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Crime of Torture in International and Yemeni National Laws

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Introduction to Torture: Torture is derived from the verb "to torture," meaning to inflict physical or psychological harm, regardless of its severity. It encompasses acts such as beating, burning, shackling, imprisonment, exposure to harsh conditions, deprivation of food or sleep, and other forms of physical and psychological abuse.

Definition of Torture in Legal Context: The International Covenant on Civil and Political Rights (ICCPR) of 1966, in Article (7), and the International Human Rights Convention in Article (3) state, "No one shall be subjected to torture." However, these treaties do not provide a specific definition of torture but merely criminalize it. The International Criminal Law defines torture in the context of crimes against humanity or war crimes, rather than as an independent crime.

Some legal scholars, like Duffy, have provided definitions of torture based on the 1984 Convention against Torture. Duffy defines torture as "inhuman treatment that includes mental or physical suffering imposed to obtain information, a confession, or to inflict punishment, characterized by particular cruelty and severity."

Crime of Torture in International Laws

The Universal Declaration of Human Rights generally prohibits torture, but this prohibition is non-binding, lacking a mandatory obligation for states to respect and apply its provisions. Subsequent human rights documents have emphasized preserving human dignity and protecting against torture. Article (5) states, "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."

The prohibition against torture was further expanded by the ICCPR. Article (7) asserts that no one shall be subjected to torture or to cruel, inhuman, or degrading treatment, and Article (10) mandates humane treatment for all persons deprived of their liberty, respecting their inherent human dignity. Article 4 emphasizes that states cannot derogate from the prohibition against torture even in the most severe emergencies, also stressing that prison systems must aim at the rehabilitation and reformation of prisoners.

The Rome Statute of the International Criminal Court, in Article (7), identifies torture as a crime against humanity, describing it as one of the most serious crimes that concern the international community. Torture does not have to be perpetrated by state officials or at their instigation; therefore, acts committed by special units, terrorist or criminal organizations, or ordinary individuals can be considered crimes against humanity if they occur within a widespread or systematic attack.

In the 1984 Convention against Torture, Article (1) defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from them or a third person information or a confession, punishing them for an act they or a third person has committed or is suspected of having committed, or intimidating or coercing them 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."

When reviewing international laws concerning the international criminalization of torture, we find that the Convention against Torture is the most significant document prohibiting torture. It contains detailed provisions for the prevention and suppression of torture. Article 1 defines torture, and Part I explicitly states that state parties must take practical measures to prohibit torture, ensuring no circumstances—such as war or internal strife—justify the use of torture, and not allowing the defense of following orders from a superior as a justification for torture.

The Optional Protocol to the Convention against Torture (2002) further calls for effective measures to prevent torture, aiming to establish a system of regular visits by international and national independent bodies to places where persons are deprived of their liberty to prevent torture. These bodies are authorized to access all relevant information concerning detainees, their places of detention, facilities, and can conduct interviews about their detention conditions.

Crime of Torture in Yemeni National Laws

The Yemeni Constitution prohibits torture, whether physical or psychological. Paragraph (b) of Article (48) states, "No person may be arrested, searched, or detained except in cases of flagrante delicto or by an order necessitated by the need for investigation and the preservation of security, issued by a judge or the Public Prosecution in accordance with the law. Nor may any person be monitored or investigated except in accordance with the law."

Furthermore, the same paragraph stipulates that any person deprived of their freedom must have their dignity preserved. It prohibits physical, psychological, or moral torture, as well as coercion to confess during investigations. It grants the person deprived of their freedom the right to refrain from making any statements except in the presence of their lawyer. It also forbids the detention or imprisonment of any individual in places not subject to the Prison Law, and it prohibits inhumane treatment during arrest or while in detention or imprisonment.

Article (6) of the Yemeni Criminal Procedure Law, paragraph (a), states, "It is prohibited to torture the accused or treat them in a manner that is inhumane, physically, or mentally harmful to coerce them into confession; any statement proven to have been made by the accused or witnesses under such conditions shall be disregarded." The law also stipulates in Article (16) that criminal proceedings in cases of torture do not lapse due to the passage of time.

In the Yemeni Penal Code, Article (166) prescribes imprisonment for up to ten years for any public official who lies while performing their duties or uses force or threats, either personally or through another, against an accused or witness to coerce a confession of a crime or to provide statements or information concerning it. This is without prejudice to the victim's right to seek retribution, compensation, or redress.

Article (168) of the same law states, "A public official who uses cruelty against people, relying on their authority, without justification, in a manner that undermines their honor or causes physical harm, shall be punished with imprisonment for up to one year or a fine, without prejudice to the victim's right to retribution, compensation, or redress. The employee shall be dismissed from their position in all cases."

