



# SAFEGUARDS IN POLICE CUSTODY

This is resource note 5.1 of the CTI practical Police Resource Toolkit for professional, human rights-compliant Policing.

## BACKGROUND

1. Police custody or police detention (the terms are used interchangeably in this document) refers to the detention of a person for an initial period of time, following their arrest by the police.<sup>1</sup> Other forms of deprivation of liberty considered in this practical resource toolkit include 'stop and search', 'arrest' and 'transport'.
2. This resource note does not detail the safeguards and rights associated with detention beyond the initial period of time spent in police custody following arrest. Furthermore, it does not detail the principles and safeguards during interviewing for investigations and information gathering, which are contained in the resource notes on 'interviewing suspects, witnesses and victims', 'interviewing children' and 'interviewing victims of sexual crimes'. (For more information, see also the resource note on 'lawful use of force and firearms').
3. Detention powers are granted to the police in a number of situations with specific objectives; a suspect may be held for questioning in relation to alleged criminal offences, or in order to safeguard criminal procedure by ensuring that a person charged with a criminal offence will appear before a court.<sup>2</sup>
4. Law enforcement officials may detain a person by exercising lawful powers of arrest. Detention needs to comply with the fundamental principles of legality, necessity, proportionality, respect for dignity and non-discrimination. It also needs to be based on an assessment of the individual's particular circumstances and substantiated reasons to believe that the person is at risk of absconding, destroying evidence, influencing witnesses or committing new crimes. Depriving someone of their liberty is considered one of the most extreme measures a State can take against a person under its jurisdiction. Detention, therefore, places an immense responsibility on the detaining authority to treat each detainee humanely and to fulfil their duty of care with due diligence. Police custody should always be a last resort measure and only be applied where it is prescribed in law, necessary and proportionate.

<sup>1</sup> Chapter does not refer to a court-ordered detention pending trial in regular pre-trial detention.

<sup>2</sup> There are also other reasons for police exercising their powers to hold persons in custody, such as for their own safety (for instance, children reported missing from home and awaiting their parents or guardians; persons with mental health disorders or awaiting examination by a doctor or transfer to hospital; or people under the influence of alcohol, narcotics or other drugs. Others may be held by the police pending their transfer to the custody of other authorities, such as in the context of immigration or deportation.

5. It is important to note that not all persons subject to arrest must be taken into custody. Non-custodial measures should be considered as alternatives to deprivation of liberty in each case. Many national systems use such alternatives, including bail, seizure of travel documents, the condition to appear before the court as required and not to interfere with witnesses, periodic reporting to police or other authorities, electronic monitoring or curfews.
6. Research has shown that the practical implementation of key safeguards, including procedural safeguards, in the first hours of detention is the most effective way to prevent torture and other ill-treatment and to guarantee a fair and effective justice system. Those safeguards in police custody are connected to and build upon safeguards upon arrest.

