



United Nations Counter-Terrorism Implementation Task Force

CTITF Working Group on Protecting Human Rights
while Countering Terrorism

Basic Human Rights Reference Guide: Detention in the Context of Countering Terrorism

October 2014



United Nations Office of the High Commissioner on Human Rights

Wahid El-Agnaf

Special Rapporteur on the promotion and protection of human rights
and fundamental freedoms while countering terrorism

United Nations Office on Drugs and Crime

Counter-Terrorism Committee Executive Directorate

Office of Legal Affairs

United

About the Basic Human Rights Reference Guide Series

The Basic Human Rights Reference Guide series is an initiative of the Counter-Terrorism Implementation Task Force (CTITF) Working Group on Protecting Human Rights while Countering Terrorism.

The United Nations Global Counter-Terrorism Strategy (General Assembly resolution 60/288) was adopted by consensus by all Member States on 8 September 2006 and has since then been reaffirmed on a biannual basis, lastly by General Assembly resolution 68/276 of 13 June 2014. The Strategy reaffirms respect for human rights and the rule of law as the fundamental basis for the fight against terrorism. In particular, Member States reaffirmed that the promotion and protection of human rights for all and respect for the rule of law are essential to all components of the Strategy, and recognized that effective counter-terrorism measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing.

In order to assist States in this regard, the Task Force formed the Working Group on Protecting Human Rights while Countering Terrorism, which is led by the Office of the United Nations High Commissioner for Human Rights (OHCHR). Members include the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the United Nations (e)-5 () JTJ8e

Counter-Terrorism

Contents

Principles and Guidelines	1.....
I. Introduction	3.....
A. Purpose of the Guide	3.....
B. Definitions	4.....
C. Further development and codification of international law and standards	5.....
D. Key issues	6.....
II. Guiding Principles and Guidelines	9.....
Notes	33.....

Principles and Guidelines

For the purpose of assisting legislators, decision makers in the areas of policy and practice, judges, lawyers and prosecutors, law enforcement officials and public and private actors involved in the administration of detention facilities, this document identifies and explains ten guiding principles and guidelines concerning detention in the context of countering terrorism:

1. No one shall be subject to unlawful or arbitrary deprivation of liberty in the implementation of counter-terrorism measures.
2. On arrest or detention on terrorism charges, persons must be informed of the reasons for arrest or detention, be promptly informed of any charges and of the person's rights and be informed of how to avail oneself of those rights, in a language, manner and format understood by the detained or arrested person. Competent authorities must record and communicate certain further information to the detained person and/or his or her legal counsel concerning the circumstances of the detention.
3. All persons deprived of liberty have the right to prompt and effective access to legal counsel.
4. Detention awaiting trial should be an exception and should be as short as possible.
5. Persons deprived of their liberty must be treated with humanity and with respect for the inherent dignity of the human person. Persons deprived of their liberty

7. Any form of detention must be subject to effective oversight and control by the judiciary. Any person arrested or detained for the alleged commission of a terrorist offence must be brought promptly before a judge or other officer authorised by law to exercise judicial power. All detained persons, whether the detention per

I. Introduction

1. States have an obligation in international law to protect the public from acts of terrorism and to bring to justice persons who commit, or prepare or assist the commission of acts of terrorism. Among other things, Security Council resolution 1373 (2001) requires States to: “Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts-or in supporting terrorist acts is brought to justice.” United Nations Global Counter-Terrorism Strategy also resolves that UN Member States will take “urgent action to prevent and combat terrorism in all its forms and manifestations”. States have adopted various tools to those ends, including counter-terrorism measures through the detention of persons.

A. Purpose of the Guide

2. This Guide is not intended to cover all issues concerning detention or all aspects of the rights engaged when a person is deprived of his or her right to liberty. Its main purpose is to assess the key challenges engaged in the detention of persons when countering terrorism and to provide Member States with legal and practical guidance to assist them in ensuring that counter-terrorism measures comply with international human rights law. The Guide is aimed at legislators, decision makers in the areas of policy and practice, judges, lawyers and prosecutors, law enforcement officials and public and private actors involved in the administration of detention facilities.
3. This document should be read in conjunction with other Basic Human Rights Reference Guides of the CTITF Working Group on protecting human rights while countering terrorism, especially the “Conformity of National Counter-Terrorism Legislation with International Human Rights Law”, which includes a brief description of the sources of international law and of the UN human rights mechanisms that are referred to in this document. It also includes a brief description of the structure and content of the “Right to a Fair Trial and Due Process in the Context of Countering Terrorism” Fact Sheet No. 32 of the Office of the High Commissioner for Human Rights, Human Rights, Terrorism and Counter-Terrorism.

