



Awareness Raising and Training Measures for the Istanbul Protocol in Europe

International and Regional Legal Standards

Ludwig Boltzmann Institute of Human Rights

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TABLE OF CONTENT

1. Introduction.....	7
2. International and Regional Instruments	7
2.1 The Universal Declaration of Human Rights	7
2.2 The International Covenant on Civil and Political Rights	8
2.3 The Convention against Torture and its Optional Protocol	8
2.4 The Convention on the Rights of the Child	9
2.5 The Convention on the Elimination of All Forms of Discrimination against Women.....	10
2.6 The Convention on the Rights of Persons with Disabilities	10
2.7 The European Convention on Human Rights	11
2.8 The African Charter on Human and People’s Rights	11
2.9 The American Convention on Human Rights	12
2.10 The Geneva Conventions and their Additional Protocols	12
2.11 The Rome Statute of the International Criminal Court.....	13
3. Soft Law Standards.....	14
3.1 The Standard Minimum Rules for the Treatment of Prisoners	14
3.2 The Declaration on the Protection of all Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	14
3.3 The Code of Conduct for Law Enforcement Officials.....	15
3.4 The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials	15
3.5 Principles of Medical Ethics.....	16
3.6 The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.....	17
3.7 The Basic Principles for the Treatment of Prisoners	17

3.8	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	18
3.9	The European Prison Rules.....	19
3.10	The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)	19
3.11	Guidelines on the Role of Prosecutors	19

1. Introduction

The following section gives an overview of the main sources of international law that regulate the prohibition and prevention of torture and other forms of ill-treatment. It closely follows the first chapter of the Istanbul Protocol, which gives a comprehensive overview of the most “relevant international legal standards” applying at the time of the drafting of the Protocol. However, this chapter also includes new legal instruments that were developed after the publication of the Istanbul Protocol.

In the first part, it describes the binding international Conventions of the United Nations, most importantly the Convention against Torture, but also the Universal Declaration of Human Rights, which, although not a binding legal document, served as a basis for subsequent treaties, and is therefore of great importance. A description of the relevant provisions under international humanitarian law and criminal law follows. Finally, the section reviews the provisions prohibiting and preventing torture and ill-treatment in regional treaties.

In the second part, the different non-binding legal standards, called “soft law standards” are reviewed. These texts, however, have had a strong legal impact, when international human rights jurisprudence is considered. Those include specific and detailed safeguards relating to persons in detention as well as to professionals working in law-enforcement, or health personnel working with detainees.

The broad variety of these standards altogether proves the international common agreement on the importance to prohibit torture and ill-treatment.

2. International and Regional Instruments

2.1 The Universal Declaration of Human Rights

The **Universal Declaration of Human Rights (UDHR)** was adopted by the General Assembly in 1948 without any votes against it. This was made possible in the aftermath of the atrocities of World War II that led to the foundation of the United Nations as a means for securing peace worldwide. Already in the Charter of the United Nations, its founding document, the aim of “promoting and encouraging respect for human rights and for fundamental freedoms” is stated as one of the central purposes of the UN (Article 1 UN Charter). The UDHR was then the subsequent result which sets

forth the human rights and fundamental freedoms that all individuals should be granted in the world, without any discrimination. Any State wishing to become a UN member also has to acknowledge the UDHR. Although a non-binding instrument, the Declaration set out a direction and standards of human rights for nearly all subsequent international and regional treaties.

The prohibition of torture is stated in Article 5 UDHR: *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

2.2 The International Covenant on Civil and Political Rights


The **International Covenant on Civil and Political Rights (ICCPR)** is a multi-lateral treaty adopted by the UN General Assembly in 1966, which came into force in 1976. Its main purpose is to make one part of the human rights and fundamental freedoms contained in the UDHR legally binding. In contrast to its “twin”, the International Covenant on Economic, Social, and Cultural Rights, it focuses on those rights that grant participation in political life, that ensure legal certainty, and that secure fundamental physical rights, as the right to life and freedom from slavery. The ICCPR allows States to limit some rights in some specific situations, such as a state of emergency, when the life of the nation is at threat. The prohibition of torture, however, can never be restricted or derogated from, not even during a public emergency.


