

Committee: Legal Committee (GA6)

Issue: Regulations for the extra-custodial use of force to prevent torture and other cruel, inhuman or degrading treatment or punishment within national jurisdictions

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INTRODUCTION

After the end of the Second World War (WW2), during which nefarious crimes took place, the international community needed to repudiate all form of Torture and other Cruel, Inhumane and Degrading Treatment or Punishment (CIDTP). This was the reason why the Universal Declaration of Human Rights under article 5 banned torture and the prohibition of torture is deemed as a norm of *jus cogens* (*See Jus Cogens*). However, even after the signing of the Universal Declaration of Human Rights, there are still numerous reports from citizens and international organizations regarding incidents of torture.

After the 9/11 attacks, the international community was shocked by the loss of so many people and debates started to escalate regarding the use of torture as an effective way of discouraging terrorist attacks and interrogating suspects. Thus, several countries adopted a more lenient policy towards the ban of torture and CIDTP.

However, 19 years after the 9/11 attacks, there are still countries willing to use extra-custodial force, torture and CIDTP, without realizing the negative effects. The necessity to combat such acts is shown through the United Nations Sustainable Development Goals. Sustainable Development Goal number 3 indicates the importance of citizens' well-being, while Sustainable Development Goal number 16 calls for the strengthening of Peace, Justice and Institutions.

It goes without saying that extra-custodial use of force, torture and CIDTP constitute a blatant violation of basic human rights. Thus, it is of paramount importance that all countries take all measures necessary to ensure the prevention of such acts.



Figure 1: The 17 Sustainable Development Goals (SDGs)

DEFINITION OF KEY TERMS

Torture

The term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person. Torture often takes place for purposes such as obtaining from him/her or a third person information or a confession, punishing him/her for an act he/she or a third person has committed or is suspected of having committed. Moreover, torture can occur in order to intimidate or coerce him/her or a third person and for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation 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.¹

Extra-custodial use of force

Extra-Custodial use of force is the use of force by law enforcement officers and other officials outside the context of custody.²

¹ Ohchr.org. 2020. OHCHR | Convention Against Torture. [online] Available at: <<https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>>

² Dignity.Dk, 2020, <https://www.dignity.dk/wp-content/uploads/Extra-Custodial-Use-of-Force.pdf>.

Law enforcement Officials

The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.³

State Agent

"Any person exercising public authority on behalf of the State, whether of military or civilian status and whether appointed, elected, employed or contracted, including private security personnel."⁴

Jus Cogens

Jus cogens (from Latin: compelling law) refers to certain fundamental, overriding principles of international law⁵, that cannot be overlooked. Thus, jus cogens cannot be disputed, while it is even stipulated in the 1986 Vienna Convention on the Law of Treaties that if a treaty conflicts jus cogens, it is considered null.⁶

Waterboarding

Waterboarding is a method of torture in which water is poured into the nose and mouth of a victim who lies on his back on an inclined platform, with his feet above his head. As the victim's sinus cavities and mouth fill with water, his gag reflex causes him to expel air from his lungs, leaving him unable to exhale and unable to inhale without aspirating water.⁷

BACKGROUND INFORMATION

Protests

There are many different reasons why the authorities might decide to use extra-custodial force and CIDTP. As social problems escalate all around the globe, more and more people are participating in demonstrations in order to manifest their worries and anger.

³Ohchr.org. 2020. OHCHR | Code Of Conduct For Law Enforcement Officials. [online] Available at: <<https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>> [Accessed 5 August 2020].

⁴Unodc.org. 2020. [online] Available at: <https://www.unodc.org/documents/justice-and-prison-reform/Civilian_Private_Security_Services_Ebook.pdf> [Accessed 5 August 2020].

⁵ "Jus Cogens". LII / Legal Information Institute, 2020, https://www.law.cornell.edu/wex/jus_cogens.

⁶"Jus Cogens". Obo, 2020, <https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0124.xml>.

