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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

Summary

In the present report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards, presents her annual overview of trends and developments in line with paragraph 1 (g) of Human Rights Council resolution [52/7](#), as well as a thematic study focused on good practices and challenges in investigating, prosecuting and preventing wartime sexual torture, and providing rehabilitation for victims and survivors. The Special Rapporteur considers that the torture framework has strong advantages when considering sexual aggression in wartime and other similar security situations, especially for survivors but also for investigators and prosecutors, and sets out a call for action. The report concludes with several recommendations.

* [A/79/150](#).



I. Trends and developments

1. The year 2024 marks the fortieth anniversary of the adoption of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This treaty, representing the most effective international instrument to reduce this brutal practice, is approaching universal ratification, with 174 States parties.¹ The Special Rapporteur welcomes the accession of Tuvalu and congratulates Europe, Latin America and the League of Arab States for having achieved regional universality. She commends the efforts of the Convention against Torture Initiative in leading the campaign.

2. Slovakia and the Congo joined the Optional Protocol to the Convention against Torture. Also notable was the establishment of a new national preventive mechanism in Burkina Faso and two local preventive mechanisms in Brazil.

3. The Special Rapporteur welcomes amendments to the Penal Code in Côte d'Ivoire to ensure acts of torture are considered as crimes in all circumstances. At least 39 torture cases were or are being prosecuted through universal jurisdiction involving multiple offenders.² While the number of prosecutions and convictions for torture are growing, many States continue to fail to investigate allegations of torture. Following the latest judgment of the European Court of Human Rights against Lithuania in respect of Central Intelligence Agency renditions,³ she laments the limited domestic criminal proceedings pursued by some countries in respect of earlier rulings.

4. Over the past year there has been a devastating rise in torture and other outrages on human dignity in armed conflict. Evidence gathered by the mandate holder demonstrates that torture and other inhuman cruelty is part of State policy by Russia in its war in Ukraine to intimidate, instil fear, punish or extract information and confessions (A/HRC/55/52/Add.1). In the Sudan, the primary warring parties are engaged in systematic campaigns involving arbitrary arrest, detention, torture and ill-treatment of civilians.

5. Evidence from the Hamas-led attacks in Israel on 7 October 2023 convincingly indicate that grave violations of international law took place, including killings, hostage-taking, torture and sexual torture.⁴ The Special Rapporteur intervened with Israel regarding allegations of torture and other cruel, inhuman or degrading treatment or punishment against detained Palestinians.⁵ She welcomes the decision by the Israeli High Court of Justice ordering the closure of the Sde Teiman military detention camp.

6. The Special Rapporteur welcomes the binding and urgent provisional measures issued by the International Court of Justice on the Syrian Arab Republic in November 2023, to take all measures necessary to prevent acts of torture and other ill-treatment and to preserve evidence. However, she has received current and large-scale

¹ States that are not yet party are Barbados, Bhutan, Brunei Darussalam (signatory), Democratic People's Republic of Korea, Dominica, Haiti (signatory), India (signatory), Islamic Republic of Iran, Jamaica, Malaysia, Micronesia (Federated States of), Myanmar, Palau (signatory), Papua New Guinea, Saint Lucia, Singapore, Solomon Islands, United Republic of Tanzania, Tonga, Trinidad and Tobago and Zimbabwe.

² TRIAL International and REDRESS, *Universal Jurisdiction Annual Review 2024*, (2024).

³ European Court of Human Rights, *Al-Hawsawi v. Lithuania*, Application No. 6383/17, 16 April 2024.

⁴ See <https://www.ohchr.org/en/press-releases/2024/01/un-experts-demand-accountability-victims-sexual-torture-and-unlawful>.

⁵ See <https://www.ohchr.org/en/press-releases/2024/05/israel-un-expert-calls-probe-allegations-torture-and-mistreatment-against>.

allegations of torture and other ill-treatment in the country. She calls on the Syrian Arab Republic to adhere to the provisional measures without delay.⁶

7. The Special Rapporteur has also received communications and/or intervened on torture cases relating to conflict in, inter alia, Afghanistan, Azerbaijan, Burundi, the Central African Republic, Chad, Colombia, Côte d'Ivoire, Ethiopia, Guinea, India, Iraq, Kenya, Libya, Mexico, Myanmar, Nepal, Nicaragua, Nigeria, Rwanda, Sri Lanka, the Syrian Arab Republic, Uganda and Yemen.

8. The general trend towards authoritarianism in this year of elections is worrying. Recent protests have been driven by a desire for political change, by the continuing cost of living crisis and by reaction to global events. In many instances peaceful protests have been policed with excessive force or violence. Over the past year there have been protests that resulted in violence in, inter alia, Angola, Argentina, Bangladesh, Belarus, Comoros, the Congo, Georgia, Greece, Guatemala, Haiti, Iran (Islamic Republic of), Israel, Jordan, Kenya, Kosovo,⁷ Madagascar, Mexico, Mozambique, Nepal, Pakistan, Papua New Guinea, Poland, Senegal, Serbia, Somalia, Spain, Sri Lanka, Türkiye and the United States of America.

9. The Special Rapporteur welcomes the Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests, authored by the Special Rapporteur on the rights to freedom of peaceful assembly and of association (A/HRC/55/60).

10. States are reminded of the call by the Special Rapporteur in her previous report (A/78/324) for a global agreement to regulate the trade in torture-capable weapons, tools and equipment widely used by law enforcement and other public authorities. Renewed diplomatic vigour is needed. She wrote to France after illegal torture tools were found on sale at an arms fair in Paris.⁸ The mandate holder will continue to monitor arms fairs globally.

11. Torture and intimidation to quash dissent and political opposition continues. The Special Rapporteur has intervened in multiple cases. The death of Alexei Navalny while in custody in the Russian Federation was a bleak day for human rights.⁹ The mandate holder remains deeply concerned about the admission of evidence in the Jimmy Lai case in Hong Kong, China, that was allegedly secured through torture in China.¹⁰ While the release of Julian Assange is a welcome relief, the Special Rapporteur encourages the United States to update their espionage and extradition laws to include safeguards for journalists and whistle-blowers.¹¹ The decision by the highest court of Suriname to uphold the prison sentence of the former President, Dési Bouterse, for torture and extrajudicial executions was welcomed.¹²

12. The repression of human rights defenders is a significant trend globally and the Special Rapporteur has received information on cases in, inter alia, Azerbaijan, Cambodia, China, Egypt, Eritrea, the Lao People's Democratic Republic, Palestine, Myanmar, the Russian Federation, Syrian Arab Republic, Thailand, the United Arab

⁶ See <https://www.ohchr.org/en/press-releases/2024/07/torture-allegations-continue-syria-despite-icj-order-un-expert>.

⁷ References to Kosovo shall be understood to be in the context of Security Council resolution 1244 (1999).

⁸ See <https://www.ohchr.org/en/press-releases/2024/06/ahead-major-security-trade-fair-paris-un-torture-rapporteur-requests-france>.

⁹ See <https://www.ohchr.org/en/press-releases/2024/02/russia-un-experts-call-accountability-navalnys-death-and-immediate-release>.

¹⁰ See <https://www.ohchr.org/en/press-releases/2024/01/hong-kong-sar-un-expert-warns-against-admission-evidence-allegedly-secured>.

¹¹ See <https://news.un.org/en/story/2024/06/1151436>.

¹² See <https://www.ohchr.org/en/press-releases/2024/01/suriname-un-experts-welcome-landmark-ruling-against-former-president-desire>.

