



Right to notify third parties of police custody

June 2018

"1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody."

Principle 16.1 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

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Introduction

A recent study¹ commissioned by the Association for the Prevention of Torture (APT) demonstrated that one of the most effective measures to prevent torture and other ill-treatment is to ensure that all persons in custody have effective access to safeguards during the first few hours of custody.² According to the analysis, four safeguards in particular have proved to be the most effective in preventing torture and ill-treatment:

¹ In 2012 the APT commissioned an independent academic global research to address the question: does torture prevention work? In 2016, Dr. Richard Carver and Dr Lisa Handley published the results of their research. The book *Does torture prevention work?* includes 14 chapters analysing the impact of preventive measures in 16 countries.

² For the purposes of the series, "custody" is understood to span from the moment of the suspect's apprehension to the time he or she is brought before a judge or released.

- the right to notify third parties of the fact of deprivation of liberty—which, according to the study, is the most effective safeguard against torture;
- the right to an independent medical examination upon request;
- the right to have access to a lawyer; and
- the right to information about rights.

This document is the first in a four part series on the implementation of safeguards in 10 Latin American countries during the first hours of police custody. It was drafted on the basis of responses to a questionnaire by 16 National and Local Mechanisms for the Prevention of Torture (NPM and LPM)³ and other institutions in Latin America. Information was also obtained from discussions held during a workshop in Panama, in November 2017.⁴ The series seeks to summarise provisions in national legislation that govern the above-mentioned safeguards and to address challenges in their practical implementation. This document provides an overview of the right of persons in police custody to notify third parties⁵ of their arrest.

Why is the implementation of this safeguard important?

It is important to ensure detainees have the right to notify a third party of their arrest, detention and/or transfer from one place of detention to another. The implementation of this safeguard may result in the following benefits:

- Diminish the risk of torture and ill-treatment, due to the fact that a third party is aware of the fact of detention and may exercise vigilance and/or take steps aimed to ensure the well-being of the detainee.⁶
- Reduce the isolation and anxiety of the person in custody.
- Reduce the risk of disappearance.
- Allow the third party to challenge the lawfulness of the arrest.
- Allow persons in custody to access to other safeguards. For example, the third person may be able to assist by checking whether the detained person has—or, if necessary, facilitate—access to a lawyer.
- Allow the person in custody to access appropriate assistance and protection, as well as to have basic needs met.⁷

³ 7 NPMs (Bolivia, Costa Rica, Ecuador, Mexico, Paraguay, Peru and Uruguay), 7 LPMs (Argentina: Mendoza, Misiones, Salta, Chaco; Brazil: Rio Janeiro and Pernambuco), the National Human Rights Institute in Chile (INDH), and the National Prisons Ombudsman (PPN) in Argentina responded to the questionnaire.

⁴ Members of NPMs in Argentina, Brazil, Bolivia, Costa Rica, Ecuador, Mexico, Paraguay, Peru and Uruguay, and representatives of LPMs in Misiones and Mendoza Provinces in Argentina, and Rio de Janeiro Brazil, and from the National Prisons Ombudsman (PPN) in Argentina attended the workshop.

⁵ The term third parties include family/relatives and friends/another trusted/chosen person. The term will be used throughout the document. The terms “communicate” and “notify” are used interchangeably in this document

⁶ SPT, Report on the visit of the SPT to Benin, (15 March 2011), UN Doc CAT/OP/BEN/1, § 81.

⁷ SPT, Report on the visit of the SPT to the Republic of Paraguay, (7 June 2010), UN Doc CAT/OP/PRY/1, § 87.

Essential elements for torture prevention



- The right to communicate the deprivation of liberty to third parties should clearly be recognised in the national legislation.
- Third parties should be informed about the detention from the very outset of deprivation of liberty. Delays in notification should be exceptional, regulated by the law, and limited to a reasonable period of time. The information provided by the authorities should be complete and include at least information on: the place of detention, including its exact location, the grounds for detention, and how to reach the detained person.
- The authorities should ensure there is direct communication between the person in custody and his or her relatives or third parties.
- The authorities should clearly record the fact of any communication with third parties about a detainee.

1. When should the third party be notified?

<p>What do international standards specify?</p>	<p>International human rights standards specify that the family members or a third party should be notified as soon as possible after the arrest.⁸ The United Nations Subcommittee on Prevention of Torture (SPT) has recommended that notification be provided without delay following the initial detention, and on each occasion that the person is transferred.⁹</p> <p>The Inter-American Court of Human Rights states that at the time of deprivation of liberty and before the person makes his or her first statement to the authority, he or she should be informed of the right to contact a third person.¹⁰</p>
<p>What does the legislation in Latin American countries state?</p>	<p>Most national legislation establishes that persons in police custody may communicate the fact of their detention to a third party, and such communication must take place promptly. Some national legislation, for example, provide that the deprivation of liberty should be notified immediately (Argentina, Costa Rica, Honduras, Paraguay, Peru, Uruguay)¹¹, or at the moment a person is arrested (Mexico, Paraguay).¹²</p>
<p>What happens in practice?¹³</p>	<p>Although the implementation of this right varies by country, in practice two different situations were identified:</p> <ol style="list-style-type: none"> 1. The right itself is not respected, with third parties not being notified and detainees being unable to communicate with them. 2. Persons deprived of their liberty are held for an extended period of time¹⁴ or for several days¹⁵ without a third party being notified of their detention.