## SAFEGUARDS, PROCEDURES AND RECOMMENDED PRACTICES

7. Certain basic guarantees apply to all persons deprived of their liberty, including those held in police custody. The following non-exhaustive list of safeguards is aimed at helping ensure the efficiency and fairness of criminal investigations and subsequent criminal procedures, including by reducing the risk of torture and other ill-treatment in the first hours of police detention.
8. **Legal and Procedural Safeguards:**
  - **Information about rights:** The provision of information on the detained person's rights and on how to access these is critical to the effective implementation and operation of all other safeguards. This enables a person to challenge the legality of their detention and seek release if they believe the reasons for police custody are unfounded, invalid or otherwise unlawful. It also enables a person to challenge and seek to modify their conditions and treatment in police custody. The information regarding the detainee's rights and how to exercise them should be conveyed verbally, in clear, non-technical and precise language upon arrest and in writing upon arrival at the place of detention, inter alia the police station. The Luanda Guidelines of the African Commission on Human and Peoples' Rights (2014), for instance, provide for the use of a 'letter of rights', and the EU Directive (2012/13) contains an indicative model letter of rights to assist national authorities in developing such letter. It is recommended that the written form setting out their rights should be signed by the arrested person, and they should be allowed to keep a copy. It is considered good practice to ask detainees to explain the rights of which they have been informed (orally or in writing) to ensure they understand them and are able to exercise them adequately. Particular attention should be paid to ensuring that illiterate detainees, detainees with disabilities or who speak another language or dialect understand their rights correctly. (For more information, see also the resource note on 'arrest').
  - **Judicial oversight:** Being brought promptly (usually within 48 hours, and within 24 hours in the case of children) before a judge or other independent judicial authority, and at regular intervals throughout the detention, is a basic right protected in international human rights law which provides oversight of the law enforcement official's initial decision to detain and ensures that there are continuing grounds for keeping the person in detention. It is also an important disincentive for torture or other ill-treatment in the first hours of police custody. Unlawful detention can call into question the legality of continuing questioning and the fairness of the ensuing trial and can lead to litigation against the State authorities. The judge can authorise the detainee's continued detention or order their release, with or without conditions. The right to be brought promptly before a judge to challenge the legality of detention applies to all detainees, regardless of the allegations against them or the offences with which they have been charged.

- **Access to medical care and independent medical examination:** Adequate medical care and treatment should be provided throughout the period of detention. Furthermore, a detainee has the right to request and undergo an age- and gender-responsive independent medical examination by a doctor of their own choice (in addition to any medical examination carried out by a doctor called by the police authorities) without delay, from the moment of deprivation of liberty. As medical doctors may not always be available at police stations, especially in remote areas, initial medical assessments may be performed by another qualified health-care professional reporting to a doctor. Patient-doctor confidentiality is an important part of such medical examinations. The medical examination serves the purpose of ensuring that detaining authorities are aware of any medical conditions that require particular care or treatment. An initial medical assessment at the earliest opportunity is also considered a fundamental safeguard, by providing a way to report, record and end abuse. In accordance with international standards, all medical examinations should be conducted out of the hearing and out of the sight of the law enforcement staff. In exceptional cases, if the health professional so requests, special security arrangements may be considered, such as having an officer within call or within sight, but always out of hearing. (For more information, see also CTI UNCAT Implementation Tool 2/2021 on Initial Medical Assessment).
- **Prompt access to a lawyer and legal aid:** Providing detainees with access to a lawyer, ideally of their choosing, and providing the opportunity to consult promptly and in full confidentiality with the lawyer in a language they understand is essential to reducing the risk of torture or other ill-treatment and helps ensure that continued detention is lawful and that the detainee will receive a fair trial. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) make clear that detainees have the right to communicate and consult with a legal adviser of their own choice or a legal aid provider without delay, interception or censorship, and in full confidentiality, meaning – at the very least – not within hearing distance of police officers. Refusing access to a lawyer will justify the case being discontinued or a conviction being overturned. Children, notably as per relevant dispositions of the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and persons with mental or physical disabilities or in other situations of vulnerability require the same access to a lawyer as other detainees. Information must be provided to children in a manner appropriate to their age and maturity.

For those who cannot afford a lawyer of their own choice, access to legal aid that is publicly funded should be provided in the first hours of detention, during questioning and subsequent stages of the criminal justice process. International standards provide for legal aid as a minimum for those detained, arrested, suspected of or charged with a criminal offence punishable by a term of imprisonment or the death penalty and, if required, due to the urgency or complexity of the case. As is the case for other procedural safeguards, information on the right to a lawyer and legal aid schemes should be provided immediately (upon arrest), prior to any questioning by police officers, in addition to being publicly displayed in police stations in a manner that corresponds to the needs of illiterate persons, members of minorities, persons with disabilities and children.

