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The crime of Torture and its correct documentation through the implementation of the specialized medical- psychological expertise

Review Article

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SUMMARY

The objective of this review is to carry out an analysis of what nowadays constitutes, according to the current norms in Mexico, the crime of torture, as well as to describe and analyze the protocol of Istanbul, which is characterized as a fundamental instrument during a judicial investigation in which a psychological

medical evaluation is carried out to verify through scientific means whether a person has been a victim of torture. In this context, a review is made on the national and international regulations on which the medical-expert performance is based, as well as on the specialized medical / psychological expertise for possible cases of torture.

Keywords: Protocol of Istanbul, Torture, Human Rights.

INTRODUCTION

The violation of human rights has become a widespread and deeply rooted phenomenon in Mexico. The concern of society in general lies in the fact that the figures indicate an increase in the number of cases reported by the institutions responsible for defending and promoting fundamental rights. At present, the crime of torture comes to mean an expression of the use and abuse of power by the institutions responsible for seeking justice and has become a topic of daily debate in the media. The abuses committed by the security forces during a detention are increasingly documented; almost every day cases are reported in which excessive use of physical or psychological force predominates; physical and psychological intimidation during a testimony or statement that directly or indirectly involves the alleged offender is usually obtained.

One of the most recent issues that has resonated nationally and internationally, is the one accredited by the National Commission of Human Rights (CNDH), on the disappearance of the students of Ayotzinapa normalistas, on

September 26, 2014, in the municipality of Iguala, Guerrero. A group of students was arrested by local police officers who later turned them over to a criminal group. The investigations carried out by the Attorney General's Office (PGR) would lead to the arrest of several individuals who allegedly declared they had been tortured. Given the evidence of a series of inconsistencies in the investigation, especially the one related to the fact that several detainees claimed to have been coerced to testify in the terms that they did, the corresponding magistrate ordered the immediate release of the suspects, noting that the testimonies provided can not be used as evidence. From this controversial case arise several enigmas that take relevance at the national level: What is torture? How do you get to determine that a person has actually suffered acts of torture? What are the scientific elements that help the public ministry to establish that there was a physical and / or psychological coercion to obtain a testimony? Why can a judge order the immediate release of a defendant in the presence of acts of torture?

This review will try to give a timely and objective answer to the questions raised above, in order to understand why it

is necessary to make a comprehensive documentation of these cases through scientific instruments that allow to establish the historical truth of the acts. To achieve this purpose it is necessary to be clear about the concept of torture, conduct a general statistical review of the cases reported in Mexico, and point out national and international instruments that serve to document cases of possible torture and other cruel, inhuman or degrading treatment or punishment, in addition to reviewing other documents as important as the protocols and manuals created to identify and provide legal medical follow-up to positive cases of torture; this is established in the "Specialized Psychological Medical Expertise for Cases of Possible Torture or other Cruel, Inhuman or Degrading Treatment or Punishment."

HISTORICAL BACKGROUND

The concept of Torture

Through the history of humanity, codes of conduct have been created, in order to give order to life in society. This is how the Law arises and evolves, in order to control our "instinct". In ancient times Greek and Roman societies created codes of conduct. Among its objectives was to seek to intimidate criminal behavior by imposing penalties if someone committed a crime. One of the ways to establish the truth of the facts, which is still valid today, was the interrogation of the individuals tried and often these were carried out under the premise of imposing physical pain on those involved with the objective of obtaining a testimony.

In Greece there was a term called "βάσανος, ου, ἡ2" (Basanos), which designated the accepted judicial processes,

which could only be used in slaves or people with a shameful occupation, although they were also used to interrogate captured enemies with the purpose of obtaining essential information (Illán, 2017). In Rome, something similar happened; the interrogations carried out through physical and psychological intimidation were reserved for slaves and foreigners, with the sole purpose of ensuring that their statements had legal value. This procedure was called "Questio", that is, the judicial investigation process (Fernández, 2013). The Questio judicial investigation process was accompanied by the "Tormentum", which applied to the different punishments, including the death penalty. "Questio per tormenta", was the judicial investigation through torture (Fernández, 2013).

The word "torture" comes from the Latin "delayed torture" (twisting, twisting, torture, torment). It is a resulting activity name derived from the Latin verb "torquere" (twisting, curving, also twisting the limbs, that is, torturing). Torture constitutes the most serious violation of the fundamental rights of human beings and constitutes a direct attack against the dignity of the person and the values and principles on which democracy and modernity are based (Pino Gamero, 2013).