Article 7 ICCPR states that *“No one shall be subjected to torture or to cruel, inhuman degrading treatment or punishment.”*


2.3 The Convention against Torture and its Optional Protocol

The **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)** was adopted in 1984 and came into force in 1987. It is the main binding UN treaty specifically focusing on the prohibition and prevention of torture. However, the prohibition of torture is an absolute and non-derogable right, applying to all States, even the non-signatories to the UNCAT.

The Convention is the only universal instrument defining torture. Article 1 UNCAT states: *“For the purposes of this Convention, 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*

 Read full text at www.un.org/en/documents/udhr/index.shtml

 Read full text at www2.ohchr.org/english/law/ccpr.htm

 For a more detailed explanation of the definition of torture stated in

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.”

Article 2 petitions States to take measures to ensure the prevention of torture. It prohibits torture in a non-derogable way, i.e. no exceptions may ever be invoked to justify torture. The UNCAT also requires States to criminalise torture in all its forms in their domestic legal system (Article 4), and forbids forceful return of people to countries where they are likely to be tortured (Art. 3). States must also promptly investigate allegations of torture, at their own initiative or following a victim’s complaint (Art. 12 and 13) and grant victims of torture compensation (Art. 14). They furthermore need to ban the use of evidence that was obtained under torture in courts (Art. 15). Article 16 obliges States to prevent other acts of cruel, inhuman or degrading treatment or punishment, which do not amount to torture.


The **Optional Protocol to the Convention against Torture (OPCAT)** is only binding for States that accede to it. The OPCAT was adopted by the UN General Assembly in New York in 2002, and entered into force in 2006. It establishes a system of monitoring of places of detention as a preventive and protective measure against torture and ill-treatment.


Specifically under Article 2(1), the OPCAT establishes the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT). The SPT, under Article 11 (a), is mandated to visit the States parties and make recommendations concerning the protection of persons deprived of their liberty against torture and ill-treatment. Also, it advises and assists National Preventive Mechanisms (NPMs), another monitoring system established by the OPCAT (Art. 3). The NPMs are set up at the national level to monitor places of detention and the treatment of detainees domestically, and make recommendations regarding the prevention and prohibition of torture and ill-treatment. The OPCAT therefore reinforced strongly the prevention against torture by creating these two interlinked mechanisms.


2.4 The Convention on the Rights of the Child

The **Convention on the Rights of the Child (CRC)** was adopted by the UN General Assembly in 1989 and came into force in 1990. It is the first legally binding international instrument to spell out civil, cultural, economic, political and social rights in relation to children. Because of their vulnerability, children need special care and protection. The Convention defines as a child any person under the age of 18 years and requires States to act within the best interests of children. It calls for the protection of children from physical

Article 1 UNCAT, please see the document “CAT Obligations” in this unit

 Read full text at www2.ohchr.org/english/law/cat.htm

 More information on the SPT and NPMs in further documents of this unit

 Read full text at www2.ohchr.org/english/law/cat-one.htm

or mental abuse and for the elimination of all forms of corporal punishment. It is the most widely ratified treaty, the United States and Somalia being the only States not part to it.

A specific prohibition against torture is stated in Article 37 (a) CRC: *“No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.”*

2.5 The Convention on the Elimination of All Forms of Discrimination against Women

The **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)** was adopted by the UN General Assembly in 1979. It aims at the prohibition of discrimination against women and at the promotion of the principle of equality of men and women. The legally binding instrument further strives for women’s equal access to, and equal opportunities in, the political and public life.


Article 3 of CEDAW entails an obligation for States Parties to *“take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”*


Discrimination against women in the field of health care is prohibited by Article 12 which also states that women shall receive appropriate services *“in connection with pregnancy, confinement and the post-natal period (...) as well as adequate nutrition during pregnancy and lactation”*


2.6 The Convention on the Rights of Persons with Disabilities

The **Convention on the Rights of Persons with Disabilities (CRPD)** was adopted by the UN General Assembly in 2006 and came into force in 2008. It is a legally binding specific instrument protecting and recognising the rights of persons with disabilities. It ensures that their rights are protected and that they are treated with dignity and equality under the law.

