

**REQUIREMENTS FOR IMPLEMENTING  
THE CONVENTION AGAINST TORTURE  
IN IRAQ**

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***Introduction***

In early July of 2008 Iraq ratified the UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (“CAT”). The CAT was drafted in the recognition that torture and cruel, unusual or degrading treatment are outlawed under international law.<sup>i</sup> The purpose of the CAT is to outline the specific steps and give guidance on what measures a state should take so the state complies with its already existing obligation to prevent and punish illegal acts of torture or cruel, inhuman or degrading treatment.<sup>ii</sup> Broadly speaking the CAT requires countries to prevent acts of torture, train all appropriate personnel, investigate allegations, prosecute those who are accused, and compensate victims.

The Convention Against Torture breaks down as follows:

- Articles 1-16 outline the specific steps, such as legislation and guidelines for training, which a state must take in order to implement the CAT.
- Articles 17-24 establish the powers of the Committee Against Torture. The Committee is the body responsible for monitoring state compliance. Monitoring is primarily done through the reporting process outlined in article 19. The Committee also has the power to conduct confidential investigations into credible allegations of systematic torture within a country. Under Article 22, a state may recognize the competence of the committee to hear complaints brought by individuals
- Articles 25-33 relate to the mechanisms of ratification, state party reservations and amendments to the treaty.

This memo follows the structure of the State Reports that are submitted to the Committee by State parties every four years. Each article is provided, with an explanation of what steps a state *must* take and what additional steps a state *should* take to implement the article. State Reports commonly go through each article and outline what legislation they have enacted, or other steps they have taken to comply with the CAT (see Annex 1, State Report of France). The Committee Against Torture reviews the reports and provides comments and recommendations. This memo follows a similar organization as these State Reports in order to best provide the Iraqi parliament with information as to their specific obligations under each article of the CAT.

**Define Torture**

*Article 1*

*1. For the purposes of this Convention, torture means 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 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.*

2. *This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.*

Article 1 of the convention requires that a signatory state pass legislation [or amend existing legislation] that defines torture to include:

- Both physical and mental suffering.
- That the act was committed for the purpose of obtaining information, a confession, for intimidation, or coercion of the victim or a third person.
- That the act was committed by a public official or with their consent or acquiescence.
- Or that the act was committed out of discrimination

The definition of torture adopted by Iraq should reflect the idea that torture can be both a positive act, water boarding for example, but it can also be an omission, such as not providing food or water. Additionally, Iraq's definition must ensure that any public official at any level will be punished if he or she is involved in any act of torture in anyway, as that was the intention of the drafters.<sup>iii</sup>

The state definition of torture should be enacted nationally to ensure that the same definition applies throughout the country. However, if individual provinces/governorates have their own definitions of crimes, they must also define torture to encompass all the elements of article 1 are included. Additionally, if individual governorates or provinces do have their own definition of torture efforts should be made to ensure that the definition of torture is consistent throughout the country.<sup>iv</sup>

It should be noted the Committee has consistently held that states that have exclusively relied on Sharia law to define torture are not in compliance with article 1.<sup>v</sup>

**Prevent Torture**

*Article 2*

- 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*
- 2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.*
- 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.*

Article 2 requires State parties to take steps to prevent torture. This imposes an obligation to reduce, or eliminate conditions where torture is more likely to happen, such as secret detention centers<sup>vi</sup>, prolonged pre-trial detention<sup>vii</sup>, and violations of due process rights.<sup>viii</sup> For different countries this will impose different obligations depending on the current situation in that country, but some conditions have been repeatedly cited by the Committee as a problem.

Prison conditions should be humane and sanitary.<sup>ix</sup> A state party must take steps to reduce overcrowding, improve sanitary conditions, and ensure that men, women and juveniles are held in separate centers<sup>x</sup> and that there are female guards

in female detention centers.<sup>xi</sup> Prisoners should have regular access to food<sup>xii</sup> and medical care.<sup>xiii</sup> Independent organizations must be allowed unannounced and unsupervised access to all prisons and detention centers in order to monitor their conditions and ensure compliance.<sup>xiv</sup> There must not be secret detention centers or prisons.<sup>xv</sup> When a person is taken into custody they must be granted the following rights:

- The right to counsel
- The right to communicate with family;
- The right to access medical treatment.

