

**Since January 2020 NANSEN provides specialised support to victims of torture as they may face particular difficulties in demonstrating their need for international protection, due to their vulnerable profile.**

Questions?

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### Definition of torture<sup>[1]</sup>

Article 1 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984:

*“For the purposes of this Convention, the term “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.”*

### **Constitutive elements:**

#### **1. Conduct**

The Convention speaks of 'act', which can lead to a restrictive interpretation from which omission <is excluded. It follows from the preparatory work, as confirmed by the Committee against Torture, that intentional denial to detainees of water, food and medical treatment also falls within the definition of torture. It is therefore appropriate to speak of behaviour rather than action.

#### **2. Causing severe pain and suffering, both mental and physical**

This is a factual situation, which differs from person to person. Its interpretation evolves over time.

#### **3. Intention**

Severe pain and suffering must be intentionally inflicted on the victim to qualify as torture. Purely negligent behaviour or recklessness are not included.

Intention is determined on the basis of objective facts and circumstances of the case and not on the basis of a subjective investigation into the motivation of the perpetrator.

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**Opgelet: dit betreft geen officiële NANSEN nota die integraal kan voorgelegd worden aan de asielinstanties**

Intention must be aimed both at the behaviour to inflict severe pain and suffering and at the goal to be achieved with this behaviour. The offender must intentionally inflict pain or suffering, and this pain must have been inflicted for one of the purposes prohibited by the Convention against Torture. The offender must not act with the specific intention of inflicting severe pain and suffering (as this is a subjective element that differs from person to person). It is sufficient that the offender's intention was to adopt the behaviour which subsequently led him to inflict severe pain and suffering and that he took into account the fact that the treatment could cause pain or suffering. The specific purpose determines the qualification as torture.

#### **4. Purpose**

The condition of a specific purpose is the determining element for classification as torture (the distinction between torture and inhumane treatment).

Purpose within the meaning of the Convention against Torture must be interpreted restrictively. Only a purpose related to those listed in the Convention Against Torture is sufficient. Article 1 of the Convention sets out the objectives:

- Enforcing a confession
- Obtaining information from the victim or a third person
- Punishment
- Harassment and pressure/coercion
- Discrimination

#### **5. Powerlessness**

The victim is under the control of the perpetrator and has lost the capacity to resist or escape the infliction of pain or suffering (e.g. detention). The offender uses this unequal and dominant position to achieve a certain effect or goal. (This is an essential criterion which distinguishes torture from inhuman treatment)

#### **6. Involvement of a public official or other person acting in an official capacity**

It concerns all government officials and persons acting in an official capacity.

Other persons acting in an official capacity are broader than government officials. It includes non-state actors whose authority is comparable to that of the government (e.g. rebel groups exercising de facto authority in certain regions, failed states where the government has lost control over certain areas).

Serious pain or suffering must have been inflicted by, at the urging of, or with the consent of, a government official or other person acting in an official capacity.

At the instigation of means sedition, incitement, invitation, and requires direct or indirect involvement. The term consent is broader and may cover a wide range of acts committed by private persons if the State in one way or another permits such activities to continue.

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Where torture is committed by non-State actors, States are required to exercise due diligence or care to prevent, investigate and punish such acts. If not, the State may be held responsible (e.g., gender-based violence).

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