The word 'torture' is usually used to describe inhumane treatment that has a purpose, such as obtaining information or confessions, or inflicting punishment; it is generally an aggravated form of inhuman treatment. The treatment or punishment of an individual can be considered degrading if he humiliates him rudely in front of others or leads him to act against his will or conscience (Bueno, 2003).

According to this definition, it is the degree of suffering that is caused on the individual that distinguishes torture from

inhuman treatment or punishment and the latter from degrading treatment or punishment. According to the European Commission, for an act to qualify as torture, it must go through three levels. First, it must be included within any of the assumptions that define degrading treatment. Then, to be categorized as inhumane treatment, it must cause severe mental or physical suffering, be applied deliberately and lack justification in the particular circumstances of the case. Finally, to be qualified as torture, the act must be an aggravated form of inhuman treatment and pursue a specific purpose.

It is well known that in the Middle Ages, the Catholic Church acquires great importance in this sense, since there was the persecution of heretics, appearing institutions such as "The Holy Inquisition", "The Court of the Holy Inquisition" and "The Holy Office" ; these ecclesiastical doctrines considered the denial of them a crime and used very elaborate methods and instruments (Kary, 2010). It was in the last century when one of the main instruments that seeks to safeguard the fundamental rights of people is created. From the Universal Declaration of Human Rights of 1948, for the first time a reflection is made on the mechanisms used by the authorities during the investigation of a crime; Article 5 states emphatically that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Garza, 2011).

Other important documents that emphasize that no person will be subject to acts of torture are the Geneva Conventions (1949); they emphasize the prohibition at any time and place of attacks against life and bodily integrity, especially homicide in all its forms, mutilation, cruel treatment, torture and torture (www.icrc.org).

With the passing of time, in 1969, the American Convention on Human Rights or Pact of San José de Costa Rica, would strengthen the fight against acts of torture; Article 5 states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" and that "Any person deprived of liberty shall be treated with the respect due to the inherent dignity of the human being", however it would take almost a decade to go into effect (July 18, 1978). Over time, the Convention became one of the bases of the inter-American system for the promotion and protection of human rights (www.colmex.mx).

Nowadays, torture in Mexico is considered a federal crime, which is defined in the General Law to prevent, investigate and punish Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and is defined as pain or suffering physical and / or psychic, which causes a public servant in the exercise of his functions, to a person under his custody with the purpose of obtaining information / confession, within an investigation (Quintero, 2015).

General information about the crime of Torture

Mexico is going through a complex situation of public security. Organized crime is a challenge for the authorities and the population. Since 2006 and under the so-called "war on drug trafficking", measures have been implemented to regulate the arrest, investigation and combat of organized crime, including the deployment of armed forces that perform public security functions; In this context, in 2006 the Secretary of National Defense (SEDENA) was appointed before the National Commission of Human Rights

(CNDH) as responsible for human rights violations in 182 cases, while in the first half of 2012 this number was increased to 1164 complaints. The CNDH registered an increase in complaints of torture and abuses since 2007 and reported a maximum of 2020 complaints in 2011 and 2113 in 2012, compared to an average of 320 in the six years prior to 2007. According to Amnesty International figures, Torture has increased by 600% in the last 10 years.

INVESTIGATION OF THE CRIME OF TORTURE

To carry out the investigation of cases where torture is presumed, there are multiple national and international references that must be previously taken into account, in order to verify or rule out the existence of the crime. Who carries out the investigation should have contemplated that there are protocols and manuals created *expresamente* to document these cases.

The expert staff (forensic psychologist, forensic psychologist and photographer), with the consent of a judicial authority and the direction of a public prosecutor, must carry out the collection of evidence and the preparation of expert expertises. The purpose of this test is to document signs and symptoms that help elucidate the existence of acts of torture.

It is achieved at present by implementing the specialized medical / psychological expertise for cases of possible torture and / or abuse, which has its basis from the General Law to Prevent, Investigate and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and which will be discussed later. The expertise is based mainly on the

guidelines indicated by a transcendental document in the forensic scenario when investigating Torture cases: the Istanbul Protocol.

The Istanbul Protocol

As stated in the previous paragraphs, knowledge of the Istanbul Protocol, which is the first set of international standards to document torture and its consequences, created on the initiative of the United Nations (UN), signed by Mexico, is relevant. on September 23, 2002 and ratified on March 30, 2005.

