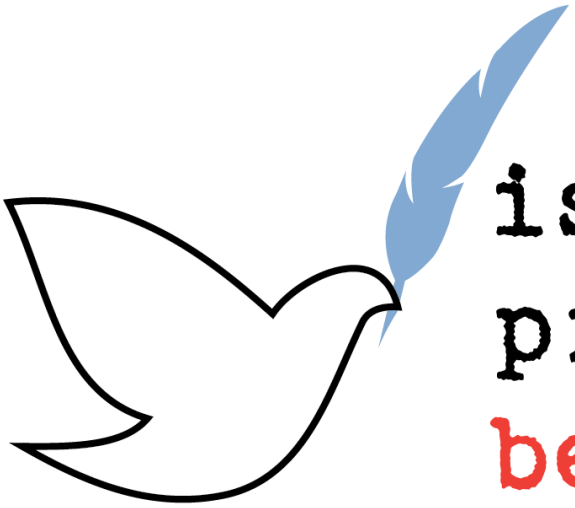

istanbul protocol be aware!

Awareness Raising and Training Measures for the Istanbul Protocol in Europe

Definition of Torture and Cruel, Inhuman or Degrading Treatment, and Main Obligations to Prevent Them

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Introduction

In its first chapter, the Istanbul Protocol provides a comprehensive overview of all international and regional legal standards in regard to the prohibition of torture and ill-treatment that were relevant at the time of its drafting. It also provides a comprehensive overview of the obligations derived from these standards. The Protocol clearly mentions that States have a duty to investigate and document acts of torture, which is of utmost importance in order to gather crucial evidence in criminal proceedings and in asylum applications.

📖 *Also look at Chap. I, Part B, 1 (§ 10) of the Istanbul Protocol.*

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which applies to all States Parties (153), is the only universal legal instrument defining the crime of torture. In this chapter, we will therefore closely analyse its definition, and the obligations deriving from it. A review of other legal instruments in the field of the prohibition of torture and ill-treatment will be made in chapter 5 of this series.

📖 *Read the full text of the UNCAT at www2.ohchr.org/english/law/cat.htm*

1. Definition of Torture and Cruel, Inhuman and Degrading Treatment or Punishment (Ill-treatment)

Many legal instruments have been developed over the last decades, which mention the prohibition of torture and ill-treatment, but the UNCAT is the only universal treaty defining it. In this chapter, we will therefore analyse the different elements of this definition and the main obligations derived from the UNCAT. It is however important to note that the prohibition of torture and ill-treatment is part of customary international law, and considered to be *jus cogens*[1].

📖 *For more information on this topic, please read: Nowak / McArthur, The United Nations Convention Against Torture (1),*

📖 *Steven Dewulf, The Signature of Evil (2) and*

📖 *UN Docs, CAT Committee, General Comment No. 2, CAT/C/GC/2, 1998, on the implementation of Article 2 UNCAT*

Since the existence of the Istanbul Protocol is based on the idea of documenting acts of torture and use the evidence gathered in court proceedings or asylum applications, it is of importance to first understand what the definition of torture entails.

Torture is defined in Article 1 of the UNCAT as *"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*

📖 *Note that the only other definition of torture in an international treaty is found in Art. 2 of the Inter-American Convention to*

[1] See International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Furundzija*, Case no. IT-95-17/I-T, 10. Dec. 1998

acquiescence of a public official or other person acting in an official capacity." The definition contains four essential elements forming a comprehensive concept of torture and distinguishing it from ill-treatment.

Firstly, **severe pain or suffering** must be inflicted. This means there has to be a certain intensity of pain or suffering, which naturally depends on the subjective perception of the victim. It is important to note that mental pain or suffering is sufficient (e.g. caused by the threat of death or torture) and by no means does the severity have to be equivalent in intensity to the pain caused by serious physical injury.

Secondly, the pain or suffering must have been inflicted to achieve a certain **purpose**: extraction of a confession; obtaining information from a victim or a third person; punishment, intimidation and coercion; and discrimination. As the wording "such as" suggests, the list of purposes in Article 1 UNCAT is not exhaustive. Other, similar purposes, which have something in common with those expressly mentioned (e.g. with a connection to the interests or policies of the State and its organs) are sufficient.

