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Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk

A Global Campaign for Pretrial Justice Report

Pretrial Detention and Torture:
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Face the Greatest Risk

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About the Global Campaign for Pretrial Justice

Excessive and arbitrary pretrial detention¹ is an overlooked form of human rights abuse that affects millions of persons each year, causing and deepening poverty, stunting economic development, spreading disease, and undermining the rule of law. Pretrial detainees may lose their jobs and homes; contract and spread disease; be asked to pay bribes to secure release or better conditions of detention; and suffer physical and psychological damage that last long after their detention ends. In view of the magnitude of this worldwide problem, the Open Society Justice Initiative, together with other partners, is engaging in a *Global Campaign for Pretrial Justice*. Its principal purpose is to reduce unnecessary pretrial detention and demonstrate how this can be accomplished effectively at little or no risk to the community.

Current activities of the Global Campaign include collecting empirical evidence to document the scale and gravity of arbitrary and unnecessary pretrial detention; building communities of practice and expertise among NGOs, practitioners, researchers and policy makers; and piloting innovative practices and methodologies aimed at finding effective, low cost solutions. In addition, the campaign strives to establish linkages with associated fields such as broader rule of law and access to justice initiatives and programs.

The goal of this paper is to focus on an important and underappreciated issue and assist countries and governments to better understand it and more effectively design

policy responses to it. Although this paper makes reference to specific situations and countries, it is important to note that excessive pretrial detention is a global issue affecting developing and developed countries alike.

This paper is part of a series of papers examining the impact of excessive pretrial detention. In addition to the socioeconomic impact of pretrial detention, the papers in the series look at the intersection of pretrial detention and public health, torture, and corruption.

More information about the *Global Campaign for Pretrial Justice* is available at http://www.soros.org/initiatives/justice/focus/criminal_justice/articles_publications/publications/pretrialjustice_20090903.

Summaries of the other three papers in this series are available as follows:

- The socioeconomic impact of pretrial detention: http://www.soros.org/initiatives/justice/focus/criminal_justice/articles_publications/publications/pretrial-detention-socioeconomic-20100409;
- Pretrial detention and public health: http://www.soros.org/initiatives/justice/focus/criminal_justice/articles_publications/publications/pretrial-detention-health;
- Pretrial detention and corruption: http://www.soros.org/initiatives/justice/focus/criminal_justice/articles_publications/publications/pretrial-detention-corruption-20100409.

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Contents

About the Global Campaign for Pretrial Justice	5
Acknowledgments	7
Summary and Recommendations	11
Introduction	17
I. Overview of Pretrial Detention	21
II. Legal Framework	23
III. The Practice of Torture and Other Ill-Treatment in Pretrial Detention	27
IV. Systemic Factors that Lead to Torture and Other Ill-Treatment	35
V. Recent Developments to Strengthen Safeguards	45
Notes	53

Summary and Recommendations

Despite the absolute ban on torture and other forms of cruel, inhuman or degrading treatment or punishment under international law, forms of physical torture such as beatings, electroshock, asphyxiation, and stress positions—as well as psychological forms of torture including death threats and threats against family members—continue to be routinely practiced throughout the world². Of the nearly ten million people detained globally, those held in pretrial detention face the most significant risk of torture and other forms of ill-treatment.³

Pretrial detainees are particularly at risk of being abused because the incentives and opportunities for torture are most prevalent during the investigation stage of the criminal justice process. Pretrial detainees are entirely in the power of detaining authorities, who often perceive torture and other forms of ill-treatment as the easiest and fastest way to obtain information or extract a confession.

The practice of torture during pretrial detention is facilitated by a range of systemic problems, including: criminal justice systems centered on confessions and underpinned by corruption; lack of access to legal assistance while in pretrial detention; arbitrary arrests, primarily of poor people without the resources to defend themselves; poorly trained and paid law enforcement officials who do not have access to modern criminal investigation tools; and the popularization of a “tough on crime” approach to criminal justice that exaggerates its benefits and understates its costs.

One of the most effective ways to prevent torture is through early access to legal aid, combined with a system of regular, unannounced visits to places of detention.

Yet, of all formal detention facilities, pretrial detention centers and police stations are typically the most difficult to gain access to, and information on people held in pretrial detention is often limited or nonexistent. In many cases, authorities do not make public data about their pretrial detention populations, and in other cases authorities fail to accurately track pretrial detainees. This lack of transparency perpetuates the problem of torture, which continues to occur with impunity in many states throughout the world. As former Special Rapporteur on Torture Sir Nigel Rodley put it:

[T]here needs to be a radical transformation of assumptions in international society about the nature of deprivation of liberty. The basic paradigm, taken for granted over at least a century, is that prisons, police stations and the like are closed and secret places, with activities inside hidden from public view. The international standards referred to are conceived of as often unwelcome exceptions to the general norm of opacity, merely the occasional ray of light piercing the pervasive darkness. What is needed is to replace the paradigm of opacity by one of transparency. The assumption should be one of open access to all places of deprivation of liberty. Of course, there will have to be regulations to safeguard the security of the institution and individuals within it, and measures to safeguard their privacy and dignity. But those regulations and measures will be the exception, having to be justified as such; the rule will be openness.⁴

This paper highlights the risk of abuse faced by pretrial detainees and identifies some of the systemic factors that perpetuate torture and other ill-treatment. Research referenced in this paper is largely drawn from the fact-finding missions of former UN Special Rapporteur on Torture Manfred Nowak and his team, as well as a review of reports by the European Committee for the Prevention of Torture, other relevant UN treaty bodies, and non-governmental organizations.

Recommendations

1) **Reduce the excessive and arbitrary use of pretrial detention**

Greater effort must be placed on ensuring that pretrial detention is used as an exceptional measure, in accordance with international law. Reducing the number of people and the time spent in pretrial detention has the potential to significantly reduce the risk of torture and other ill-treatment and help ease the global problem of overcrowding in facilities where pretrial detainees are held.

A concerted effort is required to link advocacy efforts with alternatives to pretrial detention and involvement in justice reform programs. In particular, civil society organizations, individuals, and governments actively engaged in torture prevention should call for the following:

- States should review and modify laws to bring them into line with international standards relevant to pretrial detention. States should consider decriminalizing certain minor offenses such as loitering or vagrancy, or modifying laws to prohibit pretrial detention for such offenses.
- Greater investment in judicial training to encourage the use of non-custodial solutions such as bail, reporting to a police station, or house arrest.
- A review of best practices for the use of non-custodial measures and the sharing of successful models that have helped reduce the number of people held in pretrial detention.
- Awareness raising activities to address public concerns about the use of non-custodial measures.
- If employed, pretrial detention should only be used for strictly specified time periods and for the shortest time possible. Any extension of pretrial detention should be duly authorized by a judge.

2) Put the prevention of torture and other ill-treatment into practice

The absolute prohibition of torture and other ill-treatment needs to be robustly defended and measures must urgently be put in place at the national level. States must ensure that they meet their obligations under international law to prohibit and prevent torture and other ill-treatment. This will include the following:

- Acts of torture that fall within the definition of Article 1 of the United Nations Convention Against Torture must be made a criminal offense under domestic law. Those responsible for torture, regardless of their rank or position, are held accountable in accordance with procedures that comply with international law.
- Prompt, efficient, and independent investigation is carried out into all allegations of torture or other ill-treatment.
- Those found guilty of torture shall be subject to appropriate sanctions that reflect the gravity of the crime in accordance with international law.
- Any statement gained through torture or other ill-treatment is inadmissible as evidence in any proceedings, except against persons accused of torture as evidence that the statement was made.

- Pretrial detention conditions must not amount to torture or other ill-treatment and those in pretrial detention must be held in places that are properly suited for them.

3) Invest in creating professional law enforcement services

An under-resourced, poorly educated, and ill-trained law enforcement service significantly increases pretrial detainees' risk of torture and other ill-treatment. Emphasis must be placed on providing training to law enforcement personnel that reflects human rights standards and emphasizes the concerns of vulnerable groups, including pretrial detainees. Interrogation practices that facilitate the use of torture and other ill-treatment should be discontinued and investment should be made into promoting practices and equipment that discourage coercive interrogation methods. Police authorities and other law enforcement officials should receive training in modern crime investigation techniques that duly reflect international human rights standards. Interrogation practices should be kept under periodic review to reflect the most recent human rights standards. Further training tools may need to be developed for law enforcement personnel to promote a better understanding of the interplay between respecting human rights and law enforcement.

Other legal professionals, such as lawyers and judges, should receive appropriate training on interrogation and investigation techniques that reflect international human rights standards.

4) Engage with the legal and health professions

Access to a lawyer at the very outset of detention and before interrogation is one of the strongest safeguards against torture and other ill-treatment. Access to appropriate medical services is also essential for pretrial detainees. Widespread engagement with the legal and health professions, including national and regional bar and health practitioner associations, is essential. Specific approaches should include:

- Developing training programs for health and legal professionals on detecting, reporting, and preventing torture. These trainings could be given during professional qualification courses and as part of continuing professional development.
- Involving national bar associations in law reform programs and other policy developments such as NPM designation.
- Advocating for the establishment of national legal aid programs that guarantee access to a lawyer for all detainees including prior to interrogation.
- Supporting the implementation of paralegal programs at police stations, remand centers, and prisons.

- Increasing the availability of independent health practitioners for those in pretrial detention.

5) Focus targeted interventions as part of a comprehensive set of measures addressing the criminal justice system as a whole

In order to effectively tackle torture and other ill-treatment within pretrial detention, there needs to be a robust system and framework of safeguards in place at the national level.

The following specific activities could facilitate this process:

- Multi-disciplinary involvement should be encouraged in criminal justice reform programs by including torture prevention specialists, legal and medical professionals, and rehabilitation centers.
- Cooperation and constructive dialogue among different agencies within the criminal justice system should be strengthened through regular meetings among the various stakeholders in order to coordinate and share information.
- Thematic and country-specific research should be undertaken to detail a “chain of risk” in relation to torture and other ill-treatment at all stages of the criminal justice process.

