

# FACTSHEET

## Torture, cruel, inhuman and degrading treatment

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## 1 Prohibition and definition

Torture, cruel, inhuman and degrading treatment are all prohibited under international human rights law. In addition to the Universal Declaration on Human Rights, many international treaties outlaw torture. These include: The Convention Against Torture (CAT), The International Covenant on Civil and Political Rights (ICCPR), The European Convention on Human Rights (ECHR), The American Convention on Human Rights (AmCHR), the Inter-American Convention to Prevent and Punish Torture<sup>1</sup> and the African Charter on Human and Peoples Rights (Banjul Charter). The prohibition of torture is also widely seen as forming part of customary international law and as being one of the most fundamental human rights.

The most comprehensive **definition of torture** is found in the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Under this Convention, the definition of torture is (broken down into its component elements):

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<sup>1</sup> The Inter-American Convention to Prevent and Punish Torture additionally defines torture as 'the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish'. The list of signatories to this convention is available at: [www.oas.org/DIL/treaties\\_and\\_agreements.htm](http://www.oas.org/DIL/treaties_and_agreements.htm)

1. Intentional infliction of severe pain and suffering (whether physical or mental) on a person
2. for such purposes as:
  - a. obtaining information or a confession from him or a third person
  - b. punishing him for an act he or third person has committed or is suspected or committing
  - c. intimidating or coercing him or a third person
  - d. or for any reason based on discrimination of any kind.
3. The pain or suffering must have been inflicted by, at the instigation of or with the consent or acquiescence of a public official or a person acting in an official capacity.
4. It does not include any pain and suffering arising only from, inherent in or incidental to lawful sanctions.

CAT obliges states that are party to the treaty to take various steps to prevent torture on their territory, including criminalising torture in their domestic law. Additionally, a prompt and impartial investigation must be conducted whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. Under CAT, no exceptional circumstances whatsoever; including war or any other public emergency may be invoked as a justification for torture. As of May 2006, 141 countries are party to CAT.

Although CAT is the only international treaty that focuses solely on torture, cruel, inhuman and degrading treatment, the other treaties mentioned above all contain a more general prohibition of torture. For example the International Covenant on Civil and Political Rights (ICCPR) provides that 'no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment'.

## **2 The distinctions between torture, cruel, inhuman and degrading treatment and 'mistreatment'**

Unlike torture, 'cruel, inhuman and degrading treatment' is not defined by any international human rights treaties<sup>2</sup>. It refers to a form of punishment or treatment that does not meet the threshold of torture, usually because it does not reach the level of severe pain or suffering<sup>3</sup>. It must also be committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. The distinction is made in order to attach a special stigma to deliberate inhuman treatment causing very serious and cruel suffering – that which is classified as torture<sup>4</sup>. Despite this distinction, cruel inhuman and degrading treatment is not permissible under any circumstances. Although the lines between torture, cruel, inhuman and degrading treatment may sometimes be unclear, the distinction between the two is also important because whilst cruel, inhuman and degrading treatment is prohibited, a State does not have the same extent of obligations to criminalise, investigate and prosecute acts of cruel, inhuman and degrading treatment that it has in relation to torture.

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<sup>2</sup> The Human Rights Committee, in its General Comment 20 on Article 7 did not consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different kinds of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.

<sup>3</sup> Amnesty International describe torture as an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

<sup>4</sup> See *Selmouni v France* no. 25803/94 [1999] ECHR 66, (28 July 1999) para 96

Ill-treatment must reach a minimum level of severity for it to constitute cruel, inhuman or degrading treatment. However, whether a particular act or incident constitutes torture or cruel, inhuman or degrading treatment depends on the specific circumstances of that incident. Many factors are relevant including the duration and effect of the treatment, the health, age and gender of the victim as well as the particular treatment involved<sup>5</sup>. In certain circumstances, prison conditions themselves can amount to cruel, inhuman and degrading treatment (see below).

Acts that fall below the threshold of cruel, inhuman or degrading treatment may, for our purposes, be termed 'mistreatment'. Whilst mistreatment does not fall within the scope of CAT; the ICCPR, ECHR and AmCHR provide that those deprived of their liberty should be treated with humanity and with respect. Mistreatment not amounting to cruel, inhuman and degrading treatment may be viewed as a violation of this obligation. Treatment not amounting to torture, cruel, inhuman or degrading treatment will not be dealt with in detail in this factsheet.