B. Definitions

4. The language of article 9 of the International Covenant on Civil and Political Rights (ICCPR), which pertains to the right of every person to liberty, refers to both 'arrest' and 'detention'. The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter the UN Body of Principles) defines 'arrest' as "the act of apprehending a person for the alleged commission of a criminal offence or by the action of an authority".

General Assembly requested the establishment of an Expert Group to review the Standard Minimum Rules. This Expert Group has met several times since 2010 and deliberations are ongoing.

- r The UN Human Rights Committee, the treaty-based monitoring body established under the ICCPR, is developing a General Comment on the content, interpretation and application of the right to liberty and security of the person under article 9 of the ICCPR. The General Comment will replace the Committee's earlier General Comment No. 10 of 1982. The Committee began deliberations on this work during its half-day of general discussion in October 2012. It has since deliberated on a first draft General Comment (No. 35) and will continue with this work during 2014.
- r Under its resolution 20/16 (2012), the UN Human Rights Council requested the Working Group on Arbitrary Detention to prepare draft basic principles and guidelines on remedies and procedures on the right of anyone deprived of his or her liberty by arrest or detention to bring proceedings before court in order to challenge the lawfulness of such detentions (corpus see Guideline 7 herein). The aim is to assist Member States in fulfilling their obligation to avoid arbitrary deprivation of liberty in accordance with article 10 of the ICCPR (A/HRC/Res/20/16, para. 10.3(i)).

CTITF Working Group on protecting human rights while countering terrorism

Counter-Terrorism

II. Guiding Principles and Guidelines

1. No one shall be subject to unlawful or arbitrary deprivation of liberty in the implementation of counter-terrorism measures.
 - 1.1. Prohibition against unlawful or arbitrary detention
17. States have a duty to respect, fulfil and guarantee the full enjoyment of the right to liberty and security of all persons within their jurisdiction. In reflecting this

- r Secondly, the Working Group on Arbitrary Detention and the Human Rights Committee have treated arbitrary conduct as including elements of unreasonableness. The detention of a person will be arbitrary if it includes elements of inappropriateness, injustice, lack of predictability, lack of due process of law or discrimination.³⁹ For example, regimes allowing for the detention of persons believed to pose a threat to national security must not be discriminatory in their application, i.e., the legal provisions for any such detention must be applicable to all such persons, regardless of their national identity.⁴⁰ An arrest or detention may be arbitrary if it is conducted as a result of an apprehension of a person based solely on prohibited grounds of discrimination, extends beyond a reasonable time without proper justification, or does not respect the minimum procedural guarantees established by international law.^{3h.}

t It involves the prolonged administrative custody of asylum-seekers, immigrants

- r Article 9(3) of the ICCPR also provides that: “It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement”. This reflects a presumption in favour of measures short of detention (referred to as ‘bail’ in a number of countries), considered separately under Guideline 4 herein.
- r Applicable to any form of detention, whether pertaining to the alleged commission of a criminal offence or otherwise, any person deprived of liberty has the right to ‘habeas corpus’ (article 9(4) of the ICCPR), considered separately under Guideline 7 herein.

2.2. Effective enjoyment of procedural guarantees through the provision of information to the detained person

22. For States to comply with their obligation to ensure the enjoyment of the minimum guarantees under article 9(2) to (4) of the ICCPR, Principle 13 of the UN Body of Principles clarifies that at the moment of arrest or detention the authority responsible for the person’s arrest or detention must provide the person “with information on and an explanation of his rights and how to avail himself of such rights”⁴⁶. Authorities must inform the accused of the actual substance of the complaint. The Human Rights Committee has explained that the justification of ‘State security’ is insufficient for these purposes⁴⁷. The obligation, and the enjoyment of the minimum guarantees set out above, is intimately linked with the right of all detained persons to have prompt access to legal counsel, considered under Guideline 3 herein.

2.3. Recording of information

23. The act of depriving a person of his or her liberty requires authorities to record and communicate certain further information to the detained person and/or his or her legal counsel. These requirements guard against unlawful and arbitrary detention such as secret or incommunicado detention, and seek to minimise the possibility of detaining authorities exploiting the vulnerable position of detainees.

