

MODULE 4: THE PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Introduction	111
Activity – Version 1: Conditions that facilitate or prevent ill-treatment	112
Activity – Version 2: Ill-treatment role play and case studies	112
Handout – Activity version 1: Conditions that facilitate or prevent ill-treatment.....	115
Handout – Activity version 2: Ill-treatment role play and Case studies A and B	117
Briefing notes	119
1. Key concepts	119
2. What is inhuman or degrading treatment?.....	120
3. Activity version 1 – Conditions that facilitate or prevent ill-treatment.....	121
a. Milgram experiment.....	121
b. Stanford prison experiment.....	122
4. Activity version 2 – Ill-treatment role play and Case studies A and B.....	123
Supplementary material	125

The prohibition of torture and inhuman or degrading treatment or punishment

Introduction

This module looks at the topic of prohibition of torture and inhuman or degrading treatment or punishment and its relationship to human rights and policing. The right to be free from torture and ill-treatment is absolute, meaning it can neither be infringed upon nor violated. This is particularly relevant to police work, as, unlike other persons, police are permitted to use force or limit certain rights when necessary, such as during arrests or when interrogating suspects. Such situations can give rise to questions related to the prohibition of torture and ill-treatment.

The module seeks to untangle the topic's complex legal, ethical and systemic layers to help police officers understand how and why torture and ill-treatment occur in different situations. This knowledge can make it easier for them to more effectively prevent and protect against violations of the prohibition that their own and/or others' conduct might potentially cause.

To defuse what can be an emotionally charged issue, and transcend a focus on personal guilt and moralising, the module first examines the systemic or situational factors that encourage or discourage police misconduct. The analysis of such external forces contributes to a differentiated view of police misconduct.

This module also aims to instil knowledge about the definition of torture, the absolute prohibition of torture and the distinction between legitimate treatment and inhuman or degrading treatment. It further looks into the link between the prohibition of torture, inhuman and degrading treatment, and the necessity and proportionality principles, police misconduct and its consequences.

Activities – Version 1: **Conditions that facilitate or prevent ill-treatment;** and Version 2: **Ill-treatment role play and case studies**

Purpose:

The right to freedom from torture and other ill-treatment is one of the most fundamental human rights, and much of the police-related discussion about human rights violations is somehow related to it. This issue is a 'classical' topic in police training and needs to be dealt with thoroughly. It raises important and interwoven legal, ethical and social scientific aspects.

Objectives:

Knowledge

- understand the legal concept of torture and other cruel, inhuman or degrading treatment or punishment
- know the concrete obligations of police to respect, protect and fulfil this human right
- know the systemic conditions/situational forces that tend
 - to facilitate misconduct
 - to prevent misconduct

Attitude

- have a reasoned position rejecting torture and other ill-treatment as legitimate tools of policing

Skills

- be able to discuss the ethical dilemmas involved in this sensitive area with other police officers

Requirements:

- time: 70–100 minutes
- materials:
 - Handouts 1 and 2 with discussion questions, role play and case studies
 - optional: power point presentation and projector
- space: plenary room plus two working group rooms
- group size:
 - Version 1 – maximum 20–25 persons: mid-management to upper-management level
 - Version 2 – maximum 15–30 persons: vary perspectives according to group size



Activity version 1 description – **Conditions that facilitate or prevent ill-treatment**

- ❶ Introduce the purpose and objectives of the activity.
- ❷ Explain and discuss briefly the definition of torture and other ill-treatment and its legal, ethical and social science aspects. (about 15-20 minutes)
- ❸ Distribute Module 4 – Activity version 1 - handout.
- ❹ Divide participants into groups of 4-to-5 persons and discuss the statements. (about 30 minutes)
- ❺ Answer any questions that arise during group work.
- ❻ Ask the groups to present their work in the plenary.
- ❼ Summarise major points and provide tailor-made input, drawing on information from the Briefing notes as necessary.