Mistreatment	→	Cruel, inhuman or degrading treatment	→	Torture
Least severe	→	more severe	→	most severe

Whilst the definition of torture remains the same or similar in most domestic legal systems, there can be differences in what is perceived to be 'severe pain and suffering' by national governments and courts. There may also be differences in the level of severity or relevant factors viewed necessary for particular treatment to amount cruel, inhuman or degrading treatment. However, international courts and bodies such as the European Court of Human Rights and UN Committee Against Torture as well as some domestic courts have developed a body of case law which may provide useful guidance and benchmarks as to what treatment is likely to be viewed as torture or cruel, inhuman or degrading treatment and what will fall below that level.

### 3 Torture

The **European Court of Human Rights** (ECtHR) has considered many cases concerning torture and inhuman and degrading treatment or punishment.

The Court has held that the use of physical force against persons deprived of their liberty, where that use of force has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 [the prohibition on torture, inhuman or degrading treatment or punishment]<sup>6</sup>. Once the Court has determined that an act falls within Article 3, it will then determine whether the treatment is 'severe' enough to amount to torture or is cruel, inhuman or degrading treatment.

In several cases, the ECtHR has found abuse by police and other authorities to constitute **torture**. In determining whether torture has taken place, the ECtHR will normally consider whether the treatment was for the purpose of obtaining information

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<sup>5</sup> *Ireland v UK*, decision of 18 January 1978, Series A no. 25, p. 65 § 162 and *Costello-Roberts v. the United Kingdom*, judgment of 25 March 1993, Series A no. 247-C, p. 59, § 30.

<sup>6</sup> *Selmouni v France* para 98. See also *Ribitsch v Austria*, 18896/91 [1995] ECHR 55 (4 December 1995) para 38, and *Tekin v. Turkey* judgment of 9 June 1998, *Reports* 1998-IV, pp. 1517-18, para 53

or a confession, inflicting punishment or intimidating<sup>7</sup>. Where there has been no such purpose the court has held that the treatment is cruel, inhuman and degrading rather than torture.

In **Aksoy v Turkey**, the European Court of Human Rights held that a form of treatment known as ‘Palestinian hanging’ where an individual is stripped naked, their arms tied together behind their backs and they are then suspended from their arms, amounted to torture. The Court has held that beatings to the soles of the feet and a blow to the chest resulting in a fall and broken sternum amounted to torture<sup>8</sup>. The Human Rights Committee has considered a combination of beatings, ‘Palestinian hanging’, being pushed into water until close to asphyxiation, being made to stand with legs apart and arms raised for 20 hours and psychological torture to amount to torture<sup>9</sup>. The Committee Against Torture has held that a man who was stripped naked, handcuffed to a bar attached to the wall, beaten with a baton for an hour and subsequently denied medical attention, food or water or the possibility of using the lavatory for three days was tortured<sup>10</sup>.

In another case, a 17 year old girl who was held blindfolded for three days, beaten during interrogation, paraded naked in humiliating circumstances and pummelled with high pressure water while being spun around in a tyre was held by the ECtHR to have been tortured<sup>11</sup>. The rape of a female detainee by an agent of the State for purposes such as the extraction of information or confessions or the humiliation, punishment or intimidation of the victim has been considered to be an act of torture by both the **Inter-American Court of Human Rights** and ECtHR<sup>12</sup>.

The ECtHR has not taken a static view of what constitutes torture or inhuman or degrading treatment. In **Selmouni v France** the Court considered that certain acts which were classified in the past as “inhuman and degrading treatment” as opposed to “torture” could be classified differently in future. It took the view that the increasingly high standard being required in the area of the protection of human rights required increasingly greater firmness in assessing breaches of the fundamental values of democratic societies<sup>13</sup>. This implies that the Court may consider an increasingly lower threshold of treatment to be torture. In Mr Selmouni’s case the Court concluded that physical and mental violence against him over a number of days of questioning, considered as a whole caused “severe” pain and suffering and was particularly serious and cruel so as to amount to torture. The

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<sup>7</sup> See *Salman v Turkey* 21986/93 [2000] ECHR 357 (27 June 2000) para 114 and *Suheyla Aydin v Turkey* 25660/94 [2005] ECHR 325 (24 May 2005) para 195 and *Aksoy v Turkey* 28635/95;30171/96;34535/97 [2000] ECHR 463 (10 October 2000). In *Egmez v Cyprus*, (no. 30873/96, ECHR 2000-XII), and *Denizci v Cyprus*, 25316/94;25317/94;25318/94; [2001] ECHR 351 (23 May 2001), the lack of a specific intent to extract a confession was one of the main reasons why the mistreatment was not held to be torture.

<sup>8</sup> *Salman v Turkey Ibid*

<sup>9</sup> *Estrella v Uruguay CCPR/C/18/D/74/1980*

<sup>10</sup> *Dimitrijevic v Serbia and Montenegro CAT/C/35/D/172/2000*

<sup>11</sup> *Aydin v Turkey* 23178/94 [1997] ECHR 75 (25 September 1997) para 83-84. The girl in this case was also raped, however the Court held that both the rape and the other treatment that she was subjected to would have independently been classified as torture.