The detention of a person triggers the following obligations on State authorities:

- t The following information must be recorded in an official register:
 - a) The identity of the detained person;
 - b) The reasons for the arrest;
 - c) The time of the arrest and the taking of the arrested person to a place of custody;
 - d) The time of the person’s first appearance before a judicial or other authority;

- e) The identity of the law enforcement officials concerned;
- f)

the rest of the prison population in order to prevent the recruitment by those persons of inmates into a terrorist organization. It has been observed that such segregation might be permissible, but only when strictly necessary and if the person has been convicted of a 'terrorist' offence in respect of which a proper definition of terrorism has been applied.

Additional to the overarching guarantee that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the person, the following guarantees apply to persons detained for the alleged commission of a criminal offence or persons detained subsequent to a conviction for a criminal offence:

t In the case of persons detained for the alleged commission of a criminal offence:

has been a) - 1 ð \ • æ feèR { ^ 3c#fP %VrG äç,qŽ...iP^ 3sc u1G €G j#)

for the dignity of a detained person. The right also encompasses various features. The starting point, as explained by the Human Rights Committee, is that persons deprived of their liberty “enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment” as stated in the UN Basic Principles for the Treatment of Prisoners:

“Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned

Different treatment of those charged with terrorist crimes might otherwise have serious repercussions on their right to the presumption of innocence. Counter-terrorism measures must also not result in discrimination based on ethnicity or

5.6 Prohibition against torture and other inhumane treatment

40. The prohibition against torture and other forms of ill-treatment is also a *ius cogens* norm of customary international law, thus applicable to all States in all circumstances. It is reflected in equally non-derogable terms within article 7 of the ICCPR. The prohibition against torture is separately treated within the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), with special emphasis on the preventive aspects of torture in places of detention addressed in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The link between the right to humane treatment and the prohibition against torture and ill-treatment has been emphasised by the Human Rights Committee and is also evidenced from the fact that both requirements are dealt with in the same articles of the American Convention on Human Rights and the African Charter on Human and Peoples' Rights.

of the Human Rights Council have expressed the view that forcible feeding constitutes a violation of medical ethics as well as the right to health. Both the Declaration of Tokyo and the Declaration of Malta unequivocally prohibit the forcible feeding of a competent detainee, which has been endorsed by the World Medical Association and the American Medical Association. It is therefore of particular concern that States continue to forcibly feed detainees accused of terrorist acts.^{1,2}

5.9 Solitary confinement and sensory deprivation

43. Solitary confinement is in practice applied for a number of reasons: as a disciplinary measure for sentenced prisoners; for the isolation of individuals during an ongoing criminal investigation; as an administrative tool to manage specific groups of prisoners; and as a form of judicial sentencing. Counter-terrorism efforts have seen an increase in the use of strict and often prolonged solitary confinement practices in detention systems in various countries, including in the context of coercive interrogation. Solitary confinement may amount to an act in violation of articles 7 and 10 of the ICCPR. The Committee against Torture has recommended that solitary confinement be abolished; and, where the practice is

6.2 The right to make a request or complaint concerning the treatment of a detained person

46. Principle 33(1) of the UN Body of Principles requires that a detained person, or his or her counsel, must have “the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers”. Counsel must also be able to complain to higher authorities if the detainee represented alleges that human rights violations have occurred during his or her time in detention. Article 36 of the Standard Minimum Rules also requires that every prisoner must have the opportunity to make requests or complaints to the director of the detention facility, without

utive authorities of the State(s) concerned are obliged under international law to carry out proprio motu an effective official investigation which is begun promptly, secures all relevant evidence, and is capable of leading to the identification and,

7. Any form of detention must be subject to effective oversight and control by the judiciary. Any person arrested or detained for the alleged commission of a terrorist offence must be brought promptly before a judge or other officer authorised by law to exercise judicial power. All detained persons, whether the detention pertains to the alleged commission of a terrorist offence or for other reasons, must have the right to challenge in court the legality of their detention, including by way of habeas corpus.

