



ENDING TORTURE

A Handbook for Public Officials

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THE REDRESS TRUST

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A. INTRODUCTION

Torture is a serious human rights violation and an international crime. Its use is absolutely prohibited under any circumstance as a matter of international law, and the prohibition against torture also figures in most national constitutions around the world. Yet torture and other forms of cruel, inhuman or degrading treatment or punishment still commonly occur in many countries and we all have a role to play in seeing the practice end.

This Handbook is published by REDRESS as part of its mission to eradicate torture worldwide. Its purpose is to answer key questions relating to torture which arise for ***public officials***.

The Handbook gives information and guidance to ***law enforcement personnel*** on how to end torture that are to be observed in their daily work. Law enforcement personnel who come into regular, even daily, contact with detainees include ***uniformed and non-uniformed police officers, prison wardens, intelligence and security officers, public prosecutors***.

Law enforcement personnel such as police officers have a responsibility to maintain public law and order. Part of this responsibility consists in the protection of human rights and the utmost respect for the individual; however, in their fight against crime and disorder such law enforcement personnel are also put in positions where they might violate human rights. A common example is the use of excessive, unlawful force, which could amount to torture, to obtain a confession or information from a suspect in a criminal

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investigation. A serious conflict can develop between maintaining law and order on the one hand, and respecting basic human rights on the other. A well trained and properly functioning force grounded in human rights values is essential to protect the public peace and to safeguard the rights of citizens.

B. GENERAL

I. What is torture?

Torture is the infliction of severe physical or mental pain or suffering on a person, by or with the consent of a public official, for a specific purpose such as gaining information, or as a form of punishment or intimidation. The full legal definition now accepted in international law and contained in the **United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** is as follows:

“Torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as a 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

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include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

Both physical and mental acts which cause severe pain and suffering are prohibited. Examples of practices that may amount to torture include: beating; extraction of nails; burns; electric shocks; suspension of the body; suffocation; exposure to excessive light, noise, heat or cold; sexual aggression such as rape or other forms of sexual assault; forced administration of harmful drugs in detention or psychiatric institutions; prolonged denial of rest, sleep, food, water, sufficient hygiene, medical assistance; total isolation and sensory deprivation; detention in constant uncertainty in terms of space and time; threats to torture or kill relatives; total abandonment; mock executions.

Acts which fall short of torture are still prohibited if they amount to cruel, inhuman or degrading treatment or punishment. There are two main differences between torture and these latter prohibited acts. Firstly, if a public official does something which does not cause **a sufficiently severe degree** of physical or mental pain or suffering, then the act would not be torture but it could constitute cruel, inhuman or degrading treatment or punishment. An example would be forcing a detainee to sleep shackled in leg-irons or handcuffs. Secondly, if the act was not inflicted for one or more of the specific **purposes** contained in the definition of torture (i.e. to obtain a confession or information, as a form of punishment for something done or suspected, intimidation) then it would also not be torture but could fall within cruel, inhuman or degrading treatment or punishment. An example would be the keeping of a

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bright light shining in a detainee's cell 24 hours a day because it is a 'regulation.'

2. Who are the perpetrators of torture?

The international law definition of torture is closely linked to it being a purposeful **official** act: the authorities in a country are themselves involved in it or allow it to happen, and therefore the 'normal' state machinery which should be prohibiting, preventing, investigating and prosecuting such an act has not functioned properly. So torture in this sense does not apply to private acts of cruelty such as those inflicted by criminal gangs or ordinary individuals. A public official is someone who has been given public authority and power by government organs, such as a police officer, a civil servant, a government doctor, a prison warden, a soldier and so on. Public officials are also called **state officials**.

However, torture can also take place in a wider context, for example, by a person that **actually** holds and exercises authority over others in a certain region and under particular conditions (such as a powerful 'warlord' or armed group that controls a part of a country) when such authority is similar to government authority, whatever the person's precise legal status. This is because the definition of torture refers to "public officials **or other persons acting in an official capacity**" and can therefore occur where a warring faction or rebel group creates quasi-governmental bodies and exercises some powers normally undertaken by an elected or legitimate government.

3. Who are torture victims?

Torture victims are individuals and groups of persons who suffer harm, including physical or mental injury, emotional suffering, economic loss, or breach of their fundamental legal rights as a result of the torture. Victims can also include dependants and members of the immediate family or household of the direct victim, to the extent that they suffered physical, mental, or economic harm. Torture victims are also called torture survivors. Experience shows that anybody can become a victim of torture, irrespective of class, age, gender, nationality or political persuasion.

4. What are the consequences of torture for victims/survivors?

One of the worst aspects of torture is that the state is involved - the very body designed to protect the rights of individuals. Public officials abuse their positions of power and commit serious crimes. For the victims this is a disorienting experience, and if there is nowhere for them to go to lodge a complaint or to seek assistance, if the perpetrators have become untouchable, then recovery is made even harder.

Torture, as a calculated act of cruelty that is often extremely degrading and disorientating, usually leads to severe and long-term physical and psychological trauma, possible upheaval and drastic change of circumstances. Any process of healing requires the survivor to come to terms with his/her traumatic experience. This is a very difficult process for most survivors.

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Conversely, the process of seeking and obtaining justice can be an empowering experience for survivors: it is the perpetrators who are forced to explain their actions and to make amends. It is therefore extremely important for the recovery of torture survivors that the authorities publicly acknowledge the wrong done and that those who have perpetrated the torture are brought to justice. Holding persons accountable helps to heal victims. It also helps to end the cycle of torture.

C. INTERNATIONAL LAW AND THE PROHIBITION OF TORTURE

I. What is international human rights law?

International human rights law is made up of rules or norms, established by treaty or custom, forming the basis on which states agree to be bound. Human rights are founded on respect for the inherent dignity of each person, and human rights law obliges states to act in a particular way and prohibits them from doing specific things, such as engaging in torture or other forms of cruel, inhuman or degrading treatment or punishment. Such basic or fundamental human rights are also called ***universal human rights***.

Both international and regional human rights treaties, and a vast body of human rights principles, have developed since World War II. International human rights treaties are usually drawn-up and monitored through the United Nations (UN), while regional instruments have emerged, for

example, from the Organisation of American States, the Council of Europe and the African Union.

2. What are the basic international law rules dealing with the prohibition of torture?

The prohibition against torture is **absolute**. ***There is no exception to this prohibition.*** It is set out in all the major international human rights texts and treaties dealing with civil and political rights, for example, Article 5 of ***the Universal Declaration of Human Rights***, Article 7 of the ***International Covenant on Civil and Political Rights***, Article 1 the ***Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment***, Article 3 of the ***European Convention for the Protection of Human Rights and Fundamental Freedoms***, Article 5 of the ***American Convention on Human Rights***, and Article 5 of the ***African Charter on Human and Peoples' Rights***.