<sup>12</sup> *Aydin v Turkey Ibid*. See also the Inter-American Court of Human Rights in *Fernando and Raquel Mejia v. Peru* decision of 1 March 1996 (Report no. 5/96, Case 10,970). This approach was followed by the International Criminal Tribunal for the Former Yugoslavia in *Prosecutor v. Zenjil Delalic et al*, Case no. IT-96-21-T, 16 November 1998.

<sup>13</sup> *Selmouni v France supra* para 101. This sentiment was echoed by the Inter-American Court of Human Rights in *Cantoral Benavides v. Peru* (Judgment of August 18, 2000), para 99.

treatment comprised of: a large number of blows inflicted to Mr Selmouni that left marks and covered almost all of his body, being dragged along by his hair; being made to run along a corridor with police officers positioned on either side to trip him up; threatened sexual assault; being urinated on and threatened with a blowlamp and then a syringe.<sup>14</sup>

The **Committee Against Torture**, which monitors compliance with the **Convention Against Torture** has decided that being handcuffed to a radiator and beaten by several police officers, including being beaten with a metal bar and nightsticks, coupled with racial abuse amounted to torture<sup>15</sup>.

The **US**, in particular has made a clear distinction between cruel, inhuman and degrading treatment and torture<sup>16</sup>. The US Department of Justice has previously suggested that the following acts would likely constitute torture: severe beatings using instruments such as iron bars, truncheons or clubs; threats of imminent deaths such as mock executions; threats of removing extremities; burning, especially burning with cigarettes; electric shocks to genitalia or threats to do so; rape or sexual assault or injury to an individual's sexual organs, or threatening to do any of these sorts of acts; and forcing the prisoner to watch the torture of others<sup>17</sup>.

Both the United Nations Human Rights Committee and the Inter-American Court of Human Rights have considered psychological torture, both deciding that that the threat of serious physical injury can in some cases be a form of "psychological torture".<sup>18</sup>

#### **4 Cruel, inhuman and degrading treatment**

In 1979 the **European Court of Human Rights** decided a case brought by Ireland against the UK about the treatment of detainees in various holding centres, police offices and military barracks in Northern Ireland in the early 1970s<sup>19</sup>. The Court held that the combined use of five interrogation techniques: wall-standing, hooding, subjection to noise, deprivation of sleep and deprivation of food and drink amounted to cruel inhuman and degrading treatment but did not amount to torture because the suffering involved did not reach the requisite level of intensity and cruelty implied by the term torture. In the Court's view the distinction between torture and cruel, inhuman and degrading treatment derived principally from a difference in the **intensity** of the suffering inflicted.

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<sup>14</sup> Selmouni v France *supra* para 102-105

<sup>15</sup> Dimitrijevic v Serbia and Montenegro, CAT/C/33/D/207/2002 (29/11/2004).

<sup>16</sup> The Department of Justice once suggested that: to constitute torture, an act must inflict pain that is difficult to endure. 'Physical pain amounting to torture must be equivalent in intensity to the pain accompanying serious physical injury, such as organ failure, impairment of bodily function or even death. For purely mental pain and suffering to amount to torture...it must result in significant psychological harm of significant duration eg lasting for months or even years. See: Memo from the department of Justice to White House Counsel (August 1, 2002). Note, this memo was later withdrawn and replaced by a Memorandum for James B Comey, Deputy Attorney General, dated December 30 2004 which takes a broader approach.

<sup>17</sup> Memo from the department of Justice to White House Counsel (August 1, 2002), p 24.

<sup>18</sup> *United Nations. Human Rights Committee. Miguel Angel Estrella v. Uruguay*, No. 74/1980 of March 29, 1983. Inter American Court of Human Rights in *Cantoral Benavides case*, *supra*, para. 102.

<sup>19</sup> *Ireland v UK* (1979-1980) 2 EHRR 25

The **Israeli Supreme Court** has also considered a case involving five techniques of interrogation: shaking, the Shabach<sup>20</sup>, the frog crouch, excessive tightening of handcuffs and sleep deprivation<sup>21</sup>. Similarly to the ECtHR, the Israeli Supreme Court concluded that these techniques amounted to cruel, inhuman and degrading treatment but not torture.

The **European Court of Human Rights** has held that where an individual is taken into police custody in good health but is found to be injured at the time of release, the State must provide a plausible explanation of how those injuries were caused, failing which a clear issue arises under Article 3 of the Convention<sup>22</sup>. The **Human Rights Committee** has similarly said that where an individual deprived of liberty receives injuries in detention, it is incumbent on the State party to provide a plausible explanation of how these injuries occurred and to produce evidence refuting these allegations<sup>23</sup>.

