consent to conduct a visit to a place of detention.⁷¹ Unlike Article 14(2) in relation to the role of the Subcommittee, the Optional Protocol makes no provision for the temporary postponement by the state of a visit by a National Preventive Mechanism to a particular place of detention under any circumstances.

In order to carry out their preventive mandate, National Preventive Mechanisms should be granted similar rights of access as the Subcommittee for Prevention of Torture, namely:

- Access to all information concerning the number of persons deprived of their liberty in places of detention, as well as the number of places and their location;
- Access to all information referring to the treatment of these persons as well as their conditions of detention;
- Access to all places of detention and their installations and facilities;
- The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person whom the National Preventive Mechanism believes may supply relevant information;
- The liberty to choose the places it wants to visit and the persons it wants to interview.⁷²

Following a visit, a National Preventive Mechanism will submit a report of their findings to the relevant authorities with the aim of establishing a constructive dialogue to work

Guidelines on National Preventive Mechanisms, [UN Doc. CAT/OP/12/5](#) (2010); Association for the Prevention of Torture, [Optional Protocol to the UN Convention against Torture Implementation Manual](#), 2010, pp. 187-228.

70 Article 19 of the [Optional Protocol to the Convention against Torture](#).

71 The power to conduct unannounced visits is implied by Articles 12(a), 14(c) and 20(c) of the Optional Protocol to the Convention against Torture to support its overall preventive objective. See also SPT Guidelines on National Preventive Mechanisms, [UN Doc. CAT/OP/12/5](#) (2010) §25; SPT annual report, [UN Doc. CAT/C/46/2](#) (2011) §87.

72 Article 20 of the [Optional Protocol to the Convention against Torture](#).

towards implementing necessary improvements and strengthening the protection of persons deprived of their liberty. Unlike in the case of the Subcommittee, the Optional Protocol does not provide that the National Preventive Mechanism visit reports must be submitted on a confidential basis to the authorities. Therefore there is flexibility for National Preventive Mechanisms in deciding on the most appropriate approach to ensure the engagement of the authorities and secure the implementation of their recommendations. However, in order to ensure transparent working practices as an aid to the functional independence of the National Preventive Mechanisms, states parties are under an obligation to publish and disseminate the annual reports of their National Preventive Mechanisms.⁷³

The mandate of National Preventive Mechanisms is not restricted to conducting visits in order to identify failings within particular places of detention, but also extends to a more advisory role in relation to strengthening the protection framework for persons deprived of their liberty. National Preventive Mechanisms are expressly granted the power to make recommendations to improve the treatment of and conditions for persons deprived of their liberty and to prevent torture and other ill-treatment, and to submit proposals and observations concerning existing or draft legislation.⁷⁴ Thus National Preventive Mechanisms have a key role in bringing attention to any systemic or legislative gaps in the protection of persons deprived of their liberty.

5.3 OTHER INTERNATIONAL MONITORING MECHANISMS

The Optional Protocol to the Convention against Torture has a global scope and is focused on preventing torture and other ill-treatment in all contexts of deprivation of liberty. However, there are other bodies that have a mandate to visit places of detention, most notably the European Committee for the Prevention of Torture and the ICRC. Some special procedures of the UN may also conduct visits to places of detention as part of their broader mandate, including the Special Rapporteur on torture and the Working Group on Arbitrary Detention, as may special mechanisms or commissioners of regional human rights bodies such as the Committee for the Prevention of Torture in Africa, the Special Rapporteur on prisons and conditions of detention in Africa, and the Rapporteur on the rights of persons deprived of liberty in the Americas. (See [Chapter 1.2.](#))

5.3.1 THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE

The European Committee for the Prevention of Torture is the chief body in Europe with a mandate to prevent torture and other ill-treatment. Over the years the Committee has made a significant contribution to the prevention of torture and other ill-treatment in the European region. (The European Committee for the Prevention of Torture predates the Optional Protocol to the Convention against Torture and influenced its development.)

⁷³ Article 23 of the [Optional Protocol to the Convention against Torture](#).

⁷⁴ Article 19(b) and (c) of the [Optional Protocol to the Convention against Torture](#)

The European Committee for the Prevention of Torture was established in 1989 in accordance with Article 1 of the European Convention for the Prevention of Torture to assist states to implement Article 3 of the European Convention on Human Rights. It is composed of one expert member from each state party to the European Convention for the Prevention of Torture,⁷⁵ who serve in an individual, independent and impartial capacity.⁷⁶

By ratifying the European Convention for the Prevention of Torture a state party gives its consent to allow the European Committee for the Prevention of Torture to visit “any place within its jurisdiction where persons are deprived of their liberty by a public authority”.⁷⁷ The Committee is specifically mandated to conduct visits to examine the treatment of persons deprived of their liberty with “a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.”⁷⁸ Thus the European Committee for the Prevention of Torture has a broad preventive mandate and can visit a wide range of places of detention.

The European Committee for the Prevention of Torture makes periodic, scheduled visits to each state party to the European Convention for the Prevention of Torture and can also make ad hoc (unscheduled) visits. Each year the Committee draws up a programme of visits and notifies the states concerned of its intention to conduct a visit. After this notification the Committee may at any time visit any place of detention under the jurisdiction of the state concerned.⁷⁹

In order to ensure that the European Committee for the Prevention of Torture can carry out its mandate effectively, each state party must guarantee the Committee:

- Access to its territory and the right to travel without restriction;
- Full information on the places where persons deprived of their liberty are being held;
- Unlimited access to any place where persons are deprived of their liberty, including the right to move inside such places without restriction;
- Other information available to the state authorities which is necessary for the Committee to carry out its task;
- The ability to interview in private persons deprived of their liberty; and
- The ability to communicate freely with any person whom it believes can supply relevant information.⁸⁰

⁷⁵ For more information on the members of the CPT, see: www.cpt.coe.int/en/members.htm

⁷⁶ Article 4(4) of the [European Convention for the Prevention of Torture](#). All member states of the Council of Europe have ratified the European Convention for the Prevention of Torture. In addition, Protocol No. 1 to the Convention, which entered into force on 1 March 2002, provides for non-member states of the Council of Europe to accede to the Convention.

⁷⁷ Article 2 of the [European Convention for the Prevention of Torture](#).

⁷⁸ Article 1 of the [European Convention for the Prevention of Torture](#).

⁷⁹ Article 8(1) of the [European Convention for the Prevention of Torture](#).

⁸⁰ Article 8 of the [European Convention for the Prevention of Torture](#).

After a visit, the Committee transmits its findings in a report to the state, which is required to respond within a set time limit. In order to help establish a constructive dialogue with the state, the Committee reports are initially submitted on a confidential basis. However states can consent to the report being made public, and in practice most states have eventually agreed to their publication.⁸¹

5.3.2 THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)

In accordance with the Third and Fourth Geneva Conventions of 1949, the ICRC is mandated to visit prisoners of war and civilian detainees in international armed conflicts.⁸² There is no specific treaty provision requiring access by the ICRC to detainees in non-international armed conflicts (sometimes called “civil wars”), but under Article 3 common to all four Geneva Conventions, the ICRC may “offer its services” to the parties to such conflicts.⁸³ Unlike the Subcommittee on Prevention of Torture and the European Committee for the Prevention of Torture, the ICRC is not mandated to visit persons deprived of their liberty outside the context of armed conflict; however, its statutes and practice have extended ICRC visits to persons detained in other situations of violence.⁸⁴

The aim of visits to places of detention by the ICRC is to ensure that detainees are treated with dignity and humanity, in accordance with the Geneva Conventions and other international law and standards. ICRC delegates work with parties to the conflict to prevent abuse and to improve the treatment of detainees and their conditions of detention.⁸⁵

In order to ensure that the ICRC is effective in monitoring the treatment of detainees and conditions of detention, their visits are carried out in accordance with strict conditions:

- Delegates must have full and unimpeded access to all detainees and to all places used by and for detainees.
- Delegates must be able to hold private interviews with the detainees of their choice.
- Delegates must be able to repeat their visits.
- The detaining authority must notify detainees’ names to the ICRC, and the ICRC must be able to draw up lists of detainees independently.⁸⁶

81 For CPT visit reports see: www.cpt.coe.int/en/visits.htm

82 Article 126 of the [Third Geneva Convention](#), Articles 76(6) and 143 of the [Fourth Geneva Convention](#).

83 [Common Article 3 of the Geneva Conventions](#). See similarly, Article 18 of [Protocol II](#).

84 Under Article 5(2)(d) of the Statutes of the International Red Cross and Red Crescent Movement (adopted by the 25th International Conference of the Red Cross at Geneva in 1986, amended in 1995 and 2006), the ICRC’s role is, among other things, “to endeavour at all times – as a neutral institution whose humanitarian work is carried out particularly in time of international and other armed conflicts or internal strife – to ensure the protection of and assistance to military and civilian victims of such events and of their direct results.” In its publications the ICRC regularly uses the term “armed conflict and other situations of violence” in describing its mission.

85 See ICRC website: www.icrc.org/eng/what-we-do/visiting-detainees/overview-visiting-detainees.htm

86 These operational principles are the result of the ICRC’s long-standing practice in this field to attain the humanitarian objectives of those visits. See practice of the ICRC: www.icrc.org/eng/what-we-do/visiting-detainees/

During a visit the ICRC delegation will assess the conditions of detention and identify any shortcomings and humanitarian needs. The ICRC can also monitor certain detainees individually for specific protection, medical or other purposes, and promote contact between detainees and their families by facilitating family visits or transmitting letters and Red Cross messages and, more recently, by facilitating video-conferencing between detainees and their families, for example in Afghanistan and at the US detention centre in Guantánamo Bay, Cuba. The ICRC also provides detainees with medical and other supplies, either directly or through the detaining authority.⁸⁷

In order to encourage co-operation by the authorities, the ICRC submits confidential reports to the authorities and establishes a confidential dialogue with the detaining authority in order to resolve any issues.⁸⁸

5.4 THE ROLE OF THE JUDICIARY AND LEGAL PROFESSIONALS IN THE PREVENTION OF TORTURE AND OTHER ILL-TREATMENT

An independent and impartial judiciary is essential to uphold the rule of law, to ensure the right to a fair trial, to prosecute those responsible for torture and other ill-treatment, and to safeguard the rights of persons deprived of their liberty. In order to secure an independent and effective judiciary, the Basic Principles on the Independence of the Judiciary should be respected and implemented. These Principles promote the adoption of a range of measures by states to secure the independence of the judiciary, including:

- Constitutional or similar guarantees of judicial independence.⁸⁹
- Safeguards against inappropriate or unwarranted interference with the judicial process.⁹⁰
- Guarantees for the impartial consideration of the facts in accordance with the law without restrictions, improper influences, inducements, pressures, threats or interferences.⁹¹
- The allocation of adequate resources.⁹²
- Freedom of expression and association for members of the judiciary.⁹³
- Strict, transparent and non-discriminatory criteria for judicial qualification, selection, training, discipline, suspension and removal, tenure and conditions of service to be guaranteed by law.⁹⁴

Many of the safeguards for persons deprived of their liberty outlined in **Chapter 3** of this manual require the involvement of a judge and a lawyer to ensure they are respected in practice. Such safeguards include the right to be brought promptly before a judicial authority, the right to challenge the lawfulness of detention, and the

[overview-visiting-detainees.htm](#)

87 See: <http://www.icrc.org/eng/what-we-do/visiting-detainees/overview-visiting-detainees.htm>

88 See: www.icrc.org/eng/what-we-do/visiting-detainees/overview-visiting-detainees.htm

89 Principle 1 of the [Basic Principles on the Independence of the Judiciary](#).

90 Principle 4 of the [Basic Principles on the Independence of the Judiciary](#).

91 Principle 2 of the [Basic Principles on the Independence of the Judiciary](#).

92 Principle 7 of the [Basic Principles on the Independence of the Judiciary](#).

93 Principles 8 and 9 of the [Basic Principles on the Independence of the Judiciary](#).

94 Principles 10-20 of the [Basic Principles on the Independence of the Judiciary](#).

prohibition against admitting any statement obtained through torture or other ill-treatment. Judges and lawyers must be vigilant to the risks of torture and other ill-treatment at all times during deprivation of liberty. Where allegations of torture or other ill-treatment are made, or where a judge or lawyer has reason to believe that such treatment may have occurred, they should ensure that a prompt, impartial and thorough investigation is carried out.⁹⁵

It has been recognized that a “failure by the judiciary to properly and appropriately inquire into allegations of torture to induce confessions, can result in judges sustaining a system that is reliant on torture to ensure convictions,”⁹⁶ and a culture of impunity.⁹⁷

As noted by the European Committee for the Prevention of Torture:

“The diligent examination by judicial and other relevant authorities of all complaints of ill-treatment by law enforcement officials and, where appropriate, the imposition of a suitable penalty will have a strong deterrent effect. Conversely, if those authorities do not take effective action upon complaints referred to them, law enforcement officials minded to ill-treat persons in their custody will quickly come to believe that they can do so with impunity.”⁹⁸

(See [Chapter 3.4](#) on bringing detainees promptly before a judicial authority, and [Chapter 6.2](#) on criminalizing torture and other acts of ill-treatment in domestic law.)

In some jurisdictions, judges or prosecutors are given a mandate to inspect places of detention. This is an important function which enables the inspectors to examine the treatment of persons deprived of their liberty and conditions of detention, not least in order to prevent torture and ensure that the rights of persons deprived of their liberty are respected.

Judges and lawyers also have a responsibility to publicly condemn acts of torture and other ill-treatment and have a central role to play in ensuring that those responsible for committing such violations are held accountable. (See [Chapter 6](#).)

Judges and lawyers must also ensure that they are not complicit in torture and other ill-treatment while carrying out their official functions. Prosecutors may be present at interrogations and must ensure that they are not involved or complicit in acts of torture or other ill-treatment, for example in order to extract confessions or obtain information. In accordance with the Guidelines on the Role of Prosecutors, prosecutors

95 CAT Annual Report, [UN Doc. A/56/44](#) (2001) §169; SPT visit report: [Maldives](#), [UN Doc. CAT/OP/MDV/1](#) (2009) §88; Visit report of the Special Rapporteur on torture: [Kenya](#), [UN Doc E/CN.4/2000/9/Add.4](#) (2000) §93(k); European Committee for the Prevention of Torture, Standards, [CPT/Inf/E](#) (2002) 1, p. 12, §45.

96 See UNAMI/OHCHR, [Report on the judicial response to allegations of torture in Iraq](#), 2015, p.16.

97 See report of the Special Rapporteur on the independence of judges and lawyers, [UN Doc. A/65/274](#) (2010) §§14-15.

98 European Committee for the Prevention of Torture, Standards, [CPT/Inf/E](#) (2002) 1, pp. 12-13, §45.

must “respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system”.⁹⁹

Prosecutors should not rely on information or confessions without first satisfying themselves that these were not obtained by coercive means. When prosecutors come into possession of evidence that they know, or believe on reasonable grounds, was obtained through torture or other coercive means they should reject such evidence, inform the court accordingly, and take all necessary steps to ensure that those responsible are brought to justice.¹⁰⁰

5.5 THE ROLE OF HEALTH PROFESSIONALS IN THE PREVENTION OF TORTURE AND OTHER ILL-TREATMENT

One of the core requirements on health care professionals is that they avoid doing harm.¹⁰¹ Other requirements such as respect for patient autonomy and confidentiality, and practising in the interests of the patient, are all consistent with practice that makes the welfare of the patient the highest priority for the health care professional. This vision is well captured in the World Medical Association’s [Declaration of Geneva](#), which includes doctors’ commitments, given “solemnly, freely and upon my honour”, to:

- Not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between their duty and the patient.
- Maintain the utmost respect for human life.
- Not use medical knowledge to violate human rights and civil liberties, even under threat.¹⁰²

Also reflecting core values of professional ethics are the [Principles of Medical Ethics](#), which state that:

“Health personnel, particularly physicians, charged with the medical care of prisoners and detainees, have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained.”¹⁰³

5.5.1 ETHICS STANDARDS FOR INDIVIDUAL HEALTH PROFESSIONALS

The work of all health care professionals is guided by codes of ethics. In 1975 the World Medical Association adopted the [Declaration of Tokyo](#), a declaration against participation by physicians in torture. The Declaration proclaims that “the physician shall not countenance, condone or participate in the practice of torture”,¹⁰⁴ “shall not provide any premises, instruments, substances or knowledge to facilitate

99 Guideline 12 of the [Guidelines on the Role of Prosecutors](#).

100 Guideline 16 of the [Guidelines on the Role of Prosecutors](#).

101 In the words of the Latin version of the Hippocratic Oath, *primum non nocere* (above all do no harm).

102 [Declaration of Geneva](#).

103 Principle 1 of the [Principles of Medical Ethics](#).

104 [Declaration of Tokyo](#), §1.

the practice of torture”,¹⁰⁵ shall protect confidentiality, shall not facilitate or aid interrogations, and must exercise clinical independence in health care.¹⁰⁶ It also stipulates that a doctor should not be party to the force-feeding of prisoners on hunger strike.¹⁰⁷

5.5.2 OBLIGATIONS ON PROFESSIONAL BODIES: THE ROLE OF THE HEALTH PROFESSIONS

For more than four decades, doctors have been explicitly required to refrain from assisting in torture and to not tolerate it. The [Declaration of Tokyo](#) states:

“The doctor shall not countenance, condone or participate in the practice of torture or other forms of cruel, inhuman or degrading procedures, whatever the offence of which the victim of such procedures is suspected, accused or guilty, and whatever the victim’s beliefs or motives, and in all situations, including armed conflict and civil strife.”¹⁰⁸

The Declaration of Tokyo remains the strongest statement of the organized medical profession against participation in, or tolerance of, torture, although it has not resolved the problems confronted by doctors who witness torture and are uncertain of how they can act to stop it.

Over the years professional bodies have also adopted explicit statements opposing professional involvement in or tolerance of torture. For example, in 1975, the International Council of Nurses adopted a statement on the responsibility of nurses in the care of prisoners and detainees which prohibited participation in torture. The International Council of Nurses went on to adopt a number of human rights declarations, including revisions of the 1975 statement as well as further statements on the role of nurses in relation to torture and capital punishment.¹⁰⁹

In 1977, the World Psychiatric Association adopted the [Declaration of Hawaii](#) which prohibited participation by psychiatrists in what has been called “political psychiatry” – the use of psychiatry in the detention and punishment of opponents of the state or others who are committed to an institution for non-medical reasons. In 1996 the Association adopted a general statement on ethics – the [Declaration of Madrid](#) – with specific paragraphs addressing issues such as torture.

105 [Declaration of Tokyo](#), §2.

106 [Declaration of Tokyo](#), §§3-5.

107 [Declaration of Tokyo](#), §6.

108 Article 1 of the [Declaration of Tokyo](#). This and similar texts cited in this section are reproduced in Amnesty International, *Codes of Ethics and Declarations Relevant to the Health Professions, 5th edition* (Index: ACT 75/002/2011).

109 International Council of Nurses, [Nurses’ role in the care of detainees and prisoners, 2011 and 2012](#), [Torture, death penalty and participation by nurses in executions, 2012](#).

A specialist medical body, the International Council of Prison Medical Services, adopted the Oath of Athens in 1979, committing prison medical personnel to behave ethically in relation to prisoners.¹¹⁰

The UN has also addressed the issue of medical participation in torture. In 1982 it adopted the [Principles of Medical Ethics](#), which sets out the ethics of relations between health workers, particularly physicians, and prisoners. The existence of these standards is a significant advance and provides clear guidance on the principles applying to the medical care of those vulnerable to torture and other ill-treatment. Less clearly resolved is the problem of what the medical practitioner should do when he or she witnesses torture or sees its after-effects. The implication of the Declaration of Tokyo's injunction not to "countenance" or "condone" torture or other ill-treatment is that unethical behaviour by a colleague, or pressure to behave unethically, should be reported to an appropriate person or organization. Similarly, the International Council of Nurses urges nurses aware of "abuse and maltreatment" of detainees and prisoners to "take appropriate action".¹¹¹ Specific guidance is lacking, however, and there remains a need to find more effective support for health practitioners placed in this position.¹¹²

When documenting torture and other ill-treatment, health care professionals and others should be guided by the [Istanbul Protocol](#). The Istanbul Protocol is a practical international tool containing detailed guidelines for the assessment by health care and other professionals of alleged victims of torture or other ill-treatment; for investigating cases of alleged torture; and for reporting findings to investigative bodies, the judiciary or any other relevant agency. (See [Chapter 6.3.2](#) on elements of an effective investigation.)

