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Chapter 8

International legal standards for the protection of persons deprived of their liberty

Facilitator's Guide

Learning objectives I

- To familiarize the participants with some of the most important international legal standards concerning the treatment of persons deprived of their liberty, including the legal duty of States to prevent, punish and remedy the violation of these standards

Learning objectives II

- To illustrate how multiple legal rules are enforced in practice in order to protect the rights of persons deprived of their liberty
- To explain what steps, measures and/or actions judges, prosecutors and lawyers must take in order to safeguard the rights of persons deprived of their liberty

Questions I

- Have you ever encountered any persons deprived of their liberty who have complained about ill-treatment?
- If so, when and how was the alleged ill-treatment carried out and for what purpose?
- What measures were taken to remedy the situation and what effect did they have, if any?

Questions II

- What are the rules in your county with regard to the recognition of places of detention and the registration of persons deprived of their liberty?
- What are the rules in your country with regard to solitary confinement? E.g., for what reasons, for how long and in what conditions can it be imposed?

Questions III

- Is incommunicado detention permitted under the laws of your country and, if so, for how long? What legal remedies are at the disposal of the person subjected to such detention? How do the authorities ensure that no physical or mental abuses of the detainee or prisoner occur while held incommunicado?
- As lawyers, have you ever encountered any problems in having free and confidential contacts with your detained or imprisoned clients? If so, what did you do about it?

Questions IV

- Are there any special problems in your country with regard to the conditions of detention for children and women?
- If so, what are they and what measures, if any, have been taken to remedy the situation?
- What are the formal complaints procedures in your country for alleged ill-treatment of detainees and prisoners?

The prohibition of torture, and cruel, inhuman and degrading treatment or punishment

Key legal texts I

The International Covenant on Civil and Political Rights, article 7:

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

The prohibition of torture, and cruel, inhuman and degrading treatment or punishment

Key legal texts II

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1 (1):

For the purposes of this Convention, the term “torture” means 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. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The prohibition of torture, and cruel, inhuman and degrading treatment or punishment

Key legal texts III

The African Charter on Human and Peoples' Rights, article 5:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

The prohibition of torture, and cruel, inhuman and degrading treatment or punishment

Key legal texts IV

The American Convention on Human Rights, article 5:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

The prohibition of torture, and cruel, inhuman and degrading treatment or punishment

Key legal texts V

The European Convention on Human Rights,
article 3:

No one shall be subjected to torture or to
inhuman or degrading treatment or punishment.

The prohibition of torture, and cruel, inhuman and degrading treatment or punishment

The legal responsibilities of States

States have a legal duty under international law to:

- Use effective legislative, administrative, judicial and other means to *prevent* acts of torture and other forms of ill-treatment
- *Promptly and effectively investigate* alleged instances of torture and other forms of ill-treatment and provide *effective remedies* to alleged victims of such treatment
- Not grant immunity to perpetrators of torture or other forms of ill-treatment; such immunity is incompatible with a State's legal duty to prevent, investigate and remedy human rights violations

The prohibition of torture and cruel, inhuman and degrading treatment or punishment

What it means I

Every person has the right not to be subjected to torture, or to cruel, inhuman and degrading treatment or punishment. This right must be guaranteed *at all times*. It cannot be derogated from even in public emergencies threatening the life of the nation.

The prohibition of torture and cruel, inhuman and degrading treatment or punishment

What it means II

It can generally be said that torture is a particularly severe form of ill-treatment aimed at obtaining either confessions or information from a person or punishing or intimidating him or her. It is committed by a public official, or at the instigation of or with the consent or acquiescence of such an official or other person acting in an official capacity.

Sexual abuse in the form of rape, committed by public officials, has been considered to constitute a form of torture.

The prohibition of torture and cruel, inhuman and degrading treatment or punishment

What it means III

The right to freedom from ill-treatment comprises a prohibition on corporal punishment and, as a minimum, medical and scientific experimentation that has not been freely consented to.

All persons deprived of their liberty must be treated with respect for the inherent dignity of the human person.

The prohibition of torture and cruel, inhuman and degrading treatment or punishment

What it means IV

Law enforcement officials and medical personnel are strictly forbidden from resorting to torture and other forms of ill-treatment at any time.

Confessions obtained by torture and other forms of unlawful treatment must be disregarded by prosecutors and judges. Prosecutors and judges have a duty to take all necessary steps to ensure that those responsible for using such methods are brought to justice.

The prohibition of torture and cruel, inhuman and degrading treatment or punishment

What it means V

In order to be able to contribute to ensuring the full exercise of the right to freedom from torture and other forms of ill-treatment, judges, prosecutors and lawyers must be allowed to pursue their work efficiently and independently.

Legal requirements as to places of detention and registration of detainees and prisoners I

All persons deprived of their liberty are to be held in officially recognized places of detention.

Registers must be kept at every place of detention with detailed and reliable information on the name of the detained persons, the reasons why they are there, the time of arrival, departure and transfer, as well as the names of the persons responsible for their detention and imprisonment.

Legal requirements as to places of detention and registration of detainees and prisoners II

Registers must be readily available at all times to all persons concerned, such as legal counsel and family members to whom the relevant records should also be communicated ex officio.

Basic principles governing detention and imprisonment I

All persons deprived of their liberty have the right to be treated with humanity and respect for their dignity. This is a fundamental rule which must be guaranteed at all times regardless of the material resources available in the States.

Every detained or imprisoned person has the right not to be subjected to discrimination.