The purpose of the protocol is to clarify the facts related to alleged cases of torture, identifying those responsible for the facts and seeking reparation for the damage caused to the victims. To achieve this purpose it must be precise that the people in charge of the investigation fulfill the following requirements: 1. Obtain statements from the victims, 2. Recover and preserve the evidence, including medical evidence, in relation to the alleged tortures to help in the eventual prosecution of those responsible, 3. Identify potential witnesses and obtain their statements regarding the fact, and 4. Determine how, when and where they occurred, as well as any type of pattern or practice that may have led to the commission of the crime.

The specialist in charge of carrying out the investigation must request from the corresponding judicial authority all the information contained in the file to document exhaustively the background of the case. Generally you will find contradictory statements, as the testimonies of the arresting agents and those of the alleged perpetrators will be different, so new statements must be obtained from the first of the alleged

torture, making it clear that the rest of the statements They are precedents to consider during the investigation.

The application of the Protocol, among other purposes, seeks to clarify the facts, establish and recognize the responsibility of the persons or the State, prevent the repetition of these acts as well as facilitate the prosecution of those involved and the repair of the damage.

It also states that the State will ensure that complaints or allegations of torture or abuses are investigated promptly and effectively. Investigators must be competent and impartial as well as belong to an independent body. In Mexico, the institutional agencies that handle requests to investigate cases of possible torture are the Attorney General's Office (PGR), the State Prosecutor's Offices and the Human Rights Commissions, both the National and the State; This implies that many of the times the accused arresting agents belong to the government institutions that investigate the crime. The above is a consequence of the large number of complaints issued, so it is not feasible in our country that this issue established by the protocol is fulfilled in its entirety.

Despite the above, a large number of files have been integrated in which the denunciation of torture by the victims is one of the main points to be resolved; In addition to the corresponding ministerial actions, one of the most important elements during the investigation is the official document issued by the forensic specialist, usually an expert in forensic medicine. The expert expertise must be practiced adhering to ethical principles and will be carried out without the presence of security agents or other government officials; it will be necessary to have the presence of his representative and that the

alleged victim, while the diligence is done, be accompanied by a representative to avoid misinterpretation and corroborate the information obtained at that time.

The document must include at least the following elements: condition of the interview, detailed explanation of the facts reported by the subject during the interview, physical and psychological examination, interpretation of the probable relationship between physical and psychological symptoms and possible tortures or bad deals and authorship. When concluding, the obligation of the experts is to deliver the expertise directly to the judge or the requesting judicial authority. No other person shall have access to the opinion.

The Specialized Medical / Psychological Expertise for cases of possible Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

It is an evaluation carried out by official or independent experts accredited in the medical and psychological specialty, which is based on the Istanbul Protocol, international treaties on Human Rights, institutional protocols, research manuals, practical guides and legal regulations. It has the purpose of documenting in writing medical and psychological signs and symptoms that the victim presented at the time of being apprehended or being in custody, in addition to establishing the degree of correlation of these signs and symptoms, with the probable acts of torture, previously described.

To duly document the expertise, the following sections should be considered, which are mentioned in the Istanbul Protocol:

1. Psychosocial history and prior to arrest

This story should be considered for both the medical expert and the psychologist. Two scenarios may arise: if the person is detained or the alleged victim is free; in the first case it will be appropriate for the psychosocial history to be brief, and in the second aspect it may be more detailed. Regarding the medical history, it is important to ask and be explicit, if you take any medication, what kind of disease you have before the arrest. It is timely to strictly consider their psychosocial and medical context prior to the arrest, since there are cases in which the presumed victims often simulate their illnesses or psychological conditions prior to arrest.

2. Summary of detention and abuses

Obtain information specifying dates, places, length of detention, frequency and duration of torture sessions. Point out the different security bodies that intervened and describe who were the ones that caused some kind of physical / psychological damage.

3. Detención circumstances

Different questions related to the moment of the facts can be raised; however the interviewer must be careful and should not induce the questions; that is, he has to answer freely; If we, as experts, ask you, did you blindfold him? Surely he will answer yes, but if we let the alleged victim write or relate freely and we will expand the interrogation, it will be more convenient and we will avoid persuading the person interviewed.

4. Place and conditions of detention

Mention if the person had food and beverages, such as sanitary facilities, lighting, good temperature and ventilation conditions, with a detailed description. Also document any contact of the person with their relatives, lawyers or health professionals, conditions of overcrowding or isolation, the dimensions of the place of detention and if there are other people who can corroborate it.