The **ECtHR** has held that beating by police officers resulting in a broken jaw reached the threshold of inhuman and degrading treatment<sup>24</sup>. The Court has looked at the number and intensity of blows inflicted to a detainee (backed up by medical evidence) when determining that treatment was inhuman and degrading<sup>25</sup>.

The **ECtHR** has considered treatment to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering<sup>26</sup>. In considering whether a treatment is “degrading” within the meaning of Article 3, the **ECtHR** will generally consider whether its object is to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3<sup>27</sup>. However, although the purpose of such treatment is a factor to be taken into account, in particular whether it was intended to humiliate or debase the victim, the absence of any such purpose does not inevitably lead to a finding that there has been no violation of Article 3 (see below discussing when prison conditions themselves can amount to a breach inhuman and degrading treatment)<sup>28</sup>. Unlike cases where the ECHR has held that treatment constitutes torture, the court has not always looked at whether the purpose of the treatment was intended eg to elicit information, when deciding whether certain treatment is inhuman and degrading. The state of health of the prisoner will also affect whether certain treatment is inhuman and degrading<sup>29</sup>. Most deliberate infliction of physical or mental pain by officials is likely to at least amount to ‘degrading’ treatment.

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<sup>20</sup> The detainee is hooded and seated on a small and low chair which is tilted forward with his hands behind his back. Powerfully loud music is played in the room.

<sup>21</sup> *Public Committee Against Torture in Israel v Israel* 38 ILM 1471 (1999)

<sup>22</sup> *Selmouni v France* para 87. See also the *Tomasi v. France* judgment of 27 August 1992, Series A no. 241-A, pp. 40-41, §§ 108-111, and the *Ribitsch v. Austria* judgment of 4 December 1995, Series A no. 336, pp. 25-26, § 34)

<sup>23</sup> *Siragev v. Uzbekistan*, Communication No. 907/2000, Views adopted on 1 November 2005, para.6.2.

<sup>24</sup> *Dizman v Turkey*, 27309/95 [2005] ECHR 609 (20 September 2005) para 85

<sup>25</sup> *Tomasi v France*, Series A, No 241-A, Application No 12850/87, para 115

<sup>26</sup> *Kalashnikov v Russia*, 47095/99 [2002] ECHR 596 (15 July 2002), para 95

<sup>27</sup> see *Raninen v. Finland*, judgment of 16 December 1997, *Reports of Judgments and Decisions*, 1997-VIII, pp. 2821-22, § 55 and *Peers v Greece*, 28524/95 [2001] ECHR 296 (19 April 2001), para 68.

<sup>28</sup> *Peers v Greece*, *Ibid*, para 74

<sup>29</sup> See *Mouisel v France*, 67263/01 [2002] ECHR 740 (14 November 2002) para 38-40.

The **Human Rights Committee**, which monitors states' compliance with the International Covenant on Civil and Political Rights, has held that being held for long periods of incommunicado detention in an unknown location amounts to torture, cruel and inhuman treatment<sup>30</sup>. The Human Rights Committee has often held that beatings in prison amount to a violation of Article 7. However, in some cases, injuries sustained by beatings not justified as the result of the use of 'reasonable force' were only held to be violations of Article 10 and were not thought to amount to cruel and inhuman treatment<sup>31</sup>.

As far as psychological abuse goes, the ECtHR has established that the mere possibility of the commission of one of the acts prohibited in Article 3 of the European Convention is sufficient to consider that said article has been violated, although the risk must be real and imminent. In line with this, to threaten someone with torture may constitute, in certain circumstances, at least "inhuman treatment"<sup>32</sup>.

The **Inter-American Convention to Prevent and Punish Torture** contains a broader definition of torture than the CAT: 'torture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventative measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish'.

The Inter-American Commission and Court of Human Rights have been less rigid in determining the thresholds between torture and cruel, inhuman and degrading treatment than the other bodies mentioned above.

## **5 When are prison conditions cruel, inhuman and degrading treatment?**

In some circumstances, prison conditions themselves can amount to cruel, inhuman and degrading treatment.

For this to be the case, the **European Court of Human Rights** has stressed that the suffering and humiliation involved must go beyond the inevitable suffering or humiliation connected with imprisonment. Measures depriving a person of his liberty may often involve such an element of suffering or humiliation. But, under Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity. He must not be subjected to distress or hardship that exceeds the unavoidable level of suffering inherent in detention, and given the practical demands of imprisonment, his health and well-being must be adequately secured<sup>33</sup>.