Activity version 2¹ description – Ill-treatment role play and case studies

- ❶ Present the role play and distribute the handout. (5 minutes)
- ❷ Form six working groups (each group takes on one perspective: parents of the victim; parents of the suspect; lawyer of the suspect; chief police constable; representative of the police union, representing the officer who refused to follow the order of the chief constable; human rights NGO) and appoint one representative from each group. The representative plays the respective character in the television discussion. The working group supports the representative in preparing arguments according to his/her role in the discussion: What is his/her point of view? Does he/she support the police's reaction or not? (about 20 minutes)
- ❸ Roundtable discussion. The participants in the discussion are:
 - parents of the victim, parents of the suspect, lawyer of the suspect, chief police constable, representative of the police union (representing the officer who refused to follow the order of the chief constable), human rights NGO.
 - If necessary, further/other perspectives can be added. The trainer moderates the television discussion. (about 20 minutes)
- ❹ Debrief the role play, addressing the questions posed in the handout. (about 20 minutes)
- ❺ Ask participants to individually review Case studies A and B. (about 5–10 minutes)
- ❻ Discuss the role play and both case studies asking the participants to compare and contrast them, with a focus on understanding how torture/ill-treatment can occur in various circumstances.
- ❼ Discuss the role play and the two case studies and the reasoning underlying the absolute character of the prohibition of torture.
- ❽ Summarise major points and, if necessary, provide tailor-made input, drawing on information from the Briefing notes as necessary. (about 25 minutes)

1. Günther Berghofer, Austrian Police Commander, and Gudrun Rabussay-Schwald, who co-drafted this manual, developed this exercise.



Handout – Activity version 1:² Conditions that facilitate or prevent ill-treatment

Social science research in the area of police violence has identified a number of structural conditions which are relevant to the occurrence of police misconduct. The following list provides some of the major ones:

Conditions that tend to facilitate misconduct:

- Relative isolation of an organisation from other organisations and society
- Existence of closed organisational units
- Dominance of male participants, often from lower socio-economic sectors
- Working environment characterised by an inflexible attitude which focuses on the problematic aspects of social life
- Discrepancy between what is legal and what appears legitimate and just ('they will escape punishment anyway')
- Relatively fixed images of who the 'other' in police work is (stereotyping of groups and beliefs in fixed patterns of action)
- Reaction of 'others' tends to corroborate these images (self-fulfilling prophecy)
- The power of 'the other', and the danger of effective complaints from such 'others', is seen to be low
- Strong (sub)-cultural knowledge which is different from the 'official' view
- Badly developed communication skills on the part of the police and/or on the part of the 'other'

Conditions that tend to prevent misconduct:

- Mixed functional and organisational groups (from different police units)
- Well-developed communication structures between management and police officers
- Diverse working environment
- Management recognises and expresses praise for good police work
- Clear awareness of human dignity as a principle of human rights and police action
- Transparency and diversity of social relations with police
- Multiple and varied contact with different public groups, including minority groups
- High identification with local environment
- Little focus on own group (friends, activities etc.)
- Heterogeneity/Diversity of composition (age, sex, ethnic origin, sexual orientation)
- Availability of easily accessible counselling structures
- Psycho-social support/reflection after difficult work-related events, long-term operations

2. Elements of the handout are based on Behr, R. (2006), *Polizeikultur. Routinen – Rituale – Reflexionen. Bausteine zu einer Theorie der Praxis der Polizei*, Wiesbaden, pp. 88 and following.

Handout – Activity version 1: **Conditions that facilitate or prevent ill-treatment**

(continued)

Discussion questions:

1. On the basis of your concrete work experience, which of these factors seem relevant to you?
2. On the basis of your experience, which of these factors do not seem relevant?
3. If you were asked to start working on one of these factors, where would you start?



Handout – Activity version 2: Ill-treatment role play and Case studies A and B

Role play: Kidnapping case

Unknown perpetrator(s) kidnap(s) a six-year-old boy and demand(s) a large ransom. Police launch an immediate investigation which is carried out under the public spotlight because the boy is asthmatic and needs his medicine soon and might otherwise suffocate. The city's Deputy Police Chief and his team arrest a man who was seen with the child immediately before he disappeared. Other evidence also strongly suggests the suspect is involved. When questioned, however, he denies any connection with the kidnapping. The Deputy Police Chief, fearing for the boy's safety and in view of the strong evidence and time constraints, gives the order to threaten the suspect with torture if he continues to refuse to disclose where he has hidden the child. He argues that this method was justified under the circumstances. A police officer refuses to carry out his orders for legal and ethical reasons.

Questions to prepare for the television discussion:

How do you feel about this situation in your role as character XYZ?

What is your point of view regarding the actions taken by the police officers involved (deputy police chief; refusing officer) in this situation?

Is it justified to threaten the suspect with torture in this situation? Why or why not?

How would you have acted in this situation (as the police officer/as the victim's relative)?

How do you expect the police to act in this situation?

Handout – Activity version 2: Ill-treatment Case studies A and B - Medical attention and drug trafficking cases *(continued)*

Case study A: Detention

Six police officers arrested Mr H on 5 October 1989.³ They threw a stun grenade, entered Mr H's flat and forced him to the ground. They handcuffed and hooded him and then took him to police headquarters for questioning. It was not until his arrival in prison the next day that he was able to change his clothes. On the third day, he asked to see a doctor. He was not examined until eight days after his arrest when x-rays revealed he had sustained a fractured rib.

