

OBLIGATIONS TO PREVENT

The UN Convention Against Torture (UNCAT) obligates all States parties to take 'effective legislative, administrative, judicial and other measures to prevent torture' (Article 2(1)). This is also 'indivisible, interdependent and interrelated' with respect to the prevention of cruel, inhuman and degrading treatment (per Article 16).¹ Prevention can be *direct* (reducing risk and addressing causes) and *indirect* (deterring repetition through investigation and prosecution; see respective factsheets).

The obligation to prevent torture is binding, absolute and without exception. The persistence of torture in the face of decades of concerted international efforts towards its prevention and eradication is indicative of the complexities involved. As the following set out, prevention is an oversight- and rights-based effort targeted at the full continuum of state use of force, whether in or outside detention.²

Additional obligations to prevent torture are found in the UNCAT, namely in articles 3, 10 and 11. Article 3 embodies the principle of non-refoulement which prohibits states from returning or extraditing a person to another state where there is a real risk of that person being subject to torture (see Torture and Migration factsheet). Article 10 requires states to educate and inform its law enforcement personnel, civil or military, medical personnel, public officials involved in the custody, interrogation or treatment of the prohibition against torture. Article 11 requires that interrogation rules, instructions, methods and practices as well as arrangements for custody and treatment are kept under systematic review with a view to preventing torture.

TRINITY OF RIGHTS: LEGAL SAFEGUARDS IN POLICE CUSTODY

The first hours in police custody are generally recognised as entailing the greatest risk of torture and CIDTP. Recognising such ill-treatment thrives in the absence of transparency, a trinity of rights (lending oversight and thereby limiting opportunity for perpetration) have proven paramount to preventing torture in practice.

The trinity of legal safeguards includes

- i. the right to a lawyer,
- ii. the right to a doctor, and
- iii. the right to notify a relative or a third party of choice.³

Persons must be informed of and afforded their rights promptly, independently and freely. The significance of these rights have been widely-recognised.⁴ (See further factsheet on 'Safeguards in Police Custody'.)

PRE-TRIAL DETENTION

Excessive periods of pre-trial detention expose detainees to gross violations of internationally and regionally enshrined human rights. Primarily, the conditions of pre-trial detention (overcrowding and poor physical conditions) generally also strengthen the link between the excessive use of pre-trial detention and torture and cruel, inhuman and degrading treatment.⁵⁶ This means that if fewer people are kept in detention fewer people would be exposed to such a risk. Therefore, pretrial detention should be used 'as a last resort, for the shortest time possible, and only for the most serious offences'.⁷ Related violations include freedom from arbitrary arrest or detention,⁸ the right to a fair and public trial,⁹ without due delay¹⁰ and the right to be presumed innocent.¹¹ (See factsheet on 'Pre-Trial Detention'.)

Effective judicial oversight, namely the right to be brought before a judge within a short time after arrest, is not of any less importance. A maximum period of 48 hours' police custody is generally accepted as best practice.¹² Bail (the practice of releasing suspects pending trial, conditionally or not) should be a presumed right, rebuttable where risks of non-appearance at trial, further offending or obstructing justice exist.

DETENTION MONITORING & STANDARDS

Regular monitoring places of detention by an independent national preventive mechanism provides checks on relevant risk factors. This is promoted by the *Optional Protocol* to the UNCAT. Establishing clear and detailed detention procedures and standards, in accordance with the *UN Nelson Mandela Rules* as a minimum, are necessary.

See the relevant, separate factsheets.

STRUCTURAL CHALLENGES

There exists a multitude of causes for torture on a multitude of plains: individual, institutional, cultural and situational. Public institutions, such as the police and courts, may not be structured or equipped to adequately protect human rights, for reasons of susceptibility to political interference, being under-resourced or merely unaware that their practice is not lawful under international law. Community understanding and expectations also naturally inform such practices.

The notion of *progressive realisation*, namely that state obligations could be legitimately dependent on the stage of development of the country or available economic resources, does not apply to the prevention and prohibition of torture, or indeed any of the obligations under the UN Convention Against Torture.¹³

As a side, the importance of related and indivisible rights such as the right to life, liberty and security of the person, the right to be treated with dignity, fair trial and the right to private life, to name but a few, must also be respected to ensure that the freedom from torture is realised.

REFERENCES

¹ UN Committee Against Torture, General Comment No 2, para. 3.

² See Amnesty International's 12-Point Programme for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by Agents of the State.

³ UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16.1; UN Declaration on the Protection of all Persons from Enforced Disappearance, Article 10.2: of the authorities responsible, the times and locations of detention and release, and state of the health of detainee.

⁴ CAT A/48/44/Add.11 para 26; CAT/C/SR.50, para. 21; CAT/C/SR.91, para. 56; CAT/C/SR.201 paras. 16, 26. Richard Carver and Lisa Handley, *Does Torture Prevention Work?* (Liverpool University Press, 2017).

⁵ Ludwig Boltzmann Institute and University of Bristol Human Rights Implementation Centre, *Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk* (2011), p 11.

⁶ ICCPR, Article 7; CAT, Article 16; African Charter on Human and Peoples' Rights, 1981, Article 5.

⁷ United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) 1990, rule 6.2.

⁸ ICCPR, Article 9 (1); African Charter on Human and Peoples' Rights, 1981, Article 6.

⁹ ICCPR, Article 14 (1); African Charter on Human and Peoples' Rights, 1981, Article 7.

¹⁰ ICCPR, Article 14 (3) (c).

¹¹ ICCPR, Article 14 (2).

¹² A/54/44, para. 103

¹³ CAT/C/SR.101, para. 15. A/47/44, para 65.