5. Methods of torture

Obtain concise information about the alleged torture and abuses; caution must be exercised in suggesting modalities of abuse to which the person may have been subjected. The questions should be formulated in such a way that a coherent relationship is obtained. For each form of abuse, notes should be taken of the following details: body position, means of restraint, nature of all contact, duration, frequency, anatomical location and location of the affected body.

The story should include the date of the torture, how many times it was practiced or how many days the torture lasted, the period of each episode; he must be careful with this data, since in general it has been observed that during torture the subject tends to suffer a temporary and spatial disorientation.

The expert should document not only the case to guide his interview; It must also correlate the information provided by the victim with the pre-existing information on methods of torture, such as the one indicated by the National Commission on Political Prison and Torture.

6. Background evaluation

Survivors of torture may encounter difficulties in giving concrete details about

what happened; there are factors that can explain the inconsistencies that are observed in the narration of the person's case. Whenever possible, the researcher should ask for clarification. But when it is not possible, it will look for any other indication that supports or denies the story.

7. Examination of methods of torture

After obtaining a detailed account of the facts, it will be useful to examine other possible methods of torture. It is essential to learn what regional torture practices are and to modify local guidelines accordingly.

The protocol indicates a list of methods of torture; However, we must consider that the list does not intend that researchers use it as a checklist that is included in the expertises. Besides, it does not mean that if the method is not included in the list, let's conclude that it is not a case of possible torture or inhumane treatment.

It should also be taken into account that the methods of torture used can produce different types and levels of injuries; Data obtained through a complete medical history and physical examination should be evaluated in conjunction with appropriate laboratory and radiological examinations. It is necessary to analyze the data obtained during the interviews, in conjunction with the experts involved, not so that they affect our results, but rather to arrive at a more accurate diagnosis and especially if it requires follow-up or rehabilitation treatment.

How are the results or findings obtained during the medical / psychological interviews interpreted and how are the conclusions of the expertise formulated?

The physical manifestations of torture may vary according to the intensity, frequency and duration of the abuse, the self-protection capacity of the survivor and their physical condition prior to torture. Certain forms of torture may not leave physical traces, but may be associated with other disorders.

When possible, the names of the witnesses or the victim will be given. It should also be indicated if at the time of the interview or in any of its parts there was someone else in the room. The expertise will be signed and the delivery date will be placed, including any statement that may be required by the jurisdiction to which it is intended.

In view of the foregoing, the examining physician must request from the public prosecutor in charge of the investigation, all lesion certificates, physical integrity reports, which are included in the file, or in the investigation folder.

These elements are very important because if the person alleges inhuman degrading treatment or torture, these certificates must be consistent and consistent with the data provided to us by the victim; in many cases they do not coincide, and allegations of torture such as bruises, wounds or any other type of damage must be documented in the initial medical certificates; in the event that they are not indicated, it will be very difficult to verify a case of positive torture since if we do not have all the scientific elements.

When making the expertise in form, you must follow the facts and write carefully. Professional jargon will be avoided. Medical terminology or technicalities should be defined so that they can be understood.

What should be included in the physical or medical history of the victim in the Specialized Medical / Psychological Expertise?

The protocol determines that the medical history should be complete and include information about medical, surgical or psychiatric history. The specialist should ensure that all injuries suffered before the period of detention and its possible further effects are recorded in order to establish a correlation between regional torture practices and individual reports of abuse. All complaints of a survivor of torture are significant and should be reported, even if there is no correlation with physical observations. Documentary evidence should be kept of acute and chronic symptoms, disabilities associated with specific forms of abuse, as well as subsequent healing processes.

It is necessary to take note of the severity, frequency and duration of each symptom and any associated disability or need for medical or psychological care.

During the physical examination, whenever possible, the victim may choose the sex of the doctor and, where appropriate, the interpreter. If the doctor does not belong to the same sex as the victim, and as long as he does not object, a witness of the same sex will be added. It is important to make the victim feel that he is in control of the situation and that he has the right to limit the examination or to put an end to it at any time.

The Specialized Psychological-Medical Expertise indicates that the physical examination must be carried out through a complete, methodical, descriptive examination; directed by apparatuses and systems as established by medical propedeutics and forensic doctor, with the intention of looking for symptoms, signs and / or alterations compatible or closely related to the facts that are investigated and in this way to be able to establish that they are a product of abuse or torture. Likewise, the description must follow the generally accepted guidelines for physical examinations.