Case study B: Interrogation

The police arrested Mr R for drug trafficking.⁴ Mr R said that the officers questioning him grossly insulted him and then assaulted him repeatedly in order to wring a confession from him. They punched him in the head, kidneys and right arm and kicked him in the upper leg and kidneys. They pulled him to the ground by the hair and banged his head against the floor.

The police officers reported, however, that as Mr R was getting out of the car hand-cuffed, he slipped and his right arm hit the rear door. The injuries occurred before the interrogation took place.

After his release, Mr R went to the hospital for an examination, where the doctors noted bruises both inside and outside his right arm.

It is not disputed that Mr R's injuries were sustained during his detention in police custody. During his detention, he was entirely under the control of police officers. Due to the lack of evidence no individual police officers were found guilty. However, that does not absolve Country X of its obligations under the ECHR to provide a plausible explanation of the cause of the applicant's injuries.

3. European Court of Human Rights (ECtHR),
Hurtado v. Switzerland, No. 17549/90,
28 January 1994.

4. ECtHR, *Ribitsch v. Austria*, No. 18896/91,
4 December 1995.



Briefing notes

These Briefing notes provide guidance on the module activities and handouts covering the topic of torture or inhuman or degrading treatment or punishment. The Briefing notes are structured as follows:

1. **Key concepts**
2. **What is inhuman or degrading treatment?**
3. **Activity version 1 – Conditions that facilitate or prevent ill-treatment**
 - a. Milgram experiment
 - b. Stanford prison experiment
4. **Activity version 2 – Ill-treatment Role play and Case studies A and B**

1. Key concepts

European Convention on Human Rights, Article 3; EU Charter of Fundamental Rights, Article 4

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The prohibition of torture or inhuman or degrading treatment or punishment is encapsulated in Article 3 of the European Convention on Human Rights (ECHR) and in Article 4 of the Charter of Fundamental Rights of the European Union. In contrast to most other rights, the prohibition of torture and inhuman and degrading treatment or punishment is absolute. This means that there is no justification for treating persons in a way that constitutes torture or inhuman or degrading treatment or punishment.

A more detailed definition of torture can also be found in Article 1 of the CAT. This definition has been used by the European Court of Human Rights (ECtHR) with regard to case law relating to Article 3 of the ECHR.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Article 1

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.

2. What is inhuman or degrading treatment or punishment?

Using ECtHR case law as a point of reference, for treatment to be considered 'inhuman or degrading':

- an individual's suffering and humiliation must go beyond that inevitable element of suffering or humiliation which is connected with a given form of legitimate treatment or punishment.⁵
- ill treatment of an individual must reach a minimum level of severity,⁶ which depends on the concrete circumstances of a case as related to, among other things, the:
 - . duration of the treatment;
 - . physical and/or mental effects on the individual;
 - . sex, age and state of health of the individual.⁷

For those persons deprived of their liberty, any recourse to physical force which has not been made strictly necessary by their own conduct diminishes human dignity and is in principle an infringement of Article 3 of the ECHR.⁸

The ECtHR, in assessing whether, under Article 3 of the ECHR, a punishment or treatment is 'degrading', considers:

- whether the object of the treatment is to humiliate and debase the person⁹ and, alternatively,
- whether, as far as the consequences are concerned, it adversely affects his or her personality in a manner incompatible with Article 3.¹⁰
- Degrading treatment has also been seen as involving treatment such as to arouse feelings of fear, anguish and inferiority capable of humiliating or debasing the victim and possibly breaking his or her physical or moral resistance.¹¹ The handcuffing of a doctor in front of his family and neighbours without any evidence that he posed a danger, for example, was considered to arouse such feelings and thus constituted degrading treatment.¹²

As interpreted by courts according to the UN CAT definition, 'torture':

- causes severe pain or suffering, physical or mental
- is intentionally inflicted
- for a certain purpose: to get information, a confession, punishment, intimidation, or for discriminatory reasons
- by a public official or at least with his/her acquiescence (there must be some sort of involvement of public officials, either by direct action or by failing to take appropriate action to prevent torture by others)

How do you distinguish between torture and inhuman or degrading treatment?

There are three main conditions to consider when determining whether an act constitutes torture or inhuman/degrading treatment.