Emirates, Viet Nam and Zimbabwe. These countries represent a fraction of the States in which this type of repression takes place. The use of “hostage-diplomacy” is also troubling and will be an ongoing focus for the mandate. The Special Rapporteur has intervened on behalf of Ryan Corbett, a citizen of the United States detained in Afghanistan.¹³

13. As noted in the recent report by the Special Rapporteur on global prison conditions (A/HRC/55/52), far too many people are imprisoned, for too long, in severely overcrowded facilities in all regions. The Special Rapporteur is deeply concerned by indeterminate sentences for public protection that were introduced, then disbanded, in the United Kingdom of Great Britain and Northern Ireland yet continue to affect thousands and result in psychological torture.¹⁴ The incoming Government must end this injustice. The Supreme Court ruled in Brazil on the widespread violation of fundamental rights in prisons and the Special Rapporteur urges the Government to swiftly draw-up the required nationwide action plan to end abuses.¹⁵ She welcomes the decision by the Australian Federal Police to stop using inhuman spit hoods on detainees.¹⁶ She also acknowledges the arrest of 13 prison guards in Milan, Italy on charges of torture in juvenile centres.¹⁷ She shares the concerns of the Committee Against Torture of the treaty between Denmark and Kosovo to outpost foreign prisoners in Kosovo.¹⁸

14. Women and girls remain at heightened risk of severe and gender-specific forms of torture and other ill-treatment. Their near total exclusion from public life in Afghanistan heightens the risk they face of violence. In Gaza, military strikes by Israel have destroyed the capacity to provide adequate medical care for mothers giving birth.¹⁹ Reproductive restrictions continue in the United States where 14 states have criminalized abortion.²⁰ The decision of the United States Senate to block the federal right to contraception access is regrettable.

15. Death row has long been characterized as a form of inhuman treatment. Serious allegations were received about executions in Afghanistan, Iran (Islamic Republic of), Iraq, Saudi Arabia, the United States and Yemen. The execution of Kenneth Eugene Smith in Alabama in the United States with experimental nitrogen gas inhalation was a horrific development.²¹ The Special Rapporteur welcomed the decision of the Iranian courts to overturn the death penalty for rapper Toomaj Salehi, though he remains in detention and ought to be released.²² The reinstatement of the death penalty in the Congo, after two decades, is a step back.²³

16. The Special Rapporteur is concerned that the prohibition on refoulement is not being respected. She is concerned about plans of returning Syrians to the Syrian Arab

¹³ See <https://www.ohchr.org/en/press-releases/2024/06/afghanistan-detained-american-aid-workers-life-risk-if-no-urgent-medical>.

¹⁴ See <https://www.ohchr.org/en/press-releases/2023/08/uk-un-torture-expert-calls-urgent-review-over-2000-prison-tariffs-under>.

¹⁵ See <https://www.cnj.jus.br/sistema-carcerario/plano-pena-justa/>.

¹⁶ See <https://humanrights.gov.au/about/news/media-releases/commission-welcomes-banning-spit-hoods-afp>.

¹⁷ “Italy arrests 13 prison guards over suspected torture of juvenile detainees” *Reuters*, 22 April 2024.

¹⁸ Committee against Torture, Concluding observations on the eighth periodic report of Denmark, CAT/C/DNK/CO/8, 8 December 2023, para. 16.

¹⁹ See <https://news.un.org/en/story/2024/01/1145317>.

²⁰ Lift Louisiana, Physicians for Human Rights, Reproductive Health Impact, and the Center for Reproductive Rights, Criminalized Care: How Louisiana’s Abortion Bans Endanger Patients and Clinicians. March, 2024.

²¹ See <https://www.ohchr.org/en/press-releases/2024/01/united-states-un-experts-horrified-kenneth-smiths-execution-nitrogen-alabama>.

²² See <https://www.ohchr.org/en/press-releases/2024/04/iran-un-experts-alarmed-death-sentence-imposed-rapper-and-songwriter-toomaj>.

²³ See <https://www.amnesty.org/en/latest/news/2024/03/drc-reinstating-executions-shows-a-callous-disregard-for-human-rights/>.

Republic by a number of countries.²⁴ The Special Rapporteur is also concerned about the situation of refugees in Libya who have allegedly been held captive and tortured.²⁵ The Special Rapporteur joined the Special Rapporteur on trafficking in persons in writing to airlines and aviation authorities warning them not to facilitate unlawful removals from the United Kingdom to Rwanda.²⁶ The incoming United Kingdom Government's immediate decision to revoke the inhuman asylum transfer scheme is welcomed. The evacuation by Australia of the last refugee from the terrible conditions at the offshore processing facility in Nauru was short-lived, with the island now allegedly housing 100 or more asylum-seekers.²⁷ The judgment by the High Court of Australia that the system of indefinite immigration detention is unlawful was welcomed.²⁸

II. Investigating, prosecuting and preventing wartime sexual torture, and providing rehabilitation to victims and survivors

The present report contains descriptions and information about sexual torture and sexual violence which may be triggering for victims and survivors.

A. Introduction

17. Sexual torture is the ultimate imposition of power over another human. It leaves long-term scars that wound future generations. The consequences can be emotional, traumatic, physiological, reproductive and socioeconomic. Through sexualized forms of torture perpetrators aim to cause harm to victims directly²⁹, 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.

18. The Special Rapporteur is alarmed at the prevalence and intensity of sexual torture in today's wars and other situations of insecurity. In this past year, there have been a considerable and increasing number of sexual torture reports. These have included allegations from the Sudan of hundreds of rapes of women in early 2024. Evidence from the Hamas-led attacks of 7 October 2023 in Israel convincingly indicates that rapes and genital mutilations took place. An escalation in fighting in Northern Kivu in the Democratic Republic of the Congo has included egregious forms of rapes and other sexual assaults. The systemic torture perpetrated by Russian forces against Ukrainian soldiers and civilians includes nearly 300 open cases of alleged sexual torture on women and men.

19. Submissions for this report further contained information about sexual torture in, inter alia, Afghanistan, Azerbaijan, Burundi, Central African Republic, Chad, Colombia, Côte d'Ivoire, Ethiopia, Guinea, Iraq, Kenya, Libya, Mexico, Myanmar,

²⁴ See <https://www.ohchr.org/en/press-releases/2024/02/syrian-returnees-subjected-gross-human-rights-violations-and-abuses-un>.

²⁵ See <https://www.ohchr.org/en/press-releases/2023/07/libya-un-experts-alarmed-reports-trafficking-persons-arbitrary-detention>.

²⁶ <https://www.ohchr.org/en/press-releases/2024/04/uk-airlines-and-aviation-authorities-should-not-facilitate-unlawful-removals>.

²⁷ Ben Doherty, "What is our future?": the Nauru detention centre was empty. Now 100 asylum seekers are held there", *The Guardian*, 12 June 2024.

²⁸ See <https://humanrights.gov.au/about/news/media-releases/commission-commends-high-court-ruling-indefinite-immigration-detention>.

²⁹ The terms "victim" and "survivor" are used interchangeably in this report. The Special Rapporteur notes that some victims do not survive their sexual torture and that some survivors choose not to identify as a "victim". She also notes that the terms may also have specific legal meanings in different legal systems.

Nepal, Nicaragua, Nigeria, occupied Palestinian territory, Rwanda, Sri Lanka, Uganda, Yemen and the former Yugoslavia.

20. Given the extent of these forms of torture – and the utter impunity that often accompanies them – the Special Rapporteur is calling for a fundamental rethink about how these egregious crimes are considered and addressed. Why does sexual torture in war happen so frequently? Why have efforts failed to prevent it? Why are there so few prosecutions? What are the benefits of framing sexual violence through the torture prohibition?

21. Sexual assaults committed by warring parties are almost always torture. Sexual torture is a prohibited form of severe pain or suffering that is intentionally inflicted for such purposes as interrogation, punishment, intimidation or discrimination.³⁰ 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.

22. 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.³¹ These violations are intended to cause maximum humiliation and cruelty. In extreme cases sexual torture may be part of political and/or military strategies.