In recent years a number of individual professional associations have increased their activity in the realm of human rights protection, seeing it as a natural component of concern for public health and wellbeing.¹¹³ The World Medical Association has made appeals in cases of doctors at risk and has adopted numerous human rights declarations.¹¹⁴

NGOs such as the International Federation of Health and Human Rights Organizations and the International Rehabilitation Council for Torture Victims, as well as many national

110 The Oath of Athens is reproduced in Amnesty International, *Codes of Ethics and Declarations Relevant to the Health Professions, 5th edition* (Index: ACT 75/002/2011).

111 International Council of Nurses, *Nurses' role in the care of detainees and prisoners*.

112 Support for doctors who do protest against torture is given, generally, in Article 7 of the [Declaration of Tokyo](#) and specifically in the World Medical Association's [Declaration of Hamburg Concerning Support for Medical Doctors Refusing to Participate in, or to Condone, the Use of Torture or Other Forms of Cruel, Inhuman or Degrading Treatment](#), 1997.

113 See, for example, British Medical Association, *The Medical Profession and Human Rights: Handbook for a Changing Agenda*, 2001. The British Medical Association had previously published reports on medical involvement in human rights abuses and, specifically, in torture. It undertakes appeals in cases of health professionals at risk.

114 See World Medical Association policy and ethics statements at: www.wma.net/en/20activities/10ethics/index.html

medical NGOs, have spoken out against torture, other ill-treatment and other human rights abuses. Others have taken up the issue of medical participation in torture.¹¹⁵ There is an important role for all these organizations – professional associations, medical human rights organizations and humanitarian organizations – to play in joining with the wider human rights community to build a world free from torture. (See also [Chapter 7.3.2](#), Working with medical and forensic experts.)

5.3.3 LEGAL DECISIONS ON THE ROLE OF HEALTH PROFESSIONALS

Courts have made surprisingly few rulings bearing on the ethics of doctors in the context of torture. Research has shown that few doctors are ever held legally responsible for participating in or condoning torture,¹¹⁶ while medical tribunals have only rarely held doctors accountable for condoning torture. One of the rare cases resulting in a measure of accountability occurred in 2012 when a British doctor was removed from the medical register for failing to take adequate action when examining a man, Baha Mousa, who had been severely beaten by British soldiers in Iraq. This decision followed a detailed public inquiry into the circumstances of Baha Mousa's death.¹¹⁷

115 See S.H. Miles, *Oath Betrayed: Torture, Medical Complicity, and the War on Terror*, 2006; Medact, [Preventing torture: The role of physicians and their professional organisations: Principles and practice](#), 2011.

116 S.H. Miles, T. Alencar and B. Crock, 'Punishing physicians who torture: A work in progress' in *Torture*; Vol. 20 Issue.1, 2010.

117 The three-volume report is available at www.bahamousainquiry.org/report/index.htm

CHAPTER 6

ENSURING JUSTICE, TRUTH AND OTHER REPARATION FOR VICTIMS OF TORTURE AND OTHER ILL-TREATMENT

States should criminalize torture and other acts of ill-treatment effectively in domestic law. All complaints or reports of torture and other ill-treatment must be promptly, thoroughly and impartially investigated. Where sufficient, admissible evidence exists, those suspected of committing the crime of torture or other acts of ill-treatment should be prosecuted in proceedings that meet international standards of fairness or extradited to another country or international tribunal that is able and willing to do so. States must exercise universal jurisdiction over torture and other acts of ill-treatment that are crimes under international law. States must ensure that victims are provided with an effective remedy, including full and effective reparation to address the harm they have suffered.

- 6.1 The obligation to ensure justice, truth and other reparation**
- 6.2 Criminalizing torture and other acts of ill-treatment in domestic law**
 - 6.2.1** Criminalizing torture as a distinct crime in domestic criminal law
 - 6.2.2** Criminalizing assistance and participation in torture, including forms of command and superior responsibility, and attempts to commit torture
 - 6.2.3** Criminalizing torture as a war crime and a crime against humanity
 - 6.2.4** Criminalizing other acts of ill-treatment
 - 6.2.5** Key principles in enacting or amending domestic laws
- 6.3 Investigation**
 - 6.3.1** Obligation to investigate
 - 6.3.2** Elements of an effective investigation
 - 6.3.3** Investigations supplemental to criminal investigations
- 6.4 Prosecuting those suspected of torture or other acts of ill-treatment**
 - 6.4.1** Universal jurisdiction
 - 6.4.2** International justice
- 6.5 Reparation**
 - 6.5.1** Definition of a victim
 - 6.5.2** Forms of reparation
 - 6.5.3** Reparation for victims of abuse committed by non-state actors
 - 6.5.4** United Nations Voluntary Fund for Victims of Torture
 - 6.5.5** The International Criminal Court's Trust Fund for Victims

6.1 THE OBLIGATION TO ENSURE JUSTICE, TRUTH AND OTHER REPARATION

Torture is a gross violation of human rights and a crime under international law. All governments have a duty to investigate allegations of torture and, where sufficient admissible evidence exists, to prosecute before their domestic courts those suspected of committing the crime. Alternatively, they can extradite the suspected perpetrator to another state that is able and willing to prosecute them,¹ or, where appropriate, to an international or internationalized criminal tribunal. States also have an obligation to provide effective remedies to victims, that is, to provide them with full and effective reparation to address the harm they have suffered.²

However, all too often, torture and other ill-treatment is committed with impunity. Impunity can result from failures at any stage: not investigating the crimes or investigating them inadequately; not bringing the suspected culprits to trial in fair proceedings; not prosecuting them effectively; not reaching a verdict or convicting them, despite convincing, admissible evidence that should suffice to establish their guilt beyond a reasonable doubt; not sentencing those convicted, or sentencing them to derisory punishments out of all proportion to the gravity of their crimes; not enforcing sentences; and not ensuring that victims and their families are afforded satisfactory reparation.

Overcoming impunity is a key element in the eradication of torture. A successful prosecution is the clearest possible sign of an official policy that torture will not be tolerated. It strengthens the rule of law by demonstrating that public officials are not above the law. It contributes to the rehabilitation of victims, giving a sense that justice has been done. It helps to promote a public morality based on human rights values by emphasizing that human rights violations must not go unpunished. A conviction or a finding of state responsibility can provide the basis for financial compensation and other forms of reparation. In addition, a formal finding of state responsibility can lead to important reforms.

International justice is also essential to ensure that the international community steps in to deliver justice for victims of torture when the domestic authorities fail to act. The International Criminal Court has jurisdiction over acts of torture when they constitute crimes against humanity, war crimes and genocide, and can order convicted persons to provide reparation to victims. Other ad hoc international and internationalized criminal courts have been established to address impunity in specific situations, which has in some cases included torture or other acts of ill-treatment.³ Finally, all states should exercise universal criminal jurisdiction to prosecute torture before their domestic

1 See Article 8 of the [Convention against Torture](#).

2 See Article 8 of the [Universal Declaration](#); Article 2(3) of the [ICCPR](#); [HRC General Comment 20](#), §14; Article 14 of the [Convention against Torture](#).

3 See for example: [Prosecutor v Akayesu](#) (ICTR-96-4-T), Rwanda Tribunal (1998); [Prosecutor v Delalić and others](#) (IT-96-21-A), Yugoslavia Tribunal (1998); [Prosecutor v Furundžija](#) (IT-95-17/1-T), Yugoslavia Tribunal (1998); [Prosecutor v Kunarac and others](#) (IT-96-23 & IT-96-23/1-A), Yugoslavia Tribunal Appeal judgment (2002).

courts and consider victims' claims for reparation, regardless of where the crimes are committed.

6.2 CRIMINALIZING TORTURE AND OTHER ACTS OF ILL-TREATMENT IN DOMESTIC LAW

Key points:

- States must ensure that torture is defined effectively as a specific, separate offence under domestic criminal law, in line with Article 1(1) of the Convention against Torture.
- Assistance and participation in torture, including forms of command and superior responsibility, and attempts to commit torture should also be made offences under domestic law.
- Domestic law must criminalize war crimes and crimes against humanity involving torture.
- Other acts of ill-treatment should be criminalized under domestic law.
- States should exercise universal jurisdiction over torture, as well as other forms of ill-treatment that are crimes under international law.
- Domestic criminal law must reflect that torture is never justified.
- Inappropriate defences such as “necessity” or “superior orders” must be prohibited.
- No time limits can be imposed for bringing those responsible for torture and other acts of ill-treatment to justice.
- Amnesties and immunities from prosecution for torture and other acts of ill-treatment should be not granted.
- The penalty for committing torture and other acts of ill-treatment must be proportionate to the grave nature of the act and to penalties imposed under domestic law for similar offences. The death penalty, life imprisonment without the possibility of parole and corporal punishment should not be imposed as forms of punishment for crimes of torture.

6.2.1 CRIMINALIZING TORTURE AS A DISTINCT CRIME IN DOMESTIC CRIMINAL LAW

Defining torture as a distinct crime under domestic law is essential in combating the use of torture and other ill-treatment.⁴ Article 4 of the [Convention against Torture](#) states:

“1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.”⁵

⁴ CAT General Comment 2, §11.

⁵ Article 4 of the [Convention against Torture](#).

The Committee against Torture has interpreted Article 4 as requiring state parties to include a separate offence of torture distinct from other ordinary offences, such as assault, in their domestic law.⁶ Punishing acts of torture as ordinary offences tends not to reflect the gravity of the attack against fundamental values of the international community. Ordinary offences such as assault also fail to incorporate all aspects of the definition of torture set out in Article 1 of the [Convention against Torture](#).

While many national constitutions have provisions stating that no one may be subjected to torture or other cruel, inhuman or degrading treatment or punishment, such constitutional provisions do not in fact criminalize torture. To enable prosecution, the domestic law needs to contain a specific crime of torture. Even those states parties to the Convention against Torture that have a “monist” legal system – whereby international treaties take direct legal effect within the state upon ratification – must put in place specific measures making torture a punishable offence under criminal law.⁷

As discussed in [Chapter 2.3.1](#), Article 1 of the [Convention against Torture](#) sets out a definition of torture. States do not have to reproduce word for word the Article 1 definition in their domestic criminal law – they can adopt a broader definition, but any definition must cover at least the same conduct.⁸

6.2.2 CRIMINALIZING ASSISTANCE AND PARTICIPATION IN TORTURE, INCLUDING FORMS OF COMMAND AND SUPERIOR RESPONSIBILITY, AND ATTEMPTS TO COMMIT TORTURE

Where an act of torture is committed by agents of the state, it is not usually the action of just one individual. It is often the product of a deliberate policy, implemented by the organs of the state and overseen or at least tolerated by other state officials. Even when torture is not the product of a policy, it is often a common practice in which officials with command responsibility acquiesce. Other law enforcement officers or security force members are often present when torture takes place, or are close enough to know what is happening, and even when they do not actively participate, they choose not to intervene and not to report the crime.

Article 1 of the [Convention against Torture](#) states that torture is an act “committed by or at the instigation of *or with the consent or acquiescence* of a public official or other person acting in an official capacity” (emphasis added). Article 4 of the Convention obliges states parties to make complicity or participation in torture

6 Concluding Observations of CAT: [Russian Federation, UN Doc. CAT/C/RUS/CO/5 \(2012\) §7](#); [Bulgaria, UN Doc. CAT/C/BGR/CO/4-5 \(2011\) §8](#); [Djibouti, UN Doc. CAT/C/DJI/CO/1 \(2012\) §8](#).

7 CAT Summary of Consideration of State Party Reports: Switzerland, Annual Report, [UN Doc. A/45/44 \(1990\) §95](#).

8 See for example Concluding Observations of CAT: [UK, UN Doc. CAT/C/GBR/CO/5 \(2013\) §7](#); [UK, UN Doc. CAT/C/CR/33/310 \(2004\) §4](#); [Senegal, UN Doc. CAT/C/SEN/CO/3 \(2013\) §8](#); [Gabon, UN Doc. CAT/C/GAB/CO/1 \(2012\) §8](#); [Mexico, UN Doc. CAT/C/MEX/CO/5-6 \(2012\) §8](#); [Norway, UN Doc. CAT/C/NOR/CO/6-7 \(2012\) §6](#); [Peru, UN Doc. CAT/C/PER/CO/5-6 \(2012\) §7](#); [Russian Federation, CAT/C/RUS/CO/5 \(2012\) §7](#); [Togo, UN Doc. CAT/C/TGO/CO/2 \(2012\) §8](#).

punishable by appropriate penalties.⁹ International law is clear that an order of a superior or public authority can never be invoked as a justification for torture.¹⁰ Furthermore, superior officials are guilty of complicity if they knew or ought to have known that torture was practised by officers under their command and failed to act to prevent or stop it.¹¹

Similarly, health care professionals must not participate, be complicit in or condone acts of torture. (See [Chapter 5.5.2.](#)) The terms “consent” and “acquiescence” have been interpreted by the Committee against Torture in order to ensure the broadest possible protection against torture. (See [Chapter 2.3.1\(e\).](#))

In addition, Article 25 of the [Rome Statute](#) gives the International Criminal Court jurisdiction over those who order, solicit or induce the war crime or crime against humanity of torture. Furthermore, Article 28 of the Rome Statute provides that military commanders can be held criminally responsible for crimes committed by their subordinates if they knew or should have known that the crimes were being perpetrated or about to be committed, and if they failed to take necessary and reasonable measures to prevent or repress the crimes or submit the cases to prosecutors. Civilian superiors, such as political leaders or senior civil servants, are held to a similar standard.

6.2.3 CRIMINALIZING TORTURE AS A WAR CRIME AND A CRIME AGAINST HUMANITY

As noted in [Chapter 2.2](#), the Geneva Conventions of 1949 specify certain acts, including torture and inhuman treatment, as “grave breaches” of the Conventions when committed against persons protected by these Conventions. Grave breaches of the Geneva Conventions are war crimes. The rules set out in the Geneva Conventions entail individual criminal responsibility for grave breaches, including torture and inhuman treatment, and provide for mandatory universal jurisdiction over these crimes among states parties to the Conventions. Torture, as a grave breach of the Geneva Conventions, is also listed as a war crime under Article 8(2)(a) of the [Rome Statute](#).

Under Article 7(1)(f) of the [Rome Statute](#), when torture forms part of a widespread and systematic attack directed against a civilian population (including in times of peace) it constitutes a crime against humanity, which falls within the jurisdiction of the International Criminal Court. To amount to a crime against humanity, there is no requirement that the torture itself be widespread or systematic, only that

9 See also [CAT General Comment 2](#), §8; Article 7 of the [Declaration against Torture](#) (which calls upon states to criminalize “participation in, complicity in, incitement to or an attempt to commit torture”); Article 6 of the [Inter-American Convention against Torture](#); Guideline 4 of the [Robben Island Guidelines](#); Annual Report of the Special Rapporteur on torture, [UN Doc. A/56/156](#) (2001) §39(a). While Article 3 of the European Convention does not expressly require states parties to criminalize torture, the European Court has interpreted this obligation as being implicit in the general duty to protect individuals from torture and other ill-treatment; see *M.C. v Bulgaria* (39272/98), European Court (2004) §153.

10 See Article 2(3) of the [Convention against Torture](#); Articles 4-5 of the [Inter-American Convention against Torture](#); Rule 1 of the [Mandela Rules](#); Guideline 10 of the [Robben Island Guidelines](#); [CAT General Comment 2](#), §26; [HRC General Comment 20](#), §3.

11 See [CAT General Comment 2](#), §26.

it be part of a widespread or systematic attack and that the perpetrator must have knowledge of the attack.¹² Article 7 of the [Rome Statute](#) also includes as a crime against humanity “other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health” which would include many acts which may not amount to torture but which do amount to other forms of ill-treatment.¹³

It is therefore important that domestic law also incorporates these crimes to ensure that they can be prosecuted appropriately in accordance with international law.

6.2.4 CRIMINALIZING OTHER ACTS OF ILL-TREATMENT

The [Convention against Torture](#) does not provide explicitly for other acts of cruel, inhuman or degrading treatment or punishment¹⁴ to be made offences under criminal law; however, it is not expressly ruled out, as Article 16(2) of the Convention states:

“The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.”¹⁵

In addition, the UN Declaration against Torture also states that:

“If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well-founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.”¹⁶

The Human Rights Committee has also requested that states provide information on:

“the provisions of their criminal law which penalize torture and cruel, inhuman and degrading treatment or punishment, specifying the penalties applicable to such acts, whether committed by public officials, or other persons acting on behalf of the State, or by private persons”.¹⁷

As noted in [Chapters 2.1](#) and [2.3.2](#), international law prohibits all forms of cruel, inhuman or degrading treatment or punishment absolutely. Indeed, international humanitarian law and international criminal law not only prohibit but explicitly criminalize as war crimes “inhuman treatment”¹⁸ and “cruel treatment”,¹⁹ while

12 Article 7(1) of the [Rome Statute](#).

13 See Article 7(1)(k) of the [Rome Statute](#).

14 See [Chapter 2.3.2](#) for more information on what constitutes other forms of ill-treatment.

15 Article 16(2) of the [Convention against Torture](#).

16 Article 10 of the [Declaration against Torture](#).

17 [HRC General Comment 20](#), §13.

18 See for example, Article 50 of the [First Geneva Convention](#); Article 51 of the [Second Geneva Convention](#); Article 130 of the [Third Geneva Convention](#); Article 147 of the [Fourth Geneva Convention](#), all pertaining to “grave breaches” of the respective Conventions. See similarly Article 8(2)(a)(ii) of the [Rome Statute](#).

19 Such treatment is prohibited under Article 3(1)(a) common to all four Geneva Conventions (concerning the treatment of persons taking no active part in hostilities during non-international armed conflicts) and is criminalized as a war crime, for example under Article 8(2)(c)(i) of the [Rome Statute](#) (similarly concerning non-international armed conflicts).

certain “inhumane acts” are criminalized as crimes against humanity.²⁰ Amnesty International’s position, therefore, is that there are no grounds for claims that states have no obligation to criminalize acts of ill-treatment other than torture.

Within the context of the ICCPR, the Human Rights Committee has stated the following: “Where the investigations... reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice... These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7)”.²¹

Amnesty International similarly calls on states to, at the very least, criminalize and punish those acts of ill-treatment which, while not amounting to torture, constitute crimes under international law in the relevant context (including armed conflict). Such criminalization should cover acts committed both by officials and by non-state actors. (See [Chapter 2.9](#) on non-state actors.) Criminalization should include mostly – though not exclusively – deliberate acts and omissions, such as beating, humiliation, intentionally neglecting persons under one’s care, sexual violence, humiliation, and wilfully withholding from family members information on the fate and whereabouts of a person arrested by the authorities.

When such acts cause severe pain or suffering and meet the other requirements of the definition of torture, Amnesty International’s position is that they must be criminalized as torture. Legislation criminalizing cruel, inhuman or degrading acts must come alongside, not replace, legislation criminalizing torture.

