



APT input – Systemic Racism in Law Enforcement

Introduction

1. This document by the Association for the Prevention of Torture (APT) aims to contribute to the report of the United Nations High Commissioner for Human Rights pursuant to Human Rights Council resolution 43/1 on the 'Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers'. The APT welcomes the opportunity to contribute to this important and necessary report.
2. The submission focuses on the nexus between systemic racism in law enforcement and excessive use of force, and the prohibition of torture and other ill-treatment. Looking at racism as one of the root causes of torture, it draws attention to the relevance of the preventive approach.
3. This submission is structured in three parts: the first, presents relevant connections and common roots between systemic racism and torture, and looks to ways of prevent certain expressions/manifestations of systemic racism through safeguards; the second proposes avenues for systemic transformation of law enforcement; the third centres on transparency and accountability to ensure sustainable change.

A. Racism as a Root Cause of Torture

a. Racism and Torture

4. The same logic underpins racism and torture: constructing an 'other' as less than fully human. For a society to condone systemic discrimination against a particular group, it needs to have constructed that group as excluded from the community. Similarly, for a perpetrator to torture another human being, the victim needs to be constructed as less than human.¹ Studies in psychology have confirmed the existence of this phenomenon of dehumanisation and have linked it to both racism, and torture.²
5. Racism is also employed to justify, and further this 'othering'. Racial prejudices and systemic discrimination against persons perceived as belonging to a particular 'race' or

¹ See Primo Levi, *If This Is a Man*. New York: Orion Press, 1959; Giorgio Agamen, *Homo Sacer. Sovereign Power and Bare Life*. Stanford, Calif.: Stanford University Press, 1998; Kteily, N., Hodson, G., & Bruneau, E. (2016). They see us as less than human: Metadehumanization predicts intergroup conflict via reciprocal dehumanization. *Journal of Personality and Social Psychology*, 110(3), 343- 370 accessible at: <https://doi.org/10.1037/pspa0000044>; Viki, G. T., Osgood, D., & Phillips, S. (2013). Dehumanization and self-reported proclivity to torture prisoners of war. *Journal of Experimental Social Psychology*, 49(3), 325–328. <https://doi.org/10.1016/j.jesp.2012.11.006>. [willingness to torture Arab or Muslim persons or in general 'out-group' members].

² Mekawi, Y., Bresin, K. & Hunter, C.D. Dehumanization of African-Americans Influences Racial Shooter Biases. *Race Soc Probl* 11, 299–307 (2019). <https://doi.org/10.1007/s12552-019-09267-y>.

ethnic group can lead to the marginalisation and exclusion of these individuals from the dominant community. They contribute to the establishment of laws, customs, and practices that systematically reflect, (re)produce, and perpetuate institutional and systemic inequalities and socioeconomic disparities, as well as unfair treatment, including in respect of criminal justice processes and encounters with law enforcement.

6. In this way, racism in some cases constitutes a root cause of torture and other ill-treatment. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) lists 'discrimination of any kind' as one of the constitutive elements of torture.³ The United Nations Committee against Torture (CAT), emphasised in its General Comment 2 that "the discriminatory use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture."⁴
7. Systemic racism negates the individuality of both the victim and the perpetrator. Because it insidiously permeates everything from institutional cultures to hiring policies and professional practices, systemic racism replaces the individual value-system and beliefs with systemic and institutional prejudices.
8. Law enforcement agencies and criminal justice institutions, like most bureaucratic structures, have the potential of creating or enhancing group classifications. As explained by Henri Tajfel, the "most important principle of the subjective social order we construct for ourselves is the classification of groups as 'we' and 'they'".⁵ Once someone is construed as a 'they', a member of the out-group, members of the in-group will dismiss them and discriminate against them, even without a reason in terms of the individual's own interests.
9. This is how, in a systemically racist police force, officers, regardless of whether or not they personally believe in the "racial inferiority" of some human beings, regardless of whether they themselves belong to a racial minority,⁶ will find themselves enacting racist policies, internalising and reproducing racist practices.⁷ For this reason, the argument that picking out the 'bad apples' will address the issue is wholly misguided. A systemic problem calls for systemic solutions. By addressing systemic racism in a systemic manner: rethinking, reshaping and reconstructing institutions, cultures, and policies, we tackle a root cause of torture and other ill-treatment.