As mentioned above, even when there is no specific intent to humiliate or debase the victim, there can still be a violation of article 3 (although this will not be torture)<sup>34</sup>. In

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<sup>30</sup> *El-Megreisi v Libyan Arab Jamahiriya* CCPR/C/50/D/440/1990, 24 March 1994. In this case, Mr El-Megreisi was held in incommunicado detention for 3 years.

<sup>31</sup> *Chaplin v Jamaica* CCPR/C/55/D/596/1994 (1995)

<sup>32</sup> *Eur. Court HR, Campbell v. Cosans*, Judgment of 25 February 1982, Series A Vol. 48, para 26.

<sup>33</sup> *Poltoratskiy v Ukraine*, 38812/97 [2003] ECHR 216 (29 April 2003), para 132, *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI

<sup>34</sup> *Peers v Greece*, *supra* para 74

**Peers v Greece** the European Court of Human Rights held that the fact that the authorities took no steps to improve the unacceptable prison conditions showed a lack of respect for the prisoner concerned. The Court held that the prison conditions diminished the applicant's human dignity and "aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance" and that this amounted to **degrading treatment**. The Court took into account, in particular, that, for at least two months, the applicant had to spend a considerable part of each 24-hour period practically confined to his bed in a cell with no ventilation and no window, which would at times become unbearably hot. He also had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cell-mate<sup>35</sup>.

Overcrowding and inadequate facilities for heating, sanitation, sleeping arrangements, food, recreation and contact with the outside world in Greek prisons has been held to amount to inhuman and degrading treatment<sup>36</sup>. When assessing conditions of detention, account is taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant<sup>37</sup>. In another case, serious overcrowding and absence of sleeping facilities, combined with the inordinate length of the period during which he was detained in such conditions, amounted to degrading treatment contrary to Article 3<sup>38</sup>.

In Russia, severely overcrowded and unsanitary environment and its detrimental effect on the applicant's health and well-being, combined with the length of the period during which the applicant was detained in such conditions (4 years and 10 months), amounted to degrading treatment<sup>39</sup>.

The **Inter-American Court of Human Rights** has similarly held that prison conditions can constitute cruel, inhuman and degrading treatment. In one case the Court held that being held with other prisoners in small and poorly ventilated cells, having a slop-pail instead of a toilet and being obliged to sleep on the floor as well as lack of medical treatment for serious health problems, failed to respect the prisoner's physical, mental and moral integrity and constituted inhuman and degrading treatment<sup>40</sup>. The Court has consistently held that "prolonged isolation and being held incommunicado constitute, in themselves, forms of cruel and inhuman treatment, harmful to the mental and moral integrity of the person and to the right of all detainees of respect for the inherent dignity of the human being"<sup>41</sup>. and said that incommunicado detention is only permissible in exceptional circumstances. The **Human Rights Committee** had also held that prolonged incommunicado detention is cruel, inhuman and degrading<sup>42</sup>.

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<sup>35</sup> *Peers v Greece*, *supra* para 75

<sup>36</sup> "Greek case" Report of the European Commission on Human Rights, 5 November 1969, 12 Yearbook of the European Convention on Human Rights 1.

<sup>37</sup> *Dougoz v Greece* 40907/98 [2001] ECHR 213 (6 March 2001) para 46

<sup>38</sup> *Dougoz v Greece*, para 48.

<sup>39</sup> *Kalashnikov v Russia*, *supra*, para 95

<sup>40</sup> *Caesar V. Trinidad and Tobago*, Judgment of March 11, 2005, Inter-Am Ct. H.R., (Ser. C) No. 123 (2005).

<sup>41</sup> See *Cantoral Benavides v Peru* Series C, No. 69, judgment of 18 August 2000 para 8., *Fairén-Garbi and Solís-Corrales Case*, Judgment of March 15, 1989, Inter-Am. Ct. H.R. (Ser. C) No. 6 (1989), para. 149; and *Velázquez-Rodríguez Case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988). para. 156.

<sup>42</sup> 20 months in *Marais v Madagascar* CCPR/C/18/D/49/1979, 24 March 1983.

The **Human Rights Committee** has considered that standards of detention that do not comply with the UN Standard Minimum Rules on the Treatment of Prisoners in conjunction with incommunicado detention, threat of torture, intimidation, food deprivation and being kept locked up for several days without possibility of recreation amounted to cruel, inhuman and degrading treatment<sup>43</sup>. The Committee has said that the detention of a prisoner conditions that pose a serious threat to his/her health, constitutes a violation of Article 7 of the International Covenant on Civil and Political Rights<sup>44</sup>. There are however a number of cases where prison conditions have been very poor and medical attention lacking and the Committee have not said that Article 7 was violated. However, in these cases it has held that there was a violation of Article 10<sup>45</sup>. It is worth remembering that each case will be decided on a case by case basis considering both conditions of detention and the individual circumstances of the case. If prison conditions do not amount to cruel, inhuman and degrading treatment they may violate article 10. This will often be the case with unsanitary conditions and denial of food or medical treatment.