Nevertheless, Amnesty International does not call for across-the-board criminalization of all cruel, inhuman or degrading treatment or punishment. This is because the broad remit of this concept in international law (as explained in [Chapter 2.3.2](#) and which Amnesty International strongly supports) means that cruel, inhuman or degrading treatment or punishment also includes violations not necessarily reducible to acts or omissions which can be criminally attributed to specific individuals with the necessary element of intent (or recklessness). For instance, poor prison conditions amounting to cruel, inhuman or degrading treatment or punishment are often the result of long-term negligent policies, deprioritization or budget constraints and general societal apathy. Such conditions are in violation of states’ obligation to prevent cruel, inhuman or degrading treatment or punishment and must be immediately redressed, but not necessarily through criminal investigations and prosecutions. This, however, does not mean that Amnesty International rules out prosecutions in such instances, where appropriate.

²⁰ Article 7(1)(k) of the [Rome Statute](#).

²¹ See [HRC General Comment 31](#), §18. Amnesty International considers that this statement covers punishments as well. See similarly [CPT Standards](#), CPT/Inf/E (2002) 1 - Rev. (2006) §27.

In view of the above, we use the term “other acts of ill-treatment” in this manual as shorthand for acts of ill-treatment that must be criminalized alongside torture, a slight variation from “other ill-treatment” which is used more broadly for all violations of the prohibition of cruel, inhuman or degrading treatment or punishment, some of which may not call for criminal investigations or prosecution.²²

6.2.5 KEY PRINCIPLES IN ENACTING OR AMENDING DOMESTIC LAWS

The [Convention against Torture](#) and the Committee against Torture set out a number of key principles for states to incorporate into their legislation, as follows:

Torture is never justified

Article 2(2) of the Convention against Torture states: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

Inappropriate defences such as “necessity” or “superior orders” must be prohibited

Where Article 1 of the [Convention against Torture](#) refers to “lawful sanctions”, this is to ensure that punishments such as long imprisonment (in humane conditions), the imposition of which may cause considerable distress, and indeed suffering, cannot be claimed to constitute torture. Neither the “lawful sanctions” exception nor any other provision in the Convention allows defences for torture such as “superior orders” or “necessity” to be permitted under domestic criminal law. (See [Chapter 2.3.1\(i\) \(f\)](#).) Article 2(3) of the Convention prohibits the invocation of an order from a superior officer or a public authority as justification for torture.²³ Officials have a right and a duty to refuse to obey any order to commit torture or other ill-treatment.²⁴

No time limits can be imposed for bringing those responsible for torture to justice

The jurisprudence of the Committee against Torture, certain international tribunals and other international legal instruments confirm that no statute of limitations or other time limits may be applied to acts of torture.²⁵

22 While Article 16 of the [Convention against Torture](#) does refer to “acts”, similarly to Article 1, CAT, the HRC and other human rights bodies have consistently interpreted “cruel, inhuman or degrading treatment or punishment” broadly so as to extend to violations that are not reducible to acts. See for example Concluding Observations of CAT: Spain, [UN Doc. CAT/C/CR/29/3](#) (2002) §11(d); [Carmen Amendola Masslotti and Graciela Baritussio v Uruguay](#), HRC, UN Doc. Supp. No. 40 (A/37/40) (1982) §§11 and 13; [Trepashkin v Russia](#) (36898/03), European Court (2007) §§93-95; [Karalevičius v Lithuania](#) (53254/99), European Court (2005) §36. See also [Chapter 2.3.2](#) on the description of other ill-treatment, and [Chapter 4.1](#) on the right to humane conditions of detention.

23 Article 2(3) of the [Convention against Torture](#).

24 See [HRC General Comment 20](#), §13; Annual Report 2001 of the Special Rapporteur on torture, [UN Doc. A/56/156](#) (2001) §39(k).

25 See Concluding Observations of CAT: [Andorra](#), [UN Doc. CAT/C/AND/CO/1](#) (2013) §7; [Latvia](#), [UN Doc. CAT/C/LVA/CO/3](#) (2013) §8; [Guatemala](#), [UN Doc. CAT/C/GTM/CO/5-6](#) (2013) §8; [Japan](#), [UN Doc. CAT/C/JPN/CO/2](#) (2013) §8. See also [Prosecutor v Furundzija](#), Yugoslavia Tribunal (1998) §157; Principle 23 of the Updated Impunity Principles; [Basic Principles on Reparation](#), §6; Article 29 of the [Rome Statute](#).

No granting of amnesties or immunities from prosecution for torture or other acts of ill-treatment

States should not grant amnesty or immunity from prosecution to any person suspected or convicted of committing torture or other acts of ill-treatment, irrespective of their official capacity. The Committee against Torture has stated that “amnesties or other impediments which preclude or indicate unwillingness to provide prompt and fair prosecution and punishment of perpetrators of torture or ill-treatment violate the principle of non-derogability”.²⁶ The Human Rights Committee has noted that: “Amnesties are generally incompatible with the duty of States to investigate such acts; to guarantee freedom from such acts within their jurisdiction; and to ensure that they do not occur in the future”.²⁷

The penalty for committing torture and other acts of ill-treatment must be proportionate to the grave nature of the act and proportionate to penalties imposed under domestic law for similar offences²⁸

The Committee against Torture has not established a minimum penalty that should be imposed against persons convicted of torture. However, it has considered sentences of a short duration (up to 10 years) as being insufficient.²⁹ Any penalties imposed as a punishment for acts of torture must be compliant with international standards. Corporal or other cruel, inhuman or degrading punishment, which in Amnesty International’s view includes the death penalty and life imprisonment without the possibility of parole (see [Chapter 2.5.1](#)), must not be imposed.

The law should provide for the exercise of universal jurisdiction over torture³⁰

Universal jurisdiction over a particular crime means that any state can, and in some cases must, exercise jurisdiction, wherever the crime was committed and whatever the nationality of the perpetrator or the victim. By providing for the exercise of universal criminal law jurisdiction in their domestic laws, states ensure that there can never be a safe haven for any person responsible for acts of torture. (See [section 6.3.1](#) below.)

6.3 INVESTIGATION

Key points:

- **States must investigate whenever there is reason to believe that torture or other ill-treatment may have been inflicted.**
- **Investigations must be prompt, impartial, independent and effective.**

²⁶ CAT General Comment 2, §5.

²⁷ HRC General Comment 20, §15. See also *Zimbabwe Human Rights NGO Forum v Zimbabwe*, African Commission (2006) §§211 and 215.

²⁸ Article 4(2) of the [Convention against Torture](#).

²⁹ See Concluding Observations of CAT: *Andorra*, UN Doc. CAT/C/AND/CO/1 (2013) §7; *Latvia*, UN Doc. CAT/C/LVA/CO/3 (2013) §7; *Estonia*, UN Doc. CAT/C/EST/CO/5 (2013) §8; *Kenya*, UN Doc. CAT/C/KEN/CO/2 (2013) §8; *UK*, UN Doc. CAT/C/GBR/CO/5 (2013) §17; *Tajikistan*, UN Doc. CAT/C/TJK/CO/2 (2012) §6; *Armenia*, UN Doc. CAT/C/ARM/CO/3 (2012) §10; *Rwanda*, UN Doc. CAT/C/RWA/CO/1 (2012) §7.

³⁰ Articles 5-8 of the [Convention against Torture](#).

- **Officials against whom there are credible reports of responsibility for committing, or being involved in, torture or other acts of ill-treatment should be suspended from active duty during investigations.**
- **Effective measures must be put in place to protect victims and witnesses of torture.**

All states should ensure that their legal and institutional frameworks enable them to effectively investigate and prosecute perpetrators of torture and other acts of ill-treatment. Such measures are also essential as they ensure effective remedies for victims, including full and effective reparation. International human rights law imposes on states the obligation to investigate complaints and reports of torture and other ill-treatment. Often others outside the state system, such as national human rights institutions and non-governmental organizations, will also need to be able to conduct investigations.

6.3.1 OBLIGATION TO INVESTIGATE

States' obligation to investigate torture and other ill-treatment is set out in Articles 12 and 13 of the [Convention against Torture](#).

Article 12 of the Convention states:

“Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.”

Article 13 states:

“Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.”

Article 16 of the Convention against Torture expressly provides that the obligation to conduct investigations contained in Articles 12 and 13 also apply to other forms of ill-treatment. Similar obligations are contained in Article 8 of the [Inter-American Convention against Torture](#).

Concerning enforced disappearances, Article 3 of the [Convention on Enforced Disappearance](#) states that:

“Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.”

Article 12(1) of the [Convention on Enforced Disappearance](#) provides for the right to report an allegation of enforced disappearance and the corresponding obligation to protect complainants, witnesses, relatives and defence counsel, as well as persons investigating the complaint. Article 12 also details some of the necessary powers and resources the investigating authorities must have, including access to the documentation and other information relevant to their investigation;³¹ and access, if necessary with the prior authorization of a judicial authority, which must rule promptly on the matter, to any place of detention or any other place where there are reasonable grounds to believe that the disappeared person may be present.³² (See [Chapter 3.3](#) on enforced disappearances.)

In accordance with Article 12 of the [Convention against Torture](#), an investigation must be made wherever there is “reasonable ground” to believe that torture or other ill-treatment has been committed. In practice this means an investigation should be undertaken both in situations where: (i) a complaint to the authorities has been made; and (ii) no complaint has been made but there are indications that torture or other ill-treatment may have occurred.³³

The Human Rights Committee has also repeatedly recognized the obligation to investigate in order to realize the right to an effective remedy.³⁴ In relation to the duty to investigate generally, the Committee has stated:

“Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies... A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”³⁵

Specifically in relation to torture and other ill-treatment, the Committee has noted that:

“Article 7 should be read in conjunction with article 2, paragraph 3, of the Covenant... The right to lodge complaints against maltreatment prohibited by article 7 must be recognized in the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”³⁶

31 Article 12(3)(a) of the [Convention on Enforced Disappearance](#).

32 Article 12(3)(b) of the [Convention on Enforced Disappearance](#).

33 See Principle 2 of the [Principles on the Investigation of Torture](#).

34 See Article 2(3) of the ICCPR; see also HRC: *Hugo Rodríguez v Uruguay*, UN Doc. CCPR/C/51/D/322/1988 (1994) §12.3; *Pestaño v the Philippines*, UN Doc. CCPR/C/98/D/1619/2007 (2010) §7.2; *Amirov v Russian Federation*, UN Doc. CCPR/C/95/D/1447/2006 (2009) §11.2; *Sathasivam v Sri Lanka*, UN Doc. CCPR/C/93/D/1436/2005 (2008) §6.4; *Peiris v Sri Lanka*, UN Doc. CCPR/C/103/D/1862/2009 (2012) §7.4.

35 [HRC General Comment 31](#), §15.

36 [HRC General Comment 20](#), §14. See also *Hugo Rodríguez v Uruguay*, HRC, UN Doc. CCPR/C/51/D/322/1988 (1994) §12.3.

It has also acknowledged that states parties' responsibility to investigate allegations of violations of the ICCPR includes investigating allegations of violation of rights by a prior regime in order to grant an effective remedy.³⁷

The Human Rights Committee has also noted, in relation to enforced disappearances, that "the failure of a State party responsibly to discharge its obligations to investigate and clarify the circumstances of the harm suffered by the direct victim will... usually be a factor"³⁸ in determining whether a family member can be considered to be a victim of a violation of the prohibition of ill-treatment under Article 7.

Regional human rights treaty bodies and courts have also recognized that states have an obligation to investigate allegations of torture. For example, the European Court has stated:

"[W]here an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in... [the] Convention', requires by implication that there should be an effective official investigation."³⁹

Likewise, the Inter-American Court of Human Rights has repeatedly asserted that states must prevent, investigate and punish any violation of the rights recognized by the American Convention on Human Rights.⁴⁰ It has held that the obligation to investigate violations of rights protected by the Convention is a consequence of the state's obligation to respect and ensure those rights, including the right not to be subjected to torture or other ill-treatment.⁴¹ Equally, the African Commission has recognized that state parties to the African Charter have an obligation to investigate violations,⁴² and in particular have reaffirmed that the granting of amnesties effectively forecloses any available avenue for alleged abuses to be investigated, and violates the right of victims to an effective remedy.⁴³ (See [section 6.2.5](#).)

The Special Rapporteur on torture has stressed the importance of the obligation to investigate, in particular stating that:

37 *Hugo Rodríguez v Uruguay*, HRC, UN Doc. CCPR/C/51/D/322/1988 (1994) §12.3.

38 See *Amirov v Russian Federation*, HRC, UN Doc. CCPR/C/95/D/1447/2006 (2009) §11.7.

39 European Court: *Assenov and Others v Bulgaria* (90/1997/874/1086), (1998) §102. See also *Aydin v Turkey* (23178/94), Grand Chamber (1997) §103; *Selçuk and Asker v Turkey* (23184/94 and 23185/94), (1998) §96; *Kurt v Turkey* (24276/94), (1998) §§133 and 135-9; *Keenan v UK* (27229/95), (2001) §123.

40 See for example Inter-American Court: *Velásquez Rodríguez v Honduras*, (Ser. C) No. 4 (1988) §§176, 180 and 187; *Hilaire, Constantine and Benjamin et al. v Trinidad and Tobago*, (Ser. C) No. 94 (2002); "*Street Children*" Case, (Ser. C) No. 77 (2001) §101 and operative clause 8; *Barrios Altos, Chumbipuma Aguirre et al. v Perú*, (Ser. C), No. 75 (2001).

41 *Velásquez Rodríguez v Honduras*, Inter-American Court (Ser. C) No. 4 (1988) §§176, 180 and 187.

42 See *Zimbabwe Human Rights NGO Forum v Zimbabwe*, African Commission (2006) §§211 and 215. See also Principle 19 of the *Robben Island Guidelines*.

43 See *Zimbabwe Human Rights NGO Forum v Zimbabwe*, African Commission (2006) §§211 and 215.

“Independent national authorities, such as a national commission or ombudsman with investigatory and/or prosecutorial powers, should be established to receive and to investigate complaints. Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no connection to that which is investigating or prosecuting the case against the alleged victim.”⁴⁴

Furthermore, the UN General Assembly and the UN Human Rights Council have both urged that “an independent, competent domestic authority must promptly, effectively and impartially investigate all allegations of torture or other cruel, inhuman or degrading treatment or punishment”.⁴⁵

In addition, international humanitarian law, and in particular the Geneva Conventions, require states to search for persons “alleged to have committed, or ordered to have committed” grave breaches, including torture and other acts of ill-treatment, and to try or extradite them.⁴⁶ Customary international humanitarian law similarly provides that: “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.”⁴⁷

6.3.2 ELEMENTS OF AN EFFECTIVE INVESTIGATION

A number of international instruments and tools have been developed that set out general principles of good practice which can be used to assess whether or not an investigation is effective. In particular, the [Principles on the Investigation of Torture](#) set out guiding principles for an effective investigation. These have been supplemented by the [Istanbul Protocol](#), a practical tool containing detailed international guidelines for the assessment by health care and other professionals of alleged victims of torture or other ill-treatment; for investigating cases of alleged torture; and for reporting findings to the judiciary or any other investigative body.⁴⁸ In addition, the [Principles for the Investigation of Arbitrary Executions](#) contain standards on the investigation of deaths in custody (which may be the result of torture) and on the operation of commissions of inquiry.

The [Principles on the Investigation of Torture](#) state that the purposes of an effective investigation are:

44 Special Rapporteur on torture: [General Recommendations](#), §k; Interim report, UN Doc. A/68/295 (2013) §64; Report focusing on commissions of inquiry, UN Doc. A/HRC/19/61 (2012) §§24, 27, 47-51.

45 UN General Assembly resolution, UN Doc. A/RES/65/205 (2010) §6. See identical language in Human Rights Council resolution, UN Doc. A/HRC/31/L.26/Rev.1 (2016) §18.

46 See Article 49 of the First Geneva Convention; Article 50 of the Second Geneva Convention; Article 129 of the Third Geneva Convention; Article 146 of the Fourth Geneva Convention.

47 See ICRC, *Customary IHL Study*, [Rule 158](#).

48 [Istanbul Protocol](#), p. 1.

- The clarification of the facts and establishment and acknowledgement of individual and state responsibility for victims and their families;
- The identification of measures needed to prevent recurrence; and
- The facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the state, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.⁴⁹

As well as these general principles, Article 12 of the [Convention against Torture](#) stipulates that investigations must be both prompt and impartial.

Promptness

The Committee against Torture has stated that promptness is essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or long-term effects, the physical traces of torture and other ill-treatment can soon disappear.⁵⁰ Promptness would also deny perpetrators time to intimidate victims and witnesses, remove evidence or otherwise undermine the investigation. The requirement of promptness applies both to the time it takes for the authorities to examine the allegations initially, and to the pace of the investigation thereafter.⁵¹ The Convention does not define the term promptness, but to be effective the authorities should start investigating a case of torture or other ill-treatment within a matter of hours or days and there must not be unreasonably long delays in bringing the investigation to its conclusion.⁵²

The Committee against Torture has noted that a

“State’s failure to investigate, criminally prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of redress and thus constitute a violation of the State’s obligations under article 14”.⁵³

Impartiality

The investigation must be capable of leading to the identification and punishment of those responsible. A lack of thoroughness of an investigation can be evidence of a lack of impartiality, in violation of the requirements of Articles

49 Principle 1 of the [Principles on the Investigation of Torture](#).

50 See for example CAT: *Evloev v Kazakhstan*, UN Doc. CAT/C/51/D/441/2010 (2013) §9.5; *Blanco v Spain*, UN Doc. CAT/C/20/D/59/1996 (1998) §8.2.

51 See for example CAT: *Blanco v Spain*, UN Doc. CAT/C/20/D/59/1996 (1998) §§8-9; *Evloev v Kazakhstan*, UN Doc. CAT/C/51/D/441/2010 (2013) §9.5; *Gerasimov v Kazakhstan*, UN Doc. CAT/C/48/D/433/2010 (2012) §§12.3 and 12.5; *Osmani v Republic of Serbia*, UN Doc. CAT/C/42/D/261/2005 (2009) §10.7; *Ali v Tunisia*, UN Doc. CAT/C/41/D/291/2006 (2008) §15.7; *Ben Salem v Tunisia*, UN Doc. CAT/C/39/D/269/2005 (2007) §16.7.

52 For example, in one case, CAT held that there had been a violation of the right to conduct a prompt investigation after a delay of more than two weeks since the initial complaint was made. See *Blanco v Spain*, CAT, UN Doc. CAT/C/20/D/59/1996 (1998) §§8-9.

53 CAT General Comment 3, §17.

12 and 13 of the Convention.⁵⁴ Therefore the investigating authority must examine all the information necessary to the inquiry. Those conducting the investigation must also be independent from the suspected perpetrators as well as those who may want to protect these persons or the institution or agencies they serve.

The Special Rapporteur on torture has stated: “Independent entities are essential for investigating and prosecuting crimes committed by those responsible for law enforcement.”⁵⁵ The Special Rapporteur has also called for the “separation of forensic services from public prosecution services to ensure their independence and impartiality”.⁵⁶ The Committee against Torture has similarly called for the creation of independent investigatory machinery.⁵⁷

Evidence to be gathered in an investigation should include, where possible:

- Statements by the alleged victim, by the alleged perpetrators (including persons in relevant positions of authority) and by witnesses and others having knowledge of the matter;
- Medical evidence;
- Evidence from audio, video or similar monitoring or recordings;
- Other physical or biological evidence, such as bloodstains, fingerprints, equipment used to inflict torture, bullets, weapons, fibres, hair and bodily fluids, etc.;
- Records, including custody records and records of interrogation sessions.

If there is reason to believe that torture or an act of ill-treatment has been committed, a criminal investigation should be launched. The investigator should determine whether a crime was in fact committed and, if so, whether sufficient, admissible evidence exists to bring charges against those suspected of being responsible. If charges are brought, the investigator should obtain all the evidence needed to secure a conviction. All evidentiary material should be carefully preserved before and during trial and thereafter for use in any further proceedings.