23. Women and girls bear the brunt of sexual torture, committed on female bodies by male soldiers and other male perpetrators under the command of male leaders. They also face forced pregnancies, sexual enslavement, childbirth and the child-rearing of children born of rape, which can lead to rejection by family or community. Women and girls may also be killed, mutilated, disfigured or murdered for so-called “dishonour”. They may lose reproductive functions irreparably. Female soldiers are at grave risk of sexual assaults if captured, and they are often at risk within their own ranks. Occasionally, women participate as perpetrators.

24. Men and boys are also victims, probably at levels never fully disclosed. 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. The perpetrators of sexual crimes are overwhelmingly male.

25. Sexual torture against lesbian, gay, bisexual, transgender and intersex individuals has also been reported. The outlawing of experimentation, perpetrated against homosexuals and gender non-conforming individuals by the Nazis during the Second World War, is reflected in article 7 of the International Covenant on Civil and Political Rights. In countries that criminalize same-sex relations, lesbian, gay, bisexual, transgender and intersex victims risk punishment.

26. Children are the most vulnerable victims of sexual torture. Sexual torture has profound effects beyond physical harm. It disrupts their development and education, causing long-lasting emotional and psychological distress. Victims face stigmatization, discrimination and even ostracization by their communities and families. They have an urgent need for specialized rehabilitation programmes even when they become adults. At times, children are forced to become perpetrators and later struggle with their actions. High rates of self-harm and suicide are reported.

³⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 1 (summarized form of the globally accepted definition).

³¹ For a longer list of specific forms see United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), 2002, paras. 455–459.

27. Today's wars are fought on the battlefield and in the media. Denial, disinformation, misinformation and propaganda are prevalent in our fractured media ecosystems. They directly impact reporting on sexual torture. Allegations are used as weapons against enemies. Manipulating or distorting evidence is a tactic of war. Social media makes investigations and establishing the truth extremely complicated. It also silences many survivors who fear wide public scrutiny.

28. Through the present report, the Special Rapporteur seeks to keep a spotlight on these egregious violations, and to explore the benefits of the torture framework for achieving justice and remedies for victims and survivors. As few will ever realize justice or reparations, this report contains an important section on prevention.

29. The Special Rapporteur is extremely grateful to all who contributed. There were 46 submissions, including from seven States.³² Experts and practitioners from all regions joined an online consultation in May. She is extremely thankful to the International Council for the Rehabilitation for Victims of Torture that contributed to specific sections of the report, and the Jiyan Foundation for Human Rights, the Coalition for Just Reparations and survivors of crimes by Islamic State in Iraq and the Levant, who shared their views during a study visit by the Special Rapporteur to northern Iraq in June.

B. Criminalizing and prosecuting sexual torture

30. Sexual torture – like all other forms of torture – is strictly prohibited under international law (A/77/502, para. 29).³³ Sexual torture may constitute a war crime, crime against humanity or even genocide. Sexual violence in war or other security or terrorism contexts can also constitute a crime of torture without further qualifying elements. 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.

31. 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”.³⁴ 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.³⁵

32. 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

³² State submissions were received from El Salvador, Germany, Israel, Norway, Ukraine, Zambia and the Permanent Observer Mission of Palestine to the United Nations. All submissions are accessible at: <https://www.ohchr.org/en/calls-for-input/2024/identifying-documenting-investigating-and-prosecuting-crimes-sexual-torture>.

³³ 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.

³⁴ Kelly Dawn Askin, *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (Martinus Nijhoff 1997), p. 30.

³⁵ *Ibid.*

person. Like torture, rape is a violation of personal dignity”.³⁶ The International Criminal Tribunal for the former Yugoslavia held that forcing male prisoners to commit sexual acts against each other,³⁷ and forcing people to watch other people being raped,³⁸ constitute torture or cruel and inhuman treatment.

33. Today, various types of sexual assaults are being prosecuted either as torture, or one of the explicitly enumerated sexual violence crimes. 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.³⁹ The Office of the Prosecutor’s Policy on Gender-Based Crimes provides that “the crime of torture can also be committed by way of acts of sexual, reproductive and other gender-based violence if they cause the victim(s) in the perpetrator’s custody and/or control severe pain and suffering... they can be charged cumulatively and cumulative convictions entered accordingly”.⁴⁰

34. Attention of the international community to sexual crimes against women and girls, and the specific importance of women’s representation and leadership in peace negotiations and recovery efforts, has been greatly aided by the women and peace and security agenda of the Security Council.⁴¹

35. Every international and regional human rights body (courts and committees) has recognized rape and other sexual assaults of comparable gravity as torture or cruel, inhuman or degrading treatment or punishment, and has placed a priority on victims of war violence. The Human Rights Committee held that gang rape by soldiers violated article 7 of the International Covenant on Civil and Political Rights.⁴² The Committee against Torture has regularly, through its individual communications procedure, prevented the expulsion of individuals at risk of threats of sexual torture.⁴³ The Committee on the Elimination of All Forms of Discrimination Against Women has acknowledged that various forms of gender-based violence may constitute torture (CEDAW/C/GC/35, paras. 16–18). The Committee on the Rights of the Child recognized that children are extremely vulnerable during armed conflicts and that torture includes sexual abuse (CRC/C/GC/13, paras. 3 (i), 4, 25, 26 and 72(g)). The Office of the United Nations High Commissioner for Refugees has issued guidelines that acknowledge that gender-related persecution as a ground for refugee status.⁴⁴ The

³⁶ International Criminal Tribunal for Rwanda, *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment of 2 September 1998, para. 687.

³⁷ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Tadić*, IT-94-1-T, Judgment of 7 May 1997, paras. 206, 726, and 730.

³⁸ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Furundžija*, IT-95-17/I-T, Judgment of 10 December 1998, paras. 266–269.

³⁹ International Criminal Court, *Prosecutor v. Ongwen*, ICC-02/04-01/15, Judgment of 4 February 2021, paras. 3072–3077.

⁴⁰ International Criminal Court, Office of the Prosecutor Policy on Gender-Based Crimes, December 2023, para. 58.

⁴¹ Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Conflict-Related Sexual Violence Report of the United Nations Secretary-General, 24 May 2024; women and peace and security agenda, Security Council resolutions: 1325 (2000), 1820 (2008), 1888 (2009), 1960 (2010), 2106 (2013), 2242 (2015), 2467 (2019). See also Committee on the Elimination of Discrimination against Women, general recommendations No. 19 (1992) on violence against women, No. 30 (2013) on women in conflict prevention and No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19.

⁴² *Purna Maya v. Nepal*, CCPR/C/119/D/2245/2013, 23 June 2017, para. 12.4.

⁴³ *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.

⁴⁴ Office of the United Nations High Commissioner for Refugees, Gender-related persecution in the context of article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, HCR/GIP/02/01, May 2002.

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.⁴⁵ 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.⁴⁶ 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.⁴⁷

36. At the national level, of the 108 States that have specific crimes of torture in their criminal codes (A/HRC/52/30, para. 36), an inadequate number explicitly include sexual offences as torture which contributes to impunity. The failure to recognize sexual acts in wartime as torture explicitly leads to charges and prosecutions as ordinary crimes of rape or sexual or indecent assault, which generally carry much lower penalties than torture. These crimes may also permit for defences of superior orders, statute of limitations and head-of-State immunities, which are not applicable to crimes of torture.

37. Explicit recognition of rape and sexual abuse as acts amounting to torture are contained 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.

38. Zambia acknowledges that without explicit provisions on regulating sexual torture in armed conflict, there may be challenges in holding perpetrators accountable for their action.⁴⁸ Prosecutors in Ukraine have been encouraged to charge acts of sexual torture as both sexual violence and torture.⁴⁹ El Salvador has created a policy for prosecuting war crimes and crimes against humanity which specifies how sexual violence can be used as a form of torture and has created a manual for documentation and investigation which applies the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).⁵⁰ Meanwhile, a growing number of countries are exercising universal jurisdiction over sexual forms of torture.⁵¹

39. The regulation of military conduct is a fundamental safeguard against sexual torture. Many countries have copied versions of rule 93 of the International Committee of the Red Cross' customary international humanitarian law, which explicitly prohibits rape and other forms of sexual violence. Of those crimes, numerous national military manuals state that rape, enforced prostitution and indecent assault are prohibited and many of them specify that these acts constitute war crimes.⁵² Inconsistencies between civil and military laws need to be addressed so that

⁴⁵ 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.