7.1 Obligation to provide for judicial oversight

51. Principle 4 of the UN Body of Principles provides that: “Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority”. This is in part reflects paragraphs (3) and (4) of article 9 of the ICCPR, which entail two features involving States’ obligation to provide for judicial oversight:

- First aspect of judicial oversight arises in the case of any person arrested or detained for the alleged commission of a criminal offence, in which case the person must be brought promptly before a judge or other officer authorised by law to exercise judicial power. This right stands separately and additional to the right to habeas corpus and does not rely on the detained person initiating a request to be brought before a judge. As explained by the Working Group on Arbitrary Detention when establishing a list of principles applicable to the detention of persons in the framework of counter-terrorism measures: “the exercise of the right to habeas corpus does not impede on the obligation of the law enforcement authority responsible for the decision for detention or maintaining the detention, to present the detained person before a competent and independent judicial authority within a reasonable time period”.
- The second required mechanism of judicial oversight arises in the case of any form of detention, whether pertaining to the alleged commission of a criminal offence or otherwise. It requires States to establish and ensure detainees’ access to an effective and speedy mechanism to challenge the legality of their detention. Article 9(4) of the ICCPR provides that any person deprived of liberty “shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful”. Corresponds to the procedure known in many countries as habeas corpus and must be available

crucial importance that the court has the power to review the information forming the basis on which the individual is held in detention.

56.

sea violation of international law, prolonged detention for counter-terrorism purposes increases the likelihood that individuals will be subjected to solitary confinement and/or situations of detention that are contrary to the prohibitions of torture and other forms of ill-treatment.¹⁵⁸ All of the same guarantees applicable to persons deprived of their liberty, as set out elsewhere in this Guide, must equally apply to such forms of detention.¹⁵⁹

Measures to prevent terrorist acts from occurring have been pursued by States in various ways, including:

- t Immigration detention of migrants, often followed by expulsion or deportation;
- t Administrative detention without charge or trial; and
- t Measures falling or thought to be falling short of the deprivation of liberty, such as 'control orders'.

8.2 Immigration detention

58. The use of immigration detention and the deportation or expulsion of foreigners believed to be a threat to security is a widely used counter-terrorism measure. The Special Rapporteur on human rights while countering terrorism has observed that, in efforts to strengthen counter-terrorism, States have either increased the rate at which non-citizens are detained or have adopted legislation that lacks the safeguards required by international human rights law.¹⁶⁰ Use of powers to detain under immigration law, and the expulsion or deportation of a foreign national, must be carried out in a manner that is consistent with international human rights law and international refugee law, including the applicable safeguards set out in this Guide.
59. Immigration detention must be limited to such time as is necessary and proportionate, must in no circumstances be indefinite and must be periodically reviewed.¹⁶¹ Any decision to detain an individual for immigration purposes must be made on a case-by-case basis,¹⁶² be for a legitimate purpose, and must

may not be removed until a final determination of their refugee status has been made.¹⁶⁷ It has been emphasised that the prohibition against refoulement apply not only to situations where there is a risk of torture or other ill-treatment, and in many situations where the death penalty is sought, but also to cases involving a risk of exposure to a manifestly unfair trial,¹⁶⁸ there is a risk of arbitrary detention in the receiving country.¹⁶⁹ Summary expulsion of an alien, or preventing access by the person to judicial review of the expulsion order, also amounts to a violation of article 9 of the ICCPR.¹⁷⁰

8.3 Administrative detention

61. Concern has been expressed about the use of administrative detention as a counter-terrorism tool where such detention is used on the sole basis of a broadly formulated suspicion that a person forms a ‘threat to national security’, or similar expressions that lack the level of precision required by the principle of legality.¹⁷¹ Much of the information concerning the reasons for such detention is often classified, so that the detainee and his or her lawyer have no access to this information and thereby no effective means to contest the grounds of the detention.¹⁷² This form of administrative detention is at odds with numerous aspects of the right to a fair hearing under article 14 of the ICCPR, and of access to an independent and impartial court, especially when there is no possibility for a review of the detention on the basis of substantive grounds.¹⁷³
62. The Human Rights Committee has said that measures of administrative detention must be restricted to very limited and exceptional circumstances¹⁷⁴ where a detainee would constitute a clear and serious threat to society that can not be contained in any other manner.¹⁷⁵ In the examination of specific instances of administrative detention, however, the Human Rights Committee has generally found that such instances are not in compliance with the requirements of article 9 of the ICCPR.¹⁷⁶ Administrative detention has also been characterised as putting a detainee at greater risk of torture, ill-treatment or other violations of human rights.¹⁷⁷ The Committee against Torture has therefore recommended the elimination of all forms of administrative detention.¹⁷⁸
63. Favouring recourse to the ordinary criminal justice system, pursuant to which criminal charges would be brought against any individual suspected of having carried out or been a party to terrorist activities, the Working Group on Arbitrary Detention has stated that: “Resort to administrative detention against suspects of [terrorist] activities is inadmissible.¹⁷⁹ Where administrative detention is used, the terms governing its use must be defined with precision and must conform to the principle of legality.¹⁸⁰ Such terms must be directed to the countering of terrorism and maintaining national security. The use of vague and sweeping

