

MODULE 12

Introduction

The UN Convention against Torture (UNCAT) defines torture as containing four elements: (i) severe mental or physical pain or suffering; (ii) inflicted intentionally; (iii) to punish, intimidate, coerce, obtain a confession or information, or for any other reason based on discrimination of any kind; and (iv) by or at the instigation of a person in an official capacity.

Given that most detention settings exist explicitly for a punitive purpose and are run by State officials, these are settings in which there is a heightened risk of abuse amounting to ill-treatment or torture. In detention settings, the State typically has absolute control over detained or imprisoned persons, often in a closed and isolated location, making them uniquely vulnerable. As such, certain conduct in detention settings can violate the prohibition on torture and ill-treatment when it otherwise would not. Moreover, the very conditions of detention can constitute torture and cruel, inhuman or degrading treatment or punishment (CIDTP).

Detention should be understood comprehensively, so as to include police stations, prisons, immigration centres, detention centres, health centres such as psychiatric institutions, childcare centres, etc.

Torture and ill-treatment in detention settings

The following forms of treatment in contexts of detention or imprisonment have been held to amount to torture:

- *The excessive or repeated use of force in prison which results in severe physical or mental pain or suffering.* For example, in the case of Mendoza et al. v. Argentina, the Inter-American Court of Human Rights (IACtHR) held that two prisoners had been tortured in an Argentinian federal prison when they were subjected to strong blows to their feet, a common technique of torture also known as “falanga”.
- *Acts of abuse and physical or psychological violence before and during detention.* For example, in Ntikarahera v. Burundi, the Committee against Torture (CAT) found that the complainant had been subjected to torture when he was “handcuffed, put into a vehicle and beaten until he lost consciousness on the way to the jail of the criminal investigation police.”
- *Rape in detention as a form of torture.* In M.T. v. Uzbekistan, for example, the Human Rights Committee (HRC) found that the beating, threat of rape, and gang-rape of a woman prisoner in Uzbekistan amounted to torture, and that these and other severe abuses were “aimed at breaking her moral and physical resistance so as to force her to [confess].”

Various bodies have also held that the following kinds of treatment can amount to torture in detention settings: mock executions; the firing of rubber bullets at prisoners; the failure to

provide food, water, and medical care; exposure to cold; hot- and cold-water treatment; credible threats of harm to the victim or a third party; and sleep deprivation.

Solitary confinement may also amount to torture, in particular where the right to benefit from prompt and independent medical and legal assistance is not respected, or if the solitary confinement is of an excessive duration or is accompanied by other harmful treatment. The CAT held in Yrusta v. Argentina that torture was committed where the victim was placed in isolation in punishment cells for more than 20 days in a row. There is no minimum duration for isolation to constitute torture; thus, torture was also held to have taken place where a victim was “handcuffed and locked in a lavatory measuring 1.5m by 3m [...] for five days without water, food, contact with the outside world or medical care of any kind.” On the other hand, solitary confinement or *incomunicado* detention unaccompanied by other ill-treatment will be held to amount to CIDTP as opposed to torture.

Where the use of force in contexts of detention or imprisonment does not reach the level of severity required for a finding of torture, it may still amount to CIDTP. For instance, the CAT has held that when a person was hit upon her arrest and repeatedly had her face hit against the partition inside the patrol car as she was being taken to the police station, ultimately breaking her nose, it amounted to CIDTP. Overcrowding or poor sanitary conditions in detention facilities may also give rise to a finding of CIDTP.

As mentioned, the risks of CIDTP and torture are present not only in jails and prisons, but also in other custodial settings such as immigration detention centres, childcare centres, and psychiatric facilities.

Legal standards to safeguard against torture in detention settings

Several codes of conduct set out principles to guarantee the rights of detained and imprisoned persons and limit the use of force by law enforcement officials in detention and imprisonment settings. These include the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Examples of regional guidelines include the Luanda Guidelines in Africa and the European Prison Rules. Many States’ constitutions also set out protections for people deprived of their liberty.

According to these and other international and regional codes of conduct, everyone has the right to life, security of the person, and freedom from torture and CIDTP while in detention. Law enforcement officials should not use force unless absolutely necessary, and they should always use non-violent means first. If law enforcement officials must use force (which is only ever permissible for security purposes), they should exercise restraint and minimise injury, and their use of force must be “proportionate” to achieve a legitimate aim. They should also be trained in the use of non-violent means to manage conflict or emergency situations.

Mechanisms to report torture in detention settings

When legal standards are not being met, complaint mechanisms can play an important role in preventing or stopping torture in detention settings. In many countries, the administrative authority responsible for places of detention will conduct internal inspections and provide opportunities for prisoners to file internal complaints. Unfortunately, such complaint mechanisms are often unavailable or completely ineffective. In some countries, independent

oversight bodies have been established, allowing prisoners to file external complaints. Again, the availability and effectiveness of such mechanisms varies widely, and most often is inadequate.

When the national of a country is being detained abroad, consular protection is an important avenue to prevent abuse in detention.

States that have adopted the UN Optional Protocol to the CAT (OPCAT) are obligated to set up National Preventive Mechanisms (NPMs) to periodically visit and inspect detention centres to ensure the proper safeguarding of the rights of detainees. The NPMs cooperate with the UN Special Rapporteur on Torture and the Subcommittee on Prevention of Torture.

In terms of regional and international complaint mechanisms, see *Module 8: Forum Choice*.

Individuals and NGOs can turn to advocacy strategies to bring attention to torture and CIDTP taking place in detention settings, and to pressure States to respond, to make available avenues for justice and reparations for victims, and to change laws and policies to ensure the safeguarding of the rights of detainees and prisoners (see *Module 7: Advocacy*).

Further Reading

Universal Rights Group, [Safeguarding human rights in places of detention: the role of National Preventive Mechanisms during COVID-19](#).