

# Right to an independent medical examination upon request

June 2018

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*"A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge."*

*Principle 24 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 study<sup>1</sup> 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

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<sup>1</sup> 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.

hours of custody.<sup>2</sup> According to the analysis, four safeguards in particular have proved to be the most effective in preventing torture and ill-treatment:

- 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 third 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)<sup>3</sup> and other institutions in Latin America. Information was also obtained from discussions held during a workshop in Panama in November 2017.<sup>4</sup> 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 on the right to an independent medical examination.

### **Why is the implementation of this safeguard important?**

A detainee's right to a proper medical examination for which consent has been sought is not limited to prisons, but applies to other places of deprivation of liberty, such as police stations, and temporary detention facilities.<sup>5</sup> A medical examination in the early stages of custody can take place in three specific circumstances:

- When the police ask healthcare staff to carry out a general medical examination immediately upon a person's arrest.
- When the detained person requests an additional medical examination, to be carried out by a doctor of his or her choice.<sup>6</sup> In such cases, the second medical examination does not substitute the one provided by the State.
- In some jurisdictions, when medical staff conduct a more thorough examination if it is suspected that the person in custody has been subjected to torture or ill-treatment.

From the point of view of prevention, if a person deprived of liberty undergoes a regular and private medical examination during their custody, this could act as a deterrent to any officer who may resort to ill-treatment.<sup>7</sup>

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, (2011), OAS/Ser. L/V/II, §164.

<sup>6</sup> CPT, Developments concerning CPT standards in respect of police custody, (2002), §42.

<sup>7</sup> SPT, Report on the visit of the SPT to Benin, (2011), UN Doc CAT/OP/BEN/1, §91; SPT, Report on the visit of the SPT to the Maldives, (2009), UN Doc CAT/OP/MDV/1, §109.

The right to a medical examination is important for the following reasons:

- It provides information on the physical and mental health of the detainee.
- It helps ascertain the presence of any injuries or bodily harm indicative of torture and ill-treatment.
- It helps to identify cases in which the detainee requires medical care and treatment or a transfer to a health centre.<sup>8</sup>
- It facilitates the gathering of evidence and documentation that may be needed to support potential complaints about torture or ill-treatment.

### Essential elements for torture prevention



- Detainees should be provided with medical examinations and assistance upon request, immediately after arrest.
- The medical examination should be conducted in private and the results should be confidential and made available to the person in custody and his or her lawyer.
- Medical staff should provide a quality service to detainees, without discrimination.
- The detained persons should be permitted to have an independent examination conducted by a doctor of his or her choice, in addition to any examination by medical staff appointed by the police.

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<sup>8</sup> APT, Monitoring Police Custody - A practical guide, p. 154.

## 1. The right to request and undergo a medical examination

<p><b>What do international standards specify?</b></p>	<p>According to international human rights standards, the State has a duty to provide and ensure that all detained persons are able to undergo a medical examination.<sup>9</sup> This applies in particular if the detainees have health problems, whether or not these are related to their detention.<sup>10</sup></p> <p>The United Nations Subcommittee on Prevention of Torture (SPT) has recommended that medical examinations should be routine for all detained persons in police custody when they arrive at the place of detention. Furthermore, the SPT has reiterated that detainee's right to be examined by a doctor upon request must be respected.<sup>11</sup></p> <p>The SPT has also recommended setting up a system of independent examinations in which qualified forensic doctors and psychologists carry out <b>exhaustive investigations</b>, if the doctor who has examined the detainee has reason to believe that the person has been subjected to torture and ill-treatment.<sup>12</sup></p>
<p><b>What does the legislation in Latin American countries state?</b></p>	<p>The legislation recognise that persons in custody have the right to be examined by a doctor during the early stages of detention (Mendoza Province in Argentina, Honduras)<sup>13</sup> in order to have their physical condition assessed. In some cases, detainees are entitled to medical examination in specific circumstances, for example if they are injured (Paraguay, Uruguay).<sup>14</sup></p> <p>Detainees may be entitled to a second medical examination if it is suspected that they have been victims of torture or ill-treatment. In one country, for instance, legislation states that a medical-psychological opinion will be issued on the basis of the Istanbul Protocol, and that it will be carried out with the person's informed consent (Mexico).<sup>15</sup></p>

<sup>9</sup> UN, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 24; UN, Resolution adopted by the Human Rights Council on 24 March 2016, (2016), Doc A/HRC/RES/31/31, §8.

<sup>10</sup> SPT, Report on the visit of the SPT to Gabon, (23 June 2015), UN Doc CAT/OP/GAB/1, § 41.

<sup>11</sup> SPT Report on the visit of the SPT to Benin, (15 March 2011), UN Doc CAT/OP/BEN/1, § 92.

<sup>12</sup> SPT, Report on the visit of the SPT to Paraguay, (7 June 2010), UN Doc CAT/OP/PRY/1, § 98.

<sup>13</sup> Honduras, Code of Criminal Procedure, Article 282; Mendoza Province in Argentina, Law 6722, Article 12 (5).