Under Article 15 (1) the CRPD provides that *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”* In Article 15 (2), it also puts an obligation on the States parties to *“...take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”*

 Read full text at www2.ohchr.org/english/law/crc.htm

 Read full text at www2.ohchr.org/english/law/cedaw.htm

 Read full text at www2.ohchr.org/english/law/disabilities-convention.htm

2.7 The European Convention on Human Rights

The **European Convention on Human Rights (ECHR)** is a regional treaty protecting fundamental rights and freedoms in Europe. Drafted in 1950 by the Council of Europe, the Convention came into force in 1953. It was the first time that some of the rights stated in the UDHR were made legally binding at a regional level. The rights protected by the ECHR are for the most part identical to those of the ICCPR. All Council of Europe members are party to it, and all new entrants are expected to ratify it as soon as possible.

In particular, Article 3 ECHR provides that *“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”*

The Convention also established the European Court of Human Rights (ECtHR), which has been influential in interpreting the provisions of the Convention. The right to effective remedy in particular was expanded to impose an obligation to investigate claims of torture. In that regard, the Court ruled in the landmark case *Assenov and others vs. Bulgaria* in 1997 that investigating allegations of torture is an obligation and found that the omission to do so was a violation under Article 3 ECHR, not in the form of ill-treatment, but *“based on the failure to carry out an effective official investigation into Mr. Assenov’s allegations of ill-treatment by the police”*.


Furthermore, the Council of Europe created the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**, in 1987, which came in force in 1989, based on Article 3 ECHR. Its purpose was the setup of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), a body carrying out monitoring visits to places of detention in all 47 States of the Council of Europe


2.8 The African Charter on Human and People’s Rights


The **African Charter on Human and People’s Rights (ACHPR)** came into effect in 1986. It was materialised under the guidance of the Organisation of African Unity (now African Union) which, at its 1979 Assembly of Heads of State and Government, adopted a resolution calling for drafting a continent-wide human rights instrument, similar to those that already existed in Europe and the Americas.


In Article 5, the ACHPR forbids torture by stating that *“...torture, cruel, inhuman degrading punishment or treatment shall be prohibited.”*

The Charter also required the establishment of the African Commission on Human and Peoples’ Rights under Article 30, to ensure protection of fundamental rights in Africa. The Commission went a step further and estab-

 Read full text at www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf

 Read full case at: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58261#%22itemid%22:%22001-58261%22>

 Read full text at www.cpt.coe.int/en/documents/ecpt.htm

 Read full text at www1.umn.edu/humanrts/instree/z1afchar.htm

lished a system of Special Rapporteurs, which has been influential in raising awareness on the issue of the prevention and prohibition of torture.

2.9 The American Convention on Human Rights

The **American Convention on Human Rights (ACHR)** is a regional human rights instrument adopted by the nations of the Americas in Costa Rica in 1969. The purpose of the Convention, stated in its preamble, is *"to consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man."*


The Convention states in Article 5 (1) that: *"Every person has the right to have his physical, mental and moral integrity respected"*. It specifically prohibits torture in Article 5 (2): *"no one shall be subjected to torture or cruel inhuman degrading punishment or treatment."* The Article also provides for the protection of the dignity of anyone deprived of liberty.

Furthermore, the countries of the Americas adopted the **Inter-American Convention to Prevent and Punish Torture**. In the Convention's Article 1, the States undertake to prevent and punish torture. Any person alleging torture has a right to an impartial examination of the case (Art. 8), proper and prompt investigation (Art. 1), and to initiate criminal proceedings where possible. The Inter-American Court of Human Rights also made precedent when it held in the case *Velásquez-Rodríguez v. Honduras* in 1988 that *"the State is obliged to investigate every situation involving a violation of the rights protected by the Convention."*

2.10 The Geneva Conventions and their Additional Protocols

The four **Geneva Conventions** of 1949 and their three Additional Protocols are the core of international humanitarian law, also called "the law of war", and their purpose is to regulate armed conflicts. They were developed at the initiative of the International Committee of the Red Cross (ICRC) in Switzerland, and grant protection to people who do not take part in the conflict, such as civilians, wounded soldiers or prisoners of war.