There must be no arbitrary detention.<sup>xvi</sup> Someone who is detained must be informed of the charges against him or her, they must have access to legal counsel especially during an interrogation.<sup>xvii</sup> The state should establish a legal aid system, which is adequately funded in order to provide such counsel to those who are unable to obtain counsel on their own.<sup>xviii</sup> Detainees must be allowed to contact their family and they must have access medical personnel if necessary.

If a judge has ruled that exceptional circumstances exist and that the presence of counsel would impair an investigation, authorities can interrogate a detainee without the presence of counsel, however this should only be done after it has been authorized by a judge.<sup>xix</sup> States should implement additional measures to protect the rights of those that are interrogated.<sup>xx</sup>

The police force of the State party must be the primary law enforcement body. This means that security forces must have very limited power to arrest, detain, charge and prosecute those who break the law.<sup>xxi</sup>

In order to be in full compliance with the CAT Iraq should explicitly state in all relevant legislation, that there is no derogation from the prohibition against torture.

**Non Refoulment**

*Article 3*

- 1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*
- 2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.*

Article 3 forbids a state party from returning or extraditing someone to a country if there is a substantial risk that they will be subjected to torture if returned.<sup>xxii</sup> A state party must adopt immigration laws specifically for those people who face a risk of torture if they are deported/returned/extradited. These immigrations laws must provide that if a person faces a substantial risk of torture their case will be reviewed impartially and the risk of torture will be assessed according to the specifics facts of that person's case.

A state party may not exclusively rely on diplomatic assurances that a person will not be tortured.<sup>xxiii</sup> Each case must be assessed individually.<sup>xxiv</sup> During the review a representative of the country seeking extradition or the country of

origin of the person being removed shall be present, as well as a representative of the UNCHR.<sup>xxv</sup> Iraq should consider creating a specific class of political asylum, or implementing a different measure, that would allow for those people who face a substantial risk of torture if they are removed or extradited to more easily remain legally within Iraq.

### **Criminal Law**

#### *Article 4*

- 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.*
- 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.*

A state party must pass legislation [or amend existing legislation] that criminalizes not only acts of torture but also prosecutes and punishes those who are complicit in such acts. Any public official who commits an act of torture must be punished. There may be no impunity; all offenders must be equally prosecuted and punished regardless of their position.<sup>xxvi</sup>

The penalty imposed on those who are found guilty must be sufficiently serious as to reflect the gravity of the crime. Minimal prison time or insignificant fines will not be considered sufficient.<sup>xxvii</sup> Punishments should be consistent throughout the country. The convention should never be invoked to justify imposing the death penalty.<sup>xxviii</sup>

**Jurisdiction**

*Article 5*

*1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:*

- 1. When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;*
  - 2. When the alleged offender is a national of that State;*
  - 3. When the victim was a national of that State if that State considers it appropriate.*
- 2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article.*
- 3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.*

Article 5 requires a State party to take all necessary measures to establish jurisdiction so that courts can hear cases that arise from offences established under article 4. Under Article 5 States parties must establish jurisdiction over the following individuals:

- Someone who has committed torture on the territory of the state party.
- Someone who is a national of the state party, regardless of whether they are currently located on the territory of the state party

- Someone who has committed torture on a national of the state party
- Someone who is accused of torture who is currently located on the territory of the state party but is not a national of the state party.

**Custody**

*Article 6*

- 1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.*
- 2. Such State shall immediately make a preliminary inquiry into the facts.*
- 3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides.*
- 4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this*

*article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.*

Article 6 requires a State to pass legislation that would allow it to detain and retain custody over an alleged offender that is present on the territory of the state party. The state shall then investigate the allegations to the extent possible. A person who is accused of torture and has been taken into custody must be afforded the same procedural rights as any national detained for any crime. He or she must also have the opportunity to contact a representative of his or her state. The state party must notify other states that may have jurisdiction over the person, that they have taken custody of the accused.<sup>xxix</sup>