Amongst numerous rulings in international tribunals, two examples show the nature of this absolute prohibition. The ***European Court of Human Rights*** said:

Even in the most difficult of circumstances, such as the fight against organised terrorism and crime, the [European] Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment.

The ***International Criminal Tribunal for the Former Yugoslavia*** stated:

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Because of the importance of the values it protects, ... the prohibition against torture ... has now become one of the most fundamental standards of the international community. Furthermore, this prohibition is designed to produce a deterrent effect, in that it signals to all members of the international community and the individuals over whom they wield authority that the prohibition of torture is an absolute value from which nobody must deviate.

The absolute ban on torture includes situations where a superior officer or public authority orders it. Such an order is illegal and cannot be relied on as defence. Because the prohibition against torture is both a rule of customary international law and is contained in the major international and regional treaties, no state or individual whatsoever and in whatever circumstances can lawfully commit torture.

Unlike some other fundamental rights and freedoms which can lawfully be limited or suspended at certain times such as during war or public emergency (for example, freedom of assembly or freedom of expression), the prohibition against torture can never be justifiably altered or restricted: **torture is at all times and in all circumstances prohibited.** For this reason the prohibition is described as being absolute. Thus although a state of war or a threat of war, internal political instability or any other public emergency might give rise to exceptional circumstances justifying the restricting of other basic human rights (such as the examples mentioned), the right not to be tortured can never be altered, suspended or restricted.

In a state which prohibits torture but then enters a period of instability such as a rebellion in part of it or a similar public emergency, the authorities might amend or suspend the national laws and procedures which are normally in place to protect individuals from torture. Security considerations might be raised as reasons why the prohibition against torture has to be 'watered down' in the 'national interest' or in 'the fight against terrorists.' Even if the laws are not officially amended, the authorities might also turn a blind eye to the torture of suspects involved in the insurrection. **However, none of this is acceptable under international law which prohibits torture in all circumstances.** Consequently, the fact that an alleged perpetrator was involved in a 'war against terrorists' will be no defence to a subsequent prosecution. International law does not recognise the 'right' to commit torture at any place or at any time, no matter whether during war or peace or in any situation between these conditions. This includes action taken to combat international terrorism.

3. What are states' basic obligations arising from the absolute prohibition against torture?

The absolute prohibition against torture obliges all states to do the following:

- They must prevent torture taking place within their territories – this means every state must take **active** steps to prevent torture, for example, by clearly prohibiting it in national legislation and enforcing the prohibition; national laws and practices dealing with

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the prevention and prohibition of torture must conform to international standards.

- Where torture has occurred the state must ensure that **complaints** are properly dealt with; this includes ensuring that all those who have allegedly suffered torture have a genuine opportunity to register their complaint without fear of victimisation.
- Where complaints have been made and/or the state is aware that torture may have occurred, matters must be **investigated** promptly, impartially and effectively.
- When proper investigations into the allegations establish that torture occurred, states are obliged to bring perpetrators to **justice** and to grant victims adequate **reparations**.

4. How are these international standards enforced?

A state is responsible for the illegal acts of its public officials. When the authorities of a state, whether or not they are acting under any official policy, fail to protect individuals from human rights abuses, they are in violation of international law and therefore incur **state responsibility**. Acts or omissions committed by a person or group are considered to be the acts of a state if the person or group is in fact acting on the instruction of, or under the direction or control, of that state.

If states fail to diligently prevent and/or respond to human rights violations, they are legally responsible. Accordingly,

there is a continuing obligation on states to provide effective domestic remedies for victims of human rights violations at all times: during times of peace and war, and even in times of emergency. If the remedies are non-existent or fail to provide prompt and adequate reparation, states commit a new and independent violation under international law. States must investigate alleged acts of torture, and must prosecute and punish alleged perpetrators and provide reparation to victims. Where they fail to do so they are in breach of their international obligations and international bodies and other states can then take sanctions envisaged under international law. (Some of the ways in which states are held to account are examined below.)

Importantly, torture also leads to ***individual or personal criminal and civil liability*** for perpetrators. Regimes sometimes try to protect those involved in torture by passing amnesty laws which absolve the police, soldiers and others from liability for anything done during a particular situation or over a specific period of time. However, international law does not recognise such amnesties, as in essence they are merely attempts to 'legalise' torture after the event. A new regime is not bound by amnesties granted previously, and perpetrators can and should be prosecuted no matter how long ago the torture was committed and no matter what 'laws' were passed to condone it.

Moreover, unlike most other unlawful conduct committed within a state which is left to each state to prosecute, a person who is alleged to have committed torture can be prosecuted ***anywhere in the world where he or she is found***. The prohibition against torture therefore gives rise

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to what is called *universal jurisdiction*. Torture is an international crime, and if an alleged perpetrator of torture in one country is found in a second country, the authorities in the second country can prosecute such a person even if the accused is not alleged to have tortured anyone outside of the first country. Universal jurisdiction helps to enforce the absolute prohibition: because the ban is so important, it gives rise to an exception to the usual rule of territorial jurisdiction whereby each state has the exclusive right to deal with what has happened within its borders. This special rule, therefore, is that an alleged torturer can be prosecuted wherever he/she is found *unless* such a person is extradited to face prosecution for the torture in another country – either where it took place or in a country more closely connected to the event. A famous example is that of former dictator General Pinochet, arrested in Britain for torture in Chile; he faced extradition to Spain for prosecution there as some of his victims were Spanish citizens. A more recent case of the exercise of universal jurisdiction was the prosecution, conviction and imprisonment in Britain of an Afghan warlord, Faryadi Zardad, for torture committed in Afghanistan. He was resident in Britain, and no country had sought his extradition.

5. What international mechanisms deal with the prohibition of torture, state responsibility and/or individual perpetrators?

Numerous international mechanisms, some arising from human rights treaties, help to monitor and enforce human rights, including those relating to the prohibition against

torture. Others have been set up directly by the United Nations.

The **United Nations Commission on Human Rights** meets each year to examine, monitor and publicly report on human rights situations in specific countries or territories (known as country mechanisms or mandates) or on major phenomena of human rights violations worldwide (known as thematic mechanisms or mandates). It consists of states elected for these purposes. There is also a **Special Rapporteur on Torture** tasked to provide the Commission with information on states' legislative and administrative actions related to torture.

