



THE GLOBAL CAMPAIGN FOR PRETRIAL JUSTICE

WHY PRETRIAL DETAINEES FACE THE GREATEST RISK OF TORTURE

Torture and cruel, inhuman or degrading treatment are not aberrations. They are common—even routine—in many detention facilities. Of the over ten million people in detention around the world, those held in pretrial detention are most at risk of torture: they are wholly in the power of detaining authorities, many of whom perceive torture as the fastest way to obtain information or a confession and the easiest way to exercise physical and mental control over detainees. The practice is exacerbated by indiscriminate arrests, primarily of poor people without the resources to extricate themselves from detention.

Nigeria: a man arrested in 2001 was still awaiting trial more than six years later. He reported that he was frequently beaten and that police repeatedly demanded money—which he did not have—in return for moving his case along.

Who Is at Risk?

All detained persons are at risk of being tortured. Although many people assume torture victims are likely to be political prisoners or suspected terrorists, most victims of torture and inhuman treatment are ordinary people accused of ordinary crimes. Those from the poorest and most disadvantaged sectors of society are at

particular risk. They are more likely to be discriminated against by the police, and less able to pay bribes, and thus more likely to end up in detention. While detained, the discrimination usually continues and exposes them to an increased risk of torture, compounded by their inability to afford a lawyer.

When are Detainees Most at Risk?

While all detainees are at risk of torture and ill-treatment at all stages (both pretrial and post-conviction) of their detention, torture is most likely to occur at the pretrial stage. Torture flourishes during the very initial stages of detention—usually in the first days or even hours of police custody—when the police seek information and/or confessions from detainees. Three distinct phases can be identified during the pretrial stage.

1 Upon Apprehension

Illegal or excessive use of force by the police often amounts to torture or ill treatment:

- while making arrests, particularly during mass police operations;
- during transfer to the police station, for example in the a police vehicle particularly if there are no controls such as video cameras; or
- during a stop at a secret detention center or a secluded location en route to the police station.

2 In Police Custody

Torture in police custody was found to be widespread or systematic in eleven of the fifteen countries visited between 2005 and 2009 by the current UN Special Rapporteur on Torture. Suspects are often interrogated without the presence of a lawyer or any independent monitor, providing officials ample opportunity to exert pressure through ill-treatment. Most police facilities are designed to hold a small number of prisoners for a short period of time. Yet in many countries, conditions are so poor, unhygienic, and overcrowded that police custody, especially if for lengthy periods, amounts to cruel, inhuman or degrading treatment or punishment.

3 In Pretrial Detention

Contrary to international standards pretrial detainees are often held in conditions and subject to treatment far worse than that experienced by convicted prisoners. Common abuses include:

- exposure to violent “welcome treatments” as a means of intimidation or subordination to the rule of prison guards or other resident detainees;
- torture as a disciplinary measure; and
- detention conditions that amount to cruel, inhuman, or degrading treatment.

The Prohibition of Torture under International Law

Torture and other cruel, inhuman or degrading treatment or punishment are universally recognized as abhorrent and, under international law, are prohibited at all times. Torture is considered the “**most serious violation of the human right to personal integrity and dignity**” and is banned absolutely under the United Nations Convention against Torture and a host of other treaties and laws.

Systemic Factors

Several factors promote the continued practice of torture at the pretrial stage, including:

- excessive use of pretrial detention;
- malfunctioning and under-resourced criminal justice systems, including systems that are focused on confessions and marked by corruption;
- inadequate custodial measures, resulting in the failure to register detainees when they are taken into custody, or monitor their progress through the system;
- lack of access to counsel, including legal aid for indigent detainees;
- restrictions on outside access to police stations and detention facilities, limiting independent monitoring—and hence public awareness of the abuses taking place;
- inadequate or nonexistent complaint mechanisms for prisoners; and
- insufficient prohibition of torture within national legal frameworks.

Uruguay: in 2009, detainees reported being held in steel boxes called “las latas” (the tin cans). They were allowed to leave the cells for only four hours a week and had restricted access to water. Forced to drink from the toilet, the detainees had to use plastic bottles or bags to relieve themselves. The steel modules generated an intolerable heat, exacerbating the stench of prisoners’ faeces.

Jordan: detainees reported in 2008 that they were met by a “welcoming committee” of up to 20 officers who forced them to strip to their underwear and subjected them to heavy beatings. When they lost consciousness, the detainees were revived with cold water and beaten again.

Recommendations

- Reduce excessive and arbitrary pretrial detention to ensure that it is used as an exceptional measure, in accordance with international law. Fewer people in pretrial detention means fewer people exposed to the risk of torture and a reduction in overcrowding.
- Ensure early access to legal and medical assistance to enable suspects to seek advice prior to interrogation and report cases of torture. The presence of external professionals also increases the openness and transparency of the system.
- Ratify the optional Protocol to the UN Convention Against Torture (OPCAT) and establish National Preventive Mechanisms (NPMs), including establishing mechanisms for the independent monitoring of police lock-ups and other places of pretrial detention.
- Invest in professional law enforcement services that use investigative techniques and practices, and discourage coercive interrogation methods.

Equatorial Guinea: a male detainee kept in police custody for several months was forced to pay for food and drinking water and had no protection against malaria-carrying mosquitoes. He was repeatedly denied a hearing before a judge, access to a lawyer, or contact with his family.

Nigeria: detainees reported that police officers forced them to torture their fellow detainees, while still other detainees—including children—watched. Detainees also reported that they were denied medical care for the bullet wounds they received as a result of the shots fired by police during arrest.

This is a summary of the report, “Pretrial Detention and Torture,” by the Ludwig Boltzmann Institute of Human Rights and the University of Bristol Human Rights Implementation Centre, published by the Open Society Justice Initiative in 2010. The examples used are drawn from the fact finding missions of UN Special Rapporteur on Torture Manfred Nowak during the period 2005-2009. Prison figures are from the World Prison Brief www.prisonstudies.org

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