- 1. Intentionality:** One must consider the intentions behind a person's actions. Torture cannot occur 'accidentally.' In contrast, inhuman or degrading treatment can be caused by negligence or by the unintended consequences of actions, such as inadvertently causing a detainee pain or suffering.
- 2. Severity of the pain:** Ill-treatment must reach a minimum level of severity if it is to fall within the scope of Article 3 of the ECHR.¹³ The assessment of this minimum is relative: it depends on the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim.¹⁴ Therefore,

5. ECtHR, *Kudla v. Poland*, No. 30210/96, 26 October 2000, para. 92.

6. ECtHR, *Tyrer v. United Kingdom*, No. 5856/72, 25 April 1978, para. 30.

7. ECtHR, *Keenan v. United Kingdom*, No. 27229/95, 3 April 2001, para. 108; *Campbell and Cosans v. United Kingdom*, No. 7511/76; 7743/76, 25 February 1982, para. 30.

8. ECtHR, *Ribitsch v. Austria*, No. 18896/91, 4 December 1995, para. 38.

9. ECtHR, *Campbell and Cosans v. United Kingdom*, No. 7511/76; 7743/76, 25 February 1982, para. 30.

10. *Ibid.*

11. ECtHR, *Keenan v. United Kingdom*, No. 27229/95, 3 April 2001, para. 109.

12. ECtHR, *Erdogan Yagiz v. Turkey*, No. 27473/02, 6 March 2007.

13. ECtHR, *Tyrer v. United Kingdom*, No. 5856/72, 25 April 1978, para. 30.



to determine whether a certain treatment reaches the minimum level of Article 3 of the ECHR requires a look at all the circumstances of a given case. The line between the severity levels applicable to torture or to inhuman treatment is particularly difficult to draw. Furthermore, because human rights are ‘living instruments’, changing public awareness and attitudes have an influence on where the line is drawn. Not surprisingly, therefore, there is robust debate on the relevance and degree of severity needed. In the European context, the case law of the ECtHR is the most relevant.

- In the 1970s, the ECtHR set a high level of severity in the well-known and much criticised *Ireland v. United Kingdom* case, by classifying techniques of sensory deprivation used in the interrogation of suspected terrorists (hooding, submission to continuous and monotonous noise, deprivation of sleep, deprivation of food and water, standing against the wall) as inhuman treatment but not as torture.¹⁵
- This high threshold is not currently applicable; the current standard was set in *Selmouni*. Police beat, threatened and humiliated Mr Selmouni in an assault that lasted a number of days in an attempt to make him confess to an offence. This physical and mental violence was sufficiently severe to be classified as torture.¹⁶
- In light of the *Selmouni* ruling, it is clear that the techniques of sensory deprivation just described, which have been practiced by several states in the fight against terrorism particularly since the September 2001 attacks in the United States, constitute torture.¹⁷
- No differentiation is made between physical or mental torture. Therefore, causing severe psychological suffering while ‘just’ threatening torture is also considered torture.¹⁸

3. Purpose: Unlike inhuman treatment, torture is an act undertaken for a certain purpose: to get information, such as a confession; to punish; to intimidate; and to discriminate against. As mentioned previously, excessive use of force can, however, result in ill-treatment even without such a purpose.

3. Activity version 1: Conditions that facilitate or prevent ill-treatment

Activity 1 highlights that structural conditions as well as an individual’s actions are contributing factors to the occurrence of misconduct, including prohibited conduct such as torture and/or ill-treatment of others.

Social psychologists have sought to shed some light on this topic by studying misconduct in relation to human behaviour and organisational structures, such as hierarchies with authority figures. They consider three main attributes for analysis: “what individuals bring into any setting, what situational forces bring out of those actors, and how system forces create and maintain situations”.¹⁹ This means that an individual’s action(s) are not necessarily the sole reason for misconduct, such as torture and/or ill-treatment. Situational forces might be so powerful that they transform ordinary people into perpetrators. The results of two famous social experiments illustrate how structure can influence behaviour.

a. Milgram experiment

The Milgram experiment was actually a series of social psychology experiments conducted in the 1960s to measure the willingness of participants to obey authority figures’ orders, even though the orders likely conflicted with the participants’ personal values.

14. ECtHR, *Keenan v. United Kingdom*, No. 27229/95, 3 April 2001, para. 108; *Campbell and Cosans v. United Kingdom*, Nos. 7511/76 and 7743/76, 25 February 1982, para. 30.

15. ECtHR, *Ireland v. United Kingdom*, 18 January 1978, para. 96.

16. ECtHR, *Selmouni v. France*, No. 25803/94, 28 July 1999, see further, Reid (2007), pp. 574 and 575.

17. See, UN CAT (1997), para. 257; McArthur and Nowak (2008), *The United Nations Convention against Torture. A Commentary*, Oxford University Press, New York.