Victims and witnesses of torture or other acts of ill-treatment may fear lodging a complaint as this may expose them to reprisals. Accordingly Article 13 of the [Convention against Torture](#) requires states parties to take steps to protect them and eliminate risks of reprisals.⁵⁸ The Committee against Torture has called on governmental authorities “[t]o ensure the right of victims of torture to lodge a complaint without the fear of being subjected to any kind of reprisal, harassment,

54 CAT: *Blanco v Spain*, UN Doc. CAT/C/20/D/59/1996 (1998) §8(8); *M'Barek v Tunisia*, UN Doc. CAT/C/23/D/60/1996 (2000) §§11.8-11.10; *Evloev v Kazakhstan*, UN Doc. CAT/C/51/D/441/2010 (2013) §9.7; *Gerasimov v Kazakhstan*, UN Doc. CAT/C/48/D/433/2010 (2012) §12.8; *Ali v Tunisia*, UN Doc. CAT/C/41/D/291/2006 (2008) §15.8; *Ben Salem v Tunisia*, UN Doc. CAT/C/39/D/269/2005 (2007) §16.8.

55 Report of the Special Rapporteur on torture, UN Doc. E/CN.4/2001/66 (2001) §1310.

56 See Special Rapporteur on torture mission report: *Mexico*, UN Doc. A/HRC/28/68/Add.3 (2014) §82(e).

57 See for example Concluding Observations of CAT: *Andorra*, UN Doc. CAT/C/AND/CO/1 (2013) §10; *Kyrgyzstan*, UN Doc. CAT/C/KGZ/CO/2 (2013) §7.

58 See Article 13 of the [Convention against Torture](#). In addition, Article 16 provides explicitly that the right to lodge a complaint applies equally to allegations of other forms of ill-treatment.

harsh treatment or prosecution, even if the outcome of the investigation into his [sic] claim does not prove his or her allegation".⁵⁹ It has also called for the protection of judges, prosecutors and informers.⁶⁰

Officials suspected of committing torture or other acts of ill-treatment should be suspended from active duty during an official investigation.⁶¹ According to the [Principles on the Investigation of Torture](#): "Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation."⁶² They should also be removed from any position where they could ill-treat anyone else. The suspension should be without prejudice to the outcome of the investigation; suspension does not mean that the official is presumed to be guilty.

The [Principles on the Investigation of Torture](#) also set out criteria for medical investigations of torture and other ill-treatment (expanded and detailed in the Istanbul Protocol), covering issues such as the facts to be investigated and recorded, the need to behave in conformity with the highest ethical standards, the need to obtain the informed consent of the alleged victim before making an examination, the need to conduct medical examinations away from the presence of security agents or other government officials, and the need for confidentiality.⁶³ The Principles further state: "Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence."⁶⁴

6.3.3 INVESTIGATIONS SUPPLEMENTAL TO CRIMINAL INVESTIGATIONS

In addition to criminal investigations, there are a number of other types of investigations which may be carried out by a range of bodies. These should be additional and complementary to any criminal investigations; if a crime is alleged to have been committed, there must be a criminal investigation. Supplemental investigations include:

- Investigations by human rights ombudspersons and national human rights commissions. These may, for example, be aimed at helping individual victims to invoke remedies, or at formulating general recommendations for state action, including investigation, prosecution, reparation and prevention.
- Investigations by parliamentary commissions. These can be particularly useful in formulating legislative reforms.

59 CAT Annual Report, [UN Doc. A/54/44 \(SUPP\)](#) (1999) §102.

60 CAT Annual Report, [UN Doc. A/51/44 \(SUPP\)](#) (1996) §§57(e) and 79.

61 CAT Annual Report, [UN Doc. A/56/44](#) (2001) §97(d) and §120(b). See also Special Rapporteur on torture mission report: [Mexico](#), [UN Doc. A/HRC/28/68/Add.3](#) (2014) §82(b).

62 Principle 3(b) of the [Principles on the Investigation of Torture](#).

63 [Principles on the Investigation of Torture](#).

64 Principle 4 of the [Principles on the Investigation of Torture](#).

- Investigations of deaths in custody. All deaths in custody should be investigated by a judicial or other competent authority to determine the cause of death.⁶⁵ If there is reason to believe that a person has died as a result of torture or other ill-treatment, a criminal investigation should be launched.⁶⁶
- Internal investigations. Police forces, for example, often conduct their own investigations into allegations of abuses by members of their forces, which may result in disciplinary sanctions.
- Commissions of inquiry or similar procedures. The [Principles on the Investigation of Torture](#) state that these commissions should be established “[i]n cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of abuse, or for other substantial reasons”.⁶⁷ The Principles also state that commissions of inquiry must have the power to obtain all the information necessary to the inquiry; must be adequately resourced; have the power to oblige all those acting in an official capacity who were allegedly involved in torture or ill-treatment to appear and testify; and to be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.⁶⁸
- Truth commissions. Commissions of inquiry into gross human rights violations, usually carried out under former governments, have been set up in several countries as part of an intended process of national reconstruction. They are often referred to as “truth commissions”. Although an effective truth commission can go a long way towards satisfying a state’s obligation to respect, protect and promote the victims’ right to truth, they are not an alternative to the investigation and prosecution of crimes under international law. Therefore, criminal justice and truth-seeking mechanisms do not exclude, but rather supplement each other. A 2010 Amnesty International report into 40 truth commissions established worldwide between 1974 and 2010 was able to identify a number of elements of common practice, including the practice of truth commissions to:
 - Reject the granting of amnesty for crimes under international law in connection with truth-seeking processes;
 - Allow the granting of amnesty in connection with truth-seeking processes only when the amnesty excludes crimes under international law;
 - Strongly support the prosecution of crimes under international law.⁶⁹

Each of these different types of supplementary investigation can have a role in preventing torture and other ill-treatment, in helping victims to obtain reparation, and in protecting potential victims. However, the investigating bodies must have the necessary qualifications, powers and resources to effectively carry out their tasks. The investigators should be protected against the risk of intimidation or reprisals.

65 Principle 34 of the [Body of Principles](#).

66 Principle 9 of the [Principles for the Investigation of Arbitrary Executions](#).

67 Principle 5(a) of the [Principles on the Investigation of Torture](#).

68 Principles 3(a) and 5(a) of the [Principles on the Investigation of Torture](#).

69 Amnesty International, [Commissioning justice: Truth commissions and criminal justice](#) (Index: POL 30/004/2010).

The authorities should respond to the reports produced by the investigations and implement any valid recommendations. Investigations of these types should be carried out in ways that do not preclude the possibility of criminal investigation and prosecution.

As a supplement to criminal investigations and other investigations by officials, it will often be valuable for people outside the state apparatus to investigate reports of torture and other ill-treatment. Human rights organizations, for example, may need to collect information on torture and other ill-treatment in order to assist victims or to document patterns of abuse which can be denounced publicly. Lawyers representing victims will need to document their clients' claims. Journalists may be able to expose cases and patterns of torture and other ill-treatment through well-documented information. Doctors may need to diagnose the physical and mental effects of torture and other ill-treatment in order to provide therapy or to help asylum-seekers substantiate their claims. Like official investigations, such investigations must be done competently, with a strict respect for the facts and for the needs and wishes of the victims.

6.4 PROSECUTING THOSE SUSPECTED OF TORTURE OR OTHER ACTS OF ILL-TREATMENT

Key points:

- States have an obligation to bring to justice in a fair trial those suspected of committing acts of torture.
- Punishments should be commensurate with the gravity of the offence and in conformity with international law. The death penalty, corporal punishment and other cruel, inhuman or degrading punishments must not be imposed.
- States must ensure that there is no safe haven for torturers by exercising universal jurisdiction over torture and other acts of ill-treatment that are crimes under international law.
- There should be no time limit for prosecuting crimes of torture.
- Immunities from prosecution or amnesties should not be granted for acts of torture.
- Under international humanitarian law, states must enact legislation necessary to provide effective penal sanctions for persons committing, or ordering others to commit, grave breaches of the Geneva Conventions, including torture.

One outcome of the obligations to criminalize torture and to provide an effective remedy is the obligation to prosecute those suspected of torture. The [Convention against Torture](#) expressly requires states parties to either prosecute or extradite for prosecution persons suspected of committing acts of torture.⁷⁰ Similarly, the [Inter-American Convention against Torture](#) speaks of the obligation to “prevent and punish” acts of torture and other acts of ill-treatment, and specifically to initiate criminal proceedings,

⁷⁰ Article 7 of the [Convention against Torture](#).

whenever appropriate following an investigation.⁷¹ The [Declaration against Torture](#) also provides that criminal proceedings must be instituted against alleged torturers and that people alleged to have committed other acts of ill-treatment “shall be subject to criminal, disciplinary or other appropriate proceedings”.⁷² Equally, the Human Rights Committee has stated: “Those who violate article 7, whether by encouraging, ordering, tolerating or perpetrating prohibited acts, must be held responsible.”⁷³

As discussed in [section 6.2](#) above, UN treaty bodies and regional human rights bodies have acknowledged a close link between the right to an effective remedy and states’ obligations to investigate, prosecute and punish those responsible for torture and other acts of ill-treatment.⁷⁴

Furthermore, as discussed in [Chapter 2.1](#), the prohibition of torture is recognized as a peremptory norm and a rule of customary international law. This has a number of important consequences and imposes upon all states a number of obligations, including the obligation to punish acts of torture. Thus the Committee against Torture observed that “even before the entry into force of the Convention against Torture, there existed a general rule of international law which would oblige all States to take effective measures to prevent torture and punish acts of torture”.⁷⁵ Thus the obligation to bring torturers to justice can be considered to be a rule of customary international law, applicable to all states, whether or not they are parties to treaties prohibiting torture.⁷⁶ (See also [section 6.4.1](#) below on universal jurisdiction.)

In addition, as noted in [Chapter 2.2](#) and [section 6.2.3](#) above, acts of torture can also amount to war crimes, crimes against humanity and genocide, which fall under the jurisdiction of the International Criminal Court. (See [section 6.4.2](#) below on international justice.)

Prosecuting those suspected of torture and other acts of ill-treatment involves:

- Enacting laws which adequately criminalize acts of torture and other ill-treatment;

71 See Articles 8 and 12 of the [Inter-American Convention against Torture](#).

72 Article 10 of the [Declaration against Torture](#); see also Principle 16 of the [Robben Island Guidelines](#).

73 [HRC General Comment 20](#), §13, and see also §§8 and 15.

74 See for example: CAT: [General Comment 3](#), §§7 and 17; [Evloev v Kazakhstan](#), UN Doc. CAT/C/51/D/441/2010 (2013) §9.7; [Gerasimov v Kazakhstan](#), UN Doc. CAT/C/48/D/433/2010 (2012) §§12.8; [Osmani v Republic of Serbia](#), UN Doc. CAT/C/42/D/261/2005 (2009) §§10.7 and 10.8; [Ben Salem v Tunisia](#), UN Doc. CAT/C/39/D/269/2005 (2007) §16.8; [Aydin v Turkey](#) (23178/94), European Court Grand Chamber (1997) §103. See also European Court: [X and Y v the Netherlands](#) (8978/80), (1985) §§28-30; [Selçuk and Asker v Turkey](#) (23184/94 and 23185/94), (1998) §96; [Kurt v Turkey](#) (24276/94), (1998) §§133 and 135-9; Inter-American Court: [Velásquez Rodríguez v Honduras](#), (Ser. C) No. 4 (1988) §§176, 180 and 187; [Hilaire, Constantine and Benjamin et al. Case](#), Judgment of June 21, 2002, (Ser. C) No. 94 (2002); the “Street Children” Case, (Ser. C) No. 77 (2001) §101 and operative clause 8; [Caso Barrios Altos, Chumbipuma Aguirre et al. v Peru](#), (Ser. C) No. 75 - Judgment of March 14, 2001; [Zimbabwe Human Rights NGO Forum v Zimbabwe](#), African Commission (2006) §§211 and 215; Principle 19 of the [Robben Island Guidelines](#).

75 See for example [O.R., M.M and M.S. v Argentina](#), CAT, UN. Doc. A/45/44, Supp. 44, [Annex V](#) (1989) §7.2.

76 See Amnesty International, [End impunity: Justice for the victims of torture](#) (Index: ACT 40/024/2001) p. 16.

- Eliminating legal, policy, administrative, resource and other barriers to the successful prosecution of alleged torturers, including ineffective principles of criminal responsibility, such as the absence of provisions for command and superior responsibility; improper defences, such as the defence of “superior orders” and “necessity”; and other legal obstacles such as statutes of limitation;
- Removing provisions which give immunity from prosecution to people who would otherwise be subject and liable to prosecution;
- Conducting full and effective investigations into complaints and reports of torture and other acts of ill-treatment;
- Having the ability, willingness and authority to arrest suspects and to prevent them from fleeing;
- Establishing and administering an effective prosecuting authority, which is underpinned by adequate resources and qualified personnel, and which is free from corruption and undue unethical and unlawful influence and interference;
- Guaranteeing an independent and well-qualified judiciary operating effectively in accordance with international standards of fairness;
- Trying those accused of torture and other acts of ill-treatment before regular and independent civilian courts;
- Providing protection where necessary to complainants, survivors, witnesses and others involved in the proceedings, including lawyers, prosecutors and judges, and the families of those involved;
- Pending the outcome of criminal proceedings, removing alleged offenders from any position where they could repeat the alleged crimes or intimidate complainants and witnesses; and
- Ensuring that those with command or other superior responsibility, irrespective of rank or status, are held responsible as well as those who carried out the act.

The various institutions involved must have the political will to bring perpetrators to justice, and must turn this will into concrete action. Prosecutors must bring charges and pursue an effective prosecution. Judges must convict and sentence the accused person if the evidence against them is admissible and sufficiently strong. Other institutions and authorities, including the police, must carry out their relevant tasks and must not impede the process.

The rights of the suspected perpetrator of torture must be respected and an alleged offender is to be prosecuted only if there is sufficient, admissible evidence. The alleged offender “shall be guaranteed fair treatment at all stages of the proceedings”,⁷⁷ and punishments should be commensurate with the gravity of the offence. Corporal punishment and other cruel, inhuman or degrading punishments – including, in Amnesty International’s view, the death penalty – must not be imposed. (See [Chapter 2.5.1](#).)

⁷⁷ Article 7(3) of the [Convention against Torture](#).

6.4.1 UNIVERSAL JURISDICTION

Sometimes those administering the criminal justice system in a given state are unable or unwilling to initiate investigations and prosecutions. Also, torturers often attempt to escape justice by fleeing abroad. If the domestic legislation of another state permits, it can, pursuant to the principle of universal jurisdiction, bring such torturers to justice despite the offence being committed abroad and the victim, the offender or both not being nationals or residents of the state exercising criminal jurisdiction.

For states parties to the [Convention against Torture](#),⁷⁸ this is not an option but an obligation – they are bound together in an agreement to extradite or bring to justice any person present in any territory under their jurisdiction who is alleged to have committed torture. Similar provisions are found in the [Inter-American Convention against Torture](#).⁷⁹

In particular, the Convention against Torture provides that:

- Each state party must establish jurisdiction over offences of torture “in cases where the alleged offender is present in any territory under its jurisdiction” and it does not extradite the suspect under the provisions of the Convention.⁸⁰
- Offences of torture as listed in Article 4 of the Convention must be defined in law as crimes for which it is possible to extradite a suspect from one state party to another.⁸¹
- When a person alleged to have committed torture is present in the territory of a state party, the state party must take the person into custody or take other necessary measures to ensure his or her presence for prosecution,⁸² and “if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution”.⁸³

Even without being a party to the Convention against Torture or the Inter-American Convention against Torture, a state can exercise universal jurisdiction if its domestic legislation permits, and can punish foreign nationals who commit acts of torture against other foreign nationals outside the prosecuting state’s territory.

It has been recognized that the prohibition of torture is a peremptory norm of international law.⁸⁴ All states should therefore pass legislation that outlaws torture and enables the prosecution in fair trials of those accused of committing acts of torture.

78 And, as noted, under the four Geneva Conventions, in cases of torture which occurs during armed conflict.

79 See Article 12 of the [Inter-American Convention against Torture](#).

80 Article 5 of the [Convention against Torture](#).

81 Article 8 of the [Convention against Torture](#).

82 Article 6 of the [Convention against Torture](#).

83 Article 7 of the [Convention against Torture](#).

84 See for example [Belgium v Senegal](#), International Court of Justice (2012) §99.

In addition, all High Contracting Parties (states parties) to the four Geneva Conventions of 1949 are obliged “to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches” of each of these Conventions.⁸⁵ “Grave breaches” of the Geneva Conventions include torture and inhuman treatment. (See [Chapter 3.14](#), Safeguards during armed conflict.)

High Contracting Parties to the Geneva Conventions are also
“under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.”⁸⁶

Not only must universal jurisdiction be extended to criminal prosecutions for torture, the Committee against Torture has also recognized the importance of universal civil jurisdiction by stating that it “considers that the application of article 14 is not limited to victims who were harmed in the territory of the state party or by or against nationals of the state party” and commends “the efforts of states parties for providing civil remedies for victims who were subjected to torture or ill-treatment outside their territory.”⁸⁷ This is important as victims of torture often face barriers to obtaining reparation within their own national courts, so that seeking a remedy before other national courts may be their only option.⁸⁸

6.4.2 INTERNATIONAL JUSTICE

Key points:

- **An International Criminal Court has been established to prosecute genocide, crimes against humanity and war crimes.**
- **The International Criminal Court has jurisdiction to investigate and prosecute these crimes when national authorities are genuinely unable or unwilling to do so.**
- **The International Criminal Court has jurisdiction over torture and other forms of ill-treatment that may amount to war crimes or form part of crimes against humanity.**
- **Anyone, including victims, can send information regarding alleged crimes to the Prosecutor of the International Criminal Court.**

The Office of the Prosecutor of the International Criminal Court (OTP-ICC) may initiate investigations and prosecution of persons suspected of committing war crimes, crimes

85 See Article 49 of the First Geneva Convention; Article 50 of the Second Geneva Convention; Article 129 of the Third Geneva Convention; Article 146 of the Fourth Geneva Convention.

86 See Article 49 of the First Geneva Convention; Article 50 of the Second Geneva Convention; Article 129 of the Third Geneva Convention; Article 146 of the Fourth Geneva Convention.

87 CAT [General Comment 3](#).

88 Amnesty International, [Statement on the 25th anniversary of the UN Committee against Torture](#) (Index: IOR 51/005/2013).

against humanity or acts of genocide if the state in which the offences have been committed is genuinely unable or unwilling to do so. It is in this context that those who commit acts of torture may be prosecuted by the International Criminal Court.

The International Criminal Court is a permanent independent judicial body mandated to prosecute genocide, crimes against humanity and war crimes. Its statute – the [Rome Statute](#) – was adopted in July 1998 and entered into force on 1 July 2002. The Rome Statute sets out the mandate of the Court, defines the crimes for which it has jurisdiction, and what states must do to co-operate with it.⁸⁹

The OTP-ICC has jurisdiction to prosecute individuals in cases where:

- Crimes have been committed in the territory of a state which has ratified the Rome Statute;
- Crimes have been committed by a citizen of a state which has ratified the Rome Statute;
- A state which has not ratified the Rome Statute has made a declaration accepting the court's jurisdiction over the crime;
- Crimes have been committed in a situation which threatens or breaches international peace and security and the UN Security Council has referred the situation to the Court in accordance with Chapter 7 of the UN Charter.

The jurisdiction of the International Criminal Court is based on the “complementarity principle”, in other words, the OTP-ICC will only step in to investigate and prosecute those suspected of committing crimes when the national authorities are genuinely unable or unwilling to do so. The Preamble to the Rome Statute recalls that:

“it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes... Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions”.

The ICC only has jurisdiction over crimes committed after 1 July 2002, when the Rome Statute entered into force, or in the case of states that ratified after this date, approximately 60 days following their ratification.⁹⁰

Anyone, including victims, can send information regarding alleged crimes to the Prosecutor of the International Criminal Court.⁹¹

The Court has jurisdiction over torture and other acts of ill-treatment that may amount to war crimes or form part of crimes against humanity (see [section 6.2.3](#) above).