Legislative Shortcomings in Yemeni National Laws

Despite Yemen being a party to the International Convention against Torture, which obliges state parties to enact laws consistent with the provisions of the convention, there are significant shortcomings in Yemeni national laws concerning the criminalization and prohibition of torture. This crime is narrowly defined as being committed against an accused person to obtain information or data. Additionally, it limits the crime to acts committed by a public official or someone in a similar position.

In a study by Judge Salah Al-Marfadi, a member of Yemen's Supreme Court, regarding the crime of torture in Yemeni law, the judge pointed out that the Yemeni legislator did not explicitly criminalize torture as a distinct and independent crime. The law confined the crime of torture to a single form, which is coercion to confess (Penal Code Article 166). He noted that the scope of torture crimes is broad and general, encompassing personal torture crimes, those committed by representatives of state apparatuses in their various forms and authorities, crimes of torture against prisoners of war, and crimes of torture against political detainees and freedom of expression detainees, among others.

Al-Marfadi highlighted the significant differences between the crime of torture and the crime of intentional bodily harm, which some believe to be the same crime. According to Judge Al-Marfadi, the severity of pain and suffering distinguishes torture from bodily harm, along with the element of repeated acts or the lack thereof. Torture involves repeated, more explicit actions, unlike bodily harm. Furthermore, premeditation and surveillance are more prevalent in torture crimes than in bodily harm crimes. Additionally, bodily harm only occurs through a physical act, unlike torture, which can occur through physical or mental acts. The motives and purposes of each crime also differ.

Statistics

The shortcomings in legislation have led to the expansion of the phenomenon of torture, especially during the war that Yemen has been experiencing for the past nine years. The Mwatana Organization for Human Rights reported in a statement published on its website in June 2024 that it documented at least 657 cases of torture and other cruel, inhuman, or degrading treatment or punishment by all parties to the armed conflict across various Yemeni governorates.

According to Mwatana's documentation—based on testimonies from victims or their families—different forms of torture and other cruel, inhuman, or degrading treatment or punishment practiced by various parties to the conflict include: nail extraction, severe beatings with sticks, wires, whips, and rifle butts, kicking, electric shocks, sexual humiliation and threats of rape, sleep deprivation, hanging from the ceiling, body cavity searches, forced and humiliating nudity, burning with fire, deprivation of using toilets, using loudspeakers to create noise to prevent sleep, deprivation of food and water, burning with cigarette butts, deprivation of religious practices, forced prostration to flags, hammering body parts, forcing people to drink urine, and burning genital organs—affecting Yemeni men, women, and children.

More than 200 people have died under torture in the prisons of conflicting parties in Yemen, according to a statement by the Sam Organization, published on its website in conjunction with the International Day in Support of Victims of Torture on June 26, 2023. The statement emphasized that many detention and arrest centers have become black spots in the history of torture in Yemen. It pointed to the proliferation of dozens of illegal and secret prisons dedicated to enforced disappearance and systematic and severe torture, where various types of torture, sometimes leading to death, are practiced against arbitrarily detained and forcibly disappeared detainees.

Recommendations

1. **Amend the Legislative System Related to Torture Crimes:** Work on enacting a penal law that includes severe punitive measures and establishes torture as an independent crime, not subsumed under other crime categories, drawing upon the penalties outlined in the Convention against Torture.
2. **Define Torture in the Penal Code and Criminal Procedure Law:** Ensure the definition aligns with international conventions ratified by the Republic of Yemen, including the Convention against Torture.
3. **Ensure Non-Dropping of Criminal Prosecution for Torture by Special Amnesty:** Include provisions in the Basic Law and related laws to ensure that criminal prosecution related to torture does not lapse by special pardon, in addition to non-lapsing by prescription.
4. **Establish a National High Authority to Combat Torture:** Comprising experts and professionals, this authority should be given broad legal powers to obtain all information related to human rights violations.

5. **Create a Special Fund for Compensating Torture Victims:** This should guarantee the dignity, justice, rehabilitation, and reintegration of victims into society.
6. **Prosecute Individuals Involved in Torture Cases:** Ensure that perpetrators are removed from public office and positions of authority. This is essential for victim satisfaction and to prevent the recurrence of this crime.

Conclusion

Addressing the crime of torture requires a comprehensive approach that combines legal reforms, institutional strengthening, and international cooperation. The legislative framework in Yemen needs significant amendments to fully comply with international conventions and provide effective safeguards against torture. Moreover, building a culture of accountability and justice, supported by civil society organizations and international partners, is essential to end the impunity of perpetrators and provide justice and rehabilitation to victims.