⁴⁶ *Raquel Martin de Mejia v. Peru*, Case 10.970, Report 5/95, 1 March 1996.

⁴⁷ *Aydin v. Turkey*, Application No. 57/1996/676/866, 25 September 1997, paras. 83–87.

⁴⁸ Submission from Zambia.

⁴⁹ Submission from Ukraine.

⁵⁰ Submission from El Salvador.

⁵¹ Submission from Germany; see also Trial International, *Universal Jurisdiction Annual Review 2023*, page. 51 and pages 56–58.

⁵² For example, Argentina, Australia, Belgium, Benin, Bosnia and Herzegovina, Burkina Faso, Canada, China, Colombia, Congo, Croatia, Dominican Republic, Ecuador, El Salvador, France, Germany, Hungary, India, Indonesia, Israel, Italy, Kenya, Madagascar, Mali, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Peru, Philippines, Romania, Russian Federation, Senegal, South Africa, Spain, Sweden, Switzerland, Togo, Uganda, United Kingdom and United States.

they do not create jurisdictional challenges that may delay or impede investigations⁵³ or lead to opposite conclusions.⁵⁴

C. Shifting the shame and stigma to perpetrators

40. Shame and stigma remain deeply associated with sexual violence of all kinds, extending to children who are born of rape, and are key factors impeding recovery, rehabilitation and justice. The complexity of the extensive impact on and suffering of survivors is often compounded by multiple traumatic experiences.⁵⁵ In the case of added stigmatization by the wider community, trauma incurred by sexual violence may be further intensified⁵⁶ and is linked to significant increases in depression, anxiety and trauma symptoms.⁵⁷

41. The stigma or shame of sexual violence must rest wholly on the perpetrators. There is no stigma in being tortured. There is no shame in sexual torture. Victims and survivors are not to blame for the violence perpetrated upon them. Likewise, husbands or fathers or other relatives who may carry the burden of having been unable to “protect” their loved ones are also not responsible. It is essential to change the way stigma is discussed and viewed to remove any implied responsibility of victims, their families, or communities.

42. The *jus cogens* nature of torture is unambiguous. By approaching sexual violence in war through the torture framework, shame and stigma are removed from victims and rest entirely where they belong – on the perpetrators and those who embolden them to commit these crimes. This includes those in authority who explicitly or implicitly grant permission for sexual torture, for example by standing by and allowing it to happen, through reinforcing social divisions and dehumanization that foment hatred, or by leaving crimes unpunished.

43. Political, religious and other leaders can play an important role in changing societal attitudes towards victims. In Iraq, in September 2014, the Yazidi spiritual leader Baba Sheikh issued an official statement welcoming the return of women liberated from ISIS captivity, which has contributed significantly to reducing societal shame and had a positive effect on the healing process of victims, their families and community. Survivors in other communities in Iraq have not had the same embrace and as a consequence suffer under the added burden of social rejection. In Tigray, Ethiopia, some faith-based organizations have seen it as their duty to help shunned survivors by offering food, shelter, counselling and vocational training.⁵⁸ In Ukraine, the Coordination Headquarters for the Treatment of Prisoners of War has created a safe environment in which war victims are able to discuss their experiences including those of sexualized torture, without judgment, while benefiting from rehabilitative support (A/HRC/55/52/Add.1, para. 96).

44. In the survivor-led Kinshasa Declaration on the Rights to Reparation and Co-creation of Survivors and Victims of Conflict-Related Sexual and Gender-Based

⁵³ Submission from the National Human Rights Commission of Nigeria.

⁵⁴ Submission from Miguel Agustín Pro Juárez Human Rights Centre (Centro Prodh) (Mexico).

⁵⁵ Tobias Kube, Anna Caroline Elssner and Phillip Herzog “The relationship between multiple traumatic events and the severity of posttraumatic stress disorder symptoms—evidence for a cognitive link”, *European Journal of Psychotraumatology*, 14(1), 2023.

⁵⁶ An Verelst, Maarten De Schryver, Eric Broekaert and Ilse Derluyn, “Mental health of victims of sexual violence in eastern Congo: associations with daily stressors, stigma, and labelling”, *BMC Women’s Health*, 14;106, 2014, pp. 1–12.

⁵⁷ Sarah McIver Murray, et al., “Stigma among survivors of sexual violence in Congo: scale development and psychometrics”, *Journal of Interpersonal Violence*, 33(3), February 2018, 491–514.

⁵⁸ Submission from the Jubilee Campaign.

Violence,⁵⁹ survivors from conflicts in twelve countries across Africa declared that reparation programmes should address discriminatory and stigmatising taboos. They also declared that survivors had to be “co-creators” of their destiny. It is not enough that survivors are consulted, they must be stakeholders – designers, policymakers, implementers and recipients of rehabilitation. As an outcome of the Special Rapporteur’s “hearing for healing and justice” in 2023, torture survivors from 13 countries across Latin America adopted the Bogotá Declaration in which they demanded that victims be involved in the development of public policies on torture. They stressed they were “tired of being considered criminals, vandals or terrorists, and that, together with [their] families have had to flee [their] homes and territories and cannot return for fear of reprisals, loss of life or constant stigma”.⁶⁰

D. Underreporting and delayed disclosure

45. The obstacles, impediments and challenges to effective torture investigations and prosecutions identified by the Special Rapporteur in her previous report (A/HRC/52/30) are relevant to investigating sexual torture and should be read in conjunction with this report. However, the sexualized nature of harm and the context of war present specific challenges.

46. The consensus among experts is that sexual torture in war is generally underreported. It has been estimated that for every reported case of wartime sexual violence, up to twenty additional cases remain undocumented and unaddressed.⁶¹ If sexual torture is reported, it is done so at a late stage. This complicates data collection and analysis of the scale and nature of the atrocities, which impacts the ability to respond appropriately.

47. With the near ubiquity of sexual torture in modern armed conflicts, the Special Rapporteur believes that authorities should have a working assumption that sexual torture is taking place. This will maximize their ability to respond, to collect and preserve evidence, and to get victims the help they need. There are also many indicators that authorities should look out for, such as a significant increase in the demand for emergency contraception (A/HRC/55/52/Add.1, para. 44), and for testing for pregnancy and sexually transmitted infections.⁶²

48. War undoubtedly creates barriers for reporting. The need for people’s safety and survival takes priority over reporting crimes.⁶³ Victims in occupied territories may not be able to contact law enforcement.⁶⁴ There may be no procedures or safe locations to report. Perpetrators may hold positions of power, while family members

⁵⁹ See <https://www.globalsurvivorsfund.org/latest/resources/kinshasa-declaration/>.

⁶⁰ See <https://irct.org/wp-content/uploads/2023/12/2Declaracion-de-sobrevivientes-y-victimas-de-tortura-en-Bogotae-2.pdf>.

⁶¹ Remarks of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Pramilla Patten, at the seventy-sixth session of the General Assembly side-event “Preventing and addressing conflict-related sexual violence as a tool of war”, co-hosted by the Office for Global Women’s Issues, the Department of State of the United States, Search for Common Ground, Georgetown Institute for Women, Peace and Security, 29 September 2021. See also submission of Elizka Relief Foundation, which assesses that recorded sexual assault accusations in Sudan constitute only three per cent of actual cases.

⁶² Foreign and Commonwealth Office of the United Kingdom of Great Britain and Northern Ireland, *International Protocol on the Documentation and Investigation of Sexual Violence in Conflict*, second ed., March 2017, p. 228; United Nations Action Against Sexual Violence in Conflict, *Early-Warning Indicators of Conflict-Related Sexual Violence Matrix*, 25 March 2022, p. 19.

