

Torture is a Crime

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In Spokesman 81, Dr Inge Genefke described how her pioneering work with the victims of torture led her to realise that torture is fundamentally a crime against democracy. Here, she and Professor Bent Sørensen scrutinise the UN Convention against Torture which defines torture and spells out measures for its eradication.

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When ‘Kolingen’, a character created by the Swedish artist Engstroem, passes a shop window containing all kinds of beauty products, he speaks the famous words: ‘wonderful that it exists’, and, after a short pause, ‘a shame that it is necessary’.

Since 1974, medical work against torture has been undertaken in Copenhagen, Denmark. It started with four volunteer doctors, and now extends to nearly 200 rehabilitation centres for torture victims worldwide: ‘wonderful that it exists’.

The anti-torture movement provides rehabilitation to the victims of torture, and it strives to put the problem of torture on the agenda, to raise awareness of *where* torture is used, and how *destructive* torture is for every democratisation process. All this work is aimed at breaking the silence which surrounds the problem of torture. The current debate in newspapers and on radio and television has shown that this aim has been achieved: ‘A shame that it is necessary’.

Danish politicians, the Chief of Defence, newspapers, editorials and non-governmental organisations all agree: ‘torture should not take place’. Many facts have been presented, and many proposals for improvements have been put forward. One aspect seems to be missing, however, and the aim of this article is to emphasise that the necessary international instrument already exists. This instrument takes all problems regarding torture into account – it only needs to be put into effect.

This instrument is the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. It was adopted – by consensus – by the UN General Assembly on 10 December 1984 (the day which, in 1948, was made UN Human Rights Day), and it came into force on 26 June 1987. (Since 1997, following Denmark’s initiative, this day has become the UN International Day in Support of Victims of Torture). The

Convention has been ratified by 134 countries, including all of those that currently have troops in Iraq.

The provisions of the Convention always apply during wartime, when the so-called Geneva Conventions apply, and they always apply during peacetime, when the Geneva Conventions do not apply. This means that the excuse which was used in Afghanistan – ‘we are not at war, so the Conventions do not apply, they are not prisoners of war’ – is invalid. The Convention against Torture always applies. Contrary to some other conventions, it cannot be suspended, not even partly, and not even temporarily. So, let us use the Convention as our legal framework – if it is good enough! We will now take a look to see if it is.

Article 1 defines torture – not ‘other cruel, inhuman or degrading treatment or punishment’. These concepts are not defined and probably never will be. Four conditions must apply in order to fulfil the definition of torture. If one of these conditions is missing, it is not torture.

The act must:

- 1) cause ‘severe pain or suffering, whether physical or mental’
- 2) be ‘intentionally inflicted’

We think that most people know – or can easily imagine – that torture makes you ill. Torture is the only illness that is ‘intentional’ – all other illnesses are caused by bacteria, viruses, cancer, and so on. Torture is inflicted by another human being, and this absurdity makes the after-effects even more unbearable.

Further:

- 3) The act of torture must be perpetrated for a purpose. The Convention mentions many possible purposes. The most well known, presumably, is the wish to get information or to obtain a confession, but the Convention also mentions intimidation or coercion of the victim or a third person (please remember the pictures from Iraq!).

Torture is a very bad way of obtaining confessions or information: after some time, the victim will always say whatever the perpetrator wants to hear, and will be willing to sign blank pieces of paper. When we teach, we usually say to the police: ‘Do you want the truth, or do you want a confession?’

Finally:

- 4) The torture must be inflicted by or with the consent or acquiescence of a public official.

This just makes matters worse: the state is behind the torture.

Article 2 prohibits the use of torture with complete clarity: ‘No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a

justification of torture.’ This means *no torture*. It means *no torture* of terrorists. It means torture can *never* be justified with reference to a ‘ticking bomb’, *not even* if we use the justification that ‘we can save 200 lives if we torture one man’. Torture as defined in article 1 should never take place.

Section 3 of Article 2 states: ‘An order from a superior officer or a public authority may not be invoked as a justification of torture.’ This must be one of the most far-reaching provisions, and it also applies to the armed forces. The basic premiss within the armed forces is that you obey an order, otherwise it is mutiny. If the order (or the content of a written instruction) is to ‘use all means’, then the answer is: ‘no, not torture’. ‘If I, (the subordinate) use torture, I am guilty of a criminal offence and should be punished. And the person who gave the order is also a criminal and should be punished.’ Article 2 therefore offers protection against every kind of torture at the same time as it offers legal protection to those people who refuse to torture others.

No less than 5 Articles (nos. 4 to 8) deal with the punishment of perpetrators. In summary, it is the obligation of the state to ensure:

- that torture, as defined in article 1, is an offence under the criminal law of the country
- that persons who are accused of torture are taken to court and, if found guilty, are given penalties which take into account the ‘grave nature’ of the offences.

