



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**

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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

With the support of

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

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And the participation of the International Committee of the Red Cross,
the Office for the Coordination of Humanitarian Affairs
and the United Nations High Commissioner for Refugees as observers

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About the United Nations Counter-Terrorism Implementation Task Force

The Counter-Terrorism Implementation Task Force (CTITF), established by the Secretary-General in 2005, is chaired by the Under Secretary-General of the Department of Political Affairs, Mr. Jeffrey Feltman, and is comprised of 34 UN and international entities. CTITF works to ensure overall coordination and coherence in the counter-terrorism activities of the United Nations system and to support Member States efforts in the implementation of the UN Global Counter-Terrorism Strategy (A/RES/60/288) adopted in 2006. CTITF provides for the delivery of this focused and coherent assistance mainly through its Working Groups and other initiatives, and strives to ensure that the Secretary-General's priorities are integrated in its work, including respect for human rights, as expressed in the "Human Rights Up Front" action plan. CTITF also seeks to foster constructive engagement between the United Nations system and international and regional organizations, civil society and the private sector, where appropriate, on the implementation of the Strategy.

The United Nations Global Counter-Terrorism Strategy, which brings together into one coherent framework decades of United Nations counter-terrorism policy and legal responses emanating from the General Assembly, the Security Council and relevant United Nations specialized agencies, has been the focus of the work of CTITF since its adoption by the General Assembly in September 2006 (General Assembly resolution 60/288).

The Strategy sets out a plan of action for the international community based on four pillars:

- (i) Measures to address the conditions conducive to the spread of terrorism;
- (ii) Measures to prevent and combat terrorism;
- (iii) Measures to build States' capacity to prevent and combat terrorism and to strengthen the role of the United Nations system in this regard;
- (iv) Measures to ensure respect for human rights for all and the rule of law as the fundamental basis of the fight against terrorism.

In accordance with the Strategy, which welcomes the institutionalization of CTITF within the United Nations Secretariat, the Secretary-General in 2009 established a CTITF Office within the Department of Political Affairs to provide support for the work of CTITF. Via the CTITF Office, with the help of a number of thematic initiatives and working groups, and under the policy guidance of Member States through the General Assembly, CTITF aims to coordinate United Nations system-wide support for the implementation of the Strategy and catalyse system-wide, value-added initiatives to support Member State efforts to implement the Strategy in all its aspects. CTITF will also seek to foster constructive engagement between the United Nations system and international and regional organizations and civil society on the implementation of the Strategy.

The United Nations Counter-Terrorism Centre (UNCCT)

The United Nations Counter-Terrorism Centre (UNCCT) was established in September 2011, within the CTITF Office, to promote international counter-terrorism cooperation and support Member States in the implementation of the Global Counter-Terrorism Strategy. The Under-Secretary-General for Political Affairs and Chairman of the CTITF, Mr. Jeffrey Feltman, is the Executive Director of UNCCT.

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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 Office on Drugs and Crime (UNODC), the Counter-Terrorism Committee Executive Directorate (CTED), the Office of Legal Affairs (OLA), the United Nations Interregional Crime and Justice Research Institute (UNICRI), the International Maritime Organization (IMO), the International Criminal Police Organization (INTERPOL), and the 1267/1988 Monitoring Team. The International Committee of the Red Cross (ICRC), the Office for the Coordination of Humanitarian Affairs (OCHA) and the United Nations High Commissioner for Refugees (UNHCR) participate as observers.

The Guides have been prepared to assist Member States in strengthening the protection of human rights in the context of countering terrorism. They aim to provide guidance on how Member States can adopt human rights-compliant measures in a number of counter-terrorism areas. The Guides also identify the critical human rights issues raised in these areas and highlight the relevant human rights principles and standards that must be respected.

Each Guide comprises an introduction and a set of guiding principles and guidelines, which provide specific guidance to Member States based on universal principles and standards, followed by an explanatory text containing theoretical examples and descriptions of good practices. Each Guide is supported by reference materials,* which include references to relevant international human rights treaties and conventions, United Nations standards and norms, as well as general comments, jurisprudence and conclusions of human rights mechanisms and reports of United Nations independent experts, good practice examples and relevant documents prepared by United Nations entities and organizations.*

The Guides are intended for: State authorities, including legislators; law enforcement and border officials; national and international non-governmental organizations; legal practitioners; United Nations agencies; and individuals involved in efforts to ensure the protection and promotion of human rights in the context of counter-terrorism.

* For a brief overview of the broader international law framework, including an introduction which aims to give a quick insight into the general principles of international law as well as the basic elements of international criminal law, humanitarian law, refugee law and human rights law which may be relevant in a counter-terrorism context, see United Nations Office on Drugs and Crime, *Frequently Asked Questions on International Law Aspects of Countering Terrorism*, United Nations, Vienna, 2009.

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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 are entitled to the enjoyment of all human rights, subject to restrictions that are unavoidable in a closed environment. The modalities and conditions of detention must always be applied without discrimination and under the same conditions as for free persons. No one shall be subjected to torture or other forms of ill-treatment or punishment under any circumstances.
6. Any form of detention must be subject to effective oversight. A detained person must have access to independent complaints mechanisms. States have an obligation to undertake prompt, independent, thorough and impartial investigations into allegations of torture or ill-treatment and to institute criminal proceedings against the perpetrators of such acts. States should, and may be required by international obligations to, allow regular visits to places of detention by independent parties.

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.
8. Any form of administrative or 'preventive' detention for reasons of national security must be lawful and not arbitrary. All rights and guarantees applicable to detained persons must apply equally to such forms of detention. Immigration detention must be limited to such time as is reasonably necessary in the particular case, must be periodically reviewed, and must comply with all safeguards applicable to any other form of detention. Administrative detention should in principle not be used and, where used, must be restricted to exceptional circumstances. Other preventive measures, such as control orders, may amount to a deprivation of liberty.
9. Secret and incommunicado detention may never be used, including in the detention of terrorist suspects.
10. Persons unlawfully or arbitrarily deprived of their liberty shall have access to justice, including claiming remedies and reparation. Persons unlawfully or arbitrarily deprived of their liberty shall be immediately released and shall be entitled to reparation, including compensation, for the period of time unlawfully or arbitrarily detained. Detained persons whose rights have been violated whilst in detention shall be entitled to remedies and reparation. Information obtained through the use of torture or other forms of cruel, inhuman or degrading treatment shall be inadmissible as evidence.

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”.¹ The 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”.² 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 those on “*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),³ on “*The Stopping and Searching of Persons*”, on “*Security Infrastructure*” and on “*The Right to a Fair Trial and Due Process in the Context of Countering Terrorism*”; and Fact Sheet No. 32 of the Office of the High Commissioner for Human Rights, on *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”.⁴ Arrest within the meaning of article 9 of the ICCPR need not involve a formal arrest as defined under national law.⁵ The UN Body of Principles defines ‘detention’ as the broader condition of “any person deprived of personal liberty”, excluding any person deprived of liberty as a result of conviction for a criminal offence (which is captured under the Body of Principles by the term ‘imprisonment’).⁶ In the present document, ‘detention’ is treated as meaning *any* form of deprivation of liberty, including arrest or detention as defined in the UN Body of Principles, or imprisonment.
5. In its Deliberation No. 9, the UN Working Group on Arbitrary Detention set out its views on the definition and scope of ‘arbitrary deprivation of liberty’, which includes the right to *habeas corpus* (see Guideline 7 herein), concluding that the prohibition against arbitrary detention is a universally binding norm of customary international law.⁷ The Working Group concluded that, as also falling within the customary law elements of the prohibition against arbitrary detention, arbitrary detention cannot be justified by derogations and cannot be considered a necessary or proportionate measure.⁸ It considered that secret and incommunicado detention constitute the “most heinous violation of the right to liberty” under customary international law.⁹
6. Article 4(2) of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) defines the deprivation of liberty as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority”. Such action may take the form of the arrest of any person, or of his or her pre-trial detention, ‘preventive’ detention or ‘administrative’ detention, or of any other form of deprivation of liberty such as secret or incommunicado detention.
7. ‘Pre-trial detention’ involves the detention of an accused person prior to the commencement of the criminal trial.¹⁰ ‘Investigative detention’ is used for the purposes of questioning and investigation prior to the laying of charges, or potentially also for the purpose of protecting evidence or witnesses from interference by the

detained person during this period of time.¹¹ ‘Administrative detention’ involves the deprivation of liberty resulting from an order of the executive, without the (immediate) intention to bring the detainee to justice on allegations of criminal conduct or to submit the detainee to a procedure of deportation or extradition.¹² ‘Preventive detention’ is often used synonymously with administrative detention, although the justification of detaining an individual is to prevent certain activities, such as terrorist acts.¹³ ‘Immigration detention’ generally involves the deprivation of liberty of non-nationals due to their alleged breach of conditions of entry, stay or residence.¹⁴

8. ‘Secret detention’ is understood to mean the detention of a person in circumstances where the person is not permitted any contact with the outside world (known as ‘incommunicado detention’) and when the authorities refuse to confirm or deny, or when they actively conceal, the fact of the detention or the fate or whereabouts of the detainee.¹⁵ Every instance of secret detention amounts to an ‘enforced disappearance’ and is, by its nature, a form of incommunicado detention.¹⁶ Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance defines ‘enforced disappearance’ as “the arrest, detention, abduction or any other form of deprivation of liberty... followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person”.¹⁷
9. A particular right considered in Guideline 7 herein is the right codified in article 9(4) of the ICCPR, which 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”. This corresponds to the notion known as ‘habeas corpus’, which should be available at all times and under all circumstances, including during states of emergency.

C. Further development and codification of international law and standards

10. It should be noted that this document is published ahead of the completion of work to further develop and codify international law and standards relating to the detention of persons. Three initiatives should be recalled in this regard:
 - Although the Standard Minimum Rules for the Treatment of Prisoners (hereafter the UN Standard Minimum Rules), approved in 1957 and extended in 1977, are still relevant today, it has been recognised that some of the provisions could be reviewed in order to reflect recent advances in correctional science and good practices.¹⁸ In its resolution 65/230 (2010), the UN

General Assembly requested the establishment of an Expert Group to review the Standard Minimum Rules.¹⁹ This Expert Group has met several times since 2010 and deliberations are on-going.²⁰

- 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.
- 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 detention (*habeas corpus* – see Guideline 7 herein). The aim is to assist Member States in fulfilling their obligation to avoid arbitrary deprivation of liberty in compliance with international human rights law. The Working Group was requested under that resolution to present the draft basic principles and guidelines to the Human Rights Council before the end of 2015.

