



POSITION PAPER OF  
THE UNITED NATIONS SPECIAL RAPPORTEUR ON TORTURE  
AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT,  
DR ALICE JILL EDWARDS

In respect of

INTERNATIONAL COURT OF JUSTICE

APPLICATION OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL,  
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

(CANADA AND THE NETHERLANDS  
V.  
SYRIAN ARAB REPUBLIC)

## **Table of Contents**

A. Introduction and Statement of Interest.....	2
B. Background of proceedings.....	5
C. Allegations of torture and other cruel, inhuman or degrading treatment or punishment against the Syrian Arab Republic actioned by the mandate of the Special Rapporteur on Torture between 2011 and 2024 .....	6
Torture and mistreatment of detainees including during interrogations .....	8
Inhumane conditions in places of detention.....	9
Failure to provide medical treatment or inadequate medical attention .....	9
Enforced disappearances and incommunicado detention .....	10
The unlawful use of information and confessions obtained from torture .....	10
Sexual torture .....	11
Torture and other ill-treatment against children .....	11
Summary of Replies from the Syrian Arab Republic .....	11
D. Definition and Scope of Torture in the Convention against Torture and under international law.....	12
E. Obligations of States parties under the Convention against Torture.....	16
F. Additional international legal obligations .....	17
G. The duty to investigate and prosecute torture and other ill-treatment .....	18
H. Obligations to ensure humane and dignified treatment of persons deprived of their liberty .....	20
I. Obligations to prohibit and prevent sexual torture .....	24

*Note: This document was prepared and finalized just as the Government of Bashar Al-Assad was toppled on 8 December 2024 and does not take account of these change in circumstances. It is the view of the Special Rapporteur on Torture that the International Court of Justice’s provisional measures continue to apply to the State of Syria and anyone exercising power in the country, and that the Case before the Court will be a significant contribution to future accountability, justice, and peace and stability within the country.*

## **A. Introduction and Statement of Interest**

1. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (“Special Rapporteur on Torture”), Dr. Alice Jill Edwards, has the honour to present this Position Paper in respect of the Case of Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), before the International Court of Justice (hereinafter “the Court”), with the view to assisting the Court in their deliberations. This Position Paper is drafted on a voluntary basis for the Court’s and the parties’ consideration and is without prejudice, and should not be considered as a waiver, express or implied, of the privileges and immunities of the United Nations, its officials and experts on missions, pursuant to the 1946 Convention on the Privileges and Immunities of the United Nations.<sup>1</sup>
2. The Special Rapporteur on Torture is part of “[t]he system of Special Procedures” that “is a central element of the United Nations human rights machinery and covers all human rights: civil, cultural, economic, political, and social.”<sup>2</sup> She serves as an independent human rights expert selected and appointed by the Human Rights Council for her “(a) expertise; (b) experience in the field of the mandate; (c) independence; (d) impartiality; (e) personal integrity; and (f) objectivity.”<sup>3</sup> She “undertake[s] to uphold independence, efficiency, competence and integrity through probity, impartiality, honesty and good faith” and “not receive financial remuneration.”<sup>4</sup>
3. In the performance of her mandate, the Special Rapporteur on Torture is considered an expert on mission for the United Nations, within the meaning of Articles VI and VII of the Convention on the Privileges and Immunities of the United Nations. In accordance with Article VI, Section 22, the Special Rapporteur enjoys such privileges and immunities as are necessary for the independent exercise of her functions, including in respect of words spoken or written and acts done by her in the course of the performance of her mission, immunity from legal process of every kind.<sup>5</sup>

---

<sup>1</sup> United Nations General Assembly, *Convention on the Privileges and Immunities of the United Nations*, 13 February 1946.

<sup>2</sup> Office of the High Commissioner for Human Rights (“OHCHR”), *Special Procedures of the Human Rights Council*, <https://www.ohchr.org/en/hrbodies/sp/pages/introduction.aspx>

<sup>3</sup> Human Rights Council, Institution-building of the United Nations Human Rights Council, A/HRC/RES/5/1 (June 18, 2007), [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/5/1](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/5/1)

<sup>4</sup> OHCHR, *Special Procedures of the Human Rights Council*.

<sup>5</sup> Authorization for the position and views expressed by the Special Rapporteur on Torture, in full accordance with the independence afforded to her mandate, was neither sought nor given by the United Nations, the United Nations Human Rights Council, the Office of the United Nations High Commissioner for Human Rights, or any of the officials associated with those bodies.

4. Dr. Edwards was appointed as the Special Rapporteur on Torture on 8 July 2022 and took up the appointment on 1 August 2022. Dr. Edwards is a jurist of the highest standing. Prior to this appointment, Dr. Edwards was Head of the Secretariat of the Convention against Torture Initiative<sup>6</sup>, a unique inter-governmental collaboration of the Governments of Chile, Denmark, Fiji, Ghana, Indonesia and Morocco to achieve universal ratification and implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “Convention against Torture” or “CAT”)<sup>7</sup> (2016-21). In that position, she worked with and supported 15 States that went on to ratify or accede to the Convention. From 2010-2015, she was Chief of Section – Protection Policy and Legal Advice and Senior Legal Coordinator, the most senior international law position at the Office of the United Nations High Commissioner for Refugees in Geneva and she held prior field postings in Bosnia and Herzegovina, Rwanda and Morocco. She has also worked with human rights and development non-governmental organisations in Mozambique and Pakistan, and at the International Secretariat of Amnesty International in London, United Kingdom. She has held academic appointments and has taught and written extensively on international human rights law at the universities of Oxford, London, and Nottingham.<sup>8</sup> She is presently a Visiting Senior Fellow at the Geneva Academy of International Humanitarian Law and Human Rights in Geneva, Switzerland. She has published over fifty books, articles and reports. Her book, *Violence against Women under International Law* (Cambridge University Press, 2011), has been extensively cited and she is credited for the breakthrough legal argument that rape and other forms of sexual aggression are forms of torture and persecution, enabling hundreds of thousands of victims to obtain protection. She is admitted to practice as a barrister and solicitor of the Supreme Court of Victoria, Australia and the High Court of Australia (1998). She has intervened in nearly 100 cases as amicus curie in her past positions, and twice before the United States’ Supreme Court in her private capacity. She holds a Doctor of Philosophy in Public International Law from The Australian National University (2009).
5. The Special Rapporteur on Torture’s mandate was established in 1985. The mandate has been renewed regularly with the most recent renewal pursuant to United Nations Human Rights Council resolution 52/7.<sup>9</sup>
6. The Special Rapporteur on Torture’s mandate comprises three main activities:
  - i. Transmitting “communications” letters to governments and non-state actors/de facto authorities about torture concerns that have already occurred, are ongoing, or which have a high risk of occurring, and requesting information and responses to those concerns.
  - ii. Undertaking fact-finding country visits, and
  - iii. Submitting annual reports on the mandate’s activities and thematic studies to the Human Rights Council and the General Assembly.

---

<sup>6</sup> Convention against Torture Initiative, <https://cti2024.org>.

<sup>7</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, United Nations, Treaty Series, Vol. 1465, p. 85 (entered into force 26 June 1987).

<sup>8</sup> For Dr. Edwards’ full biography and information on the mandate, see Office of the High Commissioner on Human Rights (OHCHR), Special Rapporteur on Torture website, <https://www.ohchr.org/en/special-procedures/sr-torture>.

<sup>9</sup> [A/HCR/RES/52/7](https://www.unhcr.org/refugees/res/52/7), 13 April 2023.

7. The Special Rapporteur's interest in this case is twofold.
8. First, since March 2011 and November 2024, the mandate has sent 28 communications involving multiple allegations of torture and/or other cruel, inhuman or degrading treatment or punishment ("CIDTP") against the Syrian Arab Republic. She seeks to furnish the Court with information pertaining to these allegations. A summary of the types of allegations is set out in the section C and an Annex is provided with additional information.
9. Secondly, the Special Rapporteur has an interest in this case from her years of expertise in monitoring global compliance with and accountability on torture and other CIDTP. In her role as Special Rapporteur on Torture, Dr. Edwards interprets and applies international treaties including the Convention against Torture and the General Comments adopted by the Committee against Torture ("Committee"). For the purposes of the proceedings before the Court, the Special Rapporteur limits her analysis in this Position Paper to the following legal questions relevant to the proceedings:
  - The definition and scope of torture in the Convention Against Torture and international law;
  - Obligations of States parties to the Convention Against Torture;
  - Additional international legal obligations;
  - Obligations to investigate and prosecute torture and other ill-treatment;
  - Obligations to ensure humane and dignified standards of treatment for persons deprived of their liberty; and
  - Obligations to prohibit and prevent sexual torture.
10. The Special Rapporteur on Torture draws on her and her predecessors' reports and other statements in preparing this Position Paper<sup>10</sup> and other standards of international law.
11. On 14 June 2024, the Special Rapporteur wrote to the Syrian Arab Republic urging them, based on information available to her mandate, to implement the provisional measures outlined by the Court without delay ([SYR 1/2024](#)). In her communication, she requested the Government provide information on the measures it had taken to do so. The information alleged that the Government of the Syrian Arab Republic had taken no steps to implement the provisional measures. As a consequence, it is reported that the use of torture and other cruel, inhuman or degrading treatment continues to be practiced widely, and the physical and psychological health and lives of thousands of individuals deprived of liberty in detention centres operated by the Government remain at risk. It is also feared that important evidence of acts of torture and other human rights violations may have been destroyed, particularly as a result of the abolition of military field courts which has allegedly not been accompanied by clear provisions regulating the fate of cases pending before such courts, their records and archives.<sup>11</sup> On 1 July 2024, Dr. Edwards issued a press release stating that there was

---

<sup>10</sup> Dr. Edwards' reports and her predecessors' reports are available here: <https://www.ohchr.org/en/special-procedures/sr-torture/annual-thematic-reports-special-rapporteur>.