All physical findings or morphological characteristics must be numbered and documented both graphically as well as with photographs, so it is essential that the doctor go together with the expert in forensic photography or failing that the doctor takes the camera with him or her and authorizes the corresponding detention center. The numbering of the images will be correlated with the respective diagrams.

The clinical history can be framed in the following sections: medical history of the case, clinical, personal pathological, hospital, surgical, traumatic, immunoallergic, non-pathological, family, psychiatric, substance use and abuse.

For the physical examination, the following elements of study should be considered, in order to perform a search for injuries or secondary alterations or that are closely related to the facts that are investigated:

- General appearance, must include vital signs, particular signs.
- Exploration of the body surface, the cephalic limb, including the neck, eyes, nose and throat, oral

cavity and denture, back and abdomen thorax, genito / urinary system (including pelvic exam, perineum, anus and rectum), the musculoskeletal system and the nervous system (central and peripheral).

Equally important are the complementary studies that are requested or required to determine the pathology or have an accurate diagnosis or confirm this diagnosis. More specific studies can also be requested, such as chemical, histopathological, genetic tests, among others.

If necessary, interconsultation will be requested to specialists or subspecialists; its result will be analyzed by the signing medical experts, who will determine and conclude whether or not there is congruence and correspondence between the dynamics of the facts and the injurious result with the version of the person examined, as well as with the mechanism producing the injuries and their harmful condition observed.

Finally regarding the conclusions and recommendations, they should be concise, impartial and objective; We must have all the scientific elements to give a positive or negative case to torture.

It is necessary to present a professional expertise on the agreement that exists between all sources of information, forensic evidence mentioned above and allegations of torture and / or abuse. Issue legal medical classification of physical and / or psychological injuries found. Include recommendations on new evaluations and care of the subject.

The conclusions are formulated taking into consideration the precepts:

- Establish whether the injurious chart referred by the person is compatible or not with the provisions of Article 3 of the Federal Law to Prevent and Punish Torture.
- Emit in a clear and simple way the mechanics of injuries: producing object, injury dynamics, production chronology, number of participants.
- Issuing the legal medical classification of injuries complies with the provisions of the Federal Criminal Code.
- Recommendations on new evaluations or care that the person needs.

Medical Physical Examination of Torture Victims Alleged / Practical Guide to the Istanbul Protocol for Physicians and Psychologists

In the Istanbul Protocol there are guides that constitute an auxiliary instrument to the protocol and have been developed as a practical reference resource for doctors and psychologists involved in the investigation and documentation of cases of alleged torture.

These guidelines do not replace the protocol, but provide additional information on the different physical and psychological consequences of torture at different levels of processing. The medical guide is divided into four sections:

- Section A: deals with dermatological findings in

allegations of torture: macroscopic changes and possible microscopic alterations.

- Section B: describes possible injuries in the musculoskeletal system after physical torture and according to the specific forms of torture.
- Section C: refers to other systems; such as cardiopulmonary alterations, gastrointestinal, urological alterations, otorhinolaryngological, ophthalmological alterations and gynecological examination.
- Section D: exploration in children is described.

With regard to the content of the Practical Guide to the Istanbul Protocol for psychologists, it is divided into six sections dealing with:

- Section A: Importance of psychological evaluation in medical research and documentation of allegations of torture.
- Section B: The interview, ethical and clinical considerations: privacy, security, trust, confidentiality and informed consent, some dilemmas found in the interview process, interview, potential transference and counter-reference reactions, factors that are inconsistent and difficulty to write and describe the torture story.

- Section C: Psychological evaluation for the investigation of allegations of torture: objectives of the psychological evaluation, components of the psychological evaluation.
- Section D: Psychological consequences of torture in the individual: factors associated with the psychological response to torture, more frequent psychological responses, more common diagnostic categories.
- Section E: Interpretation of the findings / clinical impression: how to interpret the findings, absence of psychopathology, what to do in case of inconsistencies.
- Section F: Report: who requests it, who has access, what should be included.

NATIONAL LEGAL REGULATIONS THAT RULES THE INVESTIGATIONS OF TORTURE

In accordance with the exhaustive bibliographic review, it is important to mention the national agreements of the prosecutors' offices of justice, national protocols (Mexico), codes of ethics, agreements, guidelines, manuals of each public institution; refer to cases of possible torture and / or inhuman or degrading treatment, which we can support and have as a legal basis, to adequately conduct an investigation of torture with all the medical scientific elements that protect our actions as experts and timely support the medical / psychological expertise issued before the corresponding authority.