D. Key issues

11. All counter-terrorism measures, including those involving the deprivation of liberty, must comply fully with States' international human rights obligations. The protection and promotion of human rights while countering terrorism is both an obligation of States and a condition for an effective and sustainable counter-terrorism strategy.²¹
12. The implementation of counter-terrorism measures through the detention of persons leads to interference with individuals' full enjoyment of a wide range of civil, political, economic, social and cultural rights.²² In particular, detention may potentially violate, amongst others, the right to personal liberty and the right to personal security and integrity.²³ Article 9 of the ICCPR deals, in this regard, with both the right to liberty and the right to security as separate and distinct rights, the latter dealing with the infliction of bodily or mental injury upon a person whether or not this occurs in places of detention. Numerous international and regional instruments dealing with the protection of the rights of detained persons nevertheless highlight the increased risk of torture and other forms of

ill-treatment and attacks against personal security during detention.²⁴ As stated by the UN Working Group on Arbitrary Detention, detention places persons at risk of human rights violations because of:

*“...the inability of those who are in detention to defend and protect themselves, as their daily life is largely dependent on the decisions taken by the staff at the detention facilities. Additionally, and although legal safeguards to prevent arbitrary detention from occurring have been adopted by the majority of countries, many persons deprived of their liberty have no access to such substantive, procedural and institutional guarantees. Most of them do not have the economic means to afford expensive and complex legal procedures, especially when legal aid systems are absent or dysfunctional. Moreover, the transmission of communications from detention centres may face obstacles and in some cases means of communication are inexistent.”*²⁵

13. In the fight against terrorism, the detention of persons not only invokes international human rights law but may also engage international humanitarian law, international refugee law and international criminal law.²⁶ International humanitarian law applies in situations of international and non-international armed conflicts and provides a range of substantive and procedural protections for persons detained in connection with an armed conflict. In order to ensure the proper application of rights to persons deprived of liberty it is of the utmost importance to properly define the context of detention and, with that, the applicable legal framework(s).
14. Developments in counter-terrorism law and practice have seen the emergence of regimes under which a person may be detained outside the context of initiated criminal proceedings, including in administrative or preventive detention for security reasons, or investigative detention.²⁷ With this has come a blurring of the traditionally clear lines of action between criminal justice law enforcement authorities and intelligence agencies. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism (hereafter the Special Rapporteur on human rights while countering terrorism) has in this regard noted that:

*“Giving powers of arrest, detention and interrogation to intelligence agencies is not as such a violation of international law, provided these agencies comply with all relevant human rights standards regarding arrest and detention and with domestic constitutional and other provisions prescribed for ordinary law enforcement agencies.”*²⁸
15. The Special Rapporteur on human rights while countering terrorism has nevertheless noted with concern that, in several countries, the shift in power from law enforcement authorities to intelligence agencies in the countering of terrorism has been undertaken “precisely to circumvent such necessary safeguards in a

democratic society, abusing thereby the usually legitimate secrecy of intelligence operations”.²⁹ It has also been noted that the risk of grave human rights violations is significantly increased in the context of activities undertaken in the more secretive world of intelligence agencies as opposed to those of traditional law enforcement agencies.³⁰

16. It has been observed, for example, that there has been a growing tendency to resort to interrogation methods in the investigation of terrorist incidents, or during counter-terrorism intelligence operations more generally, that violate the prohibition of torture and other forms of ill-treatment.³¹ Experience has shown that lack of implementation (or the absence) of safeguards and procedural rules that ban, in law and in practice, the compulsion or use of involuntary statements—especially in combination with prolonged periods of detention—have encouraged the use of methods and practices violating the prohibition of torture and other forms of ill-treatment.³²

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 guarantee, article 9(1) of the ICCPR obliges States parties to ensure that no one shall be subject to unlawful or arbitrary deprivation of liberty.³³

1.2. Requirement for detention to be lawful

18. For an arrest or detention to be lawful, article 9(1) of the ICCPR explains that: “No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law”. This means that in situations where it is clearly impossible to invoke any legal basis justifying the deprivation of liberty, the deprivation of liberty will be considered arbitrary.³⁴ For example, if a person is arrested for having committed an act of terrorism, the act in question must be a criminal act under domestic law. In such cases, strict compliance with the principle of legality is required.³⁵ Reflecting article 9(1) of the ICCPR, the UN Body of Principles adds that the arrest or detention of any person shall only be carried out by competent officials or persons authorised by law for that purpose.³⁶

1.3. Prohibition against arbitrary detention

19. Article 9(1) of the ICCPR also prohibits the ‘arbitrary’ arrest or detention of any person. In general terms, this means that it is not enough that an arrest or detention is carried out within the framework provided by the law. The law itself and implementation of that framework must also comply with international law and not be arbitrary. Common to the interpretation of the term ‘arbitrary’ detention are four features:
- The first is that arbitrary conduct may, but need not, involve an act or omission that is against the law.³⁷ Deprivation of liberty will be considered arbitrary if it comes about as a result of the total or partial non-observance of international norms relating to the right to a fair trial of a grave nature.³⁸

- 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 nationality.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 human rights standards.⁴¹ These minimum guarantees include, for example, the right to a fair trial (see the Basic Human Rights Reference Guide on “*The Right to a Fair Trial and Due Process in the Context of Countering Terrorism*”).
- Thirdly, the Working Group on Arbitrary Detention has explicitly categorised as arbitrary the situation where asylum-seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (see further Guideline 8 herein).⁴²
- Finally, the Working Group on Arbitrary Detention and the Human Rights Committee have also considered that the concept of arbitrariness is intended to guarantee that even reasonable conduct that is provided for by law should be undertaken in accordance with the provisions, aims and objectives of the Universal Declaration of Human Rights (UDHR) and the ICCPR, such as the prohibitions against discrimination and torture or ill-treatment.⁴³ Any deprivation of liberty must adhere to the norms of international law, especially with regard to ensuring that mechanisms exist to enable exercise of the right to challenge the legality of detention by bringing proceedings before a court (see further Guideline 7 herein).

Any deprivation of liberty must be lawful, meaning that it is on grounds and in compliance with procedures established by law. This also means that any arrest or detention must be carried out by a competent official/person authorised by law for that purpose.

Any deprivation of liberty must also not be arbitrary. An arrest or detention will be arbitrary if it fails to be necessary and proportional, most notably if:

- It involves an act or omission that is against the law and that constitutes a grave total or partial non-observance of the right to a fair trial; and/or
- It is unreasonable, meaning that it includes elements of inappropriateness, injustice, lack of predictability, lack of due process of law or discrimination; and/or

- It involves the prolonged administrative custody of asylum-seekers, immigrants or refugees without the possibility of administrative or judicial review or remedy; and/or
- It fails to comply with other provisions, aims and objectives of international human rights law, such as the prohibitions against discrimination and torture or ill-treatment, and the right to challenge the legality of the detention.

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 detention.*

2.1. Minimum procedural guarantees triggered on arrest or detention

20. The arrest or detention of a person for the alleged commission of a criminal offence triggers certain minimum procedural rights and obligations, which are equally applicable in respect of persons arrested under terrorism charges.⁴⁴ At the outset, article 9(2) of the ICCPR requires that:
- At the time of arrest, the person must be informed of the reasons for his or her arrest in a language understood by the person; and
 - The person must be 'promptly' informed of any charges against her or him in a language understood by him or her.
21. The arrest or detention of a person for the alleged commission of a criminal offence engages the following further minimum guarantees for the person arising under article 9(3) and (4) of the ICCPR, and corresponding obligations on State authorities. Integral to the effective enjoyment of these minimum guarantees is access to legal counsel (see Guideline 3 herein).
- The person must be brought 'promptly' before a judge or other officer authorised by law to exercise judicial power (article 9(3) of the ICCPR), considered separately under Guideline 7 herein.
 - The person is entitled to trial within a reasonable time, or to release (article 9(3) of the ICCPR). This right is complemented by article 14(3)(c) of the ICCPR, establishing the right to be tried "without undue delay" as a minimum guarantee for everyone charged with a criminal offence. These complementary rights are expanded upon in the Basic Human Rights Reference Guide on "*The Right to a Fair Trial and Due Process in the Context of Countering Terrorism*".⁴⁵

- 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.
 - 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 purposes.⁴⁷ This 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.⁴⁸

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

- The following information must be recorded in an official register:
 - a) The identity of the detained person;⁴⁹
 - b) The reasons for the arrest;⁵⁰
 - c) The time of the arrest and the taking of the arrested person to a place of custody;⁵¹
 - d) The time of the person’s first appearance before a judicial or other authority;⁵²

- e) The identity of the law enforcement officials concerned;⁵³
 - f) Precise information concerning the place of detention, including in circumstances where a person is transferred to another place of detention;⁵⁴
 - g) The time of admission to and release from the place of detention;⁵⁵
 - h) The physical integrity of the detained person.⁵⁶
- The record of information in (b) to (f) above must be communicated to the detained person and/or the person's counsel, if any.⁵⁷ If the person is illiterate, this information must be conveyed orally.⁵⁸
 - All of the information described must be made promptly available, upon request, to any judicial or other competent authority or institution.⁵⁹
 - Information in (c) and (e) to (h) must be made available to any person with a legitimate interest in the information, such as relatives of the detained person, their representative or their counsel.⁶⁰ In the case of a death in custody, this information must be conveyed to the person's next-of-kin.