Basic principles governing detention and imprisonment II

Except in truly exceptional circumstances, pretrial detainees on remand shall be separated from convicted persons.

Those remanded in custody have a right to be presumed innocent until proved guilty and therefore also the right to be given more favourable treatment than convicted prisoners.

States have a duty to provide convicted prisoners with teaching and training aimed at their reformation and social rehabilitation.

Accommodation and separation of categories

In general, the accommodation of detainees and prisoners must be such as to respect their dignity, security and good health, with adequate sleeping, living, working and sanitary conditions.

Children/minors who are deprived of their liberty shall be separated from adults, unless such separation is not in their best interests; they shall be brought to justice promptly.

To the extent possible, men and women shall be held in separate institutions. In an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate from the part allocated to men.

Personal hygiene, food, health and medical services I

Every person deprived of his or her liberty has the right and duty to keep clean and the right to be warm and in good health. To this end, he or she shall be provided with the necessary equipment, clothing and bedding, as well as adequate food, and medical supplies and dental services.

Every person deprived of his or her liberty has the right to a cell of adequate size and to enjoy daylight.

Personal hygiene, food, health and medical services II

When dealing with detainees or prisoners on hunger strike, the prison authorities must take care not to adopt an inflexible punitive approach, but to explore avenues for dialogue and be guided by a sense of humanity.

Personal hygiene, food, health and medical services III

A person in police custody shall be allowed to be examined by a physician of his or her own choice. Medical examinations shall be conducted in private unless the doctor requests otherwise, and the result of the medical examinations shall be recorded by the doctor and made available to the detainee and his or her lawyer.

Religion

Every person deprived of his or her freedom has the right not to be discriminated against on the basis of religion. To the extent possible, the religious beliefs and cultural precepts of the detainees and prisoners shall be respected, including the holding of regular services and the organization of pastoral visits.

Recreational activities

Every person deprived of his or her liberty has the right to exercise outdoors for a *minimum* of one hour daily in conditions that respect his or her right to privacy. Certain categories of prisoners may require special recreational training.

Detainees and prisoners shall have reasonable access to educational, cultural and informational material.

Solitary confinement

Although not unlawful as such, the use of solitary confinement should be limited to exceptional circumstances, in particular during pretrial detention. The lawfulness of solitary confinement depends on an assessment of its *purpose, length and conditions*.

Solitary confinement should be used only when the security or well-being of persons or property are in danger, and should be subject to regular judicial supervision.

Solitary confinement should not be used as a punishment.

Incommunicado detention

It is unlawful to prevent people held incommunicado from challenging the legality of their detention or from effectively preparing their defence. Prompt judicial intervention to examine the lawfulness of a deprivation of liberty is instrumental to ensuring respect for a detained person's physical and mental integrity.

Contact with the outside world

Visits and correspondence with family and friends I

Persons deprived of their liberty have the right to enjoy the same human rights as persons in freedom, subject only to those restrictions that are an unavoidable consequence of the confinement.

Detainees and prisoners have the right to contact their families and friends without delay on arrest and detention.

Contact with the outside world

Visits and correspondence with family and friends II

Throughout their deprivation of liberty, detainees and prisoners have the right to maintain contact with families and friends through visits and correspondence at regular intervals. Any interference with this right must be based on law, imposed for legitimate purposes and be necessary in a democratic society.

In organizing family visits, prison authorities must ensure that the rights and freedoms of the visiting persons are respected.

Contact with the outside world

Visits and correspondence with lawyers

Persons deprived of their liberty have a right to be regularly visited by, and consult and communicate with, their lawyers through correspondence that shall be transmitted without delay, preserving the full confidentiality of the lawyer-client relationship. During visits by their lawyers, detainees and prisoners shall be able to discuss with each other within sight but not within the hearing of law enforcement officials.

Contact with the outside world

Correspondence for the purpose of bringing complaints

In order to help ensure their right to personal security, all persons deprived of their liberty have a right to unhindered communication for the purpose of bringing complaints concerning, in particular, allegedly unsatisfactory conditions of detention, torture and other forms of ill-treatment.

Inspection of places of detention

The regular inspection of all places of detention by independent teams is an effective measure to prevent the occurrence of torture and other forms of ill-treatment and should be organized systematically in all countries. To maximize the effect of such visits, the team members must have uninhibited and confidential access to all detainees and prisoners, and make a public report on their findings.

Complaints procedures and effective remedies

Persons deprived of their liberty have a right to an effective remedy for alleged violations of their human rights, including, in particular, the right to freedom from torture and other forms of ill-treatment, and must to this effect have unhindered access to effective complaints procedures which should result in prompt, serious and objective investigations by the authorities.

Proven cases of torture or other forms of ill-treatment must be properly punished and appropriate compensation granted to the victim.

Effective complaints procedures = effective prevention

The existence of effective complaints procedures and the consistent and vigorous investigation of the grievances of persons deprived of their liberty, including prosecution, provide a strong deterrent effect on the incidence of all forms of torture, and cruel, inhuman and degrading treatment and punishment.

The role of judges, prosecutors and lawyers

Judges, prosecutors and lawyers have a key role to play in the protection of the human rights of persons deprived of their liberty and must be allowed to carry out their respective legal responsibilities with true independence and impartiality.

Pregnant women and mothers caring for newborn children in detention

Pregnant women who are deprived of their liberty should receive humane treatment and respect for their inherent dignity at all times, in particular during childbirth and while caring for their newborn children. States shall provide special facilities to ensure this, and medical and health care for such mothers and their babies.