

## UNCAT ARTICLE-BY-ARTICLE

### PART I: SUBSTANTIVE ARTICLES

#### Article 1 – Definition of torture

- The definition of torture in Article 1 of UNCAT has four elements:
  - Severe pain or suffering (physical or mental);
  - Intentional infliction;
  - For a particular purpose (non-exhaustive list) – such as obtaining information, a confession, punishment, intimidation or discrimination of any kind;
  - Infliction by, at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.
- Pain or suffering from lawful sanctions is not included in the definition.
- This definition is without prejudice to any international instrument or national legislation of wider application.

#### Article 2 – Prevention of torture and non-derogability

- States have an obligation to take effective legislative, administrative, judicial or other measures to prevent acts of torture in their territory (Article 2.1)
- The prohibition of torture has an absolute, non-derogable character (Article 2.2):
  - “No exceptional circumstances whatsoever” are allowed to justify its use (e.g. state or threat of war, political instability, or any other public emergency).
  - No order from superior officers or a public authority can be invoked to justify torture (Article 2.3).

#### Article 3 – Non-refoulement

- It is prohibited to expel, return (*refouler*) or extradite a person to another State when there are “substantial grounds” for believing that the person would be in danger of being subjected to torture.
  - The existence of a consistent pattern of gross, flagrant or mass violations of human rights is taken into account to determine whether such grounds exist.

#### Article 4 – Criminalisation of torture

- States parties are required to make torture a separate and distinct offence (Article 4.1)
- Modes of liability to be criminalised (Arts. 1.1 and 4.1):
  - Direct commission of torture
  - Attempt to commit torture
  - Instigation to commit torture
  - Complicity in torture (aiding and abetting)
  - Consent or acquiescence
  - Other forms of participation (e.g. incitement, conspiracy, accessory after the fact)
- Provide appropriate penalties commensurate with the grave nature of the crime.

#### **Article 5 – Jurisdiction over torture**

- State parties to exercise jurisdiction over the crime of torture:
  - Territoriality and flag principle – when offences committed in any part of their territory or on board a ship or aircraft registered in that State.
  - Active nationality principle – torture committed by any offender who is a State national.
  - The victim is a national of such State if considered appropriate.
  - Universal jurisdiction – States shall take measures to establish their jurisdiction when the alleged offender is present in their territory and the State does not make use of extradition proceedings under Article 8 (see below) (Article 5.2).

#### **Article 6 – Custody arrangements and inquiry procedures**

- When an alleged perpetrator is in the State’s territory, he/she shall be brought into custody, lasting only as long as provided by law and until criminal or extradition proceedings are instituted (Article 6.1).
- A preliminary inquiry into the facts shall be undertaken (Article 6.2).
- Consular assistance to be provided to foreign nationals (Article 6.3).
- Any other State exercising jurisdiction over the crime of torture shall be notified (Article 6.4).

#### **Articles 7, 8 and 9 – Extradition, prosecution and mutual legal assistance**

- States are required to extradite a suspected torturer or, if not possible, to prosecute him/her domestically (Article 7.1).
- The crime of torture is to be an extraditable offence in any existing extradition treaty or one to be included between States Parties (Article 8.1).
- If there is no extradition treaty, UNCAT can be used as a legal basis for such extradition (Article 8.2).
- States are to include torture and/or related crimes as extraditable offences in domestic law (Article 8(3)).
- States parties shall cooperate with each other with regard to criminal proceedings brought for the crime of torture, including by supplying all evidence at their disposal. Existing treaties on mutual legal assistance shall be used to guide States in carrying out their obligations (Article 9).

#### **Article 10 – Education and training**

- States are required to provide education and training on the prohibition against torture to all law enforcement personnel (civil or military), medical personnel, public officials and other persons involved in the custody, interrogation or treatment of arrested or detained persons, or persons deprived of their liberty (Article 10.1).
- The prohibition to be included in the rules or instructions regarding the duties or functions of such persons (Article 10.2).

#### **Article 11 – Review of detention procedures**

- States are required to keep under systematic review interrogation rules, instructions, methods, practices, and custody procedures, in order to prevent any cases of torture.

#### **Articles 12 – Prompt and impartial investigation**

- States are required to launch prompt and impartial investigations when there is “reasonable ground” to believe that an act of torture has been committed in a territory under their jurisdiction.