<sup>14</sup> Paraguay, Resolution 1344/2015, which establishes the minimum conditions for deprivation of liberty in police stations; Uruguay, Law on Police Procedure No. 18315, Article 51.

<sup>15</sup> Mexico, General Law on Torture, Articles 36, 37 and 38.

**What happens  
in practice?<sup>16</sup>**

In practice, persons in police custody are routinely examined by police healthcare staff (or in public healthcare centres chosen by the police), usually before entering the police stations. This type of examination is often superficial,<sup>17</sup> brief, and performed as a formality, with the aim of confirming the detained person's physical health.

In most countries, persons in custody are unable to receive independent medical examinations because they lack the financial resources to pay for the services of an independent doctor.

Persons in police custody may request a second, more comprehensive medical examination to be carried out by a forensic physician, for the purpose of investigating claims of torture and ill-treatment (Mexico).

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<sup>16</sup>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.

<sup>17</sup>SPT, Report on the visit of the SPT to Brazil, (2012), CAT/OP/BRA/1, § 37.

## 2. When is the medical examination performed?

<p><b>What do international standards specify?</b></p>	<p>The medical examination should be carried out as soon as possible after the arrest<sup>18</sup> and immediately after the person is admitted to the place of detention.<sup>19</sup> The UN Special Rapporteur on Torture has stated that medical examinations should be carried out as soon as a detained person is admitted to a detention centre and at regular intervals thereafter.<sup>20</sup></p> <p>The UN Committee against Torture (CAT) has recommended that countries should take effective measures to ensure that persons in detention are promptly examined by a medical officer.<sup>21</sup></p> <p>As a point of reference, the European Committee for the Prevention of Torture (CPT) has stated that it is important to guarantee persons who are released from police custody the right to a medical examination.<sup>22</sup> The CPT has also recommended that a doctor should be contacted without delay if the detainee requests a medical examination.<sup>23</sup></p>
<p><b>What does the legislation in Latin American countries state?</b></p>	<p>Some national legislation states that the medical examination should be carried out at the following moments:</p> <ul style="list-style-type: none"> <li>• Upon arrest or “shortly after the crime was committed” (Salta Province in Argentina).<sup>24</sup></li> <li>• When a person is deprived of liberty (Mendoza Province in Argentina).<sup>25</sup></li> <li>• When the detained person enters or leaves the police unit (Chile)<sup>26</sup> or detention centre (Ecuador).<sup>27</sup></li> </ul> <p>In one jurisdiction medical examinations of possible cases of torture and/or ill-treatment should be conducted no later than 12 hours after the arrest, and before and after the statement is made before the Public Prosecutor's Office (Mexico).<sup>28</sup></p>

<sup>18</sup> SPT, Report on the visit of the SPT to Brazil, (2016), UN Doc CAT/OP/BRA/3, § 56.

<sup>19</sup> IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle IX (3).

<sup>20</sup> UN, Interim report of the Special Rapporteur on torture, (2016), UN Doc A/71/298, § 88.

<sup>21</sup> CAT, Concluding observations on the second periodic report of the Plurinational State of Bolivia, (14 June 2013), UN Doc CAT/C/BOL/CO/3, § 9 (a).

<sup>22</sup> CPT, Developments concerning CPT standards in respect of police custody, (2002), § 42.

<sup>23</sup> CPT, Extract from 12th General Report on the CPT's activities, [CPT/Inf (2002) 15], § 42.

<sup>24</sup> Argentina, Salta Province, Salta Code of Criminal Procedure, Article 97.

<sup>25</sup> Argentina, Mendoza Province, Provincial Law No. 6722 Organic Law of the Police of Mendoza, Article 12 (5).

<sup>26</sup> Chile, Exempt Decree No. 2534 of the Ministry of Justice of Chile.

<sup>27</sup> Ecuador, Comprehensive Organic Criminal Code, Article 683.

<sup>28</sup> Mexico, General Law on Torture, Article 46.

**What happens  
in practice?<sup>29</sup>**

In practice, medical examination is conducted at the following times:

- After the arrest (Mendoza Province in Argentina).
- When the detained person arrives, and in some cases leaves, the police station (Misiones Province in Argentina).
- During the first 24 hours of custody, if it is suspected that the person was subjected to ill-treatment. In some cases, a doctor may visit the place of detention each morning, to assess detainees who have spent the night in the cells (Costa Rica).
- Before being admitted to any detention centre (Ecuador).
- When the person is taken to the Public Prosecutor's Office (Mexico).

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<sup>29</sup>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.