### **Extradite or Prosecute**

#### *Article 7*

*1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.*

*2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.*

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offenses. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

**Under articles 7 and 8 the State party must choose to either prosecute or extradite someone over whom they have custody and is accused of torture.** If another state party requests that a person accused of torture be extradited then the state party where the accused is currently located can choose to extradite. If the state party will not or cannot extradite under national law, the state party must investigate and prosecute the allegations of torture.<sup>xxx</sup> The state party must treat all investigations and prosecutions in the same manner regardless of how the state has obtained jurisdiction over the case.<sup>xxxii</sup> A state party may not enact legislation that would prevent extradition to the International Criminal Court.<sup>xxxii</sup>

### **Cooperation**

#### *Article 9*

- 1. States Parties shall afford one another the greatest measure of assistance in connection with civil proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.*
- 2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.*

A state party must assist another state party in the investigation of someone who is alleged to have tortured. This requires that states cooperate with requests for information, documents or anything else that is necessary to prosecute and

punish those who torture. States must not impose procedures that are unduly burdensome or make it too difficult for the requesting nation to obtain the necessary information.<sup>xxxiii</sup>

### **Training**

#### *Article 10*

- 1. 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.*
- 2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.*

State parties must appropriately train police, medical, prison, detention, immigration and judicial personnel, and anyone else who may be in a position to inflict or observe torture or cruel, unusual or inhumane treatment. All training should include explicit instructions that acts of torture will not be tolerated and will be prosecuted and punished.<sup>xxxiv</sup> Training should educate personnel on ways prevent torture, how to recognize signs of torture and how to report incidents that are observed.

Generally all public officials must be trained on the states obligations under the convention.<sup>xxxv</sup> Specifically, policemen or others [prosecutors, investigative judges, detention guards] who participate in the interrogation process must be

trained on proper interrogation techniques, and they must be aware of all the due process rights that are afforded to someone who has been taken into custody. Immigration officials should also be trained on proper detention, and interrogation techniques. Anyone involved in the detention process must be trained on how to maintain safe and sanitary prison facilities. Those who oversee the detention of women or children should be properly trained to deal with these specific prison populations.<sup>xxxvi</sup>

All personnel including medical personnel should be trained to recognize signs of torture so that it can be reported.<sup>xxxvii</sup>

Training must be systematic so that those who are new are made aware of their obligations to prevent and report instances of torture, and those who have already been trained should be regularly reminded of their obligations. NGOs and/or other independent organizations should be allowed to oversee training to ensure that training complies with the state's obligations.

## **Review**

### *Article 11*

*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.*

The state should regularly evaluate all of their detention, interrogation, training, immigration, security and procedures, in addition to any other

procedures where there is a risk that acts of torture may occur, in order to determine that they sufficiently prevent torture and circumstances where torture is more likely to occur.<sup>xxxviii</sup>

In addition to self-review, states should allow independent organizations to observe and review the procedures in place.<sup>xxxix</sup> This will help the state party get an independent analysis of what further steps they can take to fulfill their obligations. A state party should allow non-government organizations or other independent groups to make unannounced visits to all places, such as prisons, pre-trial detention centers, observe interrogations, and other arrest procedures.<sup>xl</sup>

### **Impartial Investigation**

#### *Article 12*

*Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.*

In order to be in compliance with this article, the state party must take all possible measures to ensure that all persons involved in an investigation and judicial process are impartial. All allegations of torture must be investigated thoroughly and expeditiously regardless of who is accused. Judges [as well as prosecutors] should be free from any bias or influence and should treat each case in the same manner regardless of who the accused is.<sup>xli</sup>

**Right to Complain**

*Article 13*

*Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.*

Compliance with article 13 starts when a state party enacts legislation or amends existing legislation that criminalizes acts of torture. Once the act is criminal victims must have a right to file a complaint, the authorities must investigate such as they would with any other crime, and the courts must have jurisdiction over such crimes. Access to courts should be real and not illusory. There should be no statute of limitations, as this would impair a victim's right to complain.<sup>xlii</sup>

Prosecutors' offices must have adequate funding to properly fulfill their prompt and impartial investigation. Additionally, resources must be allocated to the judiciary to permit them to accomplish their obligations, and to prevent any backlog in the judicial system that would create delays.<sup>xliii</sup> Military courts should not be used to review such cases, as there is a risk that they will not be impartial.<sup>xliv</sup>

A state party must enact legislation that will protect witnesses and victims who speak out against those who commit torture. Legislation that punishes someone for harming a victim or witness should be enacted.<sup>xlv</sup> Additionally, if a

victim is currently in a prison or detention center, he or she should be placed in a facility where he is removed from those he or she is accusing.

