

TORTURE & POLICING

Whilst acknowledging that the police play a vital role in preventing and combating crime as well as in maintaining law and order in our societies, police powers to apprehend, detain and question suspects, particularly when coupled with public and political pressure applied to police, bring with them an inherent risk for abuse. In fact, experience shows that the risk of police torture and ill-treatment is greatest during the first few hours after a person has been apprehended. Legal safeguards against torture and ill-treatment, as described below, guide authorities in their treatment and protection of detained persons to reduce the risk of torture and ill-treatment. This linkage is uncontested, yet the gulf between legislation and practice remains pronounced.

RIGHT TO NOTIFY A THIRD PERSON¹

is an essential safeguard to establish contact between the detainee and the outside world and, in turn, facilitate social and professional support and a means to follow their treatment. The information to be provided should necessarily include the detaining and supervising authorities, the time and location of detention, and the health state of the detainee.² This should be provided to a person of the detainee's choosing, at the outset of their apprehension.³ The person can be notified in a number of ways including directly by the detainee or by a police officer in the presence of the detainee. The details of time and person contacted, or when intended notification is not successful, should be registered. Should the detained person choose not to notify a third person, this should also be recorded and countersigned by the detainee. It may also be legitimate for notification to be delayed in certain cases.⁴

ACCESS TO A LAWYER⁵

must be extended to any person held in official custody including for administrative purposes, irrespective of legal status (i.e. whether deemed a witness, formally declared a suspect or not). The lawyer should be able to communicate privately with the detainee from the outset of their custody, including before and during questioning, whether preliminary, informal or official. The lawyer should be able to attend police questioning.

Access to a lawyer during trial preparation is a distinct, albeit related, right as the purpose is to ensure a fair trial (and not to necessarily to prevent torture) and does not satisfy the broader need as illustrated in the earlier phases. Effective legal aid covering these stages and not just at a court hearing, as it is often seen to be the case, needs to be provided to those who cannot afford to pay for a lawyer. That is, where a suspect cannot appoint or pay for their own lawyer, a legal aid lawyer needs to be appointed for them (ex officio) by the authorities. Otherwise, the right of access to a lawyer becomes elusive for those in police custody who cannot afford one.

ACCESS TO A DOCTOR⁶

upon request, without delay or limitations, possibilities for denial or discretion on the part of the police to make an assessment whether medical care is needed, must be respected. This right is not the same as the provision of emergency care. Medical examinations must be conducted by an independent, competent health professional, who properly documents and reports detected injuries to a competent authority, conducted in a confidential manner and not in the presence of a police officer, as that is likely to discourage detainees from revealing any torture or ill-treatment by the police.

INFORMATION ON RIGHTS⁷

It is axiomatic to state that a person needs to know, from the outset of apprehension, of their rights and how to ask for them in order to be able to exercise them. The authorities bear the onus to effectively (verbally and in writing), accessibly and promptly (and not depending on a formal declaration of being a suspect) inform a person, upon deprivation of liberty, in a manner that they fully understand, as depending on their age, education, language and other factors effecting mental capacity.

LENGTH OF POLICE CUSTODY & THE ROLE OF JUDGES AND PROSECUTORS⁸

Persons in police custody need to be brought before a judicial authority as soon as possible. Delays beyond 48 hours must be absolutely exceptional and justified.⁹ The importance of this safeguard lies in the fact that it is the first authority, independent of the police, to see arrested persons and scrutinize the legality of detention, a detainee's treatment at the hands of the police, (in terms of the provision of their rights, physical treatment) and observe any visible injuries. It is crucial to extend the safeguards to all forms of detention to counter any abuse by the authorities.

MOREOVER

- Separating the detention and investigative functions of the police has been emphasized by both the UN Committee Against Torture and the European Committee for the Prevention of Torture as significant to the prevention of torture and ill-treatment.¹⁰
- A comprehensive custody record, detailing when an individual was detained, interviewed, transferred, offered food, medically examined, informed of rights, visited by third parties etc., is a fundamental safeguard.¹¹

REFERENCES

¹ *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988):

Principle 16: 1. 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.

² *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.

³ CPT, 'Developments concerning CPT standards in respect of police custody', CPT/Inf(2002)15-part, para. 41.

⁴ See CPT, 12th General Report, para. 43: A detained person's right to have the fact of his/her detention notified to a third party should in principle be guaranteed from the very outset of police custody. Of course, the CPT recognises that the exercise of this right might have to be made subject to certain exceptions, in order to protect the legitimate interests of the police investigation. However, such exceptions should be clearly defined and strictly limited in time, and resort to them should be accompanied by appropriate safeguards (e.g. any delay in notification of custody to be recorded in writing with the reasons therefor, and to require the approval of a senior police officer unconnected with the case or a prosecutor).

⁵ *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988):

Principle 17: 1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

Principle 18: 1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultation with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in the present principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

See also CPT, 'Access to a lawyer as a means of preventing ill-treatment', paras. 18-25 of 21st General Report (CPT/Inf(2011)28).

⁶ *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* (1988):

Principle 24: A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.

Principle 25: A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

CPT, 'Developments concerning CPT standards in respect of police custody', CPT/Inf(2002)15-part, para. 42.

⁷ CPT, 'Developments concerning CPT standards in respect of police custody', CPT/Inf(2002)15-part, para. 44.

⁸ *International Covenant on Civil and Political Rights*: Art. 9 (3) 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. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

UN Human Rights Committee, *General Comment No. 35, Article 9 CCPR (Liberty and security of person)*, CCPR/C/GC/35, 2014, paras. 32-33 (footnotes omitted): Paragraph 3 requires, firstly, that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power. That requirement applies in all cases without exception and does not depend on the choice or ability of the detainee to assert it. The requirement applies even before formal charges have been asserted, so long as the person is arrested or detained on suspicion of criminal activity. The right is intended to bring the detention of a person in a criminal investigation or prosecution under judicial control. [...] It is inherent to the proper exercise of judicial power that it be exercised by an authority which is independent, objective and impartial in relation to the issues dealt with. [...]

See also CPT, 'Developments concerning CPT standards in respect of police custody', CPT/Inf(2002)15-part, para. 45.

⁹ UN Human Rights Committee, *General Comment No. 35*, para. 33: While the exact meaning of "promptly" may vary depending on objective circumstances,⁹⁵ delays should not exceed a few days from the time of arrest.⁹⁶ In the view of the Committee, 48 hours is ordinarily sufficient to transport the individual and to prepare for the judicial hearing;⁹⁷ any delay longer than 48 hours must remain absolutely exceptional and be justified under the circumstances.⁹⁸ Longer detention in the custody of law enforcement officials without judicial control unnecessarily increases the risk of ill-treatment.⁹⁹ Laws in most States parties fix precise time limits, sometimes shorter than 48 hours, and those limits should also not be exceeded. An especially strict standard of promptness, such as 24 hours, should apply in the case of juveniles.¹⁰⁰

¹⁰ CAT/C/SR.14, para. 17; CAT/C/SR.44, para. 39; CAT/C/SR.61, para. 73; Council of Europe et al, 'Seminar Report: Seminar on combatting torture during police custody and pre-trial detention 22-23 March 2018 in Copenhagen, Denmark', p. 4.

¹¹ CPT, *Police Custody*, Extract from the 2nd General Report, 1992, CPT/Inf(92)3-part1, para. 40.