### 3. What is the purpose of the medical examination?

<p><b>What do international standards specify?</b></p>	<p>According to the <i>Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas</i>, a medical examination shall be conducted on persons deprived of liberty to verify their state of physical or mental health and the existence of any mental or physical injury or damage; to ensure the diagnosis of any relevant health problem; or to investigate complaints of possible ill-treatment or torture or to determine the need for care and treatment.<sup>30</sup></p>
<p><b>What does the legislation in Latin American countries state?</b></p>	<p>National regulations in Latin America state that the medical examination will be conducted to:</p> <ul style="list-style-type: none"> <li>• determine the physical and psychological state of the person at the time of the arrest (Argentina)<sup>31</sup> and whether it is necessary to provide immediate medical assistance (Mendoza Province in Argentina);<sup>32</sup></li> <li>• identify the need for medical care (Honduras),<sup>33</sup></li> <li>• assess the person’s mental state and identify possible intoxication due to substance abuse (Salta Province in Argentina)<sup>34</sup></li> <li>• investigate allegations of torture and/or ill-treatment (Mexico).<sup>35</sup></li> </ul>

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<sup>30</sup> IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle IX (3).

<sup>31</sup> Argentina, National Code of Criminal Procedure, Article 184.

<sup>32</sup> Argentina, Mendoza Province, Provincial Law No. 6722 Organic Law of the Police of Mendoza, Article 12 (5).

<sup>33</sup> Honduras, Code of Criminal Procedure, Article 282.

<sup>34</sup> Argentina, Salta Province, Salta Code of Criminal Procedure, Article 97.

<sup>35</sup> Mexico, General Law on Torture, Articles 44 and 45.

#### 4. Who performs the medical examination?

<p><b>What do international standards specify?</b></p>	<p>The examination should be performed by medical professionals meeting certain criteria:</p> <ul style="list-style-type: none"> <li>• <i>Independence:</i> Detainees must be able to request an independent medical examination. The examination should preferably be carried out by a medical professional who is independent from the detaining authorities.<sup>36</sup> To this end, the CAT, the Human Rights Committee, and the SPT have recommended that physicians should operate “independently”.<sup>37</sup> It has been recommended that forensic medical services should be attached to a judicial or other independent authority, and not to the detaining authority, such as the police.<sup>38</sup> It has also been recommended that medical services ought to be structurally and operationally independent.</li> <li>• <i>Specialist knowledge:</i> the medical examination should be conducted by a competent medical practitioner<sup>39</sup> with education and training on the prohibition of torture,<sup>40</sup> and its effective documentation, in accordance with the Istanbul Protocol.<sup>41</sup></li> </ul> <p>The SPT has stated that if a physician is not available at the time of the detention, the detained person should be examined by a nurse, and thereafter by a physician as soon as possible.<sup>42</sup></p>
<p><b>What does the legislation in Latin American countries state?</b></p>	<p>Some national legislation states that persons in custody have the right to be examined by a forensic physician, or by another available doctor (Honduras).<sup>43</sup> Medical examinations to investigate possible cases of torture and ill-treatment must be carried out by a forensic physician (Peru, Mexico)<sup>44</sup> or by a doctor chosen by the person deprived of liberty (Mexico).<sup>45</sup></p>

<sup>36</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, §170

<sup>37</sup> SPT, UN Doc CAT/OP/ARG/1 Report on the visit of the SPT to Argentina (2010) §24; SPT UN Doc CAT/OP/HND/1 Report on the visit of the SPT to Honduras (2010), §155.

<sup>38</sup> UN, report of the UN Special Rapporteur on Torture, (2003), UN Doc E/CN.4/2004/56, §40.

<sup>39</sup> UN, Resolution adopted by the Human Rights Council on 24 March 2016, (21 April 2016), UN Doc A/HRC/RES/31/31, §8.

<sup>40</sup> UN, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 10.

<sup>41</sup> UN, CAT Concluding observations on Argentina, (2017), UN Doc CAT/C/ARG/CO/5-6, §24b; SPT, Report on the visit of the SPT to Honduras, (2010), UN Doc CAT/OP/HND/1, §153; SPT, Report on the visit of the SPT to Brazil, (2012), UN Doc CAT/OP/BRA/1, §38.

<sup>42</sup> SPT, Report on the visit of the SPT to Mexico, (2010), UN Doc CAT/OP/MEX/1, §132.

<sup>43</sup> Honduras, Code of Criminal Procedure, Article 282.

<sup>44</sup> Peru, Code of Criminal Procedure, Article 71.

<sup>45</sup> Mexico, General Law on Preventing and Sanctioning Torture, Article 46.

**What happens in practice?**<sup>46</sup>

In practice, the general medical examination is performed by the following persons:

- Physicians assigned by the police (police health services) (Chaco, Mendoza and Misiones Provinces in Argentina, Uruguay).<sup>47</sup>
- Forensic physicians (Honduras).
- Staff in public healthcare centres (Misiones Province in Argentina, Chile, Costa Rica, Honduras, Uruguay, Paraguay).
- Physicians from the Institutes of Forensic Medicine (Pernambuco State in Brazil).<sup>48</sup>
- Professionals from the medical units of the Ministry of Public Health (Ecuador).

In practice, persons in custody are not able to appoint a doctor of their choice because the decision rests with the police authority. If the police take the person in custody to a public healthcare centre, the medical staff will be assigned by the centre (Chile, Costa Rica, Ecuador, and Paraguay). In some cases, private medical services will be used upon the detainee's request, or if he or she has a pre-existing chronic illness (Uruguay).

