

## UN Convention Against Torture:

联合国《禁止酷刑公约》：

### Exclusion of evidence obtained by torture

#### 排除酷刑所得证据

This document is a collection of relevant materials on Article 15, the exclusionary rule, of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 15 excludes the use of any evidence which has been obtained as a result of torture, except against a person accused of torture.

这份文件汇集了《联合国禁止酷刑和其他残忍，不人道或有辱人格的待遇或处罚公约》第 15 条，非法证据排除规则的有关材料。第 15 条排除使用通过酷刑获得的证据，除非用于针对被控施用酷刑者。

#### Introduction

#### 引言

The proscription of torture in international law is absolute and non-derogable. This universally accepted norm is set out in international law, notably: Article 5 of the Universal Declaration of Human Rights; Article 7 of the International Convention on Civil and Political Rights; and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

国际法对酷刑的禁止是绝对及不可减损的。这一普遍接受的标准规定在国际法中，特别是：《世界人权宣言》第 5 条；《公民及政治权利国际公约》第 7 条；以及《联合国禁止酷刑和其他残忍，不人道或有辱人格的待遇或处罚公约》（CAT）。

The aim of the law is to protect both the dignity and the physical and mental integrity of the individual. The law places a duty on states to protect everyone against acts of torture and other cruel treatment through legislative and other measures.

该法的目的是保护个人的尊严及身心健康。法律规定国家有义务通过立法和其他措施保护所有人不遭受酷刑和其他残忍对待。

#### The Exclusionary Rule 排除规则

The exclusionary rule is set out in Article 15 of the Convention Against Torture.

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排除规则规定于《禁止酷刑公约》的第15条：

“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”

“每一缔约国应确保在任何诉讼程序中，不得援引任何业经确定系以酷刑取得的口供为证据，但这类口供可用作被控施用酷刑者刑求逼供的证据。”

Why is there an exclusionary rule?

为何要有排除规则？

The main justification for the exclusionary rule is that prohibiting the use of evidence obtained as a result of torture or other cruel treatment will discourage its use by removing incentives. Another reason for the rule is that statements made as a result of torture are inherently unreliable and undermine the right to a fair trial.

使用非法证据排除规则的主要理由是禁止使用通过酷刑或其他虐待获得的证据，能够去除使用酷刑的动机，从而打击酷刑。另一个原因是通过酷刑取得的口供本质上是不可靠的，损害了公平审理的权利。

Not only statements, but all types of evidence obtained by torture must be deemed inadmissible. This rule should apply not only to criminal proceedings, but to any type of legal and administrative proceedings.

通过酷刑取得的所有类型的证据，不仅仅只是口供，都不得采信。排除规则应该不仅适用于刑事诉讼，而且适用于任何类型的法律和行政诉讼。

Definition of torture under international law

国际法对酷刑的定义

The definition of torture in international law is set out in Article 1 of the Convention Against Torture.

国际法对酷刑的定义规定于《禁止酷刑公约》的第1条：

“The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

“‘酷刑’是指为了向某人或第三者取得情报或供状，为了他或第三者所作或涉嫌的行为对他加以处罚，或为了恐吓或威胁他或第三者，或为了基于任何一种歧视的任何理由，蓄意使某人在肉体或精神上遭受剧烈疼痛或痛苦的任何行为，而这种疼痛或痛苦是由公职人员或以官方身份行使职权的其他人所造成或在其唆使、同意或默许下造成的。纯因法律制裁而引起或法律制裁所固有或附带的疼痛或痛苦不包含在内。”

There are four key elements to the definition.