right to habeas corpus outlined in Guideline 7 above. Where habeas corpus is unavailable, effective remedies to challenge arrest and detention will be denied, resulting in a violation of article 9(4).

70. Where a deprivation of liberty is arbitrary, immediate release is likely to be the most appropriate form of remedy.¹⁹⁸ Where detention is arbitrary due exclusively to a violation of fair trial rights, retrial of the individual may be adequate. However, because a violation of fair trial rights must be grave to give rise to an arbitrary detention, it is likely that immediate release will still be considered the appropriate remedy.¹⁹⁹ In situations of pre-trial detention, conditional release, release on bail or other measures short of detention pending trial will likely be required.²⁰⁰

Notes

1. Security Council resolution 1373 (2001), para. 2(e).
2. The United Nations Global Counter-Terrorism Strategy, adopted under General Assembly resolution 60/288 (2006), para. 2.
3. See further the Basic Human Rights References Guide, Conformity of National Counter-Terrorism Legislation with International Human Rights Law, Part I(C).
4. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted under General Assembly resolution 43/173 (1998) (hereafter the UN Body of Principles), Annex, 'Use of terms', para. (a).
5. See, for example: Kurbanov v. Tajikistan, Human Rights Committee Communication No. 1096/2002, UN Doc CCPR/C/79/D/1096/2002 (2003), para. 7.2; and Yklymova v. Turkmenistan, Human Rights Committee Communication No. 1460/2006, UN Doc CCPR/C/96/D/1460/2006 (2000), paras. 7.2–7.3.
6. UN Body of Principles, Annex, 'Use of terms', paras. (b)–(e).
7. Report of the Working Group on Arbitrary Detention (A/HRC/22/44), Part III, Deliberation No-9 concerning the definition and scope of 'arbitrary deprivation of liberty' under customary international law (hereafter Deliberation No. 9), para. 51.
8. Deliberation No. 9, paras. 48 and 50.
9. Deliberation No. 9, para. 60.
10. While the UN Body of Principles refers principally to the pre-trial period of detention, not including persons held in custody after conviction, the Office of the High Commissioner has pointed out that this expression may differ depending on the jurisdiction: see OHCHR, Training Manual on Human Rights Monitoring, Chapter IX, Visits to persons in detention, para. 4.
11. The Committee against Torture has expressed its concern regarding the use of investigative-detention. See, for example: Committee against Torture, Concluding Observations on the fifth periodic report: Ukraine, UN Doc CAT/C/UKR/CO/5 (2007), para. 9; and Concluding Observations on the combined fifth and sixth periodic reports of the Netherlands, UN Doc CAT/C/NLD/CO/5–6 (2013), para. 10.
12. Report of the Special Rapporteur of the Sub-Commission on the practice of administrative detention, UN Doc E/CN.4/Sub.2/1990/29 and Add.1; Working Group on Arbitrary Detention, Fact Sheet No.26, p. 4; Jelena Pejic, 'Procedural principles and safeguards for internment/administrative-detention in armed conflict and other situations of violence', (2005) 87(858) International Review of the Red Cross, pp. 375–376; and International Commission of Jurists, Memorandum on International Legal Framework on Administrative Detention and Counter-Terrorism, March 2006, p. 5.
13. Report of the Working Group on Arbitrary Detention (A/HRC/19/57/Add.3), summary and para. 28; Report of the Working Group on Arbitrary Detention (A/HRC/13/30), para. 77; and Human Rights Watch, In the Name of Security: Counterterrorism Laws Worldwide since September 11 (2012), p. 95.
14. Report of the Special Rapporteur on the human rights of migrants, Francois Crepeau (A/HRC/20/4), para. 8; Report of the Working Group on Arbitrary Detention (A/HRC/7/4), para. 43; and Michaela Flynn, Immigration Detention and Proportionality, Global Detention Project Working Paper No. 4 (February 2011), p. 7.
15. Joint Study on global practices in relation to secret detention in the context of countering terrorism of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Working Group on Arbitrary Detention, represented by its Vice-Chair Shaheen Sardar Ali; and the Working Group on Enforced or Involuntary Disappearances, represented by its Chair Jeremy Sarkin (A/HRC/13/42) (hereafter the Secret Detention Joint Study), para. 8.