⁶³ Submission from the Permanent Observer Mission of the State of Palestine.

⁶⁴ Submissions from Ukraine and Synergie des femmes pour les victimes des violences sexuelles.

may be detained. Investigators may be affiliated with the enemy.⁶⁵ Speaking out can carry great risk. Monitoring bodies, such as the International Committee of the Red Cross (ICRC), may be denied access to victims.⁶⁶ Victims who have been displaced by conflict may struggle to comprehend different legal systems, culture or language.⁶⁷

49. The delays by the international community in recognizing the occurrence of sexual violence causes a lack of trust in reporting crimes.⁶⁸ Some victims are killed and cannot speak out.⁶⁹ The rush to bury bodies with dignity and according to cultural or religious conventions⁷⁰ can destroy essential evidence. Overcoming this may require the granting of legal or religious exceptions to delay burials. Permissions may be needed from family members for autopsies, or for the speedy gathering of photographic and other forensic evidence.

50. Disclosure of experiences of sexual torture is further inhibited by a range of social and psychological responses, such as post-traumatic stress disorder or avoidance/dissociation, as well as because of real or perceived stigma, or fear of reprisals from family or community.⁷¹ In Sudan, it has been submitted that women have committed suicide owing to the fear and shame associated with rape.⁷² In Ethiopia, it has been submitted that survivors refrain from reporting their assaults because it is common for husbands to divorce their wives after learning they had been sexually assaulted.⁷³ Male victims may believe that disclosure compromises their masculinity.⁷⁴ In places where same-sex relations are criminalized, they may fear the risk of prosecution.⁷⁵

51. Survivors may fear that their information will not be kept confidential. The balancing act between informed consent and effective investigation should always work towards protecting victims so they feel safe to report these crimes. The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) outlines the fundamental ethical obligations of health professionals to respect the autonomy and privacy of the patient to avoid harm. Courts or authorities requesting information must respect medical ethics of confidentiality.⁷⁶ At a minimum, all those working with survivors must have in place confidentiality protocols and measures to protect survivor information, privacy and safety, including taking special care to ensure the security of any digital communications, data management and storage.⁷⁷ In Ukraine, for example, victims may request security measures about their personal data and the “notice of

⁶⁵ Submissions from Assistance Association for Political Prisoners (Burma), Burmese Women’s Union, Colors Rainbow, and Progressive Voice.

⁶⁶ Submissions from Independent Commission for Human Rights in Palestine; and Addameer Prisoner Support and Human Rights Association, Al-Haq, Al Mezan Center for Human Rights, Palestinian Centre for Human Rights, The Women’s Centre for Legal Aid and Counselling, MIFTAH.

⁶⁷ Submission from Global Rights Compliance.

⁶⁸ Submission from Jerusalem Institute of Justice.

⁶⁹ Submissions from Israel and Assistance Association for Political Prisoners et al.

⁷⁰ Submission of Dinah Project (Israel); Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, Mission report: Official visit of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict to Israel and the occupied West Bank, 29 January–14 February 2024, para. 46.

⁷¹ Submission from Maat for Peace, Development, and Istanbul Protocol, paras. 274–276.

⁷² Submission from Partners for Transparency.

⁷³ Submission from Ethiopian Human Rights Commission.

⁷⁴ Submission from Syrian Legal Development Programme.

⁷⁵ Submission from All Survivors Project.

⁷⁶ Istanbul Protocol, para. 172.

⁷⁷ Institute for International Criminal Investigations, Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (Murad Code), 13 April 2022, Principle 7.8.

suspicion” (charging document) does not indicate the specific place of the crime to avoid re-traumatization of the victim, publicity, condemnation or stigmatization.⁷⁸

E. Evidence gathering

52. Sexual torture results in physical or psychological harm, or both. An over-reliance or demand for physical evidence of sexual torture perpetrated during conflict leads to injustice. In fact, the absence of physical evidence of sexual torture in conflict is the norm.

53. Evidence gathering in situations of ongoing armed conflict and its aftermath are especially challenging. Areas where violence is taking place may be occupied, under attack, mined or otherwise inaccessible. The passage of time between the commission of a crime and access to the crime scene may be lengthy, leading to the deterioration and disappearance of tangible evidence. Perpetrators may try to cover up their crimes by bombing or setting fire to buildings or bodies. Medical and forensic infrastructure may be destroyed, or severely damaged, and forensic teams may be stretched beyond capacity.

54. Rape kits to collect forensic evidence are often not present or difficult to access. Only a minority of victims may have physical injuries and even then, these may heal in a few days.⁷⁹ The identity of perpetrators in conflict may be unknown, which can limit the immediate usefulness of DNA evidence.

55. While many acts of sexual torture are physical, some acts, such as being forced to witness the sexual violence committed on family members or other detainees, are geared at psychological torment.⁸⁰ The Istanbul Protocol sets out how to carry out and document a psychological evaluation, in addition to forensic assessment of physical evidence for all forms of torture.⁸¹ Evaluations pursuant to the Istanbul Protocol should be admitted into proceedings, whether they are carried out by private or State medico-legal practitioners.

56. The forms of evidence gathered in a sexual torture investigation include testimonial evidence from victims, witnesses, and suspects; physical evidence (including from the victim’s physical examination and gathered from a location); digital evidence (such as videos and photographs, satellite imagery, open-source information); and documentary evidence (official documents and non-official documents). Circumstantial and testimonial evidence are the most common forms of evidence of war-time crimes and are sufficient for substantiating the crime provided they are reliable and credible. Germany has used an approach where the focus is on the overall characterization of the armed conflict or crime against humanity, which spares victims the need to provide detailed information about their own ordeals in individual cases.⁸²

F. Interviewing survivors and witnesses

57. Interviewing survivors of sexual torture requires skill, training and emotional intelligence. The conduct of the interview can be the difference between the information being considered reliable or otherwise.⁸³ It can determine whether a survivor is willing to share their story. How testimonial evidence is gathered can have a profound impact on the outcome, fairness, and efficiency of any criminal

⁷⁸ Submission from Ukraine.

⁷⁹ Istanbul Protocol, para. 463.

⁸⁰ Submission from Women’s Initiatives for Gender Justice.

⁸¹ See [A/69/387](#) on the role of forensics in torture generally.

⁸² Submission from Germany.

⁸³ Submission from Benjamin Lucas and Becky Milne.

proceedings.⁸⁴ Respecting the dignity and integrity of all those interviewed – victims, witnesses and suspects – and adjusting for specific vulnerabilities is essential. The framing of the interview can have a strong bearing on how the crimes are charged and whether they are considered torture.

58. Rapport building is the fulcrum of the interview and victims should choose the way they wish to describe their experiences. Interviewers must be trained to elicit sensitive information in an ethical and reliable manner, free of any agenda, without causing further harm or security risk to the interviewee. They should ask open-ended questions and allow victims the time that they need to answer. Survivors should lead the telling of their story, only being prompted when needed. In Norway, immigration interviewers adjust the interview and questioning strategies if indicators of trafficking in persons, domestic violence, forced marriage or female genital mutilation are identified and an interviewer with adequate expertise may be called in.⁸⁵ They must be informed about the purpose of the interview and how it will take place. They are entitled to the full range of rights as specified under international law.⁸⁶

59. The Special Rapporteur has observed an uneven approach to interviewing women and men. Female war survivors are routinely asked questions about rape, which can lead to her experience being narrowly classed as rape rather than torture, or such questioning may not provide her the opportunity to talk about her full experience, including other potential crimes. It should not be assumed that sexual violence was the violation of greatest concern to the survivor. Survivors must be given an opportunity to share the totality of their experience. To end impunity, investigators must be attuned to the full spectrum of prosecutable crimes. Men generally have a different experience and are given opportunities to explain their story in full. After this more holistic interview, these experiences of sexualized assaults are more often classified as torture or inhuman treatment.

