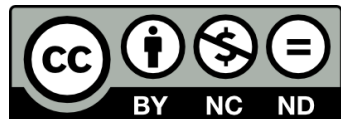




The Role of lawyers in the prevention of torture and ill-treatment

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**ARTIP: Awareness Raising and Training Measures
for the Istanbul Protocol in Europe**

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Education and Culture DG

Lifelong Learning Programme

Overview

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The Role of Lawyers in the Prevention of Torture and Ill-treatment

A. INTRODUCTION

A. Introduction

Functions of lawyers related to cases of torture and ill-treatment:

- Establishment & implementation of the national legal framework
- Representation of detainees and torture survivors,
- Investigation & documentation of cases
- Preventive monitoring of places of detention,
- Advocacy and policy making
- Capacity strengthening and litigation

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B. LEGAL FRAMEWORK

1. Legal Framework

Acts of torture and ill-treatment can be prevented by a strong domestic legal framework, paired with the international human rights treaties the country ratified.

2. Legislative Action

Lawyers should:

Propose legislation

Control implementation process

Advocate for improvement of legislation

Call for the criminalisation of torture

Develop comparative analyses of international and regional standards

Observe principles of universal jurisdiction and non-refoulement

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C. REPRESENTATION OF DETAINEES

1. Legal Framework

The rights to justice and a fair trial are included in:

- Art. 14 ICCPR
- Basic Principles on the Role of Lawyers
- European Prison Rules
- Standard Minimum Rules for the Treatment of Prisoners (SMRT)
- Regional Instruments:
 - European Convention on Human Rights (Art. 6)
 - American Convention on Human Rights (Art. 8)
 - African Charter on Human and Peoples' Rights (Art. 7)

2. Vulnerability

Detainees, and especially pre-trial detainees, are particularly susceptible to violations of their fundamental rights and their inherent dignity.

3. Representation of Detainees

Lawyers should ensure procedural safeguards:

- Immediate, direct, regular and confidential access to lawyer
- Information on reasons of arrest
- Information on the rights of detainees
- Medical examination
- Application for a writ of habeas corpus
- Information on complaints mechanisms

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D. RIGHT TO REMEDY AND REPARATIONS

1. Legal Framework

Art. 13 and 14 UNCAT:

- Right to lodge a complaint with a competent authority
- Right to impartial and prompt investigation
- Protection against reprisals
- Right to obtain redress and adequate compensation

2. Assistance to victims of torture

Lawyers should:

- Explain the right to remedy and reparations to the victim of torture
- Help lodging a complaint
- Assist victim of torture in subsequent procedural stages

3. Adequate Reparation

Compensation can be:

- Investigation of the truth
- Official recognition of the act of torture committed
- Apology by responsible authorities
- Monetary compensation
- Fight against impunity and introduction of preventive measures

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E. INVESTIGATION AND DOCUMENTATION

1. Investigation

- Prompt, impartial, thorough
- Protection against reprisals
- Confidential interviews
- Allegations should only be forwarded with express consent of detainee

2. Documentation

Lawyers have to know how to medically document and detect traces of torture:

- Knowledge-sharing between medical doctors and the legal professions
- Complaints are stronger if supported by precise accounts on torture endured
- Arrange for independent medical examination to bolster position when lodging a complaint

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F. PREVENTIVE MONITORING

1. Preventive Monitoring

“Regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventive measures against torture.”

