Module 5. Preventing and Prohibiting Torture

5.1 Preventing and prohibiting torture

These materials will help participants to understand:

- How we define torture?
- The role of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in preventing torture.
- The role of The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT) in preventing torture.

How we define torture?

The maltreatment and torture of prisoners constitute a global problem. Prison authorities should ensure that prisoners are treated according to the rule of law, respecting their human rights, and use the imprisonment period to prepare them for life after release. However, many countries have outdated laws and rules governing prisons, with prison departments often under police or military control.

Torture is a subgroup of collective violence, defined specifically by the severity of the pain, the intentionality, the purpose, and the perpetrator. Torture is prohibited by international law, and there are no circumstances that justify an exception to this prohibition. Nevertheless, according to human rights reports, torture is practised in about 130 countries and is widespread and systematically used in 80–100 countries (Albano et all, 2023).

Art.1 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, provided by the General Assembly resolution in 1975, defines torture as **“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners”.**

It is essential to recognize that while international and national regulations aim to prevent torture in prisons, challenges persist. Awareness, enforcement, and oversight vary from one country to another. The role of civil society organizations, independent monitoring bodies, and international scrutiny is vital in promoting adherence to these regulations and preventing torture in prison systems.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

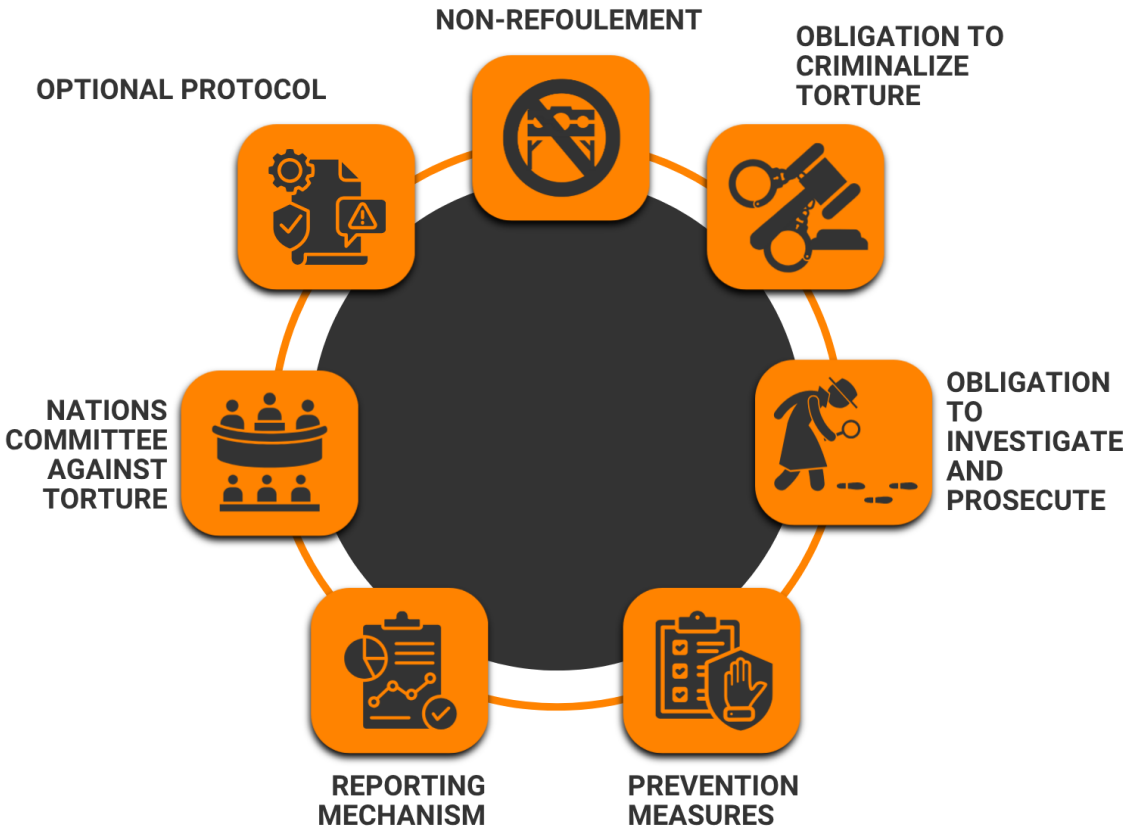
The "Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" is the key international human rights document for protection against torture. The document was adopted by the United Nations in 1984 and entered into force on June 26, 1987, and as of my knowledge cutoff date in January 2022, has been ratified by a large number of countries.