⁸ For example, Principle 16.1 in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states that the notification should take place “Promptly after arrest and after each transfer”. According to Rule 68 of the Minimum Rules for the Treatment of Prisoners, it should take place “immediately”.

⁹ SPT, Report on the visit of the SPT to Argentina, (2013), UN Doc CAT/OP/ARG/1, § 21; SPT, Report of the visit of the SPT to Brazil, (2012), UN Doc CAT/OP/BRA/1, § 66.

¹⁰ IACHR, Case of Tibi v. Ecuador. Judgment of September 07, 2004 Series C No. 114, §112.

¹¹ Argentina, Organic Law of the Federal Police, Article 5.1; Costa Rica, Code of Criminal Procedure, Article 82; Honduras, Code of Criminal Procedure, Article 101.2 and the Organic Law of the National Police, Article 24; Peru, Code of Criminal Procedure, Article 71.2 (b); Uruguay, Law No. 19.293 Code of Criminal Procedure, Article 65 (f).

¹² Mexico, National Code of Criminal Procedure, Article 113 (II); Paraguay, Code of Criminal Procedure, Art. 298 (6).

¹³ The information provided in this section was obtained from the response to the APT questionnaire and during the NPM and LPM working meeting held in Panama from 21 to 23 November 2017.

¹⁴ SPT, Report on the visit of the SPT to Brazil, (2012), UN Doc CAT/OP/BRA/1, § 65.

¹⁵ SPT, Report on the visit of the SPT to Argentina, (2013), UN Doc AT/OP/ARG/1, § 20.

2. Who notifies the third party? Who is notified?

<p>What do international standards specify?</p>	<p><i>Who notifies the third party?</i> Some international standards state that detained persons may require the competent authority to notify the members of his/her family of his/her arrest.¹⁶ In addition, international standards also establish that detainees can notify about their deprivation of liberty directly to family members or third parties.¹⁷</p> <p><i>Who is notified?</i> The international legal framework also sets out, and does not limit, the individuals to whom the fact of custody may be communicated. For example, the notification may be made to the family or other designated suitable persons, the lawyer, or any other person of the prisoner's choice.¹⁸</p>
<p>What does the legislation in Latin American countries state?</p>	<p><i>Who notifies the third party?</i> In national legislation, notification of the fact of detention to family members or third party may be done by:</p> <ul style="list-style-type: none"> • The police (Chile, Paraguay, Peru, Mexico, Uruguay).¹⁹ • The person in custody (Argentina, Costa Rica, Ecuador, Honduras, Mexico, Mendoza Province in Argentina).²⁰ <p><i>Who is notified?</i> Some national laws specify that notification of a person's detention can be made to the following parties:</p> <ul style="list-style-type: none"> • The detainee's family or relatives (Argentina, Chile, Ecuador, Mexico, Paraguay).²¹ • A person trusted by the detainee (Chile, Honduras, Salta Province in Argentina and Uruguay).²² • Associations, groups, institutions or entities to which the person wishes to report his or her detention (Costa Rica, Paraguay, and Peru).²³

¹⁶UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16.1.

¹⁷UN, International Convention for the Protection of All Persons from Enforced Disappearance, Art. 17.2 (b); IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle V.

¹⁸Inter-American Commission on Human Rights (IACHR), Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle V; Declaration on the Protection of all Persons from Enforced Disappearance, Art. 10(2).

¹⁹Chile, Code of Criminal Procedure, Article 82 (b); Paraguay, Constitution of the Republic of Paraguay, Article 12.2 and Article 298 (6) of the Code of Criminal Procedure; Peru, Code of Criminal Procedure, Article 71.2 (b); Uruguay, Code of Criminal Procedure, Article 65 (f).

²⁰See Annex B.

²¹Argentina, Organic Law of the Federal Police, Article 5.1; Chile, Code of Criminal Procedure, Article 94; Ecuador, Comprehensive Organic Criminal Code, Article 533; Mexico, National Code of Criminal Procedure, Article 113; Paraguay, Code of Criminal Procedure, Article 298 (7).

²²Argentina, Salta Province, Code of Criminal Procedure, Article 88 (d); Chile, Code of Criminal Procedure, Article 94; Honduras, Code of Criminal Procedure, Article 101.2; Uruguay, Law No. 19.293 Code of Criminal Procedure, Article 65.

²³Costa Rica, Code of Criminal Procedure, Article 82; Paraguay, Code of Criminal Procedure, Article 71; Peru, Code of Criminal Procedure, Article 71.2.