In addition to the recommendations outlined above, the Optional Protocol to the Convention Against Torture (OPCAT) provides clear opportunities to strengthen the torture prevention framework at the national level, and has created an opportunity for countries to review their monitoring practices for police detention and other pretrial facilities. States should be encouraged to ratify and properly implement the OPCAT. As of January 1, 2011, 57 States Parties have ratified it and 32 countries have designated their National Preventative Mechanisms NPMs. States Parties to the OPCAT must ensure that the power to monitor police detention and other pretrial detention facilities is incorporated into the mandate of any NPM, established or designated.

Targeted support to NPMs, systematically monitoring the situation and overseeing the implementation of safeguards, is critical. This must address the underlining features of an effective NPM such as its independence, both in terms of functional independence and independence of its personnel, adequate financial and human resources, and the mandate that duly reflects the necessary NPM powers. Recognizing the increased workload involved in monitoring places of police detention, as well as the obstacles placed in the way of access, greater focus should be placed on practical approaches to monitoring. This could include publishing how to guides, monitoring in police detention facilities, as well as conducting structured dialogue with police and prison services.

Introduction

“Anyone who has been tortured remains tortured [...] Anyone who has suffered torture never again will be able to be at ease in the world; the abomination of annihilation is never extinguished. Faith in humanity, already cracked by the first slap in the face, then demolished by torture, is never acquired again.”⁵

Torture and other forms of cruel, inhuman, and degrading treatment or punishment are universally recognized as abhorrent acts and are prohibited under international law at all times. Torture has been recognized as the “most serious violation of the human right to personal integrity and dignity... [i]t presupposes a situation where the victim is powerless i.e. is under the total control of another person.”⁶

The vast majority of torture and other ill-treatment that occurs around the world takes place in pretrial detention. (For the purpose of this paper, pretrial detention is defined as any form of custody or confinement by law enforcement, from the time of arrest through police custody, during transfers, before and after judicial review of the decision to detain, and until a person has been formally tried by a court and convicted, or acquitted and released.) Excessive and arbitrary pretrial detention is universally prohibited by international legal norms. Although rational pretrial detention can play an important role in criminal justice systems, it should be the exception rather than rule,⁷ to be used only under certain specific conditions.

But the over-use of pretrial detention is often standard practice, exposing a greater number of people to the risk of being tortured. In many countries, half of the detainees

in the criminal justice system are awaiting trial; in some countries the proportion is over 80 percent.⁸ Pretrial detainees are extremely vulnerable to abuse because they are entirely in the power of authorities who have an interest in gaining information or a confession. Many law enforcement officials perceive torture as the easiest and fastest way to achieve their goals.

Recognizing the particular problems of political detainees and vulnerable groups, such as women, children, persons with disabilities, and drug users,⁹ this analysis will focus on the larger-scale problem of torture and other ill-treatment of people held in pretrial detention for routine criminal cases. The UN Special Rapporteur on Torture has observed that it is usually “ordinary people” suspected of “ordinary” crime who are most commonly the victims of torture and other ill-treatment.¹⁰ In many parts of the world there is a justifiable fear that once apprehended by the police, people fall into a criminal justice abyss that is almost impossible to escape. Pretrial detention is frequently the worst part of such a system. During this crucial period, authorities seek to obtain confessions to secure conviction, and torture and other ill-treatment is often used as a means of obtaining such information. In addition, people may languish for months, or even years, without appearing before a judge, without access to a lawyer, and without contact with family or friends. The average time spent in pretrial detention in Nigeria is 3.7 years; in Kenya some individuals have waited more than 17 years for trial.¹¹ In human rights cases against the Russian Federation, the European Court of Human Rights established that detainees had been held for four¹² to six years¹³ in remand.

Pretrial detention is used excessively around the world today, contributing to the global problem of overcrowded prisons.¹⁴ Individuals subjected to prolonged pretrial detention emerge from the justice system years later, mentally and physically scarred, and with little chance of redress or rehabilitation. This is profoundly damaging to the individual and to society as a whole.

Pretrial detention is not always wrong; it can be necessary to prevent the flight of a criminal suspect and/or illegal tampering with evidence or the process itself. Pretrial detention is legal if it meets carefully defined conditions in human rights law, particularly the right to liberty and security of the person,¹⁵ and the principle of presumption of innocence.¹⁶ But international legal norms favor releasing the accused pending trial.¹⁷ Although international law recognizes the vulnerability of pretrial detainees and prescribes specific safeguards and entitlements to reflect their status, all too frequently these safeguards are ignored and pretrial detainees are subjected to far worse detention conditions than convicted detainees. This is especially true in police stations and other short-term custody locations, which are seldom designed for prolonged detention but frequently used for this purpose.

Addressing the underlying factors leading to torture and other ill-treatment and

establishing preventive mechanisms requires a comprehensive approach. This paper examines the root causes that underlie the practice of torture and other ill-treatment in pretrial detention. It aims to show that a holistic approach is necessary to eliminate the circumstances in which torture and other ill-treatment occur. Torture can be deterred by holding perpetrators accountable, refusing to admit evidence gained through torture, and allowing independent oversight of detention facilities.

This paper begins with a brief overview of pretrial detention. Chapter II outlines the international legal framework to prohibit and prevent torture and other ill-treatment. Chapter III describes the practice of ill-treatment in pretrial detention, tracing the stages from apprehension to remand detention. It demonstrates that detainees risk ill-treatment at all stages of their detention, often without adequate recourse through which they can lodge a complaint. Chapter IV identifies the systemic factors that facilitate the practice of torture and other ill-treatment during pretrial detention, and explores the key areas where states fail to adequately protect pretrial detainees.

The final chapter covers recent developments and practices aimed at the prevention of torture and other ill-treatment. It examines a range of national mechanisms and civil society initiatives designed to protect pretrial detainees.

I. Overview of Pretrial Detention

One way to measure the scope of pretrial detention is its *duration*—the number of days people spend in detention. According to a 2003 European Commission investigation, the average length of pretrial detention in 19 of the then 25 member states of the European Union was 167 days, or 5.5 months.¹⁸ Data for other countries or regions are hard to find, but the global average is almost certain to be higher than the European figure—for example, the average length of pretrial detention in Nigeria is 3.7 years.¹⁹

A second gauge of the extent of pretrial detention around the world is the *total number* of individuals in detention. While accurate and up-to-date data are not available for all countries, it is reliably estimated that worldwide, some three million people are in pretrial detention at any given time.²⁰ That is larger than the populations of 60 countries, including Armenia, Congo-Brazzaville, and Jamaica.

Still, the three million-person snapshot of a given day's pretrial detention population does not adequately convey the real extent of pretrial detention around the world. A more dynamic measure is the flow of people into custody over time. In the course of a typical year, an estimated 10 million people will enter pretrial detention—a number greater than the populations of two-thirds of the world's countries.²¹

A third important measure of pretrial detention is the *percentage* of all detainees who are in the pretrial stage: globally, one out of every three detainees is awaiting trial and has not been found guilty of a crime.²²

A fourth way of measuring pretrial detention is the *rate*, calculated as the number of pretrial detainees per 100,000 of the general population. Globally, an estimated

44 people per 100,000 are in pretrial detention, but this figure hides vast disparities among regions. The Nordic countries of Europe, for example, have a pretrial detention rate of 14 per 100,000, while North America's rate is 137 per 100,000.²³

The excessive and arbitrary use of pretrial detention is a global problem, affecting developed and developing countries alike. As the data on average duration of pretrial detention indicate, there is great variance among states in their use of pretrial detention. But while the problem is nearly universal, its manifestations are manifold and diverse. Some broad patterns tend to hold and can be useful in understanding the diversity and complexity of the issue.

Developed countries tend to have more total pretrial detainees as well as a higher pretrial detention rate. The United States, for example, has the world's highest total number of pretrial detainees (approximately 476,000), and the fourth-highest rate of pretrial detention (158 per 100,000). But the average pretrial detention duration and the percentage of all prisoners who are pretrial are relatively low in the U.S. and throughout the developed world.

Conversely, in the developing world the rate of pretrial detention may be comparatively low, but the average duration and percentage of all prisoners who are pretrial are relatively high. In some countries, over three quarters of all prisoners are pretrial detainees. This includes Liberia (where 97 percent of all prisoners are awaiting trial), Mali (89 percent), Benin (80 percent), Haiti (78 percent), Niger (c. 76 percent), Bolivia (74 percent), and Congo-Brazzaville (c. 70 percent).

Pretrial detention can provide a window into the effectiveness and efficiency of a particular state's criminal justice system, as well as its commitment to the rule of law. In the developed world, the lower percentage of all prisoners who are pretrial and the shorter average duration of pretrial detention indicate a relatively efficient criminal justice system: people move through the system quickly and are generally released pending trial. In developing countries, however, the great majority of all detainees are pretrial and they can languish in that situation for years. This indicates, at best, an inefficient and overwhelmed criminal justice system, and at worst a lack of commitment to the rule of law.

The global scope of excessive pretrial detention is important to understand when considering one of the primary ills attendant to it: that pretrial detainees—as this paper seeks to demonstrate—are at greater risk of being tortured than sentenced prisoners.

II. Legal Framework

Torture and other ill-treatment are prohibited under international law. This right is non-derogable; no one may be subjected to torture and other ill-treatment under *any* circumstance, including during times of war or public emergency. The prohibition of torture and other ill-treatment is a rule of customary law: it is regarded as so absolute and universally accepted that even states which have not ratified any of the international treaties that explicitly prohibit torture and other ill-treatment are banned from using it against anyone, anywhere, at any time. In addition, the prohibition of torture is considered to be a peremptory norm of international law.²⁴ This means that all states are bound by this prohibition and may not withdraw from this obligation under any circumstance; their obligation to prohibit torture cannot be modified in any way, including by treaty, national law or custom, and no excuse, such as a threat to national security or a state of emergency, can be invoked to justify its use.