3. *All persons deprived of liberty have the right to prompt and effective access to legal counsel.*

3.1. Right to counsel

24. For the effective exercise and guarantee of rights relating to the detention of persons, all persons deprived of their liberty must have prompt and effective access to legal counsel. The right to counsel has been recognised by the Human Rights Committee as equally applicable to both judicial proceedings as well as the pre-trial phase.⁶¹ Denial of counsel may result in procedural violations of article 9(3) and/or (4) of the ICCPR.⁶² The right to legal counsel in judicial proceedings is a matter expanded on in further detail in the Basic Human Rights Reference Guide on "*The Right to a Fair Trial and Due Process in the Context of Countering Terrorism*".⁶³

3.2. Right to counsel from the time of deprivation of liberty

25. In situations of pre-trial detention, the detainee must have prompt access to legal counsel, meaning that counsel must be made available to the detained person promptly after his or her arrest or detention. Detainees should be able to receive private visits from counsel and to maintain confidentiality of discussions.⁶⁴ Confidentiality of detainee-lawyer communications must be guaranteed from the outset of any deprivation of liberty, including from the moment of the first interrogation of a suspect by police,⁶⁵ regardless of whether the State intends to use at trial any information obtained in breach of the confidentiality.⁶⁶ Information should be made available concerning the reasons for arrest or detention as well as the evidence obtained.⁶⁷ Counsel should have access to any interrogation of a detainee.⁶⁸ In order to facilitate access to counsel, free legal aid should be provided to the detainee if necessary.⁶⁹ According to the Special Rapporteur on

the independence of judges and lawyers, States must develop and implement an effective and sustainable legal aid system in order to ensure that the right to legal assistance is effectively enjoyed.⁷⁰

3.3 Relevance of the right to counsel to effective access to *habeas corpus*

26. Prompt and effective access to legal counsel is also important for the effective access to the right to *habeas corpus* (see Guideline 7 herein).⁷¹

4. *Detention awaiting trial should be an exception and should be as short as possible.*

4.1 Presumption in favour of bail or other measures short of detention

27. Reflecting the presumption in favour of bail (or other measures short of detention) under article 9(3) of the ICCPR, Principle 39 of the UN Basic Principles provides that: “Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law”. This means that pre-trial detention should be an exception and as short as possible.⁷² This relates not only to the time between the formal charging of an accused and the time when the trial commences, but also the time until final judgment on appeal.⁷³ The factors determining the permissibility of pre-trial detention should be specified in the law, and should not include vague or expansive justifications such as ‘public security’.⁷⁴

4.2 Expeditious trial where bail or other measures short of detention are denied

28. In cases involving serious charges such as terrorism, as properly defined,⁷⁵ and where an accused is denied bail (or other measures short of detention) by the court, an accused person must be tried in as expeditious a manner as possible.⁷⁶ This requirement applies even in bona fide emergency situations where there is a serious terrorist threat.⁷⁷

4.3 Burden on the State to justify continued detention

29. Article 9(3) of the ICCPR places a burden on the State to establish the need for the detention of an accused person to continue. As observed by the Special Rapporteur on human rights while countering terrorism:

*“Where there are essential reasons, such as the suppression of evidence or the commission of further offences, bail may be refused and a person remanded in custody. The Special Rapporteur takes the view, however, that the classification of an act as a terrorist offence in domestic law should not result in automatic denial of bail, nor in the reversal of onus. Each case must be assessed on its merits, with the burden upon the State for establishing reasons for detention.”*⁷⁸

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 are entitled to the enjoyment of all human rights, subject to restrictions that are unavoidable in a closed environment. The modalities and conditions of detention must always be applied without discrimination and under the same conditions as for free persons. No one shall be subjected to torture or other forms of ill-treatment or punishment under any circumstances.*

5.1 Obligation to treat detained persons with humanity and respect for the inherent dignity of the person

30. Because the treatment of persons deprived of their liberty is entirely dependent on detaining authorities, persons who are deprived of their liberty are ‘powerless’ and consequently vulnerable to physical or mental pressure.⁷⁹ Article 10(1) of the ICCPR requires that all persons deprived of their liberty “shall be treated with humanity and with respect for the inherent dignity of the human person”.⁸⁰ The implications of the broad guarantee in article 10(1) are considered further below in this Guideline.

5.2 Guarantees applicable to persons charged with a criminal offence; juveniles; and persons convicted of a criminal offence

31. In the case of persons detained for the alleged commission of a criminal offence, article 10(2) of the ICCPR requires that:

- Save in exceptional cases, the person shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons (article 10(2)(a)). As noted by the Human Rights Committee, this provision emphasizes the entitlement of such persons to be presumed innocent, reflected in article 14(2) of the ICCPR,⁸¹ and considered further in the Basic Human Rights Reference Guide on “*The Right to a Fair Trial and Due Process in the Context of Countering Terrorism*”.⁸²
- In all cases, juvenile persons shall be separated from adults and brought as speedily as possible for adjudication (article 10(2)(b)). The Human Rights Committee has expressed the view that deviation from this provision cannot be justified under any circumstances.⁸³

32. In the case of persons convicted of a criminal offence, article 10(3) of the ICCPR provides that: “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status”. As to the segregation of persons convicted of terrorism offences, which is a practice not expressly dealt with by the ICCPR, States have expressed concerns that such persons may need to be segregated from

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.⁸⁴

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:

- In the case of persons detained for the alleged commission of a criminal offence:
 - a) Save in exceptional cases, the person shall be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons; and
 - b) Persons under the age of 18 years shall in all cases be separated from adults and brought as speedily as possible for adjudication.
- In the case of persons convicted of a criminal offence:
 - a) The treatment of such persons shall be aimed towards their reformation and social rehabilitation; and
 - b) Persons under the age of 18 years shall be segregated from adults and shall be treated in a manner appropriate to their age and legal status.

5.3 Content of the right to humane treatment and respect for the inherent dignity of the person

33. The broad guarantee in article 10(1) of the ICCPR is applicable to all persons deprived of their liberty and in all circumstances. The Human Rights Committee has noted that the humane treatment and respect for the dignity of a detained person is “a fundamental and universally applicable rule”.⁸⁵ It forms a norm of customary international law applicable to all States and in respect of all detained persons, and is treated by the Human Rights Committee as a legal norm that cannot be derogated from, even in states of emergency or situations of armed conflict.⁸⁶ Terrorism and threats of terrorism cannot justify any derogation from this obligation. This is underscored in article 17 of the International Convention for the Suppression of the Financing of Terrorism, which reads:

“Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law.”

34. Various provisions in the ICCPR additional to article 10(1), as well as other international instruments,⁸⁷ supplement the right to humane treatment and respect

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”.⁸⁸ 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 is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.”*⁸⁹

35. Of particular relevance:

- The modalities and conditions of detention must always be applied without discrimination and in respect of the dignity of the detainee as for a free person (articles 2(1) and 26 of the ICCPR).⁹⁰
- The guarantee in article 10(1) of the ICCPR supplements the prohibition against torture or cruel, inhuman or degrading treatment or punishment.⁹¹

5.4 Equality and non-discrimination

36. The principles of equality and non-discrimination are central to human rights law and are recognised as *ius cogens* norms of customary international law, thus applicable to all States. In its statement on racial discrimination and measures to combat terrorism, the Committee on the Elimination of Racial Discrimination demanded that:

*“...States and international organizations ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin”; and insisted that: “...the principle of non-discrimination must be observed in all matters, in particular in those concerning liberty, security and dignity of the person, equality before the courts and due process of law, as well as international cooperation in judicial and police matters in these fields”.*⁹²

37. The prohibition of discrimination does not exclude the possibility for different treatment under specific circumstances, but for any distinction to be permissible there needs to be an objective and reasonable justification. It must further a legitimate objective and the means must be reasonable and proportionate to the end sought.⁹³ As a general rule, however, there is no justification for treating terrorist suspects or those convicted of terrorist acts differently from other suspects or convicts. The same length and conditions of detention apply to all detainees equally.

Different treatment of those charged with terrorist crimes might otherwise have serious repercussions on their right to the presumption of innocence.⁹⁴ Counterterrorism measures must also not result in discrimination based on ethnicity or religion. The Special Rapporteur on human rights while countering terrorism has expressed concern, for example, over the different treatment of detainees of one/a certain religion and recommended appropriate human rights education for penitentiary and law enforcement staff as well as disciplinary measures against any official involved in discriminatory conduct.⁹⁵

5.5 Disciplinary codes for places of detention

38. The existence and consistent application of a disciplinary code for places of detention helps to ensure the transparent and non-discriminatory running of detention facilities. The UN Body of Principles and the UN Standard Minimum Rules require disciplinary codes to be established by law in which it is clear: what conduct constitutes a disciplinary offence; the types and duration of punishment that may be inflicted for violation of the disciplinary code; and the authority that is competent to impose such punishment.⁹⁶ All disciplinary procedures must comply with due process and the principles of natural justice. Detainee's access to complaints mechanisms (see Guideline 6 below) must also be available without discrimination.
39. Detention facility staff must under no circumstances be permitted to exercise informal punishment.⁹⁷ Any punishment imposed under the disciplinary code must furthermore not amount to torture or to cruel, inhuman or degrading punishment (discussed further below).⁹⁸ The following types of punishment are prohibited under international human rights law: corporal punishment (intentional physical force utilised to cause a person severe pain);⁹⁹ collective punishment (punishment imposed on a group of individuals due to their involvement in or belonging to the group);¹⁰⁰ the restriction of diet (unless approved by a medical officer);¹⁰¹ the use of instruments of restraint;¹⁰² forced labour;¹⁰³ or lengthy solitary confinement.¹⁰⁴

The following features of a disciplinary system are considered to be good practice:¹⁰⁵

- The head of the detention facility should hear cases of alleged breaches of discipline in the presence of the detainee and the member of staff who is making the charge;
- The detainee should be told in advance what the charge is;
- The detainee should be given time to prepare his or her defence and be given the opportunity to present it at the hearing;
- The detainee should be allowed to question the officer presenting the case and to call his or her own witnesses;
- In complex cases, the detainee should be allowed legal representation;
- The detainee should have the right to appeal to a higher authority.