Second medical opinions are allowed (Chile, Costa Rica, Honduras, Ecuador) and in some cases are conducted by medical boards made up of the doctor who performed the first examination, the detained person's personal physician and a doctor appointed by the judicial authority (Salta Province in Argentina).

*Who requests the medical examination?* The following parties may request a medical examination:

- The person in custody (Costa Rica, Rio de Janeiro State in Brazil).
- The public defender (Costa Rica).
- The police (Salta, Mendoza and Chaco Provinces in Argentina).
- The Public Prosecutor's Office (Mexico, Honduras<sup>49</sup>).
- The judge (Costa Rica, Pernambuco State in Brazil).
- The prison authority. In some cases the medical examination is a mandatory legal procedure that takes place before any person in custody enters a provisional detention centre (Ecuador).

<sup>46</sup>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.

<sup>47</sup> In Uruguay, the police health services conduct the medical examination.

<sup>48</sup> According to the Report on the SPT visit to Brazil published in 2017 (§21), in some states, institutes of forensic medicine are subordinate to the police administrative authority or the departments of public security.

<sup>49</sup> The report on the visit of the SPT to Honduras in 2010 states that even police officers who have no medical training may decide on the person's access to medical care.

## 5. How is the medical examination performed?

<p><b>What do international standards specify?</b></p>	<p>International human rights standards provide that medical examinations should be impartial, consensual, free of charge, and professional:</p> <ul style="list-style-type: none"> <li>• <i>Confidentiality.</i> Medical examinations should be conducted privately and confidentially, without the police being present.<sup>50</sup> The SPT recommends that apart from the patient, persons not belonging to the medical profession should not be present during the examination. The SPT states that in exceptional cases, and if the doctor requests it, special security measures may be taken, such as having a police officer nearby. However, officers should maintain a distance, so they are not able to hear, and preferably not watch, the medical examination.<sup>51</sup></li> <li>• <i>Consensual.</i> To that end, Resolution 31/31 adopted by the Human Rights Council in 2016 states that the medical examination should take place with the consent of the person concerned.<sup>52</sup></li> <li>• <i>Free of charge.</i> The SPT has recommended that detainees should have a free medical examination.<sup>53</sup></li> </ul> <p>The Inter-American Commission on Human Rights (IACHR), in turn, has stressed that the medical examination should not be superficial observations conducted as a mere formality. Rather, clinical examinations during which the person is able to communicate freely with the health professional, should take place.<sup>54</sup></p>
<p><b>What does the legislation in Latin American countries state?</b></p>	<p>While national laws recognise the right of individuals to request or to have a medical examination, in most cases they do not specify the conditions under which it must be carried out.</p>
<p><b>What happens in practice?<sup>55</sup></b></p>	<p>In practice, one of the main challenges identified was that police authorities are present during the medical examination. When medical examinations are routinely conducted when a person is taken into police custody, the examination tends to be a formality and the detainees' wishes are not heard.</p>

<sup>50</sup> SPT, Report on the visit of the SPT to Paraguay, (2010), UN Doc CAT/OP/PRY/1, §91.

<sup>51</sup> SPT, Report on the visit of the SPT to the Maldives UN Doc CAT/OP/MDV/1 (2009) §112; Report on the visit of the SPT to Paraguay UN Doc CAT/OP/PRY/1, (2009), §95; Report on the visit of the SPT to Mexico, (2010), §133.

<sup>52</sup> UN, Resolution adopted by the Human Rights Council on 24 March 2016, Doc A/HRC/RES/31/31, §8.

<sup>53</sup> SPT, Report on the visit of the SPT to Argentina, (2013), UN Doc CAT/OP/ARG/1, §24; SPT, Report on the visit of the SPT to Gabon, (2015), UN Doc CAT/OP/GAB/1, §41.

<sup>54</sup> IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, §165.

<sup>55</sup> 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.

## 6. What does the medical examination cover?

<p><b>What do international standards specify?</b></p>	<p>A proper medical examination is an important guarantee against torture and ill-treatment. Recording injuries suffered by persons detained by the police is an important safeguard against torture and other ill-treatment.<sup>56</sup></p> <p>The SPT has recognised that medical examinations of detained persons should be conducted with the necessary detail and should provide a suitable description of:</p> <ul style="list-style-type: none"> <li>• The person’s medical history.</li> <li>• The treatment received.</li> <li>• Any discomfort and symptoms and a description by the person being examined of how the injury, if any, was sustained and the name of the person identified as responsible.</li> <li>• The result of the medical examination, including a description of the injuries and the type, location and characteristics of any injuries, which may be used to assess possible consistency with the reports or allegations of torture, if any, and a note indicating whether the whole body was examined. If the doctor has reason to believe that torture and ill-treatment have occurred, he or she should report this in the register.<sup>57</sup></li> </ul> <p>Inter-American standards on deprivation of liberty state that detained persons have the right to an impartial and confidential medical or psychological examination.<sup>58</sup> The results of the medical examination should not be brought to the attention of the police, and it is recommended that they only be made available to the detained person and his or her lawyer.<sup>59</sup></p>
<p><b>What does the legislation in Latin American countries state?</b></p>	<p>In one jurisdiction, the Anti-torture legislation provides that if a person is injured, there should be a detailed reference to all the injuries, and colour photographs should be taken of them. Where possible, their causes will have to be determined. The certificate should also mention if the detained person has a significant mental health disorder (Mexico).<sup>60</sup></p>

<sup>56</sup> APT, Monitoring Police Custody - A practical guide, p. 130.