Those that have been accused should be reassigned or suspended from their current position, pending the investigation, especially if there is a risk of interference with the investigation.<sup>xlvi</sup>

### **Compensation**

#### *Article 14*

*1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.*

*2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.*

A state party must compensate victims of torture. Though compensation often takes the form of payment this is not necessary as long as the state compensates victims in a fair and adequate manner.<sup>xlvii</sup> Compensation must be more than symbolic. Compensation must also be non-discriminatory.<sup>xlviii</sup>

The state party must enact the legislation [or amend existing legislation] necessary to ensure that if a victim dies as a result of torture his or her family has the right to obtain the compensation the victim would have been entitled to.<sup>xlix</sup>

A victim of torture must also have access to comprehensive rehabilitation facilities. The state must make available medical and psychological help to victims of torture so that they can rehabilitate into society.<sup>1</sup> Such rehabilitation programs must be properly funded in order to accomplish their purpose.<sup>li</sup>

### **Exclusion of Evidence**

#### *Article 15*

*Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.*

In order to comply with article 15, legislation must be passed that ensures that under no circumstances no statement made as a result of torture will be entered as evidence in any proceeding. Judges and others involved in the judicial process should be fully aware of this prohibition.<sup>lii</sup>

Individuals must have the right to challenge the legality of statements that are introduced into evidence that may have been made as a result of torture.<sup>liii</sup>

### **Preventing Cruel, Inhuman or Degrading Treatment or Punishment**

#### *Article 16*

*1. Each State Party shall undertake to prevent in any territory under its jurisdiction 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. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.*

*2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.*

States must enact [or amend existing] legislation that prohibits and criminalizes cruel, inhuman or degrading (CID) treatment. CID treatment occurs when acts that do not quite amount to torture take place with the consent or at least acquiescence of public officials. Unlike torture these acts do not have to be committed for a specific purpose.<sup>liv</sup> These acts are often the result of actions taken by private individuals but on such a large scale that there is little question that state officials are at least turning their heads when it come to combating these crimes, common examples are human trafficking, and in some countries child soldiers. Article 16 imposes on states to take these crimes more seriously and to take greater measures to prevent and prosecute them.

A country should always look to combat new crimes or acts that constitute and CID, and should take active steps to punish and prevent CID at all times. Realistically the areas a country must address will depend on the specific problems in the country at the time. There are some specific issues that have been addressed by the Committee Against Torture several times in regards to several countries.

In places of detention a state party must take measures to reduce CID: a state party should enacting measures that reduce inter-prisoner violence<sup>lv</sup> such as

having more severe penalties for detainees who assault other detainees; reduce sexual abuse in prisons by providing more female guards for prisons or detention centers that house women;<sup>lvi</sup> limiting the use of solitary confinement.<sup>lvii</sup>

States must take measures to eliminate involuntary sterilization<sup>lviii</sup> and must prevent female genital mutilation.<sup>lix</sup>

Human trafficking is a growing global problem and states must take aggressive measures to combat this practice. States can impose harsher penalties on those who participate in human trafficking, and increase boarder guards in areas that are of concern.<sup>lx</sup>

The practice of using child soldiers, though arguably a form of torture, is at minimum cruel, unusual, inhuman and degrading treatment. State must ensure that all official forces immediately cease this practice, rehabilitate and reintegrate those children who were soldiers, and prosecute those who continue to use this practice.<sup>lxi</sup>

## **Reporting**

### *Article 19*

*1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of this Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken, and such other reports as the Committee may request.*