Thirdly, the pain or suffering must be inflicted **intentionally**. Torture cannot be inflicted by negligence. Intention must also exist with respect to achieving a certain purpose. Both intent and purpose must be determined on an objective basis and not by investigating subjectively what motivated the perpetrator.

Lastly, torture requires the involvement of a **public official**. However, the instigation, consent or acquiescence are sufficient. Thus, State responsibility already exists with the active or passive agreement or the lack of possible intervention by a public official, e.g. when observing torture committed by private actors. This wide concept makes it possible to establish State responsibility in some specific cases related to, inter alia, inter-prisoner abuse, genital mutilation, domestic violence and trafficking in human beings, when the State fails to react. It has to be noted, however, that not all of these cases constitute torture.

The particular severity of torture is reflected in the special position its prohibition takes in international law, which ranks it among the very few **absolute** and **non-derogable** human rights.

The *absolute* nature of the prohibition of torture means that the right to personal integrity and human dignity – the freedom from torture – cannot be balanced against any other right or concern, even if they constitute such important concerns as the protection of national security or other human rights. As such, the prohibition of torture goes further than the protection of the right to life which can be limited under certain very restricted circumstances, such as in the case of imminent danger to the life or health of others. No limitations are permitted regarding the prohibition of torture.

Prevent and Punish Torture

📖 *See e.g. ECtHR, Aksoy v. Turkey, judgment of 18. Dec. 1996, the Court mentions the element of purpose.*

📖 *Note the difference between negligence and omission. Both refer to the failure of doing something, but negligence is unintentional, while omission is intentional.*

📖 *See e.g. ECtHR, Z and Others v. United Kingdom, judgment of 10 May 2001, on the responsibility of the State for failing to protect citizens from abuse committed by private actors*

📖 *The prohibition of torture is absolute and non-derogable under any circumstances.*

📖 *See ECtHR, Tomasi v. France, judgment of 27 Aug. 1992, on the non-derogability of the prohibition of torture under any circumstances*

Furthermore, the prohibition of torture cannot be subject to *derogations*. Under certain circumstances, States normally have the possibility to temporarily suspend (derogate from) a number of human rights obligations in times of national emergencies, such as (civil) war, terrorism or natural catastrophes. However, even if an emergency arises which threatens the life of the nation, a State may not derogate from the absolute prohibition of torture. This prohibition is contained in the major human rights treaties, and in particular in Article 2(2) UNCAT, which stipulates that even under exceptional circumstances such as *"war or a threat of war, internal political instability or any other public emergency"*, the prohibition of torture remains untouchable.

See chapter 5 of this series on the international and regional framework on the prohibition of torture and ill-treatment

Cruel, Inhuman and Degrading Treatment or Punishment (ill-treatment) is not defined in the UNCAT. However, it becomes clear from Article 16, that ill-treatment can be negatively delimited from torture, as not requiring intention or a specific purpose. To qualify as degrading treatment, an act does not even require severe pain or suffering, but the particular humiliation of the victim is sufficient. In practice, the distinction between torture and ill-treatment is not always clear. It was suggested that a differentiation can be made by the intensity of the pain. However, a better way seems to differentiate by the presence or absence of a specific **purpose**. In that regard, a neglecting behaviour, for example, could not qualify as torture, but rather as ill-treatment. If custody officials leave detainees unattended in a cell, without food or water because they forget them and go home for the weekend, they commit ill-treatment rather than torture for the reason that they did not act with a specific purpose, but by negligence.

See emblematic cases related to the intensity of the pain:

ECtHR, Ireland v. United Kingdom, judgment of 18 January 1978.

ECtHR, Soering v. the United Kingdom, judgment of 7 July 1989.

An additional criterion of '**powerlessness'** can help drawing the line between torture and ill-treatment. Torture is predominantly inflicted on persons deprived of their liberty, who find themselves in a situation of powerlessness in the sense that they cannot leave the place where they are held, and are sometimes reduced to complete immobility by shackles, handcuffs and other restraining means. They might furthermore be prevented from calling any relatives, doctors, or lawyers to help them, and are therefore unable to defend or protect themselves. Their complete dependency towards the officials in charge and the imbalance in their relationship leads detainees to be very vulnerable to abuses. This makes torture a particularly horrendous attack on human dignity.