The four Conventions prohibit the use of torture, and their Common Article 3 stresses the importance of the prohibition of torture by applying it to non-international conflicts as well. It states that *"...the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliat-*

 Read full text at

www.oas.org/juridico/english/treaties/b-32.html

 Read full text at

www.oas.org/juridico/english/treaties/a-51.html

 Read case at

http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CDYQFjAB&url=http%3A%2F%2Fwww.cortidh.or.cr%2Fdocs%2Fcasos%2Farticulos%2Fseriesec_04_esp.doc&ei=YGzUOuqMM7Psga-04CwBw&usq=AFQjCNEcypPqIXV7UfLvvd8sveLCFr52FQ

ing and degrading treatment...”


The first Geneva Convention calls in Article 12 for members of armed forces in the field, who are wounded and/or sick, to “*be respected and protected in all circumstances*”, and “*treated humanely*”. It adds that “*in particular, they shall not be murdered or exterminated, subjected to torture or to biological experiments*”. Under Chapter IX, the Convention requires parties to criminalise grave breaches such as torture (Art. 50), provide penal sanctions for them, and bring to court persons who allegedly committed any such act. (Art. 49) It further demands to institute an enquiry to establish the violations, put an end to them and repress them (Art. 52). The Second Geneva Convention holds similar provisions regarding wounded, sick and shipwrecked members of armed forces at sea, while the Third Geneva Convention, relative to the treatment of prisoners of war, expresses in Article 17 that “*No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.*” In Article 87, the Convention recalls that “*Collective punishment for individual acts, corporal punishment, imprisonment in premises without daylight and, in general, any form of torture or cruelty, are forbidden*”. The Fourth Geneva Convention on the protection of civilians in time of war forbids torture on civilians in Art. 32.


The **two additional Protocols of 1977** strengthen the protection of victims of international and non-international armed conflicts, and contain provisions on the prohibition of torture in Art. 75 (2) Protocol I, and 4 (2) Protocol II.


2.11 The Rome Statute of the International Criminal Court


The **Rome Statute** of the International Criminal Court (ICC) was adopted in 1998 in Rome and entered into force in 2002. It is the governing document of the ICC, the first permanent international tribunal investigating and prosecuting individuals for genocide, war crimes and crimes against humanity when national courts are unable or unwilling to do so. The Rome Statute was amended during the Review Conference in 2010 in Uganda to include a definition of the crime of aggression and the jurisdiction of the Court over it.


The Statute prohibits “*causing serious bodily or mental harm*” to members of a national, ethnical, racial or religious group in its definition of genocide (Article 6 (b)). In Article 7 (1) (f), torture is listed amongst the crimes against humanity and also echoes the definition of torture as spelt out in the UN-CAT (Article 7 (2) (e)). Moreover, Article 8 (2) includes torture as a possible war crime. In Article 55, the Rome Statute calls for persons during an investigation to not be compelled to incriminate themselves and be subjected to

 Read full text at www.icrc.org/eng/resources/documents/publication/p0173.htm

 Read the full text of the Protocol I at www.icrc.org/ihl.nsf/FULL/470?OpenDocument

 Read the full text of Protocol II at www.icrc.org/ihl.nsf/FULL/475?OpenDocument

 Read full text at http://untreaty.un.org/cod/icc/statute/english/rome_statute%28e%29.pdf

 More information on the ICC can be found in other documents of

torture or ill-treatment.


this unit

3. Soft Law Standards

3.1 The Standard Minimum Rules for the Treatment of Prisoners

The **Standard Minimum Rules for the Treatment of Prisoners (SMRT)** were adopted in 1955 by the UN Congress on the Prevention of Crime and the Treatment of Offenders, in Geneva, and approved by the Economic and Social Council (ECOSOC) of the UN in Resolutions of 1957 and 1977. They are not legally binding, but provide detailed guidelines pertaining to persons held in detention, and despite some outdated provisions, they are still considered a reference. The SMRT state various minimum standards to be respected regarding issues such as accommodation, access to sport, books, exercise of religion, or personal hygiene of prisoners, and detail the special needs of some specific categories of prisoners, such as women, children or pre-trial detainees.