	<ul style="list-style-type: none"> • The detainee’s lawyer (Mexico, Uruguay).²⁴ • In addition to the right of the person in custody to communicate with a family member or his/her lawyer, the police must inform the public prosecutor about the detention without delay and by any means (Mexico).²⁵ <p>Legislation in one jurisdiction specifies that the person in custody must be assured of his or her right to assistance from the family, without detailing what kind of assistance should be provided (Brazil). Some laws establish that when the police contacts family members, they must do so in the presence of the detainee (Chile, Uruguay).²⁶</p>
<p>What happens in practice?²⁷</p>	<p>In practice, it is reported that it is the persons in custody who notifies their relatives directly about their detention (Costa Rica, Mexico and Paraguay). In other cases, it is the police (Bolivia, Chile and Uruguay) or the prosecutor’s office (Salta Province in Argentina).</p> <p>If the notification does not take place/when the law is not complied with, the family or third parties may become aware of the fact of the detention in other ways. This is often the case when they live close to the place of custody.²⁸ In some places, third parties learn about a person’s detention only when they make enquiries at the police station, or when they are with the person at the time of the arrest (Chaco, Salta and Mendoza Provinces in Argentina; the States of Pernambuco and Rio de Janeiro in Brazil).</p>

²⁴Uruguay, Code of Criminal Procedure, (2017), Article 71.5.

²⁵Mexico, National Code of Criminal Procedure, Article 132 (VI).

²⁶Chile, Code of Criminal Procedure, Article 94 (e); Uruguay, Law No. 19.293 Code of Criminal Procedure, Article 65 (f).

²⁷The information provided in this section was obtained from the response to the APT questionnaire and during the NPM and LPM working meeting held in Panama from 21 to 23 November 2017.

²⁸SPT, Report on the visit of the SPT to Gabon, (2015), UN Doc CAT/OP/GAB/1, § 36.

3. What information is communicated? How is the information recorded?

<p>What do international standards specify?</p>	<p>International standards specify the information that third parties should receive when notified about the fact of arrest and detention.²⁹ The location where the person is being held, as well as information about any transfers, should be provided.</p> <p>The <i>International Convention for the Protection of All Persons from Enforced Disappearance</i> states that everyone with a legitimate interest³⁰ shall have access at least to the following information:</p> <ul style="list-style-type: none"> • The authority that ordered the deprivation of liberty. • The date, time and place where the person was deprived of liberty and admitted to the place of deprivation of liberty. • The authority responsible for supervising the deprivation of liberty. • The whereabouts of the person deprived of liberty, including, in the event of a transfer to another place of deprivation of liberty, the destination and the authority responsible for the transfer. • The date, time, and place of release. • Elements relating to the state of health of the person deprived of liberty.
<p>What does the legislation in Latin American countries state?</p>	<p>Some national laws state that family members or third parties will receive the following information:</p> <ul style="list-style-type: none"> • News of the detention itself (Chile, Costa Rica, Honduras, Mexico, Peru, Uruguay, Mendoza Province in Argentina).³¹ • The reason for detention (Chile, Uruguay).³² • The place where the person is located (Chile, Honduras, Mendoza Province in Argentina, Paraguay).³³
<p>What happens in practice?³⁴</p>	<p>In practice, and in most countries, when third parties are notified they are informed only about the fact of detention. In some places information is provided about the court that is involved in the case (Uruguay). Records of the notification are in some instances kept in the case file, the investigation booklets in the Public Prosecutor's Offices, entry logs (Salta Province in Argentina), and police registers (Paraguay, Mexico).</p>

²⁹UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 16.1.; UN Declaration on the Protection of all Persons from Enforced Disappearance, Article 10.2.

³⁰For example, the relatives of the person deprived of liberty, their representative or lawyer.

³¹Chile, Code of Criminal Procedure, Article 94 (e); Costa Rica, Code of Criminal Procedure, Article 82; Honduras, Code of Criminal Procedure, Article 101.2; Peru, Code of Criminal Procedure, Article 71.2; Uruguay, Law No. 19.293 Code of Criminal Procedure, Article 65 (f); Argentina, Mendoza Province, Provincial Law No. 6722, Organic Law of the Police of Mendoza, Article 12.

³²Chile, Code of Criminal Procedure, Article 94 (e); Uruguay, Law No. 19.293 Code of Criminal Procedure, Art. 65.

³³Chile, Code of Criminal Procedure, Article 94 (e); Honduras, Code of Criminal Procedure, Article 101.2; Paraguay, Code of Criminal Procedure, Article 298 (6).

³⁴The information provided in this section was obtained from the response to the APT questionnaire and during the NPM and LPM working meeting held in Panama from 21 to 23 November 2017.