There may be justifiable infliction of severe pain or suffering, e.g. to arrest a criminal suspect, to dissolve a violent demonstration, or in an armed conflict. When such use of force by law enforcement officials is not necessary but disproportionate to the purpose achieved, it qualifies as ill-treatment, prohibited

by international law.

Courts and treaty bodies often do not distinguish between torture and ill-treatment in their judgments and observations. While both are non-derogable, a distinction can still be important since certain obligations under the UNCAT only apply to torture. Above all, the obligation to criminalise acts of torture[2] and apply the principle of universal jurisdiction are obligations related to the prohibition of torture.

2. Criminalisation of Torture and Ill-treatment

The particular severity of torture under international law is also reflected in the explicit obligation of States Parties under Article 4 UNCAT to *"ensure that all acts of torture are offences under its criminal law".* This obligation means that as a minimum all different aspects covered by the definition of torture as contained in the UNCAT have to be punishable under **domestic law** by appropriate sanctions, reflecting the gravity of the crime.

📖 *All countries should include a definition of torture in their criminal law.*

While in principle governments have liberty in the way they enforce this requirement in the domestic legal context, it is difficult, if not impossible, to ensure that all the elements of the definition of torture in the UNCAT be punishable without incorporating this definition in its original formulation as a **distinct criminal offence**. This means that legislators should ideally take the very definition of the UNCAT into their domestic orders to ensure that no elements of the definition be left out. However, if lawmakers prefer to rephrase it, they should in any case make sure that they criminalise torture acts, instead of simply including it in their laws other criminal acts, such as bodily harm or violence. The CAT Committee insisted in its General Comment no. 2 that the practice of criminalising torture by the application and/or accumulation of various provisions incorporated in the national legislation may, in many cases, not be sufficient to cover all prerequisites entailed in the definition of torture in Article 1 UNCAT. In particular, offences such as bodily injury, battery, duress or willful violence may miss the specific elements of purpose and intent, and thus do not replace a proper provision on a crime of torture.

📖 *The definition of torture in any domestic order should contain the same elements as Art. 1 UNCAT.*

Moreover, such criminal offences do not provide an equally comprehensive protection of both the physical and the psychological integrity of human beings. Many methods of torture, such mock executions for the purpose of obtaining a confession or information, do not lead to any physical injuries, but nevertheless amount to the deliberate infliction of severe pain or suffering. They therefore do qualify as torture, but could not be put under any

[2] Nowak, M., McArthur, E., Op. Cit. para. 46

other offences. It is therefore crucial to ensure that the **psychological** element of torture is equally included as an element for the determination of the criminal offence.

Another important issue related to the prosecution of acts of torture under general offences (i.e. violent acts or bodily injury) is that they usually include short **statutes of limitations**, which are, in some countries, set to some years only. When the expiration period for prosecuting such crimes is over, it is impossible to start any legal proceedings anymore. However, the UN Committee against Torture is very clear on the fact that acts of torture should not be subject to a statute of limitations, meaning that an act of torture can be prosecuted any time, and does not have any expiration period.[3]

📖 *Note that the prosecution of a crime of torture should not be subject to prescription.*

Furthermore, general offences, unlike acts of torture, often allow for the payment of a fine to the victim instead of mandatory imprisonment. In light of the particular gravity of the crime of torture, the standard established under UNCAT requires that the offence of torture must be accompanied by **appropriate sanctions** commensurate with the serious nature of the crime. Depending on the domestic legal system, this means that torture should carry a similar range of punishments as is applicable for other serious intentional crimes.[4]

Unfortunately, the perception continues to be present among some law enforcement officials and other actors in the criminal justice system that torture is no more than a trivial offence. This misconception of the gravity of the crime of torture can be considered as one of the main reasons for the continuous existence of the practice for the fact that torture worldwide and renders the prohibition of torture void of any deterrent effect. More importantly, however, the trivialisation of torture by the application of lenient sanctions also means that victims are deprived of any meaningful acknowledgment of their suffering. The continued practice in many countries where torturers are, as a maximum, sanctioned with disciplinary measures such as loss of rank or monetary fines, therefore constitutes a violation of the international duty to effectively criminalise such acts.