Torture and other ill-treatment are prohibited by numerous human rights instruments, both at the international and regional levels, including the UN Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the UN Convention against Torture (UNCAT), the UN Convention on the Rights of the Child, the Geneva Conventions and Additional Protocols, the African Charter for Human and Peoples' Rights, the American Convention on Human Rights, and the European Convention on Human Rights and Fundamental Freedoms.

Torture is defined by Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) as

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

Unlike torture, other cruel, inhuman, or degrading treatment or punishment (other ill-treatment) is not defined by the UNCAT or other human rights instruments, but is equally prohibited under international law. This category of ill-treatment is designed to provide the broadest possible protection for people from abusive practices that erode human dignity. It is important to stress that any form of corporal punishment is inherently degrading, and in many cases may also amount to cruel and inhuman punishment or torture in violation of international human rights law.²⁵ Over the years, a wide range of ill-treatment or punishment has been recognized as cruel, inhuman, or degrading, including poor detention conditions, over-crowding, lack of adequate sanitary provision, lack of light, lack of exercise, and the use of certain forms of punishments and restraints.

All states should enact a range of measures aimed at preventing torture and other ill-treatment from occurring or reoccurring. Indeed some treaties contain specific measures that states parties must implement to prevent torture and other ill-treatment. For example, the UNCAT includes an obligation for states parties to prevent torture and other ill-treatment by all possible means (Articles 2 and 16). It entails a number of provisions aimed at prevention, such as training of security personnel and ex-officio investigations into allegations of torture, which are mandatory for states parties.

In order to remove a key incentive for using torture during interrogation periods, international law also expressly prohibits the use of statements gained through torture and other ill-treatment. Article 15 of the UNCAT states “[e]ach State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” While this prohibition does not expressly mention statements obtained through other forms of ill-treatment, this Article must now be read in light of the UN Committee against Torture’s recent general comment on Article 2 of the UNCAT relating to the prevention of prohibited acts. The UN Committee against Torture (CAT) has taken the approach that “the obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to

prevent torture,” thus “measures required to prevent torture must be applied to prevent ill-treatment.”²⁶

This interpretation of the absolute prohibition of the use of statements gained through torture and other ill-treatment must also be read in light of Article 14(3)(g) of the ICCPR which provides that no one must be “compelled to testify against himself or to confess guilt.” The UN Human Rights Committee (HRC) has confirmed that in order to discourage torture and other ill-treatment, “the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment.”²⁷

In order to ensure that interrogation methods are compliant with international law and do not violate the prohibition against torture and other ill-treatment, Article 11 of the UNCAT provides that “[e]ach State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.”

International law also recognizes that people deprived of their liberty are particularly vulnerable to these forms of abuse. A comprehensive range of standards and safeguards have been elaborated to address this detention-related risk. Examples of these types of standards include the UN Standard Minimum Rules for the Treatment of Prisoners; the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the European Prison Rules; the Inter-American Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas; and the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines).

These standards provide a broad framework of protection, and while the majority of these standards are relevant to all detainees, some have been elaborated specifically to protect the rights of pretrial detainees because it is during the investigatory stages that a detainee is most at risk of being subjected to torture.

In addition to the prohibition against torture *per se*, a range of other rights has been elaborated under binding international law for people who have been detained and charged with a criminal offense, including:

- The right not to be subjected to arbitrary detention
- The right to be presumed innocent
- The right to be informed of the reasons for the arrest
- The right to be informed promptly of any charges

- The right to not be compelled to confess guilt or testify against themselves
- The right to challenge the lawfulness of the detention
- The right to be brought promptly before a judge
- The right to legal assistance.²⁸

Together, these rights articulate a system of judicial and procedural checks on law enforcement officials, creating an environment where torture and other ill-treatment are unlikely to occur, and if they do occur, they are acted upon promptly and the perpetrators held accountable. These rights form a framework of protection and must be considered interdependent. A failure to observe any of these rights significantly increases the risk of torture and other ill-treatment for pretrial detainees.

Despite this longstanding, universally acknowledged and absolute prohibition on torture and other ill-treatment, pretrial detainees routinely face these forms of abuse. International law has tried to respond to the obvious risks faced by pretrial detainees with a broad range of specific safeguards. What is lacking is a full and effective application of these safeguards at the national level.

III. The Practice of Torture and Other Ill-Treatment in Pretrial Detention

This section gives an overview of torture and other ill-treatment by following the chronology of pretrial detention, highlighting the risks at each stage. This overview is largely drawn from the experiences of former UN Special Rapporteur on Torture Manfred Nowak and his team during fact-finding missions to 15 countries.²⁹

Reports from previous Special Rapporteurs on Torture, the European Committee for the Prevention of Torture (CPT), as well as other relevant UN treaty bodies and non-governmental organizations show that criminal suspects are at risk of torture and other ill-treatment at all stages of their detention, from the moment of their apprehension until their release. However, two principal problem areas have been identified:

- torture is most likely to occur at the initial stage of detention, usually in the first days of police custody when it is applied to extract a confession; and
- extremely poor detention conditions and serious overcrowding of pretrial detention facilities often amount to cruel, inhuman, or degrading treatment or punishment.

Contrary to the widespread opinion that torture is exclusively the fate of political prisoners and suspected terrorists most victims of torture and other ill-treatment are ordinary people accused of ordinary crimes. Members of the poorest and most disadvantaged sectors of society are more likely to be discriminated against by the criminal justice system, and hence more likely to be confined to pretrial detention.³⁰ While detained, the discrimination often continues and exposes them to an increased risk of torture and other ill-treatment. In addition, poor or disadvantaged groups in detention are often hindered from accessing justice, either due to discriminatory attitudes³¹ or to their financial situation and social status.³² Examples of such discrimination can be found in the treatment of drug users and sexual minorities. Drug use is often harshly criminalized; in some countries more than a third of detainees are charged with drug related crimes.³³ When in detention, drug users are commonly faced with a lack of medical care, as well as discriminatory treatment by the authorities, including solitary confinement, special prison regimes, and poor detention conditions.³⁴ Similarly, sexual minorities are criminalized in many countries for expressing their sexual preferences. In detention they face a particular risk of torture and other ill-treatment, and are often held under considerably worse conditions than others.³⁵

Three distinct stages within the pretrial phase have been identified and are examined below in turn.

1) Upon Apprehension

Torture and other ill-treatment usually occur behind closed doors in detention, but abuse by police and security officers also takes place upon arrest and before reaching police premises or other detention facilities. The police may legally use proportionate physical force to apprehend and secure a suspect to prevent escape or harm to themselves or others. In practice, the police often use excessive force during arrest or transfer to police custody, resulting in pain or suffering disproportionate to the circumstances of the case. For example, in Nigeria, where armed robbery is a grave problem, it has become common practice for police to shoot suspects in the legs and feet once they have been apprehended to prevent them from fleeing, or as a means to make them confess³⁶

Once apprehended, suspects risk being tortured during their transfer to police premises. As illustrated in the case from Paraguay below, suspects are sometimes tortured in the police vehicle in order to extract a confession, or they are taken to a separate, often secret location where they are tortured before being taken to the station for interrogation. In Indonesia, detainees were brought to private houses upon arrest, where they were tortured, sometimes for several days.³⁷ The police often benefit

from broad discretion in their treatment of suspects during arrest. Effective methods of recording arrests and monitoring treatment during transfers are often absent, allowing officers to avoid being held accountable. This may encourage police to treat suspects severely before they are brought to a detention facility where the police are likely to be subject to stricter constraints.

Paraguay

César Riquelme is a member of the indigenous community of El Estribo del Pueblo Enxet. According to the information received by the NGO Tierraviva, on August 23, 2005, at about 10 a.m., two National Police officers and two members of the Lolita Mennonite community went to Mr. Riquelme's house. They informed him that his father was waiting for him in Lolita to discuss something and that they had come to pick him up. In the car, Mr. Riquelme was accused of stealing several items from his father's workplace and aggressively interrogated. He was shouted at, bound with a rope, and threatened with death unless he confessed. The officers squeezed Mr. Riquelme's testicles, punched him in his face, and banged him against the side of the car. Upon arrival at an office in the Mennonite community in Lolita, he was locked in a dark room where he was beaten, threatened, and insulted for several hours. Afterwards, Mr. Riquelme was released. A complaint was filed, but the public prosecutor has taken no further steps.³⁸

2) In Police Custody

The majority of cases of torture encountered during the fact-finding missions of the UN Special Rapporteur took place during the initial period of police detention. In eleven of the fifteen countries visited, torture in police custody was widespread or systematic. In police custody, investigating authorities have direct control over suspects and an immediate interest in securing a confession. Police officers often enjoy unfettered discretion in their treatment of suspects during interrogation, and in many countries monitoring mechanisms are weak or absent. Suspects are often interrogated without the presence of a lawyer or any independent monitors, allowing officials ample opportunity to exert pressure through ill-treatment. The police are also not always properly resourced or

trained to use modern techniques of crime investigation. Under intense pressure to solve cases, coercing a confession sometimes appears to be the easiest and perhaps the only way of convicting a suspect. In many countries around the world torture remains a routine part of police work to extract confessions or other information from suspects who refuse to “cooperate.”

Although the extraction of information and a confession is the most common purpose of torture, pretrial detainees are also abused as a means of punishment, intimidation, or to extort money. In many countries, physical abuse of detainees is used as a means of upholding prison order. In Togo, officers admitted to occasionally using violence, especially when the detainee is suspected of having committed a grave crime or does not obey orders.³⁹ In Nigeria, detainees reported that they were forced to torture each other in front of other detainees, including children.⁴⁰ Officials use such practices to demonstrate their absolute authority and to illustrate the powerlessness of detained suspects. This may be a form of both physical and mental torture.

