

CONCEPT NOTE - Thematic briefing: Protecting women from violence through the UN Convention Against Torture



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Introduction

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is the most comprehensive international treaty dealing with torture and other ill-treatment. While the Convention speaks of right-holders in terms of "he" and "his", it provides for the prevention of and protection from torture and other ill-treatment to men and women on an equal

basis. However, practice shows that an undifferentiated application of the provisions in the Convention against Torture does not automatically translate into women enjoying equal prevention, protection, access to effective remedy and reparation including rehabilitation. This discrepancy is particularly evident when it comes to violence against women and girls by non-state actors - in the home, in the workplace, on the street.

International human rights law has increasingly developed to recognise the need for a gender perspective on torture and other ill-treatment. Being the only legally-binding instrument at the international level concerned exclusively with the eradication of torture or other ill-treatment, it has been crucial that the Convention against Torture covers acts of violence against women when it amounts to torture or other ill-treatment.

Purpose of the briefing

The purpose of the briefing is to inform a discussion amongst members of the Committee against Torture (CAT) on the gender dimensions of torture and other cruel, inhuman or degrading treatment or punishment and to explore together how the CAT can provide an enhanced prevention and protection framework for women and girls bearing in mind the particular risks of torture or other ill-treatment that they face.

Background

When women and girls are subjected to torture or other ill-treatment, gender has a considerable impact on the form the torture and other ill-treatment takes, the circumstances in which it occurs, the consequences, and the availability of legal, medical and social remedies. The torture of women and girls often assumes a sexual nature. Men and boys are also subjected to sexual torture, but women and girls are disproportionately targeted with rape, threats of rape and other forms of sexual violence.

Women victims of torture are confronted with major obstacles when they file a complaint or a reparation request. In societies where maintaining the "honour" of a family and of society is seen as the responsibility of its female members, the use of a form of sexual violence against women and girls has an additional negative impact on their access to justice and reparation, including rehabilitation. Women and girls may be threatened with expulsion from their home or community, face severe stigma or worse, may be at risk of further violence - including being killed.

Many States do not secure evidence in a gender-sensitive manner, and their laws and court rules are not adapted to the special needs of victims of sexual violence. Consequently, women and girls are frequently reluctant to report torture or other ill-treatment and refrain from seeking justice. In this way, torture of women and girls often goes unnoticed and perpetrators escape punishment.

The crucial cause of the difference in the way in which men and women have traditionally been protected under the Convention against Torture is that historically, the common understanding of torture was that it refers to violence and humiliation directly at the hands of state actors whereas violence against women and girls often occurs at the hands of non-state actors.

Developments in the movement to end violence against women have broadened the accentuation of human rights law to issues of concern to women and girls including rape and other forms of sexual abuse, trafficking and domestic violence which resulted in a deconstruction of the public and private divide. The adoption of the Convention on the Elimination of All Forms of Discrimination against Women ("the CEDAW Convention") in 1979, and the issuing of General Recommendations

No. 19 on Violence against Women in 1992 and the 2017 General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19 are decisive steps forward.

On the converse, the creation of a 'specialized branch' of, and on, women's rights has meant, at least in part, a marginalization and compartmentalization of women's rights and of women's rights institutions, as well as an excuse to deny or impede their inclusion within the mainstream human rights law framework and system. There remains a tendency that -very generally speaking--human rights violations against men are dealt with by the UN "general" treaty bodies while women's human rights violations are dealt with by the UN Committee on the Elimination of Discrimination against Women ("the CEDAW Committee). While the CEDAW Convention is a crucial instrument for ensuring women's human rights, it is equally important to draw on the strengths of the other human rights treaties and treaty bodies and to rely on their ability to address and redress violations of women's specific rights (e.g. the right to be free from torture, rights of persons with disabilities, etc).

Furthermore, it is important to recognise that women and girls often suffer different forms of human rights violations, since gender often intersects with other identity characteristics. These intersecting identities include age, ethnicity, national origin and religion *inter alia*, identities that also need to be taken into account. For this reason, it is imperative that human rights bodies in general use a gender and intersectional approach in developing jurisprudence, an approach that allows a deeper understanding of the multiple forms of discrimination that women and girls encounter, as well as the complexities of their needs, experiences and realities.