Committees or “treaty monitoring bodies” monitor the implementation of core UN human rights treaties. These treaty bodies are composed of independent experts of recognized competence in the field of human rights, elected by states. Two important treaty bodies concerned with torture are the **Committee Against Torture** set up to monitor the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, and the **Human Rights Committee** which monitors the implementation of the **International Covenant on Civil and Political Rights**. These Committees consider reports by states concerning implementation of their obligations under the treaty concerned in both law and practice, and individual complaints, where the state concerned has accepted the power of the body in question to do so. (At the regional level, the Organisation of American States, the Council of Europe and the African Union have all established

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continental institutions which also provide for individual complaints.)

Other bodies deal with the criminal responsibility of those who commit serious human rights violations. The newly established *International Criminal Court* prosecutes the most serious international crimes, and there are other bodies as well, for example, the special *International Criminal Tribunals* created to deal with atrocities in the former *Yugoslavia* and in *Rwanda*.

D. INTERNATIONAL STANDARDS, TORTURE AND LAW ENFORCEMENT PERSONNEL

I. What are the basic obligations of law enforcement personnel in the prevention and prohibition of torture?

Clearly, the fundamental obligations of every state or public official are to refrain from committing, being complicit in it or condoning torture in any way whatsoever. Furthermore, this obligation extends to taking all possible steps to prevent any colleagues or subordinates from torturing. If torture has occurred then law enforcement personnel should treat the crime as seriously as they do any other crime, and do their duty: investigate and apprehend the culprits and bring them to justice. The universal jurisdiction aspect also means that law enforcement personnel in all countries in the world have a duty to apprehend any and all alleged perpetrators of torture who come within the borders of the state concerned, and to submit them to the justice

system too, either for prosecution or extradition. Like pirates, there should be no safe haven for torturers.

2. Are international standards on the prohibition of torture more relevant at some times and/or to some law enforcement activities than others?

All the rules, standards and principles relating to the absolute ban on torture apply at all times equally to all public or state officials, and to all law enforcement personnel. So soldiers at war against another state or involved in an internal conflict are no different in this respect to police officers or prison officers going about their routine duties during peacetime. The prohibition against torture is not flexible and cannot be bent to fit in with any battle against crime or an armed conflict against a rebel movement. Security considerations can never lawfully be used as justification for torture. This also applies to steps taken to combat international terrorism.

3. What are the other special international standards relating to law enforcement officials?

There are several important sets of standards which have been adopted through the United Nations, including a ***Code of Conduct for Law Enforcement Officers***, the ***Standard Minimum Rules for the Treatment of Prisoners***, the ***Basic Principles for the Treatment Of Prisoners***, the ***Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment***, and the ***Basic Principles on the Use of Force and Firearms by***

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Law Enforcement Officials. These legal documents, and others provide, guidelines for states to incorporate into national laws and practice. The **Code of Conduct** states that all law enforcement officials “*shall at all times fulfil the duty imposed upon them by law, by serving the community and protecting all persons against illegal acts*”; it goes on to say that in the performance of this duty “*law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.*” In respect of torture there is a specific further provision:

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

These international standards, principles and guidelines are often referred to when the various treaty-monitoring mechanisms (see above) examine the torture record in particular states, or deal with individual complaints. Thus although they do not form part of the treaties they are closely linked to them and are used to interpret the obligations of both states and individual public officials.

E. INTERNATIONAL STANDARDS ON THE PREVENTION OF TORTURE

I. What are the basic international standards relating to the prevention of torture?

In many countries detainees are often held *incommunicado*, denied access to a lawyer of their choice, stopped from telling relatives or others about the fact of their detention, and barred from the courts to challenge their detention and/or to lodge complaints about their treatment. Detainees are also frequently prevented from access to a doctor for treatment or medical examinations to record evidence of injuries from assault or torture. While any detainee can face these hurdles, those in the hands of security forces are particularly at risk, because security laws often fail to safeguard detainees' rights and to provide for effective judicial supervision.

The factors just described contribute to the creation of an 'abusive environment' in which human rights violations, including torture, usually occur. Comprehensive international standards have been developed to halt such an environment from developing. These standards consist of **custodial safeguards** which, if properly implemented, go a long way towards preventing torture from taking place; furthermore, if torture does occur, these safeguards increase the likelihood of the torture being quickly exposed and the culprits identified. In brief, the custodial safeguards include:

- The right of access to a **lawyer** of one's choice;

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- The right of access to **relatives and friends**, to ensure that detainees are not held incommunicado and that third persons are made aware of the detention;
- The right of access to a **doctor**, to ensure medical examination and the availability of medical records (and their possible use in subsequent proceedings against the alleged perpetrator(s));
- In the case of foreign nationals, the right of access to **diplomatic and consular** representatives who can intervene with the domestic authorities to uphold detainees' rights.

2. What is meant by the right of access to a lawyer of one's choice, and how can law enforcement personnel comply with the international standards involved?

International law recognises the right of any person deprived of his/her liberty to have prompt, full and unrestricted access to a lawyer of his or her own choice. The **Basic Principles on the Role of Lawyers**, the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** and the **Special Rapporteur on Torture** have developed standards concerning access to a lawyer, according to which national authorities should ensure the following:

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- All persons must immediately be informed of their right to a lawyer of their own choice following arrest and detention;
- Effective and equal access to lawyers must be given to all persons within the territory without exception; such access must be granted promptly, i.e. immediately and no later than 24 hours after the arrest;
- Detainees must be given adequate opportunities, time and facilities to be visited by and to communicate with a lawyer;
- These rights to consult and communicate should be exercised without delay, interception or censorship and in full confidentiality;
- The lawyer should be independent from the state apparatus;
- Persons who exercise the functions of a lawyer without having the same formal status, such as members of human rights organisations, should be allowed to assist detainees, and the same principles that apply to lawyers should apply to them.

An arresting officer, therefore, should inform the person at the time of arrest about their right to a lawyer, so that a lawyer can be present from the very beginning, in particular during questioning. Questioning of an arrested person should not begin before the suspect has had the chance to contact and consult a lawyer, unless this right is expressly

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waived. The officer must make it possible for the person to actually make contact, by giving access to a telephone or allowing some other method of communication to be used. An appropriate meeting place or room in which the detainee can meet the lawyer in private should be provided, and the lawyer should not be threatened or harassed when attempting to exercise his/her professional duty.

3. What is meant by the right to contact a family member or friend, and how can law enforcement personnel comply with the international standards involved?

An arrested person has the right to inform their family or a friend of what has happened and to contact them for this purpose. As with the right of access to a lawyer, there is an obligation on the arresting or detaining officer to tell the person that they have the right to contact such a family member or friend, and then to make such contact possible by giving access to a telephone or some other method of communication. Similarly, when such a person attends to see the detainee, proper meeting facilities and time must be provided, without harassment or intimidation of the visitor or the detainee.

4. What is meant by the right to be seen by a doctor and to be medically examined, and how can law enforcement personnel comply with the international standards involved?

