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TRAINING MANUEL ON HUMAN RIGHTS AND HUMAN RIGHTS PROTECTION FOR LAWYERS

FILE N° 13: TORTURE AND INHUMAN AND DEGRADING TREATMENT

➤ *What right? What legal good? What value?*

This concerns the right not to be subjected to torture, or cruel, inhuman or degrading punishment or treatment.

This right aims to protect the physical and moral integrity, as well as the dignity, of persons.

The prohibition of torture or cruel, inhuman or degrading punishment or treatment is absolute. It became an imperative of international law (*jus cogens* norm). ICHR, 11 March 2005, *Caesar v/ Trinidad and Tobago*; CIDH, 7 Sept. 2004, *Tibi v/ Ecuador*.

It cannot be condoned in any exceptional circumstances (art. 2 para. 2 of the CAT, art 5 of the IACPPT). Perpetrators of acts of torture cannot justify themselves by invoking orders issued by a superior or public activity (art. 2 para. 3 of the CAT, art 4 of the IACPPT).

➤ *Which texts guarantee this right?*

- **General international legal instruments**

It is acknowledged in general international legal instruments relating to human rights : art. 5 of the UDHR, art. 7 of the ICCPR, art. 3 of the ECHR, art. 4 of the Charter of Fundamental Rights of the European Union, art. 5 of the ACHR, art. 5 of the ACHPR, end also art. 3 common to the Geneva Conventions.

- **Specific international legal instruments**

- Convention against torture and other cruel, inhuman, or degrading punishment or treatment, adopted by the United Nations GA in 1984 (CAT). Convention ratified by 117 States (See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en&clang=_en)

- European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, adopted by the Council of Europe in Europe in 1987. States which have ratified the Convention:



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Albania, Germany, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia Herzegovina, Bulgaria, Cyprus, Croatia, Denmark, Spain, Estonia, Finland, France, Georgia, Greece, Hungary, Ireland, Iceland, Italy, ex-Yugoslav Republic of Macedonia, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Norway, the Netherlands, Poland, Portugal, Czech Republic, Romania, United Kingdom, Russia, San Marino, Serbia, Slovakia, Slovenia, Sweden, Switzerland Turkey and Ukraine.

- Inter-American Convention to Prevent and Punish Torture, adopted by the GA of the Organization of American States in 1985 (IACPPT). States which have ratified the Convention: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela.

➤ What differentiates torture from inhuman and degrading treatment ?

There is no consensus on the definition of these notions.

• Definition of torture

-Art. 1 of the CAT: « 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 express or tacit consent or acquiescence of a public official or other person acting in an official capacity.»

- ECHR, 18 Jan. 1978, Ireland v/ United Kingdom: « deliberate inhuman treatment causing very serious and cruel suffering ».

-Article 2 and 3 of the IACPPT :

Art.2. : any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.

Art.3 : The following shall be held guilty of the crime of torture: a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so. ; b. A person who, at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.

-Constituent elements:

-*Nature of the act*: intentional act ; IACHR, 11 May 2007, *Bueno Alves v/ Argentina*.

- *Consequence of the act* : suffering or pain of high severity for the victim, or, according to the OAS Convention, that which is intended to diminish the physical or mental abilities of the victim. Estimated according to the degree of intensity (gravity of suffering or pain, brutality) and circumstances of specific examples (duration, method, physical and mental effects, sex, age, state of health of victim, etc.) ; ECHR, *Ireland v/ United Kingdom* ; IACHR, 11 May 2007, *Bueno Alves v/ Argentina*.

-*Perpetrator of the act* : a public service official, or person carrying out public duties or acting on the instigation or with the consent of the public authorities.

- *Pursuit of a specific aim* (to obtain information or confession, punish, intimidate, apply pressure on the victim or on other people) IACHR, 11 May 2007, *Bueno Alves v/ Argentine, or reason based on discrimination*.

• Definition of inhuman or degrading treatment

-Art. 16.1 of the CAT: « other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity ».

-ECHR, 25 Apr. 1978, *Tyrer v/ United Kingdom*:

- *Inhuman treatment* : « which causes mental or physical punishment of a particular intensity »
- *Degrading treatment*: « which grossly humiliates the individual in front of others or which forces the individual to act against their will or conscience or which debases the individual in their own eyes ».