<sup>11</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=29152>

no sign that torture was being addressed by the Syrian Arab Republic despite the clear provisional order from the Court.<sup>12</sup>

## B. Background of proceedings

12. The Applicants (Canada and the Kingdom of the Netherlands) instituted proceedings against the Syrian Arab Republic (“Syria”) on 8 June 2023.<sup>13</sup> The Applicants allege Syria has violated its obligations under the Convention against Torture including by engaging in widespread and systematic acts of torture and other cruel, inhuman, or degrading treatment or punishment since at least 2011.
13. According to the Applicants, the alleged violations of the Convention against Torture includes:

“[...]abhorrent treatment of detainees, inhumane conditions in places of detention, enforced disappearances, the use of sexual and gender- based violence, and violence against children. These violations also include the use of chemical weapons which has been a particularly abhorrent practice to intimidate and punish the civilian population, resulting in numerous deaths, injuries and severe physical and mental suffering.”<sup>14</sup>
14. The Applicants further note that “Syria’s actions, which have resulted in severe pain and suffering, and the deaths of tens of thousands of people, have been met with wide- spread condemnation by the international community.”<sup>15</sup>
15. The Applicants submit that “[t]he Syrian Government intentionally prolongs the suffering of those family by withholding information on the fate of their loved ones as a means of both intimidation and punishment.”<sup>16</sup>
16. The Applicants also submitted a Request for the indication of provisional measures which included *inter alia*, an immediate cessation of torture, ill-treatment, and arbitrary detention, granting access to detention facilities, enhancing detention conditions, prohibiting the destruction of evidence, disclosing the locations of burial sites and requiring Syria to submit regular reports to the Court on the implementation of the provisional measures.<sup>17</sup>
17. On 16 November 2023, the Court delivered its order on provisional measures.<sup>18</sup> The Court concluded that it had *prima facie* jurisdiction pursuant to Article 30 of the Convention against Torture. The Court ordered Syria to take: 1) all measures within its power to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment and ensure that its officials, as well as any organizations or persons which

---

<sup>12</sup> [Torture allegations continue in Syria despite ICJ order: UN expert](#), 1 July 2024.

<sup>13</sup> Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), 8 June 2023.

<sup>14</sup> Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), 8 June 2023, para. 2.

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, para. 50.

<sup>17</sup> Request for Provisional Measures, (Canada and the Netherlands v. Syrian Arab Republic), 8 June 2023.

<sup>18</sup> Order of 16 November 2023, (Canada and the Netherlands v. Syrian Arab Republic), 16 November 2023.

may be subject to its control, direction or influence, do not commit any acts of torture or other acts of cruel, inhuman or degrading treatment or punishment; and 2) effective measures to prevent the destruction and ensure the preservation of any evidence related to allegations of acts within the scope of the Convention against Torture.

18. In the merits case, the Applicants seek the following<sup>19</sup>:

“60. The Applicants respectfully request the Court to adjudge and declare that Syria:

(a) has breached, and continues to breach, its obligations under the Convention against Torture, in particular those in Articles 2, 7, 10, 11, 12, 13, 14, 15, 16, and 19;

(b) must fully accept its responsibility for those internationally wrongful acts;

(c) must cease any such ongoing violations forthwith and comply with its obligations under the Convention against Torture;

(d) must provide appropriate assurances and guarantees of non-repetition of violations of the Convention against Torture;

(e) must investigate and where warranted, prosecute and punish those responsible for acts of torture, while also guaranteeing fair treatment at all stages of the proceedings for any person against whom proceedings are brought; and

(f) must provide individual victims full reparation, including compensation and rehabilitation, for the injury they have suffered as a consequence of those internationally wrongful acts.

61. The applicants further respectfully request the Court to adjudge and declare that Syria has committed a serious breach of a peremptory norm of international law, due to its gross or systematic failure to fulfil its obligation under Article 2 of the Convention against Torture not to commit torture as well as to prevent its officials and other persons acting in an official capacity from perpetrating acts of torture, and determine the legal consequences thereof.”

### **C. Allegations of torture and other cruel, inhuman or degrading treatment or punishment against the Syrian Arab Republic actioned by the mandate of the Special Rapporteur on Torture between 2011 and 2024**

19. The Special Rapporteur transmits communication letters to States and/or non-State actors or de facto authorities, with the aim to address alleged past or ongoing human rights violations, to present the information available regarding the allegation, set out the applicable international human rights norms and standards, outline the Special Rapporteur’s concerns and questions, and requests follow-up action. There are three types of communications:

- Urgent appeals (time-sensitive torture allegations involving loss of life, life-threatening situations, or imminent or ongoing damage of a grave nature),

---

<sup>19</sup> Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), 8 June 2023, paras. 60-61.

- Allegation letters (involving past torture allegations or non-time sensitive violations), and
  - Other communications (concerns relating to bills, legislation, policies or practices that do not comply with human rights law).
  - For the purposes of this Position Paper, all such communications are referred to as Allegation Letters or Communications.
20. The present and former Special Rapporteurs on Torture sent a total of 32 communications, individually or jointly with other United Nations human rights experts, falling within the torture mandate to the Syrian Arab Republic between March 2011 and 30 November 2024.<sup>20</sup>
21. Twenty-eight (28) communications are relevant to the present proceedings.<sup>21</sup> The allegations involved individuals and groups of individuals. Approximately 119 alleged named victims were referenced in the communications, and some communications involved systematic practices implicating hundreds and at times, thousands of other detainees or persons under the effective control of the authorities. The Government of Syria has responded to eight (8) of the 28 communications.
22. The allegations describe the Syrian Arab Republic's widespread and systematic use of torture and ill-treatment, as well as thousands of cases of arbitrary detention, enforced disappearances, murder and executions. Detainees, often held incommunicado or in inhumane conditions, reported being subjected to torture and other ill-treatment to extract forced confessions or information, punish dissent, instil fear among communities or terrorise political opponents. The use of torture and other ill-treatment was of such prolific levels that it appears to have become "normalized" since 2011, and even earlier. It is the view of the Special Rapporteur that such violence was sanctioned by the highest authorities including Assad himself and formed a longstanding policy of State terror. Similar torture and ill-treatment have also been reported in areas controlled by other actors including de facto authorities and rebel groups. These practices, if established, violate the most fundamental principles of the Convention against Torture and international human rights law.
23. The six prisons where torture and ill-treatment were alleged to have taken place include: Adra Central, Aleppo Central, Al Khatib State Security, Damascus Central, Homs Central, and Sednaya.

---

<sup>20</sup> All communications can be searched at: <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>21</sup> Four out of the 32 communications that have been actioned by the mandate of the Special Rapporteur during the period mentioned are excluded from the Position Paper. Two communications dated 5 November 2020 ([SYR/2020](#) and [OTH 74/2020](#)) were sent to the Syrian Arab Republic and the President of the Syrian National Coalition and relate to concerns about the political process between the Syrian Government and Syrian opposition regarding the design and implementation of transitional justice measures to address the gross violations of human rights. One communication on 21 October 2011 ([SYR 15/2011](#)) was an invitation to provide information on measures taken following a joint study on global practices in relation to secret detention in the context of countering terrorism. A fourth communication related to conditions of 400 women and children in Roj detention camp ([SYR 1/2018](#)) which presently and at the time of the communication is not under the effective control of the Syrian Arab Republic.



24. The alleged perpetrators contained in the below allegations are Syrian government authorities and/or pro-government actors.
25. The communications and allegations are summarized as follows:

### **Torture and mistreatment of detainees including during interrogations**

- Torture and mistreatment of detainees including during interrogations was raised in over twenty communications ([SYR 1/2024](#), [SYR 4/2020](#), [SYR 3/2018](#), [SYR 1/2018](#), [SYR 2/2015](#), [SYR 5/2014](#), [SYR 4/2013](#), [SYR 11/2012](#), [SYR 8/2012](#), [SYR 5/2012](#), [SYR 4/2012](#), [SYR 2/2012](#), [SYR 13/2011](#), [SYR 9/2011](#), [SYR 8/2011](#), [SYR 1/2013](#), [SYR 13/2011](#), [SYR 9/2012](#), [SYR 7/2011](#), [SYR 6/2011](#), SYR 4/2011<sup>22</sup>).
- Many involved concerns about the international infliction or risk of torture and other CIDTP and/or other concerns raised about individuals physical and psychological integrity ([SYR 2/2015](#), [SYR 5/2014](#), [SYR 4/2013](#), [SYR 11/2012](#), [SYR 8/2012](#), [SYR 6/2012](#), [SYR 4/2012](#), [SYR 2/2012](#), [SYR 13/2011](#), [SYR 9/2011](#), [SYR 8/2011](#),).
- A wider pattern of reports of thousands of individuals having been tortured and ill-treated was raised ([SYR 6/2011](#)).
- The types of torture and/or other CIDTP alleged by various communications included:
  - beatings ([SYR 4/2020](#), [SYR 5/2012](#), [SYR 13/2011](#), [SYR 6/2011](#), [SYR 7/2011](#), SYR 4/2011),
  - insults and humiliation ([SYR 4/2020](#), [SYR 6/2011](#)),
  - electric shocks ([SYR 7/2011](#)),
  - improvised metal and wooden racks ([SYR 7/2011](#)),
  - burns ([SYR 7/2011](#)),
  - reports of bullet wounds ([SYR 7/2011](#), [SYR 9/2012](#)),
  - being forced to stand on one leg, blindfolded with arms in the air, slapped and insulted ([SYR 1/2018](#)),
  - severe beatings for individuals on the day of their execution ([SYR 3/2018](#)), and
  - being forced to witness others being tortured or the effects of such treatment ([SYR 4/2020](#), [SYR 13/2011](#)).
- Three communications identified treatment resulting in deaths of the individual concerned ([SYR 6/2012](#), [SYR 1/2013](#), [SYR 9/2012](#)). An additional communication identified a driver of an ambulance at a government checkpoint who was taken to an intelligence service detention facility ([SYR 3/2014](#)). Two weeks later his body was released bearing extensive injuries consistent with torture.

