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## Commission on Crime Prevention and Criminal Justice

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Item 7 of the provisional agenda\*

**Use and application of United Nations standards  
and norms in crime prevention and criminal justice**

### **Statement submitted by International Association of Democratic Lawyers (IADL), a non-governmental organization in special consultative status with the Economic and Social Council\*\***

The Secretary-General has received the following paper, which is being circulated in accordance with paragraphs 36 and 37 of Economic and Social Council resolution 1996/31.

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\* [E/CN.15/2023/1](#).

\*\* Issued without formal editing.



## **The issue of torture inflicted by non-State actors as addressed by domestic laws**

On 6 May 2022, the Working Group on gender-based violence as a form of torture inflicted by non-State actors (the Working Group), established within the Alliance of NGOs on Crime Prevention and Criminal Justice (the Alliance), through the International Association of Democratic Lawyers (IADL), presented the paper “Addressing gender-based violence as torture inflicted by non-State actors”,<sup>1</sup> circulated in accordance with paragraphs 36 and 37 of the Economic and Social Council resolution 1996/31 to the Commission on Crime Prevention and Criminal Justice.

In the paper, the Working Group highlighted the urgent need for the international community to pay attention to the expanding issue of gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, as a form of torture. The worsening environment surrounding victims of non-State torture has recently changed with an increase in torture inflicted as a criminal means to threaten the lives, mostly of women and girls, by organized armed groups, private military and security contractors, mercenaries, foreign fighters and other non-State actors such as family, human traffickers, exploiters involved in sexualized exploitation, and in cyber-pornographic crimes.

Non-State torture is a practice that severely affects the lives of women and girls around the world. The linkage between gender-based violence and torture has been highlighted by experts, including by the Special Rapporteurs on Torture and Other Inhuman and Degrading Treatment and on Violence against Women, and in recommendations by the CEDAW (Nos. 19 and 35). There is a need for approaches that can take significant steps in closing accountability gaps and providing for opportunities to identify and protect victims.

The Working Group is in the process of documenting research towards a model strategy to promote global awareness to end non-State torture crimes, especially against women and girls. This includes analysing definitions of torture, gender-based violence and femicide, existing domestic laws and international regulations, and connections with the international framework of standards and norms as well as the Kyoto Declaration.

Based on that, the Working Group has been conducting a legal mapping and analysis of domestic provisions criminalizing torture. The research has been mostly focused on provisions of criminal codes, torture laws and femicide laws from selected countries in Latin America with a view to compile best practices and approaches adopted by countries when criminalizing torture with a view to expand the basic elements provided by article 1 of the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), which are: (i) an act by which severe pain or suffering, whether physical or mental; (ii) intentionally inflicted on a person; (iii) 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; and (iv) 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.

The preliminary findings of this research show that, albeit many of the domestic laws reviewed are tied to the state involvement requirement provided by article 1 of the CAT, a few national laws across the region recognize the role of non-State actors as possible perpetrators of torture to some extent.

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<sup>1</sup> E/CN.15/2022/NGO/6.

A few areas for States to consider:

- **Revise domestic laws criminalizing torture** – Some States when criminalizing torture strictly refer to the elements provided by the UNCAT which limits the scope of application of the crime of torture when there is a “State nexus”. This wording, de facto, leaves out large numbers of victims of various forms of torture, especially gender-based violence, if perpetrators are non-State actors.
- **Understand what private actors are covered by the legislation** – A few national laws recognize the role of non-State actors as possible perpetrators of torture: some States have chosen the wording “any person”, some other States have used “whoever”. Some legislations that criminalize non-State torture as a separate offence use the wording “private individual” as opposed to “Public Official” or “public servant”. However, it is not clear who are the private actors covered by these laws.
- **Reflect whether there is a need to differentiate in sanctions** – It’s not uncommon for legislations to provide with a different punishment for State and non-State actors, recognizing the element of direct involvement of the institutions as an aggravating factor, rather than a required element to identify the crime.
- **Expand or eliminate the “special aim” requirement** – The approach taken by many national provisions has significantly broadened this element in recognizing torture when the conduct is conducted by “any other purpose”, expanding the range of possibilities for crimes of torture provided by article 1.
- **Inclusion of non-discrimination clauses, gender-based violence and violence of a sexual nature as forms of torture** – It is otherwise important to note that several domestic provisions have taken into account language that reflects the attention given to underrecognized and underreported harmful exploitative practices and mentioning specific forms of discrimination such as discrimination based on gender-identity and ill-treatment of indigenous people. Other considered provisions criminalize the violation of sexual freedom, and sexual violence as forms of torture.

The Updated Model Strategies and Practical Measures in crime prevention and criminal justice responses to violence against women and girls<sup>2</sup> stress States’ due diligence obligations to promote and protect their human rights and fundamental freedoms, taking measures to prevent, investigate, and punish non-State torturers, to eliminate their impunity, and to provide protection to women and girls. In the UNCAT-Commentary,<sup>3</sup> authors have interpreted Article 1 CAT in a fairly broad manner by applying the general State obligations to respect, protect and fulfil human rights. The obligation to protect implies that States have a general obligation to protect human beings against being tortured by non-State actors. Some States have indeed expanded the criminalization of torture, creating more spaces for prosecuting non-State actors, and enabling victims to seek redress for human rights violations.

The Working Group, while continuing its research, invites Member States to consider a declaration that addresses gender-based violence as a form of torture by non-State actors. This could result in a model strategy to promote global awareness and concrete actions to effectively prevent and eliminate gender-based violence. In particular, the Working Group calls on States:

- To take into account that as long as a substantial part of the world’s population is oppressed, abused and even killed within their homes, the promises of the

<sup>2</sup> Updated Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice. [A/RES/65/228](#) of 31 March 2011, annex.

<sup>3</sup> *The United Nations Convention Against Torture and its optional protocol: a commentary*. Edited by Manfred Nowak, Moritz Birk, and Giuliana Monina, 2nd edition. Oxford: Oxford University Press, 2019.

Universal Declaration of Human Rights and the 2030 Agenda for Sustainable Development would remain a far cry from reality; [E/CN.15/2022/NGO/6](#);

- To achieve the Sustainable Development Goals to eliminate violence against women and girls (5.1–5.2), to end forced labour, slavery, and trafficking (8.7), and the exploitation and torture of children (16.2);
- To recognize the States' obligation to broaden the scope of the definition of torture in their domestic criminal codes;
- To consider describing domestic violence as a form of torture, in order to explain both the purpose of abuse and its full pattern.

The Working Group is ready to continue to be of assistance to Member States for the development of a draft declaration as a further contribution to address gender-based violence as a form of non-State torture.<sup>4</sup>

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<sup>4</sup> The full report of the study (work in progress) can be requested at [WG-NST@crimealliance.org](mailto:WG-NST@crimealliance.org).