-IACHR, 17 Sept. 1997, *Loayza Tamayo v/ Peru* :

- *Inhuman treatment*: « which causes physical or moral suffering, accompanied by mental disturbance ».
- *Degrading treatment*: « feelings of fear, anxiety or inferiority, with the aim of humiliating, degrading or breaking down the physical or mental resistance of the victim ».

- Criteria for definition:

- Slightest degree of intensity of pain.
- Requires no specific aim.

➤ What are States' obligations ?

With regard to the United Nations Convention, the OAS and European case-law :

- To abstain from practising torture or inflicting improper treatment,
- To prevent these practices through the adoption of adequate measures,
- To repress these practices : acts which constitute an infringement of national criminal law, accompanied by appropriate penalties,
- To repair damages sustained by the victims of these practices : impartial investigation, protection of victims and witnesses.
- To extradite or try the perpetrators of these acts.

➤ Which control mechanisms are there ?

- **Specific conventional mechanisms**

- *CAT*

Article 17 of the Convention provides for the setting up of a Committee against Torture, composed of independent experts, with responsibility for ensuring the application of the Convention.

It contains several mechanisms to this end :

- State communications (art. 21 ; subject to express acceptance of this jurisdiction by the States in question)

-*Initiative* : State party

-*Procedure* : written communication from the State for the attention of the State in question → written explanations from the recipient State within 3 months → if the matter has not been resolved within 6 months, possible referral to the Committee, after exhaustion of national legal remedies → good offices of the Committee to arrive at a friendly solution + where appropriate, *ad hoc* conciliation committee.

- Individual communications (art. 22 ; subject to express acceptance of this jurisdiction by the States in question)

-*Initiative* : individuals (or a parent or representative) who consider themselves to be the victim of a violation by the State (under whose jurisdiction the individual falls) of the provisions of the Convention

-*Procedure* : anonymous written communication → admissibility → examination on the merits (observations of the State in question in response within 6 months + response from the individual) → findings of the Committee communicated to the individual and the State and published in the annual report, including recommendations to the State if it establishes a violation requiring an end to the violation or reparation for damage sustained.

-Inquiries (art.20 ; subject to the tacit acceptance of this jurisdiction by the State in question (absence of declaration declining this jurisdiction))

- *Initiative* : Committee, on the basis of credible information, according to which torture is practised systematically on the territory of the State party, received through trustworthy sources (NGO for example)

- *Procedure* : examination of information → Observations of the State in question in response → where appropriate, visit by the Committee (with the agreement of the State) + conclusions from members carrying out the investigation → conclusions sent to the State in question. Confidential procedure (but option for the Committee, after consulting with the State, to publish a report of the results in its annual report).

- State reports (art.19)

States Parties are required to submit to the Committee, at regular intervals, reports on the implementation of the rights enshrined in the Convention.

The Committee examines each report and shares its concerns and gives recommendations to the State Party in the form of « general comments ».

- *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987*

The Convention established a Committee of the same name, composed of independent experts, and with responsibility, through a series of visits, for examining the treatment of persons deprived of their freedom, with a view, where applicable, to strengthening their protection against torture and inhuman or degrading treatment or punishment.

Periodic visits are carried out in contracting States, following notification. The Convention also provides for *ad hoc* visits when necessary.

After each visit, the Committee draws up a (confidential) report on the findings of the visit, containing recommendations it considers appropriate, and initiates dialogue with the State in question.

- *IACPTT*

Article 17 of the Convention provides for a mechanism of state reports, through which States parties provide an account of the measures adopted in application of the Convention.

- **General mechanism relating to human rights**

- *ECHR : recourse before the European Court of Human Rights* (see file n° 7 on European system for the protection of human rights)
- *ICCPR : communications to the Human Rights Committee* (see file n° 3 on International Human Rights Law).
- *ACHPR: communications to the African Commission on Human and People's Rights* (see file n° 10 on the African system for the protection of human rights)
- *LACHR: petitions to the Inter-American Commission on Human Rights* (see file n° 9 on Inter-American system for the protection of human rights)

Sources:

- International legal instruments cited.

- Web site of the Committee Against Torture (United Nations) : <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

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