

# Center for the Study of Human Rights in the Americas



## **Inter-American Convention to Prevent and Punish Torture (1985)**

**The American States signatory to the present Convention,**

**Aware of the provision of the American Convention on Human Rights that no one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment;**

**Reaffirming that all acts of torture or any other cruel, inhuman, or degrading treatment or punishment constitute an offense against human dignity and a denial of the principles set forth in the Charter of the Organization of American States and in the Charter of the United Nations and are violations of the fundamental human rights and freedoms proclaimed in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights;**

**Noting that, in order for the pertinent rules contained in the aforementioned global and regional instruments to take effect, it is necessary to draft an Inter-American Convention that prevents and punishes torture;**

**Reaffirming their purpose of consolidating in this hemisphere the conditions that make for recognition of and respect for the inherent dignity of man, and ensure the full exercise of his fundamental rights and freedoms,**

**Have agreed upon the following:**

### **ARTICLE 1**

**The States Parties undertake to prevent and punish torture in accordance with the terms of this Convention.**

### **ARTICLE 2**

**For the purposes of this Convention, torture shall be understood to be 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.**

**The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.**

### **ARTICLE 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.**

### **ARTICLE 4**

**The fact of having acted under orders of a superior shall not provide exemption from the corresponding criminal liability.**

### **ARTICLE 5**

**The existence of circumstances such as a state of war, threat of war, state of siege or of emergency, domestic disturbance or strife, suspension of constitutional guarantees, domestic political instability, or other public emergencies or disasters shall not be invoked or admitted as justification for the crime of torture.**

**Neither the dangerous character of the detainee or prisoner, nor the lack of security of the prison establishment or penitentiary shall justify torture.**

### **ARTICLE 6**

**In accordance with the terms of Article ', the States Parties shall take effective measures to prevent and punish torture within their jurisdiction.**

**The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature.**

**The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.**

## **ARTICLE 7**

**The States Parties shall take measures so that, in the training of police officers and other public officials responsible for the custody of persons temporarily or definitively deprived of their freedom, special emphasis shall be put on the prohibition of the use of torture in interrogation, detention, or arrest.**

**The States Parties likewise shall take similar measures to prevent other cruel, inhuman, or degrading treatment or punishment.**

## **ARTICLE 8**

**The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.**

**Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.**

**After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fore whose competence has been recognized by that State.**

## **ARTICLE 9**

**The States Parties undertake to incorporate into their national laws regulations guaranteeing suitable compensation for victims of torture.**

**None of the provisions of this article shall affect the right to receive compensation that the victim or other persons may have by virtue of existing national legislation.**

## **ARTICLE 10**

**No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action taken against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means.**

## **ARTICLE 11**

**The States Parties shall take the necessary steps to extradite anyone accused of having committed the crime of torture or sentenced for commission of that crime, in**

**accordance with their respective national laws on extradition and their international commitments on this matter.**

## **ARTICLE 12**

**Every State Party shall take the necessary measures to establish its jurisdiction over the crime described in this Convention in the following cases:**

- a. When torture has been committed within its jurisdiction;**
- b. When the alleged criminal is a national of that State; or**
- c. When the victim is a national of that State and it so deems appropriate.**

**Every State Party shall also take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within the area under its jurisdiction and it is not appropriate to extradite him in accordance with Article ~ '.**

**This Convention does not exclude criminal jurisdiction exercised in accordance with domestic law.**

## **ARTICLE 13**

**The crime referred to in Article 2 shall be deemed to be included among the extraditable crimes in every extradition treaty entered into between States Parties. The States Parties undertake to include the crime of torture as an extraditable offense in every extradition treaty to be concluded between them.**

**Every State Party that makes extradition conditional on the existence of a treaty may, if it receives a request for extradition from another State Party with which it has no extradition treaty, consider this Convention as the legal basis for extradition in respect of the crime of torture. Extradition shall be subject to the other conditions that may be required by the law of the requested State.**

**States Parties which do not make extradition conditional on the existence of a treaty shall recognize such crimes as extraditable offenses between themselves, subject to the conditions required by the law of the requested State.**

**Extradition shall not be granted nor shall the person sought be returned when there are grounds to believe that his life is in danger, that he will be subjected to torture or to cruel, inhuman or degrading treatment, or that he will be tried by special or ad hoc courts in the requesting State.**

## **ARTICLE 14**

**When a State Party does not grant the extradition, the case shall be submitted to its competent authorities as if the crime had been committed within its jurisdiction, for the purposes of investigation, and when appropriate, for criminal action, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the State that has requested the extradition.**

#### **ARTICLE 15**

**No provision of this Convention may be interpreted as limiting the right to asylum, when appropriate, nor as altering the obligations of the States Parties in the matter of extradition....**