

Mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Ref.: AL SYR 1/2024

(Please use this reference in your reply)

14 June 2024

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 52/7.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning the alleged use of torture and other cruel, inhuman or degrading treatment or punishment in the Syrian Arab Republic; and the reported lack of implementation of the provisional measures ordered by the International Court of Justice in November 2023, requiring the Syrian Arab Republic to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment; to ensure no one under its control commits such acts; and to take effective measures to ensure the preservation of evidence related to any allegation in this regard.

According to the information received:

On 8 June 2023, Canada and the Kingdom of the Netherlands filed a joint application instituting proceedings against the Syrian Arab Republic before the International Court of Justice (the "Court" of "ICJ"), concerning alleged violations of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "CAT").¹

Canada and the Netherlands contend that "Syria (...) committed countless violations of international law, beginning at least in 2011, [which] include[d] the use of torture and other cruel, inhuman or degrading treatment or punishment (...), including through abhorrent treatment of detainees, inhumane conditions in places of detention, enforced disappearances, the use of sexual and gender-based violence, and violence against children".²

They also claimed that "[t]hese violations (...) include the use of chemical weapons which ha[d] been a particularly abhorrent practice to intimidate and punish the civilian population, resulting in numerous deaths, injuries and severe physical and mental suffering".³

Canada and the Netherlands called on the ICJ to indicate provisional measures in order to "(...) protect the lives and physical and mental integrity of

¹ See Canada and the Kingdom of the Netherlands jointly institute proceedings against the Syrian Arab Republic and request the Court to indicate provisional measures: <https://www.icj-cij.org/sites/default/files/case-related/188/188-20230612-PRE-01-00-EN.pdf>

² *Ibid.*

³ *Ibid.*

individuals within Syria who are currently, or are at risk of, being subjected to torture and other cruel, inhuman or degrading treatment or punishment”.⁴

On 16 November 2023, the ICJ ordered provisional measures indicating that the Syrian Arab Republic shall, in accordance with its obligations under the CAT, take all measures necessary to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment; to ensure that its officials and any organizations or persons subject to its control, direction or influence, would not commit any such acts; and to prevent the destruction, and ensure the preservation of any evidence related to allegations of acts within the scope of the CAT.⁵

Among the information available before it, the Court had various reports of the Independent International Commission of Inquiry on the Syrian Arab Republic (the “Commission”), established by the Human Rights Council in 2011.⁶

Over the years, the Commission determined that torture and other acts of cruel, inhuman or degrading treatment or punishment in detention facilities operated by the Syrian authorities have been carried out in a systematic manner, leading to extensive deaths in detention.⁷

In its latest report dated February 2024, covering the period 1 July to 31 December 2023, the Commission affirmed that the Syrian Government had continued to engage, *inter alia*, in the practice of torture and ill-treatment, confirming continuing patterns of crimes against humanity.⁸

In the report, the Commission also referred to the abolition of military field courts through Legislative Decree no. 32, adopted by the Syrian Government in September 2023, noting, however, the lack of clarity on the fate of those sentenced by such courts; on how detainees and their families would be

⁴ *Ibid.*

⁵ See Application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and the Netherlands v. Syrian Arab Republic), Request for the indication of provisional measures: <https://www.icj-cij.org/sites/default/files/case-related/188/188-20231116-sum-01-00-en.pdf>

⁶ See <https://www.ohchr.org/en/hr-bodies/hrc/iici-syria/independent-international-commission>

⁷ See, *inter alia*, report A/HRC/54/58:

<https://documents.un.org/doc/undoc/gen/g23/155/49/pdf/g2315549.pdf?token=Lng0inBfjNaayCNNde&fe=true>; A/HRC/52/69:

<https://documents.un.org/doc/undoc/gen/g23/010/21/pdf/g2301021.pdf?token=6kgZMUBrRwcxbOWHo7&fe=true>; Conference Room Paper, “No End in Sight”: Torture and ill-treatment in the Syrian Arab Republic 2020-2023, (A/HRC/53/CRP.5): <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coisyria/A-HRC-53-CRP5-Syria-Torture.pdf>; report A/HRC/46/55:

<https://documents.un.org/doc/undoc/gen/g21/059/73/pdf/g2105973.pdf?token=FwujGD2KXxvW07XkmR&fe=true>; Conference Room Paper, “I lost my dignity: sexual and gender-based violence in the Syrian Arab Republic”, (A/HRC/37/CRP.3): <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-37-CRP-3.pdf>; and Conference Room Paper, “Out of sight, out of mind: deaths in detention in the Syrian Arab Republic”, (A/HRC/31/CRP.1):

https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-31-CRP1_en.pdf.

The Court also noted that, in resolution 77/230 of 15 December 2022, the General Assembly “[d]eplore[d] and condemn[ed] in the strongest terms the continued widespread and systematic gross violations and abuses of human rights and fundamental freedoms” in the Syrian Arab Republic, including “torture, systematic sexual and gender-based violence, including rape in detention, and ill-treatment, other violations and abuses of human rights, including those of women and children:

<https://documents.un.org/doc/undoc/gen/n22/764/98/pdf/n2276498.pdf?token=4khDDpcy98HCwHVt9X&fe=true>

⁸ See report A/HRC/55/64:

<https://documents.un.org/doc/undoc/gen/g24/012/73/pdf/g2401273.pdf?token=XMvacAoInRXqOlwYOb&fe=true>.

informed of the reform's impact on their individual situations; and on how the preservation of the courts' archives would be ensured.⁹

Additionally, since May 2011, the mandate of the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment submitted either individually or jointly with other Special Procedures mandate holders, approximately 30 communications to the Syrian Arab Republic involving allegations of torture and related ill-treatment, including numerous alleged victims. The Government of the Syrian Arab Republic thus far replied to eight such communications.¹⁰

- ⁹ On 3 September 2023, the Government of the Syrian Arab Republic issued Legislative Decree No. 32, which abolished the military field courts and ordered the transfer of all cases pending before such courts to the military justice. On this, see also Human Rights Committee, Replies to the list of issues in relation to the fourth periodic report of the Syrian Arab Republic (CCPR/C/SYR/RQ/4): <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=60kG1d%2FPPrICAqhKb7yhsnw0zosi9SCwbphFLaINeqo%2FYi6PKu%2B%2BdacRpasuPQfbKsVbCtVBgkeLj7hbzC%2FK7fj5CVEZYJvaGesvpKYqLicIrla2fgzy%2Fwv1ram2EDH>; Commission's report A/HRC/55/64, quoted above, where the Commission found that proceedings before military field courts had been characterised by the complete absence of fair trial guarantees, arbitrariness, secrecy, disregard for the right to defence, and reliance on confessions extracted under torture; and that persons tried by field courts had often been forcibly disappeared; and A/HRC/31/CRP.1, quoted above.
- ¹⁰ See JAL SYR 5/2020 of 6 November 2020: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25666>; JAL OTH 74/2020 of 6 November 2020: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25668> – the Government's replies can be found at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35873>; <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35875>; and <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=35876>; JAL SYR 4/2020 of 15 October 2020: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25635>; JUA SYR 3/2018 of 23 November 2018: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24215>; JUA SYR 1/2018 of 13 July 2018: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23951>; JUA SYR 2/2015 of 22 October 2015: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=19193> – the Government's replies can be found at: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=32298>; and <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=32297>; JUA SYR 8/2014 of 21 November 2014: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=19197>; JAL SYR 5/2014 of 20 May 2014: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21847> – the Government's reply can be found here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=30996>; JUA SYR 3/2014 of 31 January 2014: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21843>; JUA SYR 2/2014 of 22 January 2014: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18048> – the Government's reply can be found here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=31604>; JUA SYR 1/2014 of 20 January 2014: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18397> – the Government's reply can be found here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=32497>; JUA SYR 4/2013 of 16 August 2013: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22011>; JUA SYR 3/2013 of 28 June 2013: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=15275> – the Government reply can be found here: <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=31357>; JUA SYR 2/2013 of 13 May 2013: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22010>; JAL SYR 1/2013 of 21 February 2013: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18042>; JUA SYR 11/2012 of 23 November 2012: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21835> – the Government's reply can be found here:

It is alleged that, thus far, the Government of the Syrian Arab Republic has taken no steps to implement the provisional measures ordered by the ICJ in November 2023. As a result, it is reported that the use of torture and other cruel, inhuman or degrading treatment continues to be practiced widely, and the physical and psychological health and lives of thousands of individuals deprived of liberty in detention centres operated by the Government remain at risk.

It is also feared that important evidence of acts of torture and other human rights violations may have been destroyed, particularly as a result of the abolition of military field courts which has reportedly not been accompanied by clear provisions regulating the fate of cases pending before such courts, their records and archives.

Without prejudging the accuracy of the above-mentioned allegations, the ICJ's order for provisional measures to prevent torture and other ill-treatment and to preserve evidence of any such crimes is an important action towards promoting accountability and justice for victims and survivors. The provisional measures have been indicated based on considerations of urgency and are binding upon the Syrian Arab Republic. Given the urgency of such measures, I implore the Government of the Syrian Arab Republic to effectively implement the provisional measures without delay.

Should the allegations be established, they would amount to a violation of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, a *jus cogens* norm, set forth in article 5 of the Universal Declaration of Human Rights (UDHR); article 7, read alone and in conjunction with article 2(3) of the International Covenant on Civil and Political Rights (ICCPR), acceded to by the Syrian

<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=31415>; JUA SYR 9/2012 of 2 November 2012: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18666> – the Government's reply can be found here:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gId=31069>; JUA SYR 8/2012 of 21 September 2012: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18183>; JAL SYR 6/2012 of 28 June 2012:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21848>; JUA SYR 5/2012 of 8 May 2012:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=17853>; JUA SYR 4/2012 of 27 March 2012:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22710>; JUA SYR 2/2012 of 20 February 2012:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18179>; JAL SYR 15/2011 of 21 October 2011:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18045>; JUA SYR 13/2011 of 30 August 2011:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18398>; JUA SYR 10/2011 of 10 August 2011:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18137>; JUA SYR 9/2011 of 4 August 2011:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=17858>; JUA SYR 8/2011 of 3 August 2011:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=21090>; JAL SYR 6/2011 of 29 June 2011:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18053>; JUA SYR 7/2011 of 17 June 2011:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18181>; and JUA SYR 5/2011 of 26 May 2011:
<https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=18141>.

Arab Republic in 1969; and at least, articles 1, 2, 15 and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), acceded to by the Syrian Arab Republic in 2004.

I emphasize that no derogation from such prohibition is ever possible, even in times of armed conflict or any other security situation or state of emergency (article 4(2) of the ICCPR; and article 2(2) of the CAT).

Under international human rights law, the Syrian Arab Republic has an obligation to establish all acts of torture as offences under domestic law (article 4 of the CAT),¹¹ to exercise jurisdiction over said offences (article 5 of the CAT), to receive complaints and examine them promptly and impartially (article 13 of the CAT), and to investigate those allegations promptly and impartially (article 12 of the CAT).¹² Defendants cannot rely on orders of a superior or public authority, or states of emergency, to exonerate their actions (art. 2 (3) and 2(2) of the CAT); statutes of limitations, immunities or amnesties, are also considered contrary to the non-derogable nature of the prohibition.¹³ Prosecutors and courts have a duty to refuse evidence obtained, or suspected of having been obtained, through torture (article 15 of the CAT).¹⁴ Victims must be protected from reprisals or intimidation during investigations (article 13 of the CAT) and they have an enforceable right to fair and adequate compensation, including as full rehabilitation as possible (article 14 of the CAT).¹⁵