4. How are third parties notified?

<p>What do international standards specify?</p>	<p>Although international standards do not specify how notification should take place, the SPT has suggested that, if possible, it should be done by telephone.³⁵ The Nelson Mandela Rules state that prisoners should be given the capacity and means to exercise the right to inform their family or any other person immediately.³⁶</p>
<p>What does the legislation in Latin American countries state?</p>	<p>Some national legislation recognises detainees' right to make a telephone call to communicate the fact of their deprivation of liberty (Mendoza Province in Argentina).³⁷</p> <p>In other cases, the law establishes that the authorities have a particular obligation to provide the person in custody with all the physical facilities they need to communicate with a family member, and that when the Public Prosecutor's Office is informed of the detention, this communication shall be made by any means (i.e. telephone) (Mexico).³⁸</p>
<p>What happens in practice?³⁹</p>	<p>In practice, third parties are usually notified by telephone in the presence of the detainee (Costa Rica, Mexico, Paraguay, Uruguay, the Province of Mendoza in Argentina, and the State of Pernambuco in Brazil). In some cases, the custody is communicated without the detainee being present (Uruguay).</p> <p>The absence of suitable telephone facilities at police stations means that, in some cases, the detainee may use his or her mobile phone or that of a police officer to call the third person (Bolivia, Paraguay and Chaco Province in Argentina).</p>

³⁵SPT, Report on the visit to Argentina, (27 November 2013), UN Doc AT/OP/ARG/1, § 21; SPT, Report on the visit of the SPT to Brazil, (5 July 2012), UN Doc CAT/OP/BRA/1, § 66.






³⁶The United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 68.

³⁷Argentina, Mendoza Province, Provincial Law No. 6722 Organic Law of the Police of Mendoza, Article 12.

³⁸Mexico, National Code of Criminal Procedure 2014, Article 113, sections II and XVIII, Article 132 (VI).

³⁹The information provided in this section was obtained from the response to the APT questionnaire and during the NPM and LPM working meeting held in Panama from 21 to 23 November 2017.

5. Persons in situation of vulnerability

<p>What do international standards specify?</p>	<p>Some international standards state that the practical implementation of safeguards should consider the needs of persons in situations of vulnerabilities. For example:</p> <p> <i>Foreigners.</i> Prisoners who are foreign nationals will be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.⁴⁰</p> <p> <i>Children.</i>⁴¹ The minor's parents, guardians or next of kin should be notified immediately so that he or she may receive timely assistance from the person who has been notified. Where immediate notification is not feasible, it should be performed as soon as possible.</p> <p> <i>Women.</i> Detained women may be caregivers to children, such that notification of the detention to a third person takes on special importance, either to make the necessary arrangements to ensure the well-being of the children under their care, or to avoid a prolonged detention that could bear long-term consequences for children.⁴²</p>
<p>What does the legislation in Latin American countries state?</p>	<p>The needs of foreigners and children are recognized in some national legislation. For example:</p> <p> <i>Foreigners.</i> The police should immediately inform the detainee's relevant consular representation (Ecuador).⁴³ In some cases, the Public Prosecutor's Office should ensure the notification is recorded, unless the foreign national accompanied by his or her lawyer expressly requests that this notification should not take place (Mexico).⁴⁴ In other cases, the Public Prosecutor's Office will allow the detainee to directly contact his/her national Embassy or consulate.</p> <p> <i>Children.</i> In most cases, specific provisions on children stipulate that the police must immediately notify the Public Prosecutor's Office and the parents or</p>

⁴⁰The United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), Rule 62.

⁴¹The criminal age in Latin America varies between countries. For example, in Uruguay, according to Article 1 and 74(B) of the Code for Children and Adolescents, an adolescent is aged between 13 and 18 years of age.

⁴²APT, Women in detention: a guide to gender-sensitive monitoring, (2013), p.9.

⁴³Constitution of the Republic of Ecuador, Article 77.5.

⁴⁴Mexico, National Code of Criminal Procedure, Article 151.

	<p>legal guardians (Ecuador, Mexico, Paraguay, and Uruguay). This communication must be free from intervention and private (Uruguay).⁴⁵</p> <p>The legislation governing criminal proceedings against children state that they have a right to communicate with a family member or any person of their choice. In all instances, their legal representatives should be informed immediately (Ecuador).⁴⁶</p> <p>The minor has the right to communicate, within a period of no more than one hour, by telephone or any other means, with a member of his/her family or a person to whom he/she has an emotional attachment (Autonomous City of Buenos Aires in Argentina).⁴⁷ Some legislation states that in addition to the family, the fact of detention should also be reported to specialized child welfare institutions (Mexico).⁴⁸</p>
<p>What happens in practice?⁴⁹</p>	<p>The following practices were identified with regards to <i>children and foreigners</i>:</p> <p> Foreigners. The first steps in notifying third parties in some countries are informing the family members of the detainee who are in the respective countries, and the corresponding consulates (Chile, Honduras, Mexico, Uruguay, Salta Province in Argentina, Pernambuco State in Brazil).</p> <p> Children. In some countries, upon arrest, children are separated from adults and taken to temporary accommodation facilities for children, and a document of notification is sent promptly to the child's parents or guardians (Honduras, Mexico, Uruguay, and Misiones and Mendoza Provinces in Argentina). In other cases, a child protection's institution notifies the child's relatives, for instance by telephone (Chaco Province in Argentina).</p>

⁴⁵Uruguay, Law No. 17823, Code for Children and Adolescents, Article 74.

