

SAIMUN 2017 Research Report

Committee: Human Rights Council

Issue: The question of torture during police custody and pretrial detention

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1. Description of Issue

Despite numerous efforts to reduce the prevalence and severity of torture in prisons, it still remains an austere issue around the world, especially in LEDCs. Torture is a common practice in prisons; however, detainees during pre-trial detention face the greatest risk of being tortured, as interrogators try to gain as much information as possible. Detainees in police custody and pretrial detention are at the full control under law enforcements' jurisdiction. This is due many systemic factors including lack of police complaint filing system (and due to repercussions in many LEDCs) and inadequate legal resources.

It is easy to assume that those receiving torture and ill-treatment are likely to be suspected terrorists or political prisoners. However, according to United Nations Human Rights Council (OHCHR), over 77% of people are victims accused of petty crimes such as theft, trespassing, shoplifting and etc. Majority of the 77% are either financially incapable or have a low social status, being unable to pay bail or bribes. In many LEDCs, most people that can bribes are exempt from torture. As of December 2016, 83 countries have signed and ratified the United Nations Convention on Torture (UNCAT), with 160 parties. However, the reality is that even within the signatory countries, tortures are not aberrations, but occurring on a very regular basis.

In LEDCs where there are a lack of resources and know-how to interrogate suspects, law officials often perceive torture and other degrading treatment as the fastest and most effective method to obtain information. Unfortunately, in many judicial systems, this moment of

maximum police influence is where the actions of police officers and guards are most shrouded in secrecy.

2. Definition of Key Terms

Pre-trial detention:

Refers to detaining of an accused person in a criminal case before the trial has taken place, either because of a failure to post bail or due to denial of release under a pre-trial detention statute. *(US Legal)*

Custodial death (Death in custody):

A ‘death in custody’ is a generic term which refers to deaths of those in the custody of the State. A non-fatal shooting or severe and extensive injury is not sufficient; there must be a death. However, a death in a road traffic incident, even if the person who dies is under arrest and heading towards a police station in a police car, is not a death in custody. *(Government of the United Kingdom)*

United Nations Convention against Torture (UNCAT):

An international human rights treaty, under the review of the United Nations, that aims to prevent torture and other acts of cruel, inhuman, or degrading treatment or punishment around the world. The convention requires member nations to take effective measures to prevent torture under their respective jurisdictions. *(United Nations)*

3. Timeline of Key Events

Event	Description
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<p>United Nations Convention against Torture (UNCAT), 10 December 1984.</p>	<p>UNCAT was first adopted on 10th of December 1984 by General Assembly resolution 39/46 and came into effect on the 26th of June 1987. This convention requires signatory countries to prohibit the use of torture and other degrading treatments that infringe international laws, especially the Universal Declaration of Human Rights (UDHR).</p>
<p>Amnesty International (AI) adopts the “12-Point Program for the Prevention of Torture”, 1984 (Revised in 2000, 2005 respectively).</p>	<p>This program was drafted in order to prevent torture and ill-treatment of detainees. Amnesty International specifically outlines 12 methods government must undertake to ensure they abide by the minimum international obligations. Unfortunately, no country has fully adopted all 12 methods, with only Nordic countries being closest.</p>
<p>United Nations Standard Minimum Rules for Non-custodial Measures, 14 December 1990</p>	<p>Also known as “The Tokyo Rules”, this resolution outlines basic principles to promote the use of non-custodial methods. This was adopted through General Assembly resolution 45/110 . The United Nations suggests countries to strive in implementing this into their legal systems in order to reduce the use of imprisonment.</p>
<p>Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), 18 December 2002.</p>	<p>OPCAT is a supplement treaty to the 1984 UNCAC. It recommends an implementation of international inspection system to ensure that the standards of detention centers are maintained according to the UDHR. 75 countries are signatories, with 16 countries signing, but not ratifying the protocol. Unfortunately, most of these countries are LEDCs in Africa where the issue is the most severe.</p>
<p>The Subcommittee on Prevention of Torture (SPT) and other Cruel, Inhuman or Degrading Treatment or</p>	<p>SPT is a relatively recent type of treaty in UNHRC. This committee is created with 25 experts that are chosen through an impartial process. They all come from various nationalities and background, being elected on a 4-year cycle by the member nations to the OPCAT. They have the jurisdiction to visit detention facilities of member states when acts of torture and other inhumane acts are suspected or detected.</p>

