ALL TRETAIES

* 1. ***Universal Declaration of Human Rights***

The unequivocal prohibition on torture is included in the founding document of the international human rights system: the Universal Declaration of Human Rights. Its article 5 states: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” The Universal Declaration of Human Rights also says that people have the right to “an effective remedy” if their rights are violated. The Universal Declaration of Human Rights, which sets out the basic human rights standards that apply to all States, forms part of customary international law.

* 1. ***International Covenant on Civil and Political Rights***

Article 7 of the International Covenant on Civil and Political Rights provides that no person “shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” In addition, article 10 states: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” The Covenant provides that anyone claiming that their rights have been violated shall have an effective legal remedy. Further, no derogation is allowed regarding the right not to be subjected to torture and other forms of ill-treatment.

The Covenant establishes the Human Rights Committee, which monitors the implementation of the rights set out in the treaty. It does this by examining the reports of States parties, as well as individual communications/complaints received under the treaty’s Optional Protocol. The jurisprudence, general comments and concluding observations adopted by the Human Rights Committee provide important interpretive guidance on the obligations and rights set out in the Covenant. The Covenant is an international treaty that binds all States that have ratified it. The high number of States parties to the Covenant (165 in April 2010) indicates the overwhelming acceptance of the human rights standards that it contains

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

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the most comprehensive international treaty dealing with torture. It contains a series of important provisions in relation to the absolute prohibition of torture and establishes the Committee against Torture to monitor the implementation of treaty obligations by States parties. The Committee examines the reports of States parties and individual complaints. The Committee’s concluding observations and its views on individual communications provide an additional aid in interpreting the Convention. In April 2010, 146 States had ratified the Convention.

1.3.1. Definition of torture Article 1

of the Convention provides a definition of torture that contains the following three key elements: • the intentional infliction of severe mental or physical pain or suffering

• with the direct or indirect involvement of a public official

• for a specific purpose.

This definition is considered to be limited in some respects. It confines torture to acts committed by, or in some way involving, agents of the State. If non-State agents carry out torture, public officials must be involved in some way for the State to be held responsible. Article 1 of the Convention against Torture says the act must occur “at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”20 The fact that specific acts of torture are not itemized in the Convention is, however, one of the strengths of the treaty. A list could never fully itemize or describe every possible method of torture that may be used now or in the future.

1.3.2. Obligation to take preventive measures According to article 2 of the Convention, each State party has an obligation to take all necessary measures to prevent acts of torture. This includes legislative, administrative and judicial measures, as well as any other measures that may be appropriate. This is a legally binding obligation and, when reporting to the Committee against Torture, States parties are required to explain what steps they have taken to implement this obligation. NHRIs can also refer to this obligation when planning and undertaking activities to prevent torture and ill-treatment of persons deprived of their liberty.

No justification for torture – ever Article 2.2 of the Convention states that “no exceptional circumstances whatsoever” can justify torture. This includes war or the threat of war, political instability, combating terrorism or any other emergency. Orders from a superior officer are also not a justification for torture. Law enforcement and detaining officials should receive training that clearly highlights their obligation to refuse such orders. 1.3.4. Non-refoulement

Article 3 of the Convention sets out the principle of non-refoulement, which requires States to not expel, return or extradite a person to another State if there are “substantial grounds” for believing that the person would be in danger of being subjected to torture. The principle of non-refoulement is an illustration of the absolute prohibition of torture and other forms of ill-treatment. It has been undermined in recent years by the practice of some States to seek diplomatic assurances when there are known risks that the person being returned may be subjected to torture or ill-treatment. This practice has been used in the context of the so-called war on terror, with the sending State seeking assurances from the receiving State that the individual in question will not be tortured or subjected to other forms of ill-treatment. This practice is considered to violate the principle of nonrefoulement and is not permissible.