In many countries where corruption is widespread, pretrial detainees are easy victims of authorities who may torture detainees in order to extort money from them. In Indonesia, corruption is a “quasi-institutionalized practice” and detainees are “spared” from ill-treatment in return for the payment of money.⁴¹ Sometimes the most basic amenities are withheld unless payment is received. In Togo, for example, many detainees indicated that they only have access to drinking water if they pay for it.⁴² Corruption in detention facilities can have alarming consequences for detainees who are entirely dependent on authorities. It can lead to life endangerment when necessities for survival are withheld.

Conditions in police custody are particularly problematic when suspects are held for long periods of time. Suspects should be held in police facilities only until the first judicial review of detention, which should take place within a maximum of 48 hours after arrest. In many countries, however, suspects are held in police custody for several months or even years. This leads to heavy overcrowding in police cells, which are often already severely under-resourced and do not meet the requirements for short-term (let alone long-term) detention. Due to lack of space, detainees are sometimes forced to sleep in shifts or on a concrete floor in police cells that lack sufficient light and ventilation. Access to sanitary facilities is often restricted or completely absent, leading to critical hygiene conditions. The most basic amenities such as food, water, and medical care are frequently limited. In some countries, detainees are entirely dependent for such necessities on their families or fellow detainees.⁴³ This denial of basic amenities may force detainees who lack outside support into slave-like dependency. By withholding medical treatment, officials can put detainees’ lives at risk. In Nigeria, for example, suspects shot by the police during their arrest did not receive any medical treatment.⁴⁴

Equatorial Guinea

A male detainee, age 23, resident of the “Presidentia district,” was told upon arrest that he would be held for five days. Instead, he was detained for several months by the time of the Special Rapporteur’s visit. He complained that there was almost no water and that detainees had to pay for drinking water; food was not provided, and there was no protection against mosquitoes.⁴⁵

Detention under the conditions described above is common in a number of countries, and certainly amounts to ill-treatment. If done deliberately to coerce a confession or information, such conditions can amount to torture. Detainees are often denied access to complaint mechanisms, a competent lawyer, or independent judge. As a consequence, they may feel forgotten by the outside world, and the severe conditions and excessive length of detention can motivate them to confess to a crime just so they can be transferred to a regular prison facility and escape the state of limbo in which they have no idea when, or if, they will be released.

A particularly grave problem in pretrial detention is the restriction on visits by a lawyer or family members, and the total isolation from the outside world by holding detainees incommunicado or in secret detention. The UN Human Rights Committee has held that such detention constitutes inhuman and degrading treatment for both the detainees and their families.⁴⁶ It also prevents detainees from communicating the conditions of their detention and treatment to the outside world, rendering accountability and external scrutiny impossible and facilitating torture and other ill-treatment.⁴⁷

3) In Remand Detention

After judicial review, detainees are frequently placed in remand detention to await trial. This should be an exceptional measure: international legal norms favor releasing the accused (who are, after all, presumed innocent) pending trial. But in many, if not most countries, pretrial release is rare and the vast majority of accused are detained pending trial.

Although they are no longer under the control of authorities interested in a confession, remand detainees are still subject to a high risk of torture inflicted by or with the knowledge of prison officials. Upon arrival at remand prisons, detainees risk being

exposed to abusive “welcome treatments” which can be practiced by prison guards as a means of intimidation and subordination, or by other detainees to introduce newcomers to the established inter-detainee power structures.

In many countries, there were reports of abusive initiation ceremonies such as beatings by prison guards or painful and degrading physical exercises in front of the other detainees.⁴⁸ In Jordan, detainees reported that a “welcoming committee” of up to 20 officers forced them to strip to their underwear in the courtyard and subjected them to heavy beatings. When they lost consciousness, the detainees were revived with cold water and beaten again. The beatings lasted for days and no medical treatment was provided for their injuries. In Togo, detainees were subjected to beatings by fellow detainees if they did not pay an “arrival fee,”⁴⁹ and in some detention centers in China, staff told veteran detainees to torture new arrivals.⁵⁰ Detainees in Kazakhstan reported being abused during “medical check-ups,” their abuse adapted to target their “weak points,” or sickness.⁵¹ Consequently, many detainees were afraid to return to the hospital to receive medical treatment.⁵² Another form of initiation is detention in “welcome cells,” allegedly for quarantine purposes or to classify detainees before placement in normal cells. Conditions in such cells are worse than elsewhere in the facility and detainees are often shackled or handcuffed for the entire period.⁵³ These “welcome cells” are usually used as punishment cells for normal detainees, suggesting that new arrivals are placed in them as a means of intimidation and punishment rather than for administrative reasons. The two extremes of complete isolation or serious overcrowding⁵⁴ are common, and cause a higher risk of torture and other ill-treatment for new arrivals. In some cases detainees suffer weeks or even months in these poor conditions. A number of countries do not separate male and female detainees, leaving women vulnerable to sexual abuse as confirmed by the visits to Equatorial Guinea, Nigeria, and Nepal.⁵⁵ In one detention center in Paraguay in which the sexes were not separated, a detainee reported that prostitution existed and was allowed by the wardens.⁵⁶ Such inter-prisoner violence can amount to torture and other ill-treatment if the state fails to act with due diligence to prevent it.

China

Li Jianfeng is serving a 16-year sentence for subversion in Jian Yang No. 2 Prison. He was detained on October 31, 2003, along with seven other accomplices, all of whom were allegedly tortured during police interrogation. It is believed that he was arrested for defending vulnerable groups and for exposing the alleged corruption of a local official. In the Criminal Investigative Brigade of Lin De City, Li Jianfeng was reportedly imprisoned in a small iron cage measuring less than one square meter for eleven days. During this time, a strong spotlight was cast into the cage 24 hours a day; he was deprived of water and denied access to a medical doctor. Li's father reported that electric batons discharging high voltage electric shocks were used on his son's eyes and on the tips of his ears. Before formal imprisonment, Li was transferred through five different pretrial detention centers. It is reported that when he arrived at a new pretrial detention center, the staff would tell the veteran detainees to torture and hit the new arrivals. As a result of this Li Jianfeng reportedly suffered cerebral swelling and continued to suffer thereafter from headaches, fainting, dizziness, and ringing in his ear.⁵⁷

Pretrial detainees may also receive particularly bad treatment: they are frequently denied the rights that should be afforded to them as unconvicted detainees and are also denied the entitlements afforded to convicted prisoners, such as access to educational training or meaningful work. Remand detainees become second-class prisoners who are not treated as innocent, yet are not given access to the facilities of convicted prisoners. Prison authorities frequently do not regard it as their responsibility to care for pretrial detainees and provide them with only the most basic facilities.

Nigeria

Ms. Halima David, age 38, from Kaduna State, was held in pretrial detention for six years. She was taken to the Criminal Investigation Department after her arrest, where she was detained for one month. She was reportedly beaten by a female police officer, forced to swallow teargas, and fainted as a result. She could not recall signing a statement. She reported that she was pregnant at the time, lost the baby, was not provided medical treatment, and had to buy medicine with her own money. She has had no contact with her seven children, and did not know where they were, since her husband died while she was in prison. She could not afford a lawyer.⁵⁸

IV. Systemic Factors that Lead to Torture and Other Ill-Treatment of Pretrial Detainees

This section analyzes the principal factors leading to torture and other ill-treatment in pretrial detention. It also examines why pretrial detainees are exposed to a particularly high risk of torture and other ill-treatment, and explores the reasons for a state's failure to adequately protect the people under its authority. While individual factors responsible for the high risk of torture and other ill-treatment in pretrial detention are analyzed separately, it is important to recognize that the factors are interrelated and interdependent and cannot be divorced from one other.

1) Malfunctioning and Under-resourced Criminal Justice Systems

Once detainees find themselves in pretrial detention, they may risk becoming victims of a malfunctioning criminal justice system that fails to protect them from torture and other ill-treatment at each stage of their detention. Such malfunctioning is mainly due to severely under-resourced criminal justice systems and inadequate management of

detention facilities, insufficient training or inappropriate laws, and practices linked to a lack of awareness and sense of responsibility for the detainees. Recourse to torture is aggravated by an excessive dependence on confessions by judicial systems, reflecting investigators' inadequate training and lack of equipment for gathering evidence.

The Special Rapporteur's country visit to Togo revealed that the police and gendarmerie must conduct investigations, but are often not given the tools to effectively carry out their work.⁵⁹ In Nigeria, law enforcement authorities were seriously under-resourced and confronted with a high rate of violent crime. As a consequence, adequate training of criminal investigation authorities is lacking and corruption is endemic, leading the police to resort to "heavy-handed tactics in a criminal justice system which relies heavily on confessions."⁶⁰ Similarly, in Paraguay, there was extremely limited training of police officers in obtaining evidence as part of a criminal investigation.⁶¹ Politicians, judges, prosecutors, and even the media can put intense pressure on the police to solve cases quickly. In some countries, police officers are motivated to extract confessions by a system of incentives: they are evaluated according to the case-breaking rates and their salaries or possible promotions are directly linked to how many criminal suspects are convicted due to their "investigative successes."⁶²

Pretrial detainees are routinely subjected to various forms of physical torture, including beatings, blows, electroshocks, asphyxiation, suspension, stress positions, as well as various psychological forms of torture and other ill-treatment such as death threats and threats against family members. Such practices are often repeated over several days, and specifically target individual weaknesses. Whether a torture victim confesses usually depends not on whether or not he is guilty of a crime, but rather on whether he is physically and mentally strong enough to endure the ordeal. As a consequence, a considerable proportion of convicted prisoners have been found guilty because they confessed to crimes they did not commit.⁶³

Nigeria

Benjamin Saro, 24, an artist from Benue State, was arrested on January 19, 2001 in a police raid, and was charged with conspiracy and armed robbery. He reported that he was beaten with black wooden batons and cable wires, and that police demanded money from him. In the more than six years he had been in Kuje Prison awaiting trial, Saro reported that on dozens of occasions his case had been brought before the court only to be adjourned.⁶⁴

2) Inadequate and Underfunded Detention Facilities

Detention facilities are often not suited to the number of persons they hold and the length of detention. Authorities are sometimes unable to provide even the most vital provisions such as drinking water, food, and medical care, and detainees are forced to rely on their families or fellow inmates for basic provisions. This scarcity of resources results in discriminatory treatment and a high risk of tension among the detainees.