In order to ensure a strong deterrent effect and send a clear signal of "zero tolerance" to all public officials, the scope of accountability of State agents under domestic criminal law also has to be in line with the UNCAT definition. Thus, the criminal offence of torture must not only include the actual commission and attempt of torture, as well as the complicity or participation in torture, but

[3] See: UN Docs, CAT Committee, CAT/C/JPN/CO/1, Concluding Observations, 2007, para. 12.
[4] Note: Chris Ingelse in *The UN Committee against Torture: An Assessment*, (The Hague, London, Boston, 2001), p. 342. concludes that a "custodial sentence of between six and twenty years" would best correspond to the Committee's interpretation of Article 4 (2) UNCAT.

must also cover the failure by State officials to intervene in order to stop or prevent such acts. Consequently, States have to criminalise the incitement, instigation, superior order or instruction, consent, acquiescence and concealment of acts of torture. This means that superior officials who knew or should have known about torture practices of their personnel are guilty of complicity and/or acquiescence. The non-intervention of State officials in incidents where torture occurs in the private sphere should also be punishable under certain circumstances, such as in cases of domestic violence that could be prevented by State officials' actions.

Another corollary of the serious nature of the prohibition of torture under international law concerns the obligation of States to establish a far-reaching criminal jurisdiction of their domestic courts over acts of torture. In addition to the competence of courts to prosecute and punish alleged perpetrators who are nationals of the same State, initiate proceedings where the victim is a national of that State, and pursue any act of torture committed on the national territory, Article 5 UNCAT requires States to furnish their courts with **universal jurisdiction**. This means that for the first time in the history of human rights treaties, States are under the obligation to initiate criminal proceedings against any alleged perpetrator of torture who is present on that State's territory, regardless of his or her nationality and of where the crime has been committed. This far reaching jurisdictional obligation is a result of the unambiguous recognition by the international community that torture is an "enemy of all mankind"[5] and that, consequently, there should be no safe havens for torturers.

📖 *For more information on this topic, you can read: Karen Janina Berg, Universal Criminal Jurisdiction and the Crime of Torture (3).*

📖 *See also Filártiga v. Peña-Irala, 630 F. 2d 876 (2d Cir), 1980*

3. Prompt and Impartial Investigation

One of the principal factors contributing to the persistent occurrences of torture and ill-treatment worldwide is **impunity** for the perpetrators. The main reason for impunity is the lack of investigations into allegations of torture and ill-treatment.

Under international human right law, States have the obligation to initiate a prompt and impartial investigation on the basis of an allegation by the victim or wherever there is reasonable ground to believe that an act of torture has been committed (Articles 12, 13 UNCAT, Art. 2 of the International Covenant on Civil and Political Rights (ICCPR)).

However, the duty to ensure a prompt and impartial investigation does not depend on a formal complaint. Victims are often afraid to denounce torture themselves, and a reasonable ground to believe that torture occurred may

📖 *On the obligation to investigate claims of torture, see ECtHR, Assenov and Others v. Bulgaria, judgment of 28 Oct. 1998*

📖 *See CAT Committee, Parot v. Spain, Comm. No. 6/1990, 2 May 1995, as well as Blanco Abad v. Spain, Comm. No. 59/1996, 14 May 1998, on*

[5] ICTY, *Prosecutor v. Furundzija*, judgment of 10 December 1988;

arise from statements of fellow detainees, lawyers, doctors, nurses, the detainee's relatives, NGOs or national human rights institutions. The State therefore has the duty to launch **investigations *ex officio***, i.e. upon its own initiative, and without formal submission from the victim of torture and ill-treatment.

the obligation of States to launch an investigation ex officio.