⁷ "Waterboarding | Definition, History, & Facts". Encyclopedia Britannica, 2020, <https://www.britannica.com/topic/waterboarding>.

However, there are times when demonstrations become dangerous and the police have to intervene. Police, often in their attempt to quell tension, end up using violence which could be subsumed under the category of torture or CIDTP. A characteristic example is the demonstrations that took place in Catalonia in October 2017.

Marginalized Populations

Moreover, it is argued that marginalized populations are more likely to be victims of torture or ill-treatment. For instance, prisons and police stations are places where many incidents of CIDTP have been reported.

Migrants, refugees and asylum seekers

As far-right and racist narratives are on the rise all around the world due to propaganda, people become more prone to committing illegal actions that can harm migrants and refugees. Despite anti-racist campaigns that take place, migrants and refugees are still not welcome in many countries. Consequently, due to xenophobia, many people are susceptible to perpetrating acts of torture against migrants or refugees.

Sexual Violence

Lastly, sometimes sexual violence could amount to torture. For instance, female genital mutilation is considered to be a very significant problem among African states. The removal of women's genitals for non-medical purposes is considered sexual violence that causes severe pain and suffering and leads to significant health hazards. It is argued that this pain and suffering could be regarded as torture.

The ticking-bomb scenario

The ticking-bomb scenario is an argument usually used by countries in order to employ advanced means of interrogation and in particular torture. The ticking-bomb scenario suggests that it is necessary to use torture when a person holds important information concerning a bomb which is about to explode and cause a massacre. Hence, it legitimizes the use of torture, since the suffering of one person is considered, according to



Figure 2: Photo from the 9/11 attacks

this scenario, less important than many human lives that are at stake. The ticking-bomb scenario was developed after the 9/11 incident when the whole world was alarmed by the ferocity of these terrorist attacks. In light of the 9/11 events, all countries made efforts to reinforce their national security systems. To achieve a more effective national security system, several countries were willing to use extra-custodial force and CIDTP to gather information.

Fallacies on which the use of CIDTP is based

The use of CIDTP is argued to be one of the most effective ways to gather information and discourage people from committing severe crimes. However, this is just a hypothesis based on several assumptions, which are more often than not false. To begin with, the authorities can never be sure that the suspect is indeed the real culprit. Nevertheless, even if the suspect is indeed the culprit, no one can be sure that he/she is willing to reveal the correct information. The suspect may intentionally reveal incorrect or inaccurate information to mislead the authorities or he/she could reveal erroneous information to stop the pain and suffering. It is also possible that the use of these methods could also have negative results. When torturing people who have extreme and firm political, religious or ideological beliefs, it is likely that they will be further fanaticized and that they will further fanaticize others. For example, if a terrorist is tortured, then the terrorist group in which he/she is a member might not be discouraged from committing other terrorist attacks due to the fear of the potential suffering. Instead, they might be further fanaticized since they will know that that terrorist suffered for a cause.

Distinction between Torture and other Cruel, Inhumane and Degrading treatment or Punishment.

There is usually a blurred line between Torture and other Cruel, Inhumane and Degrading Treatment or Punishment. Several acts might inflict severe pain or suffering, but they might not amount to torture but they might be considered as Cruel, Inhumane Treatment or Punishment. According to the Inter-America Court of Human Rights, “an act constitutes torture when the ill-treatment: (a) is intentional; (b) causes severe physical or mental suffering, and (c) is committed with a specific purpose or objective”⁸. If one of above

⁸Melzer, Nils. "Extra-Custodial Use Of Force And The Prohibition Of Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment :". United Nations Digital Library System, 2020, <https://digitallibrary.un.org/record/1302624#record-files-collapse-header>.

criteria is not met, then the act does not amount to torture but instead to other Cruel, Inhumane Treatment or Punishment.