All Nigerian detention facilities visited by the Special Rapporteur were severely overcrowded, with some facilities operating at double or triple the actual capacity, resulting in extremely poor physical and sanitary conditions. In Port Harcourt Prison, where 92 percent of the detainees were awaiting trial, 2,420 detainees were held in a prison with the capacity for 800 detainees. The conditions for pretrial detainees were even worse than for convicted prisoners. They were held in overcrowded cells lacking appropriate hygiene facilities, with insufficient places to sleep; inadequate food, water, and medical care; and no opportunities for educational, leisure, or vocational training. According to the Special Rapporteur:

It is ironic that discriminatory treatment suffered by pretrial detainees, who may be held longer than some convicts, has been justified by the heads of some facilities on the grounds that their guilt being not yet proven, there is less responsibility and obligation, and consequently less resources, allocated to care for them.⁶⁵

Such appalling detention conditions were witnessed in many remand prisons in several countries. In Uruguay, detainees were held in an outdoor sector of metal boxes called “Las Latas” (the tin cans). Detainees were only allowed to leave the cells for a maximum of four hours a week and had restricted access to water, forcing them to drink from the toilet. They had to relieve themselves using plastic bottles or bags, which were then thrown into the courtyard shared by these metal boxes. The steel modules generated an intolerable heat in the sun, which also exacerbated the smell of the feces in the courtyard. Medical attention at “Las Latas” was not easily obtained and some detainees cut themselves in order to be taken to a doctor.⁶⁶

Due to a lack of staff and poor management of the detention facilities, authorities are often not able or willing to protect detainees from violence. In some cases they allow the detainees to discipline themselves. In Togo, authority was delegated to the *bureau interne* (the hierarchy of prisoners), effectively controlling all aspects of life within the facilities. Providing one group of detainees with such sweeping authority contributes significantly to an environment characterized by abuse of power, corruption, and violence.⁶⁷

The failure to separate pretrial detainees from convicted prisoners can also augment the risk of inter-detainee violence. In many countries, a lack of specific remand facilities makes such a separation impossible. When mixed with convicted, long-term prisoners, pretrial detainees risk being exposed to a violent offender subculture. In some prisons, daily life is dominated by violence, abuse, drug addiction, and internal gang structures. Pretrial detainees, who are newcomers and who sometimes have little experience with such structures, run a particularly high risk of becoming victims to abuse. Article 10(2)(a) of the ICCPR prescribes segregation of pretrial detainees from convicted criminals and “separate treatment appropriate to their status as un-convicted persons.”

3) Lack of Safeguards, Independent Monitoring, and Complaint Mechanisms

The absence of complaints, monitoring, and preventive mechanisms is a significant factor in the risk of torture and other ill-treatment of pretrial detainees. Together these mechanisms should ensure transparency and accountability; their absence creates a situation in which a detainee can quickly become lost in a poorly-functioning system. Once a person is held in pretrial detention, if his situation is not recorded or independently observed by both internal and external procedures, he is effectively invisible to the outside world. A lack of independent complaint mechanisms makes it difficult for detainees to be heard or to challenge arbitrary detention or abusive treatment. When accountability and external scrutiny are rendered practically impossible, authorities can treat detainees at will. Throughout all stages of pretrial detention, proper monitoring is frequently absent, or inadequate and ineffective.

The less transparent the situation of detainees, the more likely they will be exposed to torture or other ill-treatment. The lack of monitoring begins with internal procedures, such as a failure by police officials to adequately record the arrest and properly register detainees upon arrival at police facilities. In Indonesia, registers were reported to be non-existent, or lacking the most important information. In Togo, the registers often failed to accurately reflect who was in detention or what time a suspect arrived, and incorrect entries were made post-factum.⁶⁸ As a consequence, it was impossible to establish how long suspects were held in custody and difficult for them to prove that injuries stemmed from ill-treatment within detention.

Interrogations are often inadequately monitored, giving authorities a free hand in extracting a confession or other information from a suspect. Video- and audio-taping during interrogation is still scarce, and often the right to legal representation is absent

or severely limited. In many countries, the right to a lawyer is not granted until a very late stage of detention. China, for example, provides access to a lawyer only after the initial interrogation. Such practices disregard the fact that torture and other ill-treatment typically take place at a very early stage of detention and during initial interrogations.

When medical examinations are not conducted upon arrival and after each transfer, the treatment and well-being of detainees throughout all stages of pretrial detention cannot be adequately monitored. Leaving the health problems and injuries of detainees untreated and denying responsibility for their medical care can cause severe suffering and life-threatening complications. Denial of medical care is also problematic because of its use in recording the physical signs of ill-treatment in police custody. Poor healthcare is a common concern and many detainees reported that medical examinations upon arrival at detention centers were done in a cursory manner or disregarded altogether. As illustrated in the example from Moldova below, detainees may hesitate to report ill-treatment for fear of reprisals. Doctors and medical staff are often not independent and might cooperate with the police and prison staff, failing to report signs and symptoms of ill-treatment. This was witnessed in Sri Lanka, where medical examinations were allegedly done in the presence of the perpetrators of torture, or by doctors with little experience in the documentation of injuries.⁶⁹ In Kazakhstan, it was noted that staff who work under the same authority and with the same people each day are less likely to report them for conducting torture or other ill-treatment.⁷⁰ Even when independent, some medical staff lack the experience or skills to detect signs of torture and other ill-treatment.

Moldova

Oleg Stanciu, 26, was taken to Rascani police station after his arrest on July 2, 2008. During the transfer to the police station, he smashed the window of the police car. He reported that he was locked up in one of the offices of the police station as a punishment measure, and four investigators kicked and punched him all over his body while he was lying on the floor, handcuffed with his hands behind his back. The torture lasted for three hours. He saw a judge three times, and each time the detention was prolonged. After two days in detention at Rascani police station, he was transferred to the Central Temporary Detention Isolator. Upon arrival, he was asked about the bruises on his body. He was afraid to report the torture because, at Rascani police station, he had been ordered not to complain, and therefore said that the bruises resulted from a fall.⁷¹

The absence of habeas corpus proceedings is another major factor conducive to torture in pretrial detention, because it offers the first opportunity for a detainee to step out of an opaque detention system and appear in front of authorities that are independent of those responsible for their detention. Without regular judicial review, detainees are denied the possibility of challenging their detention or raising any issues about their ill-treatment in custody. The competence and independence of the judiciary and other stakeholders before the court is of vital importance to potential victims. During judicial review or trial proceedings, however, judges often fail to inquire whether the suspect was mistreated in custody.⁷² Detainees in Indonesia and Togo reported that judges, prosecutors, and even lawyers ignored their attempts to raise the issue of ill-treatment in court, even when there was medical evidence proving that torture had been committed.⁷³

Detainees may spend years in remand prisons without being tried and with no access to a lawyer. In Moldova, several detainees spent up to four years in detention without a final judgment.⁷⁴ In Paraguay, one detainee interviewed spent one and a half years in pretrial detention on suspicion of having stolen a bicycle.⁷⁵ In the end, judges often arbitrarily sentence detainees to imprisonment to justify their long period of pretrial detention.

In Moldova, many of the Special Rapporteur's interlocutors indicated that detainees were only transferred to pretrial facilities once the marks resulting from torture were no longer visible.⁷⁶

Sometimes detainees are returned to police custody after judicial review, exposing them to risk again by placing them under the authority of investigators interested in a confession or the extraction of information. This repeated exposure to risk has a detrimental effect on the efficacy of safeguards against torture; when suspects risk being transferred back to police custody, they are also considerably less likely to report ill-treatment for fear of retaliation by officials once they are back under their control. In Moldova and Kazakhstan, detainees were kept in police custody for long periods and regularly returned for “further investigation” or while waiting for their trial or appeal. This made them vulnerable to reprisals if they filed a complaint about their ill-treatment.⁷⁷ Consequently, the practice of returning detainees to police custody after judicial review undermines the important role of judicial review in monitoring and preventing abuse.

One of the most important factors contributing to torture and other ill-treatment in detention is the absence of independent visiting bodies monitoring the treatment and conditions in detention. In some countries, prosecutors and judges have the competence to carry out unannounced inspections of custody facilities.⁷⁸ However, these visiting mechanisms remain highly underused and often lack the institutional capacity to undertake systematic and regular visits throughout the country. Regular unannounced and unsupervised visits to places of detention should be carried out by an independent, external monitoring body, such as a National Preventive Mechanism (NPM) foreseen by the Optional Protocol to the United Nations Convention against Torture (OPCAT) (see part V of this report).

In many countries, functioning independent complaint mechanisms are absent or torture victims are unaware of them. Sometimes the mechanisms that do exist are not trusted by victims due to a lack of independence and fear of reprisal.⁷⁹ In Jordan, detainees who had been tortured faced “an impenetrable wall of conflicting interests.” The perpetrator of torture was the same person guarding the detainee, and the same person appointed to investigate the allegations of torture.⁸⁰

The weaker and scarcer the monitoring and complaint mechanisms, the less scrutiny the pretrial detention system will undergo, resulting in less transparency in a place of detention. A regular monitoring system is particularly important, because it offers detainees recurring opportunities to communicate their treatment, and prevents evidence of ill-treatment from being hidden. Independent monitors provide the necessary outside scrutiny, giving a clear signal to the authorities that their work methods are being monitored. Any restriction on independent monitoring and complaint mechanisms contributes to the risk of ill-treatment, as illustrated by the case from Sri Lanka below. This includes limiting access to independent and competent lawyers or regular access to families, both of which serve as an open channel to the outside world, and the absence of an independent press and a functioning and unrestricted civil society.