Once a complaint or an allegation has been made, the **promptness** of the investigation is essential to ensure that the victim will not be further subjected to torture and ill-treatment and because otherwise the physical traces of such acts could disappear. Thus, it is important to proceed to an investigation without any delay after the suspicion of a case of torture or ill-treatment has been raised, i.e. within the next hours or few days. In the case *Blanco Abad v. Spain*, the CAT Committee observed that "promptness is essential both to ensure that the victim cannot continue to be subjected to such acts and also because in general, unless the methods employed have permanent or serious effects, the physical traces of torture, and especially of cruel, inhuman or degrading treatment, soon disappear."[6]

Furthermore, it is of fundamental importance that the investigation be **impartial**, i.e. serious, effective and unbiased. The responsible authorities should not have preconceptions and should not promote the interests of one of the parties. An investigation that proceeds from the assumption that the allegations are false and that aims to protect the suspected officials cannot be effective. The investigation should be carried out by appropriately qualified individuals seeking to objectively determine the nature and circumstances of the alleged acts and the identity of the perpetrators.[7]

In order to ensure a prompt reaction it may be necessary that the initial stage of the investigations is carried out by police chiefs, prison directors or prosecutors. However, it is not recommendable that the investigation is entirely entrusted to persons with close personal and professional links to alleged perpetrators or an interest to protect them. Thus, the investigation should ideally be entrusted to external monitoring bodies with no direct links to the organisational unit in which the act of torture or ill-treatment allegedly took place.[8]

Competent authorities to conduct an impartial investigation include *inter alia* ombuds-institutions, national human rights institutions, detention monitoring commissions, public prosecutors and special independent police investigators entrusted with the sole task of investigating torture and ill-treatment by police officials, a so-called 'police-police'.

[6] CAT Committee, *Blanco Abad v. Spain*, Comm. No. 59/1996, 14 May 1998, para 8.6
[7] *Ibid*, para. 8.8
[8] Nowak, M., McArthur, E, Op. Cit. para. 61.

Whatever body is chosen, it should be given the **necessary powers to effectively carry out investigations**, such as summoning witnesses, interrogating the accused officials, inspecting official documents and carrying out forensic examinations. The victim and complainant should be informed of the results of the investigation and, ideally, the outcome should be made public.

Article 13 UNCAT states the obligation of States to take steps to ensure that complainants and witnesses are not subjected to **reprisals** as a consequence of their complaint or any evidence given. Furthermore, it is recommended that public officials suspected of torture be suspended or reassigned to a different department during the time of the investigation.[9] Finally, in order to guarantee the effectiveness of investigations, the CAT Committee also recommends States to establish a **centralised public register of complaints**.[10]

4. Remedy and Reparation to Victims of Torture

States Parties to the Convention against Torture are not only under an obligation to prevent torture and ill-treatment and to bring perpetrators to justice, but also to assist victims of torture and to grant them adequate reparation, including compensation and rehabilitation.

📖 *See UN Docs, CAT Committee, General Comment No. 3, CAT/C/GC/3, 2012, on the implementation of Article 14 UNCAT*

The right of torture victims to complain and to receive adequate remedy and reparation is laid down in Articles 13 and 14 UNCAT. Article 13 grants every victim of torture and ill-treatment an effective right to complain to a competent body without fear of reprisals. This implicates that the State takes the necessary measures to protect both the complainant and witnesses against ill-treatment and intimidation as a consequence of such complaint or witness testimony.

Article 13 spells out the right to complain and have the case promptly examined. This article thus complements the obligation to launch an *ex officio* investigation into torture allegations (under Art. 12), both Articles aiming at the establishment of the facts by a competent and independent authority.

Dependent on the establishment of the facts, further action may or shall be taken with a view to bringing the perpetrators to justice under criminal law (Art. 4 to 9) and/or providing victims of torture and ill-treatment with reparation under civil law (Art. 14). The availability of a civil procedure should not be dependent on the outcome of a criminal procedure.

Article 14(1) UNCAT must be seen as a specific manifestation of the general right of victims of human rights violations to a remedy and adequate repa-

[9] UN Docs, CAT Committee, CAT/C/NPL/CO/2, para. 24
[10] UN Docs, CAT Committee, A/56/44, para. 97(e)

ration as enshrined in Article 2(3) ICCPR and similar provisions in regional treaties. However, the terms used in Article 14 do not fully correspond to the contemporary terminology, as laid down in the *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* adopted in December 2005, which make reference to the right to remedy and reparation. The medical, psychological, social and legal rehabilitation as well as the financial compensation are therefore major aspects of the right of torture victims to adequate reparation.