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.¹⁰⁶ Article 2(2) of the CAT confirms that no exceptional circumstances whatsoever may be invoked as a justification for torture.¹⁰⁷ This includes a state or threat of war, internal political instability and other situations of public emergency such as acts or threats of terrorism. No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may they invoke superior orders as a justification for such conduct.¹⁰⁸

5.7 Interrogation of persons

41. The interrogation of persons, including persons deprived of their liberty, must adhere to international human rights law and standards. This means that the interrogation of persons must never involve methods that amount to torture or other forms of ill-treatment. With a view to preventing acts of torture or other forms of ill-treatment, articles 11 and 16 of the CAT require States parties to systematically review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of detained persons. Articles 10(1) and 16 of the CAT oblige States parties to ensure that education and information regarding the prohibition against torture and other forms of ill-treatment are fully included in the training of public officials and other persons who may be involved in the custody, interrogation or treatment of any person deprived of their liberty.

5.8 Forcible feeding

42. Forcible feeding of a detainee may amount to torture or other cruel, inhuman or degrading treatment, particularly when it is administered in a manner that amounts to such treatment.¹⁰⁹ Several of the Special Procedures mandate holders

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.¹¹⁰ 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.¹¹¹ It is therefore of particular concern that States continue to forcibly feed detainees accused of terrorist acts.¹¹²

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.¹¹³ Solitary confinement may amount to an act in violation of articles 7 and 10 of the ICCPR.¹¹⁴ The Committee against Torture has recommended that solitary confinement be abolished; and, where the practice is not abolished, that it should be used only in exceptional cases and for a limited duration.¹¹⁵ The Committee has also expressed particular concern regarding the use of solitary confinement as a preventive measure in pre-trial detention and as a disciplinary measure.¹¹⁶ The International Criminal Tribunal for the Former Yugoslavia has held that:

*“to the extent that the confinement of the victim can be shown to pursue one of the prohibited purposes of torture and to have caused the victim severe pain or suffering, the act of putting or keeping someone in solitary confinement may amount to torture”.*¹¹⁷

44. The European Court of Human Rights has also recognised that complete sensory deprivation coupled with total isolation constitutes a form of inhuman treatment, which cannot be justified by the requirements of security or any other reason.¹¹⁸ The UN Basic Principles call on States to abolish or restrict the use of solitary confinement as a punishment.¹¹⁹ Although the Standard Minimum Rules do not prohibit ‘close confinement’ as a punishment, they do specify that placing a person in a dark cell is prohibited and that any punishment may not be cruel, inhuman or degrading.¹²⁰ Any confinement must be accompanied by daily visits by a medical officer, who is obliged to advise the director of the detention centre if termination or alteration of the punishment is necessary on grounds of physical or mental health.¹²¹

The humane treatment of detainees means that persons deprived of their liberty shall never, under any circumstances, be subjected to torture or other forms of ill-treatment or punishment. In practical terms, these guarantees mean, amongst other things, that:

- The interrogation of persons must never involve methods that amount to torture or other forms of ill-treatment.
- The forcible feeding of detainees may amount to torture or other cruel, inhuman or degrading treatment, particularly when it is administered in a manner that amounts to such treatment. Forcible feeding has been concluded to amount to a violation of medical ethics as well as the right to health.
- Detention facility staff must under no circumstances be permitted to exercise informal punishment.
- Corporal punishment, collective punishment, the restriction of diet, the use of instruments of restraint, forced labour, or lengthy solitary confinement are prohibited forms of punishment under international human rights law.
- As a practice that may amount to torture or other ill-treatment, abolition of solitary confinement has been recommended. Where the practice has not been abolished, its use should be confined to exceptional circumstances; for a limited duration; and should never be accompanied by complete sensory deprivation. Any confinement must be accompanied by daily visits by a medical officer.

6. Any form of detention must be subject to effective oversight. A detained person must have access to independent complaints mechanisms. States have an obligation to undertake prompt, independent, thorough and impartial investigations into allegations of torture or ill-treatment and to institute criminal proceedings against the perpetrators of such acts. States should, and may be required by international obligations to, allow regular visits to places of detention by independent parties.

6.1 Monitoring the effective application of rules regarding the treatment of detained persons

45. In order to give practical effect to the overarching right to humane treatment and its component parts, particularly the prohibition against torture and ill-treatment, effective oversight and complaint mechanisms are essential. The Human Rights Committee has spoken of the need to monitor the effective application of rules regarding the treatment of persons deprived of their liberty, emphasizing the importance of independent and impartial systems for monitoring detention facilities, and specific measures to prevent torture and other ill-treatment.¹²² Although such mechanisms may be non-judicial in nature, any form of detention must be subject to effective oversight and control by the judiciary, a matter explained further in Guideline 7 herein.

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.¹²³ Rule 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 censorship as to substance. Unless evidently frivolous or groundless, every request or complaint must be promptly dealt with and replied to without undue delay.¹²⁴ Specific to allegations of torture and other ill-treatment, articles 13 and 16 of the CAT require States to guarantee the right to complain to, and to have his or her case promptly and impartially examined by, competent authorities.
47. Depending on the nature of the complaint, a detainee may not wish to communicate the complaint to his or her immediate custodial staff, especially if the complaint relates to that staff member’s conduct. Detainees must therefore have the ability to complain to the director of the detention facility, or to higher authorities.¹²⁵ The Committee against Torture has also recommended the establishment of centralised public registers of complaints of torture and ill-treatment and of the results of the investigations.¹²⁶

6.3 Obligation to conduct a prompt, independent, thorough and prompt investigation into allegations of torture or other inhumane treatment

48. Irrespective of whether a formal complaint is made, States have an obligation to undertake a prompt, independent, thorough and impartial investigation where they become aware of information alleging ill-treatment of a detainee.¹²⁷ Officials that are the subject of investigation must be suspended during the time of investigation.¹²⁸ In the case of allegations of torture or of cruel, inhuman or degrading treatment or punishment, the CAT obliges States parties to investigate such allegations in a “prompt and impartial” manner and to institute criminal proceedings where appropriate.¹²⁹ The failure or inability to do so will result in impunity, meaning that the perpetrators of such violations are not held to account.¹³⁰ As stated by the Special Rapporteur on human rights while countering terrorism:

“Where a plausible allegation is made that public officials have committed (or been complicit in the commission of) gross or systemic human rights violations, the exec-

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, where appropriate, the punishment of the perpetrator(s) and those on whose authority the violations were committed.”¹³¹

6.4 Regular inspection of places of detention

49. The Special Rapporteur on torture has observed that the regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventive measures against torture. He concluded that inspections of all places of detention, including police lock-ups, pre-trial detention centres, security service premises, administrative detention areas and prisons should be conducted by teams of independent experts.¹³² Guidance on how to conduct visits to places of detention is provided in the OHCHR *Training Manual on Human Rights Monitoring* (Chapters 5 and 9).¹³³ The OPCAT establishes a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The OPCAT established the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (SPT), which serves as an independent international mechanism with a mandate to conduct such visits. Article 3 of the OPCAT also calls on States parties to establish at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, generally referred to as a National Preventive Mechanisms (NPMs).
50. The dual functioning of visits to places of detention by the SPT and NPMs is primarily preventive in nature, but also acts in a protective way by identifying challenges in the administration of detention facilities and the ways in which their operation can be brought into compliance with the right to humane treatment and its component parts. It is against this background that all States have been called on to ratify the OPCAT.¹³⁴

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 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:

- The 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.¹³⁵ 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”.¹³⁶
- 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.¹³⁷ 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”.¹³⁸ This corresponds to the procedure known in many countries as ‘*habeas corpus*’, and must be available at all times and under all circumstances, including during states of emergency.¹³⁹ The procedure must be effective so that, according to the Working Group on Arbitrary Detention: “the decision to grant habeas corpus must be implemented immediately, either through the release of the person deprived

of liberty or by unobstructed rectification of any flaws discovered”.¹⁴⁰ The urgent nature of *habeas corpus* proceedings means that executive authorities must be able to immediately act upon an order for release, without the need for further approvals, including internal administrative procedures.¹⁴¹ The right to *habeas corpus* applies equally to detention for counter-terrorism purposes.¹⁴²

7.2 Prompt access to judicial oversight

52. Extended periods of police detention without bringing a suspect before a judge has nevertheless been a long-standing practice of concern in several countries.¹⁴³ The Special Rapporteur on human rights while countering terrorism has expressed concern that the absence of an express provision in the law on the maximum period of such detention may lead to instances of indefinite detention.¹⁴⁴
53. The right in article 9(3) of the ICCPR to be brought promptly before a judge or other officer is not accompanied by a definition of the term ‘promptly’. The Human Rights Committee has stated that, while the meaning of the term must be determined on a case-by-case basis, delays in bringing a person before the court must not exceed “a few days”, and “any delay longer than forty-eight hours should be justified by exceptional circumstances”.¹⁴⁵ It has treated delays of three or more days as being in violation of article 9(3) of the ICCPR.¹⁴⁶ Detention will be considered arbitrary if the State party continues to detain an individual “beyond the period for which the State party can provide appropriate justification”.¹⁴⁷ In the context of immigration detention, it has recommended that judicial review should take place within 48 hours of the moment of apprehension.¹⁴⁸

7.3 Speedy and regular review of detention

54. The speedy and regular court review of any form of detention is important.¹⁴⁹ This will be especially so where a person has not been released on bail (or where other measures short of detention have not been adopted) pending trial, in which case the UN Basic Principles provides that the court “shall keep the necessity of the detention under review”.¹⁵⁰ The UN Body of Principles also provides that *habeas corpus* procedures must be simple and expeditious and at no cost for detained persons without adequate means.¹⁵¹ The detaining authority must produce the detained person before the reviewing authority without unreasonable delay.¹⁵²

7.4 Jurisdictional competence of the judicial authority

55. Oversight by a competent and independent judicial authority must require and allow the court to evaluate the accusations, the basis of the deprivation of liberty (by reference to legal criteria) and whether continued detention of the person is both necessary and proportionate to avert the stated risks.¹⁵³ It is therefore of

crucial importance that the court has the power to review the information forming the basis on which the individual is held in detention.¹⁵⁴

56. Judicial proceedings must entail the real possibility of release and the judge hearing the case must have the authority to order immediate release.¹⁵⁵ This arises not only as an aspect of article 9(3) and (4) of the ICCPR, but also by reason of States' obligation under article 2(3) of the ICCPR to ensure that an effective remedy is provided in cases where a person's detention is unlawful or arbitrary.¹⁵⁶

Judicial oversight and control over all forms of detention must be provided for by law.