Sri Lanka

K.M. Jahankeer, 26, is a member of the Home Guard. On May 8, 2007, Jahankeer was arrested on suspicion of illegal possession of a weapon. He was brought to Mutur Police Station where he was repeatedly tortured. Standing naked, his thumbs as well as his feet were tied with rope. Jahankeer was ordered to stand on a chair and was then suspended by his thumbs and feet from an iron bar fixed across the room. He was punched in his face by the officers in charge and then beaten on the soles of his feet with a wooden baton. The officers drove three nails into each of the soles of his feet. He was subjected to similar torture on the second and third day of his arrest. He was held for three days in the police cell without receiving any food. On the third day he was forced to touch the weapon he was suspected of possessing illegally and to sign a statement. Upon his request, he was taken in a police jeep to Mutur Hospital, where he received some basic treatment but was not allowed to speak to the doctor in private.⁸¹

4) Inadequate Legal Prohibition of Torture and a Culture of Impunity in Practice

The opacity of the pretrial detention system makes accountability and external scrutiny difficult. The lack of monitoring hampers an examination of what occurs in detention, making it difficult for the victims to prove their ill-treatment by authorities. This reduces the possibility of investigating, prosecuting, and punishing perpetrators of torture and other ill-treatment. As a consequence, a culture of impunity is fostered in which perpetrators feel safe to torture and ill-treat detainees. A lack of investigation, prosecution, and punishment of perpetrators has been identified as one of the principal factors for torture and other ill-treatment in pretrial detention.⁸²

Proceedings against perpetrators of torture are often not even instigated, or quickly fail, due to absent or inadequate anti-torture legislation. Many countries lack an explicit and absolute legal prohibition of torture. Often a definition of torture is missing or not in accordance with Article 1 of the UNCAT, creating loopholes for potential torturers. If a penalty is imposed for torture and other forms of ill-treatment, it is frequently

inadequate and not commensurate with the gravity of the crime, entailing only minimal or disciplinary sanctions such as a lowering of rank or loss of salary. In Jordan, reductions of salary or delayed promotions were generally deemed as a sufficient penalty for practices of torture by detention facility directors, heads of security forces, and even members of government.⁸³ But even in Western states, as a case from Austria recently illustrated, practices of torture are sometimes met with mild disciplinary measures or suspended criminal sentences.⁸⁴ This enables past perpetrators to continue to work in law enforcement, to carry on with their practices and to pass these on to their fellow officers, creating an environment where torture and other ill-treatment is accepted as part of the job. In addition, in some places, including parts of Indonesia and Nigeria, corporal punishment is not explicitly prohibited, which encourages the ill-treatment of detainees for the purpose of establishing discipline. Police and prison staff rules can also be inadequate, leaving authorities with wide discretion on the use of force against criminal suspects and detainees.

Even if properly incorporated into law, the necessary legislation and regulation can be meaningless if the perpetrators are, in practice, spared from prosecution and punishment. This was the case in Jordan, where impunity has been institutionalized, with knowledge of torture consistently denied, evidence hidden, and security services effectively shielded from independent criminal prosecution and judicial scrutiny. Similarly, in Equatorial Guinea, where near total impunity prevailed, officers known to use torture regularly continued working in the police and gendarmerie.⁸⁵

A lack of monitoring and complaint mechanisms, combined with impunity, lead to a lack of control and accountability, creating an environment highly conducive to torture and other ill-treatment.

5) Lack of Awareness of Torture and Appropriate Action to Prevent and Punish It

Torture and other ill-treatment are facilitated by the over-use of pretrial detention, combined with a lack of awareness and appropriate action by law enforcement officials. Police and prison staff may feel that it is justified and necessary to use torture and other ill-treatment to extract a confession or discipline a detainee. Authorities in detention facilities may not regard it as their responsibility to take care of the well-being of detainees, especially when they have not been convicted of a crime and are not seen as being under official state care. Law enforcement officials ignorant of their special responsibilities towards pretrial detainees often fail to provide them with the most basic services necessary for survival.

The existence of torture is facilitated by the lack of awareness and appropriate action by other stakeholders in the criminal law system, such as members of the medical profession, judges, and lawyers. If they are not aware of the issue of ill-treatment and its legal prohibition, they may be unlikely to notice, investigate, or report its occurrence. The awareness of the problem is of vital importance for its monitoring and prosecution.

Another major risk factor is the public's lack of awareness. If people are not informed and aware of the problem of torture and other ill-treatment in pretrial detention, they are unlikely to be interested in the treatment and conditions in detention facilities. This makes it easier for detainees to be forgotten and disappear into the detention system. A lack of awareness can also lead to hostile attitudes toward pretrial detainees: many people assume that the arrested must be guilty and deserve to be mistreated. Such attitudes enable authorities to remain shielded from external accountability. Without informed and compassionate public interest and scrutiny, authorities can justify their treatment of pretrial detainees with the argument that the detainees are dangerous "criminals." In Nigeria, the label of "armed robber" has frequently been used to justify the detention, ill-treatment, and extrajudicial executions of innocent individuals who refused to pay a bribe or insulted or inconvenienced the police.⁸⁶

V. Recent Developments to Strengthen Safeguards to Prevent Torture and Other Ill-Treatment in Pretrial Detention

The previous section identified a number of systemic factors that contribute to torture and other ill-treatment in pretrial detention. This section will outline the ways in which torture and other ill-treatment are prohibited and prevented. There have been various attempts at creating legal frameworks that outlaw the use of torture and other ill-treatment; there have also been efforts to establish safeguards that prevent torture, such as videotaping interrogations. These have often proven to be insufficient: the legal provisions not properly adhered to and the safeguards frequently ignored or lacking. This section of the paper examines a number of important recent developments and practices designed to strengthen safeguards to prevent torture and other ill-treatment. This section also attempts to highlight some of the protection gaps that still exist.

Independent monitoring of detention sites has long been recognized as one of the main ways to eliminate torture and other ill-treatment. Torture is not practiced in the public eye, and opening detention sites to independent scrutiny greatly contributes

to the elimination of such practices. As noted by UN Special Rapporteur on Torture Manfred Nowak:

The very fact that national or international experts have the power to inspect every place of detention at any time without prior announcement, have access to prison registers and other documents, are entitled to speak with every detainee in private and to carry out medical investigations of torture victims has a strong deterrent effect. At the same time, such visits create the opportunity for independent experts to examine, at first hand, the treatment of prisoners and detainees and the general conditions of detention (...). Many problems stem from inadequate systems which can easily be improved through regular monitoring. By carrying out regular visits to places of detention, the visiting experts usually establish a constructive dialogue with the authorities concerned in order to help them resolve problems observed.⁸⁷

A number of organizations already engage in such monitoring, including international bodies such as the International Committee of the Red Cross (ICRC), the UN Special Rapporteur on Torture, and regional bodies like the Committee for the Prevention of Torture. On a national level, many states have established their own mechanisms, such as human rights commissions, ombudspersons offices, and statutory visiting bodies. Many civil society organizations have come up with various initiatives to supplement such monitoring.

None of these bodies, acting alone, can prevent torture and other ill-treatment. They operate with different mandates and engage with the criminal justice system at different levels and in distinct ways. International bodies lend more independence, have a higher profile and an external perspective, but their engagement is often infrequent. Their work can be of great value only if it is complemented by national mechanisms that ensure contextual analysis and a regular in-country presence. National mechanisms often need the clout and authority of international and/or regional mechanisms to ensure compliance at the national level. Effective national mechanisms can also strengthen feedback and communication between international and regional bodies and national authorities. Civil society organizations add another dimension, as they may have an easier time earning the trust of detainees who have been abused by the authorities, and are often more flexible in their programming and in responding to changing needs.

Another complementary approach at national levels combines monitoring mechanisms with complaint handling bodies. All detainees should have access to an independent complaints body and should be able to access such a body without fear of

punishment. However, complaint bodies are reactive, taking action only after an allegation of abuse has been made. Nevertheless, their work can usefully feed into the work carried out by preventive bodies, in that the complaints received may inform the work of the latter by highlighting systemic issues that need to be addressed. In order to understand the differences between various monitoring bodies, it is useful to look at some examples.

1) Statutory Visiting Bodies

Many states have legislation that provides for independent oversight by bodies created by the state itself. An example in the United Kingdom is Her Majesty's Inspectorate for Prisons (HMIP), which has carried out regular visits to all prisons and reported on the treatment of prisoners and conditions in prison since 1982. Recently, the HMIP also gained powers to visit police stations, and in 2008 HMIP began unannounced visits to policy custody suites.

The HMIP regularly engages with authorities and carries out systematic visits to detention facilities, issuing recommendations that are highly respected and receive a high level of compliance. This may be hard to achieve in countries where the statutory bodies do not have the same high level of authority. Also, while an independent institution in practice, the HMIP remains associated with the government: for example the chief inspector is appointed by the secretary of the Ministry of Justice and reports to the Ministry of Justice and the Home Secretary.⁸⁸ If duplicated in other countries, this model may raise serious concerns over independence and undermine the effectiveness of preventive work.

2) Human Rights Commissions

Many countries have established human rights commissions (HRCs), which tend to have broad mandates to deal with the whole array of human rights issues, including torture and other ill-treatment. Some HRCs have powers to receive individual complaints and issue binding orders to public officials while others work as an advisory body to the government.⁸⁹ In Uganda, the human rights commission has the power to investigate human rights violations, as well as visit jails, prisons, and places of detention to inspect inmate conditions and make recommendations.⁹⁰

However, HRCs charged with the protection and promotion of all human rights generally do not make systematic visits to places of detention and many only conduct

visits in response to complaints, either as a result of formal judicial proceedings or following information received, for example, from a family member. These are reactive bodies that respond to allegations of torture, so their engagement with pretrial detention is ad hoc. To be more effective and reach the many victims of torture who are unable to lodge a complaint, HRCs need to be able to conduct systematic unannounced visits to all places of detention.