International human rights bodies recognise that the prompt medical examination upon entering (and leaving) detention facilities, and/or upon request, is one of the elementary safeguards against torture. These international standards are contained in the ***Standard Minimum Rules for the Treatment of Prisoners***, the ***Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment***, and elaborated upon by the ***Special Rapporteur on Torture*** and the ***European Committee for the Prevention of Torture***. All countries should:

- Guarantee the right of detainees to be examined by a doctor, and, where necessary, to receive medical treatment;
- Offer a medical examination promptly after detention;
- Ensure that medical examinations of detainees are conducted out of hearing of law enforcement officials and, unless the doctor conducting the examination requests otherwise, out of sight of such officials;
- Grant a detainee or his/her lawyer the right to petition a judicial or other competent national authority for a second medical examination or opinion;
- Ensure that the forensic medical services are not under the same governmental authority as the police and prison system but under judicial or independent authority;

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- Guarantee detainees the right of access independent doctors.

Law enforcement personnel should take the necessary practical steps to see that the above standards are complied with. An arrested person should be told from the start that they have a right to be seen by a doctor, and if the person so wishes the competent authority should make the necessary arrangement to summon a doctor or to transfer the person to the nearest hospital, and he should inform the next of kin what is happening. An arrested person should be treated in a way that preserves their human dignity and should not be harmed physically or psychologically and should be provided with suitable medical care - there is a clear duty on the authorities to provide such medical care. The prompt and proper medical examination of a person who alleges torture is also crucial to ascertain the truth or otherwise of such allegations. Clearly, medical examinations that are carried out much later (after release from detention) are of less value: if a considerable time has elapsed after the alleged torture has occurred then visible signs of injuries may well have disappeared.

Proper facilities for medical examinations must be provided, and doctors must not be intimidated or harassed. If the detainee wishes to be examined or treated by a private or independent doctor this should be granted and steps should be taken to facilitate it. As a matter of routine procedure every person detained should be expressly told of all of their rights to proper medical attention at the time of entering and leaving a detention centre, and the authorities have a corresponding duty to examine a detainee upon so

entering and leaving. Furthermore, law enforcement personnel should ensure a detainee's express right to request a medical examination at any time, to be conducted out of hearing of officials and out of their sight.

5. What else can law enforcement personnel do to prevent torture?

In states which have institutions to protect and monitor human rights, law enforcement personnel can work with them to find ways of improving systems to prevent torture and to protect people in custody from such abuses. Because law enforcement personnel deal directly with detainees they can know what the weaknesses in any systems are, where violations are taking place, and who is responsible. Law enforcement personnel can also work constructively with local and international non-governmental organisations (civil society) to remedy faults and shortcomings. Where there are official or semi-official bodies which visit places of custody, ways can be found to assist them with the effective operation of their mandate, and to fully co-operate with them in exposing any defects in institutional safeguards.

F. THE RIGHT TO COMPLAIN ABOUT TORTURE

I. What are the international standards on the right to complain?

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International law clearly recognises the right to complain about torture (and the right to have the complaint investigated). The **Convention Against Torture** provides an express right for every person who alleges that they have been tortured to bring a complaint to the competent authority, and to have the complaint promptly and impartially investigated by the authorities. **The Inter-American Convention to Prevent and Punish Torture** expressly requires states to guarantee individuals a channel through which they can submit complaints of torture, and to have these complaints impartially examined through an immediate and proper investigation and criminal process. The right to complain about torture is also enshrined in the **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment**. The **Human Rights Committee**, the **European Court of Human Rights** and other regional international bodies have all affirmed the right to complain about torture and a corresponding duty of states to thoroughly and effectively investigate all such cases.

2. What is the significance of the right to complain about torture?

A 'complaint' about torture is an important right for victims in and of itself. It gives them the chance to positively express dissatisfaction and disapproval of their treatment. This may contribute substantially to the reestablishment of their sense of control and dignity. It is also a means to an end, in that it gives notice to the competent authorities of the possible commission of a crime. In this respect, the complaint is a **trigger** for the competent authorities to

begin an investigation, with a view to holding any perpetrator accountable as part of criminal or administrative proceedings. A complaint may also be a first step for the victim to obtain other forms of reparation, because without the evidence generated by a proper official investigation it is often difficult to pursue non-criminal legal remedies such as restitution or compensation: for example, the lack of clear medical documentation can seriously hinder the achievement of such remedies. Consequently, the availability of effective complaint mechanisms has very wide implications for the prevention and punishment of torture, as well as for remedies and reparation.

When victims make use of complaints mechanisms about torture, it also indicates the nature and extent of the practice in the country concerned. Analysis of patterns of complaints can assist authorities to identify necessary reforms or to counter systemic problems. In other words, as with other international standards which have been established to fight the scourge of torture, those surrounding the right of victims to complain are ways of measuring both the law and practice in all parts of the world, and the extent to which states reach levels towards which they ought to be aiming.

3. Who can exercise this right to complain about torture, and when?

The *Standard Minimum Rules for the Treatment of Prisoners* provides as follows:

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Every prisoner shall have the opportunity each weekday to make requests or complaints to the director of the institution or the officer authorized to represent him.

Torture allegations must be investigated promptly in order to secure evidence and protect victims from further torture, and this confirms that victims should be entitled to lodge complaints without delay or obstacle. The **Body of Principles** widens the above provision and states that legal counsel or family members, or indeed any other person, should have the right to report torture and other violations of the said **Body of Principles** to the appropriate authorities.

4. To whom can detainees and others who have allegedly been tortured exercise their right to complain?

The **Body of Principles** lists “detention authorities”, “higher authorities”, or, where necessary, “appropriate authorities vested with reviewing or remedial powers”. The **Standard Minimum Rules** refers to all the following as authorities with whom a detainee may lodge a complaint: the director of the institution, the officer authorised to represent him [the prisoner], the central prison administration, judicial authorities or other proper authorities. The **Convention Against Torture** refers to “competent authorities”, while the **Special Rapporteur on Torture** has noted the important role to be played by “judicial or other competent authorities”:

[These] shall review the lawfulness of the detention as well as monitor that the detained individual is entitled to all of his/her rights, including the right not to be subjected to torture or other forms of ill treatment.

5. How can detainees and others exercise their right to complain?

The **Convention Against Torture** does not require that a formal complaint be lodged: it is sufficient for the complainant/detainee simply to bring the facts to the attention of a competent authority, and the latter is then obliged to consider such an act as a tacit but unequivocal expression of the complainant's wish that the facts be promptly and impartially investigated. The **Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (known as the **Istanbul Protocol**), also confirm that even in the absence of an express complaint, an investigation must be undertaken if there are other indications that torture or ill-treatment might have occurred.