Therefore, torture investigations and follow-up are governed by the following medical-legal parameters:

American Convention on Human Rights

Consider Article 7, which states that every person has the right to freedom and personal security. Likewise no one can be deprived of his physical freedom; no one may be subjected to arbitrary arrest or imprisonment; Any person detained or detained must be informed of the reasons for their detention and notified without delay and any person deprived of liberty has the right to appeal to a competent judge or court so that he or she may decide, without delay, on the legality of his or her arrest or detention and order their release if the arrest or detention were illegal.

Agreement number A / 057/2003

This agreement was published on August 18, 2003, in Mexico; Its purpose is to instruct the agents of the Public Ministry of the Federation, the forensic and / or forensic medical experts and other personnel of the PGR, regarding the application of the Specialized Medical / Psychological Expertise, in any person that alleges such abuses, as well as how to establish the institutional guidelines that govern its implementation. Describes that the Specialized Medical / Psychological Expertise, which is the document signed by forensic and forensic medical experts of the PGR, which is submitted to the Public Ministry of the Federation. The writing will be practiced to any person who alleges such abuses, in order to document and correlate, where appropriate, the manifestations of torture and / or ill treatment with physical and / or psychological findings. It is the obligation of the Public Ministry of the Federation to

request the expertise from medical expert witnesses in cases of possible torture.

In this agreement, he cites the informed Consent, which will be expressed by the person who alleges to have been the object of said abuses, so that it may be revised in its entirety psychophysical; In case of denying the consent, the person is in all his right and his refusal will be stated. In case you grant your consent, you will be informed of the following points to consider: a) The purpose of the examination; b) The nature of the evaluation, including an assessment of physical and / or psychological evidence of possible abuse; c) The manner in which the information will be used; d) The possibility of granting or denying their consent to the practice of the interview and the medical examination, and e) of the right to be recognized by a forensic and / or forensic medical expert and, in the absence of this or if it also requires it, for a doctor of his choice under the terms of article 7 of the Federal Law to Prevent and Punish Torture.

It also refers to photographers who must obtain photographic impressions of visible injuries and areas of the body where the person examined alleged to have been tortured and / or mistreated, even when said injuries are not evident. When delivering the requested expertise, it must have certain conditions which are mentioned in the ninth section. He mentions that it is necessary to create a Committee for Monitoring and Evaluation of the Specialized Medical / Psychological Expertise to evaluate said expertises in the institution.

Agreement No. A/008/2005

Published on December 23, 2005, in the Official Gazette of the Federal

District. The purpose of the agreement is to establish the guidelines for the agents of the Public Prosecutor's Office responsible for investigating possible cases of torture, within the procedures that must be carried out for the proper integration of the corresponding preliminary investigations, in addition to other expert expertises that they deem appropriate for the completion of the Specialized Medical / Psychological Expertise, to the alleged victim who alleges to have been the object of that crime, with the express and informed consent of the same, in the terms indicated in the Sole Annex of this Agreement. It is similar to the previous agreement but applicable to the Federal District now Mexico City.

Agreement A/085/15

Most recent update of the agreements previously indicated; was created on October 5, 2015 and indicates to instruct the agents of the Public Ministry of the Federation, the medical experts and psychologists, and other personnel of the PGR, in the field of its competence, regarding the minimum procedures that must be carried out I finish before the probable commission of the crime of torture; as well as establishing the guidelines that govern the application of the Specialized Psychological Medical Expertise.

Agreement A/006/18.

Agreement establishing the Special Prosecutor's Office for the Investigation of the Crime of Torture and establishing its powers. This most recent agreement was created on January 26, 2018, and aims to create the Special Prosecutor's Office for the Investigation of the Crime of Torture, attached to the Deputy Attorney General's Office for the Investigation of Federal

Crimes, as the administrative unit with full technical and operational autonomy in charge to initiate, direct, coordinate and supervise the investigations related to the crimes indicated in the General Law to Prevent, Investigate and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in terms of articles 22 and 55 of the same Law; as well as, in the area of competence, perform the corresponding actions to obtain the appropriate sanction of those crimes and of the corresponding integral reparation and specialized attention to direct and indirect victims.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

This Convention entered into force on June 26, 1987, in accordance with article 27. It consists of 33 articles and its objective is to make the fight against torture and other cruel, inhuman or degrading treatment or punishment more effective throughout the world. It is necessary to mention the national action protocols (Mexico) that are mainly based on the Istanbul Protocol and were created with the purpose of having greater knowledge to support the investigation of cases of possible torture and / or abuses or inhuman or degrading treatment and it demands the strengthening of institutional capacities within the framework of the change of the Mexican legal system and of the transition from the inquisitorial penal system to the accusatory one.