60. Wherever possible, the survivor should be able to choose the sex/gender of the interviewer.⁸⁷ People may prefer to be interviewed by persons of the same sex/gender, ethnicity and religion – though this is not always the case, nor always possible, and should not be presumed.⁸⁸ In particular in cases where survivors are in custody, the most important factor may be that the interviewer is a clinician to whom the person can ask honest questions.⁸⁹ The same considerations apply to interpreters who should be trained and well informed about cultural and linguistic nuances. Simultaneous interpretation using discreet headsets is a good practice. This avoids interpreters distracting the survivor, which can lead to memory disruption, mistranslation and a potential breakdown of rapport.⁹⁰

61. Poorly conducted interviews can retraumatize victims, but if they are carried out well the process can aid recovery.⁹¹ Investigators are often the first person to hear survivors' stories.⁹² When a doctor is trained in survivor-centric and trauma-informed

⁸⁴ Convention against Torture Initiative, Training Tools 1/2017: Investigative Interviewing for Criminal Cases, p. 1.

⁸⁵ Submission from Norway.

⁸⁶ See Principles on Effective Interviewing for Investigations and Information Gathering, May 2021, Principle 2; General Assembly resolution 77/209, para. 16.

⁸⁷ Convention against Torture Initiative, Police Resource Toolkit, Chapter 7.3, Investigating Sexual Crimes, 2024, p. 6.

⁸⁸ Council of Europe, "Working with Survivors of Sexual Violence during Armed Conflict: A Manual for Ukrainian Mental Health and Emergency Response Professionals", 2022, p. 48.

⁸⁹ Istanbul Protocol, para. 283.

⁹⁰ Submission from Benjamin Lucas and Becky Milne.

⁹¹ Ibid.

⁹² Convention against Torture Initiative, Police Resource Toolkit, Chapter 7.3, Investigating Sexual Crimes, 2024, p. 6.

approaches a forensic medical evaluation can lead to validation, relief and hope.⁹³ Embedding psychologists in investigation teams ensures continual assessment and adjustment.⁹⁴

62. If investigators are well trained, the need to reinterview survivors can be avoided, reducing the risk of retraumatization. Focusing questions on the suspects' behaviour helps overcome traditional misunderstandings (such as assigning fault) that focus on victim behaviour.⁹⁵ If the purpose of the interview is to help obtain rehabilitation, remedy or reparation, the interviewer should ask questions about suffering and damages.

63. While in-person interviews are preferred, remote interviewing can be useful in conflict-affected areas or where access to survivors is limited.⁹⁶ Remote interviews should only be done when absolutely necessary, following a comprehensive threat and risk assessment. There should be psychosocial follow-up and other support services.⁹⁷

64. Interviewing children requires additional expertise to account for their cognitive, linguistic and emotional development. The Istanbul Protocol cautions that clinicians without specialized expertise must be cautious in evaluating children.⁹⁸ Authorities should train more individuals to do this work properly, to ensure that this difficult but important step in a child's path to justice and rehabilitation is carried out appropriately.

65. Interviewers of torture victims, including sexual torture, are under significant cognitive and emotional pressure. Both survivors and interviewers need breaks, the presence of a friend or support person, and a safe environment. Recording interviews can relieve the cognitive load on interviewers, as well as providing a more accurate record of testimony and can be key digital evidence at trial. Interviewers can experience secondary trauma through listening to horrific experiences and witnessing the effects of sexual torture.⁹⁹ Interviewers and interpreters may also be experiencing direct trauma associated with the war.¹⁰⁰ High rates of burnout can be reduced through appropriate training and ongoing support.

G. Understanding offender behaviour to strengthen prevention

66. Despite international and national investment in education and training, as well as increasing investigations and prosecutions, the perpetration of wartime sexual crimes and torture continues – far too often with impunity. While accountability for such crimes can have a preventive function, the underlying causes and catalysts of sexual torture need to be fully addressed.

67. Sexual violence against women and girls is attributed to misogyny, inequality, and discrimination. It is perpetuated through legal, social, cultural, economic and religious systems that devalue women and establish male dominance. These drivers of sexual violence, which are present in civilian life in apparently “safe”

⁹³ Submission from Synergy for Justice.

⁹⁴ Submission from Physicians for Human Rights.

⁹⁵ Convention against Torture Initiative, Police Resource Toolkit, Chapter 7.3, Investigating Sexual Crimes, 2024, p. 7.

⁹⁶ Institute for International Criminal Investigations, ICII Guidelines on Remote Interviewing, August 2021, para. 3.

⁹⁷ Institute for International Criminal Investigations, ICII Guidelines on Remote Interviewing, August 2021, para. 6.

⁹⁸ Submission from Synergy for Justice; UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2002, para. 284.

⁹⁹ Submission from Synergy for Justice.

¹⁰⁰ Ibid.

environments, are magnified and unleashed in wartime. Perpetrators use gender norms and power relations to augment suffering on victims.¹⁰¹

68. In conflict situations, there are additional causes that allow torture to be perpetrated, tolerated and even encouraged. These include the political and economic entrenchment of difference and hatred, the selective targeting of victims to foment terror and control, to incite their movement out of certain areas, and to destroy social cohesion. Torture – and its sexual forms – are used as part of political and military strategies to win the war at all costs. Like other forms of torture, it may be used to oppress, subjugate, control and exact revenge. The use or threat of sexual torture may be accompanied by a mistaken belief that it will be effective in eliciting intelligence or a confession. There may also be a perception that this particularly extreme, painful and humiliating form of torture will succeed where other methods have failed.¹⁰² It may be used as a form of threat escalation.

69. Some terrorist entities adopt ideologically motivated policies that authorize certain forms of sexual violence, including sexual enslavement and child marriage, defining who can be targeted and regulating the conditions under which the violence can be perpetrated.¹⁰³ Rape may also be used to “compensate” or “reward” troops, especially when soldiers’ salaries are inadequate.¹⁰⁴ The so-called “comfort women” of the Second World War,¹⁰⁵ rape hotels operated during the war in Bosnia and Herzegovina,¹⁰⁶ and the sexual enslavement of survivors of ISIS, all have this character.

70. Engaging in such appalling acts can be an explicit or implicit component of State military or political strategies. This can be through written or verbal orders, or through language that intentionally signals permission.¹⁰⁷

71. Why torture becomes sexualized can be understood as being rooted in ideologies of male sexual entitlement.¹⁰⁸ War is an extreme break from the norms and values of peacetime.¹⁰⁹ More broadly many military cultures are characterized by pervasive misogyny that encourages a “rape culture”, even towards an army’s own female soldiers.¹¹⁰ During war, masculinity is encouraged with an “us versus them”, or “life and death”, group mentality. Conformity means survival and ostracism leads to death.¹¹¹ Multiple perpetrator rape has been used to build cohesion within units, or create loyalty in units that are made up of forcibly recruited individuals that have no natural cohesion.¹¹²

¹⁰¹ Submission from DIGNITY.

¹⁰² Christopher J. Einolf, Why Do States Use Sexual Torture against Political Prisoners? Evidence from Saddam Hussein’s Prisons, *Journal of Global Security Studies* 3:4, October 2018, p. 419.

¹⁰³ Mara Redlich Revkin and Elisabeth Jean Wood, The Islamic State’s Pattern of Sexual Violence: Ideology and Institutions, Policies and Practices, *Journal of Global Security Studies* 6:2, 2021: p. 15.

¹⁰⁴ Elisabeth J. Wood, Rape During War Is Not Inevitable: Variation in Wartime Sexual Violence, *Understanding and Proving International Sex Crimes*, Torkel Opsahl Academic EPublisher, 2012, p. 414.

¹⁰⁵ See *The Prosecutors and the Peoples of the Asia-Pacific Region v. Showa et al.*, PT-2000-1-T, 31 January 2002.

¹⁰⁶ See *Prosecutor v. Kunarac et al.*, IT-96-23-T & IT-96-23/1-T, 22 February 2001.