Punishment, February 2007.	
Freddie Carlos Grey Jr. fell into coma during police custody and dies due to injuries to the spinal cord, 12 April 2015 (Died on 19 April 2015).	On 12 th of April 2015, Freddie Grey Jr., a 25-year old Black American man, fell into coma during Baltimore Police Department's custody. According to reports released by Baltimore Police Department, 6 police officers involved in the incident failed to take appropriate measures when transporting him to the police station and used unnecessarily/illegitimate force on Freddie Grey Jr, causing death due to spinal cord injuries.

4. Positions of Key Member Nations and Other Bodies on the Issue

India:

According to multiple reports, including those published by AI and Human Rights Watch (HRW), around 400~500 people died from 2002 to 2008 while in police custody, one of the highest rates in the world. The government of India has not released an official report or statement on these allegations and methods to tackle this issue. However, NGOs such as HRW obtained numerous cases of injuries/death due to torture by police.

It has been reported that Indian police consistently use inhumane interrogation methods as shown below. India's judicial system makes it extremely hard for citizens to file complaints against police, making this issue of police torture during custody and pretrial one of India's biggest behind the arras.



Figure 1: Giving electric shocks to legs, private parts of the body. The current is passed through the body at regular intervals.



Figure 2: Hitting detainees with flour mill belt throughout the body around 200 times before the individual passes out from extreme pain.

Further Information: [India: Killings in Police Custody Go Unpunished](#)

Tunisia:

The first-ever report on the conditions of pretrial detainees in Tunisia was only released on the 5th of December, 2013, a representation of how ignorant the government was in addressing this severe issue. It found that there was virtually no access to lawyers or legal advices prior to interrogation. Prior to 2011 (under President Zine el Abidine Ben Ali), human rights NGOs had virtually no access whatsoever to such detention centres, showing how cagey the government was in hiding their widespread of human rights infringement.

Further information: [TUNISIA: EVIDENCE OF TORTURE AND DEATHS IN CUSTODY SUGGEST GAINS OF THE UPRISING SLIDING INTO REVERSE GEAR](#)

Myanmar:

As a country that was ruled by military junta for a number of years, “torture” was and is still a rather common practice throughout this country. Even worse, the consensus is that torture isn’t a crime, but a legitimate practice. Since there are virtually no repercussions for police officers for

breaching national/international laws, police officers infringe human rights to an appalling and unimaginable extent. Myanmar currently ranks 147th/168 on the Corruption Perception Index (CPI) released by Transparency International (TI), making it one of the most corrupted nations in the world. This is an indicator of how corrupted the police force in Myanmar is, interrogators increasing the intensity of torturing for people with a high social status in order to extort as much money as possible from the detainee.

5. Suggested Solutions

Under international agreements, people awaiting trial or under custody are presumed innocent unless proven guilty. Thus, they should be allowed to return to their respective residences on the basis that they can be trusted to appear on trial on a set date (judge's professional judgement). Only in circumstances where the suspect is likely to evade or present as a threat to the society they should be detained. By allowing this, it will greatly reduce excessive pretrial detention. Fewer people being detained will reduce the number of people exposed to the risk of torture and will also reduce the overall crowdedness of detention facilities.

Another approach to alleviate torture during police custody and pretrial stage is to guarantee all detainees the access to legal advice prior to interrogation, allowing the suspects to know their rights and how much jurisdiction the interrogators have over them. In addition, investments should be made on educating law enforcement officers on alternative methods to gain information and confessions, focusing more on investigative techniques over interrogative methods. This will ensure countries are taking steps closer to abide by the UNCAT.

Especially in LEDCs, there is serious problem of police officers merely depending on confession as a form of evidence, which is the fundamental reason for police officers inflicting such harm on the detainees. Therefore, it seems like there should be an immediate improvement of the general police and legal system in many LEDCs. There has to be a strict line on whether an act can be considered as a form of interrogation or infringement of human rights.

*Further Reading: [Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk](#) and [12-Point Program for the Prevention of Torture](#).

6. Bibliography

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