Consequently, states are obliged to open an investigation on their own initiative and without any complaint at all, where there are sufficient grounds to suspect that torture has taken place. One reason for this is that in certain cases victims may not be in a position to submit a complaint, for example the person may be deceased or too badly injured to do anything, or there may be language barriers. Allegations made by trustworthy non-governmental organisations or individuals are also sufficient. In addition,

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there is a duty for officials to report acts of torture or ill treatment. Whatever mode of investigation is employed, the authorities must act promptly once the matter has come to their attention - irrespective of the route, they have a **legal duty** to launch an investigation. They cannot leave it to the initiative of the next of kin or others either to lodge a formal complaint or to take responsibility for the conduct of any investigatory procedures.

6. What can and should law enforcement personnel do to comply with these international standards and so to ensure that detainees and others can exercise their right to complain?

Law enforcement personnel should take all necessary steps to ensure the following rights of detainees and others:

- To be informed about available remedies and complaints procedures;
- To have access to lawyers, doctors and family members and, in the case of foreign nationals, diplomatic and consular representatives;
- To lodge complaints with appropriate bodies in a confidential manner in any form and without delay;
- To have access to external bodies, such as the judiciary and visiting bodies, including the right to communicate freely with such bodies;

- To compel competent authorities to carry out an investigation;
- To have effective access to the investigatory procedure, including the right to undergo a timely medical examination.

These rights have developed from the rulings and reports of international human rights bodies, tribunals and treaty-monitoring organs. Individually and collectively they create specific duties, obligations and responsibilities on law enforcement personnel to expedite the exercise of these rights; conversely, they create responsibilities not to block, hinder or prevent their exercise. It follows that law enforcement personnel must acquaint themselves with their duties and obligations, and then take all the necessary measures to deal professionally with complaints at all stages.

7. How can law enforcement personnel best ensure that detainees and others have effective access to complaints procedures?

Law enforcement personnel must understand, appreciate and abide by the international legal framework relating to torture: its prohibition and prevention, and the legal rights of victims who have suffered torture, including the right to complain. They should also know the national laws and practice relating to these issues, and act to the best of their abilities within international law, even or particularly if there is a discrepancy between national laws and practice and these international standards. They must not allow

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weaknesses in national systems or the orders of their superiors to deflect them from this duty.

8. What practical measures can law enforcement personnel take to ensure that torture victims can better exercise their right to complain?

Victims should be clearly told of their right to complain, and have explained to them all the necessary procedural steps to make such complaints. Detailed and easy to understand information on the process should be given to victims and those with whom they are in contact. In order to help them, complainants should be given a choice of methods and locations for lodging complaints, and those authorities or institutions that are tasked to deal with them should provide a positive environment to overcome the psychological barriers to the bringing of complaints. This would include an open-door policy, guarantees of confidentiality, ensuring that officers receiving the complaints adequately reflect gender and ethnic/religious minorities, and the establishment of victim support groups and counselling services. Special steps should be taken, such as developing or amending codes of conduct, training of personnel, provision of confidential call lines, locked complaints boxes in detention centres and so on, to create a culture within law enforcement agencies that accepts and facilitates such internal complaints. Clear and accessible rules and procedures for recording and processing complaints should be in place, preferably enforced through legislation.

All complaints should be recorded in a daily log with the process closely and properly supervised. Complaints regarding torture and other cruel, inhuman or degrading treatment or punishment should be separately categorised in order to easily generate statistics for monitoring and follow-up. Once such a complaint is made, as well as in the absence of a complaint when the act is known to have occurred, the competent investigating officials should open an investigation without delay, or forward the complaint promptly to the competent authorities or investigators. Failure to do so should result in disciplinary and/or criminal sanction.

Complainants should be given a copy of their complaint together with a file reference number and should be kept regularly informed about follow-up steps taken. Complainants should have the right to challenge the non-recording of complaints (as well as any further decisions not to open an investigation on the grounds that the complaint is ill-founded) before a higher authority and/or a court of law. Alleged perpetrators should be automatically suspended for the duration of the investigation, unless the allegation is manifestly ill founded.

Officers receiving complaints should receive specialised training in dealing with trauma victims. Specific measures need to be taken for groups who traditionally face additional obstacles in accessing complaints procedures, such as marginalised communities, foreign nationals, asylum seekers and unlawful immigrants. Such measures can include out-reach programmes to these groups through community organisations or leaders, the guaranteeing of consular access, allowing complaints to be lodged in

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languages other than the national language, providing special assistance for lodging complaints, and having liaison officers for specific community groups.

9. What happens if the international standards relating to the right to complain are violated?

In a state which seriously endeavours to meet these international standards, violations will trigger national administrative and judicial consequences for the law enforcement personnel who have failed in their duties and obligations. In a state where authorities connive at or condone torture and are therefore most likely to also violate the rights of victims to remedies and reparations, those responsible may regard themselves as beyond the law. However, they will be accountable in the eyes of international human rights institutions, and in due course, as their state moves towards improving its human rights records, they will be judged nationally as well.

G. THE INVESTIGATION OF TORTURE

I. What are the international standards on the obligation to investigate torture?

Any allegation of torture should trigger the state to investigate the substance of the complaint ***promptly, impartially*** and ***effectively***. This obligation does not extend to clearly frivolous cases or those that are

‘manifestly unfounded.’ According to the **Special Rapporteur on Torture**, all torture allegations should be investigated and the alleged perpetrator(s) suspended from duty; however, the latter step should only be taken where the allegation is not manifestly ill founded. The **Standard Minimum Rules for the Treatment of Prisoners** obliges the authorities to deal with any complaint “*unless it is evidently frivolous or groundless*”, while the **Body of Principles** states that “(e)very request or complaint shall be promptly dealt with and replied to without undue delay.”

The **European Court of Human Rights** and the **Inter-American Court of Human Rights** have both found that states have a duty to inform the complainants about the outcome of investigations, and to publish the results. The most detailed pronouncement of what publication entails is in the **Istanbul Protocol**, in relation to commissions of inquiry, according to which:

A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, the report shall be made public. It shall also describe in detail specific events that were found to have occurred, the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation, and, as appropriate, indicate steps to be taken in response.

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Both the **Committee Against Torture** and the **Human Rights Committee** have called on states to publish information on the number and nature of complaints, investigations undertaken, and steps taken following such investigations, including punishment of the perpetrators; the **Human Rights Committee** has also urged states to provide specific information on the remedies available to victims and the procedure that complainants must follow, statistics on the number of complaints, and how they have been dealt with.

2. What is meant by the requirement of *prompt* investigations into torture complaints?

The **Convention Against Torture** expressly requires ***prompt*** or ***immediate*** investigations upon receipt of complaints of torture. There are no hard and fast rules as to what constitutes “*prompt*” or “*immediate*.” Cases indicate that it depends on the circumstances but that the words would normally be given their literal meaning.