In relation to torture and ill-treatment, they enumerate some safeguards, such as the need to keep registers (Rule 7), the access to medical services (Rules 22 to 26) and the right to make requests and complaints (Rules 35 and 36). In the chapter on discipline and punishment, it is stated in Rule 30 (1) that *“no prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence”*. Moreover, *“corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.”* The SMRT also recall that instruments of restraint should never be applied as a punishment.

 Read full text at www2.ohchr.org/english/law/pdf/treatmentprisoners.pdf

3.2 The Declaration on the Protection of all Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The **Declaration on the Protection of all Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** was adopted by General Assembly Resolution 3452 in 1975. Although not a binding instrument, the Declaration is nevertheless a statement of principle that defined the obligation to prohibit torture in absolute terms, and was the basis of the future Convention against Torture.

It enumerates several essential provisions for an effective prohibition of torture, and in Article 3 states that: *“No State may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment”*, recalling that

no circumstances whatsoever may justify acts of torture, and that States should take effective measures to prevent torture and ill-treatment (Article 4). It also spells out the right to complain about acts of torture (Article 8) and to receive due compensation (Article 11). Further, it also requests States to criminalise acts of torture and ill-treatment (Article 7).

3.3 The Code of Conduct for Law Enforcement Officials


The **Code of Conduct for Law Enforcement Officials** was adopted by General Assembly Resolution 34/169 in 1979. Its scope of application extends to all "officers of law" who exercise police powers including members of the security forces, if they are empowered with policing duties. The Code sets out fundamental standards of responsibility and professionalism for law enforcement officials and highlights their role in serving the community, particularly those in need of immediate aid. As overarching principle, Article 2 stipulates that all police officers are required to respect and protect human dignity and maintain and uphold the human rights of all persons.


In particular, Article 2 of the Code of Conduct reserves the use of force by police officers as an exceptional measure only, limited to such circumstances where it is strictly necessary for the performance of their duties, namely to prevent crimes, to effect the lawful arrest of suspects or to prevent persons suspected of or committed for a crime from escaping. The principle of proportionality is to be applied in a very strict sense where the use of firearms is concerned: thus the use of firearms should only be permitted as a means of last resort in cases of armed resistance or a concrete and imminent danger to the lives of others.

Article 5 contains an explicit prohibition for officials to *"inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment"*. This provision also excludes invoking a superior order in cases of torture and ill-treatment, and restates the principle of non-derogability from the prohibition of torture even in exceptional circumstances such as national emergencies or armed conflicts.

3.4 The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

The **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials** were adopted by the 8th UN Congress on the Prevention of Crime and the Treatment of Offenders in Cuba, in 1990. They are a soft law instrument designed to assist member States in their task of ensuring and promoting the proper role of law enforcement officials who exercise police powers, especially the powers of arrest or detention. The principles provide

 Read full text at www2.ohchr.org/english/law/declarationcat.htm

 Read full text at www2.ohchr.org/english/law/codeofconduct.htm

a more detailed set of rules on the use of force and firearms than the Code of Conduct for Law Enforcement Officials.

Under Article 1 of the general provisions, the principles call on governments and law enforcement agencies to constantly keep the ethical issues associated with the use of force and firearms under review. Law enforcement officials should be equipped with a differentiated kind of weapons, such as non-lethal weapons, ammunitions and self-defence equipment to adequately respond in appropriate situations. Article 7 urges governments to ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law. Articles 15 to 17 on “*policing persons in custody or detention*” set rules for law enforcement officials who are in contact with persons in detention or custody. The use of force is prohibited except for the maintenance of security or when personal safety is threatened.


3.5 Principles of Medical Ethics

The **Principles of Medical Ethics** relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment were adopted by General Assembly Resolution 37/194 in 1982. The Principles lay down fundamental ethics applicable to medical personnel charged with medical care of prisoners and detainees. These principles may not be derogated even under exceptional circumstances, such as public emergencies.