¹⁰⁷ Mayesha Alam and Elisabeth Jean Wood, Ideology and the Implicit Authorization of Violence as Policy: The Myanmar Military’s Conflict-Related Sexual Violence against the Rohingya, *Journal of Global Security Studies*, 7:2, 2022, p. 8.

¹⁰⁸ UN Multi-Country Study on Men and Violence, Why Do Some Men Use Violence Against Women and How Can We Prevent It’ (2013).

¹⁰⁹ Inger Skjelsbæk, Responsibility to Protect or Prevent? Victims and Perpetrators of Sexual Violence Crimes in Armed Conflicts, *Global Responsibility to Protect*, 4(2), 2012, p. 164.

¹¹⁰ Helen Benedict, Why Soldiers Rape, *In These Times*, 13 August 2008.

¹¹¹ Susan T. Fiske, Lasana T. Harris, and Amy J.C. Cuddy, Why Ordinary People Torture Enemy Prisoners, *Science*, 306:5701, 26 November 2004, p. 1482.

¹¹² Dara Kay Cohen, Explaining Rape during Civil War: Cross-National Evidence (1980–2009), *American Political Science Review*, 107: 3, August 2013, 461-477.

72. Research on perpetrators in the areas of sexual violence during conflict helps inform our understanding of perpetrators of sexual torture. Only a small minority of perpetrators are sadists and psychopaths.¹¹³ Psychological research has found little evidence that torturers are criminally inclined or mentally ill but shows that social structures, situations and social psychological stressors cause “ordinary people” to become torturers.¹¹⁴ Factors that cause people to become torturers include: obedience to authority, training, manipulation of emotions of fear, anger and revenge, and dehumanization and deindividuation of both torturers and victims.¹¹⁵

73. Any attempt to understand the motives or incentives of perpetrators does not excuse their conduct as a matter of criminal responsibility. Nonetheless, if torture and its sexual manifestations are ever to be fully eradicated, understanding offender behaviour, especially when crimes are committed at scale, is fundamental to preventing torture of all kinds in the future and to ensure that interventions are properly targeted.

H. Recovering from sexual torture

74. Reparations are designed to comprehensively address the damage caused by gross human rights violations and must include rehabilitation for victims of conflict-related sexual torture. In some countries like Bosnia and Herzegovina, Colombia, Côte d’Ivoire and Iraq, there are reparation programmes for survivors of conflict-related sexual violence, although accessing them can be difficult.¹¹⁶

75. In Iraq, the pioneering Yazidi Female Survivors Law of 2021, which provides a reparation framework for Yazidi, Christian, Shabak and Turkmen female survivors of sexual violence and other ISIL crimes, does not (yet) recognize children born of rape as victims eligible for reparation, nor are there procedures for men and boys to apply.¹¹⁷ In Ukraine, there is progress towards a draft reparations law that applies to those who have been subjected to sexual aggression perpetrated by Russian forces and includes support for emergency contraception, safe abortion services, and the opportunity to be tested for sexually transmitted infections.¹¹⁸

76. In 2024, after a long delay, the Government of Chad started to make payments to victims, but so far only 10 per cent of the total amount awarded by the Extraordinary African Chambers has been dispersed.¹¹⁹ The International Criminal Court has recently ordered reparations to be paid to the victims of Dominic Ongwen and held that community-based reparation measures were most appropriate.¹²⁰ El Salvador has a reparations programme for female victims that provides for rehabilitation in the areas of right to health, education, food and participation in economic life.¹²¹ In Kenya, a court ordered reparations owing to the harms caused by the State’s failure to investigate, prosecute, and end impunity for conflict related sexual violence.¹²²

¹¹³ Alette Smeulers, Perpetrators of International Crimes, <https://alettesmeulers.org/en/perpetrators-of-international-crimes/>.

¹¹⁴ Einolf, Why Do States Use Sexual Torture against Political Prisoners? p. 419.

¹¹⁵ Ibid.

¹¹⁶ Submission from Global Survivors Fund.

¹¹⁷ Submission from Jiyun Foundation for Human Right and Coalition for Just Reparations.

¹¹⁸ Submissions from Ukraine and ZMINA Human Rights Center.

¹¹⁹ Submission from REDRESS.

¹²⁰ Ibid.

¹²¹ Submission from El Salvador.

¹²² Submission from Utu Wetu Trust.

77. In the few instances where States have included rehabilitation in their broader reparation programmes there are significant shortcomings. The shortcomings include relying wholly on rehabilitation services that are implemented and paid for by civil society organizations, requiring victims to file or participate in criminal complaints to be eligible or applying unduly high evidentiary standards for them to be eligible. The public health services that are offered may be general rather than specialized. Often programmes are available for a small number of victims. A specific focus on female victims can exclude and therefore dismiss the experiences of other victims. When survivors access services sexual assault survivors are often treated poorly with mocking or further humiliation. There are funding shortfalls and time limits on registration for reparations.¹²³

78. The research conducted for this report indicates that the most effective rehabilitation practices are found at the service provider level in their direct engagement with victims, their families and communities. The Special Rapporteur has identified the effective rehabilitation approaches listed below.

(a) Acknowledgement and recognition: survivors seek acknowledgement as a path to healing. Any reparations laws should provide procedures that are accessible to survivors regardless of sex/gender, age and ethnic or religious group.

(b) Designing responses with victims: adequate, prompt and effective reparation must be a priority for all victims. This allows them to start to rebuild their shattered lives. Feeling heard and being recognized are fundamental to healing. While rehabilitation is a critical component of reparation, victims are also entitled to comprehensive and holistic reparation. In Nigeria, special panels on sexual violence have been established to give victims opportunities to tell their stories which are then investigated and compensation, awarded.¹²⁴ Reparations should be transformative in their design,¹²⁵ implementation and impact. They are best when they address the structural inequalities, gender stereotypes and discrimination, and other factors that are at the root of sexual violence. In Nepal, the sub-committee implementing the national action plan intends to include two conflict-affected women representing both sides of the conflict alongside public officials.¹²⁶ In Kosovo, the establishment of the Commission for the Verification and Recognition of Sexual Violence Victim Status was a source of satisfaction for survivors and played a vital role in acknowledging the trauma they had experienced.¹²⁷

(c) Enabling survivors to seek help without disclosing: support measures can target the typical consequences of torture, including sexual torture in general rehabilitation services. Group counselling sessions can be used to create safe and supportive spaces where survivors can speak about issues that they may not be ready to address with their family or community. For example, in Israel, the health system has provided trauma-focused treatment with the understanding that some victims may seek treatment without declaring they have been sexually assaulted.¹²⁸ In the Syrian Arab Republic, physiotherapists can provide pelvic interventions where gynaecological examinations may not be tolerated or are unavailable.¹²⁹

¹²³ See AL OTH 18/2023 (Kosovo), 1 March 2023, p. 6, <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=27909>.

¹²⁴ Submission from the National Human Rights Commission of Nigeria.

¹²⁵ United Nations, Guidance note of the Secretary-General: Reparations for conflict-related sexual violence, principle 4, June 2014.

¹²⁶ Submission from of Human Rights and Justice Centre and Conflict Women National Network (Nepal).

¹²⁷ Submission from the Kosova Rehabilitation Centre for Torture Victims.

¹²⁸ Submission from Israel.

¹²⁹ Submission from Centre for Victims of Torture.

(d) Tailoring services to the needs and contexts of survivors: rehabilitation services should be holistic¹³⁰ and be developed, implemented and monitored in collaboration with victims. They should be survivor-centred and customized based on factors such as sex/gender, age, health circumstances and the type of harms experienced. Some victims' priorities may be sexual and reproductive health needs.¹³¹ Service providers should ensure both male and female staff are on hand to support survivors. Community outreach and telehealth can ensure geographical reach and privacy for victims who do not want to be identified. In Afghanistan, the decrease in health services and the extreme social stigma associated with survivors means some have had to seek help abroad for medical and psychosocial care.¹³² In Tigray, Ethiopia, service providers are working with some sexual torture victims who have been rejected by their families, helping them to become economically independent.¹³³

(e) Trained professionals: professionals working with victims of sexual torture must be specifically trained in the holistic care of victims. This includes assessing, identifying and understanding the impacts of sexual torture. They should use sensitive language and understand the cultural stereotypes associated with sexual violence against diverse individuals. This understanding must be integrated into clinical practice to prevent victim-blaming and potential re-traumatisation.