18. ECtHR, *Akkoc v. Turkey*, Nos. 22947 and 22948/93, 10 October 2000, para. 116 and *Gäfgen v. Germany*, No. 22978/05, 1 June 2010.

19. Zimbardo, P. (2007), *The Lucifer effect: Understanding how good people turn evil*, New York, p. 9.

Experiment: Participants were instructed to administer painful electric shocks of up to 450 volts to another person if he or she answered a question incorrectly.²⁰ With minimal pressure from authority figures, many participants followed orders and administered shocks although they understood that these shocks harmed the other person. Of the participants, 65% administered the experiment's highest level 450-volt shock. Although they felt uncomfortable, participants typically denied personal responsibility and justified their actions by saying that they were just doing their jobs or they were just following orders.

Results: The authority figures in the experiment concluded that despite clear evidence that the participants' "actions [are] incompatible with fundamental standards of morality, relatively few people have the resources needed to resist authority".²¹

b. Stanford prison experiment

The Stanford prison experiment was conducted in 1971 by a team of researchers who sought to understand how personality traits influence behaviour in prison environments. They also investigated the psychological effects associated with placing people in prisoner and prison guard roles.

Experiment: A group of participants were divided and randomly assigned roles as prisoners or guards in a simulated prison environment. The participants adapted to their roles well beyond researchers' expectations. The 'guards' embraced their roles as authoritarian figures, controlling the 'prisoners' by readily punishing disobedience with various psychological and physical tactics. The 'prisoners' became similarly engaged, first attempting to rebel against the guards' tactics, then internalising their roles as passive prisoners and tolerating the abuse. Five prisoners became so upset that they quit the experiment early. Ultimately, the morality of the entire experiment was brought into question and it was abruptly stopped just six days into the planned two weeks.²²

Results: Researchers found that the participants were impressionable and obedient when thrust into a social and institutional environment that legitimised the application of a specific ideology. The scientists concluded that the situation, rather than individuals' personalities, caused the participants' behaviour. The experiment shows the power of authority.

Training tip: Using the social psychology experiments in training courses

Torture and/or ill-treatment are not commonplace in most people's lives. Therefore, describing one or both experiments to participants can help them better understand how ordinary people can be influenced by the structures and authority figures around them. Evaluating misconduct from this perspective can help participants to:

- recognise that torture and/or ill-treatment is not necessarily a simple matter of a person or persons being 'evil' or 'bad', but that the context also has an influence;
- feel that there are ways to prevent misconduct because responsibility does not necessarily lie with the individual; several tangible factors can potentially influence their behaviour.

20. Milgram, S. (1974), *Obedience to authority: An experimental view*, New York, Harper & Row.

21. *Ibid.*

22. For a presentation on the Stanford prison experiment, see: www.prisonexp.org/.



4. Activity version 2: Ill-treatment role play and Case studies A and B

The scenario and two case studies in the Activity version 2 Handout are examples of police in situations related to torture and/or inhuman or degrading treatment. Police must walk a fine line between respecting and protecting human rights and using force. They therefore must understand and apply the principles of necessity and proportionality to ensure that a legitimate use of force does not become an excessive use of force, such as torture or inhuman/degrading treatment. Both the objectives and means when using force must also conform to national laws, police regulations and international human rights law.²³

Therefore, it is useful for police to remember that it is important to:

- ensure that conditions for persons who are in detention correspond to human rights standards;
- conduct prompt, impartial and effective investigations of allegations of torture and ill-treatment;
- protect against torture and ill-treatment by other individuals.

Similarly, the UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (CAT) also outlines guidance on how authorities, such as the police, should handle situations related to torture or inhuman/degrading treatment.

UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

In the role play, threats of torture were used to extract information from the suspect. In an effort to prohibit torture and/or inhuman or degrading treatment while also protecting the right to a fair trial, evidence obtained through torture or ill-treatment is considered tainted and inadmissible in courts.

Hence, avoiding police misconduct in investigations is not only important because it reflects the most fundamental values of democratic societies based on the rule of law, but also because it is required for effective policing since evidence obtained through torture or ill-treatment cannot be used in criminal proceedings.

Articles 3 and 6 prohibiting torture and on the right to a fair trial of the ECHR and Article 15 of the CAT stipulate such evidence conditions.