Furthermore, there is no period of limitation for the crime of torture, and it is not possible to grant amnesty for the crime of torture. So, if President Bush, shortly before the November elections, wishes to pardon soldiers who have committed crimes during the fighting in Iraq, he will have to exclude the perpetrators of torture. In the rehabilitation centres we often say that *perhaps* the victims can forgive the perpetrators, society cannot do so on their behalf.

Torture is an international crime to a greater degree than crimes against humanity or genocide. An example illustrates this: a Danish citizen has, on an order from the United States Department of Defence, tortured a Jordanian citizen while he was in Afghanistan. Later, the Dane is on holiday in the United Kingdom. It will then be the obligation (not just a possibility or a right) of the United Kingdom to take the Dane into custody, or to take other legal measures to ensure his presence while investigations are made. The prosecutor is then obliged to deal with the case as he or she does with all other cases of a serious nature, and if the inquiry leads to proceedings being brought, then the case should proceed in a British court, unless the Dane is extradited to a country where legal proceedings would be instituted.

With respect to the crime of torture, the Convention against Torture makes the International Criminal Court (of which the United States is not a member) superfluous.

The rules of the Convention against Torture apply to everyone, including Heads of State and former Heads of State. Only the question of diplomatic immunity has not yet been solved. The Danish Ministry of Justice has declined to express its view in this matter, but referred it to the Ministry of Foreign

Affairs, where they were of the opinion that diplomatic immunity also applies in cases of the international crime of torture. This contradicts the view of the UN Committee against Torture.

Five of the articles in the Convention aim to counteract impunity. Alleged perpetrators are to be brought before a court, irrespective of the nationality of the perpetrator or the victim, or of the place where the crime took place. If the perpetrator is found guilty, he must receive a penalty which takes into account the grave nature of the crime.

In addition to the perpetrator, there is also a victim, perhaps several. This is dealt with in Article 14. The state is obliged to offer the victim of torture a 'fair and adequate compensation, including the means for as full rehabilitation as possible', and this means medical rehabilitation. It is the state that has the duty to offer this. The victim must not be required to press charges against the perpetrators or the state. Recently, initiatives have been taken to offer medical rehabilitation to the victims of torture in Iraq.

What about prevention?

Article 10 deals with education, and the Convention states: 'Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.'

The message is quite clear: all personnel, civil as well as military, who serve in the armed forces or in peace-keeping forces must be trained in the prohibition of torture and in the ways in which this prohibition is secured in practice. It is not enough for them to be taught about human rights in general or about the Geneva Conventions. US Army Major General Antonio Taguba's criticism and his request for education were therefore completely justified – it is a plain obligation to educate these personnel groups.

The Major General also asked for control and supervision. Article 11 deals with this: 'Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.'

If the United States had complied with Article 11, as the country has committed to, these problems would not have occurred. Article 11 and Articles 1-8 provide the legal framework for dealing with the problems we are now facing.

Who is going to investigate?

Article 12 says: 'Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation (...) of any act of torture', and Article 13: 'any individual (...) has been subjected to torture (...) has the right to complain to, and to have his case promptly and impartially examined by, its

competent authorities.’ There is therefore no doubt that the legal basis exists in the United States for an inquiry into what has taken place in prisons.

Finally, Article 15 states: ‘(...) any statement which (...) has been made as a result of torture shall not be invoked as evidence in any proceedings.’ So, military and police personnel should know that they waste their time if they get a confession through torture – the confession is useless.

Relevant personnel therefore have to learn and understand that torture is prohibited always, including when an order is given to torture. In addition to being illegal and punishable, torture is also degrading for the victim, the perpetrator and society as a whole. Finally, if a confession is the objective, using torture renders it worthless.

In discussions such as these, the question of the validity of information obtained by the use of torture is frequently asked: how does this information compare to the information obtained by normal means? Only a few studies have been carried out. In Peru, it has been shown that the police could trust the information that people had given during ordinary interrogations, whereas those who had been tortured simply admitted anything, making the information useless. This means that – in addition to all the above-mentioned aspects – torture is also a very ineffective working practice.

What if the United States does not comply with the Convention?

Perhaps Article 20 can be used: ‘If the Committee [the UN Committee against Torture] receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised (...) the Committee shall invite the State Party to co-operate in the examination of the information.’ This may lead to a visit to the respective country (a so-called Article 20-visit).

The Committee has 10 members. As a member of the Committee from its inception in 1988 until 2000, one of the authors (Bent Sørensen) has gained a substantial amount of knowledge about the work of the Committee and its members. They are all literate, for a start, and therefore they have received reliable information on the United States and Iraq from, among others, Donald Rumsfeld (if he says it is torture, it probably is). The pictures represent what the Convention calls ‘well-founded indications’. ‘Torture is being systematically practised’ – yes, it takes place in specific prisons and under specific circumstances, so it must be said to be systematic. In this light, we are of the opinion that the Committee could undertake an Article 20-investigation and inspect the conditions.

In conclusion, the Convention against Torture contains all the necessary provisions to be able to punish perpetrators, to compensate, prevent, control, educate and inspect: it is adequate.