*2. The Secretary-General shall transmit the reports to all States Parties.*

3. *Each report shall be considered by the Committee which may make such comments or suggestions on the report as it considers appropriate, and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.*

4. *The Committee may, at its discretion, decide to include any comments or suggestions made by it in accordance with paragraph 3, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1.*

The initial report, which must be filed within one year after the convention has entered into force, should state general information regarding the country such as the political structure, and the legal system under which human rights are protected. It will not be necessary to state this information in future reports.<sup>lxii</sup> The introduction should also bare information on the process of preparing the report such as consultations with government institutions and non-governmental organizations.<sup>lxiii</sup>

The next section of the report should state specific information related to implementing the convention such as the constitutional, criminal and administrative provisions, and international treaties that prohibit torture and CID. The report should also state the status of the convention in the domestic legal order, including legislative acts incorporating the convention into domestic law.<sup>lxiv</sup>

For each article the report should include the following information:

- The legislative, judicial, administrative or other measures giving effect to the provisions;
- Examples of where such measures have been enforced and relevant statistical data;
- Cases of when the convention has been violated and what measures were taken to remedy the situation.<sup>lxv</sup>

State parties must also provide The Committee with statistical data on all complaints of torture that were filed, information on investigations that were made, the result of any prosecutions, and the compensation and rehabilitation that was provided to victims.

Periodic reports, which must be submitted every 4 years are slightly different and include 3 parts. The first part will describe any new measures or developments regarding implementation of the CAT. Part 2 should contain information requested by the committee after the last report. Part 3 should provide information on measures taken by a state party to comply with the conclusions and recommendations of the Committee after the last report.<sup>lxvi</sup>

It is left to the states to decide how this information is collected and which government office or agency prepares the state reports.

The remaining articles are purely mechanically and do not require any specific action to be taken by a signatory state.

Conclusion

In order for Iraq to fully implement the Convention Against Torture the government must first enact specific legislation [or amend existing legislation] or take other measures to implement each of the first 16 articles. It must ensure prevention, training, oversight, prosecution, and reparations. But more than that, for each article additional legislation or measures should be enacted to ensure that the article is consistently followed, regulated and maintained. For example trainings must not only be implemented but they must be effective, regularly held, overseen by independent organizations [such as an independent Human Rights Commission], and updated to adapt to changing situations. Courts must have jurisdiction over those who are accused and they must regularly exercise such jurisdiction when the state has decided not to extradite. Iraq will be in compliance when it enacts the initial mandatory legislation under articles 1 through 16, passes additional laws and takes further measures to mandate strict compliance at all times with all of the articles of the Convention Against Torture.

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<sup>i</sup> Article 1 of the Universal Declaration of Human rights; Article 7 of the International Covenant on Civil and Political Rights; Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; Paragraph 31 of the UN Standard Minimum Rules for the Treatment of Prisoners. J. Burgers and H. Danelius, *The United Nations Convention against Torture: A Handbook on the Convention on against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Dordrecht: Nijhoff, 1998), at 10-12.

<sup>ii</sup> J. Burgers and H. Danelius, *The United Nations Convention against Torture: A Handbook on the Convention on against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Dordrecht: Nijhoff, 1998), at 1.

<sup>iii</sup> *Id.* at 118.

<sup>iv</sup> Report of the Committee Against torture, at 13, U.N. Doc. GAOR A/61/44 (May, 2006) [hereinafter 2006 Report].

<sup>v</sup> Report of the Committee against torture, at 49, GAOR A/57/44 (May, 2002).

<sup>vi</sup> 2006 Report, *supra* note iv at 63.

<sup>vii</sup> Report of the Committee Against torture, at 49, U.N. Doc. GAOR A/60/44 (May, 2005)[hereinafter 2005 report].

<sup>viii</sup> *Id.* at 32.

<sup>ix</sup> 2006 Report, *supra* note iv at 37.

<sup>x</sup> 2006 Report, *supra* note iv at 15.

<sup>xi</sup> 2006 Report, *supra* note iv at 65.

<sup>xii</sup> 2006 Report, *supra* note iv at 19.

<sup>xiii</sup> 2006 Report, *supra* note iv at 15.