³ United Nations, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), A/39/46, 1984, Article 1.

⁴ United Nations Committee against Torture (CAT), General Comment No. 2: Implementation of article 2 by States parties, CAT/C/GC/2, 24 January 2008, at para. 20. Accessible [here](#).

⁵ Henri Tajfel (1970). Experiments in intergroup discrimination. *Scientific American*, 223, 96-102.

⁶ Alex S. Vitale, *The End of Policing*, London: Verso, 2017, at. 25

⁷ See for e.g. Sylvia Wynter, 'No humans involved' an open letter to my colleagues', *Forum N.H.I. Knowledge for the 21st Century*, Vol. 1 No. 1 (Fall 1994).

b. *Situations of Heightened Risk*

10. All persons who come into contact with law enforcement and the criminal justice may be placed in a situation of vulnerability⁸ and face heightened risks of torture and other ill-treatment. Africans and people of African descent, in the context of interactions with law enforcement, often face integrated oppressive structures of discrimination that expose them to severe risks of suffering torture and other ill-treatment.
11. Africans and people of African descent are more at risk of police abuse, excessive use of force, and even police killings. For example, the Inter-American Commission on Human Rights (IACHR) has documented and condemned the excessive use of force against African and people of African descent in Brazil.⁹ In Colombia, ILEX Acción Jurídica has documented systemic violence in the form of insults and racial slurs, as well as, in the case of women, in the form of sexual violence.¹⁰ In a number of other contexts, police violence has killed African and people of African descent, often young men.¹¹
12. It is essential to think of such structures and practices as intersecting and having combined discriminatory effects on the basis of race, sex, sexual orientation, gender identity or expression, age, socio-economic status, immigration status, etc.¹²
13. Africans and people of African descent can face racial discrimination, intersecting with other forms of discrimination, resulting in even greater susceptibility to experiencing police brutality and torture or other forms of ill-treatment at the hands of law enforcement authorities. For example:
 - a. Based on gender identity or expression. One study in the **United States** found that compared to with cisgender persons, trans* persons of colour are six times more likely to experience physical violence at the hands of the police.¹³
 - b. Based on gender and gender identity or expression. At a 2013 thematic hearing on the rights of Afro-descendant trans* women in **Brazil**, the IACHR received troubling information regarding the high level of violence and excessive use of

⁸ The personal, environmental, and socio-cultural factors will place certain persons in particular situations of vulnerability. As such, a person is not to be considered inherently vulnerable; rather, a person is placed in a *situation of vulnerability* by the social, political, cultural, and institutional structures of power and discrimination in place. [See Association for the Prevention of Torture (APT), 'Groups in Situations of Vulnerability', Detention Focus Database, accessible at: <https://www.apr.ch/en/knowledge-hub/detention-focus-database/groups-situations-vulnerability>

⁹ IACHR, IACHR Expresses Deep Concern over Growing Violence against Afro-descendants in Brazil, Press Release, September 26 2018. See: http://www.oas.org/en/iachr/media_center/PReleases/2018/209.asp

¹⁰ ILEX, Acción Jurídica, Abuso Policial, *op. cit.*

¹¹ See for e.g. BBC, Muerte de George Floyd: el país latinoamericano donde la policía mata a más negros que en Estados Unidos, 03 Junio 2020. Accessible [here](#); UF, Foro: la brutalidad policial y los afrodescendientes en América Latina, 01 October 2020. Accessible [here](#); La Vanguardia, Denuncian a Policía de Nicaragua por ahogamiento joven que les pidió auxilio, 29 September 2019. Accessible [here](#).

