SAFEGUARDS AGAINST TORTURE

A list of preventive and remedial measures

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Safeguards against torture

In response to allegations of torture, governments usually respond if they are asked at all. This emphasizes that the primary concern is that the government is willing to tolerate isolated incidents and the work of a few exceptionally reckless security agents. They may also place a thinly veiled gun against the gun that torture or other ill-treatment occurs in dozens of countries while it is prohibited under the legal systems of all of them. The practice of torture cannot be justified as a useful technique, and the prohibition of torture or other ill-treatment should be supported in all countries.

Where the political will exists, a government can stop torture. A government can make control effective are provided by personal testimonies of torture, such as doctors, lawyers and family and to a court of law. The following safeguards during interrogation and custody may be considered appropriate for all countries.

1. Official directives and procedures

The state of head of government, and the head of government, shall ensure that there are adequate institutional measures in place to prevent and to investigate torture and to ensure that torture and ill-treatment are promptly and impartially investigated by independent bodies.

The training of judges and other officials, in particular those responsible for investigating allegations of torture, shall be provided, including the study of torture and ill-treatment.

2. Restriction of incommunicado detention

The rights of all victims of torture are held incommunicado, both for the purpose of interrogation and to allow the marking of torture to disappear. The notification to detainees of their rights shall be given when they are brought before a court of law. The notification to detainees of their rights shall be given when they are brought before a court of law.

3. Separation of authority over detention and interrogation

Detention centers should be monitored by independent national bodies, or they may be delegated to national or international bodies such as the Committee of the Red Cross. They should be able to communicate with detainees, without prior government approval.

4. Safeguards during interrogation and custody

As stated in the UN Declaration against Torture, any form of ill-treatment is prohibited. The process of interrogation itself is a clear indication of the likelihood of torture.

The presence and formal independence of medical officers would be a strong indication of the likelihood of torture.

5. Notification to detainees of their rights

At the time of detention or arrest, or as soon thereafter, detainees should be informed of their rights, with a view to preventing them from being coerced to make statements.

6. Regular system of visits to places of detention

Detention centers should be visited regularly and independently by the detention authorities and independent national bodies, or they may be delegated to national or international bodies such as the Committee of the Red Cross. They should be able to communicate with detainees, without prior government approval.

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11. Medical safeguards

The presence and formal independence of medical officers, or they may be delegated to national or international bodies such as the Committee of the Red Cross. They should be able to communicate with detainees, without prior government approval.

12. No use of statements extracted under torture

Government officials have a duty to seek the extradition of their own officials or their own nationals from another country, to ensure that there is no possibility that these officials will be questioned under torture.

13. Investigation of complaints and reports of torture

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existence of allegations cannot be taken as proof of torture, the paucity of official complaints wherever there is reason to believe that torture has occurred, even if formal complaints have not been lodged.

Based on its experience, Amnesty International believes that complaints machinery to investigate allegations of torture should reflect the following principles:

1. The main objective of complaint machinery is to establish, to the degree of certainty possible, whether torture or ill treatment has occurred. As a result, it is not necessary to prove beyond reasonable doubt who committed the offence in order to conclude that an offence has taken place.

2. The investigating body, however constituted, should be able to examine, out of its own initiative, all allegations made to it, regardless of whether there has been a formal complaint. It should not have to await allegations by a person who is or has been detained, nor to receive formal complaints. It should not be necessary to prove beyond reasonable doubt who committed the offence.

3. The terms of reference of the investigating body should include the authority to subpoena witnesses, records and documents, to take testimony under oath, and to invite evidence and submissions from interested organizations. The investigating body should have available to it the medical documentation resulting from an examination by an independent doctor given immediately after the complaint is filed. Records of any post-mortem examination relevant to a complaint should likewise be available.

4. The investigating body should be capable of acting on its own initiative, without having to receive formal complaints. Whenever there is good reason to believe that torture has occurred, to do so it must be given the staff and other resources to carry out autonomous investigations.

5. The method and findings should be public. The investigation should be open if it is to serve the cause of either justice or deterrence.

6. The right to file a complaint should be available to all parents and former detainees, their families, and to any other person or organization acting on their behalf.

7. Accurate records of complaints filed should be published on a regular basis.

8. Security agents against whom repeated complaints of ill-treatment are filed should be transferred, without prejudice, to duties not directly related to arresting, guarding or investigating detainees, pending a thorough review by senior officers of their conduct.

9. The investigating body should have available to it the medical documentation, gathered by an independent doctor given immediately after the complaint is filed. Records of any post-mortem examination relevant to a complaint should likewise be available.

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14. Prosecution of alleged torturers

The complaints procedures described above are not a substitute for the proper functioning of the courts. The punishment of the culprits should extend to the investigation of complaints of torture against any member of the security forces and any security agent accused of torture. The National Commission of Inquiry and the Commission of Enquiry into Torture should report their findings to the government, and the public should have available to them the medical documentation, gathered by an independent doctor given immediately after the complaint is filed. Records of any post-mortem examination relevant to a complaint should likewise be available.

15. Disciplinary measures

Disciplinary procedures within the security forces or relevant professional bodies, e.g. the medical authorities that licence doctors, should include not only the person directly implicated in its use. Commanding officers should be held accountable for torture committed by officials under their command. The principle requires that to initiate criminal proceedings against the state authorities and should be extended once there is reason to believe that specific agents can be convicted of torture or ill treatment.

16. Civil remedies

Assistance to torture victims by the state should include medical rehabilitation as needed and financial compensation commensurate with the abuse inflicted and damages suffered. His or her assistance should follow from a finding that torture or ill treatment has occurred and should be awarded promptly to any other criminal or civil proceedings. In the event of a detainee's death being shown to be the result of torture or ill treatment, the deceased's family should receive compensation and exemplary damages against the state without prejudice to any other criminal or civil proceedings.

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18. Ratification of international instruments

As a further sign of a government's will to prevent torture all states should ratify the International Covenant on Civil and Political Rights and its Optional Protocol providing for individual complaints. A further step would be the declaration by the government that it will cooperate with international inquiries into allegations of torture by appropriate inter-governmental and non-governmental organizations.

On 10 December 1984 the UN General Assembly adopted by consensus a new Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The 33-article Convention defines torture as a punishable offence and provides guidelines to states parties for action to prevent it and punish those responsible for inflicting it. It also sets up machinery for monitoring the application of the Convention. The Convention comes into force a month after 20 states have ratified it.

The Convention was annexed to resolution 39/46, in which the General Assembly urged all governments to consider signing and ratifying the new instrument as a matter of priority. In the continuing effort to eradicate torture throughout the world, Amnesty International believes that all governments should sign and ratify without reservations the UN Convention against Torture.