Procedurally, States parties are under the obligation to set up suitable (primarily judicial) institutions to enable torture victims to obtain redress; not only constitutional, civil, criminal and special human rights courts may grant a legal remedy, but also ombuds-institutions, national human rights commissions and special torture rehabilitation bodies may do so.

Substantively, States must provide fair and adequate reparation for the pain and suffering that occurred, which can also be carried out according to an administrative procedure or in an informal manner.

For victims of torture and ill-treatment, such **reparation** might consist of a proper investigation of the truth (also possible through a truth and reconciliation commission), an official recognition of the act of torture, for example through commemoration and tributes to the victims or other forms of dealing with the past, and an apology by the responsible authorities. Furthermore, the criminal prosecution and conviction of the individual perpetrators are important forms of reparation and redress, which goes to show that the application of criminal legislation does not only serve to fight against impunity and torture, but is an important element of the right to adequate remedy and reparation of torture victims.

Finally, monetary compensation for the pain, suffering and humiliation as well as for the material damage, for example for rehabilitation costs, might provide satisfaction as an additional form of reparation. However, the Committee against Torture confirmed in the leading case of *Guridi v. Spain* that monetary compensation is not sufficient for a crime as serious as torture, as the term of compensation should cover all the damages suffered by the victim, including restitution, compensation and the rehabilitation of the victim as well as the guarantee of non-repetition, whenever it applies. The Inter-American Court of Human Rights applies a very extensive interpretation of reparation. For example in the case of *Vargas Areco v. Paraguay*, in addition to monetary compensation, the Court instructed the State to *inter alia* organise an official public act to acknowledge the State's international liability, apologise to the victim's relatives and name a street after the vic-

📖 *The right to reparation can take diverse forms, such as restitution, official recognition, commemoration, apology, investigation and conviction of perpetrators, monetary compensation, guarantee of non-repetition, rehabilitation.*

📖 *CAT Committee, Guridi v. Spain, Comm. No. 212/2002, 17 May 2005.*

📖 *IACtHR, Vargas-Areco v. Paraguay, Ser. C, No. 155 (2006)*

tim.

If torture is practised in a widespread or systematic manner, guarantees of non-repetition, such as amending relevant laws, fighting impunity, the establishment of effective preventive or deterrent measures might constitute a proper form of reparation. In case the torture led to the death of the victims, the dependents are entitled to compensation, on behalf of the deceased persons and on their own behalf.

The right to reparation is primarily an entitlement of the victim vis-à-vis the State which is responsible for the torture and thus to repair the damage caused by such an act. In addition, the individual perpetrator(s) can also be ordered to pay a part or the whole amount of the monetary reparation to the victim.

Although the State responsible for the act of torture is under an obligation to pay and provide for such services of reparation and rehabilitation, in practice many torture rehabilitation centres receive no or only very little funding by State authorities and are dependent on non-state donors like the UN Voluntary Fund for Victims of Torture (UNFVT) which supports non-governmental rehabilitation centres with funds received by State donors worldwide. The UNFVT grants funding to NGOs whose beneficiaries are victims of torture and /or who address the consequences of torture through providing direct medical, psychological, social, economic, legal, humanitarian, educational or other forms of assistance, to torture victims and members of their family.

↳ *More information on the UNFVT can be found in chapter 6.2.*

5. Prevention

Torture is one of the most horrible human rights violations and may leave not only lasting physical but also psychological trauma, from which many victims are suffering for the rest of their lives. Rather than reacting upon violations once they have occurred, the ultimate aim must be to prevent acts of torture and ill-treatment. This approach is prominently reflected in the UNCAT, which establishes the obligation to prevent torture as a separate obligation of State Parties in Article 2(1): "Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". Article 16(1) extends this obligation to ill-treatment. In addition, the Optional Protocol to the UNCAT (OPCAT) establishes the obligation of State Parties to set up a system of preventive visits to places of detention in order to monitor the treatment of detainees and to prevent violations from occurring.

Therefore, two main dimensions of the duty of States to prevent torture are addressed by the UNCAT and its Protocol: the first dimension refers to the adoption of legal, administrative and other measures that safeguard persons from being subjected to torture and ill-treatment; and the other dimension concerns a system of preventive monitoring of places of deprivation of liberty, where persons are most vulnerable to being subjected to physical abuse.