¹² Crenshaw, Kimberle, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum*: Vol. 1989: Iss. 1, Article 8. Available at: <http://chicagounbound.uchicago.edu/uclf/vol1989/iss1/8>; MacKinnon, Catharine A., "Intersectionality as Method: A Note," *Signs*, Vol. 38, No. 4, Intersectionality: Theorizing Power, Empowering Theory (Summer 2013), available at: <https://www.jstor.org/stable/10.1086/669570>

¹³ IACHR, Violence against LGBTI Persons, OAS/Ser.L/V/II. rev.1, 2015, p. 192.

force against and numerous cases of arbitrary detention and torture, of Brazilian trans people of African descent.¹⁴

- c. Based on age and gender. In **France**, the Ombuds institution concluded in a 2017 report that *young men perceived to be Black or Arab* are 20 times more likely to be subject to police stops and identity checks than the rest of the population.¹⁵

c. Torture Prevention and the Effective Implementation of Safeguard

14. The UNCAT in its Articles 2(1) and 11 contains obligations to prevent torture and other ill treatment. Both provisions and their practical implications are particularly relevant to addressing systemic racism in law enforcement and the criminal justice system. Article 2(1) obliges State Parties to “take effective legislative, administrative, judicial or other measures to prevent acts of torture”.¹⁶ Under Article 11, States are required to “keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment [...] with a view to preventing any case of torture”.¹⁷
15. In its interpretation of States’ obligations under Article 2 of the UNCAT, the CAT highlights that the “protection of certain minority of marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment”.¹⁸ In other words, States must implement effective measures of prevention and protection and ensure that such measures effectively protect minority or marginalised individuals.
16. In fulfilling this treaty obligation to prevent torture and other ill-treatment, States are notably encouraged to implement certain basic guarantees, which when applied effectively, act as safeguards against torture and other ill-treatment.¹⁹
17. The moment of arrest and the first moments of custody by law enforcement are the periods during which a person is at highest risk of torture and other ill-treatment.²⁰ These are the moments when the power imbalance between law enforcement officials and those being deprived of liberty is the starkest. That risk can be further increased by discrimination and racism, thus placing African people and people of African descent at even higher risk of torture, ill-treatment, and arbitrary arrest.
18. Racial profiling is one manifestation of systemic racism in law enforcement.²¹ Such profiling can lead to discriminatory and disproportionate use of stop and search tactics or

¹⁴ Global Rights and Rede Negra LGBT de Brazil, Human Rights situation of trans people decent in Brazil, 149^o Period of Sessions of the IACHR, October 29, 2013.

¹⁵ Défenseur des droits, *Enquête sur l'accès aux droits Volume 1 — Relations police / population : le cas des contrôles d'identité*, 2017.

¹⁶ UNCAT, Art. 2(1).

¹⁷ UNCAT, Art. 11.

¹⁸ CAT, General Comment 2, 2008, at para. 21.

¹⁹ *Ibid.* at para. 13.

²⁰ See for e.g. CPT, *28th General Report*, 2019, at paras. 64-5. Accessible at: <https://rm.coe.int/16809420e3>.

²¹ See: UN Committee on the Elimination of Racial Discrimination (CERD), General Recommendation number 36 on Racial profiling, CERD/C/GC/32, November 2020. Available [here](#)

identity checks,²² and of traffic stops.²³ Systemic racism in law enforcement can also lead to discriminatory and excessive use of force, which can amount to ill treatment and even torture,²⁴ and can lead to police killings.

19. The Special Rapporteur on Torture and other cruel, inhuman and degrading treatment or punishment noted that States must regulate the extra-custodial use of force to prevent any torture and other ill-treatment within their jurisdiction.²⁵ As part of their obligation to prevent torture and other ill-treatment, including for individuals who belong to minority or marginalised groups, State authorities have an obligation and a responsibility to take measures addressing systemic racism in law enforcement as a root cause of torture and other ill-treatment. Such measures include the enactment and review of laws and operational guidelines regulating police powers. For instance, law and operational guidance should “establish clear and precise standards for initiating and conducting stops [...], including their function and grounds for carrying them out”.²⁶ Laws and operational guidance should clearly state that stops should be based upon individualized suspicion, and define ‘suspicion’ clearly, categorically excluding ethnicity and other personal characteristics from constituting the sole reason for a stop.²⁷
20. Some key legal and procedural safeguards have been recognised as playing a crucial role in preventing torture and other ill-treatment during the first moments of police custody, including during questioning.²⁸ These safeguards include, in particular, information about rights, access to a lawyer,²⁹ access to a medical examination, notification of family, and records.
21. Legal and procedural safeguards, from the moment of arrest and throughout the deprivation of liberty, play a key preventive role. Evidence suggests that when provided by law and effectively implemented in practice, safeguards are the most effective measures to reduce the risks of torture and other ill-treatment.³⁰ For example, someone who is effectively informed of their rights, *at the moment of arrest*, able to notify a member of their family upon arrival at the police station, who can be assisted by a lawyer and be examined by an independent medical professional in the first hours of police custody is