89 Amnesty International, [Fact Sheet 1: Introduction to the International Criminal Court](#) (Index: IOR 40/001/2004).

90 States that ratify after 1 July 2002 and non-states parties can issue a declaration accepting the jurisdiction of the ICC over crimes dating back to the entry into force, see Article 11 and 12(3) of the Rome Statute.

91 See ICC, [Office of the Prosecutor](#).

Under the Rome Statute, torture and inhumane acts will be considered crimes against humanity if committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.⁹² The Rome Statute defines torture (as a crime against humanity) similarly, but not identically, to the Convention against Torture as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions”.⁹³

6.5 REPARATION

Key points:

- **Under international treaty and customary law, victims of torture and other human rights violations have the right to an effective remedy, including reparation.**
- **Forms of reparation include: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.**
- **Victims should be treated at all times with respect. Reparation must be accessible to all victims without discrimination and take into account victims’ needs and wishes as far as possible.**
- **Under the Convention against Torture the definition of a “victim” of torture includes persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention.**
- **A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim.**
- **The term “victim” also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization.**

Under international law, victims of torture and other ill-treatment, as well as victims of other gross human rights violations, have a right to an effective remedy, which includes full and effective reparation.⁹⁴ Article 14 of the [Convention against Torture](#) states:

“1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.

92 Article 7(1) of the [Rome Statute](#).

93 Article 7(2) of the [Rome Statute](#). To this should be added the requirements that the torture was part of an attack directed at a civilian population and that the suspected perpetrator was aware of the attack, as above.

94 Principle 11 of the [Basic Principles on Reparation](#).

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.”⁹⁵

The Committee against Torture has confirmed that Article 14 applies not only to torture but also to other forms of ill-treatment.⁹⁶ As noted in [sections 6.2](#) and [6.3](#) above, a state’s failure to investigate, prosecute, or to allow civil proceedings related to allegations of acts of torture in a prompt manner, may constitute a de facto denial of an effective remedy and thus constitute a violation of the state’s obligations under Article 14.⁹⁷

A general right to reparation for human rights violations is also contained in Article 2(3) of the [ICCPR](#), which states that:

“Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.”

Similar provisions are contained in other human rights treaties, including Article 24(4) of the [Convention on Enforced Disappearance](#), Article 25 of the [American Convention](#), and Article 13 of the [European Convention](#).⁹⁸

The obligation to afford reparation is not confined to states parties to these Conventions, or to acts of torture.⁹⁹ The Inter-American Court of Human Rights has held that the obligation to afford reparation for human rights violations is a rule of customary international law which is “one of the fundamental principles of current international law”.¹⁰⁰

95 The Inter-American Convention against Torture similarly requires that states parties enact legal provisions guaranteeing “suitable compensation” for torture victims. Article 9 of the [Inter-American Convention against Torture](#).

96 [CAT General Comment 3](#), §1. See also Article 11 of the [Declaration against Torture](#).

97 [CAT General Comment 3](#), §17.

98 Although the African Charter does not contain an express provision for reparation, the African Commission has interpreted Article 7(1) to include victims’ right to a remedy, see [Zimbabwe Human Rights NGO Forum v Zimbabwe](#), African Commission, (2006), §213.

99 See Articles 2(3), 9(5) and 14(6) of the [ICCPR](#); Article 13 of the [European Convention](#); Article 2 of the [American Convention](#); Article 75 of the [Rome Statute](#).

100 [Aloeboetoe et al. v Suriname](#), Inter-American Court of Human Rights (1993) §43.

Victims should be treated at all times with respect, and reparations should take into account victims' needs and wishes as far as possible. The state should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.¹⁰¹

Reparation provided must be "prompt, fair and adequate".¹⁰² The provision of reparation must also be "victim-centred", taking into account the specific needs and circumstances of each victim such as their culture, personality, history and background.¹⁰³ The Committee against Torture has noted that in the determination of redress and reparative measures provided or awarded to a victim of torture or other ill-treatment, "the specificities and circumstances of each case must be taken into consideration and redress should be tailored to the particular needs of the victim and be proportionate to the gravity of the violations committed against them". The Committee has emphasized that "the provision of reparation has an inherent preventive and deterrent effect in relation to future violations".¹⁰⁴ Reparation must be accessible to all victims without discrimination and regardless of a victim's identity or status within a marginalized or vulnerable group, including asylum-seekers and refugees.¹⁰⁵

6.5.1 DEFINITION OF A VICTIM

The Committee against Torture has defined victims as:

"persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention [against Torture]. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term 'victim' also includes affected immediate family or dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization. The term 'survivors' may, in some cases, be preferred by persons who have suffered harm. The Committee uses the legal term 'victims' without prejudice to other terms which may be preferable in specific contexts."¹⁰⁶

A similar definition is stated in the [Basic Principles on Reparation](#).¹⁰⁷

101 CAT [General Comment 3](#), §13; Provision 11 of the [Basic Principles on Reparation](#).

102 CAT [General Comment 3](#), §10.

103 CAT [General Comment 3](#), §13.

104 CAT [General Comment 3](#), §6.

105 CAT [General Comment 3](#), §13.

106 CAT [General Comment 3](#), §3.

107 Principle V of the [Basic Principles on Reparation](#), §8.

6.5.2 FORMS OF REPARATION

In line with international standards on the right to reparation, the Committee against Torture has stated that the right to reparation in Article 14 extends beyond compensation to include all five recognized forms of reparation:

- Restitution;
- Compensation;
- Rehabilitation;
- Satisfaction;
- Guarantees of non-repetition.¹⁰⁸

Restitution

The Committee against Torture has stated that restitution is a form of redress: “designed to re-establish the victim’s situation before the violation of the Convention was committed, taking into consideration the specificities of each case. The preventive obligations under the Convention require States Parties to ensure that a victim receiving such restitution is not placed in a position where he or she is at risk of repetition of torture or ill-treatment.”

The Committee added that:

“In certain cases, the victim may consider that restitution is not possible due to the nature of the violation; however the State shall provide the victim with full access to redress. For restitution to be effective, efforts should be made to address any structural causes of the violation, including any kind of discrimination related to, for example, gender, sexual orientation, disability, political or other opinion, ethnicity, age and religion, and all other grounds of discrimination.”¹⁰⁹

Forms of restitution include restoration of liberty, legal rights, social status, family life and citizenship; return to one’s place of residence; and restoration of employment and return of property.¹¹⁰

The Committee against Torture has confirmed that the obligation of states parties to provide the means for “as full rehabilitation as possible” refers to the need to restore and repair the harm suffered by a victim whose life situation, including dignity, health and self-sufficiency, may never be fully recovered as a result of the pervasive effect of torture. This obligation is not affected by the available resources of states parties and may not be postponed.¹¹¹

Compensation

Compensation seeks to address economically assessable harm suffered by the victim. However, the Committee against Torture has stated that the payment of compensation

108 CAT [General Comment 3](#), §6. Compare Principle IX of the [Basic Principles on Reparation](#), §§18-23.

109 CAT [General Comment 3](#), §8.

110 Principle IX of the [Basic Principles on Reparation](#), §19.

111 CAT [General Comment 3](#), §12.

alone is inadequate for a state party to comply with its obligation to provide reparation under Article 14 of the [Convention against Torture](#).¹¹²

The Committee against Torture has stated that the right to compensation for torture or other ill-treatment is multi-layered and should be sufficient to compensate for any economically assessable damage resulting from torture or other ill-treatment.

This may include:

- Reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible;
- Pecuniary and non-pecuniary damage resulting from the physical and mental harm caused;
- Loss of earnings and earning potential due to disabilities caused by the torture or other ill-treatment;
- Lost opportunities such as employment and education.

In addition, adequate compensation awarded by states parties to a victim of torture or other ill-treatment should provide for legal or specialist assistance, and other costs associated with bringing a claim for redress.¹¹³

Rehabilitation

Rehabilitation includes medical and psychological care as well as legal and social services that seek to address the physical and psychological harm caused by torture and other ill-treatment. This extends to the acquisition of new skills required as a result of the changed circumstances of a victim in the aftermath of torture or other ill-treatment. Rehabilitation seeks to enable the maximum possible self-sufficiency and function for the individual concerned, and may involve adjustments to the person's physical and social environment. Rehabilitation for victims should aim to restore, as far as possible, their independence; their physical, mental, social and vocational ability; and their full inclusion and participation in society.¹¹⁴

The Committee against Torture has noted that each state party should adopt a long-term, integrated approach to rehabilitation and ensure that specialist services for victims of torture or other ill-treatment are available, appropriate and readily accessible.¹¹⁵ These should include: a procedure for the assessment and evaluation of individuals' therapeutic and other needs, based on, amongst other guidelines, those contained in the [Istanbul Protocol](#); and may include a wide range of inter-disciplinary measures, such as medical, physical and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; vocational training; education; and other measures. The Committee against Torture

112 CAT [General Comment 3](#), §9.

113 CAT [General Comment 3](#), §10.

114 CAT [General Comment 3](#), §11.

115 CAT [General Comment 3](#), §13.

has confirmed that access to rehabilitation programmes should not depend on the victim pursuing judicial remedies.¹¹⁶

Victims may be at risk of re-traumatization and may have a valid fear of acts which remind them of the torture or other ill-treatment they have endured. Consequently, the Committee against Torture has noted that a high priority should be placed on the need to create a context of confidence and trust in which assistance can be provided. Confidential services should be provided as required.¹¹⁷

States should establish concrete mechanisms and programmes for providing rehabilitation to victims of torture or other ill-treatment and victims should be provided with access to rehabilitation programmes as soon as possible following an assessment by qualified independent medical professionals.¹¹⁸

A range of institutions and organizations may be involved in providing the rehabilitation necessary to victims, including those which are state-funded as well as private medical, legal and other services, including those administered by non-governmental organizations. The victim's participation in the selection of the service provider is essential. Services should be available in relevant languages.¹¹⁹

Satisfaction

A wide variety of measures can contribute to the provision of satisfaction to victims including:

- Verification of the facts and full and public disclosure of the truth;
- The search for the whereabouts of those forcibly disappeared, for the whereabouts and identities of abducted children, and for the remains of those killed;
- Assistance in the recovery, identification and reburial of victims' bodies in accordance with the expressed or presumed wish of the victims or affected families;
- An official declaration or judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;
- Judicial and administrative sanctions against persons liable for the violations;
- Public apologies, including acknowledgement of the facts and acceptance of responsibility; and
- Public commemorations and tributes to the victims.¹²⁰

Guarantees of non-repetition

When an act of torture or other ill-treatment does occur it is vital that states should take measures to ensure that such acts do not take place in the future. Articles 1 to 16 of the Convention against Torture constitute specific measures that are deemed

116 CAT [General Comment 3](#), §15.

117 CAT [General Comment 3](#), §13.

118 CAT [General Comment 3](#), §15.

119 CAT [General Comment 3](#), §15.

120 CAT [General Comment 3](#), §16. See also Principle IX of the [Basic Principles on Reparation](#), §22.

essential to prevent torture and other ill-treatment.¹²¹ Measures that are aimed at non-repetition are broad and can address a wide variety of policy and other systemic issues. Guarantees of non-repetition offer the potential for the transformation of social relations that may be the underlying causes of violence and may include, but are not limited to, amending relevant laws, fighting impunity, and taking effective preventative and deterrent measures.¹²²

Examples of guarantees of non-repetition include:

- Issuing effective, clear instructions to public officials on implementing the provisions of the Convention against Torture, especially enforcing the absolute prohibition of torture and other ill-treatment;
- Ensuring that all judicial proceedings abide by international standards of due process, fairness and impartiality;
- Strengthening the independence of the judiciary;
- Protecting human rights defenders and legal, health and other professionals who assist torture victims;
- Establishing systems for regular and independent monitoring of all places of detention;
- Training for law enforcement officials and military and security forces on human rights law and the prohibition of torture and other ill-treatment.¹²³

6.5.3 REPARATION FOR VICTIMS OF ABUSE COMMITTED BY NON-STATE ACTORS

States have an obligation to ensure that victims have access to an effective remedy and reparation, including before domestic courts, against non-state actors who commit torture and other acts of ill-treatment. Where it fails to provide access to an effective remedy, the state itself has a responsibility to provide reparation to the victims. Where a judicial remedy is not possible in cases perpetrated by non-state actors, for example because they cannot be identified or found, the state should provide reparation to address the harm suffered by the victims. The state may subsequently seek reparation from the non-state actor if the opportunity arises.¹²⁴ States should consider establishing reparation mechanisms, including support programmes for victims where appropriate. This may include establishing compensation funds and rehabilitation centres for victims.¹²⁵

States must, with respect to claims by victims, enforce domestic judgments for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgments for reparation. To that end, states should provide under their domestic laws effective mechanisms for the enforcement of reparation judgments.¹²⁶

121 CAT [General Comment 3](#), §18.

122 CAT [General Comment 3](#), §18.

123 CAT [General Comment 3](#), §18.

124 Principle IX of the [Basic Principles on Reparation](#), §15.

125 Principle IX of the [Basic Principles on Reparation](#), §16.

126 Principle IX of the [Basic Principles on Reparation](#), §17.

6.5.4 UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE

The [United Nations Voluntary Fund for Victims of Torture](#) was established in 1981 to receive voluntary contributions “for distribution, through established channels of assistance, as humanitarian, legal and financial aid to individuals whose human rights have been severely violated as a result of torture and to relatives of such victims”.¹²⁷ Contributions are mainly made by UN member states, but the fund also accepts contributions from non-governmental organizations, businesses and other private entities, including individuals.¹²⁸ The United Nations Voluntary Fund for Victims of Torture awards grants to organizations offering medical, psychological and social assistance, as well as legal aid and financial support to torture survivors and their family members. It also finances training programmes, seminars and conferences, allowing health professionals, social workers and lawyers to exchange experiences and develop new strategies to address the needs of torture victims.

The Fund is managed by the UN Secretary-General through the Office of the High Commissioner for Human Rights, with the advice of a Board of Trustees composed of five independent experts. Grants are awarded on a yearly basis, and are renewable.¹²⁹

6.5.5 THE INTERNATIONAL CRIMINAL COURT’S TRUST FUND FOR VICTIMS

A Trust Fund for Victims was established by the Rome Statute to benefit victims of crimes under the jurisdiction of the International Criminal Court and their families. The Fund provides projects of assistance, mostly rehabilitation, to victims in situations under investigation by the Court and will play a role in implementing reparation orders of the Court for convicted persons to provide reparation to victims.

127 UN General Assembly [resolution 36/151](#), §1(a).

128 [United Nations Fund for Victims of Torture Flyer](#). See also OHCHR: [Financial Situation of the Fund](#).

129 See information on the decision-making process of the Fund at: <http://www.ohchr.org/EN/Issues/Torture/UNVFT/Pages/DecisionMaking.aspx>

CHAPTER 7

CAMPAIGNING AGAINST TORTURE TODAY

Torture and other ill-treatment continues to flourish today, aided by the marginalization and vilification of victims, impunity for perpetrators and, at times, official denial that any problem exists. Although Amnesty International continues to uncover evidence of torture in numerous countries from all regions, it is likely that the problem is under-reported and even more widespread than current statistics suggest. Focusing on cases of individuals at risk is an established method for mobilizing activists on the issue of torture and helping to protect people facing torture. Human rights organizations can strengthen their campaigning against torture through partnerships within civil society and with professional bodies, including medical and forensic experts.

- 7.1 Torture today**
 - 7.1.1 Defining the problem
- 7.2 Campaigning on individual cases**
- 7.3 Partnerships**
 - 7.3.1 Working with civil society
 - 7.3.2 Working with medical and forensic experts
- 7.4 Strengthening the international system to combat torture and other ill-treatment**
 - 7.4.1 Universal ratification of anti-torture treaties
 - 7.4.2 Co-operation with international and regional bodies and mechanisms
- 7.5 Amnesty International's Stop Torture campaign**
 - 7.5.1 Campaign focus
 - 7.5.2 Countries of focus
 - 7.5.3 Individual cases
 - 7.5.4 Global activism
 - 7.5.5 Human rights education
 - 7.5.6 Impact

7.1 TORTURE TODAY

More than three decades after the Convention against Torture came into force, and almost 70 years after the Universal Declaration, torture is flourishing. The outrageous extent of torture today exposes the gulf between the promises that governments have made and what they do in practice.

In 2015, Amnesty International surveyed the extent of torture worldwide and reported cases of torture or other ill-treatment by state officials in 122 countries from every world

region.¹ In some of those countries, torture was systematic. In others, cases were rare and isolated. But even one case of torture or other ill-treatment is unacceptable.

This figure gives a sense of the scale of the problem, but Amnesty International can only report on cases that are known to the organization. By no means does this figure reflect the full extent of torture and other ill-treatment in the world today. Nor can statistics begin to describe the despicable reality of these abuses, the harm and suffering caused, and the reality of lost and ruined lives.

A poll commissioned by Amnesty International in 2014 showed that almost half of the world's population does not feel safe from torture.² And while many states have taken the universal prohibition seriously and made significant strides in combating torture, governments across the political spectrum and from every continent still collude in this ultimate corruption of humanity, using torture to extract information, force confessions, silence dissent or simply as a cruel punishment.

This failure by governments to uphold the prohibition of torture and other ill-treatment is compounded and fuelled by a corrosive state of denial. Those who order or commit torture usually escape justice. Torture is mostly carried out with impunity, with no investigation and no one held to account. Rather than respecting human rights through zero-tolerance of torture, many governments persistently and routinely lie about it to their own people and to the world. Rather than ensuring effective safeguards to protect their citizens from the torturer, instead they allow torture to thrive.

The pervasive and pernicious nature of this abuse demonstrates that the global ban, while crucial, is not enough. Amnesty International's worldwide poll also shows that the overwhelming majority of people want clear rules against torture. Such rules and other safeguards could prevent and ultimately bring an end to this abuse.

Between 2014 and 2016, through its global Stop Torture campaign, Amnesty International mobilized activists and others around the world to expose the reality of torture, to stand with those fighting torture in their own countries, and to hold torturers to account. [Section 7.5](#) below gives an outline of the Stop Torture campaign, Amnesty International's fifth global campaign against torture, its focus and impact.

7.1.1 DEFINING THE PROBLEM

It would be impossible to conduct a comprehensive and categorical statistical assessment of the global scale of torture. Torture mostly takes place in the shadows. It is a crime under international law, a political and diplomatic embarrassment and an abuse that almost every government will agree is wrong and condemn with rhetoric if not with concerted action. Governments often invest more effort in denying or

1 Amnesty International, [Amnesty International Report 2015/16: The state of the world's human rights](#) (Index: POL 10/2552/2016).

2 Amnesty International, [Torture in 2014: 30 years of broken promises](#) (Index: ACT 40/004/2014).

covering up the existence of torture than in taking preventive measures or delivering effective and transparent investigations into allegations and prosecuting perpetrators.

At the same time, it is likely that torture and other ill-treatment goes under-reported in many countries. Many victims are poor or otherwise marginalized – and the reasons they become victims are also the reasons why they do not complain: few hear them or care about them. Some victims are criminal suspects, who are less able to make a complaint and are easily ignored or dismissed when they do. Other victims are frequently unable or too afraid to report torture, or lack the confidence that there will be meaningful action taken as a result of their complaint.

Solid country-by-country statistics are not available. It is impossible to say how many people were tortured in any country over any period of time. All statistics on torture – whether in the total number of countries in which torture is reported, or the rise and fall in allegations in a specific country – need to be treated with caution.

However, evidence collected by Amnesty International and the organization's ongoing global research, combined with more than five decades of experience of documenting and campaigning against torture, reveal that torture and other ill-treatment are thriving.