---

<sup>22</sup> SYR 4/2011 is unavailable on OHCHR communications database. According to information available on the database, the allegation letter related to 32 demonstrators being assaulted and arrested at a peaceful demonstration.

## **Inhumane conditions in places of detention**

- Five communications raised inhumane conditions in places of detention ([SYR 5/2011](#), [SYR 3/2013](#), [SYR 1/2014](#), [SYR 1/2018](#), [SYR 9/2011](#)).
- Recurring themes were a lack of nutrition, safe drinking water and essential supplies (often leading to deaths in custody) ([SYR 1/2014](#), [SYR 1/2018](#)), and crowded ([SYR 1/2018](#)) and squalid ([SYR 3/2013](#)) detention conditions.
- The detention conditions of approximately 3,500 persons detained in Aleppo Central Prison ([SYR 1/2014](#)) was the subject of allegations of a systemic nature, including that: prison kitchens ceased to prepare meals for eight months, the government denied access for food and medicine from the Red Crescent, the spread of diseases was rampant, and the lack of access to safe drinking water combined with the unavailability of detergents and sanitations pipes led to a high incidence of diarrhoea and fatal dysentery.
- One communication refers to the reported use of solitary confinement ([SYR 9/2011](#)).

## **Failure to provide medical treatment or inadequate medical attention**

- Specific reference to the lack of medical infrastructure and/or lack of provision of medical treatment for detained individuals was raised in thirteen communications ([SYR 1/2018](#), [SYR 8/2014](#), [SYR 5/2014](#), [SYR 1/2014](#), [SYR 3/2013](#), [SYR 2/2013](#), [SYR 11/2012](#), [SYR 9/2012](#), [SYR 8/2012](#), [SYR 5/2012](#), [SYR 10/2011](#), [SYR 9/2011](#), [SYR 5/2011](#)).
- It was implied in two further communications, where individuals had been subject to torture and other severe forms of cruel, inhuman, and degrading treatment, and had later died from their injuries ([SYR 1/2013](#), [SYR 6/2012](#)).
- Recurring themes focussed on denial of medication for the treatment of pre-existing long-term health conditions such as:
  - diabetes ([SYR 8/2014](#), [SYR 8/2012](#), [SYR 9/2011](#), [SYR 5/2011](#)),
  - lung ([SYR 2/2013](#)), kidney ([SYR 9/2012](#)) and heart conditions ([SYR 8/2014](#), [SYR 9/2011](#)),
  - back injuries ([SYR 11/2012](#)), and
  - cancer ([SYR 10/2011](#)),
- At least one communication involved failure to provide medical care for injuries alleged to have been received during detention ([SYR 5/2014](#)).
- Three communications referred to illnesses or medical conditions that had arisen owing to inhumane conditions of detention, such as tuberculosis ([SYR 1/2018](#)), herpes ([SYR 3/2013](#)) and infected wounds leading to gangrene and amputation ([SYR 1/2014](#)), and such conditions were accused of being prevalent and left untreated. That

same communication also referred to detainees who were suffering from tuberculosis being secluded in solitary cells without treatment ([SYR 1/2014](#)).

- A further allegation raised the plight of prisoners inside Aleppo Central Prison, a facility that housed at the time approximately 3,500 prisoners. After shelling of the prison, many had succumbed to their injuries because of a lack of medication and a lack of operating room in prison ([SYR 1/2014](#)). It was alleged that 400 prisoners had died in that facility.
- Outside the context of custody, two communications raised concerns about the denial of medical services to the civilian population (including wounded protestors), by preventing ambulances from reaching the wounded and on several occasions opening fire on medical personnel or rescuers ([SYR 3/2014](#), [SYR 7/2011](#)).

### **Enforced disappearances and incommunicado detention**

- Concerns about enforced disappearances were frequently raised – in twelve communications – given the significant lack of information made available about individuals' whereabouts following arrest ([SYR 4/2020](#), [SYR 2/2015](#), [SYR 2/2014](#), [SYR 4/2013](#), [SYR 2/2013](#), [SYR 8/2012](#), [SYR 4/2012](#), [SYR 13/2011](#), [SYR 10/2011](#), [SYR 8/2011](#), [SYR 7/2011](#), [SYR 5/2011](#)).
- This was alongside concerns regarding incommunicado detention, with either no communication, or very little communication, being permitted with family members having been identified in seven communications ([SYR 3/2018](#), [SYR 4/2020](#), [SYR 1/2018](#), [SYR 2/2015](#), [SYR 8/2012](#), [SYR 6/2011](#), [SYR 5/2011](#)).
- The abolition of military field courts and subsequent lack of clarity as to how detainees and their families would be informed of the reform's impact on their individual situations, was highlighted ([SYR 1/2024](#)).
- The refusal to access lawyers was also prevalent, having been identified in 6 communications ([SYR 4/2020](#), [SYR 1/2018](#), [SYR 8/2014](#), [SYR 5/2014](#), [SYR 8/2012](#), [SYR 9/2011](#)).

### **The unlawful use of information and confessions obtained from torture**

- Three communications specifically raised concerns about the use of information or confessions obtained by torture and other CIDTP during interrogations, in violation of Article 15 of CAT.
- Allegations included being forced to witness a friend being tortured in order to obtain confessions ([SYR 13/2011](#)), the signing of confessions to terrorism charges under duress after months of interrogations ([SYR 4/2020](#)), and eleven individuals reportedly sentenced to death during trials whereby the conviction was solely on the basis of confessions extracted under torture ([SYR 3/2018](#)).

## **Sexual torture**

- Two communications identified sexual torture (sexual and gender-based violence). These were in relation to reported threats of rape to obtain confessions made against one female detainee ([SYR 4/2020](#)) and the rape of at least one male detainee with a baton ([SYR 7/2011](#)).

## **Torture and other ill-treatment against children**

- Violence against children was raised in three communications. This included one allegation of risk of torture against an identified child ([SYR 1/2018](#)) and one further communication detailing that detainees, including children (number unspecified), were being subject to torture; it was detailed that the body of a 13-year-old boy had been seen with bullet wounds and bruises and burns to his feet, elbow, face and knees, and that a 15-year-old had been arrested and subjected to torture ([SYR 7/2011](#)).
- One of these communications included the arrest and detention of children as a direct result of the actions of their family members ([SYR 9/2012](#)).

## **Summary of Replies from the Syrian Arab Republic**

- With respect to the communications involving allegations of torture, Syria responded to eight communications ([SYR 1/2024](#), [SYR 2/2015](#), [SYR 5/2014](#), [SYR 2/2014](#), [SYR 1/2014](#), [SYR 3/2013](#), [SYR 11/2012](#), [SYR 9/2012](#)).
  - In all but one of the cases where replies were received, limited information was provided about a named individual, usually stating the reasons for arrest and date of referral to a court. No further information was provided and no wider concerns were addressed.
  - The only exception to this is in relation to the communication regarding Aleppo Central Prison ([SYR 1/2014](#)), which provided more information as to the circumstances surrounding the conditions in the prison and measures put in place.
26. An Annex attached to this Position Paper contains more details of the mandate's communications and the torture allegations contained therein.

## D. Definition and Scope of Torture in the Convention against Torture and under international law<sup>23</sup>

27. “Torture” is defined in Article 1(1) of the Convention against Torture:

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.

28. Article 1 (1) represents the dominant definition accepted by the world’s leading human rights bodies and courts, even if it is not the only international legal definition. Its acceptance by 175 States parties to the Convention against Torture and otherwise enjoying full support without any other objections, should be considered that the definition is a customary norm. Whereas certain modifications have been required to adapt that definition to specific contexts or for specific crimes, such as war crimes or crimes against humanity,<sup>24</sup> the essence of the definition has remained unchanged and unchallenged. A consensus definition of torture can be lauded as a successful achievement of the international community.