²² See for e.g. Open Society Justice Initiative (OSJI), A Report on the Strategies for Effective Police Stop and Search Project (STEPPS report), 2009. Available [here](#); Défenseur des droits, *Enquête sur l'accès aux droits Volume 1, Relations police / population : le cas des contrôles d'identité*, 2017. Accessible [here](#).

²³ See for e.g. Stanford University, The Open Policing Project, Findings. Accessible at: <https://openpolicing.stanford.edu/findings/>.

²⁴ See Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, General Assembly, A/72/178, 2017, in particular at para. 47. Accessible [here](#).

²⁵ United Nations General Assembly, Meetings Coverage, GA/SHC/4204, 2017. Accessible [here](#).

²⁶ OSJI, STEPPS report, 2009, Recommendation 2.

²⁷ *Ibid.*

²⁸ United Nations Human Rights Council, A/HRC/RES/31/31, Thirty-first session, Agenda item 3, 2016. Accessible [here](#); Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, United Nations General Assembly, A/71/298, 2016. Accessible [here](#); CPT, *28th General Report*, 2019.

²⁹ See for e.g. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *21st General Report*, 2012. Accessible at: <https://rm.coe.int/1680696a88>

³⁰ Richard Carver & Lisa Handley, *Does Torture Prevention Work?*, Liverpool: Liverpool University Press, 2017; See also: APT, ‘Torture Prevention Works’, accessible [here](#).

at much lower risk of torture and other ill-treatment than someone who does not enjoy one or more of these safeguards.

22. Similarly, someone who has their right to be brought promptly before a judge³¹ upheld is at a lower risk of facing torture and other ill-treatment. This right is of particular relevance today, as some judicial authorities opt for remote hearings in response to the COVID-19 pandemic. The physical presence before the judge, of the person deprived of liberty, is a key preventive element to the effective application of this right. The Latin expression term *habeas corpus*, literally translates to a command to “produce the body”, making it clear that the physical element of this safeguard.³²
23. While these safeguards are not explicitly conceived to prevent and address systemic racism, they can do so by preventing racist and discriminatory thoughts and preconceptions from materialising into behaviour and actions. They can also prevent racist behaviour and actions from going unnoticed and unpunished. The tragic example of José Delfín Martínez, a black man whose killing in custody by the police led to a decision of the Inter-American Court of Human Rights (IACtHR) condemning Argentina for the use of racial profiling illustrates the need for effectively implemented safeguards throughout arrest and detention.³³
24. The effective implementation of these basic guarantees can contribute to reducing the impact of systemic racism throughout the criminal justice system. Racial profiling during arrests,³⁴ discriminatory resort to bail and pre-trial detention,³⁵ granting of parole, racial bias in questioning, and in sentencing³⁶ are some ways in which systemic racism manifests itself in the criminal justice process. Suspects who are held in detention, rather than granted bail or bond pending trial, are at a much higher risk of torture and other ill-treatment, and will face additional barriers to accessing justice.³⁷ As such, these discriminatory policies and practices in the criminal justice system place Africans and people of African descent at a higher risk of torture and other ill-treatment.
25. The cumulative effect of systemic and institutional racism in the criminal justice system leads to coerced confessions, wrongful convictions, exaggerated and discriminatory sentences.³⁸ Such realities need to be considered when analysing even the more mundane

³¹ International Covenant on Civil and Political Rights, United Nations General Assembly, Resolutions 2200A, 1966, art. 9(3)

³² In this context, the APT would like to support the submission of CONECTAS, which focuses on the issue of remote custody hearings in Brazil.

³³ IACtHR, Judgement Case Acosta Martínez and Others vs. Argentina issued on 31 August 2020.