3) Ombudsperson Offices

An ombudsperson institution is typically headed by one person and (in the legal context) normally deals with the administration of justice. Ombudspersons generally become involved with monitoring detention sites through complaints and have quasi-judicial powers, including the ability to resolve individual cases.

However, some ombudsperson institutions also carry out more systematic visits. For instance, the Danish ombudsperson may inspect any public institution, company, or place of employment under his or her jurisdiction.⁹¹ Prisons and police cells are included among the 25–30 inspections the ombudsperson carries out every year.⁹²

Addressing complaints related to the proper administration of justice is the focus of ombudsperson mandates around the world, which means that their involvement in preventive measures is limited.

4) Civil Society Initiatives

Civil society organizations also play a key role in monitoring places of detention, where possible through regular visits to detention facilities. In recent years, a number of NGOs, particularly in developing countries, started engaging in prison paralegal work. An innovative low cost model, pioneered by the Paralegal Advisory Service Institute (PASI) in Malawi and Penal Reform International (PRI),⁹³ community-based paralegals provide legal education, advice, and assistance in Malawian prisons. The model includes the use of an array of instructional methods to inform pretrial detainees of their rights and train them to represent themselves. Paralegals also work directly with prison authorities to monitor the status of files, ensure detainees are aware of the charges against them, and identify individuals eligible for bail. In 2010, as part of a broader Global Campaign for Pretrial Justice, the Open Society Justice Initiative and PASI initiated a pilot project expanding PASI's work to persons arrested and held in police stations pending their first court appearance. PASI paralegals already work with

juvenile arrestees, and the project extended this intervention to adult arrestees in urban and rural areas. The paralegals provide essential advice and support, screening arrestees to promote the diversion of appropriate individuals out of the formal criminal justice process, providing legal advice to arrestees, supporting them by helping locate witnesses and family members, and educating them about the function and procedure of formal bail hearings. A similar paralegal project has been established in Sierra Leone, and a study has been commissioned to measure and document the impact of paralegals working at the police station level.

Though they are not focused directly on torture prevention, paralegal initiatives have the potential for impact on two fronts: the release of defendants on bail reduces the time spent in detention and the chance of torture and other ill-treatment during the investigatory phase, and the continuous or regular presence of paralegals in prisons creates a more open environment, reducing the opportunities for torture and other ill-treatment. Such initiatives engage the criminal justice system in a different way than statutory visiting bodies and their contribution is markedly different. These collaborative approaches should not replace unannounced visits by regular monitors, as paralegals may be at greater risk of being threatened or bribed to remain silent. Also, organizations providing services, such as legal advice or social counseling, rely on a collaborative relationship with prison authorities, which they may undermine if they publically denounce the authorities.

5) Recent Developments: OPCAT

One of the most important recent developments in the field of torture prevention is the creation of Optional Protocol to the Convention Against Torture (OPCAT). This international treaty focuses specifically on the *prevention* of torture and other ill-treatment through the establishment of an international Subcommittee on Prevention of Torture (SPT) and obliges States Parties to “set up, designate or maintain at domestic level one or several visiting bodies,” known as National Preventive Mechanisms (NPMs). These bodies engage with the wider criminal justice system by making recommendations to authorities and engaging with the legislative frameworks.

The obligation of the States Parties to establish NPMs is a major step in advancing the torture prevention agenda at national levels. OPCAT provisions only set out the general features of these bodies, like independence, necessary funding, and minimum powers. NPMs must be tailored to the geopolitical, legal, cultural, and social specifics of each country. The process of their establishment and operation allows for national ownership and makes it possible to accommodate the sensitivities of each given country.

NPMs are also charged with a very specific mandate: the prevention of torture and other ill-treatment. The primary focus of these institutions is to address the systemic shortcomings identified earlier in this paper. Consequently, the types of bodies designated as NPMs have become an essential issue in advancing torture prevention.

Many countries, including Mexico, Mauritius, Armenia, and Costa Rica, have designated their existing HRCs and ombudsperson offices to fulfill NPM mandates. While this may seem like a pragmatic approach, it poses certain difficulties. HRCs do not normally carry out the systemic, regular visits to detention sites, as required by the OPCAT, and thus find themselves re-visiting their mandates when considered for the role of the NPM.⁹⁴ Ombudsperson institutions as NPMs face a slightly different challenge: responding to complaints takes precedence over prison visits. A report from Croatia notes, “Although the work done so far has been highly professional and effective, the bulk of the advisor’s time is still spent on complaints handling rather than visiting, and it is apparent that visits are too short- usually a maximum of one day per institution.”⁹⁵

Other countries have chosen to designate a number of institutions to carry out the NPM mandate. The U.K., for example, has made use of the existing bodies by designating 18 institutions to carry out the NPM mandate, with the HMIP as the coordinating body. The challenge for this type of NPM is to ensure consistency between the 18 institutions that, in addition to their individual mandates, now all have to perform the common mandate of the NPM.

A few countries such as France and Senegal have created entirely new bodies for the purposes of NPM. These bodies now have to establish their working practice and reputation if they are to be effective NPMs.

The mandate of the NPMs provides for a unique possibility to engage with pretrial detainees and prevent torture and other ill-treatment. Article 4 of the OPCAT provides a very broad definition of “deprivation of liberty” which encompasses all types of pretrial detention. This means that NPMs must make regular visits to pretrial detention facilities, and this has already made a significant contribution in addressing systemic gaps in some countries. In the U.K., for instance, it was only when the government started to examine the issue of designating an NPM, following the ratification of the OPCAT, that the question of extending the powers of HMIP to visit police cells and police stations was considered. The U.K. case illustrates that the category of detainees at the highest risk of torture fell, until very recently, outside of the watch of any state-sanctioned national monitoring body.

The establishment of NPMs constitutes a significant step in addressing the prevention of torture and other ill-treatment. NPMs can ensure the necessary regularity of visits as well as an ongoing dialogue with authorities about the implementation of their recommendations. NPMs have a very specific mandate encompassing pretrial detention

and tailored to torture prevention, and international human rights norms are their point of reference, thereby avoiding the need to rely upon often incomplete national provisions. OPCAT represents a clear opportunity for states to prevent torture. NPMs can be tailored to the specifics of each state and their establishment and operation allows for national ownership of the process.

However, the work of NPMs is not without practical challenges. In Moldova, for example, after a period of lengthy consultation the NPM function was designated to four ombudspersons, overseen by an advisory board composed of ten civil society organizations, and chaired by the senior Parliamentary Advocate.⁹⁶ During the April 2009 post-election demonstrations, the work of the NPM members was hampered by a lack of human resources and by repeated denials of access to places of detention.⁹⁷ The whole value of monitoring mechanisms is clearly lost if representatives are only granted access when authorities choose.

In conclusion, it is essential that states allow for a web of various bodies to engage with pretrial detention both from the point of monitoring—like NPMs and statutory visiting bodies—and dealing with complaints and individual cases, like ombudsperson offices and paralegal services. None of these bodies, taken in isolation, can ensure the necessary qualities of efficient monitoring: independence, regularity, systemic approach, and compliance with recommendations. However, when these bodies work in concert to complement each other, it is possible to both limit the use of torture and address it where it occurs. Such work is clearly needed in general—and especially to reduce the heightened threat of torture faced by pretrial detainees.

Notes

1. “Pretrial detention” is defined as the period during which an individual is deprived of liberty (including detention in police lock-ups) through to conclusion of the criminal trial (including appeal). Other terms commonly used for pretrial detainees include “remand prisoners,” “remandees,” “awaiting trial detainees,” “untried prisoners,” and “unsentenced prisoners.”
2. In this paper, torture and other forms of cruel, inhuman or degrading treatment or punishment will be referred to by the shorter term “torture and other ill-treatment.”
3. Roy Walmsley, *World Prison Population List*, eighth edition, January 2009, King’s College London, International Centre for Prison Studies, http://www.kcl.ac.uk/depsta/law/research/icps/downloads/wppl-8th_41.pdf; the list states that “more than 9.8 million people are held in penal institutions throughout the world.”
4. A/56/156, para 35.
5. Jean Amery, *At the Mind’s Limits: Contemplations by a Survivor on Auschwitz and Its Realities*, Indiana University Press, 1980.
6. UN Special Rapporteur on Torture Manfred Nowak, E/CN.4/2006/6, para. 39.
7. Art. 9(3), second sentence ICCPR.
8. See R. Walmsley, *World Pretrial/Remand Imprisonment List* (Pretrial detainees and other remand prisoners in all five continents), International Centre for Prison Studies, King’s College, London, January 2008, at www.kcl.ac.uk/depsta/law/research/icps/downloads/WPTRIL.pdf.
9. See the Special Rapporteur on Torture’s special sections on women (A/HRC/7/3, pp. 8 et seq.), persons with disabilities (A/63/175, pp. 8 et seq.), drug users (A/HRC/10/44, pp. 16 et seq.); children (A/64/215, August 3, 2009, pp. 18 et seq.).