Although Amnesty International's latest global campaign against torture ended in May 2016, the organization will continue to document cases of torture and other ill-treatment and campaign to prevent and combat torture and bring perpetrators to justice around the world. More detailed information about the extent of torture today, as well as other human rights abuses, can be found in the Amnesty International Report, updated annually and covering some 160 countries.³

7.2 CAMPAIGNING ON INDIVIDUAL CASES

Since the organization's inception in 1961, individuals at risk of or currently enduring human rights violations have been at the heart of Amnesty International's campaigning. These "individuals at risk" come from all walks of life. Many are people whom Amnesty International considers to be prisoners of conscience, that is, people deprived of liberty because of their political, religious or other conscientiously held beliefs, gender, colour, language, ethnic, national or social origin, economic status, birth, sexual orientation or other status, and who have not used or advocated violence.

Other individuals whom Amnesty International campaigns for are human rights defenders, at risk because of their work to promote or protect human rights, and people at imminent risk of human rights abuses such as torture, other ill-treatment or execution.

³ The *Amnesty International Report: The state of the world's human rights* is published each year in February and is a summary of Amnesty International's concerns based on human rights abuses that have taken place during the previous calendar year in around 160 countries. The current year's report, as well as those from previous years, can be found at www.amnesty.org

When Amnesty International issues an appeal for an individual at risk, it harnesses the energy and action of tens of thousands of supporters to bring about a change in the individual's circumstances. Thousands of prisoners of conscience have been released from detention or imprisonment thanks – in whole or in part – to the work of Amnesty International's supporters, staff and other activists. Some of the individuals at risk that Amnesty International campaigns for are well-known, such as Aung San Suu Kyi, whose release after years of house arrest in Myanmar was internationally celebrated. But many others are “ordinary” people whose activities, way of life, beliefs, behaviour, origin, affiliation, sexuality, gender, or defence of human rights appeared to the authorities as justifiable grounds for trampling on their human rights.

In recent years, Amnesty International's focus on individuals at risk has broadened to include communities fighting forced eviction, women denied reproductive health care and other rights, families of people who have been forcibly disappeared, and more. But seeking justice for victims of torture and other ill-treatment and protecting people at risk of such abuse are still central to the work that Amnesty International does to protect the rights of individuals. The expanding understanding and application of the legal framework for the prevention of torture and other ill-treatment, described in previous chapters, has meant that this framework can be used in campaigning beyond the “classic” cases of detainees in police stations and prisons.

Examples of specific measures and actions that Amnesty International takes to protect individuals at risk include:

- Letter-writing and social media campaigns targeting officials;
- Sending messages of solidarity to individuals and their families;
- Maintaining a network of supporters who respond rapidly to Urgent Actions on individual cases by contacting the authorities responsible for their treatment;
- Demonstrating in front of an embassy;
- Helping activists and victims to confront decision-makers themselves;
- A donation to buy space in a newspaper or use another media opportunity to keep up the pressure on decision-makers.

Importantly, highlighting the risk of human rights violations faced by one person can help to protect other individuals facing the same risk.

Section 7.5.3 below details some of the individual cases that Amnesty International members and activists campaigned on during the organization's Stop Torture campaign between 2014 and 2016.

7.3 PARTNERSHIPS

In its work to combat torture and other ill-treatment, Amnesty International frequently works with partners, including other civil society organizations and legal, medical and forensic experts. Working alongside partners can bring a two-fold benefit to campaigning. Firstly, it lends expertise and additional legitimacy and thus effectiveness, to a campaign. Secondly, partnering with civil society organizations in countries and communities where torture takes place allows access to a network of local activists and expertise on the campaigning tactics that work well in a certain context.

7.3.1 WORKING WITH CIVIL SOCIETY

During the Stop Torture campaign, Amnesty International worked in partnership with NGOs and grassroots organizations in the campaign's five main countries of focus: Mexico, Morocco/Western Sahara, Nigeria, Philippines and Uzbekistan (see [section 7.5.2](#) below). For example:

- In Mexico, Amnesty International worked with a wide range of local NGOs and lawyers from various parts of the country who were involved in helping victims through litigation or psychosocial support; with the International Rehabilitation Council for Torture, including with the Council's forensic experts; and with independent forensic experts across the country. Amnesty International also co-organized an event in Geneva with the World Organization against Torture and the UN Special Rapporteur on torture to highlight the problem of torture in Mexico, on the day that the Special Rapporteur presented his visit report on Mexico to the Human Rights Council. Amnesty International also worked with universities and academic institutions in Mexico to inform research and media work, and with groups of relatives of torture survivors.
- Amnesty International worked with Moroccan civil society organizations to attract more activists and others to take an interest in the cases and to give greater visibility to the campaign. This resulted in increased discussion of the issue of torture in Morocco and in more torture survivors and witnesses coming forward to share their experiences with Amnesty International and other human rights groups.
- In Nigeria, Amnesty International pushed for the creation of a human rights manual, setting out standards and guidance for police officers. This was drafted by one of Amnesty International's partners and adopted by the Nigerian police force in December 2014.
- In Germany, Amnesty International worked with MPs from the Green Party (Bündnis 90) to raise parliamentary questions on the situation of human rights in Uzbekistan, where torture is pervasive. The German government issued relatively detailed responses to the MPs' questions, explaining that human rights concerns were raised with the Uzbekistan government.
- In 2015, Amnesty International worked with the [Association for the Prevention of Torture](#) and the [International Rehabilitation Council for Torture Victims](#) to produce an exhibition entitled *Torture – The International Outlaw*. During 2015 and 2016, the exhibition appeared at the headquarters of the UN in New York and Geneva, and at the Organization of American States in Washington. Using the stories of

torture survivors, the exhibition presented the key milestones in the fight against torture since the first world conference for the abolition of torture in 1973.⁴

7.3.2 WORKING WITH MEDICAL AND FORENSIC EXPERTS

Since the 1970s, doctors and professional bodies have partnered with human rights organizations to document torture, to strengthen medical ethics and to contribute to the wider fight against torture. (See [Chapter 5.5.1.](#))

After Amnesty International's first Campaign for the Abolition of Torture, launched in 1972, and discussion at the UN of the need for a code of medical ethics as a tool against torture, a number of professional bodies adopted statements opposing torture, in particular the participation by health professionals in such abuses. (See [Chapter 5.5.2.](#)) Others carried out research into the problem of torture.⁵

In 1974, the first Amnesty International medical group was established in Denmark. This subsequently gave rise to a medical network of health professionals organized into Amnesty International medical groups in various countries. These medical groups, along with doctors and mental health specialists working with refugees and other torture survivors, produced early evidence of the nature of torture and its effect on survivors, their families and communities. Two years later, a forensic group and a psychiatric group were added to the network. In subsequent years, forensic doctors, psychologists, dentists and nurses joined Amnesty International's medical network against torture.

Medical delegates began to be included in Amnesty International's research missions to examine people who said they had been the victims of torture, and Amnesty International began producing reports citing medical evidence of torture.⁶ Other organizations contributed their own expertise. These organizations, together with human rights NGOs and inter-governmental bodies, agreed that the fight against torture would be substantially assisted by the contribution of medical professionals.

Medical and forensic professionals can play a vital role in the fight against torture by:

- Documenting torture (in line with international standards detailed in the Istanbul Protocol) to help survivors obtain redress and to contribute to the legal process;
- Assisting in asylum claims based in part on the experience of torture;
- Providing care to torture survivors;
- Helping in forensic investigation of those who may have died due to torture, including through post-mortem examinations;
- Providing training to those documenting torture or helping torture survivors;
- Contributing to the development of professional standards of practice and ethics;

4 Some of the images and other content from the exhibition can be found at: www.amnesty.org/en/latest/campaigns/2016/06/un-torture/

5 See for example British Medical Association: *Torture Report*, 1986; *Medicine Betrayed: The Participation of Doctors in Human Rights Abuses*, 1992.

6 See for example Amnesty International Danish Medical Group, [Results of examinations of 14 Argentinian torture victims](#) (Index: AMR 13/009/1980).

- Working to see that such standards are implemented and opposing medical participation in torture and other ill-treatment.

In particular, medical and forensic professionals can assist those campaigning against torture and other ill-treatment in the following ways:

Medical assessment of those alleging torture

Assessing evidence of torture has a number of purposes:

- To assist in the recovery of the tortured person by ensuring that they receive any treatment they need;
- To contribute to legal processes through national or international fact-finding, assisting in asylum claims or seeking redress for torture in domestic courts;
- To contribute to the monitoring of torture and other ill-treatment;
- To increase the understanding of the consequences of torture and other ill-treatment;
- To provide evidence to support campaigns against torture and other ill-treatment.

It is not always possible to “prove” that torture has taken place. This is in part because some forms of torture leave no physical marks and those that are visible may have a number of causes. Also, it can be similarly difficult to establish mental trauma or to link it to specific causes. However, medical examinations carried out by an experienced assessor can identify signs of trauma, can link these to probable causes of the trauma – in particular to the forms of torture alleged to have taken place – and can assess the likelihood that there might be alternative possible causes of injury. In short, an assessor can evaluate whether the results of the examination are consistent with the torture alleged. Similarly, experienced mental health specialists can assess the mental state of the person alleging torture and form a view as to the relationship between the ill-treatment alleged and the person’s mental state.⁷

Campaigners and activists seeking to make use of medical examinations in support of the rights of victims of torture can seek advice from specialist medical services such as those affiliated to the International Rehabilitation Council for Torture Victims,⁸ or organizations working with refugees and trauma survivors.

Carrying out or observing post-mortem examinations

The value of post-mortem examinations is that they can throw light on the experiences of the deceased when they were still alive. Their death does not prevent their story being told. The key protocol in the investigation of deaths – the [Minnesota Protocol](#) – was developed in the 1980s and is, at time of writing, under revision. Post-mortem examinations are undertaken to identify the victim, record the visible injuries on the body, and determine the cause and manner of death.

⁷ See also University of Essex, *The Torture Reporting Handbook: Second Edition*, 2015, §4.5; D.J. Pounder, ‘The medical contribution to assessing allegations of torture in international fact-finding missions’ in *Forensic Science International*, Vol.208 Issue 1-3, May 2011, pp. 143-8.

⁸ www.ircct.org

The following case illustrates the importance of the post-mortem examination and its findings in challenging untrue statements by a government. In 1991, a young Tunisian student named Faysal Baraket was tortured to death in a police station in Manzil Bouzalfa, to the east of Tunis.⁹ The autopsy report was obtained by Amnesty International and a forensic pathologist was asked to review the findings. He concluded that, far from supporting the claim of the government that Faysal Baraket had died in a traffic accident, it showed that he had been the victim of torture that had led to a rupture of his colon, and subsequently to his death. This corroborated the evidence of witnesses who stated that they had heard Faysal Baraket being tortured during detention at the police station. Faysal's family started a long campaign for justice and, more than 20 years after his death, an exhumation of his remains confirmed that Faysal Baraket had died as a result of torture. This and similar cases led to calls for a stronger independent forensic service in Tunisia.¹⁰

Reviewing written and photographic documentation

Written and photographic evidence in cases of alleged torture can be reviewed by medical specialists who may not have had the opportunity to interview the person whose story is recorded. Descriptions of forms of torture and the effect they have can be assessed as to their consistency with known patterns of abuse. In some cases the consequences of torture can be almost diagnostic and written testimony describing such consequences can provide strong indications of torture. Similarly, high-quality digital photographs can be taken quickly, require no processing and can be sent anywhere in the world electronically, allowing experts to review the evidence. While photographs benefit from being taken by someone with special expertise, good quality photographs taken by non-specialists – which show both close-up and medium views of injury sites and contain some measure of size such as a centimetre scale or a commonly used coin – can also allow experts to assess the evidence presented.¹¹

Amnesty International and other human rights organizations have for many years drawn on medical reports, photographs and witness accounts to allow an assessment of allegations of torture. International forensic experts have underlined the importance of access to all relevant records to allow for effective evaluation of evidence in torture cases.¹²

The ever-increasing use of mobile phones and social media has resulted in direct video and audio documentation of torture and other ill-treatment or its effects surfacing on the internet – sometimes recorded by passers-by, sometimes furtively

9 Amnesty International, Further information on Urgent Action 352/91 – Tunisia: Death in custody – Faysal Baraket (Index: MDE 30/002/1992).

10 For full details of this case, see Amnesty International, [Tunisia: When bones speak: The struggle to bring Faysal Baraket's torturers to justice](#) (Index: MDE 30/016/2013).

11 Guidance on taking photographs for use as evidence of torture can be found at www.irct.org/Files/Files/TortureJournal/20_01_2010/Photographic%20documentation.pdf

12 International Forensic Expert Group et al, 'Statement on access to relevant medical and other health records and relevant legal records for forensic medical evaluations of alleged torture and other cruel, inhuman or degrading treatment or punishment' in *Journal of Forensic Legal Medicine*, Vol.20 Issue 3, April 2013, pp. 158-63.

by family members during visits, and at times by the perpetrators themselves. While the quality of such documentation varies and its nature can pose challenges as to its authenticity, such material has been very useful both in providing evidence of torture and other ill-treatment and demonstrating the reality of these violations to the public. Medical professionals, as well as any person or institution investigating allegations of torture and other ill-treatment, should review this material where available as potential evidence.

Investigating grave sites

Some of those subjected to torture may die, either as a result of the torture itself or by subsequent extrajudicial execution. Intensive work by human rights organizations has led to the discovery of many grave sites, allowing forensic specialists to carry out investigations which in many cases have led to the identification of the deceased and an understanding of the facts surrounding the death. The [Argentine Forensic Anthropology Team](#), created to investigate clandestine grave sites in Argentina in the 1980s, now leads investigations in many countries in which human remains can yield information on human rights violations.

Strengthening professional standards and opposing medical collaboration in torture

The problem of medical complicity in torture¹³ and its cover-up¹⁴ has been well documented.

Organizations working to strengthen professional standards and oppose medical collaboration in torture include:

- [International Rehabilitation Council for Torture Victims](#)
- [International Committee of the Red Cross](#)
- [Physicians for Human Rights](#)
- [Redress](#)
- [International Federation of Health and Human Rights Organisations](#)
- [World Medical Association](#)

Recent initiatives to promote awareness of the Istanbul Protocol (see [Chapter 3.8.1](#)) have given a higher profile to torture documentation and equipped a growing number of doctors to contribute to this goal.¹⁵

The role of activists

Activists working to combat torture can increase their effectiveness by:

13 See for example, British Medical Association, *Medicine Betrayed: The Participation of Doctors in Human Rights Abuses*, 1992; Physicians for Human Rights, [Doing Harm: Health Professionals' Central Role in the CIA Torture Program](#), 2014.

14 See for example, V. Iacopino et al, 'Physician Complicity in Misrepresentation and Omission of Evidence of Torture in Postdetention Medical Examinations in Turkey' in *Journal of the American Medical Association*, Vol.276 Issue 5, August 1996, pp. 396-402; V. Iacopino and S.N. Xenakis, 'Neglect of Medical Evidence of Torture in *Guantánamo Bay: A Case Series*' in *PLOS Medicine*, Vol.8 Issue 4, April 2011.

15 See, for example, the guide based on the Istanbul Protocol for use by doctors in the Maldives: Redress, [Medical Documentation of Torture and Other Ill-treatment: Basic Guide for Medical Professionals in the Maldives](#), 2015.

- Understanding the effects of torture and other ill-treatment on survivors and the ways in which these violations can be documented;
- Building links with professional bodies (such as nursing and medical associations);
- Establishing contact with centres working with refugees and torture survivors;
- Facilitating access by survivors to medical care and legal support;
- Raising funds for those providing care to survivors of torture and other ill-treatment.

7.4 STRENGTHENING THE INTERNATIONAL SYSTEM TO COMBAT TORTURE AND OTHER ILL-TREATMENT

International and regional human rights bodies and mechanisms have made valuable contributions to the fight against torture and other ill-treatment. However, there is a global crisis in the implementation of standards, with a substantial gap between what states are obligated to do and what they actually do. Therefore these bodies and mechanisms need further support, including from civil society, to create a truly effective worldwide international system for anti-torture action.

7.4.1 UNIVERSAL RATIFICATION OF ANTI-TORTURE TREATIES

Amnesty International continues to call for universal ratification of the [Convention against Torture](#) and its [Optional Protocol](#). States parties to the Convention against Torture should also make declarations under Articles 21 and 22 providing for inter-state and individual complaints to the Committee against Torture. States which have declared that they do not recognize the competence of the Committee under Article 20 to investigate reports of systematic torture in their country should withdraw these declarations. States parties which have made reservations should withdraw them.

All states parties to the Convention against Torture that have not yet done so should sign and ratify its Optional Protocol as a way to meet their obligation to take effective measures to prevent torture and other ill-treatment. States which have signed the Convention against Torture but not yet ratified it can sign its Optional Protocol and should be urged to ratify both treaties as a matter of priority.

When planning and carrying out a campaign to push a state to ratify these treaties, it should be borne in mind that ratification is only a first step. By itself, the ratification of an anti-torture treaty would not save anyone from torture. To ensure its effectiveness against torture and other ill-treatment, ratification should be followed by legislation incorporating the treaty into domestic law, and implementation in policy and practice. Ensuring that a state progresses in implementing these stages following ratification may be just as challenging as ensuring ratification. Campaign planning should therefore include strategies to maintain the momentum of action following ratification.

National ratification strategies

To campaign effectively for ratification it is essential to know the national procedure that needs to be followed. For example: whether ratification needs to be approved by

the national parliament and what the process will be; whether the government has examined the need for and prepared draft national legislation necessary in order to fully implement the treaty; and whether there are any obstacles to ratification.

For ratification and implementation of the Convention against Torture, it is also helpful to have reliable information on practices of torture and other ill-treatment within the state, not least as a means of convincing decision-makers and the public of the need to ratify the Convention. It is also useful to study relevant existing laws – including those criminalizing torture and other ill-treatment (if such laws exist) and extradition laws (for the purpose of ensuring universal jurisdiction), as well as bodies, procedures and actual practice for investigating and prosecuting suspected offences by police, prison staff and other officials.

Although commendable, a state is not obliged to adopt legislation to incorporate a treaty into domestic law nor to take other measures to implement a treaty domestically before ratification. However, as noted, without such measures, ratification on its own has little value in actually preventing or ending torture and other ill-treatment.

When campaigning for ratification and implementation of the Optional Protocol to the Convention against Torture, it is also useful to know whether there are already bodies in place that have some form of mandate to conduct visits to places of detention. If they do exist, in particular where such bodies are independent and have extensive access to prisoners and places of detention, this can be used to demonstrate to the authorities that the concept of visits to places of detention is already accepted practice and the added value of the Optional Protocol is that it will provide capacity-building opportunities and a consistent approach to visits. It is also important to compare the visiting mandate of any existing body with the minimum powers and guarantees for National Preventive Mechanisms laid down by the Optional Protocol;¹⁶ in particular whether they are independent, whether they can conduct unannounced visits, and which places of detention they are able to visit. This will assist in the process of deciding whether any changes are required to the mandate and functioning of an existing body if they were to be designated as a National Preventive Mechanism or whether a new body should be established.

To encourage a state to ratify a treaty, Amnesty International suggests the following actions:

- Approach relevant government officials, most likely within the Ministry of Foreign Affairs or the Ministry of Justice. This will often be the most informative means of finding out the government's position on ratification and necessary legislative steps to be taken before and/or after ratification. Government officials may also be able to identify possible obstacles to signature and eventual ratification. Remind government officials of commitments made in election pledges to the Human

¹⁶ See Articles 19-23 of the [Optional Protocol to the Convention against Torture](#). See also Amnesty International, [10 Guiding Principles for the Establishment of National Preventive Mechanisms](#) (Index: IOR 51/009/2007).

Rights Council, during their Universal Periodic Review, or in response to recommendations made by the UN treaty bodies, such as the Committee against Torture and the Human Rights Committee.