- Any person arrested or detained for the alleged commission of a criminal offence must be brought promptly before the court.
- All detained persons, whether relating to criminal proceedings or not, have the right to bring proceedings before a court to challenge the lawfulness of their detention and obtain an order for release if the detention is not lawful.

Prompt access to the court demands that delays in bringing a detained person before the court must not exceed two to three days from the moment of the person's apprehension.

In the exercise of judicial oversight:

- Such oversight must be speedy and regular;
- Procedures must be simple and expeditious and at no cost for detained persons without means;
- The detained person must be produced before the court;
- It must involve an evaluation of (a) the accusations, (b) the basis of the deprivation of liberty (by reference to legal criteria) and (c) whether continued detention of the person is justified;
- It must entail a real possibility of release;
- The court must respond urgently and effectively.

8. Any form of administrative or 'preventive' detention for reasons of national security must be lawful and not arbitrary. All rights and guarantees applicable to detained persons must apply equally to such forms of detention. Immigration detention must be limited to such time as is reasonably necessary in the particular case, must be periodically reviewed, and must comply with all safeguards applicable to any other form of detention. Administrative detention should in principle not be used and, where used, must be restricted to exceptional circumstances. Other preventive measures, such as control orders, may amount to a deprivation of liberty.

8.1 Detention for reasons of national security

57. Any form of administrative or 'preventive' detention for reasons of public security must not be arbitrary and must be based on grounds and procedures established by law (see Guideline 1 herein).¹⁵⁷ Although administrative detention is not *per*

se a 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:

- Immigration detention of migrants, often followed by expulsion or deportation;
- Administrative detention without charge or trial; and
- 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 The 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 must be for a legitimate purpose, and must take into account whether less restrictive measures are available.¹⁶³ Because asylum-seekers may not as a general rule be removed to a country where they would be at risk of persecution, they cannot be detained for the purposes of expulsion while their asylum claim is being examined.¹⁶⁴
60. The removal of an individual to a country or situation where he or she may experience a real risk, or a “necessary and foreseeable consequence”,¹⁶⁵ of a threat to life or freedom, persecution, torture or other cruel, inhuman or degrading treatment is prohibited by customary international law and treaty law. Such removal will result in a violation of the principle of *non-refoulement*.¹⁶⁶ Asylum-seekers

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* may 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 or if 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 circumstances,¹⁷⁴ such as where a detainee would constitute a clear and serious threat to society that cannot 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

justifications such as “public security” will not meet applicable standards of international law.¹⁸¹

8.4 Deprivation of liberty by means other than detention in a detention facility

64. The deprivation of liberty may take various forms other than detention in a detention facility, including measures such as house arrest or ‘control orders’. Control orders have been used by some States as a counter-terrorism tool and involve the imposition of conditions on a ‘controlled person’ where the person is suspected of involvement in terrorism-related activity. The Special Rapporteur on human rights while countering terrorism has warned that the imposition of controls on any person subject to such orders must not cumulate so as to be tantamount to detention.¹⁸² In determining whether control order conditions, such as curfews, give rise to a deprivation of liberty, a full range of factors must be assessed, including the nature, duration, effects and manner of execution or implementation of the measures.¹⁸³ A curfew of 18 hours has, coupled with the effective exclusion of social visitors, been concluded to amount to a deprivation of liberty.¹⁸⁴ A curfew of 12 hours has been found not to amount to a deprivation of liberty where conditions were such that the curfew operated during the normal hours of sleep and where the controlled person was allowed to enjoy a family life and some degree of social interaction.¹⁸⁵

9. *Secret and incommunicado detention may never be used, including in the detention of terrorist suspects.*

9.1 Enforced disappearance

65. The use of secret detention involving the enforced disappearance of a person is arbitrary *per se* and places the detainee at grave risk of serious human rights violations, and may in itself constitute torture or ill-treatment.¹⁸⁶ The definition of enforced disappearance in article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICED) acknowledges that such detention places a person outside the protection of the law. It is therefore of particular concern that several of the Human Rights Council’s Special Procedures have noted the use of secret and incommunicado detention in the fight against terrorism.¹⁸⁷
66. An act of enforced disappearance has been condemned by the UN General Assembly as a denial of the UN Charter and a grave and flagrant violation of human rights and fundamental freedoms.¹⁸⁸ Article 7 of the UN Declaration on the Protection of All Persons from Enforced Disappearance and article 1 of the ICED prohibit enforced disappearances in all circumstances, “whether a state of war or a threat of war, internal political instability or any other public

emergency”.¹⁸⁹ Article 17(2) of the ICED consequently requires States parties to guarantee in their legislation that any person deprived of liberty shall be held only in officially recognized and supervised places of detention.

9.2 Incommunicado detention

67. The use of secret detention also involves incommunicado detention. The Special Rapporteur on human rights while countering terrorism has highlighted the existence of legislative provisions that allow for periods of incommunicado detention for individuals accused of terrorist acts and called for the complete eradication of the institution of incommunicado detention.¹⁹⁰ The Human Rights Committee has recommended that States establish provisions in the law to guard against incommunicado detention.¹⁹¹ In its jurisprudence, the Committee has found that incommunicado detention prevents prompt presentation of a detained person before a judge and “inherently violates” article 9(3) of the ICCPR,¹⁹² and may also violate articles 7, 9(4), and 10(1) of the ICCPR.¹⁹³ As recognised by the Special Rapporteur on torture, torture is “most frequently practised during incommunicado detention” implying that incommunicado detention should therefore be made illegal.¹⁹⁴ The Committee against Torture has also called for the abolition of such practices and recommended that all persons currently held incommunicado be released, or charged and tried under due process.¹⁹⁵

10. Persons unlawfully or arbitrarily deprived of their liberty shall have access to justice, including claiming remedies and reparation. Persons unlawfully or arbitrarily deprived of their liberty shall be immediately released and shall be entitled to reparation, including compensation, for the period of time unlawfully or arbitrarily detained. Detained persons whose rights have been violated whilst in detention shall be entitled to remedies and reparation. Information obtained through the use of torture or other forms of cruel, inhuman or degrading treatment shall be inadmissible as evidence.

10.1 Access to justice, including remedies and reparation

68. In order to claim remedies and reparation, a person must be able to effectively access justice to seek such remedies. In the context of persons deprived of their liberty, two of the most important aspects of the right to an effective remedy include: the obligation to provide remedies in the case of unlawful or arbitrary detention; and the obligation to provide remedies to detainees whose treatment whilst in detention is in violation of their human rights.

10.2 Right to release

69. Under article 9(4) of the ICCPR, a person deprived of liberty has the right to release where detention is deemed unlawful or arbitrary.¹⁹⁶ This is linked to the

right to *habeas corpus*, as 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).¹⁹⁷

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

10.3 Right to compensation

71. In the case of an unlawful or arbitrary detention, the person concerned will be entitled to compensation under article 9(5) of the ICCPR, including in the context of continued detention in contravention of a court order for release. This right does not replace the right to an effective remedy in article 2(3) of the ICCPR, but acts as a specific remedial right alongside the overarching right to effective remedies.²⁰¹

10.4 Remedies and reparation for human rights violations committed during the course of detention

72. Effective remedies must also be provided where human rights violations occur whilst an individual is in detention. For example, article 13 of the CAT, read together with article 16 of the same instrument, obliges States to “ensure that any individual who alleges he has been subject to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities”. This right is also enshrined in article 2(3) of the ICCPR, and is applicable to all violations of human rights. If a claim is discovered to be well-founded, compensation should be afforded to the victim, alongside other applicable reparation.²⁰² A lack of independent investigation or criminal proceedings, coupled with the apparent rejection of the applicant’s claim for compensation, can result in a violation of the right to security of person.²⁰³

10.5 Prohibition against the use of information obtained by torture or other forms of inhumane treatment

73. Where evidence is obtained from a detained person by means of torture or other cruel, inhuman or degrading treatment, this evidence must be considered inadmissible in any court proceedings.²⁰⁴ While article 15 of the CAT expressly applies this rule only to torture, the ICCPR does not make this distinction.²⁰⁵

Furthermore, evidence obtained by coercion must also be excluded in order to respect the right guaranteed under article 14(3)(g) of the ICCPR.²⁰⁶

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 on “*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 Michael 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 in Vienna from 31 January to 2 February 2012 (UNODC/CCPCJ/EG.6/2012/1); Report on the meeting of the Expert Group on Standard Minimum Rules for the Treatment of Prisoners held in Buenos Aires from 11 to 13 December 2012 (UNODC/CCPCJ/EG.6/2012/4). The most recent meeting of the Expert Group was held in Vienna from 25 to 28 March 2014 (see <http://www.unodc.org/unodc/en/justice-and-prison-reform/expert-group-meetings6.html>).
21. See further the Basic Human Rights Reference Guide on “*Conformity of National Counter-Terrorism Legislation with International Human Rights Law*”, especially Guidelines 1 and 2. See also: UN Global Counter-Terrorism Strategy, Annex, Pillar IV: Security Council resolution 1963 (2010), para. 10; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/16/51), para. 12; Report of the United Nations Secretary-General, *Uniting against terrorism: recommendations for a global counter-terrorism strategy*, UN Doc A/60/825 (2006), para. 5; Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism, UN Doc A/HRC/8/13 (2008); and Statement by the President of the Security Council of 27 September 2010 (S/PRST/2010/19), un-numbered para. 8.
22. See, for example: General Assembly resolution 64/168 (2009), para. 6(f); and Address by Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights, to the Counter-Terrorism Committee of the Security Council, New York, 29 October 2009, p. 3.
23. Committee against Torture, *General Comment No. 2 (Implementation of article 2 by States Parties)*, UN Doc CAT/C/GC2/CRP.1/Rev.4 (2007), para. 13.
24. They include: UDHR, articles 3 and 9; ICCPR, article 9(1); (European) Convention for the Protection of Human Rights and Fundamental Freedoms, article 5; American Convention on Human Rights, article 7(1); and African Charter for Human and Peoples’ Rights, article 6.
25. Report of the Working Group on Arbitrary Detention (A/HRC/10/21), para. 46.
26. Article 147 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War defines ‘unlawful confinement of a protected person’ as a grave breach of the Convention. Grave breaches of the Geneva Conventions constitute war crimes under Article 8 of the Rome Statute of the International Criminal Court, as does Article 2(g) of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY). The ICTY has held that “clear guidance can be found in the provisions of Geneva Convention IV” (*Delalić* Judgement (IT-96-21-A), Appeals Chamber, 20 February 2001, para. 320), most notably in Articles 42 and 43, and, in para. 378, that unlawful confinement could be committed in one of two ways, namely where: “[An Accused] has no reasonable grounds to believe that the detainees pose a real risk to the security of the state; or he knows that they have not been afforded the requisite procedural guarantees (or is reckless as to whether those guarantees have been afforded or not).”
27. As noted, for example, in the 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 also Report of the High Commissioner for Human Rights on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/22/26), para. 22.
28. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/10/3), para. 37.
29. *Ibid.*
30. International Commission of Jurists, *Assessing Damage, Urging Action. Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights* (2009), p. 76; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering ter-