23. UN Code of Conduct for Law Enforcement Officials, Art. 3, available at: <http://www.un.org/disarmament/ATT/CodeofConductforLawEnfOfficials-E.pdf>; and UN Basic Principles on the Use of Force and Firearms (1990), Principles 9–11, available at: <http://www.unrol.org/files/BASICP~3.PDF>.

“The repression of, and the effective protection of individuals from, the use of investigation methods that breach Article 3 may therefore also require, as a rule, the exclusion from use at trial of real evidence which has been obtained as the result of any violation of Article 3, even though that evidence is more remote from the breach of Article 3 than evidence extracted immediately as a consequence of a violation of that Article. Otherwise, the trial as a whole is rendered unfair. However, the Court considers that both a criminal trial’s fairness and the effective protection of the absolute prohibition under Article 3 in that context are only at stake if it has been shown that the breach of Article 3 had a bearing on the outcome of the proceedings against the defendant, that is, had an impact on his or her conviction or sentence.”

*ECtHR, Gäfgen v. Germany,
No. 22978/05, 1 June 2010,
paragraph 178*

ECtHR case law outlines how the court approaches this issue and can be summed up as:

- any statement obtained as a result of torture or ill-treatment is inadmissible;
- any real evidence obtained as a result of torture is inadmissible;
- any real evidence obtained as a result of ill-treatment is inadmissible if it has an impact on the conviction or sentence.



Supplementary material

Activity version 1: Conditions that facilitate or prevent ill-treatment

The structural factors listed in Activity 1, elaborated by a sociologist, and the Milgram and Stanford prison social psychology experiments, identify dehumanisation and the lack of personal responsibility as factors that raise the risk of torture and ill-treatment:

- Victims of genocide and severe torture are viewed as objects, dehumanised through specific language in propaganda and ideology that treats them as less than human.
- Persons who commit torture often don't feel personally responsible for their acts. They may try to shunt their moral responsibility off to a higher authority. This mentality of 'just doing my duty' or 'just following orders' disables a person's moral compass and drives him or her to complicity in acts he or she would normally not commit.

Further reading

For more information, see Zimbardo, P. (2008), *The Lucifer effect – Understanding how good people turn evil*, New York, available at: www.lucifereffect.com/.

For more information on the Milgram experiment, see Milgram, S. (1974), *Obedience to authority: An experimental view*, New York, Harper & Row; and, also useful, <http://en.wikipedia.org/wiki/Milgram>, which shows the physical setting of the experiment. This might be useful to illustrate the experiment.

For more information on the Stanford prison experiment, see: www.prisonexp.org/.

Activity version 2: Ill-treatment role play and Case studies A and B

The prohibition on torture and other ill-treatment is absolute and without exception. In all situations, torture is never justified or acceptable, even in the most difficult of circumstances, such as when facing terrorist acts or organised crime.²⁵

However, the absolute nature of this prohibition has been called into question, including in EU Member States. The debate surfaced strongly in the case of Magnus Gäfgen's 2002 kidnapping in Germany of 11-year-old Jakob von Metzler, the case upon which this module's role play is based. Some eminent legal scholars argued for the application of torture under very limited conditions.

Participants might also raise issues related to the absolute ban, arguing that threatening torture is far less harmful than actual torture.

Participants might, for example, consider it acceptable to put a suspect under severe pressure, with no bodily harm inflicted on the person, especially when a kidnapped child's rights also hang in the balance. But the CAT text is clear, defining torture as: "[...] any acts by which severe pain or suffering, whether physical or mental [...] is intentionally inflicted [...]."

And physical torture is not the only, or even the most severe source of harm, as this example helps illustrate. Imagine that during an interrogation, a police officer puts a suspect under pressure: "We know where your wife works and where your children go to school. If you don't talk I'll send somebody after them. We have a dirty squad that is used to handling such situations effectively. I'm sure your wife is a pretty women who would like to have some fun with them. And maybe your children as well?" While no physical harm is inflicted, it is easy to imagine the severe mental stress that these threats produce and how they could break a person's will.

Torture victims also often report that the most traumatic part of their experience is the psychological effect of being surrendered to the torturer and his or her arbitrariness, the feeling of powerlessness and intimidation. Reducing torture solely to physical harm would fall short of understanding the nature of torture and the victim's perspective.

Another issue that might arise among participants is the aspect of balancing rights. In other words:

"Isn't it right to apply torture in order to save lives of innocent people?" Even the fundamental right to life can be limited under specific circumstances. Why shouldn't the same also apply with respect to torture?"

Here is a list of arguments that have proven helpful in arguing for the absolute prohibition of torture.