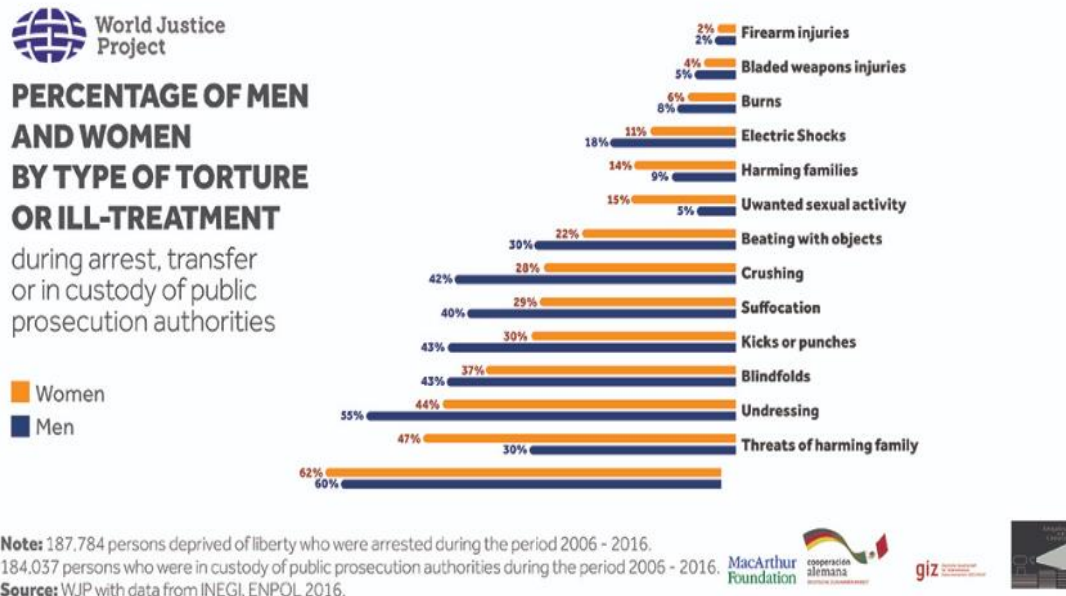


Figure 3: Graph showing the use of Torture on men and women

MAJOR COUNTRIES AND ORGANISATIONS INVOLVED

United States of America (USA)

The United States of America has repeatedly been accused of ill-treatment and use of torture on detainees. The United States of America has refused to ratify the Optional Protocol to the Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment. In fact, the president of the United States, Donald Trump, had supported the use of torture and, more specifically, waterboarding as an effective means of interrogation.

United Kingdom

There had been allegations against the United Kingdom regarding the use of torture and ill-treatment. The issue had been published and the United Kingdom government was forced to take action. This was the reason why an official enquiry was initiated by the British Parliament in order to investigate these allegations. In 2018, the investigation was

concluded and it showed that during the period of 2001-2010 United Kingdom National Security and National Intelligence personnel were informed or witnessed hundreds of cases regarding detainees' mistreatment.

Angola

Angola is one of the countries that has not ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment. Even though its constitution bans torture, there are many cases reported concerning victims of torture.

Russian Federation

The Russian Federation constitutes another example of a country that has been accused of using torture. Reports conducted by Amnesty International suggest that there are many cases related to torture in the Russian Federation. More specifically, Amnesty International found that the process of adjusting domestic legislation to universal human rights principles is really slow and that police personnel is lacking training in the issue.

European Union

The European Union has adopted a strict and firm policy against the use of torture. All member states have signed the 1950 Rome Convention on 4 November 1950, which entered into force on 3 September 1953. More specifically, article 3 of the aforementioned Convention clearly states that the use of torture is prohibited. In order to safeguard fundamental human rights, the European Union decided to establish the European Court of Human Rights.