⁴⁶Ecuador, Code for Children and Adolescents, Article 312 (2).

⁴⁷Argentina, Law No. 114/98 Comprehensive Protection of the Rights of Children and Adolescents, Article 11 (h) (j).

⁴⁸Mexico, General Law on the Rights of Children and Adolescents, Article 86.

⁴⁹The information provided in this section was obtained from the response to the APT questionnaire and during the NPM and LPM working meeting held in Panama from 21 to 23 November 2017.

6. Challenges identified and next steps for implementation

a. Challenges identified in practice

- Persons in custody are unaware of their right to notify third parties of the fact of their deprivation of liberty.
- Detainees are unable to exercise their right to communicate directly with third parties in confidence.
- In places of custody, there are usually no suitable means by which the detained person can communicate with his/her family or third parties. For instance, telephones at police stations do not work and calls to mobile phones are not permitted.
- Communication between the person in custody and his or her family members is often not recorded by authorities.
- In some countries, the police do not report the detention to third parties.

When the police notifies third parties, the following problems are identified:

- Detainees are unaware that it is the obligation of the authority to report the detention to third parties, and in some cases, are not informed that such notification was done.
- Detainees cannot decide who to notify, and the authorities notify whoever they think is most appropriate.
- Authorities do not provide the third parties with complete and comprehensible information on the situation of the person in custody.
- Authorities rarely record the fact that they have notified third parties about a person's custody.
- Authorities do not inform persons in custody that their relatives or designated persons were notified.

b. Steps to be taken to implement the safeguard

- The right to notify third parties of the deprivation of liberty should be enshrined in law.⁵⁰ National legislation should contain details on the appropriate time frame for communicating the detention to relatives or third parties.
- Families should be informed as soon as possible about the fact of deprivation of liberty, usually within two or three hours after the arrest.⁵¹ The European Committee for the Prevention of Torture (CPT) considers it a positive practice for the law to provide that every detained person will have the right to communicate by telephone, without undue delay, with a third party of his or her choice.⁵²
- Police authorities should systematically inform detainees about their right to communicate with third parties. For example, the person in custody should be asked to sign a standard form stating that he or she has understood his or her right to inform

⁵⁰SPT, Report on the visit of the SPT to Benin, (15 March 2011), UN Doc CAT/OP/BEN/1, § 81 (m).

⁵¹SPT, Report on the visit of the SPT to Sweden, (10 September 2008), UN Doc CAT/OP/SWE/1, §50.

⁵²CPT, Report for the Spanish Government on the visit of the CPT to Spain, (16 November 2017), CPT/Inf (2017)/34, § 11.

family members or third parties about their detention. The form should have a space for recording the details of the person they wish to notify.⁵³

- If police stations do not have the means by which detainees can call their relatives, calls from the detainees' personal mobile phones should be allowed. If the lack of a telephone service prevents notification, the family or third party should be notified in person (i.e. by means of a home visit).
- The police should receive ongoing training on all aspects relevant to the notification of third parties, including in the relevant means for establishing contact and in methods for effective communication.
- Police institutions should have relevant internal regulations and procedures, and officers should receive appropriate training on how to adequately follow these. Such regulations should specify how to communicate with families or third parties, what information should be communicated, and how the person deprived of liberty can be reached by the third party. It is recommended that these protocols be made public for the benefit of the entire community.
- The police should inform the detainee of the fact of his/her detention was notified to the desired and/or appropriate third party, and of what additional information was provided to the third party.
- The information provided to third parties should be provided in a language that they understand, and accessible terms should be used.
- If the notification is made by telephone, the date and time of the call, the name of the person who was notified, and his or her telephone number and other relevant contact details should be recorded.⁵⁴ Information on the following should be also recorded: the length of the call; whether the call was answered or whether a message (voicemail) was left; and the third party's response to the communication. It is especially important to record the name and identification number of the officer who made the call.
- Institutions such as Public Defenders' Offices should maintain free 24-hour telephone hotlines for persons in police custody, and persons in custody should be made aware of and assisted in using these hotlines for communicating their detention and requesting assistance.
- When a detainee is in a particular situation of vulnerability, appropriate steps must be taken to ensure his or her protection by notifying other appropriate persons and/or institutions of the fact of detention (for instance, informing a specialised judge or a child welfare institution in the case of a minor). In such cases, the persons in custody should be informed of any action taken on their behalf.