Approved Protocol for the Investigation of the Crime of Torture

The National Public Security Council agreed on December 19, 2014, the elaboration of the Approved Protocol for the Investigation of the Crime of Torture,

of national application, that will contemplate the best practices for the ministerial, expert and police investigation of this crime, and principles of action, for a dignified and respectful attention towards the victim. As a result of this agreement, this Protocol was developed as an exercise of collective construction between the PGR, the Attorney General's Offices and State Attorney's Offices, experts in the field, as well as national and international human rights organizations and organizations participated.

With this Protocol, the Mexican State assumes the commitments acquired by ratifying the two International Conventions on the matter, and in complying with the obligations derived from the recommendations and judgments on torture issued by the International Human Rights Organizations, both of the United Nations as the Inter-American System.

The Protocol seeks to establish policies for action and procedures that comply with international human rights standards for the investigation of torture, without reproducing the provisions of the Criminal Procedures Codes; The objective is to serve as a guide in the different stages of the criminal procedure, to ensure a thorough investigation of the facts and the re-victimization of the person who has suffered torture.

Code of Professional Ethics for Federal Agents of the Public Ministry and Federal Ministerial Police

It constitutes a set of rules of conduct and professional ethics to be observed by public servants of the PGR and, in a special way, the agents of the Federal Public Ministry and Federal Ministerial Police, both in the performance

of their duties and in their dealings with the public, in order to ensure compliance with the Constitution and the provisions emanating from it.

Model Protocol for the Forensic Investigation of deaths suspected of having occurred due to violation of Human Rights

The objective is to provide the professional forensic and criminal sciences, who eventually have the opportunity to participate as an expert in investigations that may involve the violation of human rights a Model Protocol, eminently practical, that allows you to meet the minimum steps necessary to document and analyze fresh, decaying or skeletonized corpses in order to determine signs of torture or physical abuse.

Model protocol for the legal investigation of extra-legal arbitrary and summary executions. Minnesota Protocol

Created in May 2004, by the United Nations High Commissioner for Human Rights. It consists of several sections that include: extrajudicial or arbitrary executions, model protocol for the legal investigation of extralegal, arbitrary or summary executions, model autopsy protocol, model exhumation protocol and analysis of skeletal remains.

In relation to the above, detainees may be subjected to torture and extrajudicial executions by state and terrorist actors. The cause of death of detainees subjected to torture is often a matter of speculation or remains obscure. An author from the University of Canada named Michael S. Pollanen points out that, at autopsy, you can observe many different

types of injuries inflicted, which often vary in severity. However, there are three recurrent patterns of trauma that are the hallmark of torture: 1. Blunt impact trauma characterized by ecchymosis, patterned injuries and internal injuries; 2. Electrical and thermal injuries; and 3. Injuries from stress positions that occur due to prolonged suspension.

Manuals and protocols on the use of *forcé*

It is necessary to mention the established manuals and guidelines that consider the use of force by the bodies in charge of police activities, since the forensic specialists have the obligation to establish the mechanics of the injuries presented by the alleged victims and it is of great importance know the regulation of the techniques used for the apprehension, to determine in the expertise if the injuries he presented at the time of the facts that are investigated are specific to the detention or are due to excessive use of force, for which the following manuals that guide us in this respect:

Manual of the Use of the Force, of common application to the three Armed Forces.

It is based on the Organic Law of the Federal Public Administration, which regulates the legitimate use of force by the personnel of the Mexican Army and Air Force. It talks about the concept and principles on the Use of Force, the circumstances in which the Use of Force is appropriate and the type of weapons and mechanisms, measures to reduce possible damage to third parties, Identification protocols and methods of Deterrence and Persuasion, specific responsibilities of the staff and the national and international legal framework. It is worth mentioning

that the use of force levels by members of the armed forces is only appropriate when it is strictly unavoidable or indispensable for the fulfillment of the assigned mission, in support of the civil authorities. The use of force will be carried out with strict adherence to human rights, regardless of the type of aggression, according to the principles of opportunity, proportionality, rationality and legality. It indicates the levels of use of force; which is the gradual use of force that, prior evaluation of the situation, must adopt the personnel of the armed forces proportional to the behavior of the person and / or the resistance that opposes.