29. The prohibition of torture, an *erga omnes* and *jus cogens* norm<sup>25</sup>, is one of the first and few absolute human rights, reflected in its non-derogability. It is prohibited in peacetime, in armed conflict and during other public emergencies and is without territorial limits. Lesser forms of cruel, inhuman or degrading treatment or punishment are prohibited under customary international law.<sup>26</sup>

30. Torture is within a unique class of international norm that is both (a) a human rights violation actionable by individuals against Governments and by Governments against

---

<sup>23</sup> The below has been drawn from the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Dr. Alice Jill Edwards, [A/77/502](#), and has been updated to reflect most recent developments.

<sup>24</sup> See International Tribunal for the Former Yugoslavia, *Prosecutor v. Kunarac et al.*, IT-96-23-T and IT-96-23/1-T, Judgment of 22 February 2001, para. 470. See also International Criminal Court, Elements of Crimes, relating to arts. 7 (1)(f), 8 (2)(a)(ii)-1 and 8 (2)(c)(i)-4.

<sup>25</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, *I.C.J. Reports 2012*, p. 422, para. 99; International Tribunal for the Former Yugoslavia, *Prosecutor v. Mucić et al.*, IT-96-21-T, Judgment of 16 November 1998, para. 454; International Tribunal for the Former Yugoslavia, *Prosecutor v. Furundžija*, IT-95-17/1-T, Judgment of 10 December 1998, paras. 153 ff.; International Tribunal for the Former Yugoslavia, *Prosecutor v. Kunarac et al.*, IT-96-23-T and IT-96-23/1-T, Judgment of 22 February 2001, para. 466; Committee against Torture, general comment No. 2 (2007), para. 1; and the report of the International Law Commission on the work of its seventy-first session (29 April–7 June and 8 July–9 August 2019) ([A/74/10](#)), pertaining to peremptory norms of international law (*jus cogens*).

<sup>26</sup> General Assembly resolution [74/143](#), fourth preambular paragraph.

Governments<sup>27</sup> and (b) a crime under international law. The systematic or widespread practice of torture would constitute a crime against humanity, while torture, cruel treatment and outrages upon human dignity committed during armed conflict are war crimes. Torture is often used as a form of genocide<sup>28</sup> or to reinforce apartheid systems and is regularly a precursor to enforced disappearances and extrajudicial executions. Rape and sexualized torture are prohibited in all circumstances.<sup>29</sup> Other prohibited conduct includes medical or scientific experimentation or punishment;<sup>30</sup> and corporal punishment used as an educative or disciplinary measure, or as unlawful punishment for a crime.<sup>31</sup> Torture and inhuman treatment can define the persecution from which refugees are granted asylum, representing the loss of protection of their own Governments.<sup>32</sup>

31. Perpetrated by those with power against those without it, torture and other ill-treatment are examples of violent abuses of power or authority. They involve exercising *ultra vires* authority over its victims, rendering them powerless. However, powerlessness is not a legal criterion to establish torture as a definitional matter; rather, it is implicit in the observation of what is actually taking place when someone is put under the custody or control of an officer of the State and subjected to this unlawful conduct.
32. International law calls for a distinction between torture and other forms of ill-treatment and punishment. As torture carries a “special stigma”,<sup>33</sup> the threshold for torture should be respected and reserved for the most heinous of crimes; unfortunately, such cases are not in short supply. In practice, however, navigating the boundaries between torture, on the one hand, and other forms of ill-treatment, on the other, can be difficult.<sup>34</sup> Making a distinction is nonetheless important and is most relevant when dealing with criminal activity, as the penalty must fit the crime.

---

<sup>27</sup> See e.g. International Court of Justice, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Application Instituting Proceedings, 19 February 2009; European Court of Human Rights, *Cyprus v. Turkey*, Application No. 25781/94, Judgment of 10 May 2001; and European Court of Human Rights, *Ireland v. United Kingdom*, Application No. 5310/71, Judgments of 18 January 1978 and 10 September 2018. See also OHCHR, “Accountability in Syria under the Convention against Torture: the joint Canada/Netherlands’ initiative”, press release, December 2021.

<sup>28</sup> International Criminal Tribunal for Rwanda, *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgment of 2 September 1998, para. 504.

<sup>29</sup> *Ibid.*, para. 687; International Tribunal for the Former Yugoslavia, *Prosecutor v. Mucić et al.*, IT-96-21-T, Judgment of 16 November 1998, para. 495. See also A/74/148, paras. 29 ff. See further, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Dr. Alice Jill Edwards, on Investigating, prosecuting and preventing wartime sexual torture and providing rehabilitation to victims and survivors, [A/79/181](#). See further Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge, United Kingdom, Cambridge University Press, 2011), pp. 219–227.

<sup>30</sup> International Covenant on Civil and Political Rights, art. 7. See also Human Rights Committee, general comment No. 20 (1992), para. 7.

<sup>31</sup> Human Rights Committee, general comment No. 20 (1992), para. 5.

<sup>32</sup> UN High Commissioner for Refugees, Guidelines on International Protection No. 1: Gender-Related Persecution within the Context of Article 1A(2) of the 1951 Convention relating to the Status of Refugees and/or the 1967 Protocol (HCR/GIP/02/01, 7 May 2002).

<sup>33</sup> European Court of Human Rights, *Ireland v. United Kingdom*, Application No. 5310/71, Judgment of 18 January 1978, para. 167; European Court of Human Rights, *Selmouni v. France*, Application No. 25803/94, Judgment of 28 July 1999, para. 96.

<sup>34</sup> Human Rights Committee, general comment No. 20 (1992), para. 4; Committee against Torture, general comment No. 2 (2007), para. 3.

33. Whether a particular harm amounts to torture often turns on factual, rather than legal, factors. Regrettably, we have not yet reached the limits of the deliberate or gratuitous ways or means by which public officials and Governments perpetrate torture, and forms of torture or inhuman treatment or punishment may never be fully elaborated. For this reason, the severe pain or suffering threshold is a dominant element of the definition of torture.<sup>35</sup>
34. There are no excuses for torture.<sup>36</sup> While State necessity (or State preservation) as a doctrine may legitimize otherwise unlawful acts in certain carefully circumscribed circumstances, the doctrine is never applicable against peremptory norms of international law from which no derogation is permissible.<sup>37</sup> As such, the relevance of the concept of proportionality that may apply to qualified freedoms, or arguments around balancing the harm in question with national security or other similar interests, are ruled out as justifications for torture. Likewise, torture is not an acceptable response in the face of terrorism or other similar serious threats, and there is ample evidence to demonstrate the inherent unreliability of deploying torture techniques as a method of intelligence or information gathering.<sup>38</sup> The legality of the actions of the victim is immaterial.<sup>39</sup>
35. Moreover, the Convention against Torture allows no personal justifications for torture or other inhuman treatment.<sup>40</sup> As per Article 2(3) the orders of a superior officer or public authority do not exonerate from criminal liability. Command responsibility for torture must be prosecutable, and public officials are accountable when they refuse or fail to protect citizens from harm (including the bystander phenomenon).<sup>41</sup> The absolute prohibition against torture permits no temporal limits on prosecution (also known as “statutes of limitations”),<sup>42</sup> amnesties<sup>43</sup> or immunities.<sup>44</sup>

---

<sup>35</sup> International Tribunal for the Former Yugoslavia, *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Judgment of 2 November 2001, para. 142, which states: “the severity of the pain or suffering is a distinguishing characteristic of torture that sets it apart from similar offences”; and European Court of Human Rights, *Cestaro v. Italy*, Application No. 6884/11, Judgment of 7 July 2015, para. 179.

<sup>36</sup> See, most recently, General Assembly resolution [74/143](#).

<sup>37</sup> See the report of the International Law Commission on peremptory norms of general international law (*jus cogens*) ([A/CN.4/L.967](#)), in which “the prohibition of torture” is listed as a peremptory norm of general international law (conclusion 23). Conclusion 18 clarifies that “no circumstance precluding wrongfulness under the rules on the responsibility of States for internationally wrongful acts may be invoked with regard to any act of a State that is not in conformity with an obligation arising under a peremptory norm of general international law (*jus cogens*)”.

<sup>38</sup> See, for instance, United States Senate Select Committee on Intelligence, Committee study of the Central Intelligence Agency’s detention and interrogation programme, 2014. See also Shane O’Mara, *Why Torture Doesn’t Work: The Neuroscience of Interrogation* (Cambridge, Massachusetts, and London, Harvard University Press, 2015).

<sup>39</sup> European Court of Human Rights, *Selmouni v. France*, Application No. 25803/94, Judgment of 28 July 1999. The character of the applicant is equally immaterial in non-refoulement cases; European Court of Human Rights, *Soering v. the United Kingdom*, Judgment of 7 July 1989, paras. 86, 90–91; and European Court of Human Rights, Grand Chamber, *Chahal v. United Kingdom*, Application No. 22414/93, Judgment of 15 November 1996, para. 80.

<sup>40</sup> Convention against Torture, art. 2 (3); see also Human Rights Committee, general comment No. 20 (1992), para. 3.

<sup>41</sup> *Hajrizi Dzemajl et al. v. Yugoslavia* ([CAT/C/29/D/161/2000](#)).

<sup>42</sup> Committee against Torture, general comment No. 3 (2012), para. 40; and European Court of Human Rights, *Abdulsamet Yaman v. Turkey*, Application No. 32446/96, Judgment of 2 November 2004, para. 55.

<sup>43</sup> Committee against Torture, general comment No. 2 (2007), para. 5.