1.3.5. Specific crime of torture Article 4 of the Convention requires each State party to ensure that torture is included as a specific crime in their national criminal law. Some States argue that this is unnecessary, as acts of torture would already be covered by existing offences in their criminal codes

However, this provision is essential because:

• torture is not just a form of violent assault, it is an exercise of power over a victim that does not correspond to any other criminal offence

• defining torture as a crime underlines the specific nature and gravity of the offence

• making torture a specific offence provides a clear warning to officials that the practice is punishable, thereby providing an important deterrent

• it emphasizes the need for appropriate punishment, taking into account the gravity of the offence

• enhances the ability of responsible officials to monitor the specific crime of torture.

The Committee against Torture requires that States parties use, as a minimum, the definition of torture included in article 1 of the Convention.

1.3.6. Universal jurisdiction The Convention obliges each State party to establish its jurisdiction over the crime of torture, irrespective of whether the crime was committed outside its borders and regardless of the alleged perpetrator’s nationality, country of residence or absence of any other relationship with the country (articles 5–9). If the State is unable to prosecute the offence, it is required to extradite the alleged perpetrator to a State which is able and willing to prosecute such a crime. This principle of universal jurisdiction constitutes one of the most important aspects of the Convention.21 Where torture is part of a widespread or systematic attack, or takes place in an armed conflict, those responsible for torture might also be tried by the International Criminal Court, as torture is regarded as a crime against humanity and a war crime. However, many more States have ratified the Convention against Torture, which covers all acts of torture and creates the obligation to exercise universal jurisdiction.

1.3.7. Training officials Article 10 of the Convention requires States parties to take steps to ensure that all law enforcement personnel, medical personnel, public officials and others involved in the deprivation of liberty receive education and information on the prohibition and prevention of torture.

1.3.8. Review of detention procedures Under article 11 of the Convention, States parties are required to keep under systematic review interrogation rules, instructions, methods and practices, as well as custody procedures. These should comply with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

1.3.9. Prompt investigation According to article 12 of the Convention, each State party must establish prompt and impartial investigations whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction. This means that, even in the absence of a formal complaint, the relevant authorities must undertake an impartial, effective, independent and thorough investigation as soon as they receive information indicating any instance of torture or ill-treatment.

1.3.10. Right of victims to complain and obtain redress The Convention provides that victims of torture have the right to complain and to have their case investigated promptly and impartially (article 13), as well as to receive redress and adequate compensation (article 14). This also includes the right to rehabilitation that is as full as possible.

22 1.3.11. Inadmissible evidence According to article 15 of the Convention, any evidence gathered as a result of torture must be deemed inadmissible in legal proceedings. This provision is extremely important because, by making such statements inadmissible in court proceedings, one of the primary aims of torture becomes redundant.

1.3.12. Optional Protocol to the Convention against Torture The Convention against Torture is complemented by an Optional Protocol, which was adopted in 2002 and entered into force in 2006. The Optional Protocol does not establish new normative standards. Instead, it reinforces the specific obligations for prevention of torture in articles 2 and 16 of the Convention by establishing a system of regular visits to places of detention by international and national bodies.

***Other treaties***

A number of other international human rights treaties contain similar prohibitions of torture and other ill-treatment.

The Convention on the Rights of the Child contains a specific provision in relation to torture and illtreatment of children (article 37), as does the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (article 10) and the Convention on the Rights of Persons with Disabilities (article 15).

Although there is no specific provision on torture included in the Convention on the Elimination of All Forms of Discrimination against Women, the relevant United Nations treaty body has adopted a general recommendation on violence against women that deals with torture (General Recommendation 19, 1992).

International refugee law also provides an important source of international human rights law that is highly relevant to the issue of torture. The right to seek asylum in another country is one of the fundamental protections for anyone who faces the danger of persecution. There is a total prohibition on any Government returning a person to a country where they would be in danger of serious human rights violations, and torture in particular. This is the principle of non-refoulement, which is specifically mentioned in the Convention against Torture.