#### **Article 13 – Complaint procedures**

- Victims of torture have the right to complain, to have their case promptly and impartially examined, and to be protected against ill-treatment or intimidation as a consequence of the complaint or evidence given (Article 13).

#### **Article 14 – Victims’ right to redress and rehabilitation**

- States are required to ensure that victims have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In case of death, the victims’ dependents shall also be entitled to compensation (Article 14).

#### **Article 15 – Non-admission of torture evidence**

- States parties are required to ensure that statements obtained through torture are excluded (not admitted) as evidence in any proceedings, except as evidence of torture in proceedings against the person accused thereof.

#### **Article 16 – Prevention of cruel, inhuman or degrading treatment or punishment**

- States parties are required to prevent acts of cruel, inhuman or degrading treatment or punishment (CIDPT) that do not amount to torture as defined in Article 1.
- Articles 10, 11, 12 and 13 are especially applicable to CIDTP.

## **PART II: FUNCTIONS OF THE COMMITTEE AGAINST TORTURE**

#### **Article 17-18 – The Committee against Torture**

- The Committee against Torture (CAT) consists of 10 experts of high moral standing and recognised competence in the field of human rights, who serve in their personal capacity (Article 17.1).
- They are nominated and elected by States parties, with consideration given to equitable geographical distribution and legal experience.

#### **Article 19 – Reporting to CAT**

- States are required to submit reports to the Committee against Torture (CAT) on the measures taken to implement the Convention:
  - 1 year after ratification/accession (initial report).
  - Every 4 years thereafter (periodic reports).

#### **Articles 20 and 28 – Confidential inquiries**

- If the CAT receives information based on “well-founded indications” that torture is being systematically practiced in the State’s territory, it can decide to carry out a confidential inquiry and seeks the cooperation of the State party. An in-country visit may be included only if agreed with the State.
- States can “opt out” (file a reservation) of the confidential inquiry procedure at the time of signature or ratification/accession and declare that they do not accept the competence of the CAT in relation to such inquiries (Article 28) (States may withdraw this reservation at any time under Article 28.2).

#### **Article 21 – Inter-State complaints**

- States can “opt in” by declaring that they recognise the competence of the Committee to receive and consider communications, through which a State Party claims that another State Party is not fulfilling its obligations under UNCAT (It has never been used to date).

#### Article 22 – Individual communications

- State parties can “opt in” by declaring that they recognise the competence of the Committee to receive and consider communications from and on behalf of individuals subject to their jurisdiction who claim to be victims of a violation of the provisions of UNCAT.

#### Article 23 – Immunities and privileges

- CAT members are entitled to the facilities, immunities and privileges of experts on mission for the UN under the relevant sections of the Convention on the Privileges and Immunities of the UN.

#### Article 24 – CAT’s Annual report

- The Committee submits an annual report of its activities to the States Parties and to the UN General Assembly.

### PART III: OBSERVANCE, RATIFICATION AND INTERPRETATION

#### Articles 25, 26, 27 and 32 – Signature, ratification, accession and entry into force

- UNCAT is open for signature and ratification or accession by any State by deposit of the relevant instrument to the UNSG (Articles 25-26).
- The Convention enters into force on the 30<sup>th</sup> day after the date of the deposit of the instrument of ratification or accession (Article 27).
- The UNSG shall inform all UN Member States and States that have signed or acceded to UNCAT of the status of signatures, ratifications, accessions, denunciations and the date of entry into force under Articles 27 and 29 (Article 32).

#### Article 29 – Amendments

- Amendments to the Convention may be proposed by State parties to the UN Secretary-General, requiring one-third of all State parties to favour a conference to consider the amendments, with the threshold of a majority of States parties attending the conference to accept the amendment.

#### Article 30 – Dispute settlement

- Disputes between State parties that cannot be settled by negotiation shall, at the request of one State, be submitted for arbitration. If 6 months lapse without resolution, either State may refer the matter to the International Court of Justice in conformity with the Statute of the Court.

#### Article 31 – Denunciation

- UNCAT can be denounced by written notification to the UNSG. It becomes effective 1 year after the date of receipt of the notification but it does not release the State Party from its obligations with regard to acts and omissions that occurred prior to such date (Article 31.1).

#### Article 33 – Text authenticity

- The Arabic, Chinese, English, French, Russian and Spanish texts of UNCAT are equally authentic and are deposited with the UNSG (Article 33.1).

The full text of the Convention can be found [here](#).