<sup>44</sup> See the report of the International Law Commission on the work of its seventy-second session ([A/76/10](#)), chap. VI.

36. Lesser forms of cruel, inhuman or degrading treatment or punishment are equally prohibited and are to be investigated and punished, commensurate with applicable penalties. They should not be underestimated as to their impact on victims or on institutional cultures in which impunity can create and incentivize conditions that can escalate to insipid forms of ill-treatment or even torture. Cumulative effects of lesser cruelty, however less dramatic, can amount to torture, and negligent mistreatment or deprivations of essential rights (safety, clean water, hygiene, social interaction) of persons deprived of their liberty are never to be tolerated.
37. “Discrimination” is one of the explicit purposes in the Article 1(1) definition of torture in recognition of the fact that it is often the reason for torturous behaviour being perpetrated against specific individuals or groups, or why it is neither investigated nor prosecuted and why victims are so regularly left without a remedy.
38. Where abuse is perpetrated by private or non-State actors, the State is accountable where it fails in its “due diligence” responsibilities to prevent said harm by failing to take all reasonable steps to protect the victim, or to investigate and prosecute those responsible, and provide redress.<sup>45</sup>
39. In respect of a missing or disappeared person, it is accepted by the Committee against Torture<sup>46</sup> and at international law more generally that the disappeared person him- or herself in addition to family members of the disappeared can qualify as victims of torture or inhuman treatment under Article 1(1) of the Convention against Torture. The intentional infliction of mental suffering, involving anguish and despair on family members by the State through withholding information about the fate of their loved ones or refusing to disclose their location for any of the purposes set out in Article 1(1) would qualify as an act of torture.
40. In *Larez v. Venezuela*, the Committee recalled that “enforced disappearance entails multiple human rights violations and a failure by the State party concerned to comply with the obligations contained in the Convention, and that this constitutes in itself, in relation to the disappeared person, or may constitute, in relation to the person’s relatives, a form of torture or inhuman treatment contrary to the Convention.”<sup>47</sup> The position take by the Committee is also shared by other international bodies and courts.<sup>48</sup> Additionally, the resolution establishing the Independent Institution on

---

<sup>45</sup> Committee against Torture, general comment No. 2 (2007), para. 20. See Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, series C, No. 4, Judgment of 29 July 1988, para. 172; European Court of Human Rights, *M.C. v. Bulgaria*, Application No. 39272/98, Judgment of 4 December 2003, para. 166; European Court of Human Rights, *Opuz v. Turkey*, Application No. 33401/02, Judgment of 9 September 2009, para. 129; Inter-American Court of Human Rights, *González et al. (“Cotton Field”) v. Mexico*, series C, No. 205, Judgment of 16 November 2009; *A.T. v. Hungary* (CEDAW/C/36/D/2/2003), para. 9.2.

<sup>46</sup> See, for example, conclusions and recommendations on the second periodic report of Algeria (A/52/44, para. 79), on the initial report of Namibia (A/52/44, para. 247) and on the initial report of Sri Lanka (A/53/44, paras. 249 and 251).

<sup>47</sup> *Guerrero Larez v. Venezuela (Bolivarian Republic of)*, CAT/C/54/D/456/2011, 26 June 2015, para.6.4.

<sup>48</sup> United Nations Declaration on the Protection of All Persons from Enforced Disappearances, Res. 47/133 of 18 December 1992, para. 1(2); Working Group on Enforced and Involuntary Disappearances, General Comment on the Right to Truth, A/HRC/16/48, para. 39 (see para. 4 of the General Comment); Inter-American Court of Human Rights, cases including *Velásquez Rodríguez v. Honduras*, Judgment of July 29 1988, paras. 156, 175, 187; *Gelman vs Uruguay*, para. 94-95; *Members of the Chichupac village and Communities of Rabinal vs.*



Missing Persons in the Syrian Arab Republic recalls the principles of “international humanitarian law and international human rights law, including the rights of families to know the fate and whereabouts of their missing relatives”.<sup>49</sup>

## **E. Obligations of States parties under the Convention against Torture**

41. The obligations of States parties pursuant to the Convention against Torture include obligations to prohibit, prevent, punish and remedy acts of torture and ill-treatment, namely:
- (a) To take effective legislative, administrative, judicial or other measures to prevent torture and other ill-treatment (Article 2),
  - (b) To protect persons against expulsion, refoulement or extradition of any individual where there are substantial grounds for believing that the person would be subjected to torture or ill-treatment (Article 3),
  - (c) To create and prosecute offences of torture under domestic law and to apply penalties appropriate to the grave nature of the crime (Article 4), including establishing jurisdiction over said crimes (Articles 5 and 7),
  - (d) To prosecute persons alleged to have committed offences in Article 4 (prosecute or extradite, per Article 7), including cooperating on the extradition of persons indicted for the crime of torture and, where extradition is not possible, prosecuting alleged offenders including making appropriate custody arrangements (Articles 6, 7 and 8),
  - (e) To afford one another the greatest measures of assistance in connect with criminal proceedings, including mutual legal assistance (Article 9),
  - (f) To educate and train law enforcement personnel, public officials or other persons who may be involved in the custody, interrogation or treatment of any arrested, detained or imprisoned individuals on the prohibition of torture (Article 10),
  - (g) To review interrogation rules, instructions, methods and practices systematically (Article 11),
  - (h) To investigate allegations of torture promptly and impartially and establish bodies independent of police and other law enforcement to carry out such investigations (Article 12),
  - (i) To establish procedures allowing for the prompt and impartial examination of any complaints, as well as victim and witness protection and whistle-blower protection (Article 13),

---

*Guatemala*, para. 158; *Terrones Silva et al. vs. Peru*, para. 172; *Omeara Carrascal and others v. Colombia*, para. 194.

<sup>49</sup> A/77/L.79, 26 June 2023, preambular para. 3.

(j) To provide redress within the legal system and an enforceable right to fair and adequate compensation, including full rehabilitation for victims or, where death results from torture, the entitlement of dependants to compensation (Article 14),

(k) To establish safeguards against the admission of any statements made as a result of torture as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made (Article 15);

(l) To prevent other acts of cruel, inhuman or degrading treatment or punishment (Article 16), and

(m) To report periodically to the Committee against Torture (Article 19).

## **F. Additional international legal obligations**

42. While it is recognized that the Court's jurisdiction is limited to the application of the Convention against Torture, it is nonetheless worth noting that the absolute prohibition of torture is found in and reinforced by a wide number of international declarations and treaties, to which the Syrian Arab Republic has voted in favour of, or is a State party:

- Universal Declaration of Human Rights (1948), Article 5 (Syria voted in favour of)
- Convention on the Prevention and Punishment of the Crime of Genocide (1948), Article II (b) and (c)
- Geneva Conventions (1949), various articles<sup>50</sup> and Additional Protocol I (1977)<sup>51</sup>
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), Article 5
- International Convention on the Elimination of All Forms of Racial Discrimination (1965), Article 5 (b)
- International Covenant on Civil and Political Rights (1966), Articles 7 and 10
- Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 1 (via interpretation)<sup>52</sup>
- Convention on the Rights of the Child (1989), Articles 37, 39 and 40 (1)x
- International Convention on the Protection of the Rights of All Migrant Workers

---

<sup>50</sup> Geneva Convention I, art. 12; Geneva Convention II, art. 12; Geneva Convention III, arts. 13, 17 and 87; Geneva Convention IV, arts. 27 and 32; and Geneva Conventions I to IV, common art. 3 and arts. 50, 51, 130 and 147, respectively.

<sup>51</sup> Additional Protocol I, art. 75 (2)(a)(ii)–(iv), (b) and (e).

<sup>52</sup> Committee on the Elimination of Discrimination against Women, General Recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19.

and Members of Their Families (1990), Article 10

- Convention on the Rights of Persons with Disabilities (2006), arts. 15 and 16
- Arab Charter on Human Rights (2004), Article 8

43. Syria has signed the Rome Statute of the International Criminal Court but is not a party.<sup>53</sup>

## **G. The duty to investigate and prosecute torture and other ill-treatment<sup>54</sup>**

44. The “duty to investigate” torture and other cruel, inhuman or degrading treatment or punishment starts with:

- Foundational legislation establishing that all acts of torture are offences under national law<sup>55</sup>,
- Establishment of complaints procedures that allow detainees to have their complaints promptly and impartially examined by competent authorities,<sup>56</sup> and
- Concludes with either the prosecution, final judgment and sentencing of alleged offenders or the dismissal of the case based on sound judicial reasoning; or extradition of the accused to be tried in another jurisdiction.

45. Effective investigations and prosecutions acknowledge suffering and bring justice and peace to victims and communities. The duty is closely connected to the right of victims and survivors to a remedy and reparation in Article 14 of the Convention against Torture.<sup>57</sup>

46. Prompt, impartial and transparent investigations also have a deterrent and preventive character, helping to improve officer behaviour and build or restore confidence in public administration.<sup>58</sup>

47. Investigating crimes of torture is not comparable with investigations into ordinary common crimes. In particular, torture is first and foremost a crime committed or enabled by public officials or, at times, promoted either quietly or outwardly by government policy or direction, or through consent or acquiescence. In making a complaint, an accuser is raising an allegation against the same authorities as those charged with protecting the rights of all individuals under their jurisdiction. This power asymmetry places the victim in a situation of particular precarity. Victims may

---

<sup>53</sup> Signed 8 September 2000, see:

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=en)

<sup>54</sup> The section has been drawn from the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Dr. Alice Jill Edwards, [A/HRC/52/30](#), and has been updated to reflect most recent developments.

