

Center for the Victims of Torture

Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.cvt.org/enddetention>

Campaign and Advocacy

For the past decade, there has been growing concern about the arbitrary use of immigration detention in countries worldwide, including the United States. As UNSpecial Rapporteur on Torture Nils Melzer explained in his 2018 [report](#) to the UN Security Council: While not every case of arbitrary detention will automatically amount to torture or ill-treatment, there is an undeniable link between both prohibitions . . . experience shows that any form of arbitrary detention exposes migrants to increased risks of torture and ill-treatment.

Yet, there has been very little analysis of the immigration detention system in the U.S. under international law prohibiting torture and ill-treatment. This backgrounder, titled, "**Arbitrary & Cruel: How U.S. Immigration Detention Violates the Convention against Torture and Other International Obligations**," attempts to fill this gap.

The backgrounder analyzes the [U.N. Convention against Torture and Cruel, Inhuman and Degrading Treatment and Punishment \(Convention against Torture\)](#) and other international and regional legal authorities. It draws on CVT's decades-long clinical experience providing care to survivors of torture, including formerly detained asylum seekers, and highlights reports of wide-ranging abuses at centers such as Stewart and Irwin County Detention Centers, located in Georgia where CVT has operated a survivor of torture program since 2016.

The backgrounder ultimately concludes that the U.S. immigration detention system is arbitrary and exposes migrants to torture and other forms of ill-treatment in violation of the U.S. obligations under international law. Indeed, it reaches the inescapable conclusion that the system's defects are structural and pervasive to a degree that the system must be phased out entirely to ensure U.S. compliance with international law.

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CVT's report highlights the following key points.

Arbitrary detention is absolutely prohibited under international law. All major international and regional instruments relating to the protection and promotion of human rights contain the prohibition, including the International Covenant on Civil and Political Rights (ICCPR). Article 9 of the ICCPR provides that No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established [by law](#). "The prohibition is also part of legally binding customary [international law](#). To avoid classification as arbitrary, immigration detention must be an exceptional measure of [last resort](#). When it is used, it must be justified as proportionate, reasonable [and necessary](#)."

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Torture and other cruel, inhuman and degrading treatment is absolutely prohibited [under international law](#). While the Convention against Torture is the primary convention concerned with the eradication of torture, the prohibition against torture is also found in numerous other [international treaties](#). The highly ratified ICCPR states, No one shall be subjected to torture or to cruel, inhuman or degrading treatment or [punishment](#). The prohibition on torture and other ill-treatment is also found in customary [international law](#). As a State party to the Convention against Torture, the ICCPR and other relevant treaties, the U.S. is legally obligated to root out torture and CIDT in all of its systems. For an act to amount to torture, there must be (1) severe pain or suffering, whether physical or mental; (2) intentionality; (3) specific purpose; and (4) official capacity.

Despite U.S. international legal obligations to prevent torture and other ill-treatment, the U.S. immigration detention system is replete with violations of these obligations.

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UN bodies have consistently reinforced that States cannot abdicate their responsibilities to detainees, including their international legal responsibility for acts of torture and other forms of ill-treatment, by using private [detention centers](#). The UN Working Group on Arbitrary Detention has clearly stated the following: If a state outsources the running of migration detention facilities to private companies or other entities, it remains responsible for the way such contractors carry out that delegation. The State in question cannot absolve itself of the responsibility for the way the private companies or other entities run such detention facilities, as a duty of care is owed by the State to those held in such [detention](#). "The Committee against Torture has stated, where detention centres are privately owned or run, such as in Georgia where Stewart, Irwin and other detention centers are operated by private prison companies, the Committee considers that personnel are acting in an official capacity on account of their responsibility for carrying out the State function without derogation of the obligation of State officials to monitor and take all effective measures to prevent torture and [ill-treatment](#)."



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