Subcommittee on the Prevention of Torture (SPT)

The Subcommittee on the Prevention of Torture acts as an intentional independent body, which ensures that all measures are taken by member-states to prevent acts of torture. One of the main objectives of the Subcommittee on the Prevention of Torture is the promotion of the Optional Protocol to the Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment.

Committee against Torture (CAT)

The Committee against Torture is a committee consisting of 10 independent experts, which monitors the compliance of member-states with the Convention against Torture and

other Cruel, Inhumane and Degrading Treatment or Punishment. All member-states are required to give frequent reports. The committee, after scrupulously examining the reports, advises the member-states on how to improve their practices and thus achieve the prevention of torture and CIDPT.

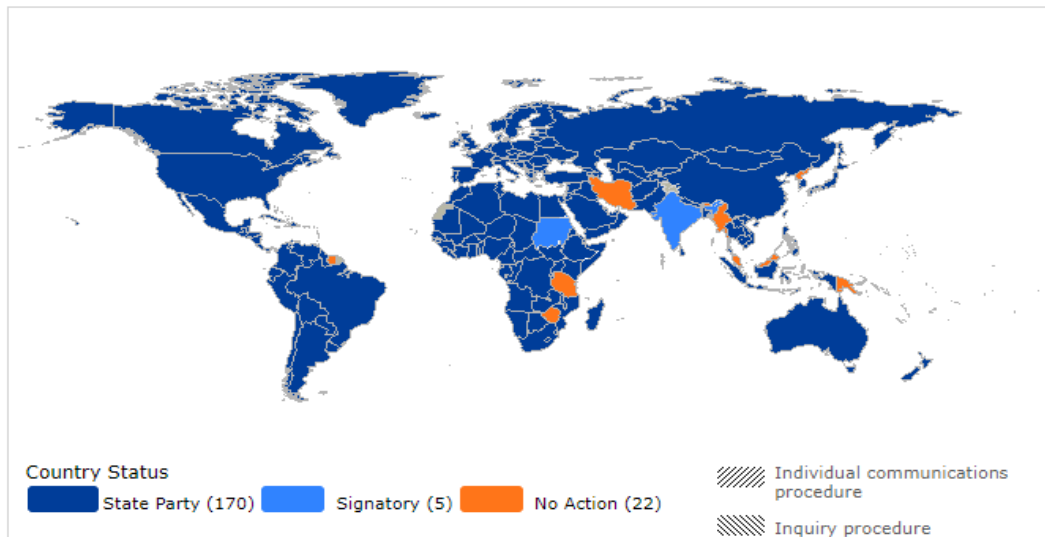


Figure 4: Map showing which countries have signed the Convention against Torture

TIMELINE OF EVENTS

Date	Description of Event
10 December 1948	The Universal Declaration of Human Rights (UDHR) is signed banning torture
9 August 1949	The 1949 Geneva Convention is signed, which bans torture under article 3
4 November 1950	The Rome Convention is signed by all member states of the European Union also prohibiting torture.
10 December 1984	The Convention against Torture and other Cruel, Inhumane and Degrading Punishment or Treatment is signed.
9 August 1999	The United Nation adopts the Istanbul Protocol.
18 December 2002	The General Assembly adopts the Optional Protocol to the Convention against Torture and other Cruel, Inhumane and Degrading Punishment or Treatment

February 2007	The Subcommittee on the Prevention of Torture is created.
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UN INVOLVEMENT: RELEVANT RESOLUTIONS, TREATIES AND EVENTS

Universal Declaration of Human Rights (UDHR)

The United Nations General Assembly adopted the Universal Declaration of Human Rights on 10 December 1948. The UDHR is considered to be the foundation of human rights. Article 5 of UDHR clearly states that ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’⁹.



Figure 5: Eleanor Roosevelt holding a poster of the Universal Declaration of Human Rights

Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment

The Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment is the fundamental Convention that bans torture and it was adopted by the United Nations General Assembly on 10 December 1984. More specifically,

⁹"Universal Declaration Of Human Rights". Un.Org, 2020, <https://www.un.org/en/universal-declaration-human-rights/>.

article 2 of the said Convention clearly urges member-states to take any legislative, measures needed to prevent all acts of torture.