Pandora's box

History has shown that the use of torture can quickly get out of hand. While torture might start as a method used only in exceptional cases, it runs the risk of being expanded and developed into general practice. Once you open 'Pandora's box', things can quickly get out of control. Institutionalising torture – by whatever name, such as 'moderate physical pressure' – has proven to be a slippery slope that undermines the most fundamental legal principles upon which a rule of law based democratic state is founded.

25. ECtHR, *Chahal v. United Kingdom*, No. 70/1995/576/662, 15 November 1996.



Traumatic consequences for victims

The consequences of torture are often traumatic and reach far beyond immediate pain. Many victims suffer from post-traumatic stress disorder, with symptoms such as flashbacks, severe anxiety, insomnia, nightmares, depression and memory lapses. Torture victims often feel guilt and shame, triggered by the humiliation they have endured. Many feel that they have betrayed themselves or their friends and family. All such symptoms are normal human responses to abnormal and inhuman treatment.²⁶

Ineffective tool

Looking at both older and more recent cases, the information gathered through torture generally does not contribute to effective investigations. First, under torture, a person tends to confess whatever the interrogator wants him or her to say, regardless of whether or not it is the truth, just to stop the suffering. Making the wrong person confess things he or she has not committed means that the real perpetrator is not brought to justice. Second, statements or real evidence obtained through torture cannot be used in criminal proceedings. Third, by relying on torture, police officers fail to enhance their professional policing skills with which they might obtain more reliable evidence.

Where do you draw the line?

Even if you consider torture a necessary last resort to save lives, as per the role play on the kidnapping of young Jakob von Metzler, one must still define the circumstances under which torture may be applied. What if threatening torture does not achieve the intended result? What if the suspect – after you make him or her suffer severely – still does not supply the information needed? At what point would you stop? What about the principle of proportionality in practice? What do we consider ‘appropriate’ torture?

Torture as job description?

Implementing torture as an appropriate method of interrogation and investigation – even if it might be the exception rather than the rule – means it would need to be part of a police officer’s job, at least of some special units. His or her duties would then include the application of torture under specific circumstances. As research has shown, people who actually apply torture risk psychological damage. While it might be understandable that Jakob von Metzler’s parents would call upon police to resort to any means to obtain the information needed to find him, the criminal justice system does not function on the basis of such emotional appeals. Instead, professionals handle cases in line with objective standards, employing professional distance and not the emotions of those directly concerned.

Why torture is an absolute right whereas the right to life is not

The police are entitled to interfere with the right to life of a perpetrator in order to protect the lives of others (compare Article 2 of the ECHR). Say, for example, a bank robber takes hostages and threatens to kill them. In trying to rescue the hostages, police are – as a last resort – allowed to shoot the robber. Why then can torture not be applied in the role play based on the Metzler case? Because, in the Metzler case, there is no direct perceptual/sensory connection between the perpetrator and the victim. You can never be sure that the suspect is actually the perpetrator, whereas the bank robber clearly directly threatens the lives of others.

26. See International Rehabilitation Council for Torture Victims, available at: <http://www.ircct.org/what-is-torture/effects-of-torture.aspx>.

European Convention on Human Rights

Article 2 - Right to life

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a. in defence of any person from unlawful violence;
 - b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c. in action lawfully taken for the purpose of quelling a riot or insurrection.

Human dignity

Torture is a direct infringement of human dignity. It objectifies a person, surrendering his or her well-being into the absolute power of another. Apart from physical injuries, torture leaves a person degraded, helpless and corrupted by an ultimate misuse of power. Taking into consideration the golden rule as a simplified principle of human rights, it becomes very clear that torture can never be in accordance with human rights standards. Or to take the classic formulation of Immanuel Kant's second categorical imperative: "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end."

Police use of force under strict consideration of necessity and proportionality

If exercised excessively, the use of force by police officers might result in a violation of Article 3 of the ECHR. Situations where ill-treatment might occur include: handcuffing suspects during or after arrest, use of physical force to overcome resistance or use of weapons. Although most police work does not entail the use of force, it is a crucial element of policing with potentially severe consequences for the public as well as for the police officers themselves.

The use of force is justified only when strictly necessary and to the extent required to perform police duties. Police should first seek a peaceful settlement to a conflict using communication skills such as negotiation, mediation or persuasion. Only when these peaceful means are ineffective or do not show promise of achieving the intended result may more intrusive means be applied, including the use of physical force. Lethal weapons should be used only as a last resort if lives are in jeopardy.

In addition to Article 3 of the ECHR, other international instruments focusing on police conduct also deal with the use of force. One of these instruments is the European Code of Police Ethics, adopted in 2001 by the Council of Europe. Although not legally binding, Article 37 stipulates: "Police may use force only when strictly necessary and to the extent required to obtain a legitimate objective."