(f) Safety and confidentiality: all rehabilitation professionals working with sexual torture victims must prioritize the right to privacy of survivors and their control over their information. The rehabilitation environment must be safe and supportive and should empower survivors.

(g) Children affected by sexual torture: there are additional and specific challenges for children born of rape as a form of torture or related ill-treatment. These factors need to be incorporated into rehabilitation and reparations programmes, such as access to birth certificates, legal identity and nationality. A lack of identification can block access to basic rights, including access to education and health care, property, or inheritance.

III. The Special Rapporteur on Torture's Call for Action: why the torture framework is helpful and applicable

79. The Special Rapporteur considers that the torture framework has strong advantages when considering sexual aggression in wartime and other security situations, especially for victims. There has been much important work on conflict-related sexual violence, yet this crime continues to be committed relentlessly. It is nearly impossible to identify cases of wartime sexual violence that do not amount to severe pain or suffering that characterizes torture or related ill-treatment. The Special Rapporteur clarifies the relevance, applicability and benefits of the international prohibition against torture, as indicated below.

(a) Binding legal framework: the torture prohibition is binding on all States and as such protects victims in ways that the sexual violence framework cannot. Torture is absolutely prohibited under customary international law, and no derogation from it is allowed even in war or other emergencies. The *jus cogens* nature of this crime means there can be no circumstances under which this violence is permissible. An order by a

¹³⁰ Convention against Torture Initiative and Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights, UNCAT Implementation Tool 5/2018, Providing Rehabilitation to Victims of Torture and Other Ill-Treatment, 2018, p. 3; Submission of Lebanese Center for Human Rights.

¹³¹ Submissions from the Centre for Reproductive Rights and Global Justice Center; Global Justice Center, Human Rights Watch, Ipas Impact Network; Physicians for Human Rights.

¹³² Submission from Azadi-e Zan.

¹³³ Submission from Woman's Association of Tigray.

superior officer or a public authority cannot be invoked as a justification of torture. Time limits cannot be imposed on prosecutions or rehabilitation. No one can exercise immunity. Amnesties are inapplicable. Explicit protections for victims and witnesses are identified; while mutual legal assistance between States and obligations to prosecute or extradite are clear. In short, sexual torture perpetrators cannot escape the atrocities that they have committed. They face the highest of penalties.

(b) Inclusivity of the torture framework: Security Council resolution [1325 \(2000\)](#) ex sequentes and the women and peace and security agenda acknowledges that there can be no peace without women's real and meaningful representation and participation in peace processes, rebuilding and security. However, such a focus on women and girls can exclude other victims of wartime sexual and other offences. This exclusion can distort reality, misdiagnose the problems and challenges, and result in partial policies and other responses. Although women and girls are still especially at risk, research increasingly shows that anyone can be at risk of sexual torture in war including civilians, soldiers, women, men, children, and lesbian, gay, bisexual, transgender and intersex individuals. The torture framework is applicable to and recognizes anyone who suffers these forms of severe pain or suffering.

(c) Shame: there is no shame in being a victim of torture. There is no blame on its victims. Framing sexual violence in conflict as sexual torture, redirects the shame from victims to perpetrators where it belongs. Political, religious, and community leaders will also be more able to reduce the shame and stigma of victims by calling out torturers, helping their community support survivors rather than blaming them.

(d) Consent: armed conflict is a coercive environment in which choice and autonomy are severely restricted, and individuals may be subject to various levels of armed control. In such settings, the question of consent is a fraught one, whether dealing with rape, enslavement or other similar acts of sexual aggression. In contrast, the issue of consent is not an element of the international crime of torture, and as such, it is not an element in crimes of wartime sexual torture. This can unburden the legal proceedings and survivors from these superfluous questions.

(e) Evidence-gathering, interviewing and investigations: in sexual violence in conflict, as in torture, testimonial evidence is frequently the primary evidence. If investigators are only focused on forensics, the context of what has happened may be lost. Following established best practices for torture interviewing and investigations will help ensure that the full range of crimes perpetrated are established and prosecuted. Sexual torture is rarely an independent act. It is often an escalation, and individuals need to be able to talk freely about all the violations they have experienced to ensure their full story is told, and perpetrators are held accountable for the full range of crimes.

(f) Rehabilitation: there are very few treaties that have an obligation to rehabilitate. Article 14 of the Convention against Torture provides a right for victims to rehabilitation and compensation. The obligations are explicit and clear.

IV. Recommendations

80. The Special Rapporteur refers States to the recommendations outlined in her previous report [A/HRC/52/30](#). In addition, the Special Rapporteur recommends that:

(a) Political, military, religious, and community leaders speak out against wartime sexual torture by issuing public statements recognizing and helping to destigmatize all survivors, and transferring the shame to where it belongs, on perpetrators, including by criminalizing, investigating, prosecuting and punishing them.

(b) Survivors, as rights-holders, should not only be consulted but instead be considered as co-creators of all policies and laws that affect them.

(c) Legislation (military and civil) should cover the spectrum of sexual and other torture-related crimes. Explicit references to sexual forms of torture be established. Cumulative charging should be permitted as it reflects the true extent of the criminal conduct.¹³⁴

(d) States and militaries adopt a zero-tolerance policy on torture including sexual violations; disciplinary codes to be endorsed by every soldier and officer and inculcated through behaviour emulation and leadership; educate soldiers and officers on the causes, consequences and prohibitions of torture, including that rape and other sexual violations of all kinds constitute torture or other intentional crimes; promote the recruitment of more female soldiers and officers; and prohibit the admission of soldiers and officers with backgrounds of domestic or sexual violence.

(e) All public authorities interacting with survivors treat them with respect and recognition, and complaints procedures and disciplinary measures are in place to deal with authorities who disrespect survivors.

(f) Investigative teams adopt working methodologies that assume there will be cases of sexual torture, and develop indicators to help identify the scale and extent of violations and appropriate responses; allegations of sexual violence (both physical and psychological) are to be documented as torture or other torture-related crimes in line with the Istanbul Protocol; medical reports consistent with the Istanbul Protocol are accepted by courts; medico-legal teams are equipped with rape kits and other forensic testing materials; and victims have safe and confidential access to prophylactics and full reproductive health services, including abortion services and testing for HIV, sexually transmitted infections and pregnancy.

(g) Interviewers and interpreters are trained and certified in the Principles on Effective Interviewing for Investigations and Information Gathering (Mendez Principles) and the Global Code of Conduct for Gathering and Using Information about Systematic and Conflict-Related Sexual Violence (Murad Code), noting the specialist requirements for interviewing survivors and witnesses of sexual torture; and protections for consent, confidentiality and anonymization of information are adopted.

(h) Reparations laws be adopted and funded that provide reparations and rehabilitation for all survivors of torture and other similar rights violations.

(i) All protection, medical and legal support services are available at one location in an integrated manner to reduce the burden on survivors to drive the process themselves, and such services should not be contingent on disclosure of sexual torture.

(j) States enhance inter-State cooperation, including by implementing the mutual legal assistance provisions in article 9 of the Convention against Torture.

(k) The various actors (international and national) engaged in gathering information about wartime crimes coordinate their activities to minimize re-traumatizing survivors and reducing the likelihood of statements that may be later assessed as being inconsistent.

(l) States conduct further research into perpetrator behaviour and commit to establishing all measures to address root causes and catalysts.

¹³⁴ Submission from the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women).