这一定义有四个关键因素。

- i) the infliction of severe pain or suffering, whether physical or mental;
  - 1) 使人遭受剧烈疼痛或痛苦，无论是肉体上还是精神上；
- ii) it must be inflicted by a public official or another person acting in an official capacity, or at their instigation or with their consent or acquiescence;
  - 2) 必须由公职人员或以官方身份行使职权的其他人所造成，或在其唆使、同意或默许下造成；
- iii) it must be intentional;
  - 3) 必须是蓄意的；
- iv) there must be a specific purpose: it may be intended to obtain information or a confession from the victim, or to punish the victim for his or another person's actions, or to intimidate or coerce him (or the group to which he belongs), or for any other reason based on discrimination.
  - 4) 必须有特定的目的：为了向酷刑受害人取得信息或供述，因受害人或其他人的行为而惩罚受害人，为了恐吓或威胁他（或他所属的团体），也可能是为了基于歧视的任何其他理由。

International law does not provide a list of prohibited acts which constitute torture and other cruel, inhuman or degrading treatment or punishment. Any distinctions between torture and other cruel treatment (Article 16) depend on the nature, purpose and severity of the treatment applied.

国际法没有一一罗列构成酷刑和其他残忍，不人道或有辱人格的惩罚待遇的被禁止的各类行为。应根据所施加待遇的性质、目的和严重程度来区分酷刑和其他残忍待遇（第 16 条）。

## Allegations of Torture

### 指控酷刑

It is inherently difficult for a victim of torture to collect evidence to support their allegation since legal files, investigation and detention records are normally held by the authorities.

Moreover, experienced interrogators are skilled at ensuring there are no visible marks on their victims.

酷刑受害者收集证据来支持他们的控诉有着根本性的困难，因为法律卷宗、调查和拘留记录通常由当局持有。而且有经验的审讯人擅长在受害者身上不留任何痕迹地实施酷刑。

The burden of proof of absence of coercion in relation to evidence must, therefore, lie with the prosecuting authority or the courts. The victim can only be expected to demonstrate that the allegation of torture is well-founded.

举证责任由检察机关或法院承担，证明证据不是通过威胁行为所得。受害人只需要证明指控酷刑是有根据的。

The Committee Against Torture has repeatedly stated that the absence of visible or recognisable marks on the victim is not a sufficient basis for ruling that a person was not subject to torture.

禁止酷刑委员会一再表示，受害人身上没有可见的或可辨识的痕迹的理由不足以判定该人没有遭受酷刑。

Among the suggested procedures for testing a confession for signs of torture are:

判断口供的酷刑迹象的建议程序包括：

- Access to a lawyer
- 可以获得律师代理
- Detailed detention records
- 详实的拘留记录
- Independent medical exam at beginning and end of custody
- 在拘留一开始和最后进行独立的医学检查
- Recording all interrogations
- 记录所有的讯问

All records should be available to be critically examined by a judge.

所有记录都应提供给法官进行仔细审查。

### **Independent medical exams**

#### **独立医学检查**

Under Article 12 of the Convention states are obliged to undertake an investigation whenever there are indications or complaints of torture or other ill-treatment. An “effective investigation” must be “prompt, impartial, independent and thorough (comprehensive)”.

公约第 12 条规定任何时候有酷刑或其他虐待迹象或投诉，国家都有责任进行调查。“有效的调查”必须“及时，公正，独立和彻底（全面）”。

The Istanbul Protocol is a manual published by the United Nations on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment. The manual includes information on relevant international legal standards, ethical codes and the legal investigation of torture as well as detailed considerations on how persons (lawyers, medical doctors, psychologists, psychiatrists, human rights monitors) should conduct interviews with alleged victims of torture. The manual also provides information on physical and psychological evidence of torture, guidelines for forensic medical reports and examples of diagnostic tests.

伊斯坦布尔议定书是联合国发布的有效调查和记录酷刑和其他残忍，不人道或有辱人格的待遇或处罚的手册。该手册包括相关国际法律标准、道德准则和酷刑的法律调查，以及对相关人士（律师、医生、心理学家、精神病医师、人权监察员）应如何与声称遭受酷刑的受害者进行访谈的详细考虑。手册还提供了酷刑的生理和心理证据，法医报告指南和诊断实例等信息。