- Engage parliamentarians, including parliamentary committees on human rights. They can promote ratification in parliament and with the government. Given the key role of parliamentarians in adopting necessary legislation it is a good idea to try to build support and interest among them.
- Work with the National Human Rights Institution and NGOs to build pressure and support.
- Build support among relevant professional bodies, such as lawyers and bar associations, prison officials, and mental health workers about the importance of tackling torture and other ill-treatment.
- Encourage public debate, including through national media and newspapers, social media, seminars and workshops, about the need to take action against torture and other ill-treatment.

International and regional ratification strategies

Opportunities to encourage ratification can also be taken at the international and regional levels. Such opportunities include:

- When a state is being considered under the Universal Periodic Review process, this provides an opportunity to call for ratification and implementation of the Convention against Torture and/or its Optional Protocol. States should be encouraged to make and accept recommendations to ratify and implement these treaties.¹⁷ This should be followed up at the national level with campaigning actions, such as those highlighted above, to encourage the government to comply with these recommendations.
- The procedure for reporting the implementation of the Convention against Torture by a state party to the Committee against Torture, and its consideration, also provides an opportunity to call for Optional Protocol ratification and the subsequent establishment of an effective National Preventive Mechanism. A recommendation from the Committee against Torture calling on the state to ratify and implement the Optional Protocol should be followed up at the national level.¹⁸
- Provide the UN Special Rapporteur on torture with information on ratification plans (or absence thereof) in advance of a country visit and follow up on recommendations made in his/her country visit reports on ratification at the national level.¹⁹
- The reporting procedures to the African Commission by state parties to the African Charter provide an opportunity to call for ratification and implementation. NGOs can submit information to the African Commission and include recommendations for ratification and other anti-torture actions by the state.²⁰

17 See [Universal Periodic Review calendar of sessions](#).

18 See [Committee against Torture's database on Concluding Observations](#).

19 For information on visits by the UN Special Rapporteur on torture see [Anti-torture Initiative](#).

20 For details of sessions see the [African Commission website](#).

- Visits to states under regional systems also provide an opportunity to encourage states to commit to ratify the Convention against Torture or Optional Protocol. These include visits by Commissioners or the special procedures and mechanisms of the African Commission or Inter-American Commission, such as the African Commission's Special Rapporteur on prisons, conditions of detention and policing in Africa²¹ and the Committee for the Prevention of Torture in Africa;²² and the Inter-American Commission's Rapporteur on the rights of persons deprived of their liberty in the Americas.²³

7.4.2 CO-OPERATION WITH INTERNATIONAL AND REGIONAL BODIES AND MECHANISMS

It is essential that states co-operate with the various international and regional bodies and mechanisms working against torture and other ill-treatment. Also, the bodies and mechanisms themselves should review their practices and procedures to strengthen their impact. In particular:

- States parties to the Convention against Torture should submit their periodic reports to the Committee against Torture on time, every four years, as required under Article 19 of the Convention against Torture. Reports should be comprehensive, with factual detail as well as legal analysis, and in accordance with the Committee's guidelines. Reports should be honest in admitting failures and even violations rather than painting an unrealistically positive picture.
- Governments and other state institutions should implement the recommendations of the Committee against Torture, Subcommittee on Prevention of Torture and other UN and regional bodies and mechanisms. In relation to individual cases, states that have violated the prohibition on torture and other ill-treatment must comply with the views and decisions adopted by the UN or regional bodies, including by providing reparation to victims.
- States parties should ensure that members of the Committee against Torture, the Subcommittee on Prevention of Torture and relevant regional mechanisms have the necessary range of expertise and independence.
- States should extend an invitation to visit to the Special Rapporteur on torture, as well as other special procedures of the UN. In Africa, states should also extend invitations to the African Commission's Special Rapporteur on prisons, conditions of detention and policing in Africa, and the Committee for the Prevention of Torture in Africa. In the Americas, the relevant regional special procedure is the Rapporteur on the rights of persons deprived of their liberty in the Americas.
- States parties to the Optional Protocol to the Convention against Torture should co-operate with the Subcommittee on Prevention of Torture and provide it with all necessary information and support. After a visit by the Subcommittee, states parties should give their consent for the Subcommittee's report to be published and should ensure the report is widely disseminated. In addition, in Europe, states parties to the European Convention for the Prevention of Torture should similarly

21 See database of the [Special Rapporteur on prisons, conditions of detention and policing in Africa](#).

22 See database of the [Committee for the Prevention of Torture in Africa](#).

23 See database of the [Rapporteur on the rights of persons deprived of their liberty in the Americas](#).

co-operate with the European Committee for the Prevention of Torture and give their permission for the Committee's visit report to be made public.²⁴

- To establish a constructive dialogue with states and aid implementation of recommendations, the relevant UN and regional bodies should ensure that the questions they raise during the examination of states' reports or during visits to states, as well as any recommendations they make, are as clear and strong as possible.

NGOs and other human rights defenders have a role to play in supporting the work of international and regional bodies. In particular, well-documented information on torture and other ill-treatment should be submitted to the relevant international bodies and mechanisms. Where appropriate, victims of torture or other ill-treatment and those acting on their behalf should consider submitting individual complaints. NGOs and the news media should publicize the views and recommendations of international bodies and mechanisms to encourage the authorities to implement them.

The anti-torture work of the UN and regional bodies is hampered by serious underfunding. At the UN it has been recognized that "the current allocation of resources has not allowed the human rights treaty body system to work in a sustainable and effective manner".²⁵ UN member states have requested the UN Secretary-General to:

"ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in preventing and combating torture and assisting victims of torture or other cruel, inhuman or degrading treatment or punishment... to enable them to discharge their mandates in a comprehensive, sustained and effective manner, and taking fully into account the specific nature of their mandates".²⁶

In addition all member states of the UN should be urged to contribute annually, as substantially as they can, to the United Nations Voluntary Fund for Victims of Torture so that the Fund can continue its valuable work of providing assistance to victims of torture and their families.²⁷ States should also be encouraged to contribute to the Special Fund of the Subcommittee on Prevention of Torture to enable it to support implementation of recommendations aimed at preventing torture and other ill-treatment in states parties.²⁸

24 See www.cpt.coe.int/en/about.htm

25 See Preamble to the UN General Assembly Resolution on Strengthening and enhancing the effective functioning of the human rights treaty body system, [UN Doc. A/RES/68/268](#), 2014.

26 See UN General Assembly Resolution on Torture and other cruel, inhuman or degrading treatment or punishment, [UN Doc. A/RES/70/146](#) (2015) §40.

27 See UN General Assembly Resolution on Torture and other cruel, inhuman or degrading treatment or punishment, [UN Doc. A/RES/70/146](#) (2015) §41.

28 See UN General Assembly Resolution on Torture and other cruel, inhuman or degrading treatment or punishment, [UN Doc. A/RES/70/146](#) (2015) §41; [Special Fund of the Optional Protocol to the Convention against Torture](#).

At the regional levels, states should support and co-operate with: in Africa, the African Commission and African Court; in the Americas, the Inter-American Commission and Inter-American Court; and in Europe, the European Court and the European Committee for the Prevention of Torture. NGOs and other human rights defenders can put pressure on states to support and co-operate with the regional human rights bodies, for example: by urging them to provide sufficient funding to enable these bodies to carry out their mandates effectively; where special mechanisms have been created, by calling for states to invite them to conduct visits to their country; by ensuring that the various instruments and decisions on cases are widely disseminated within a country; and by providing information on steps taken to give reparation to victims of torture and other ill-treatment.

7.5 AMNESTY INTERNATIONAL'S STOP TORTURE CAMPAIGN

For more than 50 years, Amnesty International has been at the forefront of global efforts to stamp out torture and other ill-treatment, including leading the campaign for a worldwide commitment to combat torture resulting in the UN [Convention against Torture](#) in 1984. Amnesty International's most recent global campaign to "Stop Torture" was launched in 2014.

The Stop Torture campaign was Amnesty International's fifth global campaign to combat torture and other ill-treatment. The campaign focused on all state custody contexts. This included ordinary criminal justice systems; people held by the military, police forces, Special Forces and secret services; situations involving regular and emergency laws, regulations or provisions; and official and unofficial or secret places of detention (where the risk of torture significantly increases). The campaign did not include torture by non-state actors or ill-treatment occurring outside of state custody, such as excessive use of force during demonstrations, although Amnesty International continues to work vigorously to prevent these forms of abuse.

7.5.1 CAMPAIGN FOCUS

Through the Stop Torture campaign, Amnesty International sought the establishment and implementation of effective safeguards against torture and other ill-treatment, as a key method to end these practices. When effective safeguards are in place, people are protected and reports of torture and other ill-treatment fall dramatically. When safeguards are not in place or not put into practice, torture thrives.

The Stop Torture campaign called for the following list of essential safeguards to be put in place:

Safeguards at arrest:

- Arrests are made only by authorized officials and on proper grounds.
- Individuals are informed of the reason for their arrest and of their rights.
- Those arrested have the right to notify family and others.

- Torture and other ill-treatment are prevented during transport of detainees, including between places of detention and to and from courts.
- Official records of arrests are kept.

In detention:

- Secret and incommunicado detention are prohibited by ensuring access to, for example, family members, medical care, legal counsel and the courts.
- All detainees are treated humanely, with detention conditions that are dignified and conducive to detainees' mental and physical wellbeing.
- Easy access is available to an independent, impartial and efficient complaints mechanism without the complainant suffering any adverse consequences.

Within the judicial process:

- Prisoners are promptly brought before an independent judicial authority.
- The right to access to a lawyer from the outset of detention is respected.
- Prisoners are able to challenge the lawfulness of their detention.
- The use of statements obtained through torture or other ill-treatment in court is prohibited, except as evidence of these acts.

During questioning:

- All interrogation techniques and coercive measures that amount to torture and other ill-treatment are prohibited.
- Video, or at least audio, monitoring and recording of all questioning sessions is made available.
- A lawyer is present during questioning.
- The right to an interpreter is respected.
- Medical examinations and services are available to the interviewee throughout the period of questioning.
- Detailed records are kept of all questioning sessions.
- Authorities responsible for detention are separate from those in charge of questioning.

Particular detainees:

- Provisions in international law and standards addressing the specific needs and rights of particular groups of people deprived of liberty, including women, children and people with disabilities, are upheld.

After release:

Release from custody is a moment which carries further risks. Release should always allow individuals to claim their rights in case they have suffered torture and other ill-treatment in custody. This includes:

- Keeping proper records of release from detention.

- Availability of independent and effective complaint mechanisms for released prisoners, with safeguards against reprisals or harassment of complainants and their families.
- Availability of medical examination notes or certificate from independent forensic doctors.
- Not being transferred, directly or indirectly, to countries or places where the individual might be at risk of torture or other ill-treatment (*refoulement*).

Overarching monitoring/oversight mechanisms:

- Effective oversight mechanisms ensure that all places where people are deprived of liberty are subject to independent monitoring. Similarly they should monitor the conduct of law enforcement agencies.
- Monitoring of detention facilities may be carried out by organizations and bodies including:
 - National human rights institutions;
 - National preventative mechanisms established under the Optional Protocol to the Convention against Torture or modelled on them;
 - International, national and regional NGOs;
 - Regional bodies (such as the African Union’s Special Rapporteur on prisons and conditions of detention, and the European Committee for the Prevention of Torture);
 - International bodies (such as the Subcommittee on Prevention of Torture, the Committee against Torture, and the Special Rapporteur on torture).

(See [Chapter 3](#) for more information on these safeguards, and [Chapter 5](#) for more information on the independent bodies empowered to monitor places of detention.)

As well as calling for these safeguards to be put in place and implemented effectively, the Stop Torture campaign also called for an end to impunity for perpetrators of torture. In many countries, impunity for perpetrators of torture is endemic and allows them to operate without fear of arrest, prosecution or punishment. Impunity also undermines the criminal justice systems and the rule of law. It means denial of justice for victims. (See [Chapter 6.1](#) on the obligation to ensure justice, truth and other reparation.)

7.5.2 COUNTRIES OF FOCUS

Following a global assessment of the use of torture and other ill-treatment around the world, it was decided to develop the Stop Torture campaign around five countries of focus where it was believed that Amnesty International and its supporters would be able to achieve tangible improvement in legislation, policy and practice. These countries were Mexico, Morocco/Western Sahara, Nigeria, Philippines and Uzbekistan. These countries were selected not because they had the “worst” record on torture and other ill-treatment, but as countries where human rights change could have a ripple effect throughout their respective regions, and maybe even globally.

Before selecting these countries, Amnesty International conducted a review of torture practices in each region of the world. These were the broad findings of that review:

Africa

Torture and other ill-treatment is rife across Africa, a region where more than 30 countries do not criminalize torture explicitly in their laws.²⁹ Torture in detention is endemic in many countries and efforts to bring those responsible to justice have been extremely limited. The African Charter expressly prohibits torture and other ill-treatment, but only 10 states have national legislation criminalizing torture.

Americas

The Americas region has some of the world's most robust anti-torture laws and mechanisms at the national and regional level. However, torture and other ill-treatment remains widespread and those responsible rarely face justice. In a number of countries, the use of torture and other ill-treatment is accepted by many as a legitimate response to high levels of violent crime.

Asia and the Pacific

Many countries in the Asia-Pacific region are failing to prevent and punish torture. China and North Korea are among the region's worse culprits. Punishments such as flogging are still practised in some countries and investigations into reports of torture are extremely rare.

Europe and Central Asia

Despite the introduction of legal provisions banning torture and other ill-treatment, the practice remains widespread across Europe and Central Asia, particularly in countries of the former Soviet Union. Torture and other ill-treatment has also been documented in parts of the European Union, with some countries also failing to effectively investigate allegations of complicity in torture carried out in the context of US-led anti-terrorism operations.

Middle East and North Africa

Initial optimism that human rights, including the right to be free from torture, would be better respected following popular uprisings in recent years has largely given way to despair at the lack of progress or, in the case of Syria, horror at the human rights catastrophe in which torture is being committed on an industrial scale. Elsewhere, particularly in countries which have seen the fall of long-standing rulers, there has been frustration at the slow pace of change. New authorities have, in some cases, taken limited positive steps, such as strengthening the legal prohibition of torture and, in the case of Tunisia, have begun a process of transitional justice. However, the factors that

²⁹ For details of the status of the criminalization of torture in Africa see the African Commission's [Torture Prevention Database](#).

facilitate torture have so far proved to be too deeply entrenched to translate law into practice.

In each of the five countries that were chosen as the focus of the campaign, torture and other ill-treatment is carried out in a unique political, economic, cultural and historical context. This was the situation in those countries at the outset of the campaign in 2014:

Mexico

In the context of Mexico's "war on drugs", the use of torture and other ill-treatment by security and police forces remains widespread throughout the country, and impunity is rife. Mexico has made numerous commitments and taken measures to prevent and punish torture and other ill-treatment, but these measures have been inadequate and largely ignored. One example is the adoption in 2003 of international forensic guidelines enshrined in the Istanbul Protocol, for the investigation of torture allegations. To date, most official medical forensic examinations continue to be flawed, take place months or years after the allegation was made, or never take place at all. Prosecutors and judges tend to disregard independent examinations, and independent experts face numerous challenges when trying to examine alleged victims who are in detention. Women are particularly vulnerable to sexual violence as a form of torture. Relevant medical assistance is almost non-existent in prisons. Legislation criminalizing torture is routinely sidestepped, as is legislation that should prevent evidence obtained through torture from being used in criminal trials. Yet the government is content to argue that torture and other ill-treatment is not widespread, acknowledging only isolated cases.³⁰

Morocco/Western Sahara

The rule of King Hassan II from 1956 to 1999 (known as the "years of lead") was characterized by repression of political dissent, the enforced disappearance of hundreds of people, arbitrary detention of thousands of others, and the systemic use of torture and other ill-treatment. Although the human rights situation has improved significantly since the accession to the throne of King Mohammed VI in 1999, Amnesty International continues to receive reports of torture and other ill-treatment by police or gendarmerie during interrogation in pre-trial detention and, less often, in prisons and while detained incommunicado in secret detention centres.

Torture and other ill-treatment has been explicitly prohibited and identified as a crime in Moroccan law for several years, but it continues in practice. Judges and prosecutors rarely investigate reports of torture and other ill-treatment, meaning few perpetrators are held accountable, resulting in a climate of impunity.

Shortcomings of the justice system, such as preventing lawyers from being present during police interrogation, continue to create conditions conducive to torture and other

³⁰ Amnesty International, [Out of control: Torture and other ill-treatment in Mexico](#) (Index: AMR 41/020/2014).

ill-treatment. Torture-tainted “confessions” included in police interrogation reports are still central to securing convictions, replacing material evidence and witness testimony.³¹

Nigeria

Torture and other ill-treatment continues to be frequently used in Nigeria. Amnesty International’s research indicates that police and military personnel routinely use torture to extract information and “confessions”, and to punish and exhaust detainees. Information extracted by torture and other ill-treatment is routinely accepted as evidence in court.³² At the time of writing, a bill to prohibit and criminalize torture was being revised by the Law Reform Commission of Nigeria.

Philippines

The use of torture and other ill-treatment is frequent in the Philippines. There have been consistent reports of torture and other ill-treatment of suspects and prisoners by state security forces, including law enforcement officers. Justice is out of reach for the vast majority of people who are tortured. Perpetrators are almost never held to account. The country has a strong legislative framework to stop torture and other ill-treatment, and the government has pledged to increase its efforts to ensure these laws are implemented. The Philippines is also party to key international anti-torture laws and mechanisms, including the Convention against Torture and the Optional Protocol. Yet impunity persists.³³

Uzbekistan

Torture and other ill-treatment is rife in Uzbekistan. Amnesty International has received persistent reports showing the routine and pervasive use of torture and other ill-treatment by security forces and prison personnel. Reports suggest that people are tortured when arrested, transferred and awaiting trial, and in detention facilities. Very few people are brought to justice for inflicting torture, and the authorities routinely fail to conduct independent and effective investigations into allegations of torture and other ill-treatment.³⁴

Before the launch of the Stop Torture campaign in 2014, Amnesty International conducted extensive research into the problem of torture in the five countries of focus. The research resulted in the publication, in 2014 and 2015, of five major research reports.³⁵ These reports provided solid evidence of Amnesty International’s concerns, as well as recommendations to the authorities in the five countries.

31 Amnesty International, *Shadow of impunity: Torture in Morocco and Western Sahara* (Index: MDE 29/001/2015).

32 Amnesty International, *“Welcome to hell fire”: Torture and other ill-treatment in Nigeria* (Index: AFR 44/011/2014).

33 Amnesty International, *Above the law: Police torture in the Philippines* (Index: ASA 35/007/2014).

34 Amnesty International, *Secrets and lies: Forced confessions under torture in Uzbekistan* (Index: EUR 62/1086/2015).

35 Amnesty International: *Out of control: Torture and other ill-treatment in Mexico* (Index: AMR 41/020/2014); *“Welcome to hell fire”: Torture and other ill-treatment in Nigeria* (Index: AFR 44/011/2014); *Shadow of impunity: Torture in Morocco and Western Sahara* (Index: MDE 29/001/2015); *Above the law: Police torture in the Philippines* (Index: ASA 35/007/2014); *Secrets and lies: Forced confessions under torture in Uzbekistan* (Index: EUR 62/1086/2015).

7.5.3 INDIVIDUAL CASES

During the Stop Torture campaign, individual cases were used to illustrate the problem of torture in the five key countries of focus. The global attention brought about by the campaign helped to ensure that in each of the cases some significant progress was made: some of the individuals were released from prison; others had their charges dropped, were released on bail, or saw investigations into their allegations of torture opened for the first time. Meanwhile, the use of individual stories helped to illustrate the horrific reality of torture, giving the campaign an urgent, human focus.