<sup>57</sup> SPT, Report on the visit of the SPT to Honduras, (2010) §153; SPT, Report on the visit of the SPT to Paraguay, (2010), UN Doc CAT/OP/PRY/1, § 93-96.

<sup>58</sup> IACHR, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle IX (3).

<sup>59</sup> SPT, Report on the visit of the SPT to Brazil, (2012), UN Doc CAT/OP/BRA/1, § 38.

<sup>60</sup> Mexico, General Law on Torture, Article 46.

**What happens in practice?**<sup>61</sup>

Information collected during medical examinations is similar in most States. Information is gathered on the detained person's state of health, and whether or not he or she has any injuries. A medical examination record may contain information on:

- Height, weight, distinctive signs (tattoos, moles), the nature and location of injuries, illnesses, addictions, disabilities, infectious and contagious diseases, psychological or psychiatric disorders (Salta Province in Argentina).
- Date and time of medical attention, condition, type of medication prescribed, injuries/scars that are consistent with blows, and their suspected causes (Costa Rica).
- Information only on visible injuries and previous illnesses (Mendoza Province in Argentina, Pernambuco State in Brazil).
- Blood pressure, temperature, and patient examination on symptoms and diseases (Chile).
- General details about injuries, accompanied by his or her account of how these were sustained, type of injury, the object that caused the injury, any period of incapacity, type of treatment and conclusions (Honduras).
- Checks on whether there are any injuries (Uruguay).

In practice, it has been documented that medical examinations are superficial and inadequate, due to a failure to properly detect and record the treatment received, the injuries, even a failure to record any notes on the findings of the examination.

*Who has access to the results of the medical examination?* In some cases, the detainee is not provided with the results of the medical examination (Chile, Mendoza Province in Argentina<sup>62</sup>, Paraguay). Sometimes, the detainee's access to his or her medical information is subject to authorisation from the judge (Ecuador) or the prosecutor (Paraguay). In some countries, the following parties may have access to this information:

- Judge (Honduras, Salta Province in Argentina).
- Public Prosecutor (Honduras, Salta Province in Argentina).
- Public Defender (Mendoza and Salta Provinces in Argentina, Ecuador).
- Detained persons (Ecuador, Honduras, Salta Province in Argentina).
- Physicians who performed the examination (Ecuador, Honduras, Salta Province in Argentina).

<sup>61</sup>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.

<sup>62</sup> The detained person does not receive a copy of the medical examination and does not sign an informed consent form for the examination. There is also a stamp the police authorities place on the medical records to indicate that the person "has no visible injuries".

- Police (Chile, Mendoza Province in Argentina, Paraguay)
- Family of the detained person (Pernambuco State in Brazil).<sup>63</sup>

## 7. Record of the medical examination

### What do international standards specify?

The SPT recommends that records be kept to show that every detainee has undergone a medical examination, featuring the name of the doctor who carried it out and the results.<sup>64</sup> Some international instruments also state that the official registers and/or individual detainee files should include information on their physical state.<sup>65</sup>

The SPT has also recommended that institutes of forensic medicine maintain exhaustive records of allegations of torture and ill-treatment and the steps taken to investigate these. These records should be checked against those of the police, and discrepancies should be clarified during the investigation.<sup>66</sup>

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<sup>63</sup> In Pernambuco State in Brazil, the family can access the information for a fee.

<sup>64</sup> Ibid., SPT Honduras Report, §155.

<sup>65</sup> International Convention for the Protection of All Persons from Enforced Disappearance, Article 17 (f).

<sup>66</sup> SPT, Report on the visit to Brazil, (2016), UN Doc CAT/OP/BRA/3, §22 (b).

