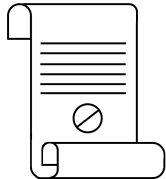


# TORTURE PROHIBITION AND PREVENTION

The prohibition of torture and other forms of ill-treatment is an absolute and peremptory norm (*jus cogens*) of international law. As such, it cannot be derogated, even in a state of war or emergency, and it can be enforced against a state even if it has not ratified any of the relevant treaties. States are not just obligated to respect the prohibition of torture, they are also required to take positive measures to prevent its occurrence.

## TORTURE IN INTERNATIONAL LAW

### CORE INTERNATIONAL HUMAN RIGHTS TREATIES



"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

**1948 Universal Declaration of Human Rights**

Article 5

**1966 International Covenant on Civil and Political Rights**

Article 7

#### 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

The CAT affirms that "[n]o exceptional circumstances whatsoever" justify torture. It requires states to take effective measures to prevent, investigate and punish the use of torture. States are not allowed to return, expel or extradite persons to any country where they may face torture. Victims of torture (or their dependents) must have an enforceable right to compensation.

#### 2002 Optional Protocol to the Convention against Torture (OPCAT)

The OPCAT establishes a global torture prevention system. Each State Party to the OPCAT is obligated to set up independent national bodies (Preventive National Mechanisms or NPMs) to monitor places of detention and formulate recommendations to prevent torture.

### HUMANITARIAN AND CRIMINAL LAW

The Geneva Conventions of 1949 and their Additional Protocols of 1977 contain a number of provisions that absolutely prohibit torture and ill-treatment in armed conflict. Torture is considered both a war crime and a crime against humanity by the Rome Statute of the International Criminal Court (ICC) as well as the Statutes of the International Criminal Tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR).

### REGIONAL TREATIES

The prohibition of torture is codified in a number of regional human rights treaties, e.g. the European Convention for the Protection of Human Rights and Fundamental Freedoms, the African Charter on Human and Peoples' Rights and the American Convention on Human Rights. There are also two regional Conventions on Torture: the European Convention for the Prevention of Torture and the Inter-American Convention to Prevent and Punish Torture.

## MONITORING AND COMPLIANCE MECHANISMS

### UN General Assembly

Each year the General Assembly adopts a resolution on torture, which reflects the latest agreed standards on torture prohibition and prevention.

### Special Rapporteur on Torture

The UN Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment is one of the special procedures overseen by the Human Rights Council (HRC). He or she:

- transmits urgent appeals to states regarding allegations of torture;
- conducts fact-finding country visits; and
- reports annually to the HRC and the General Assembly.

His/her mandate covers all countries, even those that have not ratified the CAT.

### Committee against Torture

The Committee is an independent expert body which monitors implementation of the CAT by reviewing State Reports, conducting confidential inquiries and considering individual communications. State Parties are required to submit reports every four years. The Committee reviews these reports drawing on additional information from a range of sources, including civil society input. It then issues conclusions and recommendations, which the reporting state must publish and act upon.

#### Subcommittee on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment (SPT)

Created by the OPCAT, the SPT is a new kind of treaty body in the UN human rights system. It is composed of 25 independent experts from various regions of the world. The core aspects of its mandate are:

- to monitor conditions in any place where persons may be deprived of their liberty through country visits; and
- to advise State Parties on the establishment and functioning of NPMs.

NPMs and the SPT can visit any type of place where persons may be deprived of their liberty at any time.

### International Courts and Tribunals

Crimes of torture can be prosecuted by the ICC or ad-hoc international tribunals if national courts are unable or unwilling to do so.

### ICRC Detention Visits

The International Committee of the Red Cross (ICRC) is mandated, through the Geneva Conventions, to visit places of detention during international armed conflicts in order to assess the treatment and well-being of the detained. The ICRC uses the information collected from detention visits to engage in confidential dialogue with national authorities.

### Regional Mechanisms

There are different regional mechanisms (Committees and Special Rapporteurs) with mandates related to torture. For example, the Committee for the Prevention of Torture oversees compliance with the European Convention for the Prevention of Torture. It has a fact-finding and reporting function similar to the SPT (and served as a model for the SPT) and its independent experts have unlimited access to all places of detention of the Member States of the Council of Europe.