⁵³The SPT has recommended that "the right to notify relatives about the detention should be incorporated in the text setting out the rights of persons deprived of their liberty and that they should be informed of this right and asked to sign a form stating the person to whom they wish to notify of the deprivation of liberty". Report of the visit of the SPT to Mexico, (31 May 2010), UN Doc CAT/OP/MEX/1, §125 and the report of the visit of the SPT to the Maldives, (26 February 2009), UN Doc CAT/OP/MDV/1, §102.

⁵⁴SPT, Report on the visit of the SPT to Mali, (20 March 2014), UN Doc CAT/OP/MLI/1, §20; SPT, Report on the visit of the SPT to Brazil, (5 July 2012), UN Doc CAT/OP/BRA/1, §66.

Practical examples for implementation	
Argentina/ Buenos Aires	In the Province of Buenos Aires , the law establishes that children and adolescents have the right to communicate with their families by telephone within one hour of deprivation of liberty.
Dominican Republic	Law No. 6-96 of the Dominican Republic provides that any person deprived of his or her liberty by a police or military authority has the right to communicate with his or her relatives by telephone or other means. This law states that the "right to a call" must be exercised within one hour of the person's admission to the detention centre. ⁵⁵
Paraguay	A Police Intervention Protocol for adolescents (aged between 14 and 17) who infringe the criminal law was published in Paraguay in July 2017. The Protocol was prepared by an inter-agency working group and presented to the National Police. The aim of the document is to ensure correct implementation of the law and to provide instructions for ensuring the protection of children and adolescents.
Peru	The Ombudsman's Office in Peru has a Programme to Protect Rights in Police Stations , which is responsible for developing policies to promote, protect, and respect the rights of detainees in police custody. The programme also has oversight functions through investigative activities and training in human rights and policing.
Uruguay	In Uruguay , in the case of children, the police must inform the judge about the detention of children immediately, and within a period of at most two hours following arrest. ⁵⁶

⁵⁵In the Dominican Republic, Law No. 6-96 provides that any person deprived of his or her liberty by a police or military authority has the right to communicate with his relatives by telephone or other means, (1996), Article 2.

⁵⁶Uruguay, Law No. 17823, Code for Children and Adolescents, Article 76, (1) (A) (b) and Law No. 18.315 Police Procedure, Article 6.

Annexes

A. International and regional human rights standards:

- [Article 10.2](#), UN International Convention for the Protection of All Persons from Enforce Disappearance
- [Principles 16](#), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- [Rule 62](#), UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)
- [Rule 2.1](#), UN Rules for the Treatment of Women prisoners and non-custodial measures for women offenders (Bangkok Rules)
- [Article 10.1](#), UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)
- [Rule 22](#), UN Rules for the protection of juveniles deprived of their liberty
- [Guideline 3 \(43\) \(e\)](#), United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice System
- [Principle V](#), Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas
- [Guideline 20 \(a\)](#), Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa
- [Article 4 \(f\)](#), Guidelines on the Conditions of arrest, police custody and pre-trial detention in Africa (Luanda Guidelines)
- UN Human Rights Council Resolution 31/31 on safeguards to prevent torture during police custody, 2016, [A/HRC/RES/31/31](#)
- Inter- American Court of Human Rights, [Case of Bulacio v. Argentina](#), §129-130.
- Inter- American Court of Human Rights, [Case of Hermanos Gómez Paquiyauri v. Peru](#), §93.
- Human Rights Committee General [Comment 20](#), §11
- UN Committee against Torture General [Comment 2](#), §13
- 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, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances [A/HRC/13/42](#), §292 (c)(j)

UN Subcommittee on Prevention of Torture reports:

- Argentina, [CAT/OP/ARG/1](#), §20-21
- Honduras, [CAT/OP/HND/1](#), §151
- Maldives, [CAT/OP/MDV/1](#), §99-102
- Mexico, [CAT/OP/MEX/1](#), §125

See also:

- APT, [Monitoring Police Custody a practical guide](#), p. 125-127.
- APT, [Outcome Report](#) of the Symposium on Procedural Safeguards in the first hours of police custody 2017, p. 16-17.
- Amnesty International, [Fair Trial Manual Second Edition](#), 2014, p. 51-56.
- CPT, [Developments concerning CPT standards in respect of police custody](#), 2002.