<sup>xiv</sup> 2006 Report, *supra* note iv at 35.

<sup>xv</sup> 2006 Report, *supra* note iv at 65.

<sup>xvi</sup> Report of the Committee Against torture, at 42-43, U.N. Doc. GAOR A/57/44 (May, 2001)[hereinafter 2001 Report].

<sup>xvii</sup> 2006 Report, *supra* note iv at 60.

<sup>xviii</sup> 2006 Report, *supra* note iv at 52.

<sup>xix</sup> 2006 Report, *supra* note iv at 9.

<sup>xx</sup> 2006 Report, *supra* note iv at 10.

<sup>xxi</sup> 2006 Report, *supra* note iv at 19.

<sup>xxii</sup> A Handbook on State Obligations under the UN Convention against Torture, Lene Wendland, May 2002, Association For the Prevention of Torture, page 33

<sup>xxiii</sup> 2006 Report, *supra* note iv at 44. See also Saadi v. Italy, App. No. 37201/06, Eur. Ct. H.R. (February 28, 2008).

<sup>xxiv</sup> Information and reports from reputed independent 3<sup>rd</sup> party organizations should also be used to assess any potential risk. Saadi v. Italy, App. No. 37201/06, Eur. Ct. H.R. (February 28, 2008). Burgers, *supra* note ii, at 127.

<sup>xxv</sup> 2006 Report, *supra* note iv at 22.

<sup>xxvi</sup> Report of the Committee Against torture, at 24, U.N. Doc. GAOR A/57/44 (May, 2002)[hereinafter 2002 report].

<sup>xxvii</sup> *Id.* at 25.

<sup>xxviii</sup> Burgers, *supra* note ii, at 129.

xxix *Id.* at 135.

xxx Wendland, *supra* note xxii at 33.

xxxi *Id.* at 45.

xxxii 2006 Report, *supra* note iv at 44.

xxxiii Burgers, *supra* note ii at 141.

xxxiv Wendland, *supra* note xxii at 50.

xxxv 2001 Report, *supra* note xvi at 24.

xxxvi 2005 Report, *supra* note vii at 99.

xxxvii *Id.* at 47.

xxxviii 2001 Report, *supra* note xvi at 52.

xxxix 2006 Report, *supra* note iv at 35.

xl 2006 Report, *supra* note iv at 35.

xli Wendland, *supra* note xxii at 51.

xlii 2006 Report, *supra* note iv at 36.

xliii 2006 Report, *supra* note iv at 18-19.

xliv 2006 Report, *supra* note iv at 19.

xlv 2006 Report, *supra* note iv at 14.

xlvi 2006 Report, *supra* note iv at 35.

xlvii Wendland, *supra* note xxii at 54.

xlviii 2006 Report, *supra* note iv at 16.

xlix Wendland, *supra* note xxii at 54.

<sup>1</sup> Report of the Committee Against torture , at 30, U.N. Doc. GAOR A/56/44 (May, 1999)

li 2006 Report, *supra* note iv at 42.

lii 2006 Report, *supra* note iv at 37.

liii 2005 Report, *supra* note vii at 19.

liv Wendland, *supra* note xxii at 57.

lv 2006 Report, *supra* note iv at 15.

lvi 2006 Report, *supra* note iv at 65.

lvii 2006 Report, *supra* note iv at 40.

lviii 2006 Report, *supra* note iv at 53.

lix 2006 Report, *supra* note iv at 66.

lx 2006 Report, *supra* note iv at 16.

lxi 2006 Report, *supra* note iv at 16-19.