5.1 Safeguards

Article 2(1) UNCAT does not provide a comprehensive list of legislative, administrative, judicial or other measures that have to be undertaken by State Parties to prevent torture. But the meaning of the term prevention is to be understood in a very broad sense, including the adoption of relevant laws, such as the criminalisation of torture with adequate sanctions; the provision of effective legal remedies for victims – criminal, civil and administrative -; the implementation of procedural safeguards; and the establishment of the necessary institutional and organisational capacity to effectively guarantee the prohibition of torture and ill-treatment. Moreover, a number of specific provisions of the UNCAT and several provisions of other international human rights instruments, such as the ICCPR or the Standard Minimum Rules for the Treatment of Prisoners (UNSMRT) directly or indirectly aim at preventing torture.

📖 *Read the full text of the UNSMRT at* www2.ohchr.org/english/law/treatmentprisoners.htm

Firstly, the guarantee of the **right to personal liberty** and the corresponding prohibition of arbitrary or secret detention are important safeguards against torture, as the risk of torture and other forms of ill-treatment is significantly

higher when persons are arbitrarily detained without official acknowledgment of their detention. Equally, **the right of detainees to receive family visits, the prohibition of incommunicado detention, the right to prompt access to a doctor and lawyer from the moment of arrest, and the right to habeas corpus** are important safeguards against torture and ill-treatment because these rights ensure detainees' contact with the outside world. Accordingly, States are under the obligation to establish the necessary procedural and institutional framework, such as effective and accessible legal aid systems, complaints procedures or access to independent doctors.

Fair trial and due process standards are equally relevant for the prevention of torture, such as the right of detainees to be immediately informed of the reasons of their arrest and the charges against them; the obligation to keep police custody as short as possible (not longer than 48 hours) and the corresponding right of all arrested persons to be brought promptly before a judge who shall either order their release or authorise judicial detention on remand (under a different authority than the police). These rights ensure that no one be made vulnerable to abuse by being taken outside the ambit of the rule of law.

In addition, the UNCAT stipulates that State Parties are also obliged to ensure that the **organisational structure, equipment and capacities of security forces minimise the risk of torture**. Thus Article 10 UNCAT requires the provision of appropriate education and training of law enforcement and other personnel, whereas Article 11 UNCAT refers to the systematic review of interrogation methods and conditions of detention as important safeguards against torture. The UNSMRT list a number of other measures that the State should take that can be derived from the broad obligation to prevent torture: the keeping of adequate detention registers; audio-/video-recording of interrogations; mandatory medical examinations upon arrival and detention and after each transfer; the prohibition of prolonged solitary confinement.

Law enforcement bodies should be provided with the appropriate technical equipment to enable professional forensic investigations to reduce reliance on confessions as a means to solve crimes. Furthermore, domestic law must ensure that evidence tainted by torture is inadmissible in any judicial proceedings (Article 15 UNCAT). These measures reinforce the prohibition of torture and aim at minimising incentives for investigating bodies to use torture in the course of investigations.

The obligation to prevent torture and ill-treatment is not limited to the State's own territory, but also has an extra-territorial effect: the **principle of non-refoulement** as contained in Article 3 UNCAT prohibits State Parties from expelling, returning, extraditing or otherwise rendering a person to other States where they are at risk of being subjected to torture. This means

that even if asylum seekers are not granted the status of refugee, domestic legislation must provide for a possibility to grant them permission to stay on the territory of State Parties if they are at risk of being tortured upon return to their country of origin..

5.2 Preventive Monitoring

One of the most effective measures to prevent torture and ill-treatment is the preventive monitoring of places of detention by independent mechanisms, such as the UN Subcommittee on Prevention of Torture (SPT), the European Committee for the Prevention of Torture (CPT), the UN Special Rapporteur on Torture, or National Preventive Mechanisms (NPM) established in accordance with the OPCAT. Those mechanisms have the right to make unannounced and unrestricted visits to all places of detention, hold private interviews with detainees and staff, and make recommendations to the authorities with the aim of improving the treatment of detainees.

↳ *For more information about these bodies: see chapter 6.*

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