Under international humanitarian law, the Syrian Arab Republic similarly has a duty to enact legislation to provide penal sanctions for persons committing, or ordering to be committed, torture and inhuman treatment; to search for such persons and to bring them to justice; and to prosecute suspects of acts of torture as having committed grave breaches under universal jurisdiction, which is considered obligatory.¹⁶

The obligation to prosecute or extradite alleged perpetrators of torture as a war crime or crime against humanity is also considered to form part of customary law, applicable within the context of both an international and non-international armed conflict. This requires the Syrian Arab Republic to establish jurisdiction and investigate war crimes and crimes against humanity allegedly committed by its nationals or armed forces, or on its territory, and, if appropriate, to prosecute the suspects.¹⁷ Customary law establishes that soldiers have a duty to disobey orders of a superior for grave

¹¹ The Special Rapporteur is aware of the Syrian Anti-Torture Law No.16, issued in March 2022 and may provide an analysis of such law in future. At this stage, however, the Special Rapporteur wishes to recall the issues raised by the Human Rights Committee, and the replies submitted in response by the Government of the Syrian Arab Republic. See, in particular, CCPR/C/SYR/Q/4

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FSYR%2FQ%2F4&Lang=en; and CCPR/C/SYR/RQ/4, quoted above, respectively.

¹² See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Good practices in national criminalization, investigation, prosecution and sentencing for offences of torture (A/HRC/52/30):

<https://documents.un.org/doc/undoc/gen/g23/033/16/pdf/g2303316.pdf?token=clzfg4HLIHmm6KknXQ&fe=true>

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ *Ibid.*

breaches and that there is no relief for following superior orders.¹⁸ Also considered customary norms are the rules against amnesties and statutes of limitation.¹⁹

Within this context, I recall that persons deprived of liberty must always be treated in a humane manner and with respect for their inherent dignity. They shall always have access, *inter alia*, to effective legal representation and adequate medical assistance; to prompt judicial review of their deprivation of liberty; to remedies for any violations. They should also have the possibility to communicate with a lawyer of choice, their relatives and to be visited by independent human rights monitoring bodies. In case of foreigners, they shall be promptly informed of their right to communicate with a consular post or the diplomatic mission of the State of which they are nationals. Persons deprived of liberty also have the right to be informed at the time of arrest of the reasons for their arrest, and subsequently of any charges brought against them. If not promptly charged or convicted of any crime, they should be released.²⁰ Family members should be informed of the location of where their relatives are being held, and in the event of release and/or death.

Inadequate conditions of detention and standards of treatment may constitute violations of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. When such conditions are seriously inadequate, they may further present an immediate or longer-term danger to life.²¹

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on measures taken to implement the provisional measures ordered by the International Court of Justice in November 2023, including with regard to the preservation of and public accessibility to the records and archives of the military field courts.

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ See, *inter alia*, the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (A/RES/70/175), also known as “Nelson Mandela Rules”: <https://www.un.org/en/un-chronicle/nelson-mandela-rules-protecting-rights-persons-deprived-liberty>; as well as the Basic Principles for the Treatment of Prisoners (A/RES/45/111): <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-treatment-prisoners#:~:text=All%20prisoners%20shall%20be%20treated,property%2C%20birth%20or%20other%20status>. See, further, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Current Issues and Good Practices in Prison Management (A/HRC/55/52): <https://www.ohchr.org/en/documents/thematic-reports/ahrc5552-current-issues-and-good-practices-prison-management-report>

²¹ See Report of the United Nations High Commissioner for Human Rights, Human rights in the administration of justice (A/HRC/42/20): https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/42/20