## 8. Persons in situation of vulnerability

<p><b>What do international standards specify?</b></p>	<p>International standards state that for persons in situations of vulnerability, the following must be considered:</p> <p> <i>Children.</i> Minors should have regular access to paediatricians and child psychologists in detention, as well as access to specialized medical screenings designed to detect cases of torture.<sup>67</sup></p> <p> <i>Women.</i> Specific conditions and basic needs should be recorded, particularly if the person was injured at the time of admission. Medical staff should preferably be female or should be present during examination. If required, the health care should be specifically targeted at women.<sup>68</sup></p> <p> <i>Foreigners.</i> The medical examination should be made available and culturally appropriate for foreign nationals, without discrimination. If medical staff have difficulty making a diagnosis due to language difficulties, the authorities should provide a qualified and impartial interpreter.</p> <p> <i>Persons with disabilities.</i> Medical examinations should consider the needs of persons with disabilities, provide reasonable accommodation, and recognise and ensure informed consent has been obtained for persons with disabilities.</p> <p> <i>LGBTI persons.</i> Healthcare personnel should be adequately trained to address the specific needs of LGBTI persons, who should not suffer any form of discrimination based on sexual orientation or gender identity or expression during medical examination. For transgender detainees, healthcare personnel should respect the principle of self-identification and should be trained, <i>inter alia</i>, on addressing the potential health effects of hormone therapy. Healthcare should also be aware of gender specific forms of torture and ill-treatment.</p>
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<sup>67</sup> UN, Report of the Special Rapporteur on torture Juan E. Méndez, (2015), UN Doc A/HRC/28/68, §85 (d).

<sup>68</sup> UN, Bangkok Rules, United Nations Office on Drugs and Crime. p. 26.

<p><b>What does the legislation in Latin American countries state?</b></p>	<p> <i>Children.</i> Some legislation on minors provides that adolescents will undergo a medical examination before they enter and leave the centres for adolescent offenders (Ecuador) and after transfers between institutions and the court (Uruguay). Some states that medico-legal examinations of children or adolescents will be carried out under strict conditions of confidentiality and respect for privacy and physical and emotional integrity (Ecuador).<sup>69</sup></p> <p> <i>Women.</i> With respect to the right to medical assistance, legislation against torture in one country states that in cases of sexual violence against women, medical assistance will be provided by a gynaecologist or a specialist in any other relevant specialisation, who must be female, if so requested by the detainee (Mexico).<sup>70</sup> One code of criminal procedure states that no pregnant woman may be deprived of her liberty, nor sentenced until 90 days after giving birth (Ecuador).<sup>71</sup></p> <p>Some legislation identifies the need for authorities to apply a specialised approach to particular population groups, particularly those in situations of heightened vulnerability due to their ethnic or national origin; language; religion; age; gender; sexual preference or orientation; gender identity; disability; social, economic, historical and cultural status; or other distinguishing characteristics that require special attention (Mexico).<sup>72</sup></p>
<p><b>What happens in practice?<sup>73</sup></b></p>	<p>In practice, additional safeguards are rarely provided for persons who are at-risk and in situations of vulnerability. For instance, there is general a lack of female medical staff attending to women in police custody. Detainees are sometimes examined in public hospital emergency departments by duty staff not of the same sex or gender identity as the detained person. When a choice is available, efforts will be made to accommodate detainees' requests in this regard (Ecuador).</p>

<sup>69</sup> Ecuador, Code for Children and Adolescents, Articles 395 and 80.

<sup>70</sup> Mexico, General Law on Preventing and Sanctioning Torture, Article 41.

<sup>71</sup> Ecuador, Comprehensive Organic Criminal Code, Article 624.

<sup>72</sup> Ibid. Article 6 (III).

<sup>73</sup> 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.

## 10. Challenges identified and steps needed for implementation

### a. Challenges identified in practice

- Persons in custody and their families are unaware of their right to request a medical examination.
- Persons in custody may fear reprisals if they request a medical examination and inform healthcare staff that they have been subjected to ill-treatment or torture.
- If the medical examination is performed in public hospitals, healthcare staff may be reluctant to perform an assessment of detainees and provide a diagnosis – although they do perform the examination.
- Access to a medical examination depends on will of police authorities, and these are sometimes conducted in the presence of officers.
- The results of the medical examination are not communicated to the detainee.
- Medical staffs conducting the examinations are not institutionally independent from detaining authorities, such as the police.
- Special safeguards are not provided for in the cases of persons in situations of vulnerability, such as children and adolescents, LGBTI people, people with disabilities, and the elderly, either in legislation or in practice.

### b. Steps to be taken to implement the safeguard

- Incorporate into domestic law the right to have a thorough and independent medical examination (including a psychological examination) within the first few hours of police custody.<sup>74</sup>
- Inform persons in police custody and their families of the right to request a medical examination, including detailed information on the procedure for the examination and the staff who will perform it.
- Provide medical staff in contact with detainees with training on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).
- Maintain secure electronic records to safeguard the confidentiality of medical data and reports.
- Facilitate inter-agency coordination, for example with the Red Cross, to ensure that police stations have permanent access to paramedics.

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<sup>74</sup> SPT, Report on the visit of the SPT to Paraguay, (2010), UN Doc CAT/OP/PRY/1, §93.