In one case the complainant told an investigating judge of torture on 5 December 1988, but an investigation only began in March 1990. The **Committee Against Torture** found that this was an unreasonable delay. In another case the complainant alleged during her first arraignment on terrorism-related charges that she had been tortured. It took another 15 days before the complaint was taken up by a judge and another four days before an inquiry began. The investigation then took 10 months, with gaps of between one and three months between statements on forensic evidence reports. The **Committee Against Torture** found

this also to be an unacceptable delay. Promptness therefore relates not only to how soon an investigation begins, but also how quickly it is completed.

The ***European Court of Human Rights*** has applied the test of whether “*the authorities reacted effectively to the complaints at the relevant time.*” In several cases it found that the authorities had failed to effectively investigate in that they had not acted promptly. In one case it observed that no attempt was made to ascertain the truth through contacting and questioning witnesses in the immediate aftermath of the incident, when memories would have been fresh. Law enforcement personnel have a duty to know these basic principles, and to act on them. All complaints of torture must be handled with the importance they deserve. Investigating officers must be properly trained in the methods required, and systems and resources should be in place so that prompt action can be and is taken. There must be clarity as to who is responsible to do what, and monitoring procedures ought to be in place to ensure that what needs to be done is indeed done properly and promptly.

3. What is meant by the requirement of *impartial* investigations into torture complaints?

Impartiality is a key, if not the most important, requirement of the investigation process. The term ***impartiality*** means free from undue bias. It is different from ***independence***, which means the investigation is not in the hands of persons who have close personal or professional links with the alleged perpetrators. However, the two concepts are

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closely linked, as a lack of independence is commonly seen to result in partiality.

The ***Convention Against Torture*** and the ***Inter-American Convention to Prevent and Punish Torture*** expressly require investigations to be impartial. The ***Human Rights Committee*** has also found impartiality to be an implicit requirement for any investigation under its governing treaty, as has the ***European Court of Human Rights***. Impartiality may relate to the proceedings or deliberations of the investigating body, or to any suspicion of bias that may arise from conflicts of interest. In one case the ***Committee Against Torture*** said that the investigation was not impartial because the court failed to take steps to identify the alleged perpetrators, and because it refused to allow the complainant to adduce further evidence to support a doctor's forensic report. In another case the magistrate who led the inquiry was found to be partial because he failed to give equal weight to evidence from both sides.

In its consideration of state party reports, the ***Committee Against Torture*** has criticised the absence of independent bodies to investigate torture, particularly torture by the police, the institution that ordinarily would investigate. Similarly, the ***Human Rights Committee*** has expressed concern about the lack of impartial investigations of complaints about torture, including the absence of an independent oversight mechanism, and urged states to establish independent bodies competent to receive, investigate and adjudicate on all complaints of torture and ill treatment. The ***European Committee for the Prevention of Torture*** has repeatedly stressed the importance of impartial and independent investigations as one of the

means of strengthening the protection of detainees from torture and inhuman treatment. In 2000 it noted as follows:

It is axiomatic that the investigations conducted into such [torture] cases should not only be, but also be seen to be, totally independent and impartial [and] it is indispensable that the persons responsible for carrying out investigations into complaints against the police should be truly independent from those implicated in the events.

4. What is meant by the requirement of effective investigations into torture complaints?

Treaty-monitoring bodies and other human rights institutions have frequently said that investigations must be **thorough** and/or **effective**. For example, according to the **Committee Against Torture**, investigations must seek to ascertain the facts and establish the identity of any alleged perpetrators. In one case where the state failed to order an exhumation, it found that this prevented the facts surrounding the victim's death from being ascertained, and the investigation was therefore ineffective. The **Human Rights Committee** has consistently held that states have a duty to investigate cases of torture and disappearances thoroughly, and has called upon states to have procedures that ensure the effective and thorough investigation of complaints.

The **European Court of Human Rights** has held:

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The notion of effective remedy...includes the duty to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible for any ill-treatment and permitting effective access for the complainant to the investigatory procedure.

An investigation must be effective in practice as well as in law, and must not be unjustifiably hindered by the acts or the omissions of the state. Furthermore, what is effective may vary according to the particular circumstances, but authorities must always make a serious attempt to find out what happened and “*should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions.*” Investigations should be of reasonable scope and duration in relation to the allegations.

When gathering evidence, state authorities are required to observe the following principles and practices:

- Objectivity;
- A proper attitude of the authorities towards victims and alleged perpetrator(s);
- Timely questioning of witnesses;
- Seeking evidence at the scene, (for example by searching detention areas, checking custody records and carrying out objective medical examinations by qualified doctors);

- Use of medical reports, and, in death in custody cases, obtaining forensic evidence and carrying out an autopsy.

The **Istanbul Protocol** has further specified that:

The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. These persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.

The **Special Rapporteur on Torture** has expressly endorsed the principles laid down in the **Istanbul Protocol**; similarly, the **European Committee for the Prevention of Torture** has stressed that detainees should have the right to be examined by independent doctors, and should be medically examined by qualified doctors upon entering and leaving detention facilities as well as upon request without undue outside interference, such as the presence of police officers. The **Inter-American Court of Human Rights** also referred to the need for effectiveness and to adopt all the internal legal measures necessary to facilitate the identification and punishment of those responsible.

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5. How can law enforcement personnel ensure that investigations are effective and in line with international standards?

Law enforcement personnel play a crucial role in preserving and finding sufficient evidence to support allegations of torture and cruel, inhuman or degrading treatment or punishment. Often investigations break down through failures to observe basic rules of how to conduct such a criminal investigation. In order to address this deficiency, and as a rule, any allegation of torture should be followed by a prompt medical examination, both for physical and psychological signs of torture. Further investigations into the allegations must follow without delay, including: the questioning of the complainant, witnesses and the alleged perpetrator(s); inspection of the alleged scene of the crime and the collection and preservation of forensic evidence, the taking of photographs, safeguarding of weapons or instruments used and so; the checking of custody records. In death in custody cases or other instances where the victim has allegedly died as a result of torture or other forms of ill treatment, it should be mandatory to carry out a post-mortem examination by an independent forensic expert. The *Istanbul Protocol* provides helpful, detailed and practical standards to guide investigations into allegations of torture and ill treatment and should be made widely available to investigators and medical experts.

6. How can law enforcement personnel best protect torture victims and ensure their right to participate in investigations?

The **Body of Principles** provides that neither the detained or imprisoned person nor any complainant shall suffer prejudice for making a request or a complaint, and the **Convention Against Torture** expressly requires states to protect complainants and witnesses from intimidation. International criminal tribunals have made major advances in the recognition of the rights of complainants and witnesses to be free from intimidation, harassment or ill treatment. Separate units have been created to guarantee victim and witness protection, to respect their privacy and dignity, and to provide rehabilitative services and support.