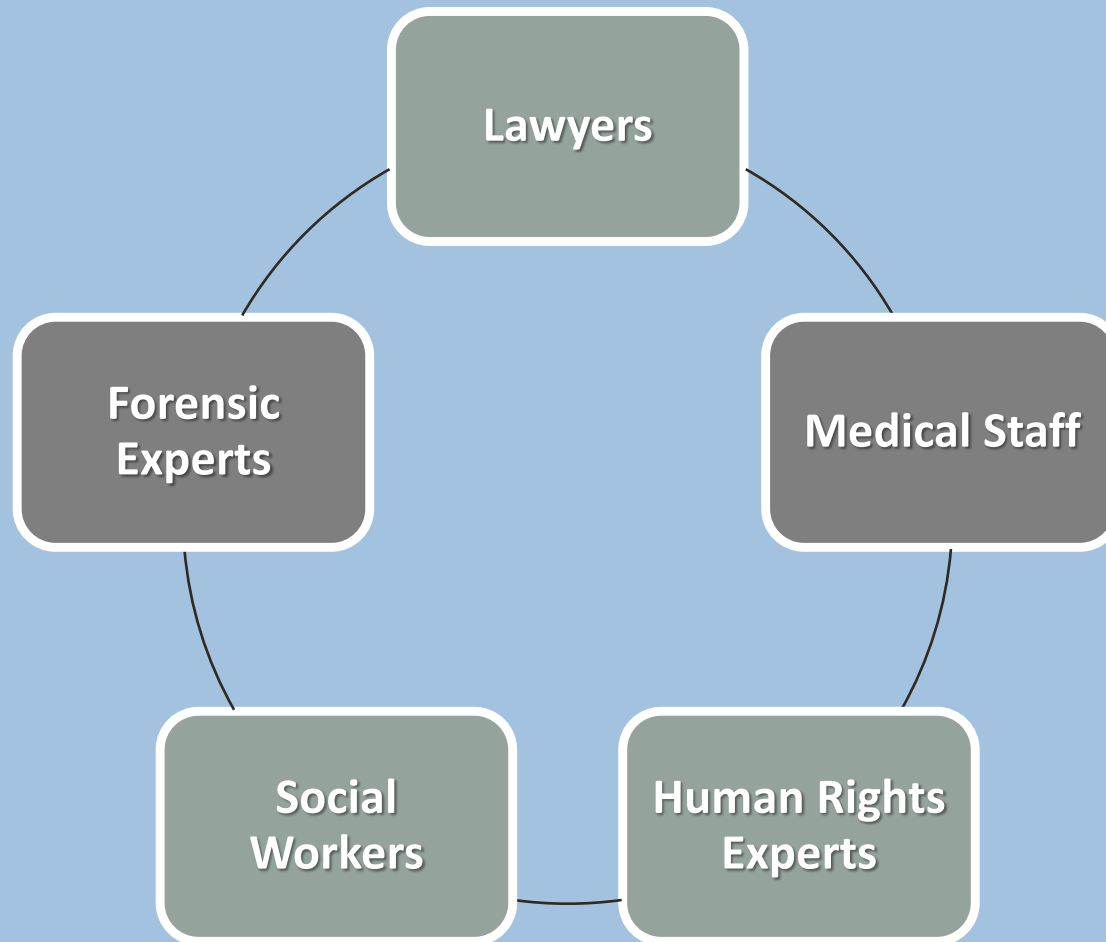
-- UN Special Rapporteur on Torture, 2002

2. Preconditions

- Implementation of Optional Protocol to the Convention against Torture (OPCAT)
- Establishment of National Preventive Mechanism (NPM)
- Cooperation with NPM, other monitoring bodies and civil society organisations

3. Preventive Monitoring

Inter-disciplinary monitoring bodies



4. Tasks for lawyers

- Establishment of standardised checklists
- Interviews with victims should be effectuated with sensitivity and empathy
- Documentation of cases of torture
- Expose patterns of institutional failure
- Connector to the public & international preventive mechanisms

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G. ADVOCACY & POLICY MAKING

1. Advocacy and Policy Making

- Ratification and implementation of human rights instruments prohibiting torture
- Advocate for legal reforms
- Awareness-raising
- Encourage judges to interpret domestic law in the light of international human rights standards

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H. CAPACITY STRENGTHENING

1. Capacity Strengthening

- Awareness-raising campaigns
- Strengthening of authorities, institutions and civil society
- Create information tools for the public
- Networking
- International Cooperation
- Training

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I. LITIGATION ROLE

1. Strategic Litigation

Strategic litigation can lead to the establishment of judicial precedents which can be particularly useful in relation to remedy and reparations.

2. Principles

- Exclusion of coerced evidence from trial
- Burden of proof must not be with the victim
- Litigation strategy should not impede the submission of a petition to an international human rights body or court