- 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. See also article 9 of the UDHR, which prohibits arbitrary arrest or detention.
 34. Report of the Working Group on Arbitrary Detention (A/HRC/16/47 (2011), Annex, para. 8(a).
 35. See the Basic Human Rights Reference Guide on “*Conformity of National Counter-Terrorism Legislation with International Human Rights Law*”, Guideline 3.
 36. UN Body of Principles, Principle 2. Furthermore, many United Nations counter-terrorism treaties expressly provide that the detention of terrorist suspects must be in accordance with obligations under international law, including international human rights law. See for example the 1999 Convention for the Suppression of the Financing of Terrorism, article 17: “Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to this Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international law of human rights.” See also the 1997 Convention for the Suppression of Terrorist Bombings, article 14, and the International Convention for the Suppression of Acts of Nuclear Terrorism, article 15.
 37. *Shorter Oxford English Dictionary* (Oxford: Oxford University Press, 2002), p. 109.
 38. Report of the Working Group on Arbitrary Detention (A/HRC/16/4), para. 8(c).
 39. Report of the Working Group on Arbitrary Detention (A/HRC/16/4), para. 8(e). See also, for example: *Mukong v. Cameroon*, Human Rights Committee Communication No. 458/1991, UN Doc CCPR/C/51/D/458/1991 (1994), para. 9.8; and *de Morais v. Angola*, Human Rights Committee Communication No. 1128/2002, UN Doc CCPR/C/83/D/1128/2002 (2005), para. 6.1; and *Gorji-Dinka v. Cameroon*, Human Rights Committee Communication No. 1134/2002, UN Doc CCPR/C/83/D/1134/2002 (2005), para. 5.1.
 40. See, for example, *A and Others v. Secretary of State for the Home Department* (2004) UKHL 56, paras. 68, 83–84, 136–138 and 158.
 41. See further the Basic Human Rights Reference Guide on “*The Stopping and Searching of Persons*”. See, for example: *A v. Australia*, Human Rights Committee Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997), para. 9.4; *Spakmo v. Norway*, Human Rights Committee Communication No. 631/1995, UN Doc CCPR/C/59/D/631/1995 (1999), para. 6.3; *van Alphen v. The Netherlands*, Human Rights Committee Communication No. 305/1988, UN Doc CCPR/C/39/D/305/1988 (1990), paras. 5.6–5.8; *C v. Australia*, Human Rights Committee Communication No. 900/1999, UN Doc CCPR/C/76/D/900/1999 (2002), para. 8.2; and *Omar Sharif Baban et al. v. Australia*, Human Rights Committee Communication No. 1014/2001, UN Doc CCPR/C/78/D/1014/2001 (2003), para. 7.2.
 42. Report of the Working Group on Arbitrary Detention (A/HRC/16/47 (2011), Annex, para. 8(d).
 43. Report of the Working Group on Arbitrary Detention (A/HRC/16/47 (2011), Annex, para. 8(b). Human Rights Committee, *General Comment 16 (The right to respect of privacy, family, home and correspondence, and protection of honour and reputation)*, para. 4. See also: *Garcia v. Colombia*, Human Rights Committee Communication No. 687/1996, UN Doc CCPR/C/71/D/687/1996 (2001); and Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Doc E/CN.4/1985/4, para. 7.
 44. See, for example: Report of the Working Group on Arbitrary Detention (A/HRC/10/21), para. 54(c)–(e); and Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/63/223), paras. 14, 17–18, 20 and 27.
 45. Guideline 6.

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*, 147, 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. Principle 12(1) of the UN Body of Principles; Rule 7(2) of the Standard Minimum Rules.
58. Rule 35(2) of the Standard Minimum Rules.
59. Article 17(3) of the ICED.
60. Article 18(1) of the ICED.
61. General Comment 32, para. 32. See also European Court of Human Rights, Case of *Salduz v. Turkey*, European Court of Human Rights Application No. 36391/02, 29 November 2008, paras. 50–55.
62. See, for example, *Berry v. Jamaica*, Human Rights Committee Communication No. 330/1988, UN Doc CCPR/C/50/D/330/1998 (1994), para. 11.1.
63. Guideline 8.
64. Rule 93 of the Standard Minimum Rules; General Comment 32, para. 34; *Gridin v. Russian Federation*, Human Rights Committee Communication No. 770/1997, UN Doc CCPR/C/69/D/770/1997 (2000), para. 8.5; *Sirageva v. Uzbekistan*, Human Rights Committee Communication No. 907/2000, UN Doc CCPR/C/85/D/907/2000 (2005), para. 6.3; Report of the Special Rapporteur on the independence of judges and lawyers, Gabriella Knaul (A/HRC/23/43), para. 41. In the context of juveniles, see Rule 60 of the UN Rules for the Protection of Juveniles Deprived of their Liberty, adopted under General Assembly resolution 45/113 (1990) (hereafter the UN Rules for the Protection of Juveniles).
65. European Court of Human Rights, Case of *Salduz v. Turkey*, European Court of Human Rights Application No. 36391/02, 29 November 2008, paras. 52 and 54.
66. UN Body of Principles, Principle 18(4); UN Basic Principles on the Role of Lawyers, UN Doc A/CONF.144/28/Rev.1 at 118 (1990), Principles 8 and 22; Human Rights Committee, *Concluding Observations: Fifth periodic report of Spain*, UN Doc CCPR/C/ESP/CO/5 (2008) para 14; Human Rights Committee, *Concluding Observations: Fourth periodic report of Austria*, UN Doc CCPR/C/AUT/CO/4 (2007), para 16.
67. General Comment 32, paras. 31–33; Principle 11(1) and (2) of the UN Body of Principles; Rule 21 of the UN Rules for the Protection of Juveniles.
68. OSCE, *Countering Terrorism, Protecting Human Rights: A Manual* (2007), p. 130.
69. General Comment 32, para. 10; Rule 93 of the Standard Minimum Rules; Rule 15.1 of the UN Standard Minimum Rules for the Administration of Juvenile Justice (hereafter the Beijing Rules), adopted under General Assembly resolution 40/33 (1985); Rule 18(a) of the UN Rules for the Protection of Juveniles.
70. Report of the Special Rapporteur on the independence of judges and lawyers, Gabriella Knaul (A/HRC/23/43), para. 48.

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 persons)* (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 (humane 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*, 147, 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)*, 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 racial discrimination and measures to combat terrorism, paras. 5–6.
93. See further the Basic Human Rights Reference Guide on “*Conformity of National Counter-Terrorism Legislation with International Human Rights Law*” Guideline 1.
94. For example, the High Commissioner for Human Rights has pointed out that lengthy pre-trial detention may violate the presumption of innocence where it has the residual effect of punishing the accused prior to trial: Report of the High Commissioner for Human Rights on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/22/26), para. 35. See also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/10/3/Add.2), para. 59.
95. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/10/3/Add.2), paras. 28 and 61.
96. Principle 30 of the UN Body of Principles; Rule 29 of the Standard Minimum Rules.
97. Office of the High Commissioner for Human Rights, *Human Rights and Prisons – Manual on Human Rights Training for Prison Officials* (Professional Training Series No. 11, 2005), p. 93.
98. Article 5 of the UDHR; articles 7 and 10 of the ICCPR; articles 2, 10(2) and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter CAT); preambular paragraph 1 and article 19(b) of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter OPCAT); Principle 6 of the UN Body of Principles; Rule 31 of the Standard Minimum Rules; Rule 87(a) of the UN Rules for the Protection of Juveniles.
99. Rule 31 of the Standard Minimum Rules. See also: General Comment 20, para. 5; Report of the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment, Nigel Rodley (E/CN.4/1997/7/Add.2), paras. 63–72; Report of the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment, Manfred Nowak (A/HRC/13/39), para. 63; *Higginson v. Jamaica*, Human Rights Committee Communication No. 792/1998, UN Doc CCPR/C/74/D/792/1998 (2002), para. 4.6; and *Osbourne v. Jamaica*, Human Rights Committee Communication No. 759/1997, UN Doc CCPR/C/68/D/759/1997 (2000), para. 9.1; Beijing Rules, Rule 17.3.
100. Rule 30 of the Standard Minimum Rules.
101. Rule 32(1) of the Standard Minimum Rules permits the restriction of diet as a form of punishment, subject to prior approval of a medical officer. However, it is increasingly the trend in regional instruments and national legislation to prohibit the use of restricted diet as punishment. Rule 22(1) of the European Prison Rules (2006) allows only for a change in diet based on medical reasons. See also the Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights* (OEA/Ser.L/V/II.116 (2002)), paras. 161–162.
102. Rule 33 of the Standard Minimum Rules; Rules 63 and 64 of the UN Rules for the Protection of Juveniles. Additionally, all instruments of restraint are prohibited for use on women during labour, during birth or immediately after birth: see Rule 24 of the United Nations Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (hereafter the Bangkok Rules), UN Doc A/RES/65/229 (2011).
103. Article 8 of the ICCPR; and Rule 71(1) of the Standard Minimum Rules.
104. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez (A/66/268), paras. 71–78; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez (A/HRC/22/53), para. 63.
105. See further the Basic Human Rights Reference Guide on “*The Right to a Fair Trial and Due Process in the Context of Countering Terrorism*”, especially Guidelines 7 to 11.
106. See article 5 of each instrument.
107. See also article 3 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by General Assembly resolution 3452 (XXX) (1975).
108. Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 (1979), article 5.