The **Committee Against Torture** has expressed concern about the lack of adequate protection for victims and witnesses and the failure of authorities to ensure protection from reprisals, while noting with approval the establishment of witness and victim protection services or programmes. The **Special Rapporteur on Torture** has recommended that witness protection schemes be established, and that alleged perpetrators be suspended pending the results of investigations, provided the allegation of torture is not manifestly ill founded. In a **European Court** case it was held that the fact that state agents had intimidated members of the victim's family after a complaint of torture was submitted violated the complainant's right to make a complaint without interference:

It is of the utmost importance for the effective system of individual petition that applicants or potential applicants are able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints.

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Other examples of interference include direct intimidation or coercion, approaches by government agents to question or interrogate victims, their families or their legal representatives about applications to court, requests that petitioners sign documents denying or repudiating the substance of their claims, and threats of criminal proceedings. Law enforcement personnel should refrain from any behaviour that could be seen as threatening or intimidating complainants, and where they become aware of unacceptable behaviour by colleagues they should do their utmost to stop it, and advise superiors or independent supervisory bodies.

International standards and treaty bodies also recognise the rights of torture victims to take part in investigations and to receive information about the progress and outcome of investigations and prosecutions. The **Committee Against Torture** has held that complainants are entitled to give evidence, and the failure to allow this goes to the root of the lack of impartiality. It has also noted that a failure to inform complainants of the result of investigations breaches their right to a remedy. The **European Court** has ruled that the next of kin of the victim is always allowed to be involved in the procedure to the extent necessary to safeguard their legitimate interests. To this end, the complainant must have effective access to the investigation process and should have the opportunity to make statements. The **Inter-American Court** has held:

The next of kin of the victims and the surviving victims must have full access and the capacity to act during all stages and

levels of said investigations...[T]heir results must be made known to the public, for ... society to know the truth.

7. What practical measures can law enforcement personnel take to ensure that detainees and others can better exercise their right to have their torture complaint investigated?

The local reality in each state and region must dictate what will work and what will not. There is no unique answer to the protection of victims and how best to raise awareness of all the issues involved. Detainees should be told of their rights upon arrest, including the right to lodge complaints about any form of ill treatment and the procedures to be followed. Moreover, detainees should be medically examined when entering and leaving detention facilities and during their detention, upon request. Such medical examination should be carried out by independent physicians or, where carried out by official doctors, should be undertaken out of sight of police officers in a confidential manner.

Detainees should have the right to complain to prison authorities at any time; in addition they should be allowed to lodge timely complaints to independent bodies without being punished for doing so. This should be done through regular and confidential channels of communication to outside bodies, i.e. independent visitors, national human rights institutions, oversight bodies, prosecution services or judges, and effective guarantees against persecution for lodging complaints. In other words **external** institutions should be complemented by **internal** complaint procedures

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that allow detainees to complain about ill-treatment to higher ranking officials who are in turn responsible for investigating any such complaint and for taking effective action - not only with regard to the particular case, but also to address institutional shortcomings.

8. What policy measures can commanding officers and managers in law enforcement agencies take to ensure that torture victims can better exercise their right to complain?

The heads of police and other law enforcement bodies should regularly report to the government on progress made in achieving the policy objectives and identifying the main problem areas. Such reports should be made public. The data should include statistics on all complaints about torture and other cruel, inhuman or degrading treatment or punishment, as well as other relevant statistical breakdowns, such as: sex, region, religious and/or ethnic affiliation, nature and date of the complaint. Furthermore, statistics should be gathered on the persons and units/forces said to be responsible, on reports of harassment or intimidation of complainants, on the outcome of investigations, and on the implementation of recommendations made. This data should be regularly analysed to establish patterns including, where possible, systemic causes of police misconduct, with a view to making complaints procedures more effective.

Underlying factors that hinder investigations and prosecutions in torture cases must be systematically analysed by law enforcement agencies, prosecution services, the judiciary and the government, as appropriate. Ideally,

authorities should commission an independent and thorough review of all complaint and investigation procedures, which would necessarily include the confidential interviewing of victims to understand more intimately the practical problems that they have faced at different stages of the procedures. Sufficient resources should be made available to enable qualitative collection, analysis and publication of data so as to enhance accountability and to bring about reforms where necessary.

Irrespective of any complaints public officials, in particular police officers, should be required to report torture cases to the competent authorities, which in turn should have to investigate *ex officio* any credible allegations of torture that come to their attention. The failure to report the criminal conduct of fellow police officers should be both a disciplinary and a criminal offence. All available complaints processes should be periodically reviewed to see if they could be simplified and improved - procedures for lodging complaints should be easy to understand and follow and should be made accessible to victims and those that come into contact with them. Direct and indirect victims should be allowed to lodge complaints, but others, such as non-governmental organisations working directly with victims should also have standing to lodge torture complaints in the public interest. Extending the right to complain to such organisations removes one of the key motivations for threats and other pressure put on victims and their relatives. All these measures should be complemented by legislation criminalising victim harassing, intimidation or bribery, and the bringing of unfounded, counter-accusations against complainants.

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H. REMEDIES AND REPARATIONS: THE RIGHTS OF TORTURE VICTIMS

I. What are the international standards relating to torture victims?

The right entitling victims of human rights abuses, including torture victims, to a remedy and reparations for their loss and suffering derives from the fundamental principle of general international law that states are responsible for their wrongdoing. This right is firmly embodied in international human rights treaties and declarative instruments. The obligation on states to provide reparation to victims has been further refined by the decisions of a large number of international and regional courts, as well as other treaty bodies and complaints mechanisms. A state is responsible to afford reparation when:

- It breaches an international obligation;
- There is material and/ or moral damage.

Most human rights instruments guarantee both the **procedural right** to a fair hearing (through judicial and/or non-judicial remedies) and the **substantive right** to reparations (such as restitution, compensation and rehabilitation).

Judicial remedies are considered more and more necessary to ensure respect for human rights. The **African Charter**

on Human and Peoples' Rights for example, provides that all remedies should be judicial. The **Charter of Fundamental Rights of the European Union** refers to an effective remedy before a tribunal in the case of violations of rights and freedoms guaranteed by the law of the EU. In the case of serious human rights violations such as torture which constitute serious international crimes, the need for judicial remedies is clearly established. The **Human Rights Committee** has explained:

Purely disciplinary and administrative remedies cannot be deemed to constitute adequate and effective remedies... in the event of particularly serious violations of human rights, notably in the event of an alleged violation of the right to life.

