



From Convention To Courtroom: The Global Fight Against Torture

Arona Mumtaz

Phd Scholar

Law Department, Kashmir University

Abstract

Torture represents a severe violation of human dignity and is universally condemned under international law. This article examines the international legal framework prohibiting torture, highlighting key conventions, treaties, and practices that enforce its prohibition. Notably, it discusses instruments such as the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), among others. The article also addresses the role of various international bodies, including the Committee against Torture and the International Criminal Court, in combating torture. Additionally, the article highlights regional conventions and their contribution to reinforcing global human rights standards. The article concludes with a reflection on the ongoing challenges in the fight against torture and provides suggestions for further advancements in international law and human rights protection.

Keywords: Torture, Human Rights, International Law, Universal Declaration of Human Rights, United Nations, Committee against Torture, ICCPR, UNCAT, Regional Conventions, International Criminal Court, Prohibition of Torture

Introduction

Torture is one of the gravest violations of human dignity, and its prohibition stands as a cornerstone of international human rights law. The international community has long recognized the need for the absolute prohibition of torture, viewing it not only as a moral outrage but as a direct threat to human rights and justice. The United Nations (UN) has played a pivotal role in ensuring this prohibition through various instruments and conventions, marking its stance on the issue as an integral aspect of global governance. The prohibition of torture has evolved into a peremptory norm of international law—*jus cogens*—that no state can derogate from, even in times of war or national emergency.

This article explores the legal frameworks that enshrine the prohibition of torture, including key international treaties, regional conventions, and mechanisms for accountability and enforcement. The study highlights the efforts of international organizations, such as the UN, and regional bodies like the European Court of Human Rights, to enforce the anti-torture norms. It also examines landmark cases and ongoing challenges in the prevention of torture.

Methodology

This article adopts a qualitative analysis approach, reviewing primary and secondary sources including international treaties, conventions, and judicial interpretations. It examines legal texts, case law, and reports from various UN committees and regional human rights bodies to provide a comprehensive understanding of the international legal landscape surrounding the prohibition of torture. The analysis is further enriched by a review of landmark court cases, such as *Filártiga v. Peña-Irala* (1980) and the Guantánamo Bay detention facility trials, to demonstrate the application of these principles in real-world scenarios.

International Legal Instruments and Bodies

The prohibition of torture is primarily enshrined in the Universal Declaration of Human Rights (UDHR) 1948, which establishes that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (Article 5). This principle is further codified in the International Covenant on Civil and Political Rights (ICCPR) 1966, specifically in Article 7. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), adopted in 1984, provides a more detailed framework, obligating states to ensure the prohibition of torture in all circumstances.

Furthermore, regional instruments, such as the European Convention on Human Rights (ECHR) 1950 and the American Convention on Human Rights (ACHR) 1969, bolster these universal treaties by applying similar principles within regional contexts. These legal instruments, combined with treaty-monitoring bodies like the Committee against Torture (CAT), work collectively to ensure state accountability and to create a robust system for monitoring the implementation of anti-torture standards.

Regional and International Enforcement

The global rejection of torture is reinforced by both universal and regional human rights frameworks. For example, the European Committee for the Prevention of Torture (CPT), established under the European Convention for the Prevention of Torture 1987, conducts periodic visits to detention facilities and provides recommendations for improvements to prevent torture. Similarly, the Inter-American Convention to Prevent and Punish Torture, which entered into force in 1987, includes provisions that extend the definition of torture to encompass psychological harm, thus broadening the scope of protection.

The role of the International Criminal Court (ICC), established under the Rome Statute, is critical in holding individuals accountable for torture, especially in cases of war crimes and crimes against humanity. The ICC's mandate to prosecute individuals for torture under Article 7(1)(f) and Article 8(2)(a)(ii) of the Rome Statute serves as a deterrent to state-sponsored torture and ensures that perpetrators of torture are brought to justice.

Case Studies and Judicial Precedents

A key part of the international anti-torture framework involves landmark judicial rulings. The case of *Filártiga v. Peña-Irala* (1980) set a precedent in U.S. law by recognizing torture as a violation of customary international law, thereby allowing victims of torture to seek justice in U.S. courts. Additionally, the cases of *Boumediene v. Bush* (2008) and the trials related to Guantánamo Bay underscore the tension between national security concerns and international human rights standards.

The Committee against Torture has also played a pivotal role in holding states accountable. Notably, in the case of *Barakat v. Tunisia*, the committee found that Tunisia had failed to meet its obligations under Article 11 of UNCAT, which requires states to systematically review interrogation methods and detention conditions to prevent torture. Similarly, *Saadia Ali v. Tunisia* highlighted Tunisia's failure to promptly investigate allegations of torture, violating multiple provisions of the Convention.

Suggestions for Strengthening the Legal Framework

while significant strides have been made in the international legal framework prohibiting torture, ongoing challenges remain. The effectiveness of international law is often hindered by the reluctance of powerful states to fully comply with international norms. Furthermore, the implementation of anti-torture standards within domestic legal systems remains inconsistent, and the capacity for international bodies to enforce their decisions is limited.

It is essential to strengthen the mandate and capabilities of the International Criminal Court and other international human rights bodies to ensure that perpetrators of torture, especially those in positions of power, are held accountable. Additionally, enhancing international cooperation through stronger enforcement mechanisms and ensuring that all states ratify and implement the provisions of the UNCAT and regional conventions is crucial for advancing the global anti-torture agenda.

Conclusion

The prohibition of torture remains one of the most universally recognized and vital aspects of international human rights law. Through a combination of international treaties, regional conventions, judicial decisions, and ongoing efforts by global and regional bodies, significant progress has been made in eradicating torture. However, challenges persist, and more efforts are required to strengthen international legal instruments, ensure compliance, and hold perpetrators accountable. The continued global commitment to the prohibition of torture will be essential in safeguarding human dignity and ensuring justice for all.

References

1. United Nations. (1948). *Universal Declaration of Human Rights*. Retrieved from <https://www.un.org/en/universal-declaration-human-rights/>
2. United Nations. (1966). *International Covenant on Civil and Political Rights*. Retrieved from <https://www.ohchr.org/en/professionalinterest/Pages/CCPR.aspx>
3. United Nations. (1984). *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)*. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>
4. European Court of Human Rights. (1950). *European Convention on Human Rights*. Retrieved from https://www.echr.coe.int/documents/convention_eng.pdf
5. Inter-American Commission on Human Rights. (1987). *Inter-American Convention to Prevent and Punish Torture*. Retrieved from https://www.oas.org/en/iachr/mandate/Basics/conv_torture.asp
6. International Criminal Court. (1998). *Rome Statute of the International Criminal Court*. Retrieved from <https://www.icc-cpi.int/resource-library/official-journal>
7. *Filártiga v. Peña-Irala*, 630 F.2d 876 (1980). *U.S. Court of Appeals for the Second Circuit*.
8. *Boumediene v. Bush*, 553 U.S. 723 (2008). *U.S. Supreme Court*.
9. Committee Against Torture (CAT). (2011). *Barakat v. Tunisia*. CAT/C/46/D/357/2008.
10. Amnesty International. (2017). *Torture in the 21st Century: The Fight to End Torture*. Retrieved from <https://www.amnesty.org/en/torture/>
11. Human Rights Watch. (2016). *Torture in the World: 2016 Report*. Retrieved from <https://www.hrw.org/world-report/2016/torture>
12. National Human Rights Commission of India. (2019). *Annual Report on Human Rights in India*. Retrieved from <http://nhrc.nic.in/>