

The Sixth Committee of the General Assembly
(Legal)
“Reassessing resolutions 39’s and 46’s ban on enhanced interrogation techniques”

The “Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” was adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984.

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (henceforth: the convention) was created to prevent and punish the widespread use of torture techniques. It aimed to do so, while holding states accountable.

To do so it outlined clear frameworks and established the Committee against Torture, made up of 10 (presently 22) human rights experts.

It requires that the member states take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. It also highlights that the use of torture is fully prohibited and cannot be excused even for states in a state of war or public emergency. Additionally acts of torture, attempts to commit torture, and complicity in torture must be made serious criminal offenses under domestic law. In order to ensure that a perpetrator is held accountable, states parties are mandated to take jurisdiction even if the offence is committed by a national on foreign soil or by a foreigner on national soil.

Furthermore the convention recognizes the right, victims of acts of torture have to fair and adequate compensation and full rehabilitation.

The Committee against Torture (CAT Committee) is a further important aspect of the convention, as it aims to strengthen effectivity by monitoring implementation and ensuring proper compliance.

As aforementioned the committee is made up of 22 experts (often specializing in human rights). States parties are required to submit regular reports on their efforts to comply with the Convention to the committee. Moreover the committee is authorized to conduct confidential inquiries into reliable reports of systematic torture within a State Party's territory, with that State's cooperation.

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) was adopted on the 18th of December 2002 by the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199.

It was created because the United Nations believed it was a further necessity to achieve the purpose of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

A central objective was to establish a system of regular visits, by independent international and national bodies, to places where people were victims of loss of liberty, in order to first and foremost prevent torture and other cruel, inhuman or degrading treatment or punishment.

One such body is the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Subcommittee works within the framework of the Charter of the United Nations and is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity. The Subcommittee works in cooperation with States Parties to implement the present protocol.

The number of members is decided by the amount of ratifications to the Protocol. The members are chosen based on moral character and professional background in the field of the administration of justice, as to ensure proper treatment of persons deprived of their liberty.

Part of the OPCATs mandates is the establishment of a National Preventative Measure (NPM). NPMs are independent domestic bodies who achieve the strengthening of protections and improvement of conditions by conducting regular unannounced visits to specific facilities and examining treatment. Following visits they make suggestions to national authorities in order to make improvements. The aim of the NPM is to prevent torture and ill-treatment in places of detention.

Presently many states face delays, funding shortages, or partial implementation of a NPM.

Key terms and definitions:

Torture: The term "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 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.

EITs: Enhanced Interrogation Techniques was a euphemism used by the U.S. government to distinguish aggressive interrogation methods, used by the CIA and military to extract information from individuals suspected of terrorism, from torture. Such methods included: Waterboarding, Stress positions, sleep deprivation, confinement in small spaces, exposure to extreme temperatures and „slapping and walling“.

The United Nations consider these methods to be forms of torture.

Nevertheless in 2014 the Senate report concluded that ETIs were ineffective and caused severe physical and psychological damage.

Non-Refoulement: The principle of non-refoulement forms an essential protection under international human rights, refugee, humanitarian and customary law. It prohibits States from transferring or removing individuals from their jurisdiction or effective control when there are substantial grounds for believing that the person would be at risk of irreparable harm upon return, including persecution, torture, ill treatment or other serious human rights violations. Under international human rights law the prohibition of refoulement is explicitly included in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED).

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT): The Optional Protocol to the Convention against Torture (OPCAT) is an international treaty that establishes a system of regular, independent visits to places where people are deprived of their liberty, such as prisons and detention centers. Its goal is to prevent torture and other cruel, inhuman, or degrading treatment or punishment by monitoring conditions and making recommendations for improvement. To achieve this, the OPCAT created the Subcommittee on Prevention (SPT), an international expert body, and requires each State Party to establish its own National Preventive Mechanisms (NPMs) to conduct domestic visits and work on prevention. Unlike the original Convention against Torture (CAT), which mainly focused on punishing acts of torture, the OPCAT's core idea is prevention through regular, unannounced visits to detention facilities.

National Preventive Mechanism (NPM): A National Preventive Mechanism (NPM) is an independent body established under the Optional Protocol to the UN Convention against Torture (OPCAT) to prevent torture and other cruel, inhuman, or degrading treatment in places of deprivation of liberty, such as prisons, police stations, and psychiatric hospitals. NPMs achieve this by conducting regular, unannounced visits to these facilities to identify risks, monitor conditions, and make recommendations to authorities for improvements. The core purpose of an NPM is preventative, aiming to create a system that reduces the likelihood of abuses by focusing on conditions and treatment rather than investigating individual incidents

Key players:

States Parties: Refers to countries who have signed and ratified the convention (173 Parties)

Some example positions:

- Early adopters/ratifiers:
 - Sweden
 - Norway
 - Canada
- United States: Ratified with reservation —> the prohibition of "cruel, inhuman or degrading treatment or punishment" only applies to acts prohibited by the Fifth, Eighth, and Fourteenth Amendments of the U.S. Constitution
- China: Ratified, raised concerns about incommunicado detention, use of residential surveillance, and lack of safeguards
- Japan: Ratified, „Daiyo Kangoku“ has been noted as a concern
- Non-parties:
 - India: Signed but not ratified (India's commitment to ratification has been noted in various forums, but a lack of corresponding domestic legislation has prevented its full implementation)
 - DPRK: Not ratified

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT): The Optional Protocol to the Convention against Torture (OPCAT) is an international treaty that establishes a system of regular, independent visits to places where people are deprived of their liberty, such as prisons and detention centers. *Examples of countries involved:*

- Brazil: Ratified and in compliance, struggles with lack of funding, resources and local bodies
- UK: Ratified with established NPM
- Germany: Ratified with established NPM —> The Federal Agency for the Prevention of Torture
- Spain: Ratified with established NPM —> Spanish Ombudsman

The Committee against Torture: Committee established to monitor implementation.

The Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT): A body of experts that can visit places of detention to monitor and make recommendations to states.

United Nations Human Rights: The Office of the High Commissioner for Human Rights (OHCHR) is the leading UN entity on human rights.

Questions you should be able to answer:

- Has my country signed and/or ratified the Convention?
 - If so, does it have any reservations?
- Has my country ratified the OPCAT?
 - If so, has it implemented an adequate NPM?
- Does my country support strengthening the Convention, or keeping state sovereignty strong?
- Does my country support international funds or only national-level remedies for victim reparations?
- Should international monitoring (like the UN Committee Against Torture) have the power to inspect prisons and detention centers in foreign states?
- What is my government's official stance on torture? Absolute prohibition? Certain "exceptions"?

Helpful links:

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_39_46.pdf

<https://www.ohchr.org/en/treaty-bodies/cat/background-convention>

[https://www.ohchr.org/en/treaty-bodies/cat#:~:text=About%20treaty%20bodies.-Overview&text=The%20Committee%20against%20Torture%20\(CAT,stop%20and%20prevent%20this%20crime.](https://www.ohchr.org/en/treaty-bodies/cat#:~:text=About%20treaty%20bodies.-Overview&text=The%20Committee%20against%20Torture%20(CAT,stop%20and%20prevent%20this%20crime.)

<https://www.ohchr.org/en/publications/fact-sheets/fact-sheet-no-17-committee-against-torture-archive>

<https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>

<https://www.ohchr.org/en/about-us>