3. Please provide information on any legislative, administrative, judicial, diplomatic or other measures taken, or envisaged to be adopted, to effectively prohibit and prevent acts of torture and other cruel, inhuman or degrading treatment or punishment and their recurrence, as required by the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
4. Please provide detailed and updated information on the number and status of investigations raising allegations of torture and/or other cruel, inhuman or degrading treatment or punishment, opened since 2011, disaggregated by gender/sex, age and other relevant demographics. Within this context, please provide information on any cooperation with international investigations undertaken within the United Nations system; by individual Member States; or States parties to relevant international treaties, including in respect of universal jurisdiction.
5. Please provide information regarding the methods and procedures for the carrying out of investigations into allegations of torture and/or other cruel, inhuman or degrading treatment or punishment and whether, or how, international standards are being complied with, including the Istanbul Protocol (Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2022 edition).
6. Please provide details of any judgments rendered by the courts since 2011, in respect of judicial proceedings (both criminal and/or civil) involving torture and/or other cruel, inhuman or degrading treatment or punishment, including with regard to persons in positions of command. Please provide details of the sentences and/or other penalties that have been applied; and any remedies for victims.
7. Please provide information as to the directives, policies and laws applicable to members of the Syrian military and state security forces to prevent the commission of acts of torture and other cruel, inhuman or degrading treatment or punishment, including training and education protocols (article 10 CAT) and reviews of interrogation and custody rules (article 11 CAT), including those applicable in armed conflict. Please provide information about the number of officials who have been disciplined since 2011, if any, for what charge, and the discipline imposed.
8. Please provide a substantive reply to those communications sent by special procedures since 2011 that thus far have been left without a response (see footnote 10). If it is not possible to provide a reply, please explain the reasons why.

I would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

In particular, I respectfully call on your Excellency's Government to consider allowing immediate access to international human rights and humanitarian observers to all places of deprivation of liberty, so that their location and conditions of detention may be independently verified, without delay. I stand ready to support your Excellency's Government's efforts in this regard.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please be informed that a copy of this letter will be sent to the Permanent Mission of Canada and to the Permanent Mission of the Kingdom of the Netherlands to the United Nations Office and other international organizations in Geneva.

Please accept, Excellency, the assurances of my highest consideration.

Alice Jill Edwards
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Annex

Reference to international human rights and international humanitarian law

In connection with above alleged facts and concerns, I refer your Excellency's Government to the following applicable international human rights law and international humanitarian law provisions and standards:

Article 5 of the Universal Declaration of Human Rights (UDHR); article 7, read alone and in conjunction with article 2(3), of the International Covenant on Civil and Political Rights (ICCPR); and at least, articles 1, 2, 15 and 16 of the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), which establish the absolute and non-derogable prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

As mentioned, attached to such prohibition are obligations to criminalize and investigate all acts of torture and/or other cruel, inhuman or degrading treatment or punishment, to prosecute suspects, to punish those responsible and to provide remedies to victims.²²

As a State party to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Syrian Arab Republic has explicit duties to establish all acts of torture as offences under domestic law (article 4), to exercise jurisdiction over said offences (article 5), to receive and examine complaints promptly and impartially (article 13), and to effectively investigate those allegations (article 12). Defendants cannot rely on orders of a superior or public authority, or states of emergency, to exonerate their actions (articles 2(3) and 2(2)), while any legal mechanisms which interfere with that obligation, such as statutes of limitations, immunities or amnesties, are considered contrary to the non-derogable nature of the prohibition (article 2(2)). Amnesties provided at domestic law do not remove criminal liability pursuant to international tribunals or universal jurisdiction. Prosecutors and courts have a duty to refuse evidence obtained, or suspected of having been obtained, through torture or other illicit means (article 15). Victims are to be protected from reprisals or intimidation during said investigations (article 13) and they have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible (article 14). States are to establish jurisdiction over all acts of torture on territoriality, flag State, active nationality, passive nationality and universal jurisdiction principles (article 5).²³

The CAT further imposes duties to extradite alleged offenders when they are not prosecuted (articles 5(2) and 7(1)). At no time shall torture be used to extract information or a confession (article 1), and any statement which has been obtained via

²² For a full explanation of the obligations to criminalize, investigate and prosecute the crimes of torture and related ill-treatment, see Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/77/502): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/610/77/PDF/N2261077.pdf?OpenElement> ; see also A/HRC/52/30, quoted above.

