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

1. BACKGROUND

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is one of the core international human rights treaties. It was adopted by the United Nations General Assembly on 10 December 1984 and entered into force on 26 June 1987. It currently has a total of 83 signatories and 173 States Parties, making it a widespread instrument in the international community.



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The prohibition against torture has become a principle of customary international law, which finds its basis in other declarations, treaties and conventions. In example, article 5 of the 1948 Universal Declaration of Human Rights, which, although not binding legislation, is part of international custom.

Similarly, the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War also provides for the prohibition of torture in broad terms, as does the 1966 International Covenant on Civil and Political Rights.

While all these instruments contributed greatly to the fight against torture after the Second World War, none of them comprehensively addressed its prevention until the creation of the Convention by the United Nations.

2. DEFINITION OF TORTURE

The definition of torture is set out in article 1 of the Convention, and four elements must be present for responsibility to be attributable to a State party.

Firstly, there must be an act causing pain or suffering of a substantial degree and committed with intent, i.e. a subjective intention on the part of the perpetrator to inflict such suffering.

Secondly, while it is not required that the direct perpetrator of the acts be a public official or other person in the exercise of his or her functions, it is necessary to have their knowledge or acquiescence. This is a fundamental element of the offence, since, unlike in other international instruments, it must be possible to affirm the direct or indirect participation of the State in the torture committed.

Thirdly, there is the purpose intended by the perpetrator(s), which must be specific. Although it does not exhaustively set out a series of cases, some possible purposes are indicated, such as obtaining information, a confession or inflicting punishment. However, there is a residual clause, the basis of which is any other type of discrimination.

Finally, pain inherent in or incidental to the imposition of lawful sanctions cannot be considered as torture.

3. STATE OBLIGATIONS

The Convention provides for a series of legislative, administrative, judicial and other measures to be taken by States Parties to ensure that torture is combated within their jurisdiction.

Thus, all actions that may be considered as torture, committed or attempted, must be criminalised under national criminal law. In

addition, States must consider whether there are substantial grounds for believing that a person may be subjected to torture or inhuman treatment if expelled, returned or extradited to another State, in which case they must cancel such a measure.

4. The COMMITTEE AGAINST TORTURE

Part II of the Convention provides for the establishment of a Committee against Torture (CAT) composed of ten human rights experts elected by the States parties based on equitable geographical distribution.

Its role is to monitor the proper implementation of the Convention and to systematically investigate allegations of torture in order to hold States accountable for such violations. In this procedure, the cooperation of the State will be sought at all stages of the proceedings and some of its members may be appointed to visit the territory where the suspicions lie.

Each State Party must submit reports to the Committee every four years (or in the year of its accession to the Convention) on the way the rights protected are implemented. The Committee, after its examination, will forward its concerns and recommendations to the State.

In addition, the Convention establishes three other monitoring mechanisms, as it may also in certain circumstances:

- 1) Consider individual complaints or communications from individuals,
- 2) Conduct consultations,
- 3) Consider inter-State complaints.

The Convention has contributed to the adoption of new national laws that are more protective and sensitive to the detection of torture by the State, however, the eradication of torture remains a challenge.

As an example, the Committee against Torture has denounced Spain in its second review of Spain in 1993 for its incommunicado detention regime, since this measure hinders an alleged complaint in cases of torture during interrogation. Although the Spanish State has ratified both the Convention against Torture and the European Convention for the Prevention of Torture and the Optional Protocol, the condemnation of international bodies has been unanimous.

The UN Human Rights Committee condemned the torture to which Gorka Lupiáñez, a member of the armed organisation ETA, had been subjected in 2007 while being held in incommunicado detention. The European Court of Human Rights has condemned Spain eleven

times, the last two in 2021, for torture and inhuman and degrading treatment.

5. THE OPTIONAL PROTOCOL

The Optional Protocol was adopted by the United Nations General Assembly on 18 December 2002 and entered into force on 22 June 2006. Its function is the prevention of torture through the inspection of places of detention by independent bodies through the creation of the United Nations Subcommittee on Prevention of Torture.

The main functions of the Subcommittee are:

1) Conducting visits to States Parties, during which it may visit facilities used for the detention of persons deprived of their liberty.

2) A consultative function of assistance and advice to the National Preventive Mechanisms.

This is an important complement to the work of the UN Committee against Torture, the Special Rapporteur on Torture and the Voluntary Fund for Victims of Torture, which are the key UN mechanisms established to prevent, prohibit and combat the scourge of torture.

States that have ratified the Protocol are obliged to establish a National Preventive

Mechanism for the Prevention of Torture and to ensure that it can exercise its mandate in an impartial and effective manner with a preventive aim. States should ensure that the members of the Mechanisms have the appropriate expertise and are equipped with

1. Sufficient human and financial resources
2. Unrestricted access to places where arrests are or may be carried out.
3. Ability to carry out their duties free from threats or coercion.