16. Secret Detention Joint Study, p. 2 and para. 31 (concerning incommunicado detention) and para. 28 (concerning enforced disappearances).
17. See also the Rome Statute of the International Criminal Court, article 7(2)(i).
18. Economic and Social Council resolution 2012/13, para. 5. See also, generally, the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez (A/68/295).
19. General Assembly resolution 65/230 (2010), para. 10.
20. Economic and Social Council resolution 2013/35, para. 6. For reports on meetings held, see: Report on the meeting of the Expert Group on Standard Minimum Rules for the Treatment of Prisoners held

- rorism, Martin Scheinin (A/HRC/10/3), para. 39; Report of the Working Group on Arbitrary Detention (A/HRC/22/44), para. 73.
31. Report of the High Commissioner for Human Rights on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/8/13), para. 26; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/63/223), para.31.
 32. See, for example: Committee against Torture, Concluding Observations: Second periodic report of Cambodia, UN Doc CAT/C/KHM/CO/2 (2011), para. 28; Committee against Torture, Concluding Observations: Fifth periodic report of the Russian Federation, UN Doc CAT/C/RUS/CO/5 (2012), para. 10; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/63/223), para.32.
 - 33.

46. See also *Caldas v. Uruguay*, Human Rights Committee Communication No. 43/1979, UN Doc CCPR/C/OP/2 at 80 (1990), para. 13.2.
47. *Ilombe and Shandwe v. Democratic Republic of the Congo*, Human Rights Committee Communication No. 1177/2003, UN Doc CCPR/C/86/D/1177/2003 (2006), para. 6.2.
48. Human Rights Committee General Comment No. 20. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment (hereafter General Comment 20), para. 11; Secret Detention Joint Study, para. 292(a); Manfred Nowak and Elizabeth McArthur, 'The distinction between torture and cruel, inhuman or degrading treatment' (2006) 16(3) *Torture*, p. 151.
49. Article 17(3)(a) of the International Convention for the Protection of All Persons from Enforced Disappearance (hereafter ICED); Rule 7(1)(a) of the Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977 (hereafter the Standard Minimum Rules); Report of the Working Group on Arbitrary Detention (A/HRC/7/4), para. 69.
50. Article 9(2) of the ICCPR; Principle 12(1)(a) of the UN Body of Principles; Rule 7(1)(b) of the Standard Minimum Rules.
51. Article 17(3)(b) of the ICED; Principle 12(1)(b) of the UN Body of Principles.
52. *Ibid.*
53. Article 17(3)(c), (d), (e) and (h) of the ICED; Principle 12(1)(c) of the UN Body of Principles.
54. Article 17(3)(e) and (h) of the ICED; Principle 12(1)(d) of the UN Body of Principles.
55. Article 17(3)(e) of the ICED; Rule 7(1)(c) of the Standard Minimum Rules.
56. Article 17(3)(f) of the ICED.
- 57.