- **Notification of family or third party:** Another important safeguard relates to the detainee's access to the outside world. It has been recognised that providing a detainee with the opportunity to notify a family member or a third party promptly – within one or two hours of arrest – helps ensure that the entirety of their rights will be complied with and that their whereabouts are known, also preventing enforced disappearance and incommunicado detention. For EU member States, the notification of family is required by an EU Directive.<sup>3</sup> On an exceptional basis, the competent authority may, however, delay a notification

<sup>3</sup> [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013.

if absolutely necessary, if provided for by law and if the transmission of the information would hinder a criminal investigation. The reasons for the delay should be recorded in a detailed manner, be accessible to counsel and to the person deprived of liberty, be approved by a prosecutor or a judge or other appropriate senior official and be judicially monitored as to the continuing necessity and proportionality of any delay. For detainees who are foreign nationals, this also includes the ability to contact their embassies and to be allowed to be visited in detention by consular officials.

#### 9. Other relevant detention procedures:

- **Registration and custody records:** The registration of all persons taken into custody, and holding them only in official places of detention, are important safeguards against enforced disappearances and secret or prolonged incommunicado detention, torture and other ill-treatment. International standards recommend that a comprehensive detention record is kept and updated regularly throughout the period a person is detained. When custody records are properly maintained and used to record every step of the arrest and custody, as well as each transfer (and accompanying details), other procedures and safeguards are generally strengthened as a result. The official register that opens a custody record for each individual should include details such as the time of deprivation of liberty, the persons responsible for their custody, their condition on arrival and the time of arrival at the place of detention. In addition, requests to see a lawyer, visits by the lawyer or legal representative, notification of family and each transfer should also be recorded. UN Human Rights Council Resolution 31/31 (2016) encourages States to maintain up-to-date official registers of persons in police custody that, as a minimum, contain information about:
  - a) the reasons for the arrest;
  - b) the time of the arrest and the taking of the arrested person to a place of detention, as well as that of their first appearance before a judicial or other authority;
  - c) the identities of the law enforcement officials concerned; and
  - d) precise information concerning the place of detention. The Human Rights Council also recommended that States communicate such records to the detained person or their counsel, as prescribed by law.
- **Body searches:** There should be clear regulations in national legislation defining when different types of searches are permissible, particularly for strip searches and invasive body searches. Intrusive searches, including strip and body cavity searches, should be undertaken only if absolutely necessary and proportionate, conducted in private and by a trained officer of the same sex.<sup>4</sup> This includes, for instance, the use of the so called '2-steps approach' for strip searches, in which the suspect is never completely naked.<sup>5</sup> Those who identify as LGBTI should be given a choice of being searched by a male or female officer. Body cavity searches shall be conducted only by qualified healthcare professionals or, at a minimum, by staff appropriately trained by a medical professional in standards of hygiene, health and safety. Such searches should never be carried out on children.<sup>6</sup> As a general rule, searches must be based on an individual assessment and/or process as a result of specific, reliable intelligence, and the least

<sup>4</sup> A body search has two objectives. As an investigative method, it is meant to find information or evidence about the alleged offence, for example, when the person is expected to carry an instrument or substance with which the alleged offence was committed. The other reason for conducting a body search is to check whether the arrested person carries anything with which they can harm the law enforcement officials, others, or themselves. A body search for any other than the two reasons given above is likely to amount to abuse, and may constitute inhuman or degrading treatment (Source: OHCHR and UNODC, [Resource book on the use of force and firearms in law enforcement](#), 2017, pp. 140).

<sup>5</sup> E.g., 'Report to the Government of the Netherlands on the visit to the Netherlands carried out by the [European Committee for the Prevention of Torture](#), 9 August 2012, CPT/Inf(2012) 21', Para. 32.

<sup>6</sup> See the [Guidelines on the Conditions of Arrest, Police Custody and Pre-trial Detention in Africa](#) (the Luanda Guidelines), Guideline 3.

intrusive method should be chosen. Officers should consider whether they are making their determination based on the specific risk posed and should examine whether their action may be influenced by stereotypes linked to particular groups. International standards also provide for appropriate records of searches being kept (e.g., Nelson Mandela Rules 50, 51 and 52).