³⁴ See: CERD, CERD/C/GC/32, 2020; See also for e.g. Défenseur des droits, *Enquête sur l'accès aux droits Volume 1, Relations police / population : le cas des contrôles d'identité*, 2017. Accessible [here](#); Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on his mission to Argentina, A/HRC/RES/41/Add.1, 18 April 2017.

³⁵ See for e.g. Julian V. Roberts, and Anthony N. Doob. “Race, Ethnicity, and Criminal Justice in Canada.” *Crime and Justice*, vol. 21, 1997, pp. 469–522. *JSTOR*, www.jstor.org/stable/1147637.

³⁶ See for e.g. The Sentencing Project, *Reducing Racial Disparity in the Criminal Justice System - A Manual for Practitioners and Policymakers*, 2008. Accessible [here](#); Cassia Spohn, “Race, Crime, and Punishment in the Twentieth and Twenty-First Centuries.” *Crime and Justice*, vol. 44, no. 1, 2015, pp. 49–97. Accessible at: www.jstor.org/stable/10.1086/681550;

³⁷ See for e.g. OSCE and Fair Trials, *Eliminating Incentives for Torture in the OSCE Region: Baseline Study and Practical Guidance*, 2020. Accessible at: <https://www.osce.org/odihr/467172>.

³⁸ See for e.g. Human Rights Watch, *Racism and the Administration of Justice*. Accessible [here](#).

interactions between law enforcement and people of African descent, for law enforcement officers appear as the last chain of a system that marginalised groups know to be discriminatory.

B. Transforming Law Enforcement to Address Systemic Racism and Prevent Torture.

26. To address systemic racism in law enforcement systemically, resolute action needs to be taken simultaneously at various levels. These areas of intervention include:
- a. Refocusing the *role* of the police: from a 'force' to a service for the community.
 - b. Redefining the *profile* of police officers from 'warriors' to 'protectors'.
 - c. Transforming police *culture* of "esprit de corps" from mutual protection to mutual oversight and transparency.
 - d. Ensuring *accountability* by moving from impunity to a 'zero tolerance' policy.

Only comprehensive transformation has the potential to create truly equitable and safe communities, where law enforcement fulfils its fundamental duties of maintaining public order while protecting fundamental freedom, through 'productive community engagement'.³⁹

Hiring and Human Resources Policies

27. Such a reconceptualisation requires a rethinking and remoulding of police tactics, structure, mind-set, and equipment. Police needs to be rooted in the communities it sets out to serve. The CAT has highlighted representation and diversity in hiring policies as a key element to preventing violations and "building a culture of respect".⁴⁰ The European Commission against Racism and Intolerance (ECRI) highlights the need to not only hire, but to set the conditions for equal opportunity at entry and for career progression for members of minorities.⁴¹ For hiring policies need to transform an institution's mind-set and culture, it needs to promote diversity and representation actively, all the way up the hierarchical structures of management and leadership. Concretely, this means hiring police officers who are not only representative of the community in which they serve, but who have connections and roots in that community, and who understand its challenges.⁴² While representation is essential, it is not enough to for an anti-racist hiring policy to succeed.
28. Transformation may require dismissing staff not aligning to the new values and policies. In some cases, it may require dismantling an entire police service to start anew. For example, in Camden, New Jersey, in the United States, police officers had to reapply to

³⁹ Burke, 2020, at 8.

⁴⁰ CAT, CAT/C/GC/2, 2008, at para. 24.

⁴¹ European Commission against Racism and Intolerance (ECRI), General Policy Recommendation 11 on Combatting Racism and Racial Discrimination in Policing, Council of Europe, 2007, Recommendation 17. Accessible at: <https://rm.coe.int/16808b5adf>.