The UN Special Rapporteur on torture has also taken the view that very poor, unsanitary and overcrowded prison conditions were cruel, inhuman and degrading<sup>46</sup>.

### **5.1 Denial of medical treatment in prison**

The denial of medical treatment in prison can amount to cruel, inhuman and degrading treatment.

The **European Court of Human Rights** has said that Article 3 cannot be interpreted as laying down a general obligation to release a detainee on health grounds or to place him in a civil hospital to enable him to obtain specific medical treatment. However, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured<sup>47</sup>.

The Court has held that persons in custody are in a vulnerable position and that the authorities are under a duty to protect them. It is incumbent on the State to account for any injuries suffered in custody, particularly where that individual dies<sup>48</sup>. The European Commission has held that the lack of immediate medical treatment to a prisoner was a violation of Article 3<sup>49</sup>. This is particularly the case, when lack of medical treatment follows mistreatment carried out by state officials<sup>50</sup>. The European Committee on the Prevention of Torture have said that prison staff may, on occasion, have to use force to control violent prisoners, including the use of instruments of physical constraint. However, 'a prisoner against whom any means of force has been

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<sup>43</sup> Mukong v Cameroon, CCPR/C/51/D/458/1991, 10 August 1994

<sup>44</sup> *Moriana Hernandez Valentini de Bazzano v. Uruguay*, No. 5/1977, of August 15, 1979, CCPR/C/7/D/5/1977

<sup>45</sup> See, for example *Howell v Jamaica*, CCPR/C/79/D/798/1998, 7 November 2003

<sup>46</sup> Report on Russia: UN doc E/CN.4/1995/34/Add.1

<sup>47</sup> *Kalashnikov v Russia*, *supra*, para 95

<sup>48</sup> *Salman v. Turkey* [GC], no. 21986/93, § 99, ECHR 2000-VII

<sup>49</sup> *Hurtado v. Switzerland*, judgment of 28 January 1994, Series A no. 280-A, opinion of the Commission, pp. 15-16, § 79

<sup>50</sup> see *Ilhan v. Turkey* [GC], no. 22277/93, § 87, ECHR 2000-VII

used should have the right to be immediately examined and, if necessary, treated by a medical doctor<sup>51</sup>.

The case of **Keenan v UK**<sup>52</sup> involved the suicide in prison of a young man with psychiatric problems. In this case, the Court found a violation of Article 3 because the standard of treatment given to Mr Keenan was not compatible with the standard of treatment required in respect of a mentally ill person and as such amounted to cruel, inhuman and degrading treatment and punishment<sup>53</sup>.

The **Human Rights Committee** has held that the denial of medical treatment after being subjected to ill-treatment itself amounts to cruel and inhuman treatment<sup>54</sup>.

## **5.2 Solitary Confinement**

Solitary confinement may sometimes amount to cruel, inhuman and degrading treatment. For more information, please see the Prisoners Abroad factsheet 'Solitary Confinement'.

## **6 Remedies for torture, cruel, inhuman and degrading treatment**

Subjecting a person to torture, cruel, inhuman or degrading treatment is a human rights violation which entails a variety of remedies. It is important to be aware that a state has greater obligations regarding an act of torture committed on its jurisdiction than it does in relation to cruel, inhuman and degrading treatment.

Under CAT, certain rights and obligations apply to both torture and acts of cruel, inhuman or degrading treatment or punishment. These are: the obligation to conduct a prompt and impartial investigation whenever there are reasonable grounds to believe that such an act has been committed in the jurisdiction of that state; and that any person who alleged that they have been subject to such treatment must have the right to complain to and have their case promptly and impartially examined by competent authorities. Both the Human Rights Committee and European Court of Human Rights have held that both torture and cruel, inhuman and degrading treatment must be investigated promptly and impartially by competent authorities<sup>55</sup>. The ECtHR added that such an investigation should be capable of leading to the identification and punishment of those responsible<sup>56</sup>.

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<sup>51</sup> CPT/Inf (92) 3, para 53

<sup>52</sup> [2001] 33 EHRR 38

<sup>53</sup> The Court held that '*The lack of effective monitoring of Mark Keenan's condition and the lack of informed psychiatric input into his assessment and treatment disclose significant defects in the medical care provided to a mentally ill person known to be a suicide risk. The belated imposition on him in those circumstances of a serious disciplinary punishment – seven days' segregation in the punishment block and an additional twenty-eight days to his sentence imposed two weeks after the event and only nine days before his expected date of release – which may well have threatened his physical and moral resistance, is not compatible with the standard of treatment required in respect of a mentally ill person. It must be regarded as constituting inhuman and degrading treatment and punishment within the meaning of Article 3 of the Convention*'.