<sup>55</sup> Convention against Torture, Articles 4 and 5 read in conjunction with Article 1.

<sup>56</sup> Convention against Torture, Article 13; Committee against Torture, General Comment No. 2 (2007), para. 13.

<sup>57</sup> Committee against Torture, General Comment No. 3 (2012), para. 19; Human Rights Committee, General Comment No. 20 (1992), para. 14; and Human Rights Council resolution 22/21.

<sup>58</sup> Carver, R. and Handley, L., *Does Torture Prevention Work?* (Liverpool University Press, 2016), pp. 81–84.

still be in the custody or under the control of the very authorities against whom they are making allegations. Authorities handling such complaints may lack impartiality or be under pressure to cover up allegations or to destroy evidence. The risk of retaliatory violence, including being disappeared, are real in many contexts. The stakes can be very high.

48. According to the International Court of Justice, the duty to investigate for the purposes of prosecution or extradition aligns with States' "common interest to ensure, in view of their shared values, that acts of torture are prevented and that, if they occur, their authors do not enjoy impunity [...] regardless of the nationality of the offender or the victims, or of the place where the alleged offences occurred".<sup>59</sup> The rules are clear and far-reaching; no stone shall go unturned in fighting impunity for crimes of torture. Defendants cannot rely on orders of a superior or public authority, or states of emergency, to exonerate their actions (Art. 2 (3) and 2.(2)), while any legal mechanisms which interfere with that obligation, such as statutes of limitations, immunities or amnesties, are considered contrary to the non-derogable nature of the prohibition.<sup>60</sup> Amnesties provided at domestic law do not remove criminal liability pursuant to international tribunals or universal jurisdiction.<sup>61</sup> Prosecutors and courts have a duty to refuse evidence obtained, or suspected of having been obtained, through torture or other illicit means (Art. 15).<sup>62</sup> Victims are to be protected from reprisals or intimidation during said investigations (Art. 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (Art. 14). States are to establish jurisdiction over all acts of torture on territoriality, flag State, active nationality, passive nationality and universal jurisdiction principles (Art. 5). The Convention against Torture further imposes duties to extradite alleged offenders when they are not prosecuted (Arts. 5 (2) and 7 (1)).
49. As expressed by the International Court of Justice, "the choice between extradition or submission for prosecution, pursuant to the Convention, does not mean that the two alternatives are to be given the same weight. Extradition is an option offered to the State by the Convention, whereas prosecution is an international obligation under the Convention, the violation of which is a wrongful act engaging the responsibility of the State".<sup>63</sup> This obligation requires a State "to make a preliminary inquiry [Art. 6 (2)] immediately from the time that the suspect is present in its territory. The obligation to submit the case to the competent authorities [under Art. 7 (1)] may or may not result in the institution of proceedings, in the light of the evidence before them ...".<sup>64</sup> Further, in respect of extradition, the Convention clarifies that torture shall be deemed an extraditable offence and that the Convention may be considered as the legal basis for extradition in the absence of an extradition treaty where extradition is conditional upon the existence of such a treaty (Art. 8). Mutual legal assistance between States parties is expected (Art. 9).

---

<sup>59</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment of 20 July 2012, *ICJ Reports 2012* (concerning the case against Hissane Habré), para. 68.

<sup>60</sup> Committee against Torture, general comment No. 2 (2008), para. 5.

<sup>61</sup> *Prosecutor v. Kallon and Kamara*, Special Court of Sierra Leone, Case No. SCSL-2004-15-AR 72(E) and SCSL-2004-16-AR 72(E), 13 March 2004, paras. 67–71.

<sup>62</sup> See Office of the United Nations High Commissioner for Human Rights (OHCHR), *Guidelines on the Role of Prosecutors* (1990), para. 16.

<sup>63</sup> *Belgium v. Senegal*, para. 95.

<sup>64</sup> *Ibid.*, para. 94.

50. The Syrian Arab Republic is under an obligation to criminalise torture and to undertake investigations, as well as to also prosecute persons responsible for torture crimes committed under its jurisdiction. In Syria’s last review by the Committee against Torture in 2012 (since then Syria has not reported to the Committee, as required per Article 19 of CAT), the Committee acknowledged that Syria’s Constitution prohibits torture, however it noted its concern with “the absence of a definition of torture in accordance with article 1 of the Convention in the national legal system of the State party, which seriously hampers the implementation of the Convention in the State party (art.1)” and that “provisions fail to ensure appropriate penalties applicable to such acts, since they set the maximum penalty at three years of imprisonment (art. 4).”<sup>65</sup> Until 2022, Article 391 of the Syrian Penal Code was limited to criminalising torture in the context of obtaining confessions (Article 15 of CAT).<sup>66</sup>
51. In 2022, the Syrian Arab Republic adopted the Prevention of Torture Act No. 16 of 2022. On 21 August 2024, the Human Rights Committee’s concluding observations on the fourth periodic report of Syria commented on new anti-torture legislation and stated:

“While welcoming the adoption of the Prevention of Torture Act No. 16 of 2022, the Committee is deeply concerned about reports of widespread torture or ill-treatment, at times leading to death. It is also concerned that Act No. 16 of 2022 lacks clear investigative mechanisms and an independent mechanism for the oversight and enforcement of the law and its implementation and does not guarantee redress for former victims of torture due to the absence of retroactive application provisions. It is further concerned that certain legislative provisions could possibly provide immunity for employees of the State Security Department for crimes committed while carrying out their duties, such as article 16 of Legislative Decree No. 14 of 1969 and Legislative Decree No. 69 of 2008. The Committee also regrets the lack of information provided on the use of prolonged solitary confinement (arts. 6, 7 and 10).”<sup>67</sup>

## **H. Obligations to ensure humane and dignified treatment of persons deprived of their liberty<sup>68</sup>**

52. The Special Rapporteur recalls that the State’s role of guarantor of the rights of persons deprived of liberty applies to all relevant public authorities within the area of their competence, including prosecutors when requesting a custody ruling, and judicial oversight of the sentence of deprivation of liberty.<sup>69</sup> Officials become responsible when they knowingly or foreseeably transfer a prisoner to an institution in

---

<sup>65</sup> CAT/C/SYR/CO/1/, paras 5 and 6.

<sup>66</sup> Article 391 of Syrian Penal Code provided: “Anyone who subjects a person to illegal acts of violence with a view to obtaining from him a confession to an offense or information pertaining thereto shall be liable to a penalty of detention for a term of three months to three years. If such acts of violence cause sickness or wounds, the minimum penalty shall be one year’s detention.” (Unofficial translation).

<sup>67</sup> CCPR/C/SYR/CO/4, para 28.

<sup>68</sup> This section has been drawn from the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Dr. Alice Jill Edwards, [A/HRC/55/52](#) on global prison management and has been updated to reflect most recent developments

<sup>69</sup> Inter-American Court of Human Rights, *Differentiated Approaches With Respect to Certain Groups of Persons Deprived of Liberty*, Advisory Opinion OC-29/22, 30 May 2022, para. 54.

which the conditions are cruel, inhuman or degrading. Regular and transparent monitoring by independent and impartial entities also provides one of the most effective ways of preventing torture or other ill-treatment in prisons, and of reinforcing positive practices and identifying needed changes.

53. The Committee's General Comment No. 2 explains that the Convention against Torture provides basic guarantees that apply to all persons deprived of their liberty and States have obligations to prevent torture in places of detention which involve:

- maintaining an official register of detainees,
- the right of detainees to be informed of their rights,
- the right to promptly receive independent legal assistance,
- the right to promptly receive independent medical assistance,
- the right to contact relatives or a third person,
- the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and
- the availability to detainees and persons at risk of torture and ill-treatment of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment.<sup>70</sup>

These guarantees are not exhaustive.<sup>71</sup>

54. The Committee has also stated that: "Articles 3 to 15 of the Convention constitute specific preventive measures that the States parties deemed essential to prevent torture and ill-treatment, particularly in custody or detention. The Committee emphasizes that the obligation to take effective preventive measures transcends the items enumerated specifically in the Convention or the demands of this general comment. For example, it is important that the general population be educated on the history, scope, and necessity of the non-derogable prohibition of torture and ill-treatment, as well as that law enforcement and other personnel receive education on recognizing and preventing torture and ill-treatment."<sup>72</sup>

55. Article 7 of the International Covenant on Civil and Political Rights (ICCPR), to which the Syrian Arab Republic became a State party on 21 April 1969, also contains a prohibition on torture and other cruel, inhuman or degrading treatment or punishment and related articles, which are informative of the application of Convention against Torture and the absolute prohibition against torture. Article 10 of the ICCPR guarantees dignified and humane treatment of persons deprived of liberty and applies to everyone without any distinction or discrimination. The ICCPR and the Human Right Committee's General Comments complements the Convention against Torture and informs the obligation of humane treatment of people deprived of their liberty.

56. The Human Right Committee's General Comment No. 21: Article 10 (Humane treatment of persons deprived of their liberty) clarifies the positive obligations that

---

<sup>70</sup> CAT/C/GC/2, 24 January 2008, para. 13.