71. See, for example: Paul Kelly v. Jamaica Human Rights Committee Communication No. 253/1987, UN Doc CCPR/C/41/D/253/1987 (1991), para. 5.6; Rafael Marques de Morais v. Angola Human Rights Committee Communication No. 1128/2002, UN Doc CCPR/C/83/D/1128/2002 (2005), paras. 6.3 and 6.5; Umarova (re Umarov) v. Uzbekistan Human Rights Committee Communication No. 1449/2006, UN Doc CCPR/C/100/D/1449/2006 (2010), paras. 8.5–8.6; and Bousroual v. Algeria Human Rights Committee Communication No. 992/2001, UN Doc CCPR/C/86/992/2001 (2006), paras. 9.6 and 9.7.
72. Human Rights Committee, General Comment 8 (Right to liberty and security of person (hereafter General Comment 8)), para. 3. See also, for example, Walker and Richards v. Jamaica Human Rights Committee Communication No. 639/1995, UN Doc CCPR/C/60/D/639/1995 (1997), para. 8.2. Rule 13.1 of the Beijing Rules also establishes that pre-trial detention must be considered a measure of last resort for juveniles.
73. General Comment 32, para. 35. See, for example, Sextus v. Trinidad and Tobago Human Rights Committee Communication No. 818/1998, UN Doc CCPR/C/72/D/818/1998 (2001), para. 7.2.
74. See, for example, Human Rights Committee, Concluding Observations: Second periodic report of Bosnia and Herzegovina, UN Doc CCPR/C/BIH/CO/2 (2012), para. 15.
75. See the Basic Human Rights Reference Guide on Conformity of National Counter-Terrorism Legislation with International Human Rights Law, Guideline 3.
76. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/63/223), para. 17. See, for example del Cid Gómez v. Panama Human Rights Committee Communication No. 473/1991, UN Doc CCPR/C/54/D/473/1991 (1995), para. 8.5; and Glenrry Francis et al. v. Trinidad and Tobago Human Rights Committee Communication No. 899/1999, UN Doc CCPR/C/75/D/899/1999 (2002), para. 5.4.
77. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/63/223), para. 17.
78. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26/Add.4), para. 34.
79. Human Rights Committee, General Comment 21 (Torture and other cruel, inhuman or degrading treatment or punishment (hereafter General Comment 21)) (une treatment of persons deprived of liberty), para. 3; Inter-American Commission on Human Rights, Principles and best practices on the protection of persons deprived of their liberty in the Americas (2008), preambular para. 3; Manfred Nowak and Elizabeth McArthur, 'The distinction between torture and cruel, inhuman or degrading treatment' (2006) 16(3) *Torture & Human Rights* 47, p. 151.
80. See also, for example, Rule 60(1) of the Standard Minimum Rules and, in the context of juveniles, Rule 87 of the UN Rules for the Protection of Juveniles.
81. Human Rights Committee, General Comment 9 (Article 10 (Treatment of persons deprived of liberty)) (UN Doc HRI/GEN/1/Rev.1 at 9 (1994) (hereafter General Comment 10)), para. 4; General Comment 21, para. 9; UN Rules for the Protection of Juveniles, Rule 17; and Beijing Principles, Rule 7.1. See, for example, Gorji-Dinka v. Cameroon Human Rights Committee Communication No. 1134/2002, UN Doc CCPR/C/83/D/1134/2002 (2005), para. 5.3. See also article 11(1) of the Universal Declaration of Human Rights.
82. Guideline 4.
83. General Comment 9, para. 2; General Comment 21, para. 13; Beijing Rules, Rules 13.4 and 26.3; UN Rules for the Protection of Juveniles, Rule 29.
84. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/4/26/Add.4), para. 36.
85. General Comment 9, para. 1; and General Comment 21, para. 4.
86. Human Rights Committee, General Comment 29 (States of Emergency), UN Doc CCPR/C/21/Rev.1/Add.11 (2001), para. 13(a).
87. Including Article 2 of the Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 (1979).
88. General Comment 21, para. 3.
89. Basic Principles for the Treatment of Prisoners, adopted under General Assembly resolution 45/111 (1990) (hereafter the UN Basic Principles), Principle 5.
90. As confirmed by the Human Rights Committee in General Comment 21, paras. 3 and 4.
91. As noted by the Human Rights Committee in General Comment 9, para. 1; and General Comment 21, para. 3.

92. Report of the Committee on the Elimination of Racial Discrimination, Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 18 (A/57/18 (2002)), chap. XI, sect. C, Statement on