- **Time limits on custody and questioning:** Time limits on how long someone can be held for questioning should be clearly set out in law and monitored, and the suspect informed. In any event, a person held in custody for questioning has to be presented to a judge within 48 hours, in order to confirm the legality of the detention. (For more information, see also the resource note on 'arrest').
- **Conditions of detention:** Persons held in police custody have to be treated humanely and enjoy the treatment and conditions of detention as prescribed by international standards, including the Nelson Mandela Rules. It is required that men and women are held separately, that children are held separately from adults, and that effective measures are taken to address overcrowding in detention facilities, including cells at police stations.
- **Specific safeguards for women in police custody:** Women are at heightened risk of sexual abuse and other forms of violence during the initial period after arrest, a fact that has been documented by, for instance, the UN Subcommittee on Prevention of Torture. Women are also usually much more vulnerable than male detainees during this time, because the majority of women who are confronted with the criminal justice system in countries worldwide have a lower educational and economic status than men (often being dependent on their spouses), and are less aware of their legal rights.<sup>7</sup> Besides the safeguards applicable to all detainees, a specific focus should be put on the prompt access to families, in particular if the detained women suspects have dependent children and, even more importantly, if they are the sole carers for children. There should also be a focus on supervision by female staff and strict separation from male detainees. In addition, Rule 20 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) urges the development of alternative screening methods, such as scans, to replace strip searches and invasive body searches, which can cause immense humiliation for the women being searched. Bangkok Rule 19 provides that if searches are applied, they are carried out only by women staff who have been properly trained.
- **Independent monitoring and internal oversight:** Good practice is for police cells, as with other places of detention, to be open to visits by independent monitoring bodies, such as national human rights institutions (NHRIs) and national preventive mechanisms established under UNCAT's Optional Protocol (NPMs), to guarantee the proper implementation of the existing safeguards, and for detainees to be given the possibility to lodge complaints about their treatment. Internal mechanisms for oversight and inspection should also include oversight of police detention facilities and conditions therein. Persons detained by the police should also be informed about mechanisms available for filing complaints of torture or ill-treatment.
- **Separating questioning and custody:** The gathering of information through interviewing of the person in police custody should ideally be conducted by a different agency or officer than the one responsible for the custody and conditions of detention. This will provide a check and balance between different criminal justice actors, lead to greater safeguards for the prevention of torture or other ill-treatment and provide for greater specialization, professionalism and efficiency in policing and law enforcement. It is recommended, therefore, that authorities designate dedicated arresting officers, custody officers and investigating officers.

<sup>7</sup> Penal Reform International (PRI) and Association for the Prevention of Torture (APT), [Women in detention: a guide to gender-sensitive monitoring](#), second edition 2015, p.8.

- **Legislation and standard operating procedures (SOPs):** In addition to providing for safeguards in legislation, policymakers and police services shall develop clear, detailed regulations and SOPs that provide guidance to law enforcement officers in applying the law. (For information on special safeguards for children and persons with mental health conditions or physical disabilities, see the resource note on 'arrest').

## COUNTRY EXAMPLES



### **Nigeria: Release on bail within 24 hours and monthly report to the magistrate on arrests**

The Administration of Criminal Justice Act from 2015, which combined the previous Criminal Procedure Act, the Criminal Procedure Code and the Administration of Criminal Justice Act, also introduced some innovative provisions to enhance the efficiency and fairness of the justice system. For instance, it mandates the authority having custody of the suspect to notify the next of kin or relative of the suspect of the arrest, at no cost to the suspect. Also, Section 30 of the Act states that a suspect in custody shall be released on bail by the officer in charge of a police station where it will not be practicable to bring the suspect before a court within 24 hours of the arrest. If the arrested person is accused of a capital offence and, therefore, is not eligible for bail, they have to be taken before a court within a reasonable time. Where a suspect is taken into custody in relation to a non-capital offence is not released on bail after 24 hours, a court has to be notified (Section 32). Section 33 of the Act directs the police to remit a report on the last working day of every month to the nearest magistrate detailing the cases of all suspects arrested, with or without warrant, within the limit of their respective stations or agency, whether the suspect has been admitted to bail or not. Upon receipt, the magistrate is to forward the report to the Administration of Criminal Justice Monitoring Committee. The Committee analyzes the report and advises the Attorney General of the Federation as to the trends of arrests, bail and related matters. Upon request, the Attorney-General of the Federation must also make the report available to the National Human Rights Commission, Legal Aid Council of Nigeria or NGOs.<sup>8</sup>