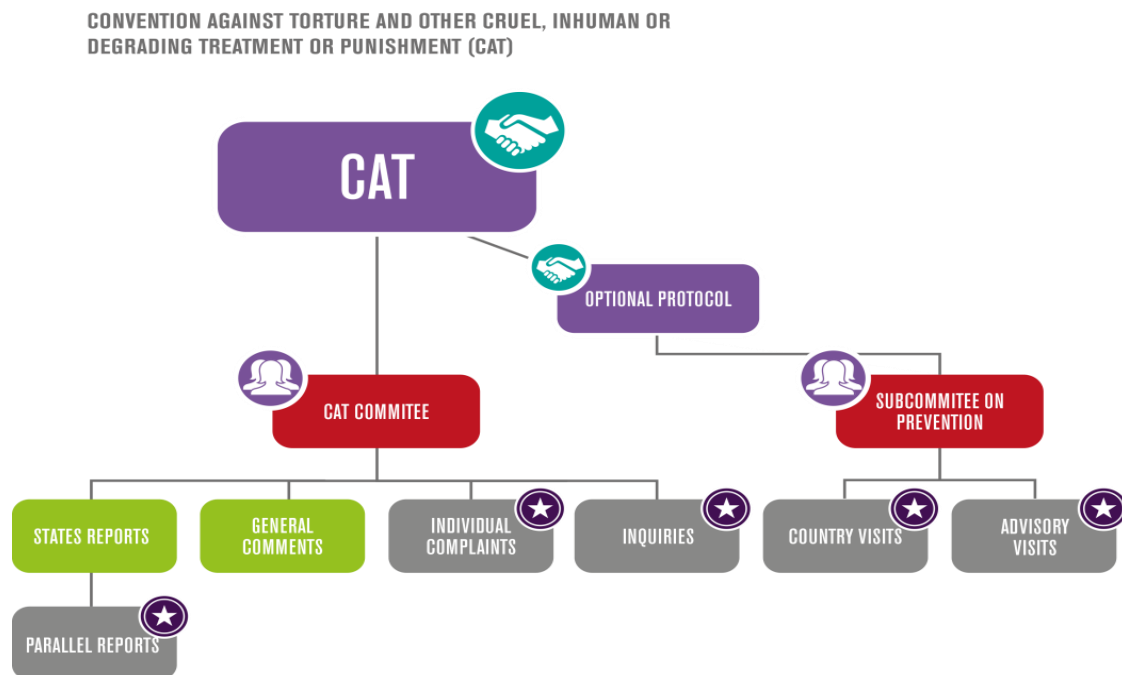


Figure 6: Graph showing how the Convention against Torture is implemented

Human Rights Council Resolution 25/13

This resolution was adopted by the United Nations Human Rights Council on 15 April 2014. The aforementioned resolution encourages all states to facilitate reports concerning CIDTP through appointing and assisting a Special Rapporteur.

(Source: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G14/122/90/PDF/G1412290.pdf?OpenElement>)

Optional Protocol to the Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment

The Optional Protocol to the Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment ensures that all states follow the Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment through ways such as but not limited to the establishment of a system of regular visits by an independent body as mentioned in Article 1.

Manual on Effective Investigation and Documentation of Torture and other Cruel, Inhumane and Degrading Treatment or Punishment (Istanbul Protocol)

The Istanbul Protocol constitutes a guideline for the evaluation of cases concerning torture and ill-treatment. The Istanbul Protocol was adopted by the United Nations in 1999 due to the need to establish international procedures for the assessment and documentation of cases of torture. By establishing those procedures, the international community would manage to more effectively identify cases of torture. Thus, it would manage to detect any problems in the law enforcement system which led to the use of torture and then tackle them. Finally, the adoption of this Protocol increases the chances that the perpetrators of torture will be found and then successfully be prosecuted.