B. National legislation

- **Constitutions**

State	Legislation	Text
Brazil	Public Constitution	Article 5. 63. the arrested person shall be informed of his rights, among which the right to remain silent, and he shall be ensured of assistance by his family and a lawyer;
Ecuador	Constitution of the Republic of Ecuador, 2008	Article 77. (...) where a person has been arrested and detained, the following basic guarantees shall be observed (...) 4. At the time of detention, the agent shall inform the arrested person of his/her right to remain silent, to request the assistance of an attorney or court-appointed defense attorney in the event he/she is unable to designate one by himself/herself, and to communicate with a relative or any other persons indicated by him/her. 5. If the arrested person is a foreigner, whoever carries out the arrest shall immediately inform the consular representative of the detainee's country.
Honduras	Public Constitution of Honduras	Article 84. (...) The arrested or detained must be informed upon arrest and with total clarity of his rights and the charges against him; furthermore, the authorities must permit him to report his detention to a relative or to a person of his choice.
Paraguay	Constitution of the Republic of Paraguay	Article 12. All detained persons have the right: 2. that the detention will be immediately communicated to their family or [to] persons that the detained [person] indicates; 3. to be maintained in free communication, but when, exceptionally, their incommunicado status has been established by [a] competent judicial mandate; the incommunicado [status] will not rule [regirá] with respect to their defender and in no case may it exceed the time period prescribed by the law;
Peru	Political Constitution of Peru	Article 2. Every person has the right: (...) 24. To freedom and personal security. In consequence: <i>g.</i> "No one may be held incommunicado, except where it is considered indispensable for the resolution of a crime and in the form and for the time provided by law. The authority is obliged by law to report, without delay and in writing, the place where the individual under arrest is detained. "

- **Codes of Criminal Procedure**

State	Regulations	Text
Chile	Code of Criminal Procedure, 2000	Article 94. The accused deprived of their freedom shall have the following rights: (...) (e) The officer in charge of the police detention facility to which he or she is taken shall notify, in his or her presence, the family member or the person of his or her choice, that he or she has been arrested, the reason for his or her arrest or imprisonment and the place where he or she is located; (...)
Costa Rica	Code of Criminal Procedure	Article 82. The accused shall have the following rights: (...) b) The right to immediate and effective communication with the person, association, group or entity to which he or she wishes to report their arrest. (...)
Ecuador	Comprehensive Organic Criminal Code	Article 533. The detained person shall be informed of his or her right to (...) communicate with a family member or any person of his or her choice. The same communication should be made to a person of trust of the detained person's choice and to his or her public or private defence lawyer. If the detainee

State	Regulations	Text
		is a foreigner, the person carrying out the arrest shall immediately inform his or her country's consular representative or, failing that, the rules of the relevant international instruments shall be followed.
Honduras	Code of Criminal Procedure	Article 101.2. Every person who is charged shall have the right: (...) 2) To be allowed to report their detention immediately and the place where he or she is detained to the individual or legal entity of his or her choice (...)
Mexico	National Code of Criminal Procedure	<p>Article 113. The accused shall have the following rights:</p> <p>(...) II. To communicate with a family member and his or her Defence lawyer when arrested, and the Public Prosecutor's Office must provide all the facilities to achieve this;</p> <p>XVIII. To report to the appropriate embassy or consulate when detained, and to provide immigration assistance if you are a foreigner, (...).</p> <p>Flagrante delicto and urgent cases</p> <p>Article 151. Consular assistance. If the detainee is a foreigner, the Public Prosecutor's Office shall promptly inform the detainee and guarantee his or her right to receive consular assistance, thereby allowing him or her to communicate with the embassies or consulates of the country of which he or she is a national. They must notify the embassies and consulates themselves of this person's detention and keep a record of this, unless the accused and their defence lawyer expressly request that this notification take place. The Public Prosecutor's Office and the police must provide information to anyone requesting it, subject to identification being presented, if a foreigner is detained and, if necessary, where they have been detained and the reason for it.</p> <p>Article 152. Rights of the detainee. Authorities executing an arrest for flagrante delicto or urgent cases should ensure that the person has full and clear knowledge of the rights listed below, at any stage during the custody period:</p> <p>I. Right to inform someone of your arrest.</p>
Peru	Code of Criminal Procedure	<p>Article 71. 2. Judges, Prosecutors or the National Police must inform the accused immediately using language that is understandable that he or she has the right to:</p> <p>b) Name the person or institution to which his or her detention should be communicated and that the said communication should be made immediately (...).</p> <p>Article 132. Police Obligations. The Police will have the following obligations:</p> <p>IV. To inform the Public Prosecutor's Office without delay by any means about the detention of any person, and to record the arrests in the register immediately (...).</p>
Paraguay	Code of Criminal Procedure	<p>Article 75. Rights of the accused. (...)</p> <p>3) to name the person, association or entity to whom or to which their arrest is to be reported. The communication should take place immediately.</p> <p>Article 298. Basic principles of action. Officers already in the police force must arrest or detain the accused (...) according to the following principles of engagement:</p> <p>7) at the time of arrest, to inform relatives or other persons related to the accused of the establishment to which he or she will be taken.</p>

State	Regulations	Text
Uruguay	Law No. 19.293 Code of Criminal Procedure	<p>Article 65. (Accused deprived of liberty). The accused deprived of liberty shall also have the following guarantees and rights: (...) f) the administrative authority of the place in which he or she is detained shall inform the person named by him or her in his or her presence that he or she has been arrested and the reason for the detention.</p> <p>Article 71.5. Every lawyer has the right to require the official in charge of any place of detention to inform him or her, in writing and immediately, whether or not a person has been detained in that establishment.</p>