In the case of forced disappearances, extrajudicial executions or torture, the remedy must also be of a judicial nature.

The **Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights and Serious Violations of Humanitarian Law** deals with reparation under five separate heads:

- Restitution
- Compensation
- Rehabilitation
- Satisfaction

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- Guarantees of non-repetition

2. What is the significance of reparation for victims of torture, and for society in general?

Torture is an extremely traumatic event designed to break the physical and psychological integrity of the victim with the aim of destroying his/her personality. Torture has been likened to killing a person without them dying. Accountability of the perpetrators and public acknowledgment of the suffering and the wrong inflicted is not only important for individual victims, but also serves as a public record that a wrong has been committed and acts as deterrent against would-be perpetrators, thereby strengthening the rule of law. For many torture survivors, the process of seeking justice and reparation is a vital part of their recovery in that it allows them to regain a sense of dignity and control. It can also be a way to restore confidence and legitimacy in the fairness of the justice system. According to **Theo van Boven**, the former **Special Rapporteur on Torture** and the originator of the draft **Basic Principles and Guidelines** referred to above, reparation has “*the purpose of relieving the suffering of and affording justice to victims by removing or redressing to the extent possible the consequences of the wrongful acts.*” For this reason “*reparation should respond to the needs and wishes of the victim.*”

3. How are these international standards enforced?

Mention has been made of the ways in which international treaties are monitored and how specific human rights institutions have been created, such as the **Human Rights Committee**, the **Committee Against Torture**, and the **Commission on Human Rights**, to name some. They are all concerned with the rights of torture victims, and with ways of helping them to get justice and reparations. In addition, there is a growing movement in international law for ways in which to place the rights of victims at the centre of international tribunals, such as in the **International Criminal Court**: perpetrators of gross and systematic human rights violations can now be brought to justice in a permanent criminal court outside of the state where the violations happened, and the trial is as much concerned with compensating the victims as with punishing the perpetrator. This is an important step forward for victims. While prosecution is vital to deter and prevent future international crimes and to punish perpetrators, and while successful prosecutions can be part of 'justice' for victims, more is needed: victims have the right to a variety of different, specific forms of reparation.

4. What is the connection between the rights of torture victims and the responsibilities of law enforcement personnel?

At a basic level the first responsibility of all law enforcement personnel is not to commit torture, and to prevent others from doing so: to stop the creation of victims. If torture has been inflicted then the rights of the victim come into play, and numerous specific responsibilities for law enforcement personnel arise. These include:

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- Preventing further torture taking place;
- Giving the victim an opportunity to complain;
- Granting access for proper medical and psychological care and legal advice;
- Ensuring the complaint is properly investigated and suspected perpetrators brought to justice as with other crimes;
- Playing a role in preventing such illegal acts in future.

In short, any instance of torture creates multiple duties and obligations on law enforcement personnel to go as far as reasonably possible to stop and put right the wrong which has occurred; conversely, not to cover-up the wrong but on the contrary to have the truth revealed and to help correct the damage done (physical, mental, economic and social) to the victim, without fear or favour.

5. What happens if law enforcement personnel violate international standards on the rights of torture victims?

The international institutions, mechanisms and instruments created to monitor and enforce human rights at the level of state responsibility as well as individual liability have been described. Through these, violations can be raised, recorded and reported on, and steps taken to persuade states to remedy failures to investigate, to grant reparations, and to

deal with officials who failed to fulfil their duties and obligations. A public official who neglects his or her duty can be an accomplice to a cover-up and at the very least lay themselves open to claims for civil damages, both in the state concerned and outside of it. To the extent that national laws and practices are in conformity with international standards, the breach of the latter will result in administrative and judicial consequences at a national level. Law enforcement personnel who intentionally or negligently fail to respect the rights of victims to an effective remedy and adequate reparations will have compounded the original wrong - the breach of the prohibition against torture - instead of fulfilling their duty to repair it. Law enforcement personnel responsible for torture are liable to:

- Pay compensation;
- Make an apology to the victim(s) and/or their families;
- Face disciplinary sanctions, including dismissal from services as well as criminal charges.

6. What difference does it make to torture victims when there are effective accountability mechanisms for law enforcement personnel?

Many states have ratified the international instruments and treaties that give effect to the right to reparation for serious violations of human rights, including torture, but torture continues. Most countries have accepted the high principles of international obligations but have done little to ensure

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their practice nationally; the prohibition against torture is a principle that is universally recognised in theory, yet states continue to condone it behind closed doors. If there is a failure to acknowledge the wrong this makes it almost impossible for perpetrators to be brought to justice, or for the dignity of victims to be restored.

It is crucial therefore that all public officials, especially law enforcement personnel, play a positive role in the worldwide campaign against torture. Every individual officer can contribute to building a society and a state free from torture, and to ensure that those who do perpetrate this crime are made accountable. In this way the terrible wrongs done to torture survivors have the possibility of being remedied.

ANNEX

The following are the main documents which have been cited in this Handbook:

African Charter on Human and Peoples' Rights, (Banjul Charter), Adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982)

American Convention on Human Rights, O.A.S. Treaty Series No. 36

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, E/CN.4/2005/L.48, 13 April 2005

Basic Principles on the Role of Lawyers, U.N. Doc. A/CONF.144/28/Rev.1 at 118 (1990)

Basic Principles for the Treatment of Prisoners, G.A. res. 45/111, U.N. Doc. A/45/49 (1990)

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, U.N. Doc. A/CONF.144/28/Rev.1

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A.res.43/173, U.N. Doc. A/43/49 (1988)

Code of Conduct for Law-Enforcement Officials, G.A. Res. 34/169, U.N. Doc. A/34/46 (1979)

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N.Doc.A/39/51 (1984)

European Convention for the Protection of Human Rights and Fundamental Freedoms, (E.T.S. 5), Rome 4.XI.1950

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Inter-American Convention to Prevent and Punish Torture, O.A.S.
Treaty Series No. 67

International Covenant on Civil and Political Rights, U.N. Doc.
A/6316 (1966), 999 U.N.T.S. 171

***Principles on the Effective Investigation and Documentation of
Torture and Other Cruel, Inhuman or Degrading Treatment or
Punishment (Istanbul Protocol)***, Adopted by General Assembly
resolution 55/89 Annex, 4 December 2000

Rome Statute for the International Criminal Court, Rome (17 July
1998)

Standard Minimum Rules for the Treatment of Prisoners, Adopted
August 30, 1955, by the First United Nations Congress on the
Prevention of Crime and the Treatment of Offenders, U.N.
Doc.A/CONF/61 I, annex I, E.S.C. res. 663 C, 24 U.N. and E.S.C.
res. 2076 (LXII) (13 May 1977)

Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N.
Doc A/810 (1948)