⁴² David Hughes, 'I'm a Black Police Officer. Here's How to Change the System', *The New York Times*, 16 July 2020. Accessible at: <https://www.nytimes.com/2020/07/16/opinion/police-funding-defund.html>.

the new police service.⁴³ In Georgia, a sweeping transformation to address endemic corruption led to the disbanding of the thirty thousand strong police force. In that case, the authorities decided that reforming the force would not suffice to create the necessary conditions for a trusted, professional, and human rights compliant service.⁴⁴

Training

29. Quality training is central to any effort to transform policing and addressing systemic racism. For such quality training to be meaningful, it should follow comprehensive and coherent needs assessment.⁴⁵ Length of training, together with a focus on preventing and reversing escalation rather than weapons training has been shown to reduce the risk of violent confrontations.⁴⁶ In fact, shorter training will, by default focus on worst-case scenarios, on survival. Longer and more thorough training can re-centre around de-escalation tactics and community policing strategies.
30. Authorities cannot expect to reach transformative change by appending 'human rights', 'diversity' and 'community relations' programmes to existing training curricula without a rethinking how existing frameworks and institutions will need to change substantially.⁴⁷ In other words, training should focus on the role of the police in society, rather than on its tasks.

Institutional Culture

31. Transforming policing requires a demilitarisation of those same tactics, structures, mind-set, and equipment. Law enforcement officers use excessive force – often disproportionately against minorities, including in particular African people and people of African descent – is often symptomatic of what law enforcement officers are trained and conditioned to see and do. All too often, police officers are trained to expect the worst, to use their weapons; they are conditioned to fight 'the enemy'.⁴⁸ Seeped racial stereotypes and prejudice, institutional cultures promote a world vision in which members of the community, especially people of colour, are systematically considered as suspects, as threats. Enabled by military-like equipment and weaponry, this warrior approach to policing has lethal consequences.
32. While the comradery, or 'esprit de corps' of law enforcement services is often exemplary it can sometimes lead to a culture permissive to abuse and discrimination, and to cover-

⁴³ BBC, 'What happened when a city disbanded its police force', 17 June 2020, accessible at: <https://www.bbc.com/news/av/world-us-canada-53083559>.

⁴⁴ Yasmeen Serhan, 'What the World Could Teach America About Policing', *The Atlantic*, 10 June 2020, accessible at: <https://www.theatlantic.com/international/archive/2020/06/america-police-violence-germany-georgia-britain/612820/>.

⁴⁵ See for e.g. Mary O'Rawe, 'Human Rights and Police Training in Transitional Societies: Exporting the Lessons of Northern Ireland', *Human Rights Quarterly*, Vol. 27, No. 3, 2005, 943-968, 966, accessible at: <https://www.jstor.org/stable/20069816>.

⁴⁶ See for e.g. Burke, 2020; Serhan, 2020.

⁴⁷ O'Rawe, 2005, at 948.

⁴⁸ See for e.g. Lauren Burke, 'Lessons from Northern Ireland: Policing, Polarization, and Moving Forward', *German Marshall Fund of the United States*, Policy Brief N°12, 2020, accessible at: <https://www.jstor.org/stable/resrep26749>; David Hughes, 'I'm a Black Police Officer. Here's How to Change the System', *The New York Times*, 16 July 2020. Accessible at: <https://www.nytimes.com/2020/07/16/opinion/police-funding-defund.html>.

ups. Issues of attitude, of institutional culture and subcultures cannot be expected to change organically.⁴⁹ The creation of human-rights-embracing, inclusive cultures require resolute action by the authorities. In strongly hierarchical institutions, the exemplarity of those in supervisory positions is all the more important, both in their own behaviour towards other and in their approach to others' inappropriate behaviour.⁵⁰ This should include inappropriate behaviours targeted towards all minorities or marginalised groups, including women, LGBTIQ persons, and persons with disabilities. No significant change can occur without leadership and management conveying "firm and unambiguous messages of zero tolerance"⁵¹ for torture and other ill-treatment, as well as for racist behaviour, language or attitudes. Further, to create a truly representative (and diverse) police service, the institutional culture needs to evolve with and through these new hires. Institutions committed to change must allow new recruits to shape the institutional culture, rather than expecting that they conform to the existing one.⁵²