Principle 1 establishes the principle of equality of care, obliging health personnel charged with caring for prisoners and other detainees to provide the same quality and standard of treatment and care that is afforded to persons who are not detained.

Principle 2 particularly spells out the prohibition of torture and states that *“It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment.”*

Principle 4 (1) further specifies that the use or application of medical, knowledge skills or treatment in order to assist the interrogation of detainees, which may adversely affect the health of that person, violates medical ethics. Similarly, the involvement of medical personnel in the certification of the fitness of detainees to undergo treatment or punishment which could harm that person's health or which violates the human rights of that person is ethically not acceptable (Principle 4 (2)). Medical personnel is also prohib-

 Read full text at www2.ohchr.org/english/law/firearms.htm


ited from participating in any procedure for restraining detainees, unless such procedures are necessary to protect the health or safety of that person or others (Principle 5).

 Read full text at www2.ohchr.org/english/law/medicalethics.htm

3.6 The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

The **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment** was adopted by General Assembly Resolution 43/173 in 1988 and applies to all persons under any form of detention. It sets out fundamental principles for the humane treatment of persons in all forms of detention and restates international human rights standards related to the procedure of arrest, judicial review, due process and duties of the authorities to proper documentation and registration of all detainees. Several safeguards essential for the prevention of torture and other forms of abuse of detainees are stipulated, such as the possibility to contact the outside world, the right to promptly inform relatives about the transfer to a different detention facility and the right of access to a lawyer and complaints mechanisms, the provision of adequate medical treatment etc. Importantly, the provision of compensation is foreseen for any act or negligence that violates the standards contained in the Body of Principles.

With regard to torture, Principle 6 contains an absolute prohibition of torture or other cruel or inhuman or degrading treatment or punishment, which does not allow for any exceptions. Reinforcing the prohibition of torture, Principle 33 guarantees the right of detainees, his or her lawyer, family members or any other person to lodge complaints about an alleged case of torture or other form of ill-treatment. Such complaints have to be handled confidentially if so requested by the complainant, must not lead to reprisals and the authorities have to reply without delay. In case of the death or disappearance of a detainee, the authorities have to initiate an ex officio investigation into the circumstances of the case.

 Read full text at www.un.org/documents/qa/res/43/a43r173.htm

3.7 The Basic Principles for the Treatment of Prisoners

The **Basic Principles for the Treatment of Prisoners** were adopted by General Assembly Resolution 45/111 in 1990. In comparison with the Standard Minimum Rules for the Treatment of Prisoners, the Basic Principles are less detailed and contain only very general principles regarding the treatment of prisoners.

Though not specifically mentioning torture, Principle 1 states that “*prisoners shall be treated with the respect due to their inherent dignity and value as human beings*” thus not to be subjected to any torture, cruel, inhuman or

degrading treatment that might undermine their innate worth as human beings.


Furthermore recognising the fact that prisoners do not lose all their rights once in custody, the Basic Principles state that *“except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants.”*


3.8 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

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** were adopted and proclaimed by General Assembly Resolution 60/147 in 2005. They affirm that gross violations of human rights or humanitarian law, such as acts of torture, *“constitute an affront to human dignity”*, and recall States’ duty to investigate such breaches, and prosecute perpetrators.

Moreover, they call upon States to grant victims of gross violations with *“equal and effective access to justice”* (Principle 11), as well as *“adequate, effective and prompt reparation”*, proportional to the gravity of the harm suffered (Principle 15).

Reparation can take numerous forms, described in Principles 19 to 23, such as: the restitution of liberty, family life, identity, property or employment; compensation for damage such as physical or mental harm, lost professional or educational opportunities, material damage or loss of earnings, as well as costs required for legal, psychological or medical assistance; rehabilitation, which includes medical and psychological care, as well as social and legal services. It may also include satisfaction. The latter can take various courses, depending on the cases, such as the cessation of continuing violations, public disclosure of the truth, an official declaration, or a public apology acknowledging the facts, sanctions against persons liable and commemorations. Principle 23 finally spells out measures guarantying the non-repetition of gross violations, such as the strengthening of the independence of the judiciary, education and training in human rights law, as

 Read full text at www2.ohchr.org/english/law/basicprinciples.htm

 Read full text at www2.ohchr.org/english/law/remedy.htm

well as legal reforms.