<sup>71</sup> Ibid.

<sup>72</sup> Ibid., para. 25.

States owe to persons deprived of liberty which overlaps with the prohibition on torture under Article 7 of the ICCPR:<sup>73</sup>

“Article 10, paragraph 1, imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty, and complements for them the ban on torture or other cruel, inhuman or degrading treatment or punishment contained in article 7 of the Covenant. Thus, not only may persons deprived of their liberty not be subjected to treatment that is contrary to article 7, including medical or scientific experimentation, but neither may they be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.”

57. Moreover, the Human Right Committee’s General Comment No. 35 on Article 9 (Liberty and security of person), which complements the Committee against Torture’s General Comment No. 2, outlines the safeguards at arrest and detention which are also considered essential for the prevention of torture, namely:<sup>74</sup>

- Detainees must be informed of the reasons for arrest, charges, and related information at the time of arrest.
- Detainees must appear physically before a judicial authority.
- Detention is only allowed in officially recognized facilities.
- An accessible, centralized register must document detainees' names, locations, and names of person responsible for detention.
- Independent medical personnel, lawyers, and family (under supervision) must have prompt and regular access.
- Detainees must promptly receive information about their rights in a language they understand.

58. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)<sup>75</sup> provide guidance and benchmarks on providing humane conditions in prison. Rule 1 unequivocally prohibits any forms of torture or ill-treatment of person deprived of their liberty:

All prisoners shall be treated with the respect due to their inherent dignity and value as human beings. No prisoner shall be subjected to, and all prisoners shall be protected from, torture and other cruel, inhuman or degrading treatment or punishment, for which no circumstances whatsoever may be invoked as a justification. The safety and security of prisoners, staff, service providers and visitors shall be ensured at all times.

---

<sup>73</sup> UN Human Rights Committee (HRC), CCPR General Comment No. 21: Article 10 (Humane Treatment of Persons Deprived of Their Liberty), 10 April 1992

<sup>74</sup> CCPR/C/GC/35, 16 December 2014.

<sup>75</sup> A/RES/70/175

59. The Mandela Rules provides that no restrictions or disciplinary sanctions can amount to torture and other cruel, inhuman or degrading treatment or punishment:<sup>76</sup> The following practices are prohibited:

- Indefinite solitary confinement.
- Prolonged solitary confinement.
- Placement of a prisoner in a dark or constantly lit cell.
- Corporal punishment or the reduction of a prisoner's diet or drinking water.
- Collective punishment.
- Instruments of restraint shall never be applied as a sanction for disciplinary offences.
- Prohibition of family contact.

60. The Mandela Rules states that solitary confinement is the confinement of prisoners for 22 hours or more a day without meaningful human contact and that it should only be used in exceptional cases and for as short a time as possible and subject to independent review.<sup>77</sup> Solitary confinement of more than 15 consecutive days is considered "prolonged".<sup>78</sup>

61. The Mandela Rules also requires the State to:

- Provide health care to prisoners offered at the same level of care as in the community.<sup>79</sup>
- Provide adequate clothing, bedding and clean bathroom facilities with access to water and toilet items.<sup>80</sup>
- Provide nutritious food and drinking water.<sup>81</sup>
- Monitor prisons to ensure they are managed in accordance to law and regulations and for the protection of prisoners.<sup>82</sup>
- Report any death in custody, disappearance, serious injury if they have reasonable grounds to believe that torture or inhuman treatment may have occurred, irrespective of a formal complaint. Reporting should be made to an independent authority.<sup>83</sup>

62. With respect to overcrowding in prisons, the Special Rapporteur endorses the minimum space-per-person ratio elaborated by International Committee of the Red Cross ("ICRC").<sup>84</sup> There is a slightly more generous standard applied by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.<sup>85</sup> States should strive to meet the higher of the two specifications.

---

<sup>76</sup> Mandela Rules 43.

<sup>77</sup> Mandela Rules 43 and 45.

<sup>78</sup> Mandela Rule 44.

<sup>79</sup> Mandela Rule 24-29, 31.

<sup>80</sup> Mandela Rule 15, 16, 18-21.

<sup>81</sup> Mandela Rules 22, 35, 42, and 43.

<sup>82</sup> Mandela Rules 83-85.

<sup>83</sup> Mandela Rules 57, 71.

<sup>84</sup> ICRC, *Water, Sanitation, Hygiene and Habitat in Prisons: Supplementary Guidance* (2012), p. 33.

<sup>85</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, "Living space per prisoner in prison establishments: CPT standards", 15 December 2015.



63. Women prisoners are at a particularly high risk of rape, sexual assault and humiliation in prison. While the Mandela Rules equally apply to women, the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) recognises the specific needs of female offenders and there is a call for the greater use of non-custodial measures for women and girls.<sup>86</sup> The Bangkok Rules call for clear policies and regulation on the conduct of prison staff aimed at providing maximum protection for women prisoners from any gender-based physical or verbal violence, abuse and sexual harassment.<sup>87</sup>

## **I. Obligations to prohibit and prevent sexual torture<sup>88</sup>**

64. Sexual torture in the form of sexual- and gender-based violence – like all other forms of torture – is strictly prohibited under international law and pursuant to the Convention against Torture and as such, States bear obligations to prohibit, prevent, investigate and prosecute or extradite, and remedy and rehabilitate victims and survivors of such violations.<sup>89</sup>
65. Sexual torture is the ultimate imposition of power over another human. It leaves long-term scars that wound future generations. Sexual torture is a prohibited form of severe pain or suffering that is intentionally inflicted for such purposes as interrogation, punishment, intimidation or discrimination. Sexual or sexualized torture is any verbal, emotional, psychological and/or physical aggression that intrudes into and violates the intimate or private areas of a person.
66. The consequences of sexual torture can be emotional, traumatic, physiological, reproductive and socioeconomic. Through sexualized forms of torture perpetrators aim to cause harm to victims directly, to attack the victim’s family, to threaten other members of the same ethnicity, religion or community, and to break the will of their “enemy”. Recovery from sexual torture requires specialist care and attention.
67. Sexual torture and similar outrages upon human dignity include such acts as forced nudity, verbal abuse and threats of a sexual nature, forced masturbation or urination, physical trauma, electrocuting, mutilating or targeting of genitalia, reproductive organs or breasts, rape (involving digital, object or penile penetration), enslavement, mock or real castrations and forced abortions, pregnancies or sterilizations. These violations are intended to cause maximum humiliation and cruelty. In extreme cases sexual torture may be part of political and/or military strategies.<sup>90</sup>

---

<sup>86</sup> A/RES/65/229, United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), 16 March 2011.

<sup>87</sup> Bangkok Rules, Rule 31.

<sup>88</sup> This section has been drawn from the Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Dr. Alice Jill Edwards, [A/79/181](#) on sexual torture, and has been updated to reflect most recent developments.

<sup>89</sup> Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge University Press 2011), pp. 219–227; Patricia V. Sellers, Sexual Torture as a Crime Under International Criminal and Humanitarian Law, *City University of New York Law Review*, 11:2, 2008, 339–351.

<sup>90</sup> See further United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Istanbul Protocol”), 2002 revised version, para. 455.

68. The Special Rapporteur considers that there is an overwhelming consensus which crystallizes rape and other forms of sexual aggression of comparable gravity into prohibited forms of torture as *jus cogens*. The first comprehensive work on systematizing international laws of war, in 1625 *De jure belli ac pacis* by Hugo Grotius concluded that rape, which was phrased as “the violation of women”, “should not go unpunished in war any more than in peace”.<sup>91</sup> Although neglected at the Nuremberg and Tokyo war crimes trials after the Second World War, prohibitions of rape and other sexual assaults, and protections for women from enforced prostitution and indecent assaults, were included from 1907 in various constituent instruments of international humanitarian law.<sup>92</sup>
69. By the mid-1990s, many of the first sexual crimes prosecuted in The Hague involved sexual crimes against men, charged as torture or other cruel and inhuman treatment. As exclaimed by the Trial Chamber of the International Criminal Tribunal for Rwanda, in *Prosecutor v. Jean-Paul Akayesu*, sexual aggression is of the same character as torture: “Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of the person. Like torture, rape is a violation of personal dignity”.<sup>93</sup> The International Criminal Tribunal for the former Yugoslavia held that forcing male prisoners to commit sexual acts against each other,<sup>94</sup> and forcing people to watch other people being raped,<sup>95</sup> constitute torture or cruel and inhuman treatment. In *Prosecutor v. Ongwen*, the International Criminal Court has found that rape and sexual violence against abducted women constitutes torture as a crime against humanity and a war crime.<sup>96</sup>
70. Every international and regional human rights body (courts and committees) has recognised rape and other sexual assaults of comparable gravity as torture or other forms of cruel, inhuman or degrading treatment or punishment.
71. Among its jurisprudence on Article 7 of the ICCPR, the Human Rights Committee has held violations for gang rape by soldiers<sup>97</sup>, and rape, forced nudity and insertion of objections into the complainant’s vagina and other sexual assaults<sup>98</sup>. The Committee on the Elimination of All Forms of Discrimination Against Women has acknowledged that various forms of gender-based violence may constitute torture.<sup>99</sup> The Committee on the Rights of the Child recognized that children are extremely vulnerable during armed conflicts and that torture includes sexual abuse.<sup>100</sup>

---

<sup>91</sup> Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Martinus Nijhoff 1997), p. 30.