United Nations Special Rapporteur on Torture and other Cruel, Inhumane and Degrading Treatment or Punishment.

The United Nations Special Rapporteur is overseen by the United Nations Human Rights Council. He has the responsibility of reporting how countries abide by the Convention against Torture and other Cruel, Inhumane Treatment or Punishment. To achieve this goal, the Special Rapporteur conducts visits to different countries, receives complaints and information in order to examine cases of torture. The Special Rapporteur is obliged to inform the United Nations Human Rights Council and the General Assembly annually regarding his findings.

PREVIOUS ATTEMPTS TO SOLVE THE ISSUE

Amnesty International

Amnesty International has taken many steps in order to successfully report and document cases of torture and prosecute the perpetrators. Another significant aspect of Amnesty's International work is its campaign regarding the adoption and enforcement of laws and measures that protect citizens from becoming victims of torture. Lastly, the education of citizens is a pillar of Amnesty International's job, as they have made a remarkable endeavor to inform people about their rights.

African Union

The African Union, through the African Commission on Human and People's Rights, encourages more frequent reports on cases of torture, while they support the job carried out by the special rapporteur. Furthermore, the Commission calls for the adjustment of

domestic law to international law principles regarding torture so that every member-state criminalizes the use of torture and prosecutes the perpetrators.

1949 Geneva Convention

On August 9, 1949, the international community condemned the use of torture through the signing of the 1949 Geneva Convention under article 3 of which torture is prohibited during an armed conflict. The 1949 Geneva Convention is considered a milestone in international humanitarian law and ensures that the use of torture is prohibited and criminalized by all means.

POSSIBLE SOLUTIONS

Judicial Reforms

It is very important that every country repudiates the use of extra-custodial force and CIDTP and imposes the strictest possible punishments for those who commit these actions. It is also significant to take into consideration the fact that one of the main reasons that CIDPT takes place is because it is used during interrogations. To prevent such events from happening, countries must pass laws which prohibit, in any legal procedure, the use of statements or testimonies which are a result of torture. That way, torture becomes redundant during interrogation and thus authorities are discouraged from conducting it.

Reports

In order to make sure that no incident of torture or CIDTP takes place in any country, it is significant for the countries to permit and assist reports conducted by independent international organization such as the United Nations Human Rights Council and Human Rights Watch. These reports play a key role in the fight against the use of extra-custodial force, since they contain important information about the ways that countries combat the issue of the use of torture and CIDPT and useful recommendations about how to improve their methods of dealing with it.

Guidance of National Intelligence

Several times, authorities employ advanced means of interrogation or they use extra-custodial force, because they do not have clear guidance as to how to respond to several situations. Thus, it is vital that every country provides its authorities with clear guidance and instructs them to by no means use extra-custodial force or torture. Moreover,

in order to make sure that national intelligence agencies do not employ such practices, it is of the utmost importance that parliamentary oversight over national intelligence is strengthened.

Facilitation of procedures regarding reporting incidents of Torture and CIDTP

The authorities cannot monitor every incident. Consequently, it is important that citizens can also report an incident of which they are victims or have witnessed without having the fear that they will face prejudice by the responsible authorities.

Signing of the Optional Protocol

The Optional Protocol to the Convention against Torture and other Cruel, Inhumane and Degrading Treatment or Punishment plays a vital role in combating the extra-custodial use of force and CIDTP. The said Protocol ensures that all possible measures are being taken in order to ensure that torture does not take place. However, many countries are reluctant to sign it and implement it.

Raising awareness

All governments must ensure that their citizens are effectively educated and they are fully aware of their rights. Many victims of torture or ill-treatment do not know their rights and thus they are unable to defend them. It is, thus, very significant that citizens realize their fundamental rights and can protest when those rights are being violated.

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