<sup>54</sup> *Mika Miha v Equatorial Guinea* CCPR/C/51/D/414/1990, 10 August 1994.

<sup>55</sup> See Human Rights Committee General Comment 20 (44), that Article 7 should be read in conjunction with Article 2(3). As such complaints of torture, cruel, inhuman or degrading treatment must be investigated promptly and impartially by competent authorities. The ECtHR has similarly read Article 3 in conjunction with the general obligation under Article 1 to "secure to everyone within [its] jurisdiction the rights and freedoms defined in ... [the] Convention" as requiring an effective official investigation in *Poltoratskiy v Ukraine*, *supra* para 125

<sup>56</sup> *Poltoratskiy v Ukraine*, *supra* para 125

The Convention Against Torture provides a number of additional obligations which apply to torture but do not extend to not cruel, inhuman or degrading treatment. One of these is that states that are party to the treaty must criminalise torture under domestic law. Thus, in any country that is party to CAT, the commission of torture should be a criminal offence to which superior orders are not a defence. Additionally, there is an obligation to either prosecute or extradite any person alleged to have committed, attempted to commit, participated in or otherwise complicit in an act of torture. Finally, the legal systems of state parties must provide redress for victims of torture and there must be an enforceable right to fair and adequate compensation.

Finally, any statement which is established to have been made as a result of torture may not be invoked as evidence in any proceedings. Neither the CAT nor Inter-American Convention on Torture do not explicitly specify that this also applies to any statement made as a result of treatment that does not reach the threshold of 'torture'. However, the International Covenant on Civil and Political Rights provides the right not be compelled to testify against yourself or to confess guilt. The Human Rights Committee has interpreted this to mean that the "law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment"<sup>57</sup>. The Inter-American Convention on Human Rights provides that 'A confession of guilt by the accused shall be valid only if it is made without coercion of any kind'. This would include torture, cruel, inhuman or degrading treatment.

Most of the international level challenges in cases involving torture, cruel, inhuman and degrading treatment focus on the lack of a prompt and impartial investigation into an allegation or lack of redress. Most of the decisions of the CAT have dealt with this lack of an investigation. Many cases heard by the HRC also focus on the lack of investigation or remedy<sup>58</sup>. How to take a case to one of these international bodies is discussed below.

## **7 How to raise allegations of torture or cruel, inhuman or degrading treatment**

As discussed above there are various consequences arising from the infliction of torture, cruel, inhuman or degrading treatment. Victims of such treatment can seek to raise any violations in a number of ways. For a list of organisations that can help you with this, please see the Prisoners Abroad factsheet '**Challenging Breaches of Human Rights**'.

Most international bodies that will examine allegations of torture require the **exhaustion of domestic legal remedies** before they will consider your case. This means that you have to have sought a remedy in the country where you were mistreated and this remedy must have been denied to you, be unreasonably prolonged or ineffective. Your first point of call should therefore be a local lawyer in the country where the torture or mistreatment occurred who can advise you as to any remedies available under local law. Remember that torture, cruel, inhuman and

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<sup>57</sup> Human Rights Committee, General Comment 20, para 12.

<sup>58</sup> Zheikov v Russian Federation, CCPR/C/86/D/889/1999, Communication No. 889/1999, 11 April 2006.

degrading treatment should be criminalised under domestic law and there is an obligation for states to investigate allegations of such treatment.

If your attempts to get redress at the national level fail, the international bodies that may be able to consider your case are listed below. These bodies will usually only consider your case if no other international body has or is considering it.

Some of these bodies offer legal aid to assist with getting a lawyer to help with your case. Where legal aid is not available there may be lawyers or other organisations in the UK that will help you to prepare your case. Some of these can be found on the factsheet 'Challenging Breaches of Human Rights'.

### **7.1 European Court of Human Rights**

If the country in which you were mistreated has ratified the European Convention on Human Rights, you can file an individual complaint with the European Court of Human Rights. Currently 46 countries have ratified the European Convention on Human Rights. A list is available at the Council of Europe website: [www.coe.int](http://www.coe.int)

An application to the ECtHR must be made within six months of the final domestic decision and legal aid may be available. More information about the ECtHR is available at [www.echr.coe.int](http://www.echr.coe.int)

### **7.2 European Committee for the Prevention of Torture**

The European Committee for the Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment (CPT)<sup>59</sup>, visits places of detention to "examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment." The CPT does not take up individual cases but after visiting a country will recommend improvements where necessary. More information on the Committee is available here: [www.cpt.coe.int/en](http://www.cpt.coe.int/en)

### **7.3 UN Human Rights Committee/Committee Against Torture**

The Human Rights Committee and the Committee against Torture are UN treaty bodies that have been set up to monitor compliance with the ICCPR and CAT respectively. Both of these treaties have mechanisms that allow for these bodies to consider individual complaints. In order for you to make a complaint, the country against which you are complaining has to have recognised the competence of the committee to consider individual complaints. Under the ICCPR this is done by ratifying the Optional Protocol and with CAT, the country must have made a declaration under Article 22 of the Convention against torture.