<sup>92</sup> *Ibid.*

<sup>93</sup> International Criminal Tribunal for Rwanda, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment of 2 September 1998, para. 687.

<sup>94</sup> International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Tadić*, IT-94-1-T, Judgment of 7 May 1997, paras. 206, 726, and 73

<sup>95</sup> International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Furundžija*, IT-95-17/I-T, Judgment of 10 December 1998, paras. 266–269.

<sup>96</sup> International Criminal Court, *Prosecutor v. Ongwen*, ICC-02/04-01/15, Judgment of 4 February 2021, paras. 3072–3077.

<sup>97</sup> *Purna Maya v. Nepal*, CCPR/C/119/D/2245/2013, 23 June 2017, para. 12.4.

<sup>98</sup> *Filmati Nyaya v. Nepal*, CCPR/C/125/D/2556/2015, 11 June 2019, para. 2.4 read with para. 7.2, 7.3 and 7.4.

<sup>99</sup> CEDAW/C/GC/35, paras. 16–18.

<sup>100</sup> CRC/C/GC/13, paras. 3 (i), 4, 25, 26 and 72(g).

72. The African Commission on Human and Peoples' Rights has held that acts of rape and failure to prevent such acts violate Article 5 of the African Charter on Human and People's Rights.<sup>101</sup> The Inter-American Court of Human Rights has held that rape by a State official is a form of psychological torture and is a violation of Article 5 of the American Convention on Human Rights.<sup>102</sup> The European Court of Human Rights has held that individually or by accumulation, acts of physical and mental violence including rape amount to torture in violation of Article 3 of the European Convention on Human Rights.<sup>103</sup>
73. Sexual or sexualized torture are prohibited by the Convention against Torture. The adoption of two general comments to the Convention, according to two esteemed members of the Committee at the time of their adoption, Nora Sveaas and Felice Gaer, "firmly integrated gender-based violence as a subject of concern under the Convention: General comment no 2 (2008) addressed Article 2 on the State obligation to prevent torture and ill-treatment and General comment no 3 (2012) focused on Article 14 which concerns the obligation to provide redress to victims of torture."<sup>104</sup> Since at least 1998, the Committee has expressed concern about gender-based violence in various forms in its reviews of State party reports, including those crimes committed by State authorities, and in situations where the State fails in its due diligence obligations to protect individuals against abuse by non-state or private actors. The Committee has regularly, through its individual communications procedure, prevented the expulsion of individuals at risk of threats of sexual torture.<sup>105</sup>
74. The Committee's General Comment No. 2 clarifies that the Convention is applicable to all persons under the State's control or custody and is not limited to those deprived of their liberty. The General Comment clarifies that "The contexts at which women are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes [...]"<sup>106</sup> General Comment No. 2 identifies rape and other sexual violence as a form of torture and clarified the obligation of the State party to prevent torture necessarily extends to identifying and assigning responsibility for impermissible acts by non-state or private actors.<sup>107</sup> Such acts are covered if a State fails to exercise due diligence.<sup>108</sup> It stipulated that "since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission."<sup>109</sup>

<sup>101</sup> African Commission, Sudan Human Rights Organisation and Centre on Housing Rights and Evictions v. Sudan, Comm. Nos. 279/03-296/05, May 2009, para. 157.

<sup>102</sup> *Raquel Martin de Mejia v. Peru*, Case 10.970, Report 5/95, 1 March 1996.

<sup>103</sup> *Aydin v. Turkey*, Application No. 57/1996/676/866, 25 September 1997, paras. 83–87.

<sup>104</sup> See Sveaas, Nora and Gaer, Felice, 'The Committee against Torture Tackles Violence against Women: A Conceptual and Political Journey', 32 (1-2) *Torture Journal: Journal on Rehabilitation of Torture Victims and Prevention of Torture* 177, at p. 178. The authors are former members of the Committee against Torture during the years of the adoption of the general comments.

<sup>105</sup> *Bakatu-Bia v. Sweden*, CAT/C/46/D/379/2009, 8 July 2011, paras. 10.6–10.8; *E.K.W. v Finland*, CAT/C/54/D/490/2012, 25 June 2015, para. 9.5; *A.Sh et al. v Switzerland*, CAT/C/63/D/717/2015, para. 9.7.

<sup>106</sup> CAT/C/GC/2, 24 January 2008, para. 22.

<sup>107</sup> CAT/C/GC/2, 24 January 2008, para. 18.

<sup>108</sup> Gaer, Felice D. 'Rape as a Form of Torture: The Experience of the Committee Against Torture'. *CUNY Law Review* 15, no. 02 (1 July 2012): 293, p. 296 <https://doi.org/10.31641/clr150213>.

<sup>109</sup> CAT/C/GC/2, 24 January 2008, para. 18.

75. Although women and girls continue to bear the brunt of sexual crimes of torture, men and boys are also victims of sexual torture, probably at levels never fully disclosed. The Committee against Torture has noted men and boys can be subject to rape and sexual violence.<sup>110</sup> Sexual torture is perpetrated against them for similar reasons: to humiliate, to dominate, to strip them of their humanity and dignity. Some armies seek to “feminize” their enemies through sexual assaults and humiliations, which often exploit cultural or religious codes. Male victims of sexual torture face different shame and stigma associated with the crime. Male victims may believe that disclosure compromises their masculinity. In places where same-sex relations are criminalized, they may fear the risk of prosecution. Lesbian, gay, bisexual, transgender, intersex and other individuals are also at risk of such forms of torture and may face particular risks especially in countries that criminalise same-sex relations.
76. In *Prosecutor v Jean-Pierre Bemba Gombo*, the International Criminal Court underlined that the definition of rape under the Rome Statute is gender-neutral, and thus includes both men and women perpetrators and victims.<sup>111</sup> In *The Prosecutor v. Bosco Ntaganda*, the rape of men was also featured. The Chamber found that soldiers penetrated the anal orifices of certain captured men with their penises or by using bits of wood and that fulfilled the material element of rape as a crime against humanity and a war crime.<sup>112</sup> The Special Rapporteur’s report on her country visit to Ukraine in the context of the Russian full scale invasion of Ukraine showed that men and boys are at risk of and subject to this type of torture.<sup>113</sup>
77. The Committee’s General Comment No. 3 on the rights to redress indicated that the Committee considers that complaint mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation and trafficking are able to come forward and seek and obtain redress.<sup>114</sup>
78. One of the clearest articulations of the Committee’s position on sexual- and gender-based violence as falling within the definition of torture in Article 1 of CAT is found in *A v. Bosnia and Herzegovina*:

“The Committee observes that the rape and other acts of sexual violence and ill-treatment to which she was subjected to caused her severe physical and mental pain and suffering and were inflicted intentionally during the armed conflict in the State party, in order to punish and intimidate the complainant, to humiliate and degrade her, representing a form of discrimination against her on the basis of her gender and ethnicity.”<sup>115</sup>

---

<sup>110</sup> Gaer, Felice D. ‘Rape as a Form of Torture: The Experience of the Committee Against Torture’. *CUNY Law Review* 15, no. 02 (1 July 2012): 293, p. 296 <https://doi.org/10.31641/clr150213>.

<sup>111</sup> *The Prosecutor v Jean-Pierre Bemba Gombo*, Judgment pursuant to Article 74 of the Statute, ICC-01/05-01/08-3343, 21 March 2016, paras. 99-100.

<sup>112</sup> *The Prosecutor v. Bosco Ntaganda*, Judgment, ICC-01/04-02/06-2359, 8 July 2019, paras 623, 940-942.

<sup>113</sup> A/HRC/55/52/Add.1.

<sup>114</sup> CAT, General Comment No. 3, 13 December 2012, para. 33.

<sup>115</sup> CAT/C/67/D/854/2017, 11 September 2019.

79. The Committee stated that Bosnia and Herzegovina – and by implication all States parties – was required to:

- (a) ensure that the complainant obtains prompt, fair and adequate compensation;
- (b) ensure that the complainant receives medical and psychological care immediately and free of charge;
- (c) offer public official apologies to the complainant;
- (d) comply with concluding observations with respect to establishing an effective reparation scheme at the national level to provide all forms of redress to victims of war crimes, including sexual violence, and to develop and adopt a framework law that clearly defines the criteria for obtaining the status of victim of a war crime, including sexual violence, and sets out the specific rights and entitlements guaranteed to victims throughout the State party.<sup>116</sup>

80. With respect to State practice, it is observed that it is widely accepted that sexual- and gender-based violence of varying forms, including rape and sexual abuse, amount to torture in Article 1 of CAT, as shown by explicit inclusion of such forms in the criminal codes of, *inter alia*, Finland, Kenya, Nigeria, Paraguay, the Philippines and Uganda. States that consider the perpetration of rape and sexual violence as an aggravating circumstance of torture to which a higher penalty is applied include Brazil, Burundi, Djibouti, Ecuador, France, Madagascar, Maldives, Mexico, Morocco, Philippines, South Africa and Türkiye.

81. Meanwhile, a growing number of countries including Germany, Switzerland, Sweden, and France are exercising universal jurisdiction over sexual forms of torture.<sup>117</sup>

16 December 2024

---

<sup>116</sup> Ibid, para. 9.

<sup>117</sup> Trial International, Universal Jurisdiction Annual Review 2023.