### **Sierra Leone: The use of community paralegals at the early stages of detention**

In instances where qualified lawyers are not available, community paralegals provide a variety of legal services. Paralegals are trained in basic criminal law and criminal procedure and are equipped with the practical skills necessary to support suspects and work with community members and justice sector officials. The [use of community paralegals](#)<sup>9</sup> at the early stages of detention has increased the number of detainees released on police bail and helped minimise the risk of bribery and abuse.

<sup>8</sup> Professor Yemi Akinseye-George, "An overview of the Administration of Justice Act, 2015" <https://bit.ly/3kOumG8>; [Administration of Criminal Justice Act](#), 2015

<sup>9</sup> Namati, "What is a community paralegal?", available at: <https://namati.org/wp-content/uploads/2015/02/What-is-a-Community-Paralegal-1.pdf>.





### Viet Nam: New provisions on legal aid and video and audio recording of interviews

In 2015, the Criminal Code and Code of Criminal Procedure were amended (with entry into force on 1 January 2018). The amendments provide for the right to access to counsel at all stages of criminal proceedings. They also broaden eligibility for free legal counsel and introduce video and audio recording for interrogations of accused persons by investigative authorities on official premises. Also in 2015, the Law on Enforcement of Custody and Temporary Detention<sup>10</sup> was amended, providing, inter alia, for the right to family visits and legal assistance, in particular during police investigations. In addition, in 2017, Viet Nam amended its Law on Legal Aid,<sup>11</sup> which regulates the provision of pro bono legal services to disadvantaged people and expands the list of legal aid beneficiaries. According to Article 7 of the Law, legal aid beneficiaries are divided into 14 groups (instead of six groups, as prescribed in the 2006 Law). Two groups of people are added as new beneficiaries, including accused who are over the age of 16 and under the age of 18, and those who are members of households living just above the poverty line (the 2006 law already included those living under the poverty line). Other additional groups of legal aid beneficiaries consist of people experiencing specific financial hardships, which are set out in the amendments.



### Latvia

In 2016, amendments to the Criminal Procedure Law<sup>12</sup> entered into force that broaden the legal safeguards afforded to persons in police custody. These include the right to request that their immediate family, educational institution or employer is notified of their detention or arrest, as well as to contact one of them, insofar as such contact does not endanger the fundamental rights of other persons or public interests, and does not hinder the achievement of the objective of criminal proceedings or the right to receive information regarding rights to emergency medical assistance and healthcare, in accordance with the laws and regulations (Section 60.2 and 60.3).



### England and Wales

Clear and consistent custody guidelines, which exist in a number of countries, are an important tool for professionalising the implementation of custody. One example is the revised England and Wales [Police and Criminal Evidence Act \(PACE\) Code C – Code of Practice for the detention, treatment and questioning of persons by Police Officers](#).<sup>13</sup> This gives detailed guidance on actions to be taken and documentation to be performed by police officers with regard to all aspects of police custody. This includes guidance on the initial action to be taken upon arrest, detainees' property, the right to legal advice, conditions of detention and the care and treatment of detained persons.

<sup>10</sup> [Law on Enforcement of Custody and Temporary Detention](#), Law 94/2015/QH13, 25 November 2015.

<sup>11</sup> [Law on Legal Aid](#), 11/2017/QH14, 20 June 2017.