To find the countries that have accepted the possibility of individual complaints under these treaties and for more information about these bodies, see the website of the UN Office of the High Commissioner for Human Rights<sup>60</sup>: [www.ohchr.org](http://www.ohchr.org)

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<sup>59</sup> Established by the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. A list of signatories is available here:

<http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=126&CM=1&DF=&CL=ENG>

<sup>60</sup> A list of those countries that are party to the Optional Protocol to the ICCPR is available here: [www.ohchr.org/english/countries/ratification/5.htm](http://www.ohchr.org/english/countries/ratification/5.htm) and declarations in relation to CAT are here: [www.ohchr.org/english/countries/ratification/9.htm](http://www.ohchr.org/english/countries/ratification/9.htm).

There is no specific time limit to make an application but it should be done as soon as possible after exhaustion of domestic legal remedies. No legal aid is normally available to bring complaints under the treaty bodies, although the legal aid provisions in particular countries may include taking cases to international bodies. It is important to note that opinions of the HRC and CAT are not legally binding on the country concerned; sometimes countries may disagree with the findings of the Committee and not implement their recommendations.

#### **7.4 Inter-American Commission/Court of Human Rights**

The Inter-American Commission and Court of Human Rights monitor states' compliance with the Inter-American Convention on Human Rights and American Declaration on the Rights and Duties of Man. The Commission can consider individual complaints against member states of the Organisation of American States<sup>61</sup> and make a report and recommendations. The Commission gives the State a period of time to resolve the situation and to comply with the recommendations of the Commission. After this period of time the Commission can either write a second report or refer the case to the Inter-American Court of Human Rights.

As with the other bodies, all domestic remedies must have been exhausted and a petition must be filed with the commission within six months of the final domestic decision.

More information is available at [www.cidh.oas.org](http://www.cidh.oas.org)

#### **7.5 African Commission/Court of Human Rights**

The African Commission can consider individual complaints about states that have ratified the African Charter on Human and Peoples Rights. In order to bring a complaint, domestic legal remedies must have been exhausted or been unduly prolonged.

The African Court on Human Rights can hear individual complaints if the state concerned has recognised the Court's competence in this respect by ratifying the Protocol to the African Charter. The Court can consider obligations under other human rights instruments that the State concerned has ratified; not just the African Charter on Human and Peoples Rights.

Decisions of the African Court on Human Rights are binding on the state concerned but decisions of the Commission are not.

More information is available at [www.achpr.org](http://www.achpr.org)

#### **7.6 UN Special Rapporteur on Torture**

The UN Special Rapporteur on Torture can consider individual allegations of torture, even where the country concerned has not ratified the Convention Against Torture. There is no requirement of exhaustion of domestic remedies before the Special Rapporteur will consider a complaint.

More information on the procedures of making a complaint is available at: [www.ohchr.org/english/issues/torture/rapporteur/index.htm](http://www.ohchr.org/english/issues/torture/rapporteur/index.htm)

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<sup>61</sup> A list of these is available here: [www.oas.org/documents/eng/memberstates.asp](http://www.oas.org/documents/eng/memberstates.asp)

## **7.7 UK Foreign and Commonwealth Office**

The Foreign and Commonwealth Office takes the mistreatment of British nationals very seriously. The FCO may be able to raise any allegations of torture or cruel, inhuman and degrading treatment with the relevant authorities in the country where a British national is detained and ask for an investigation into the allegations if an investigation has not been forthcoming.

**If you do not have access to the internet, staff at Prisoners Abroad may be able answer queries about the countries that are party to any particular international agreement.**

The information provided in this factsheet is intended for information purposes only. It is not intended to constitute, nor does it constitute legal advice. Prisoners Abroad recommend that professional legal advice should always be sought. The information contained in this factsheet is subject to change and may not be up-to-date or accurate. Prisoners Abroad gives no warranty and makes no representation regarding the accuracy or completeness of the information provided. Prisoners Abroad will not be held responsible for any loss or damage arising from the use of the information provided.

If you spot any errors or inaccuracies in this factsheet please let us know by emailing [info@prisonersabroad.org.uk](mailto:info@prisonersabroad.org.uk). Thank you.

If you require this leaflet in a large print format, please contact us. Our details are below.

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