



## **International Commission of Jurists**

### **Submission to the Committee Against Torture on the Third Periodic Report of Iceland**

The International Commission of Jurists (ICJ) appreciates this opportunity to provide its views to the Committee against Torture, in advance of the Committee's consideration of the Third Periodic Report of Iceland. In this brief submission, the ICJ wishes to draw the attention of the Committee to the lack of a definition of torture in Icelandic law equivalent to that in Article 1 of the Convention Against Torture ("the Convention") and the lack of specific criminal law offences of torture and cruel, inhuman or degrading treatment, raising issues under Articles 2 and 4 of the Convention.

#### **Definition of Torture and criminal offences**

Although torture is prohibited in Icelandic law, both by the Icelandic Constitution, and under the European Convention on Human Rights, which forms part of domestic law, Icelandic law does not define torture or cruel, inhuman or degrading treatment.<sup>1</sup> Whilst the explanatory notes accompanying the Constitutional amendment that prohibits torture<sup>2</sup> refer to Iceland's international obligations under the ICCPR and ECHR, they make no reference to the Convention Against Torture, which Iceland ratified only subsequent to the amendment.<sup>3</sup> The ICJ therefore considers that there is insufficient clarity as to the definition of torture in Icelandic law.

Icelandic criminal law contains no express offences of torture or cruel, inhuman or degrading treatment, although such acts are in practice likely to be criminalised under general criminal offences. The Government considers that, although there is no specific reference to torture in the Penal Code, "there is no doubt that conduct involving torture is a punishable act under the

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<sup>1</sup> Third Periodic Report of Iceland, CAT/C/ISL/3, para.52; First Periodic Report of Iceland, para.65. The European Convention on Human Rights (ECHR) and in particular the prohibition on torture or inhuman and degrading treatment under Article 3 ECHR does not in itself contain any definition of torture or inhuman and degrading treatment, although the meaning of these terms has been elaborated by the European Court of Human Rights: *Ireland v UK*, (1979-1980) 2 EHRR 25; *Akkoc v Turkey*, App No 22947/94; *Selmouni v France* App No 25803/94.

<sup>2</sup> Act No.97/1995

<sup>3</sup> Second Periodic Report of Iceland, 2001, CAT/C/59/Add.2, paras.51-52.

Code.”<sup>4</sup> Offences likely to apply in cases of torture or cruel, inhuman or degrading treatment include<sup>5</sup> crimes of physical assault,<sup>6</sup> manslaughter,<sup>7</sup> unlawful duress,<sup>8</sup> deprivation of liberty,<sup>9</sup> and sexual offences.<sup>10</sup> Also relevant are offences committed by public officials who use unlawful methods to obtain confessions or arrest or imprison persons unlawfully, or use unlawful methods in investigation or seizure of documents;<sup>11</sup> or intentionally use unlawful methods in the resolution of a case, arrest, search or imprisonment, or in the implementation of a sentence or seizure;<sup>12</sup> or misuse an official position to compel a person to perform an act, suffer an act or refrain from action.<sup>13</sup> This last group of offences, relating to misconduct by public officials, are subject to relatively minor penalties of up to three years.<sup>14</sup> Offences of minor and major physical assault are punishable by up to one year’s imprisonment and up to three years respectively.<sup>15</sup>

As the Committee has recently noted in its General Comment on Article 2,<sup>16</sup> clear and comprehensive domestic law definitions of torture, allied with specific criminal law offences, have a significant impact in preventing and deterring torture, as well as impunity for torture, and are therefore necessary for compliance with Article 2, as well as with Articles 1 and 4 of the Convention. The Committee has previously recommended that Iceland should define torture as a specific offence in national law.<sup>17</sup>

The ICJ urges the Committee to reiterate this recommendation in its Concluding Observations on the current periodic report. In the view of the ICJ, specific offences of torture and cruel, inhuman and degrading treatment are necessary for a number of reasons, to provide clarity in the law and thereby help to ensure prosecutions for torture in appropriate cases; to reflect the particular gravity of acts of torture and cruel, inhuman or degrading treatment which are not at present sufficiently distinguished from less serious crimes such as assault; and to ensure minimum penalties of appropriate severity; and to establish effective international cooperation to combat torture as stipulated in Article 8 (extradition).

In the view of the ICJ, clear and comprehensive domestic law definitions of torture are particularly important in the context of attempts to erode the definition and the absolute nature of the prohibition on torture and other cruel inhuman and degrading treatment, notably

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<sup>4</sup> Ibid, para.59

<sup>5</sup> Ibid, paras.60-65, First Periodic Report of Iceland, 1998 CAT/C/37/Add.2

<sup>6</sup> sections 217 and 218 of the Penal Code

<sup>7</sup> section 215 of the Penal Code

<sup>8</sup> section 225 of the Penal Code

<sup>9</sup> section 226 of the Penal Code

<sup>10</sup> Chapter XXII of the Penal Code

<sup>11</sup> section 131 of the Penal Code

<sup>12</sup> section 132 of the Penal Code

<sup>13</sup> section 134 of the Penal Code

<sup>14</sup> First periodic report *op cit* para.63-65

<sup>15</sup> *ibid*, para.60

<sup>16</sup> Committee Against Torture, General Comment No.2, Implementation of Article 2 by States Parties, CAT/C/GC/2/CRP.1/Rev.4, paras.9-10.

<sup>17</sup> Concluding Observations 2003 CAT/C/CR/30/3, recommendation 9.

in the US in the context of the “war on terror”. European States’ co-operation or acquiescence in operations such as renditions carried out as part of the “war on terror” has raised concerns about the efficacy of their systems of prevention, investigation and prosecution of torture and cruel, inhuman and degrading treatment. Iceland is among those states where there are records of flights connected with renditions passing through the territory.<sup>18</sup> In this context the ICJ considers that an unambiguous definition of torture, and clear crimes of torture and inhuman or degrading treatment, are important to ensure compliance with Articles 1, 2 and 4 of the Convention.

**The ICJ urges the Committee, consistent with its recent General Comment under Article 2, to recommend to the Government of Iceland:**

- **that it introduce a legal definition of torture equivalent to that in the Convention; that it create a specific offence of torture related to that definition;**
- **that it create a criminal offence of cruel, inhuman or degrading treatment;**
- **that attempt and complicity in these offences should also be the subject of specific crimes; and**
- **that all of the above offences be subject to penalties appropriate to the gravity of the offences.**

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<sup>18</sup> Amnesty International, *Below the Radar: Secret Flights to Torture and Disappearance*, AMR 51/051/2006, 4 April 2006 The Times, *Rice faces growing anger over claims of CIA abductions*, 5 December 2005.