10. UN Special Rapporteur on Torture, Manfred Nowak, A/64/215, para. 40.
11. Penal Reform International, "Reducing Pretrial Detention: An Index on 'good practices' developed in Africa and elsewhere," (2005); pp. 22–23.
12. ECtHR, *Kalashnikov v. Russia*, application no. 47095/99, judgment of 15.07.2002.
13. ECtHR, *Bakmutskiy v. Russia*, application no. 36932/02, judgment of 25.06.2009.
14. Robert Allen, "Current Situation of Prison Overcrowding," paper prepared for 12th United Nations Congress on Crime Prevention and Criminal Justice, http://www.kcl.ac.uk/depsta/law/research/icps/downloads/Current_Situation_of_Prison_Overcrowding_paper.pdf.
15. See Articles 3 UDHR, 9(1) ICCPR, 5 ECHR, 7 ACHR, 6 ACHPR.
16. See Articles 11(1) UDHR, 14(2) ICCPR, 6(2) ECHR, 8(2) ACHR, 7(1)(b) ACHPR.
17. The Universal Declaration of Human Rights states "everyone charged with a penal offense has the right to be presumed innocent until proven guilty according to law in a public trial at which he has all the guarantees necessary for his defense." The Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders established the following principle: "Pre-trial detention may be ordered only if there are reasonable grounds to believe that the persons concerned have been involved in the commission of the alleged offenses and there is a danger of their absconding or committing further serious offenses, or a danger that the course of justice will be seriously interfered with if they are let free." Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27–September 7, 1990.
18. *Accompanying document to the Proposal for a Council Framework Decision on the European supervision order in pre-trial procedures between Member States of the European Union*, SEC(2006)1079 (Brussels: European Commission, August 29, 2006), 10–11.
19. Anthony Nwapa, "Building and Sustaining Change: Pretrial Detention Reform in Nigeria," in *Justice Initiatives: Pretrial Detention* (New York: Open Society Institute, 2008), 86.
20. *World Prison Brief Online* (ICPS), www.kcl.ac.uk/depsta/rel/icps/worldbrief/world_brief.html, accessed February 5, 2007.
21. Martin Schönteich, "The Scale and Consequences of Pretrial Detention around the World," in *Justice Initiatives: Pretrial Detention* (New York: Open Society Institute, 2008), 11.
22. Roy Walmsley, *World Prison Population List, Sixth Edition*, (London: International Centre for Prison Studies, 2007).
23. Martin Schönteich, "The Scale and Consequences of Pretrial Detention around the World," in *Justice Initiatives: Pretrial Detention* (New York: Open Society Institute, 2008), 13.
24. *Prosecutor v. Anto Furundzija* (Trial Judgment), IT-95-17/1-T, International Criminal Tribunal for the former Yugoslavia (ICTY), December 10, 1998.
25. HRC, *Osbourne v. Jamaica*, No. 759/1997, para. 3.3; ECHR, *Tyrer v. United Kingdom*, (1978) 2 EHRR 1, IACHR, *Winston Caesar v. Trinidad and Tobago*, Series C No. 123; UN Special Rapporteur on Torture, Manfred Nowak, Report to the General Assembly 2005, A/60/316, para. 28.
26. CAT, General Comment No.2, UN Doc. CAT/C/GC/2, §3.
27. HRC General Comment No.20, dated 10/02/93, §12.

28. ICCPR, Arts. 9 and 14.
29. During the course of his mandate from December 2004 to through October 2010, Prof. Manfred Nowak and his team undertook missions to Georgia (February 2005), E/CN.4/2006/6/Add.3; Mongolia (June 2005), E/CN.4/2006/6/Add.4; Nepal (September 2005), E/CN.4/2006/6/Add.5; China (November 2005), E/CN.4/2006/6/Add.6; Jordan (June 2006), A/HRC/4/33/Add.3; Paraguay (November 2006), A/HRC/7/3/Add.3; Nigeria (March 2007), A/HRC/7/3/Add.4; Togo (April 2007), A/HRC/7/3/Add.5; Sri Lanka (October 2007), A/HRC/7/3/Add.6; Indonesia (November 2007), A/HRC/7/3/Add.7; Denmark (May 2008), A/HRC/10/44/Add.2; Moldova (July 2008), A/HRC/10/44/Add.3; Equatorial Guinea (November 2008) A/HRC/13/39/Add.4; Uruguay (March 2009), A/HRC/13/39/Add.2; Kazakhstan (May 2009), A/HRC/13/39/Add.3; Jamaica (February 2010, report pending).
30. UN Special Rapporteur on Torture, Manfred Nowak, A/64/215, August 3, 2009.
31. *Ibid.*, para. 19; UN Special Rapporteur on Torture, Nigel Rodley, A/55/290, August 11, 2000, para. 35.
32. UN Special Rapporteur on Torture, Nigel Rodley, A/55/290, para. 35.
33. UN Special Rapporteur on Torture, Manfred Nowak, A/HRC/10/44, para. 55, as observed in Indonesia.
34. *Ibid.*, paras. 60–70.
35. UN Special Rapporteur on Torture, Nigel Rodley, A/56/156, paras. 17–25.
36. Nigeria, p. 13.
37. Indonesia, p. 47, p. 53.
38. Paraguay, Appendix II, p. 37, para. 3.
39. Togo, p. 15.
40. Nigeria, p. 32; Paraguay, p. 12.
41. Indonesia, p. 12.
42. Togo, p.14.
43. Equatorial Guinea; Indonesia, p. 15; Togo, p. 14; Nigeria, p. 16, where it was reported that detainees have to pay to contact family members, receive visitors, or get medication.
44. Togo, p. 16, Nigeria, pp. 13, 14, 16.
45. Equatorial Guinea, Appendix I, p. 23.
46. See Human Rights Committee, *Quinteros Almeida v. Uruguay*, Communication No. 107/1981, para. 13; *El-Megreisi v. Libyan Arab Jamahiriya*, Communication No. 440/1990, para. 5–4; *Mukong v. Cameroon*, Communication No. 458/1991, para. 9.4; *Bozize v. Central African Republic*, Communication No. 428/1990, para. 5.2; *Sarma v. Sri Lanka*, Communication No. 950/2000, para. 9.5.
47. See Human Rights Commission, Resolution 2005/39, para. 9.
48. Indonesia, p. 36.
49. Togo, p. 15.
50. China, p. 53.

51. Kazakhstan, p. 7.
52. Kazakhstan, p. 8.
53. Togo, p. 30.
54. Nigeria, p. 35.
55. Equatorial Guinea, p. 14; Nigeria, p. 16; Nepal, p. 12.
56. Paraguay, p. 28.
57. China, Appendix 3, p. 53, para. 5.
58. Nigeria, Appendix I, p. 44.
59. Togo, p. 19.
60. Nigeria, p. 19.
61. Paraguay, p. 16.
62. As in the example of China, p. 14 and footnote 53.
63. A/64/215, para. 41.
64. Nigeria, p. 28.
65. Nigeria, p. 16.
66. Uruguay, p. 11.
67. Togo, p. 20.
68. Indonesia, p. 21, also reported in the case of Togo, p. 21.
69. See Sri Lanka, p. 20.
70. Kazakhstan, p. 15.
71. Moldova, Appendix II, p. 56.
72. Sri Lanka, p. 20.; Georgia,, p. 3.
73. Indonesia, p. 12; Togo, p. 20.
74. Moldova, p. 13.
75. Paraguay, p. 17.
76. Moldova, p. 24.
77. Moldova, p. 24, Kazakhstan, p. 16.
78. E.g. Mongolia, p. 11; Togo, p. 19.
79. Nigeria, p. 13; Sri Lanka, p. 20; Jordan, p. 17; Indonesia, p. 12.
80. Jordan, p. 17.
81. Sri Lanka, Appendix, p. 35.
82. E.g. Paraguay, p. 14.
83. Jordan, p. 16.

84. In the case of Bakary J. from Austria who was severely tortured by several police officers, the responsible police officers only received suspended sentences of six to eight months. They were sanctioned with dismissal or financial penalties, but only after the intervention of the High Administrative Court.

85. Equatorial Guinea, p. 17.

86. Nigeria, p. 13.

87. UN Special Rapporteur on Torture. Manfred Nowak, A/61/259, para. 72.

88. See Section 5A of the Prison Act 1952 as inserted by section 57 of the Criminal Justice Act 1982. See also HMIP website at <http://www.justice.gov.uk/inspectores/hmi-prisons/aboutus.htm>.

89. Association for the Prevention of Torture, Position Paper: "National Human Rights Commissions and Ombudspersons' Offices/ Ombudsmen as National Preventive Mechanisms under the Optional Protocol to the Convention against Torture," January 2008; p. 2.

90. See Article 52(1) of the Uganda Constitution.

91. Section 18 of the Danish Ombudsman Act.

92. See: http://www.ombudsmanden.dk/inspektioner_en/.

93. The project was supported by Penal Reform International and functioned on the basis of a Memorandum of Understanding with the Malawi Prison Service.

94. Byunghoon Oh, "National Human Rights Institutions and the Correctional System," Contribution to the ICC 22nd Workshop on NHRIs and Detention, March 23, 2009; Geneva, Switzerland.

95. Milena Gogic, "The Context and the Changing Role of the Croatian People's Ombudsman," Contribution to the ICC 22nd Workshop on NHRIs and Detention, March 23, 2009; Geneva, Switzerland.

96. See Parliamentary Advocates Law 1349 of 17 October 1997, as amended by Law 200 of July 26, 2007; Center for Human Rights of Moldova, Report on the Activities of the National Mechanism for Torture Prevention, 2009.

97. See Soros Foundation Moldova, "Entrenching Impunity—Moldova's Response to Police Violence during the April 2009 Post-Election Demonstrations," 2009.

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http://www.univie.ac.at/bim/php/bim/index_eng.php

Torture and other ill-treatment are not aberrations; they are common—even routine—in many detention facilities around the world. And while it is often assumed that torture victims are likely to be political prisoners or suspected terrorists, most victims are ordinary people accused of ordinary crimes. In fact, it is pretrial detainees—people who have not been tried or found guilty—who are most at risk of torture.

Pretrial Detention and Torture looks at the practice of torture in pretrial detention, the systemic factors that leave pretrial detainees so vulnerable, and the safeguards that are needed to prevent this abhorrent practice. By combining policy analysis, first-hand accounts, and recommendations for reform, the report shows why pretrial detainees are so at risk of torture and what can be done to stop it.