<sup>12</sup> Criminal Procedure Law of the Republic of Latvia, available at <https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>

<sup>13</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/903473/pace-code-c-2019.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903473/pace-code-c-2019.pdf)

## KEY RESOURCES: STANDARDS AND GUIDELINES

### International standards and recommendations:

- [United Nations Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment](#), adopted by the General Assembly resolution 43/173, 9 December 1988, e.g., Principle 16.4
- United Nations Standard Minimum Rules for the Treatment of Prisoners ([the Nelson Mandela Rules](#)) 2015, in particular, on intrusive searches, Rules 50, 51 and 52.
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ([the Bangkok Rules](#)), in particular, on intrusive searches Rule 19, 20 and 21.

### Additional guidance:

- [Principles on Effective Interviewing for Investigations and Information Gathering \(Mendez Principles\)](#), May 2021, in particular, paras. 40 (on international law and standards), 61-62 (Legal Safeguards), 63-71 (Ensuring a Non-coercive Environment), 72-76 (Keeping the interviewee informed), 77-79 (Notification of Family or Third Party), 80-85 (Access to a Lawyer), 86-91 (Access to Medical Examination and Health Care).

### Regional standards:

- [Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas](#), adopted by the Inter-American Commission on Human Rights, 2008. On intrusive searches, see Principle XXI.
- [Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa](#), adopted by the African Commission on Human and Peoples' Rights (ACHPR), 2014, in particular, checklist 1.
- Standards for law enforcement agencies, issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), CPT standards on [Police custody](#), [Developments concerning CPT standards in respect of police custody](#), [Access to a lawyer as a means of preventing ill-treatment](#), [Preventing police torture and other forms of ill-treatment – reflections on good practices and emerging approaches](#).
- [Directive 2013/48/EU](#) of the European Parliament and of the Council of 22 October 2013, on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty.



## Key resources: Practical tools and manuals

- ACHPR, [Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa \(Luanda Guidelines\) Trainer Manual](#), 2017.
- Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and Penal Reform International (PRI), [Guidance Document on the Nelson Mandela Rules: Implementing the United Nations Revised Standard Minimum Rules for the Treatment of Prisoners](#) (2018), in particular, Chapter 2.1 'Searches of prisoners and cells.'
- Convention against Torture Initiative (CTI), '[Safeguards in the First Hours of Police Detention](#)', UNCAT Implementation Tool 2/2017.
- United Nations Office of the High Commissioner on Human Rights (OHCHR) and United Nations Office on Drugs and Crime (UNODC), [Resource book on the use of force and firearms in law enforcement](#), 2017, pp. 140 – 150.
- Association for the Prevention of Torture (APT), '[Detention Focus Database: Safety, order and discipline – Body searches](#)', '[Access and contact with lawyer](#)', and '[Right to information](#)'.
- European Union Agency for Fundamental Rights, '[Rights in practice: access to a lawyer and procedural rights in criminal and European arrest warrant proceedings](#)', 2019.



For more international and regional guidance, resources and practical tools, visit our **RESOURCE PAGE**. This page is updated on a regular basis and includes the most recent standards, guidelines, tools and manuals.

Police and other law enforcement actors in all societies play an incredibly important role so that ordinary citizens can go about their daily lives without fear. Professionalism and integrity are fundamental for them to be able to perform their functions safely and effectively. Police and other law enforcement officials contribute to building a fairer administration of justice by maintaining law and order, preventing and responding to crime and keeping communities safe, while respecting and protecting the rights of suspects, victims and witnesses who come into contact with the criminal justice system. Their work is also central to the fight against torture and other cruel, inhuman or degrading treatment or punishment (ill-treatment).

Despite a large volume of international, regional and national handbooks, guidelines and other tools on best police practices, awareness, accessibility and training on these standards by policymakers and police practitioners are still a challenge. The resource notes included in this practical resource toolkit for professional, human rights-compliant policing compile existing international law, standards, practices, guides and examples on best ways to improve performance and the protection of human rights. These resource notes can inform police reforms, improve efficiency, fairness and transparency in policing and law enforcement, and reduce risks and incentives to use torture and other forms of coercion.

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