²³ See A/HRC/52/30 quoted above.

such methods, shall be excluded from any proceedings except against a person accused of torture as evidence that the statement was made (article 15).²⁴

States parties to the CAT have overarching obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment via effective legislative, administrative, judicial and other measures (articles 2 and 16), to educate and train relevant personnel including military officials on the prohibition (article 10) and to keep all rules, instructions, methods and practices relating to interrogation, custody and treatment under systematic review (article 11).²⁵

Article 10(1) of the ICCPR establishes that persons deprived of liberty must be treated with humanity and with respect to the inherent dignity of the human being; while articles 10(2) provides certain standards of treatment. The standards of conditions and treatment of persons deprived of their liberty are further contained in the UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), which establish that all prisoners shall be treated with dignity and no prisoner shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.²⁶

Under international humanitarian law, torture and other cruel, inhuman or degrading treatment or punishment is also absolutely prohibited. The main instruments include: the 1907 Hague Regulations respecting the Laws and Customs of War on Land (art. 4); the four Geneva Conventions of 1949 (Geneva Convention I, article 12; Geneva Convention II, article 12; Geneva Convention III, articles 13, 17 and 87; Geneva Convention IV, articles 27 and 32; common article 3 of Geneva Conventions I-IV and articles 50, 51, 130 and 147 respectively; Additional protocol I of 1977 (art. 75(2)(a)(ii)); and Additional protocol II of 1977 (art. 4(2)(a)).

Article 17, fourth paragraph, of the 1949 Geneva Convention III provides that: “No physical or mental torture, nor any other form of coercion, may be inflicted on prisoners of war to secure from them information of any kind whatever. Prisoners of war who refuse to answer may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind.” - Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, article 17, fourth para.

Article 87, third paragraph, of the 1949 Geneva Convention III provides: “Any form of torture or cruelty is forbidden.” - Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, article 87, third para.

Article 89 of the 1949 Geneva Convention III provides: “In no case shall disciplinary punishments be inhuman, brutal or dangerous to the health of prisoners of war.” - Convention (III) relative to the Treatment of Prisoners of War, Geneva, 12 August 1949, article 89.

Article 32 of the 1949 Geneva Convention IV provides: “The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of

²⁴ *Ibid.*

²⁵ *Ibid.*

²⁶ *Ibid.* See, further, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Current Issues and Good Practices in Prison Management (A/HRC/55/52): <https://www.ohchr.org/en/documents/thematic-reports/ahrc5552-current-issues-and-good-practices-prison-management-report>

such a character as to cause the physical suffering ... of protected persons in their hands. This prohibition applies not only to ... torture ... but also to any other measures of brutality whether applied by civilian or military agents...”

According to article 50 of the 1949 Geneva Convention I; article 51 of the 1949 Geneva Convention II; article 130 of the 1949 Geneva Convention III; and article 147 of the 1949 Geneva Convention IV, also provides that “torture or inhuman treatment” and “willfully causing great suffering or serious injury to body or health” are grave breaches of these instruments.

The duty to investigate and prosecute torture as war crime or crimes against humanity is also determined to be customary law, applicable for crimes committed in international and non-international armed conflict, which requires States to establish jurisdiction and investigate war crimes allegedly committed by its nationals or armed forces, or including outside their territory, and, if appropriate, to prosecute the suspects. Customary law has also establishes that soldiers have a duty to disobey orders of a superior for grave breaches and that there is no relief for following superior orders. Also considered customary norms are the rules against amnesties and statutes of limitation.²⁷

²⁷ *Ibid.*