123. OSCE Document of the Moscow meeting of the conference on the human dimension of the OSCE (1991), para. 23.1(ix).
124. Rule 36(4) of the Standard Minimum Rules; Rule 25 of the Bangkok Rules; and Rules 75 and 76 of the UN Rules for the Protection of Juveniles.
125. Principle 33(1) of the UN Body of Principles.
126. Report of the UN Committee against Torture, UN Doc A/56/44 (2001), para. 97(e); see also Rule 7 of the Standard Minimum Rules.
127. *Abdelli v. Tunisia* Committee against Torture Communication No. 188/2001, UN Doc CAT/C/31/D/188/2001 (2003), para. 10.4–10.5; *Ltaief v. Tunisia* Committee against Torture Communication No. 189/2001, UN Doc CAT/C/31/D/189/2001 (2003), para. 10.4–10.5; *Dimitrov v. Serbia and Montenegro*, Committee against Torture Communication No. 171/2000, UN Doc CAT/C/34/D/171/2000 (2005), para. 7.2; and Manfred Nowak and Elizabeth McArthur, *The United Nations Convention against Torture—A Commentary* (Oxford: Oxford University Press, 2008), p. 448.
128. Where officials are found guilty, they should be dismissed from their position, in addition to any other form of punishment imposed as a result of conviction. See Human Rights Committee, Concluding Observations on Serbia and Montenegro, UN Doc CCPR/CO/81/SEMO (2004), para. 9; and International Commission of Jurists,

143. See, for example Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/63/223), para. 18; Human Rights Committee, Concluding Observations: Fourth Period Report of, UN Doc CCPR/C/FRA/CO/4 (2008), para. 4; Committee against Torture, Concluding Observations: Fourth Periodic Report of the Russian Federation, UN Doc CAT/C/RUS/CO/4 (2007); International Commission of Jurists, 'Eminent Jurists Conclude Subregional Hearing on Terrorism and Human Rights in the Maghreb', press release 7 July 2006; and International Commission of Jurists, 'International Panel Ends Hearing in South-East Asia', press release 6 December 2006.
144. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/63/223), para. 18.
145. See, for example: General Comment 8, para. 2; Kennedy v. Trinidad and Tobago Rights Committee Communication No. 845/1998, UN Doc CCPR/C/74/D/845/1998 (2002), para. 7.6; Lennon Stephens v. Jamaica Human Rights Committee Communication No. 373/1989, UN Doc CCPR/C/55/D/373/1989 (1995), para. 9.6; and Willy Wenga Ilombe and Nsii Luanda Shandwe v. Democratic Republic of Congo Human Rights Committee Communication No. 1177/2003, UN Doc CCPR/C/86/D/1177/2003 (2006), para. 6.3.
146. See, for example:

160. Report of the Special Rapporteur on the protection of human rights and fundamental freedoms while countering terrorism. Martin Scheinin (A/62/263), para. 41
161. See European Court of Human Rights, *Chahal v. United Kingdom*, Application No. 22414/93, 15 November 1996, para. 113; *A v. Australia*, Human Rights Committee, Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997), para. 9.3–9.4.
162. See, for example, *Ahani v. Canada*, Human Rights Committee Communication No. 1051/2002, UN Doc CCPR/C/80/D/1051/2002 (2004), para. 10.2.
163. See, for example, *Baban v. Australia*, Human Rights Committee Communication No. 1014/2001, UN Doc CCPR/C/78/D/1014/2001 (2003), para. 7.2; and *C v. Australia*, Human Rights Committee Communication No. 900/1999, UN Doc CCPR/C/76/D/900/1999 (2002), para. 8.2.
164. United Nations High Commissioner for Refugees, *Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers* (2012), para. 33. Once recognized as refugees, such persons may be expelled only on the conditions provided for in articles 32 and 33(2) of the Refugee Convention.
165. *GT v. Australia*, Human Rights Committee Communication No. 706/1996, UN Doc CCPR/C/61/D/706/1996 (1997), para. 8.1.
166. Report of the Special Rapporteur on the protection of human rights and fundamental freedoms

193. See, for example: Muteba v. Zaire Human Rights Committee Communication No. 124/1982, UN Doc CCPR/C/22/D/124/1982 (1984), para. 12 (violation of article 9(4)); Bousroual v., Algerian Rights Committee Communication No. 1085/2002, UN Doc CCPR/C/86/D/1085/2002 (2006), paras. 9.7–9.8 (violations of articles 7 and 9(4)); Alwani v. the Libyan Arab Jamahiriya Human Rights Committee Communication No. 1295/2004, UN Doc CCPR/C/90/D/1295/2004 (2007), para. 6.5 (violation of article 7); Mukong v. Cameroon Human Rights Committee Communication No. 458/1991, UN Doc CCPR/C/51/D/458/1991 (1994), para. 9.4 (violation of article 7); de Bazzano v. Uruguay Human Rights Committee Communication No. 5/1997, UN Doc CCPR/C/OP/1 at 40 (1984), para. 10(i)-(iii) (violation of article 10(1)).

194.

194

www.un.org