The primary objective of the Convention against Torture is to prevent and combat the use of torture and other forms of cruel, inhuman, or degrading treatment or punishment. It sets out a comprehensive framework for the prohibition, prevention, and prosecution of such acts. Some key provisions and principles of the convention include:

- **The document emphasizes that torture is absolutely prohibited under all circumstances**.
- **Non-refoulement**: The convention prohibits the extradition or return of a person to a country where they would likely face torture or ill-treatment.
- **Obligation to criminalize torture**: State parties are required to make torture a criminal offense under their domestic laws. Perpetrators of torture should be subject to legal sanctions, and these sanctions should be proportionate to the gravity of the offense.
- **Obligation to investigate and prosecute**: States are obliged to conduct prompt and impartial investigations into allegations of torture, prosecute those responsible, and provide redress to victims.
- **Prevention measures**: States are encouraged to take preventive measures, such as educating law enforcement personnel, and ensure that individuals deprived of their liberty are treated in accordance with international standards.
- **Reporting mechanism**: State parties are required to submit periodic reports to the United
- **Nations Committee against Torture, an expert body responsible for monitoring the implementation of the convention**.

- **Optional Protocol**: The convention has an Optional Protocol that establishes a system for the prevention of torture and other cruel, inhuman, or degrading treatment or punishment. It permits the establishment of National Preventive Mechanisms (NPMs) to visit places of detention, conduct regular inspections, and make recommendations for improving conditions and preventing torture.

THE CONVENTION AGAINST TORTURE



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The Convention against Torture is a significant international instrument aimed at eradicating torture and promoting human rights and the rule of law. It plays a crucial role in holding governments accountable for their treatment of individuals in custody and contributes to the prevention of torture and ill-treatment in various contexts, including prisons and detention facilities.

5.2 OPCAT

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (OPCAT) is an international treaty that supplements and complements the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). OPCAT was adopted by the United Nations General Assembly in 2002 and entered into force in 2006. OPCAT is designed to prevent torture and other forms of ill-treatment in places of detention, such as prisons, police cells, and immigration detention facilities. It establishes a framework for the prevention of torture by creating a system of regular, independent monitoring of these places of detention.

Key features of OPCAT include:

- **National Preventive Mechanisms (NPMs)**: OPCAT requires each participating state to establish or designate a National Preventive Mechanism, which is responsible for visiting and monitoring places of detention, mental hospitals and other closed facilities within the country.
- **NPMs are mandated to prevent torture and other forms of ill-treatment** by conducting regular, unannounced visits, making recommendations for improvement, and raising concerns about conditions and treatment with relevant authorities.
- **Transparency and reporting**: States parties to OPCAT are required to submit periodic reports on the measures they have taken to prevent torture and ill-treatment. These reports are reviewed by the Subcommittee on Prevention of Torture (SPT), an independent body established under OPCAT.
- **Subcommittee on Prevention of Torture (SPT)**: The SPT is an international body of experts responsible for monitoring the implementation of OPCAT. It conducts visits to places of detention in participating states, provides guidance, and offers recommendations to improve conditions and prevent torture. The SPT's reports are confidential, but it can choose to make them public if the state in question agrees.
- **Cooperation and assistance**: OPCAT promotes international cooperation and the sharing of best practices to prevent torture. States are encouraged to assist one another in implementing preventive measures.

OPCAT is a significant international instrument for the prevention of torture and inhuman or degrading treatment in detention facilities. By establishing a system of regular monitoring and independent oversight, it aims to enhance transparency,

accountability, and human rights protections in places of detention worldwide. States that become parties to OPCAT commit to taking measures to prevent torture, and they work together to ensure that conditions in detention facilities comply with international human rights standards.

Example of regional document preventing tortures

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment was adopted on November 26, 1987, by the Council of Europe's member states. It is considered one of the most important human rights treaties in Europe, alongside the European Convention on Human Rights. All 47 member states of the Council of Europe have ratified this convention. The convention aims to prevent human rights abuses in prisons and is monitored by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The CPT checks prison conditions and can make unannounced visits to penitentiary institutions. Its work is closely linked to the European Court of Human Rights. If member states fail to comply with human rights standards in the prison system, they may face convictions and sanctions from the European Court of Human Rights. The convention provides a legal avenue for individuals in prisons to address grievances and maltreatment by bringing cases to the European Court of Human Rights. NGOs like the European Prison Litigation Network (EPLN) work to enhance the legal protection of prisoners' rights in Europe by employing advocacy and human rights litigation strategies. It's important to note that the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment applies only to Council of Europe member states.

Learn more about The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

References

Albano GD, Guadagnino D, Midiri M, La Spina C, Tullio V, Argo A, Zerbo S. Torture and Maltreatment in Prison: A Medico-Legal Perspective. Healthcare (Basel). 2023 Feb 15;11(4):576. doi: 10.3390/healthcare11040576. PMID: 36833110; PMCID: PMC9956078.