109. European Court of Human Rights, *Nevmerzhitsky v. Ukraine*, Application No. 54825/00, 5 April 2005, para. 93. See also Sir Nigel Rodley and Matt Pollard, *The Treatment of Prisoners under International Law* (Oxford University Press, 3rd Edition, 2009), pp. 419–420.
110. *Situation of detainees at Guantánamo Bay*, joint report of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Asma Jahangir; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt (E/CN.4/2006/120) (hereafter the Joint Report on the Situation of Detainees at Guantánamo Bay), para. 82; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez (A/HRC/22/53), paras. 31–35.
111. World Medical Association, *Declaration of Tokyo: Guidelines for Physicians Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment* (October 1975); World Medical Association, *Declaration of Malta on Hunger Strikers* (November 1991); American Medical Association, *Policy H-65.997 Human Rights* (AMA endorsement of the Declaration of Tokyo). See also International Committee of the Red Cross, “Hunger strikes in prison: the ICRC’s position” (31 January 2012).
112. Joint Report on the Situation of Detainees at Guantánamo Bay, para. 82; Reprieve, *Down the Tubes: The 2013 hunger strike at Guantanamo Bay* (July 2013). See also Committee against Torture, *Concluding Observations: Second periodic report of Turkey*, UN Doc CAT/C/CR/30/5 (2003), para. 7(f).
113. Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, transmitted by the Secretary General to the General Assembly, in accordance with General Assembly Resolution 65/205 (A/66/268), paras. 44 and 57.
114. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez (A/66/268), paras. 71–78; Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan Mendez (A/HRC/22/53), para. 63; General Comment 20, para. 6; Report on the visit of the Sub-Committee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Republic of Paraguay (CAT/OP/PRY/1), para. 185. See also, for example, *de Voituret v. Uruguay*, Human Rights Committee Communication No. 109/1981, UN Doc CCPR/C/21/D/109/1981 (1984), para. 13; and *Kang v. Republic of Korea*, Human Rights Committee Communication No. 878/1999, UN Doc CCPR/C/78/D/878/1999 (2003), para. 7.3.
115. Committee against Torture, *Concluding Observations: Fourth periodic report of Israel*, UN Doc CAT/C/ISR/CO/4 (2009), para. 18; Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, transmitted by the Secretary General to the General Assembly, in accordance with General Assembly Resolution 65/205 (A/63/175), para. 80. See also article 60(5) of the European Prison Rules (revised 2006); and *The Istanbul statement on the use and effects of solitary confinement*, adopted at the International Psychological Trauma Symposium (2007), in which it is stated that: “As a general principle solitary confinement should only be used in very exceptional cases, for as short a time as possible and only as a last resort”.
116. Committee against Torture, *Concluding Observations: Third periodic report of Denmark*, UN Doc A/52/44 (1997), para. 186; Interim Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, transmitted by the Secretary General to the General Assembly, in accordance with General Assembly Resolution 62/148 (A/63/175), para. 80.
117. *The Prosecutor v. Milorad Krnojelac*, ICTY Trial Chamber, 15 March 2002, IT-97-25-T, para. 183.
118. European Court of Human Rights, *Ramirez Sanchez v. France*, , Application No. 59450/00, 4 July 2006, para. 123.
119. Principle 7 of the UN Basic Principles.
120. Rule 31 of the Standard Minimum Rules; Rule 67 of the UN Rules for the Protection of Juveniles.
121. Rule 32(3) of the Standard Minimum Rules. See also Committee against Torture, *Concluding Observations: Fourth periodic report of Denmark*, UN Doc CAT/C/CR/28/1 (2002), para. 7(c).
122. General Comment 21, para. 6. See also International Commission of Jurists, *Assessing Damage, Urging Action. Report of the Eminent Jurists Panel on Terrorism, Counter-terrorism and Human Rights* (2009), p. 157.

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, *The Right to a Remedy and to Reparation for Gross Human Rights Violations: A Practitioners' Guide* (2006), pp. 76–77.
129. See articles 5–7, 12–13 and 16 of the CAT. See also: International Commission of Jurists, *The Right to a Remedy and to Reparation for Gross Human Rights Violations: A Practitioners' Guide* (2006), pp. 69–70; and Report of the Special Rapporteur on torture, Juan Mendez (A/HRC/19/61), para. 48.
130. Report of the independent expert to update the Set of Principles to combat impunity, Diane Orentlicher (E/CN.4/2005/102/Add.1 (2005), Principle 1.
131. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/22/52), para. 28.
132. Report of the Special Rapporteur on torture, Nigel Rodley (E/CN.4/1995/34 (1995)), para. 926(c). See also Principle 29(1) of the UN Body of Principles.
133. Office of the High Commissioner for Human Rights, *Training Manual on Human Rights Monitoring*, Professional Training Series No. 7 (2001), Chapters V and IX. See also Association for the Prevention of Torture, *Monitoring places of detention: A practical guide* (2004).
134. General Assembly resolution 66/150 (2013), para. 3; 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. 34; Report of the High Commissioner for Human Rights on the promotion and protection of human rights and fundamental freedoms while countering terrorism (A/HRC/22/26), paras. 52 and 53; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/62/263), para. 82(d).
135. See article 9(3) of the ICCPR and Principles 4, 11(1) and 37 of the UN Body of Principles. In using the comparable expression 'judicial or other authority', the UN Body of Principles defines the expression as "a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence". The requirements of competence, impartiality and independence are expanded upon in the Basic Human Rights Reference Guide on "*The Right to a Fair Trial and Due Process in the Context of Countering Terrorism*", Guideline 2.
136. Report of the Working Group on Arbitrary Detention (A/HRC/10/21), para. 54(f).
137. General Comment 8, para. 1.
138. See also Principles 4, 11(3) and 32(1) of the UN Body of Principles.
139. See, for example, Commission on Human Rights resolution 1992/35, para. 2.
140. Report of the Working Group on Arbitrary Detention (A/HRC/19/57), para. 63(c). See also Committee against Torture, *Concluding Observations on the initial periodic report of Uganda*: UN Doc CAT/C/CR/34/UGA, paras. 6(b) and 10(f).
141. Report of the Working Group on Arbitrary Detention (A/HRC/19/57), paras. 63–64; Report of the Working Group on Arbitrary Detention (A/HRC/13/30), paras. 79–80.
142. 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.

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 France*, 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*, Human 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: *Borisenko v. Hungary*, Human Rights Committee Communication No. 852/1999, UN Doc CCPR/C/76/D/852/1999 (2002), para. 7.4 (three days); *Freemantle v. Jamaica*, Human Rights Committee Communication No. 625/1995, UN Doc CCPR/C/68/D/625/1995 (2000), para. 7.4 (four days); *Kennedy v. Trinidad and Tobago*, Human Rights Committee Communication No. 845/1998, UN Doc CCPR/C/74/D/845/1998 (2002), para. 7.6 (five days); and *Kurbanov v. Tajikistan*, Human Rights Committee Communication No. 1096/2002, UN Doc CCPR/C/79/D/1096/2002 (2003), para. 7.2 (seven days).
147. *Omar Sharif Baban v. Australia*, Human Rights Committee Communication No. 1014/2001, UN Doc CCPR/C/78/D/1014/2001 (2003), para. 7.2; *Shafiq v. Australia*, Human Rights Committee Communication No. 1324/2004, UN Doc CCPR/C/88/D/1324/2004 (2006), para. 7.2; and *A v. Australia*, Human Rights Committee Communication No. 560/1993, UN Doc CCPR/C/59/D/560/1993 (1997), para. 9.4.
148. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/6/17/Add.2), para. 77. The International Commission of Jurists has argued that arrested persons should be brought before a judge within 24 hours: *The Review* (1973), p. 26.
149. See, for example, *Rameka et. al. v. New Zealand*, Human Rights Committee Communication No. 1090/2002, UN Doc CCPR/C/79/D/1090/2002 (2003), para. 7.3. See also 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.
150. UN Body of Principles, Principle 39.
151. UN Body of Principles, Principle 32(2).
152. *Ibid.*
153. Report of the Working Group on Arbitrary Detention (A/HRC/10/21), para. 54(f); 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. 19.
154. 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. 19. See, for example, Human Rights Committee, *Concluding Observations: Sixth Periodic Report of the United Kingdom of Great Britain and Northern Ireland*, UN Doc CCPR/C/GBR/CO/6 (2008), para. 15.
155. General Comment 32, para. 9; 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.
156. General Comment 8, para. 1. Article 8 of the UDHR also requires "effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law".
157. General Comment 8, para. 4.
158. Report of the Working Group on Arbitrary Detention (A/HRC/22/44), para. 73.
159. General Comment 8, para. 4.