- **Organic and procedural laws of police institutions**

State	Regulations	Text
Argentina	Organic Law of the Federal Police	<p>Article 5.1. In carrying out their duties, the Federal Police have the powers to authorise the following:</p> <p>1. (...) He or she will be allowed to communicate immediately with a family member or person whom he or she trusts to inform them of his or her situation.</p>
Argentina/ Mendoza	Provincial Law No. 6722 Organic Law of the Police of Mendoza	<p>Article 12. (...) All persons deprived of their liberty shall be informed by the police of their rights:</p> <p>(...) 3. To make a phone call to report that he or she has been arrested and where he or she is being held.</p> <p>(...) If the person deprived of his or her liberty is a minor or disabled, the police authority shall immediately notify the circumstances and location of the detention to those exercising parental authority, wardship or guardianship. If it is not possible to do so, they shall immediately inform the competent judicial authority.</p>
Peru	Manual of Human Rights applied to the Police Force (Ministerial Resolution No. 1452-2006-IN)	<p>Page 17, paragraph 2 (b). Rights of the detainee:</p> <ul style="list-style-type: none"> • To communicate with a family member or friends. • To speak with a representative of the Public Prosecutor's Office or Consulate immediately upon arrest.
Uruguay	Law on Police Procedure No. 18 315	<p>Article 49. (Right of the person who has been arrested or apprehended to be informed). Any person detained or held in custody has the right to report his or her situation to family members, relatives or a lawyer immediately.</p> <p>Article 64. (Counsel's intervention on police premises). (...) In all cases, counsel shall be informed of the time of arrest and the grounds, and of the time the competent judge was notified of the arrest.</p>

- **Other laws**

State	Regulations	Text
Brazil	Statute of the Child and Adolescent	<p>Article 107. The arrest of any adolescent and the place where they are located shall immediately be sent to the competent judicial authority and to the family of the person who has been arrested or to the person named by him or her. Sole paragraph. To examine, immediately and on pain of liability, the possibility of immediate release.</p>
Bolivia	Code for Children and Adolescents	<p>Article 262. Rights and guarantees. From the beginning of the process, an adolescent in the penal system has the following rights and guarantees: (...) k) To constant contact with family members and his or her defence lawyer (...).</p>

State	Regulations	Text
Autonomous City of Buenos Aires	Argentina, Law No. 114/98 Comprehensive Protection of the Rights of Children and Adolescents	<p>Article 11. The following rights are guaranteed to children and adolescents to whom unlawful conduct is attributed:</p> <p>(...) h) that, in the event of an arrest, parents, guardians or the person to whom the child or adolescent has an emotional attachment, be informed immediately of the place where he or she is, what he or she is being charged with, the relevant court and prevention authority;</p> <p>(j) to communicate, in the event of deprivation of liberty, within a period of not more than one hour, by telephone or by any other means, with the family unit that is responsible for him or her, or the person to whom he or she has an emotional attachment." (...)</p>
Ecuador	Code on Children and Adolescents	<p>Article 312. Every adolescent investigated, detained or interrogated has the right to be informed:</p> <p>2. Of his or her right to remain silent, to request the presence of a lawyer and to communicate with a family member or any person who is named. The adolescent will have free assistance from an interpreter if they do not understand or speak the language being used. In all cases, the legal representatives of the person being investigated, questioned or detained shall be informed immediately.</p>
Mexico	National Law on the Comprehensive Criminal Justice System for Adolescents	<p>Article 39. Prohibition on solitary confinement</p> <p>Every adolescent has the right to establish effective communication, by telephone or any other means available immediately upon arrest, with his or her family members, his or her defence lawyer or with the person or group to whom he or she wishes to report his or her detention or deprivation of liberty.</p>
	General Law on the Rights of Children and Adolescents	<p>Article 87. If a child or adolescent is found to have committed an offence, those exercising parental authority, wardship or guardianship and custody shall be notified immediately, as well as the relevant Office for Protection.</p>
Paraguay	Police Protocol Resolution No. 665	<p>3. Police personnel must, in all cases, immediately report the deprivation of liberty to a relative or third party named by the adolescent.</p>
Uruguay	Law No. 17823 Code on Children and Adolescents	<p>Article 74. An adolescent who is accused of committing acts that are presumed to be in violation of criminal law must ensure strict compliance with the guarantees of due process, in particular:</p> <p>d) Principle of humanity. The adolescent shall have the right to stay in regular contact with his or her family or caregivers, except in exceptional circumstances.</p> <p>g) Principle of freedom of communication - You have the right while in custody to communicate freely and in private with your defence lawyer, your parents, guardians, relatives and spiritual assistants.</p> <p>Article 111. (Compulsory notifications). 1) When the adolescent is arrested, the judge orders that the fact be notified immediately by the police to his or her defence lawyer, the Public Prosecutor's Office and the parents or legal guardians. The same procedure shall be followed with the technical advisers whom the judge deems it necessary to call upon for advice.</p>