“As a starting point, there must always be a legal basis for police operations, including the use of force. Arbitrary use of force can never be accepted. Moreover, the present Article indicates that the use of force by the police must always be considered as an exceptional measure and, when there is need for it, no more force than is absolutely necessary may be used. This implies that the force used should be proportionate to the legitimate aim to be achieved through the measure of force.

There must, accordingly, be a proper balance between the use of force and the situation in which the force is used. In practical terms, this means, that no physical force should be used at all, unless strictly necessary, weapons should not be used, unless strictly necessary, and, if lethal weapons are deemed necessary, they should not be used more than what is considered strictly necessary. Normally, national legislation and regulations should contain provisions on the use of force based on the principles of necessity and proportionality.”

European Code of Police Ethics, Council of Europe, Committee of Ministers Rec(2001) 10, p. 55

Training tip: Using appropriate force

The appropriate use of force in challenging situations, where police officers’ personal safety may be endangered, is one of the most relevant and sensitive issues of practical human rights application. Preparing suitable examples and case studies on the use of force is helpful. It is important to raise participants’ awareness of the strict limitation on the use of force and of police accountability when they overstep this narrow line.

When discussing the principles of necessity and proportionality for the use of force, participants might become concerned that things can easily go wrong with severe consequences for the individual officer. While it is important to raise awareness of a police officer’s responsibilities, it is equally important to convey the message that human rights do not set unrealistically high standards – they are the equivalent of meeting professional policing standards. To make this clear, match national legislation on the use of force and firearms with international human rights standards and/or give practical examples on the use of force and consider them from a human rights perspective, such as the arrest of a person or public order management.

The obligation to protect against torture and ill-treatment

Apart from the police’s obligation to respect the prohibition of torture and to use force only if necessary and with respect to the principle of proportionality, there are also positive obligations regarding the prohibition of torture and ill-treatment. Both Case study A on detention and Case study B on interrogation deal with different aspects of protection.

Case study A addresses the lack of attention an injured man receives in detention. The ECtHR concluded, in this case, that Article 3 of the ECHR had been violated, because Mr H had not been examined by a doctor until eight days after his arrest. Inadequate medical treatment of persons who are detained can constitute a violation of Article 3 of the ECHR. The state must protect the personal integrity of persons whose right to personal liberty is restricted.

Obligation to protect

Protecting children from domestic violence

Authorities learned that a boy’s stepfather had been hitting him with a stick. The applicant was examined by a doctor, who found a number of bruises, indicating that he had been beaten with a garden cane, applied with considerable force, on more than one occasion. The stepfather was charged with assault causing bodily harm and tried before a jury. The defence did not dispute that the stepfather had beaten the boy but contended that this amounted to reasonable punishment, a possible defence under English law to a charge of assault by a parent of a child. The applicant complained that English law had failed to adequately protect him from his stepfather’s ill-treatment.

The ECtHR found that the stepfather’s treatment of the applicant had been sufficiently severe to reach the level prohibited by Article 3. Moreover, it found that the state should be held responsible under the ECHR, since children and other vulnerable individuals in particular were entitled to protection, in the form of effective deterrence, from such forms of ill-treatment. English law, which provided that the prosecution had to prove that an assault on a child went beyond the limits of reasonable punishment, had not provided the applicant with adequate protection. There had, therefore, been a breach of Article 3.

Source: ECtHR, A v. United Kingdom, No. 25599/94, 23 September 1998

“The Court considers that, in these circumstances, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3 [...], requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible [...] If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance [...] would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.”

ECtHR, Assenov and others v. Bulgaria, No. 24760/94, 28 October 1998, paragraph 102

With respect to Case study B, dealing with injuries of disputed cause inflicted during detention, the ECtHR has consistently held that positive obligations under Articles 2 on the right to life and 3 prohibiting torture of the ECHR mean that the state must properly investigate any allegations of ill-treatment.

Further reading

For more information on the Jakob von Metzler case, see: Jessberger, F. (2005), ‘Bad Torture – Good Torture?’, *Journal of International Criminal Justice*, Volume 3, Issue 5, pp. 1059–1073, available at: <http://jicj.oxfordjournals.org/content/3/5/1059.full.pdf+html>.

ECtHR, *Gäfgen v. Germany*, No. 22978/05, 1 June 2010.

Association for the Prevention of Torture (2007), ‘Defusing the ticking bomb scenario - Why we must say no to torture, always’, Geneva.