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 while countering terrorism, Martin Scheinin (A/62/263), para. 49. Special protection against *refoulement* of asylum-seekers and refugees is also recognised in international refugee law. Article 33 of the Convention relating to the Status of Refugees also recognized as a principle of customary international law: *Declaration of States Parties to the 1951 Convention and or Its 1967 Protocol relating to the Status of Refugees*, 16 January 2002, preambular para. 4.
167. United Nations High Commissioner for Refugees, *Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers* (2012). See also: European Court of Human Rights, *Lokpo and Touré v. Hungary*, Application No. 10816/10, 20 September 2011; European Court of Human Rights, *R.U. v. Greece*, Application No. 2237/08, 7 June 2011, para. 98; European Court of Human Rights, *S.D. v. Greece*, Application No. 53541/07, 11 June 2009, para. 62; *Al-Tayyar Abdelhakim v. Hungary*, Application No. 13058/11, 23 October 2012; and European Court of Human Rights, *Hendrin Ali Said and Aras Ali Said v. Hungary*, Application No. 13547/11, 23 October 2012.
168. 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. 8. See also: *A R J v. Australia*, Human Rights Committee Communication No. 692/1996, UN Doc CCPR/C/60/D/692/1996 (1997), para. 6.15; OHCHR, Fact Sheet 32. *Human Rights, Terrorism, and Counter-Terrorism*, p. 34; International Commission of Jurists, *Legal Commentary to the ICJ Berlin Declaration* (Geneva, 2008), p. 97.
169. Report of the Working Group on Arbitrary Detention (A/HRC/4/40), paras. 47–49.
170. See, for example: *Ahani v. Canada*, Human Rights Committee Communication No. 1051/2002, UN Doc CCPR/C/80/D/1051/2002 (2004), para. 10.8; *Alzery v. Sweden*, Human Rights Committee Communication No. 1416/2005, UN Doc CCPR/C/88/D/1416/2005 (2006), para. 11.8; *Agiza v. Sweden*, Committee against Torture Communication No. 233/2003, UN Doc CAT/C/34/D/233/2003 (2005), para. 13.8.
171. On the principle of legality, see the Basic Human Rights Reference Guide on “*Conformity of National Counter-Terrorism Legislation with International Human Rights Law*”, Guideline 3.
172. On the disclosure of information and the permissible grounds and conditions for withholding information, see the Basic Human Rights Reference Guide on “*The Right to a Fair Trial and Due Process in the Context of Countering Terrorism*”, Guideline 9.
173. Report of the United Nations High Commissioner for Human Rights on the protection of human rights and fundamental freedoms while countering terrorism (A/HRC/22/26), paras. 22 and 43; Working Group on Arbitrary Detention Opinion No. 2/2009, UN Doc A/HRC/13/30/Add/1, para. 22; Report of the Special Rapporteur on human rights while countering terrorism, Martin Scheinin (A/63/223), para. 19.
174. Human Rights Committee, *Concluding Observations: Third Periodic Report of Jordan*, UN Doc CCPR/C/79/Add.35, paras. 226–244; and Human Rights Committee, *Concluding Observations: Third Periodic Report of Morocco*, UN Doc CCPR/C/79/Add.44, para. 21.
175. *Capora Schweizer v. Uruguay*, Human Rights Committee Communication 66/1980, UN Doc Supp. No. 40 (A/38/40) at 117 (1983), para. 18.1.

176. See, for example, *Capora Schweizer v. Uruguay*, Human Rights Committee Communication 66/1980, UN Doc Supp. No. 40 (A/38/40) at 117 (1983), para. 18.1; Human Rights Committee, *Concluding Observations: Fourth Periodic Report of Jordan*, UN Doc CCPR/C/JOR/CO/4 (2010), para. 11; and Human Rights Committee, *Concluding Observations: Sixth Periodic Report of Colombia*, UN Doc CCPR/C/COL/CO/6 (2010), para. 20.
177. Committee against Torture, *Concluding Observations: Second Periodic Report of Jordan*, UN Doc A/65/44, para. 60(13); Human Rights Committee, *Concluding Observations: Second Periodic Report of Egypt*, UN Doc CCPR/C/79/Add.23, para. 10; and Human Rights Committee, *Concluding Observations: Fourth Periodic Report of Ukraine*, UN Doc CCPR/C/79/Add.52, paras. 305–333.
178. See, for example, its Concluding Observations on: Jordan, UN Doc A/65/44, para. 60(13); Moldova, UN Doc CAT/C/CR/30/7 (2003), para. 6(d); Egypt, UN Doc CAT/C/CR/29/4 (2002), para. 6(f); and China, UN Doc A/55/44, para. 101.
179. Report of the Working Group on Arbitrary Detention (A/HRC/10/21), para. 54(b).
180. On the principle of legality, see the Basic Human Rights Reference Guide on “*Conformity of National Counter-Terrorism Legislation with International Human Rights Law*”, Guideline 3.
181. 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.
182. 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. 37.
183. See, for example, *Secretary of State for the Home Department v. E* (2007) UKHL 47 and *Secretary of State for the Home Department v. MB and AF* (2007) UKHL 46; and the analysis of these cases in Alex Conte, *Human Rights in the Prevention and Punishment of Terrorism* (Berlin: Springer Verlag, 2010), pp. 568–574.
184. *Secretary of State v. JJ and Others* (2007) UKHL 45, para. 24.
185. *Secretary of State for the Home Department v. E* (2007) UKHL 47, para. 11.
186. Secret Detention Joint Study, pp. 2–3 and para. 8.
187. Secret Detention Joint Study, paras. 98–102. See also for example: Statement of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, during the 10th regular session of the UN Human Rights Council, 10 March 2009; Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/10/3/Add.2), para. 62. See also the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/22/52), para. 50, where the Special Rapporteur strongly urged States to accept and implement recommendations in the Joint Study.
188. Declaration on the Protection of All Persons from Enforced Disappearance, adopted under General Assembly resolution 47/133 (1992), article 1(1). The Human Rights Committee has also concluded that enforced disappearances constitute arbitrary detention as well as violations of several substantive and procedural provisions of the ICCPR. See, for example: *Sarma v. Sri Lanka*, Human Rights Committee Communication No. 950/2000, UN Doc CCPR/C/78/D/950/2000 (2003), para. 9.3; and *Madoui v. Algeria*, Human Rights Committee Communication No. 1495/2006, UN Doc CCPR/C/94/D/1495/2006 (2008), para. 7.7.
189. See also article 17(1) of the ICED, which expressly prohibits secret detention.
190. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/10/3/Add.2), paras. 31–32.
191. General Comment 20, para. 11.
192. See, for example: *Medjnoune v. Algeria*, Human Rights Committee Communication No. 1297/2004, UN Doc CCPR/C/87/D/1297/2004 (2006), para. 8.7; *de Morais v. Angola*, Human Rights Committee Communication No. 1128/2002, UN Doc CCPR/C/83/D/1128/2002 (2005), para. 6.3; *Bousroual v. Algeria*, Human Rights Committee Communication No. 1085/2002, UN Doc CCPR/C/86/D/1085/2002 (2006), para. 9.6; *El Alwani v. the Libyan Arab Jamahiriya*, Human Rights Committee Communication No. 1295/2004, UN Doc CCPR/C/90/D/1295/2004 (2007), para. 6.4; and *Aber v. Algeria*, Human Rights Committee Communication No. 1439/2005, UN Doc CCPR/C/90/D/1439/2005 (2007), para. 7.6.

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. Algeria*, Human 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)); *El 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); and *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. Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment (A/56/156), para. 39(f). See also Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin (A/HRC/10/3/Add.2), para. 32.
195. See, for example: Committee against Torture, *Concluding Observations: Second periodic report of Nepal*, UN Doc CAT/C/NPL/CO/2, para. 21; Committee against Torture, *Concluding Observations: Second periodic report of Yemen*, UN Doc CAT/C/YEM/CO/2, para. 12; Committee against Torture, *Concluding Observations: Second periodic report of El Salvador*, UN Doc CAT/C/SLV/CO/2, paras. 19(d) and 20; and Committee against Torture, *Concluding Observations: Initial report of Turkmenistan*, UN Doc CAT/C/TKM/CO/1, para. 15.
196. *Sarma v. Sri Lanka*, Human Rights Committee Communication No. 950/2000, UN Doc CCPR/C/78/D/950/2000 (2003), para. 11; International Commission of Jurists, *The right to a remedy and to reparations for gross human rights violations: A practitioner's guide* (2006), p. 119.
197. *Valcada v. Uruguay*, Human Rights Committee Communication No. R. 2/9, UN Doc Supp. No. 40 (A/35/40) at 107 (1980), para. 12; *Mulezi v. Democratic Republic of the Congo*, Human Rights Committee Communication No. 962/2001, UN Doc CCPR/C/81/D/962/2001 (2004), para. 5.2; and *Abbassi v. Algeria*, Human Rights Committee Communication No. 1172/2003, UN Doc CCPR/C/89/D/1172/2003 (2007), para. 8.5.
198. Report of the Working Group on Arbitrary Detention (A/HRC/19/57), para. 70.
199. Report of the Working Group on Arbitrary Detention (A/HRC/19/57), para. 71.
200. *Ibid.*
201. See, for example: *Bolanos v. Ecuador*, Human Rights Committee Communication No. 238/1987, UN Doc Supp. No. 40 (A/44/40) at 246 (1989), para. 10; *Chambala v. Zambia*, Human Rights Committee Communication No. 856/1999, UN Doc CCPR/C/78/D/856/1999 (2003), paras. 7.3–7.9.
202. Report of the Special Rapporteur on the question of torture and other cruel, inhuman and degrading treatment, Theo van Boven, (E/CN.4/2003/68), para. 26(k).
203. *Chongwe v. Zambia*, Human Rights Committee Communication No. 821/1998, UN Doc CCPR/C/70/D/821/1998 (2000), para. 5.3. See further Guideline 6 herein and the Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Ben Emmerson (A/HRC/22/52), para. 28.
204. General Comment 20, para. 12; General Comment 32, paras. 6 and 41; *Saimijion and Bazarov v. Uzbekistan*, Human Rights Committee Communication No. 959/2000, UN Doc CCPR/C/87/D/959/2000 (2006), para. 8.3; *Tulyaganova v. Uzbekistan*, Human Rights Committee Communication No. 1041/2001, UN Doc CCPR/C/90/D/1041/2001 (2007) para. 8.2; *Khudayberganova v. Uzbekistan*, Human Rights Committee Communication No. 1140/2002, UN Doc CCPR/C/90/D/1140/2002 (2007), para. 8.2; and *Kurbonov v. Tajikistan*, Human Rights Committee Communication No. 1208/2003, UN Doc CCPR/C/86/D/1208/2003 (2006), para. 6.3. Generally, see also Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E Mendez (A/HRC/25/60).
205. General Comment 20, para. 12.
206. See further the Basic Human Rights Reference Guide on “*The Right to a Fair Trial and Due Process in the Context of Countering Terrorism*”, Guideline 5.

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