It is important to note that the undue use of force occurs when the use of force is made without observing the principles and rules provided in the directives and in this manual. In any case, the personnel of the armed forces who have been informed of the undue use of force will report it to the public prosecutor's office or public ministry of the federation. The personnel of the armed forces in the performance of their duties, shall refrain from using force, except in cases where it is strictly necessary.

Agreement 04/2012, of the Secretary of Public Safety

It establishes the guidelines that establish the general normative bases for the use of the Public Force by the police institutions of the Decentralized Administrative Bodies of the Secretariat of Public Security and that are applicable to the members of the Police Institutions that develop functions of prevention, investigation, reaction as well as guardianship, custody and protection of goods and persons for the combat of federal crimes, based on the applicable legal provisions.

Guidelines for the arrest and attention of detainees before the Public Ministry

They establish procedures, techniques and tactics of action of the agents of the ministerial police during the detentions, as well as of the ministerial personnel as far as their attributions correspond. Among other guidelines that must be considered prior to making the corresponding expertise, likewise it is necessary to take into account in which state of the Mexican Republic the case was presented since each entity has its own manuals on the use of force and it will be necessary to differentiate what type of element apprehensor intervened.

Context Analysis Manual for cases of Human Rights violations.

This manual seeks to offer Mexican and Mexican women working in human rights cases an answer to some of the common questions regarding the methodology of context analysis for crimes that lead to violations or violations of human rights.

Manual for victims and their defenders. Prohibition of Torture in the Inter-American System

This manual for victims and their advocates is intended to serve as a tool for capacity building. It aims to support the victims of torture and abuses and those who generally provide them with assistance, such as Non-Governmental Organizations, defenders and lawyers, in order to effectively benefit from the mechanisms of individual complaints before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights. This tool specifically focuses on violations of the

right not to be subjected to torture or other abuses, as enshrined in the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man, among other inter-American instruments.

CONCLUSIONS

Torture or other cruel, inhuman or degrading treatment or punishment is a serious violation of human rights; they appear in all government regimes: dictatorial, monarchical, parliamentary, socialist, republican, communist and democratic.

The increase in serious violations of human rights leads to an increase in complaints to public servants for the crime of torture; However, of the total of the investigations, an insignificant part is positive, apart from the fact that there is little expert personnel to investigate. This investigation is a laborious, systematic and prolonged procedure, since it involves the participation of three experts in the areas: Medicine, Psychology and Forensic Photography, which together issue the Specialized Psychological Medical Expertise; It is essential to document the signs and symptoms that are related to the facts that are investigated.

The technical expertise should be based on various international, national regulations, current Mexican legislation, considering expertises of non-governmental bodies, agreements, guidelines, manuals, action protocols, as well as accepted medical / psychological literature. Initially, it is necessary to ask the corresponding authority to combine all the expert actions: ministerial, preparatory, judicial statements and extensions of the complainant and the

apprehension elements. It is the obligation of the authority to declare the alleged victim, the arresting elements, about the new allegation of torture. The following documentaries are all certificates of injuries, physical integrity reports or medical / psychological studies that have been applied to them, in order to monitor the state of health and make a comparison between the arguments of the victim.

Injuries that were described throughout his apprehension. If the person was transferred to a hospital, it is essential to request the medical notes of consultation, as well as paraclinical and cabinet studies, as well as request the mechanics of injuries. With all the forensic medical elements indicated, the medical / psychological interview is carried out; The doctor must be accompanied by an expert in Forensic Photography to graphically document the presence or absence of injuries or scars. During the interview, the arguments of torture are questioned and a correspondence with the documentaries is made, it will be necessary to identify if it is simulating. The medical examination is complete and methodical, corroborating the arguments with physical signs present or absent.

The complainants have the mistaken idea that by resulting in "positive to torture"; this can influence the assigned penalty, usually decreasing it; However, the complainants must be aware that a new crime is being investigated, so the expert act must always be professional ethics, safeguarding the human rights of the people and duly informing the alleged victims of what the expertise is about and the scope that this can have.

The expertise must contain a comprehensible, simple reading, avoiding technicalities, is based on the agreement that exists between all the aforementioned

sources of information and consulted in the medical literature, with the physical findings found in the interview and in the clinical examination. The absence of these signs does not mean that torture did not occur but that an investigation would have to be carried out in greater detail. The conclusions issued should be a professional expertise on the concordance that exists between all sources of information, forensic evidence mentioned above and allegations of torture. The forensic medical classification of the corresponding physical injuries must be issued and recommendations on new evaluations and care of the victim must be made.

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