## Annexes

### A. International and regional human rights standards:

- [Principles 24-26](#), Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.
- [Rules 24-27](#) (Health care), UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules).
- [Rules 6, 10, 11.](#), UN Rules for the Treatment of Women prisoners and non-custodial measures for women offenders (Bangkok Rules) .
- [Principle IX \(3\) and X](#), Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.
- Inter- American Court of Human Rights, [Case of Bulacio v. Argentina](#), §131.
- [Guideline 20 \(d\) and 30](#), Robben Island Guidelines for the Prohibition and Prevention of Torture in Africa.
- UN Human Rights Council Resolution 31/31 on safeguards to prevent torture during police custody, 2016, [A/HRC/RES/31/31](#)
- UN, Interim report of the Special Rapporteur on torture, 2013, [A/68/295](#), §51-53.
- Juan E. Méndez, United Nations General Assembly, Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 August 2016, [A/71/298](#), §88-89.

### UN Committee against Torture and Subcommittee on Prevention of Torture reports:

- CAT, [Concluding observations](#) on the fifth and sixth periodic reports of Mexico, 2012, §17.
- CAT, Concluding observations on the seventh periodic review of Paraguay, 2017, §10-11.
- SPT, Report of the visit of the SPT to Argentina, 2013, [CAT/OP/ARG/1](#), §20-21.
- SPT, Report on the visit of the SPT to Benin, 2011, [CAT/OP/BEN/1](#), § 91.
- SPT, Report on the visit of the SPT to Brazil, 2012, [CAT/OP/BRA/1](#), § 37.
- SPT, Report on the visit of the SPT to Gabon, 2015, [CAT/OP/GAB/1](#), § 41.
- SPT Report on the visit of the SPT to Honduras, 2010, [CAT/OP/HND/1](#), § 155.
- SPT, Report on the visit of the SPT to the Maldives, 2009, [CAT/OP/MDV/1](#), § 109.
- SPT, Report on the visit of the SPT to Paraguay, 2010, [CAT/OP/PRY/1](#), § 98.

### See also:

- APT, [Monitoring Police Custody a practical guide](#), p. 128-133.
- APT, [Outcome Report](#) of the Symposium on Procedural Safeguards in the first hours of police custody 2017, p. 13.
- CPT, [Developments concerning CPT standards in respect of police custody](#), 2002.
- Amnesty International, [Fair Trial Manual Second Edition](#), 2014, p. 55.
- IACHR, [Report on the Human Rights of Persons Deprived of Liberty in the Americas](#), §162-170.

## B. National legislation

- **Constitutions**

State	Regulations	Text
Salta Province in Argentina	<a href="#">Constitution of Salta Province</a>	Article 19. Personal freedom. (...) Every detainee must be notified of the cause of the arrest in an understandable and authoritative manner and immediately brought before the competent judge, <b>who will immediately order a psychological and physical examination of the detainee.</b>

- **Codes of Criminal Procedure**

State	Regulations	Text
Argentina	National Code of Criminal Procedure	Article 184. Officials in the police or security forces shall have the following powers (...): 8. To apprehend the alleged offenders in the cases and manner authorised by this Code and, if the requirements of Article 205 are met, to order that they be held incommunicado for a maximum of 10 hours, which may not be extended for any reason without a court order. <b>In such cases, a medical report must be issued that verifies the person's psychological and physical state at the time of the arrest.</b>
Salta Province in Argentina	<a href="#">Salta Code of Criminal Procedure</a>	Article 97. Immediate medical examination. <b>If the accused is apprehended at the time of or shortly after the act has been committed, he or she shall be examined immediately by a medical officer to assess his or her mental state</b> or the possibility of intoxication through alcohol consumption or narcotic substances, unless the offence in question does not justify such an examination.
Ecuador	Comprehensive Organic Criminal Code	Article 683. Mandatory health examination. <b>Every person shall undergo a medical examination prior to being admitted to a place of deprivation of liberty and shall be provided with care and treatment, if needed.</b> This examination shall be conducted in a public health unit. If the person shows signs that suggest that he or she has been subjected to torture, cruel, inhuman or degrading treatment, the health professional conducting the examination shall inform the competent authority at the centre, who shall submit the complaint and the medical examination to the Public Prosecutor's Office.
Honduras	<a href="#">Code of Criminal Procedure</a>	Article 282. Rules governing a person's arrest or detention. The National Police shall act in accordance with the following rules: (...) 6) inform the arrested or detained persons (...) <b>of their right to be examined by a medical examiner or, if such a person cannot be present without considerable delay, by another available doctor who may record their physical condition and treat them if needed.</b> (...)
Mexico	<a href="#">National Code of Criminal Procedure</a>	Article 152. Rights of the detainee. The authorities executing an arrest in flagrante delicto or in urgent cases should ensure that the person has full and clear knowledge of the rights listed below at any stage of the custody: (...) VII. <b>The right to clinical care</b> if he or

State	Regulations	Text
		she is ill, injured or appears to be suffering from a mental disorder.
Peru	<a href="#">Code of Criminal Procedure</a>	<p>Article 71. The defendant's rights</p> <p>2. The Judges, Prosecutors or the National Police must inform the accused immediately and in a manner that can be understood that he or she has the right:</p> <p><b>f) to be examined by a medical examiner or, failing that, by another health professional, if his or her health condition requires it.</b></p>