3.9 The European Prison Rules

The **European Prison Rules** were adopted by the Committee of Ministers of the European Union in 2006. They contain basic rules to be respected by the governments of the Council of Europe relating to the treatment of detainees. The Rules cover a wide range of topics, such as hygiene, legal advice, religion, nutrition, education, safety, work or communication, all related to the well-being of prisoners.


Some provisions relate more explicitly to the prevention and prohibition of torture. Principle 1 states that *“All persons deprived of their liberty shall be treated with respect for their human rights.”* Principle 15, on the conditions of imprisonment, recalls that upon admission *“any visible injuries and complaints about prior ill-treatment”* should be recorded, and that prisoners should undergo a medical examination as soon as possible (Principle 16). In the part providing for the duties of the medical practitioner, several rules articulate the role of medical personnel, including the need to pay attention to *“recording and reporting to the relevant authorities any sign or indication that prisoners may have been treated violently”* (Principle 42 (3) (c)).

Principle 54 (4), related to safety, recalls that *“persons being searched shall not be humiliated by the searching process.”* The section on discipline and punishment states that *“the use of chains and irons shall be prohibited”* (68 (1)), and that *“Handcuffs, restraint jackets and other body restraints shall not be used”* except in specific cases.

Principle 70, dealing with requests and complaints, states that prisoners should be able to *“make requests or complaints to the director of the prison or to any other competent authority”* and, if denied, they should *“have the right to appeal to an independent authority”*. Moreover, there should not be any punishments for prisoners for *“having made a request or lodged a complaint”*. Finally, Principle 93 (1) recalls that *“the conditions of detention and the treatment of prisoners shall be monitored by an independent body or bodies whose findings shall be made public”*.

3.10 The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)

The **United Nations Rules for the Treatment of Women Prisoners and Non-custodial measures for Women Offenders (Bangkok Rules)** have been adopted by the General Assembly Resolution 65/229 in New York on 21 De-

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ember 2010. They are the first specific UN standards for the treatment of women offenders entailing the particular vulnerability and the distinctive needs of women (Rule 1). They apply to all categories of female offenders, and also cover offenders under non-custodial measures (Rules 57 to 62)

Directed at prison authorities and criminal justice agencies (including policymakers, legislators and the judiciary), the Bangkok Rules comprise provisions reflecting on procedural rights and the conditions of detention for women and their dependent children, and constitute in fact the first international instrument addressing this topic. In this regard, Rule 3 (2) states that *“All information relating to the children’s identity shall be kept confidential, and [...] take into account the best interests of the children.”*

The Bangkok Rules further include provisions on the personal hygiene (Rule 5), medical screenings on entry (Rules 6-9), and gender-specific health care (Rules 10 and 11).

Rule 19 states that *“Effective measures shall be taken to ensure that women prisoners’ dignity and respect are protected during personal searches, which shall only be carried out by women staff [...].”*

Rules 22 to 24 cover disciplinary measures. In particular, Rule 22 specifies that pregnant women and women with infants shall not be subjected to punishment by close confinement or disciplinary segregation. Furthermore, Rule 25 stipulates the rights of women who report an abuse in detention (inter alia the rights to protection, counseling, investigation or medical attention).


Rule 56 spells out the right to safety of women in pre-trial detention be ensured through the adoption appropriate measures.

3.11 Guidelines on the Role of Prosecutors


The **Guidelines on the Role of Prosecutors** were adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders in 1990. They aim at securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings.

Besides rules on the qualification, selection, status and freedom of expression and association of prosecutors, the Guidelines also include a number of procedural provisions. In Guideline 12 it says that *“Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.”*

Guideline 16 relates to evidence obtained under unlawful methods constituting a grave violation of human rights including torture or other cruel, in-

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human or degrading treatment or punishment and states that prosecutors *“shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.”*

 Read full text at www2.ohchr.org/english/law/prosecutors.htm