Accountability

33. Ending the culture of impunity is a key element to making any transformation sustainable. For if unprofessional, inappropriate, or even criminal behaviour goes unchecked, it will corrode the values and foundations of an institution, discredit efforts and policies to address these behaviours, and in some cases erode the absolute prohibition of torture.⁵³ Accountability can better public trust in law enforcement, and as such, law enforcement authorities have a responsibility to act as the first line of defence against impunity. Holding all gross misconduct hearings in public, and diverse and representative disciplinary panels can ensure greater transparency and participate to building trust.⁵⁴
34. Creating a culture conducive to accountability and professionalism entails approaching complaints openly, as opportunities for learning, improvement, and growth; rather than defensively, as threats to the integrity of the institution. This 'Learning culture' allows institutions to draw useful intelligence from complaints and encourages mutual oversight, for all officers to improve the police service together.⁵⁵ For such a culture to develop, it is necessary to implement policies for greater transparency. For example, ostensibly displaying names and identification number, including over riot gear uniforms, bulletproof vests, etc.⁵⁶ Further, a multi-country project on racial profiling showed that when officers

⁴⁹ *Ibid.* at 946.

⁵⁰ See The Rt. Hon. Dame Elish Angiolini DBE QC, 'Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing in Scotland', Final Report November 2020, at para. 28, accessible at: <https://www.gov.scot/publications/independent-review-complaints-handling-investigations-misconduct-issues-relation-policing/>

⁵¹ CPT, 28th *General Report*, 2019. At para. 71. Accessible at: <https://rm.coe.int/16809420e3>.

⁵² *Ibid.* at paras 35-37; 9.28-9.43.

⁵³ Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, *Interim report*, General Assembly, A/65/273, 2010. Accessible at: <https://undocs.org/A/65/273.CPT>; CPT 14th General Report, 2015, at para. 25.

⁵⁴ Dame Elish Angiolini, *Independent Review of Complaints Handling*, 2020. At para. 47.

⁵⁵ *Ibid.* at para. 3-4; chapter 22.

⁵⁶ Recommendation of the Ombudsman of Slovenia in response to allegations of police abuse against African migrants in 2015. The Ministry of Interior accepted the recommendation. (electronic correspondence with the National Preventive Mechanism of Slovenia); See also, CPT, 28th *General Report*, 2018, at para. 71. Accessible at: <https://rm.coe.int/16809420e3>.

systematically record data on the stops and on the grounds for those stops, they are less arbitrary, less discriminatory, and more effective.⁵⁷

35. For a culture conducive to accountability to develop, institutions and individuals must buy in the idea of a collective responsibility, creating an atmosphere in which culpability “extends beyond the actual perpetrators to anyone who knows, or should know [...] occurring and fails to act to prevent or report it”.⁵⁸ Authorities should enact and promote clear policies on reporting mistreatment, with appropriate sanctions for non-reporting.⁵⁹ This implies also clear reporting lines, the adoption of protective measures for whistleblower, and appropriate and decisive sanctions in disciplinary proceedings.
36. Effectively functioning internal and external complaints mechanisms offer complementary protections against systemic racism and torture or other ill-treatment. States should designate and ensure access to both types of complaints mechanisms.⁶⁰ Effective complaints mechanisms, following principles of “availability, accessibility, confidentiality/safety, effectiveness and traceability”,⁶¹ play an essential role in enabling accountability. When a person alleges to have been subjected to torture or other ill-treatment, States have an obligation to ensure that they have the right to complain effectively, free from intimidation, retaliation or reprisal.⁶²
37. Even the absence of a formal complaint, relevant authorities, including prosecutorial authorities, should be under a legal obligation to conduct an investigation whenever there are credible ground that any serious misconduct has occurred.⁶³ Wherever there are reasonable grounds to believe that an act of torture or other ill-treatment occurred, States have a duty to conduct an investigation ex officio.⁶⁴ Such investigations should be prompt, impartial, thorough and expeditious.⁶⁵

Transparency and Oversight

38. Independent oversight plays a crucial role in enabling and accompanying accountability and durable transformation. In the context of systemic racism in law enforcement, independent oversight is needed at all levels, from the legal framework, to the institutional policies, and the everyday practice. The CAT notes that the establishment of “impartial mechanisms for inspecting and visiting places of detention and confinement”⁶⁶ is one of the basic guarantees to prevent torture and other ill-treatment. Independent bodies

⁵⁷ OSJI, STEPPS Report, 2009.

