

In 1948, the international community, convinced that torture was one of the most serious violations of human rights, included a firm prohibition of torture and other cruel, inhuman or degrading treatment in the **Universal Declaration of Human Rights**. Over the decades, several UN human rights instruments, declarations, resolutions and reports have expressed a commitment to prevent and combat torture in all its forms and manifestations. Yet, as established in the 1984 **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, these behaviours are sanctioned “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” (Art. 1, para. 1). 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.

For the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment to retain its practical relevance, it has to provide for practical protection against violations relating to torture against women or girls on the part of non-State actors. In spite of the prohibition of torture and ill-treatment itself, the vast majority of those responsible for perpetrating, instigating, consenting or acquiescing to torture or ill-treatment are still not being held to account.

NON-STATE TORTURE: An increasing and more acute phenomenon

The worsening environment surrounding victims of non-State torture has recently changed with an increase in 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 violence violates and impairs full enjoyment of all human rights of victims and survivors who are predominantly women and girls.ⁱ

The COVID-19 Pandemic has also changed the landscape: For example, the scale of torture against children including girls has increased on a global level; therefore posing a barrier to achieve OR in achieving Sustainable Development Goal target 16.2ⁱⁱ or complying with article 37 of the Convention on the Rights of the Child.ⁱⁱⁱ These crimes now often include very young children including infants as victims of non-State torture. According to the most recent Europol report^{iv}, online child sexual abuse in the European Union has increased and has become one of the top cybercrime threats, possibly as a result of the lockdown measures put in place during the COVID-19 pandemic.^v

Millions of migrants, asylum-seekers, refugees are affected by conflict or displaced by climate change and natural disasters. Many of them, especially women and girls, were also at high risk of being subjected to torture.

Is this the legacy the UN or its Member States want to leave for future generations?

A group of independent UN human rights experts have already signaled the need to change the direction of this existing legacy and insisted that the UN address this issue on a urgent basis. They observed that the climate of impunity regarding the pervasiveness of armed non-State actors’ involvement worldwide – during both armed conflict and other situations of violence – continued to sustain and proliferate practices of torture and ill-treatment, they considered it imperative that existing international legal protections be effectively implemented to safeguard the human rights of individuals and groups. They arrived at this

ⁱ Paper drafted by the Working Group on Non-State Torture of the Alliance of NGOs on Crime Prevention and Criminal Justice, November 2022

conclusion irrespective of the status or character of the perpetrator as human rights protection was not exclusive to a specific territory. Victims must be in a position to seek redress for violations or abuses of their rights regardless of the actor at the origin of their grievance.^{vi}

WHY WE NEED A DECLARATION

- Steps taken by the mandate to combat torture have focused almost entirely on States as potential perpetrators ignoring the hidden crimes committed by non-State actors and its invisible victims.
- Torture by non-State actors in all its different forms and manifestations worldwide, remains underrecognized and underreported, owing to social stigma and inadequate reporting and response services, as well as its pervasiveness, which reflects discriminatory norms that reinforce stereotypes and gender inequality and the corresponding impunity and lack of accountability.
- The environment surrounding victims of non-State torture has recently changed for the worse necessitating urgent action by States to fulfill their obligation, at all levels, to promote, protect and respect all human rights and fundamental freedoms for *everyone*^{vii} by exercising due diligence to prevent, investigate, prosecute and hold to account the perpetrators of all forms of torture.
- Identifying non-State torture helps to prevent the many forms of femicides worldwide as torture by non-State actors is a risk indicator of such misogynistic killings^{viii} and of deaths by suicide.
- A declaration on non-State torture would empower States to fulfill their obligation, at all levels, to protect, prevent, investigate, prosecute and hold to account the perpetrators of all forms of torture and eliminate impunity as well as provide for effective access to appropriate protection, remedies and reparations on a national basis for victims and survivors, in order to avoid revictimization and to promote an empowering environment and to achieve the SDG targets.^{ix}
- It would contribute to the enjoyment of human rights and fundamental freedoms by all victims and survivors of such violence,^x consistently with the mandate of international standards and norms, upholding the rule of law and reducing inequalities.

ⁱ **A/RES/76/304** International Cooperation for access to justice, remedies and assistance for survivors of sexual violence, September 2022 Preamble; **A/76/168** Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer July 16, 2021 Para 12

ⁱⁱ SDG Target 16.2: ending abuse, exploitation trafficking and all forms of violence against and torture of children so that no one is left behind; children in particular

ⁱⁱⁱ **E/CN.4/RES/1990/74** Art 37 (a) “No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;”

^{iv} Internet Organized Crime Threat Assessment, 2021

^v See also **A/77/140** Sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material 2022

^{vi} [Joint Statement by independent United Nations human rights experts on human rights responsibilities of armed non-State actors](#), 25.2.2021

^{vii} Universal Declaration on Human Rights, 1948, Art. 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

^{viii} **A/RES/68/191** Taking action against gender-related killing of women and girls

^{ix} Achieving SDG targets 16.1: reducing all forms of violence and related deaths everywhere; 16.2: ending abuse, exploitation trafficking, and all forms of violence against and torture of children so that no one is left behind; 16.3: ensuring equal access to justice for all; 16.4: combating all forms of organized crime; 16.8: preventing violence, combating terrorism and crime; 4.8: ensuring non-violence in schools; 5.1, 10.2 and 10.3: eliminating all forms of discrimination against women and girls everywhere; 5.2. eliminating all forms of violence against all women and girls in the public and private sphere including trafficking, sexual and other types of exploitation; 8.7: eliminating all harmful practices such as FGM and child early and forced marriage(5.3), and modern slavery including the worst forms of child labor.

^x **A/RES/76/304** International Cooperation for access to justice, remedies and assistance for survivors of sexual violence September 2022 Preamble.

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