## International Law Readings

### 国际法解读

#### *Contents*

#### 内容

- The Exclusionary Rule: international law prohibits the use of evidence obtained through torture. APT Background Bulletin, 27 July 2012
- 非法证据排除规则：国际法禁止使用通过酷刑获得的证据。APT 背景简报，2012 年 7 月 27 日  
*The Association for the Prevention of Torture is a leading international NGO in Geneva. Further information on the exclusionary rule (English only) can be found at these pages on their website:*  
*预防酷刑协会是一家位于日内瓦的优秀国际非政府组织。关于非法证据排除规则的更多信息（仅英文版本）见其网站下列页面：*
- Reports of the Special Rapporteur on torture and cruel, inhuman, degrading treatment or punishment, Juan E. Méndez.
- 酷刑和其他残忍，不人道，有辱人格的待遇或处罚特别报告员的报告，Juan E. Méndez
  - March 2014. A/HRC/25/60. Sections III and IV. paragraphs 17-83. Report focuses on the exclusionary rule.
  - 2014 年 3 月。A/HRC/25/60。第三和第四部分。第 17-83 段。报告重点是排除规则。
  - September 2014. A/69/387. Sections III and IV. Paragraphs 17-74. Report focuses on role of forensic science in investigations and prosecutions.

- 2014 年 9 月。A/69/387。第三和第四部分。第 17-74 段。报告重点是法医学在侦查和起诉中的作用。

*The Special Rapporteur makes regular reports to the United Nations General Assembly on thematic issues and country visits.*

特别报告员定期向联合国大会提交主旨事务和国别访问报告。

- United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 《联合国禁止酷刑和其他残忍，不人道或有辱人格的待遇或处罚公约》  
*The Convention was adopted by the UN General Assembly on 10 December 1984 and entered into force on 26 June 1987.*  
公约于 1984 年 12 月 10 日联合国大会通过，1987 年 6 月 26 日生效。
- CCPR General Comment No. 20 (1992) on Article 7 “Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment”. 10 March 1992.
- CCPR 对第 7 条的一般性意见第 20 号（1992）“替换关于禁止酷刑和其他残忍的待遇或处罚的一般性意见 7”。1992 年 3 月 10 日。  
*This general comment published by the Human Rights Committee replaces general comment 7 (1982) reflecting and further developing it.*  
本一般性意见由人权理事会发布，取代一般性意见 7（1982），是对意见 7 的反映和进一步发展。
- Committee Against Torture General Comment No. 2 “Implementation of article 2 by States parties”. CAT/C/GC/2. 24 January 2008.
- 禁止酷刑委员会一般性意见 2 “缔约国实施第 2 条”。CAT/C/GC/2。2008 年 1 月 24 日。  
*This is an authoritative interpretation of Article 2 of the Convention regarding the obligation on States parties to take effective measures to prevent torture.*  
这是对公约第 2 条，缔约国有义务采取有效措施防止酷刑的权威解释。
- Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- 伊斯坦布尔议定书：关于有效调查和记录酷刑和其他残忍，不人道或有辱人格的待遇或处罚的手册  
*The manual is part of the Professional Training Series of the Office of the United Nations High Commissioner for Human Rights and was published in 1999. The Principles of Effective Investigation were adopted by the UN General Assembly in 2000.*  
该手册是联合国人权高级专员办公室专业培训系列的一部分，于 1999 年发布。  
《有效调查原则》于 2000 年由联合国大会通过。

## *Other useful sources*

### 其他有用资源

- UN OHCHR Jurisprudence database. <http://juris.ohchr.org/>
- 联合国人权高专办判例数据库 <http://juris.ohchr.org/>
- UN OHCHR Recent jurisprudence.
- 联合国人权高专办近期判例  
<http://juris.ohchr.org/en/search/results?Bodies=1&sortOrder=Date>
- Website of the UN Committee Against Torture
- 联合国禁止酷刑委员会网站  
<http://www.ohchr.org/CH/hrbodies/cat/pages/catindex.aspx>
- Website of the UN Special Rapporteur on Torture
- 联合国酷刑特别报告员网站  
<http://www.ohchr.org/CH/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>