⁵⁸ CPT, 14th General Report, 2005, at para. 26. Accessible at: <https://rm.coe.int/1680696a80>.

⁵⁹ See United Nations, Code of Conduct for Law Enforcement Officials, A/34/169, 1978, art. 8, commentary. Accessible at: <https://undocs.org/en/A/RES/34/169>.

⁶⁰ Council of Europe (COE), *International Police Complaints Reform*, available at: <https://rm.coe.int/16806dbbbd>.

⁶¹ CPT, 27th General Report, 2018, at para. 74-5. Accessible at: <https://rm.coe.int/16807bc1cf>.

⁶² Human Rights Council, HRC/RES/31/31, 2016, at para. 17; See also, Special Rapporteur on torture, A/71/298, 2016. at para. 91. Accessible at: <https://undocs.org/en/A/71/298>.

⁶³ See for e.g. CPT, *General Report 14*, 2005, at para. 26.

⁶⁴ See CAT, General Comment No. 3 on the implementation of article 14 by States parties, CAT/C/GC/3, 2012. Accessible at: <https://undocs.org/CAT/C/GC/3>.

⁶⁵ See UNCAT, art. 12; See also Human Rights Council, HRC/RES/31/31, 2019, at para 18; CPT, 14th General Report, 2005.

⁶⁶ CAT, General Comment 2, 2008, at para. 13.

conducting regular unannounced visits to police stations can help reduce significantly the risk of institutional racism and a culture of violence and abuse.⁶⁷

39. The Optional Protocol to the Convention against Torture (OPCAT) sets up a preventive architecture that can contribute to substantive change in law enforcement. Centred on a proactive system of visits to places of deprivation of liberty and dialogue with authorities, by National Preventive Mechanisms (NPM) and by the United Nations Subcommittee for the Prevention of Torture (SPT), the OPCAT system focuses on preventing violations from happening in the first place. This entails identifying risk factors, analysing systemic root causes, including patterns, and proposing concrete recommendations for systemic change, to address the root causes of torture and other ill-treatment".⁶⁸
40. Through the monitoring of law enforcement practices and behaviours, independent oversight bodies are able to identify the moments and practices that create situations of risk as well as the persons who are more at risks of suffering ill-treatment, including because of the expression of racism within law enforcement. The work of independent oversight bodies goes beyond visiting places of detention and making recommendations. The preventive element of their mandate entails analysing the root causes of some of the illegal and problematic behaviours and attitudes observed and documented. In practice, independent oversight bodies can establish the occurrence of such misconduct, identify and address its root causes, by monitoring law enforcement activities outside of the custodial context (including demonstrations), police vehicles, and all detention place. Independent oversight bodies can also conduct confidential interviews with persons deprived of liberty and law enforcement officials, and triangulate their observations with other sources of information. In certain contexts, it is also relevant and appropriate for independent oversight bodies to analyse training curricula and practices, and make recommendations to address some of the documented shortcomings.
41. This preventive architecture is complementary to both internal oversight and criminal prosecutions. Rather than focusing on public condemnation of past violations, it is premised on cooperation and constructive dialogue with authorities, with an objective to improve conditions, treatment, procedures, policies and laws. Based on long-term cooperation, the OPCAT prevention architecture can accompany States and institutions throughout their transformations. Other independent oversight bodies, including civil society organisations can also play a positive role in identifying shortcomings and systemic issues, and in accompanying transformation.

⁶⁷ See Carver & Handley, *Does Torture Prevention Work?*, 2017.

⁶⁸ APT and Inter-American Institute of Human Rights (IHR), *Optional Protocol to the UN Convention against Torture – Implementation Manual*, 2010, at p. 12-3. Accessible [here](#).

About

The [Association for the Prevention of Torture \(APT\)](#) is an independent nongovernmental human rights organisation based in Geneva, Switzerland. It was founded in 1977, with the simple idea that by opening places of deprivation of liberty to independent oversight, we could reduce the risks of torture and other ill-treatment and better protect the human rights and dignity of all. Today, the APT works to address and reduce risks of torture and other ill-treatment wherever they may occur. The APT's approach to prevention of torture is based on a careful analysis of why and where high risks of torture occur.