In some instances, working on individual cases proved difficult, given restrictions on Amnesty International's access to certain countries. Uzbekistan, for example, is one of a handful of countries that is essentially closed to Amnesty International. Operating in such an environment – that is, in the total absence of effective and unimpeded independent monitoring and where impunity for human rights violations is the norm – puts Uzbekistani human rights defenders and activists at great risk, and poses significant challenges to conducting research on the country. Yet the commitment and ingenuity of Uzbekistani human rights defenders and activists, both in the country and in exile, and the courage of victims and their families, made such research possible.

In order to research the issue of torture in Uzbekistan, and find information on individual cases of people at risk, Amnesty International communicated with numerous Uzbekistanis in exile in North America and across Europe and Central Asia. These interviews with persons living and working outside of Uzbekistan yielded information not just about each person's individual or family experience, but also about others currently inside Uzbekistan, who were willing to communicate with Amnesty International about the current situation in the country. In addition to attempting to securely make contact with individuals and gather information via telephone, email and Skype, Amnesty International delegates made arrangements to meet in person in two safe locations outside Uzbekistan with Uzbekistanis who had the ability to travel outside the country.

It is to their great credit that individuals who wanted to share their stories took that risk in an effort to shed light on torture and other ill-treatment in Uzbekistan. Amnesty International researchers made every effort to mitigate the risks to those individuals by implementing a strict security protocol that governed all communications, travel and the collection of information.

After conducting research in the five countries, which included checking the information with several sources to verify its authenticity and, where relevant, contacting the country's authorities for clarification, the Stop Torture campaign selected key individual cases to represent the need for effective safeguards against torture. At first, five key cases were publicized – those of Ali Aarrass (Morocco/Western Sahara), Claudia Medina (Mexico), Moses Akatugba (Nigeria), Dilorom Abdukadirova (Uzbekistan) and Alfreda Disbarro (Philippines). Mobilization efforts on these five cases peaked on 26 June 2014, the International Day in Support of Victims of Torture.

Following several positive developments on these cases, more cases were introduced to the campaign to represent the problem of torture in key countries of focus. These included Jerryyme Corre (Philippines), and Ángel Amílcar Colón and Yecenia Armenta Graciano (Mexico). In addition to 15 cases from the priority countries, the campaign was able to integrate in its body of work eight cases which were closely linked to the campaign's narrative and helped to provide a more global picture of the problem of torture, including Raif Badawi (Saudi Arabia), Saman Naseem (Iran), Mahmoud Mohamed Ahmed Hussein (Egypt) and Jian Yefei and Dong Guangping (China). At its peak, in May 2016, the campaign had a portfolio of 23 cases.

Based on extensive research, the campaign developed a tailored strategy for each case and used a wide range of tactics to promote the cases and convey the key message of the need for safeguards, including public demonstrations, online petitions, collecting signatures, advocacy, social media, street actions, theatre and exhibitions.

Amnesty International's work contributed to significant achievements in several of the cases:

Ángel Amílcar Colón Quevedo

Torture survivor and prisoner of conscience Ángel Amílcar Colón Quevedo was released without charge on 15 October 2014, after more than five years in pre-trial detention in Mexico. However, no police or military official had been brought to account at the time of writing and the Mexican government had yet to provide any reparation for the range of human rights violations that Ángel Colón suffered. The National Human Rights Commission is yet to issue a public report (recommendation) on this case. Ángel Colón has returned to Honduras where he is trying to resume his normal life.

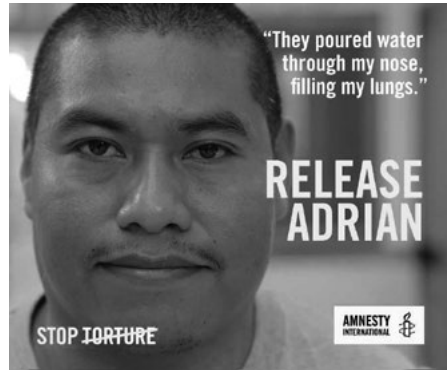
Claudia Medina Tamariz

In February 2015, all charges against torture survivor Claudia Medina were finally dropped. Her ordeal began in August 2012, when marines broke into her home in Veracruz City, in Mexico. They tied her hands, blindfolded her and took her to the local naval base where she was subjected to torture, including rape. She was then transferred to the local branch of the Federal Attorney General's Office where she was pressured into signing a statement that she wasn't allowed to read. To date, nobody has been held accountable for the torture suffered by Claudia Medina. The National Human Rights Commission is yet to issue a public report (recommendation) on her case.



Adrián Vásquez Lagunes

Following three years in prison in Mexico, during which he was tortured, including by having water poured through his nose into his lungs, Adrián Vásquez was released in December 2015. In April 2015, local prosecutors had tried to press charges against a number of police officers accused of torturing Adrián, but the judge rejected the charges. The perpetrators are yet to be brought to justice.



Moses Akatugba

In 2005, aged 16, Moses Akatugba was arrested for robbery by the Nigerian army. He says he was tortured into signing a “confession”. After eight years in prison, he was sentenced to death by hanging. Following a year of campaigning by Amnesty International activists across the world and advocacy work at the national level by Amnesty’s local partners, Moses Akatugba was pardoned on 28 May 2015 and released from jail on 2 June. His reports of torture have still not been investigated.



Mahmoud Mohamed Ahmed Hussein

After spending more than two years behind bars in Egypt, having been arrested for wearing a “Nation Without Torture” T-shirt and a scarf with a logo of the “25 January Revolution”, Mahmoud Hussein was released on bail on 24 March 2016. The charges against him had not been dropped at the time of writing. He was tortured by security officers during his arrest and in detention and was videotaped by National Security officers “confessing” after being tortured.

Jerryme Corre

In a historic ruling, in March 2016 a police officer was convicted in the Philippines of the torture of bus driver Jerryme Corre. The ruling, the first conviction under the country's 2009 Anti-Torture Act, planted a seed of hope in the fight against impunity for perpetrators of torture, and followed a three-year campaign by Amnesty International.



Yecenia Armenta Graciano

The judge's decision to acquit and release Yecenia Armenta Graciano from jail in northern Mexico on 7 June 2016 brought an end to four long years of injustice. Yecenia Armenta was arbitrarily detained by Sinaloa state investigative police on 10 July 2012 and beaten, near-asphyxiated and raped during 15 hours of torture until she "confessed" to involvement in the murder of her husband. The Sinaloa state Attorney General is yet to bring the perpetrators of her torture to account, but he was quick to appeal the acquittal, forcing Yecenia to wait for an appeals court to finally resolve her case. Upon her release, Yecenia said: "To all the people who have accompanied me, I want to send them an immense thank you. Without their support it would have been almost impossible. I want to thank them [so that] they continue to fight, that they don't give up this beautiful work that is fighting for the rights of others. Sometimes justice takes a while, but it does come."

More information about the impact of the Stop Torture campaign in the five countries of focus can be found in [section 7.5.6](#) below.

7.5.4 GLOBAL ACTIVISM

Activism by individuals is key to Amnesty International's identity and the success of its campaigns. The Stop Torture campaign was no different; mass activism amplified the message of the campaign, provided legitimacy to the demands for change, and built a human rights community by helping people to take part in direct action. Over its two-year lifetime, more than 2 million people took action as part of the campaign.

This element of the campaign was designed around a seven-point plan for effective activism:³⁶

1. Plan for impact: Activism is most effective, and has the greatest potential for impact, when particular forms of activism are chosen because they are appropriate to the specific campaign objectives and the context in which the campaign is taking place.

³⁶ For more information see Amnesty International, [Seven action points for effective activism](#) (Index: ACT 10/011/2011).

2. Engage with rights holders: Survivors of human rights violations are at the centre of the implementation of Amnesty International's campaigns. This includes creating opportunities for individuals to express their opinions, voice their demands directly to decision-makers and ultimately create change.
3. Engage activists in campaign planning, strategy and developing campaigning tools: This includes providing the opportunity for activists to be at the forefront in engaging with decision-makers or campaign targets, when this is identified as being a strategic use of their contribution.
4. Build a range of collaborative relationships: This helps to broaden the campaign's reach and build a greater constituency for human rights.
5. Innovate and take risks: Effective activism often involves moving beyond the comfortable and the familiar.
6. Adopt an integrated approach: Bringing together the different strengths of the organization or campaigning group, for example by working in project groups from the outset of a campaign.
7. Reflect and learn: Standing back and evaluating the degree to which activism contributes to human rights change is of vital importance.

In order to make activism most effective, Amnesty International carried out a detailed analysis of the different types of activists that support the work of the organization. Different approaches were used to engage different activists and supporters, tailored to their interests, skills and their power to influence other people. Global activism created cohesion across the five different country campaigns. Stories about individuals at risk, and the role of the human rights defenders who support them, helped to demonstrate the relevance of activism to the fight against torture and other ill-treatment.

Finally, as noted above, one of the areas where Amnesty International achieved the most significant progress during the Stop Torture campaign was on individual cases. Intensive membership mobilization and activism played a crucial role in achieving this progress.

7.5.5 HUMAN RIGHTS EDUCATION

Another key tactic to prevent torture and other ill-treatment as part of the Stop Torture campaign was human rights education.

Human rights education is a participatory practice aimed at empowering individuals, groups and communities by building knowledge and skills and changing attitudes to human rights. When used effectively, human rights education can help people to claim their rights, ensure that those in power know their human rights obligations, and support the human rights movement to promote and work for the protection of human rights.

Amnesty International sees human rights education not merely as education about and for human rights, but education through a participatory methodology to create

capacity for critical thinking and analysis. Human rights education was used in the Stop Torture campaign to raise awareness and increase knowledge of torture and other ill-treatment, as well as to support various groups working to prevent torture. The aim was that human rights education would contribute to ensuring activists were well-informed, and that their activism and campaigning would continue for longer than the two-year lifespan of the campaign. The campaign aimed to use human rights education to bring about positive change in the following four areas:

1. To create an increased awareness of human rights, specifically the issue of torture and other ill-treatment, within a human rights framework, in order to lead to increased action.
2. To establish human rights as social norms and build knowledge and understanding of everyone's rights, as well as governments' obligations.
3. To strengthen people's knowledge and awareness of the issue, including government obligations, remedies and support mechanisms that are or should be available to victims; building capacity to observe and comment on government policies based on human rights values; and building the capacity and skills of rights-holders to identify human rights issues, demand respect for and protection of their rights and the rights of others, and actively participate in decision-making processes involved in establishing laws, mechanisms and policies for protecting and respecting human rights.
4. To grow the Amnesty International movement and ensure local relevance for Amnesty International's work.

Overall, the inclusion of human rights education in this campaign was based on the premise that actual change in people's lives relies on individuals knowing their rights, having an attitude that is oriented to human rights, and developing the skills and confidence to take action and participate in advocacy efforts to prevent and stop torture and other ill-treatment.

Empower against torture guide

In 2014, Amnesty International brought together a group of youth activists from around the world to create a human rights education guide to support campaigning efforts to stop torture and other ill-treatment. The guide was developed for the purpose of supporting youth activists in acquiring the skills and capacity to work with other young people to increase their knowledge and understanding, as well as challenging perceptions of torture and other ill-treatment. The development of the guide was based on a principle of youth developing resources for youth, and the process was carried out in a collaborative way led by young people.

A human rights education guide entitled *Empower against torture* was published as an online resource in May 2014, written and developed by youth activists.³⁷ It included plans for workshops, links to other resources, advice on how to facilitate

³⁷ Amnesty International, [Empower against torture: A series of human rights education workshops](#) (Index: ACT 40/1433/2015).

and adapt workshops to different contexts, and space for sharing or exchanging ideas. An online resource was also developed.

7.5.6 IMPACT

At the time of writing, the impact of Amnesty International's Stop Torture campaign was still being analyzed. However, there were early indications that the campaign had had some success. Below is a summary of some of the positive changes in the five countries of focus that can be at least partly attributed to the Amnesty International campaign.

In Mexico:

- In November 2014, President Peña Nieto announced that he would support a constitutional reform in order for Congress to pass a “general anti-torture law” which would apply nationwide. The constitutional reform took place in 2015, allowing Congress to move towards such a general law. In 2015, the government organized a series of round-table discussions with NGOs, including Amnesty International, and other stakeholders regarding the substance of the law. In April 2016, the Senate approved the bill and sent it to the Lower Chamber for further approval. It had not been passed at the time of writing. The bill is a step forward in many respects, but there are some areas where Amnesty International believes the wording has not gone far enough to meet international law and standards. Amnesty International will continue to be involved in this process. Amnesty International's report *Paper promises, daily impunity* was launched at the start of the drafting process in 2015, and helped shape the debate on the issue.³⁸
- In December 2014, the Supreme Court published a Special Protocol for judges and the judicial branch in relation to torture, which quoted Amnesty International's report *Out of control: Torture and other ill-treatment in Mexico*.³⁹
- In August 2015, the Federal Attorney General's Office consulted and approved a National Protocol for the Investigation of Torture. The Protocol was also approved by all state-level Attorneys General. It has been in force since August 2015. The Protocol's effectiveness will depend on adequate implementation, results and accountability. Amnesty International was part of the group of NGOs and experts who were consulted for this Protocol and many of its suggestions were taken on board.
- In October 2015, the Federal Attorney General's Office reformed its Special Procedure for Special Medical/Psychological Forensic Examinations in an attempt to bring it into line with the Istanbul Protocol. There are some improvements that take into account the recommendations of Amnesty International's *Out of control* report.
- Results of Amnesty International's casework in Mexico: Ángel Colón (released without charge); Claudia Medina (case against her thrown out of court); Adrián

38 Amnesty International, [Paper promises, daily impunity: Mexico's torture epidemic continues](#) (Index: AMR 41/2676/2015).

39 Amnesty International, [Out of control: Torture and other ill-treatment in Mexico](#) (Index: AMR 41/020/2014).

Vásquez (released without charge); Cristel Piña (acquitted and released); Enrique Guerrero (torture investigation opened on his case); Yecenia Armenta (acquitted and released).

In Morocco/Western Sahara:

- The campaign showed impact soon after its launch in May 2014, which was timed to take place days before the visit of then-UN High Commissioner for Human Rights, Navi Pillay, to Morocco. The High Commissioner took up the issue of torture and other ill-treatment in Morocco that Amnesty International had raised during the campaign launch. Immediately after her meeting with King Mohammed VI, Morocco's Minister of Justice and Liberties issued a set of memorandums to police and gendarmerie stations, prosecutors and judges, and prisons, outlining the need to adequately investigate allegations of torture and other ill-treatment.
- Days after the campaign launch, the Committee against Torture issued its decision that Morocco had breached the Convention against Torture in the case of Ali Aarrass, and Morocco's judicial authorities announced they were reopening the investigation into his torture. Although the investigation was closed in October 2015, this was still an important precedent given Ali Aarrass' allegations of torture during incommunicado detention in the Temara secret detention centre, a facility which the Moroccan authorities had always denied existed.
- The campaign led to an increase in prosecutions of suspected perpetrators of torture and other ill-treatment, and increased coverage of the issue in national media.
- Morocco's national human rights council (Conseil National des Droits Humains, CNDH) supported Amnesty International's recommendations for the amendment of the Code of Criminal Procedure, especially the requirement for lawyers to be present during the police interrogation of all suspects. The CNDH also requested the introduction of provisions requiring the medical examination of all suspects and the appropriate handling of torture complaints, in line with Amnesty International's recommendations.
- Activism by Amnesty International supporters on key individual cases raised the profile of those cases both nationally and internationally and helped garner support from Moroccan civil society organizations.
- More torture survivors and witnesses reached out to Amnesty International and local human rights groups.

In Nigeria:

- Moses Akatugba – whose case was the flagship case for the campaign in Nigeria – was pardoned and released from prison following campaigning and advocacy by Amnesty International.
- In June 2015, Nigerian lawmakers passed the Anti-Torture Bill, which was one of the major advocacy calls of the campaign in Nigeria. The bill was among 46 passed in one day by the 7th National Assembly. However, President Muhammadu Buhari, upon inauguration, refused to sign the bill and sent it back for review. It is

currently being reviewed by the Law Reform Commission and will be sent back to the National Assembly for further deliberation.

- There was increased public debate and engagement on the issue of torture following the release of Amnesty International's report "Welcome to hell fire".⁴⁰
- Amnesty International members and supporters in Nigeria participated in public awareness events around the issue of torture and other ill-treatment.
- The Inspector General of Police announced reforms to Force Orders, Special Anti-Robbery Squads and the establishment of a complaints mechanism.

In the Philippines:

- The Philippines' Senate opened an inquiry into issues raised in Amnesty International's report *Above the law* on the day of its launch.⁴¹ The report featured in various media outlets, both domestic and international.
- The Philippines National Police Internal Affairs Service commenced administrative investigations into the campaign's key cases of Alfreda Disbarro and Jerryyme Corre (see above) upon receipt of letters from Amnesty International members and activists.
- In March 2016, a police officer was sentenced to a maximum of two years and one month's imprisonment having been convicted of the torture of Jerryyme Corre. It was the first conviction under the country's 2009 Anti-Torture Act.

In Uzbekistan:

- Human rights defenders and relatives of torture survivors felt supported and encouraged by solidarity actions and contact with Amnesty International groups, members and staff.
- At the UN Human Rights Committee review of Uzbekistan's fourth periodic report in July 2015, the head of the government delegation referred to Amnesty International's report into torture and other ill-treatment in Uzbekistan,⁴² and said that the government would consider some of the recommendations on legislative changes put forward in the report.
- Human rights defenders in exile, including torture survivors, felt energized and encouraged by speakers' tours and other opportunities provided by Amnesty International to address the international community on the issue of torture and other ill-treatment, including at the UN Human Rights Council and Human Rights Committee.
- International actors, including the Human Rights Committee, the European Union External Action Service, two US State Department Deputy Secretaries, and MPs from Germany's Green Party, all made calls for the protection of people from torture in Uzbekistan, in response to advocacy by Amnesty International.

40 Amnesty International, "Welcome to hell fire": *Torture and other ill-treatment in Nigeria* (Index: AFR 44/011/2014).

41 Amnesty International, *Above the law: Police torture in the Philippines* (Index: ASA 35/007/2014).

42 Amnesty International, *Secrets and lies: Forced confessions under torture in Uzbekistan* (Index: EUR 62/1086/2015).

It should be remembered that however well-planned, inclusive, innovative and well-executed campaigns are, they do not always succeed. Torture and other ill-treatment is deeply entrenched in the culture of some elites and governments, which see the practice as an efficient tool of control and punishment, and are very reluctant to desist. Yet, campaigning against the fundamental wrongs of torture and other ill-treatment has merits irrespective of overall success or failure. Moreover, long-term success, while not guaranteed, may eventually come about after years of campaigning, and even after a number of setbacks. It is therefore important to plan for success but be ready to learn from failure and, most importantly, to never give up.

COMBATING TORTURE AND OTHER ILL-TREATMENT

A MANUAL FOR ACTION

When a person is tortured, their dignity and integrity are cast aside – they become mere tools for achieving whatever purpose their abusers seek. Torture is the total denial of a person’s human rights.

Far from being a mediaeval practice eradicated in modern times, torture continues to thrive the world over, mostly in places where people are deprived of their liberty, but also outside such places. Nowhere are people totally free from the risk of torture and other cruel, inhuman or degrading treatment or punishment, whether directly by officials or through official complicity, inaction or failure.

Combating torture and other ill-treatment: A manual for action describes in detail the prohibition of torture and other ill-treatment in international law. It outlines the safeguards provided by international law and standards against torture and other ill-treatment for every stage from arrest and detention to trial and imprisonment, as well as for situations where torture may be inflicted outside detention settings. It also explains Amnesty International’s positions where these go beyond current international law (for example, Amnesty International’s total rejection of the death penalty) and provides guidance on campaigning against torture and other ill-treatment.

This manual will be of use to anyone working to prevent, expose and combat torture and other ill-treatment, including human rights defenders, lawyers, judges, law enforcement officers and other public officials, legislators, health professionals and the media. This is the second, updated and revised, edition of the manual.

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