- **Anti-torture law**

State	Regulations	Text
Mexico	<a href="#">General Law to Prevent, Investigate and Punish Torture and Other Cruel Treatment or Punishment</a>	<p>Article 38. In all cases where the victims need to be examined, the experts must obtain the victims' informed consent or refusal, which must be in writing and signed by the victims before they are examined, unless the victim is unable to provide such consent because of the injuries he or she has sustained or for other reasons, in which case authorisation must be obtained from a family member or the judicial authority.</p> <p><b>Article 46.</b> Any person deprived of his or her liberty shall, in accordance with Article 38 of this Law, be examined by a medical examiner or a practitioner of the person's choice within a period not exceeding twelve hours after his or her arrest, before and after the statement before the Public Prosecutor's Office.</p> <p>The person conducting the medical examination must issue the corresponding certificate immediately. If the person is injured, the person conducting the medical examination should include detailed information on all the injuries, take colour photographs of them and, where possible, ascertain the causes of the injuries. The certificate must also reference whether the detained person has a serious mental health problem.</p> <p>Article 47: If the medical examiner or practitioner appointed by the detained person finds evidence of torture, he or she must use the corresponding legal procedure to request that a specialised medical expert provide a medical-psychological opinion in accordance with the Istanbul Protocol. He or she shall also give immediate notice to the competent authorities to commence investigations in accordance with this Law.</p>

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

State	Regulations	Text
Argentina, Mendoza Province	<a href="#">Provincial Law No. 6722 Organic Law of the Police of Mendoza</a>	Article 12. Every person deprived of his or her liberty shall have the right to: 5. A medical examination to check their psychological and physical state at the time of the deprivation of their liberty and, if necessary, to receive immediate medical assistance.
Peru	<a href="#">Manual of Human Rights applied to the Police Force</a>  (Ministerial Resolution No. 1452-2006-IN)	Page 17, paragraph 2 (b). Rights of the detainee:  To the medical examination.
Uruguay	<a href="#">Law on Police Procedure No. 18315</a>	Article 16. (Care for persons in police custody). The police officers shall ensure the health and physical integrity of any persons in their custody is fully protected. They will, in particular, take immediate steps to provide medical and/or psychological care if needed.  Article 51. (An assessment of the state of health of the person who has been arrested or taken into custody). If the person who is admitted has been detained or taken into police custody is found to be injured or in a suspected state of intoxication from alcohol or other substances, the police should seek medical support and provide immediate care.

- **Other laws**

State/Province	Regulations	Text
Ecuador	<a href="#">Code on Children and Adolescents</a>  Articles 80 and 395	Compulsory health examination: Adolescents shall undergo a medical examination when they are admitted and when they leave the Centres for Adolescent Offenders and shall, if necessary, be given medical care and treatment.  Article 80. Forensic examinations. Forensic examinations for a child or adolescent shall be bound by strict confidentiality conditions and respect for the patient's privacy and physical and emotional integrity.
Uruguay	<a href="#">Law No. 17823 Code on Children and Adolescents</a>  Article 76 g)	If the adolescent is detained in accordance with Article 74 (c), the arresting authority shall be fully responsible for: (...)  g) <b>Transfers between institutions and the court, which must be preceded by a medical examination.</b>

- **Decrees and institutional resolutions**

State	Regulations	Text
Chile	<a href="#">Exempt Decree No. 2534 of the Ministry of Justice</a>	This Decree provides that the police officers in charge of the detention must verify the detainee's state of health and complete the special reports created for this purpose and, in exceptional circumstances, transfer the detainee to the health facilities to confirm the injuries, if the detainee has injuries, illnesses, is a minor or refuses to sign, or if requested by the Public Prosecutor's Office, the detainee or the police officer. <sup>75</sup>
Mexico	<a href="#">National Public Security Council's National Protocol for First Responders</a>	<b>Detention.</b> Upon arrest, the First Responder shall proceed as follows: 3. Actions taken by the First Responder prior to acting. a. Medical certificate. <b>He or she will proceed to obtain the medical certificate</b> , which may be issued by the ministerial offices according to existing resources or by the Public or Private Health Institutions.
Paraguay	Resolution No. 897/2015 of the Ministry of Public Health and Social Welfare	Article 1: To provide for <b>medical inspections to be carried out in health establishments run by the Ministry of Public Health and Social Welfare for persons who have been detained and are brought in by the police authorities</b> , either at the request of the party concerned or at the request of the authority involved and/or the attending physician, with the information required for this purpose.
	Resolution 1344/2015 adopted by the National Police Headquarters	"Establishes the minimum conditions of deprivation of liberty in police stations and the institutional communication mechanism to facilitate the right to defence and compliance with procedural deadlines" and provides in Article 1.e) Access to a medical professional, if needed, under strict police supervision.

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<sup>75</sup> Chilean Police, Analysis of the Annual Report 2013: National Human Rights Institute's Human Rights and Policing Programme, (2013), p.7.