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<sup>lxii</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Guidelines on the Form and Content of Initial Reports Under Article 19 to be Submitted by States Parties to the Convention Against Torture*, at 1, THE CAT/C/4/Rev. 3 (July 18, 2005)

<sup>lxiii</sup> *Id.* Page 1

<sup>lxiv</sup> *Id.* page 2

<sup>lxv</sup> *Id.* page 2

<sup>lxvi</sup> Committee Against Torture. *General guidelines regarding the form and contents of periodic reports to be submitted by states parties*. 02/06/98. THE CAT/C/14/Rev.1

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LEGISLATION NEEDED TO IMPLEMENT THE  
CONVENTION AGAINST TORTURE

- National and local legislation defining torture (Article 1)
- Legislation regarding detainees, detention conditions & investigation (Article 2, Article 6, Article 10, Article 11, Article 12, Article 13, Article 16)
- Immigration legislation (Article 3)
- Criminal law (Article 1, Article 4, Article 16)
- Criminal Procedure (evidentiary law) (Article 7 & Article 15)
- Extradition legislation (Article 8, Article 9 & Article 3)
- Witness and Victim Protection laws (Article 13)
- Victims of Torture Compensation legislation (Article 14)
- Anti-trafficking legislation (Article 16)
- Child Protection laws (Article 16)

Please note that this list does not incorporate everything required to be in compliance with the Convention Against Torture. Further legislative efforts, jurisdictional issues, trainings and other measures are also needed. Please consult the detailed analysis in this paper for further information.

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**SUMMARY OF THE ARTICLES OF THE  
CONVENTION AGAINST TORTURE**

Article 1

- Define torture in national legislation, and local legislation if necessary.

Article 2

- The amount of time that a person is in police custody should be limited to as short as possible.
- Detainees should be guaranteed the right to access counsel, contact their family, and receive medical treatment if necessary.
- Arbitrary detention must be prohibited.
- Military personnel must have limited power to arrest and detain civilians.
- National legislation should be passed that specifically prohibits any derogation from the prohibition of torture.

Article 3

- Immigration law should prohibit the deportation or extradition of anyone who faces a substantial risk of torture if they are returned or extradited.
  - o Immigration laws should ensure that each person who faces a risk of torture (if they are returned or extradited) receives a full and impartial review of their case and the specific facts that pertain to their case.
    - Diplomatic assurances alone cannot be used to assess the risk of torture to the person who is to be returned or extradited.
    - Independent organizations should be allowed to submit reports that are relevant to assess the risk of torture to the person who is to be returned or extradited.

Article 4

- Torture, complicity in torture and participation in torture must be illegal acts.
- Penalties for such crimes should reflect the gravity of the crime.

Article 5

- Courts must have jurisdiction over cases where:

- A non-national has committed torture on the territory of the state party
- A national has committed torture outside of the territory of the state party
- A non-national has committed torture on a national of the state party
- A non-national who has committed torture and is currently located on the territory of the state party.

Article 6

- Authorities must have the power to arrest and detain persons who are accused of torture, who are currently located on the territory of the state party.
- Non-nationals who are arrested, detained and accused of torture must have the right to contact a representative of their nation.
- Authorities must have the power to investigate all allegations of torture, even if a non-national committed the act.

Article 7

- Evidence laws should be the same regardless of whether the accused is a national of the state party.

Articles 8 and 9

- A state party should enact laws that facilitate extradition and cooperation with investigations with other countries.

Article 10

- Training programs must be mandatory for judicial personnel and anyone else who is involved in arrest and detention of civilians. Training programs must include information about the state obligations under the Convention Against Torture, proper interrogation techniques and the rights of detainees (such as the right to counsel)

Article 11

- There must be systematic review of all prison/detention facilities, interrogation techniques, and the treatment of prisoners/detainees.

Article 12

- All allegations of torture must be promptly and impartially investigated.

## Article 13

- Everyone who has been subjected to torture must have the right to file a complaint.
- Laws should be enacted that protect witnesses and victims.
- The Judicial system and prosecutor's offices must be adequately funded in order to ensure that they can efficiently investigate and try all allegations of torture.

## Article 14

- Law should ensure that victims of torture are properly compensated.
- Laws should ensure that if the victim of torture dies as a result of the torture their family will receive the compensation that the victim would have been entitled to.
- The state party must establish and properly fund rehabilitation facilities for victims of torture.

## Article 15

- Laws should prohibit the introduction of any evidence that was obtained as a result of torture.

## Article 16

- States must criminalize acts of cruel, inhuman or degrading treatment or punishment.
- Detention centers must provide separate facilities for men, women and minors,
- Detainees/prisoners must have access to medical treatment, food, water, and sanitary conditions.