While the CAT had earlier addressed violence against women at the hands of state officials, it expressed for the first time in 2001 concern about trafficking and domestic violence as reflected in its concluding observations and recommendations to Georgia, Greece (UN Doc A/56/44) and Zambia (UN Doc A/57/44). Since then, the CAT has increasingly addressed violence against women at the hands of private actors within the scope of its work. A major step forward came in January 2008, when the CAT published General Comment No. 2 clarifying in paragraph 18 that where State authorities fail to exercise due diligence to prevent, investigate, prosecute and punish non-state actors, "its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts." In the same paragraph, the Comment goes on by explaining that "the State's indifference or inaction provides a form of encouragement and/or de facto permission" to non-State actors. Significantly, the CAT concludes the paragraph by noting the applicability of this principle "to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking."

Also in January 2008, the then Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, issued an extensive report on torture through a gender perspective. The Rapporteur focused in his report on three forms of gender-based violence in the private sphere: domestic violence, female genital mutilation, and human trafficking because, in his words: "stating that these forms of violence can amount to torture if States fail to act with due diligence, illustrates the parallels between torture and other forms of violence against women." In 2016, then Special Rapporteur on torture Juan Méndez repeated in his report dealing with gender perspectives on torture and other cruel, inhuman and degrading treatment or punishment (UN Doc. A/HRC/31/57): "States are responsible for the acts of private actors when States fail to exercise due diligence to prevent, stop or sanction them, or to provide reparations to victims."

Importantly, other international and regional bodies have been applying the due diligence test, notably CEDAW, e.g in General Recommendation No. 19 (1992) on violence against women, para.

9 and more extensively in General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, and the Inter-American Court of Human Rights in e.g. *Velázquez Rodríguez v. Honduras*, (series C No. 4, 29 July 1988). Similarly, the European Court of Human Rights has developed a body of jurisprudence in relation to positive obligations to effectively prevent, investigate, prosecute, punish and provide remedies for acts of violence perpetrated by non-state actors, e.g. *Opuz v. Turkey*, application no. 33401/02, 9 July 2009 (violation of article 3, both on its own as Turkey failed to protect the applicant and in conjunction with article 14 ECHR).

The cases above illustrate the synergies between the international and regional human rights bodies which have developed a significant jurisprudence which aims to eradicate torture or other forms of ill-treatment. The Inter-American Court of Human Rights have decided a number of cases on violence against women finding a number of states responsible for violations of the prohibition of torture, including most recently in its ruling on the case of *Linda Loaiza López and Others v. Venezuela*.

Methodology

Against this backdrop, Women's Link Worldwide and the OMCT are co-hosting a thematic briefing before the CAT on how it can provide an effective and equal protection framework for women and girls. The briefing will convene experts on international human rights law, women's human rights and on torture and provide a space to discuss with the members of the CAT the gender-dimensions of torture and to highlight the parallels between violence perpetrated by state actors and non-state actors and to explore concrete proposals.

Issues to be addressed

- Part I: Torture of women under international law
- Part II: Trafficking in women and girls
- Part III: Rape and other forms of sexual violence as torture - Two country cases
- Part IV: Protection of women from torture: comparative practice
- Part V: Access to justice and reparation, including rehabilitation
- Part VI: Integration of gender perspectives in the work of CAT & the way forward

Format of the discussion

The briefing has been designed to offer valuable information and knowledge about the issues at stake, combined with an engaging, self-directed approach to acquiring new concepts by adopting a panel-dialogue-style engagement. To this end, we propose five panels with each two to four presenters followed by a discussion with the members of the CAT in order to share experiences, challenges and consider suggestions.

About the Organisations

Women's Link Worldwide is an international human rights organization that uses the power of the law to promote social change that advances the human rights of women and girls, especially those

facing multiple inequalities. We work to uphold women's and girls' rights through the recognition of women's experiences of violence and injustice in and at the international and regional human rights systems, as well as national courts, through litigation, third party interventions and participation in judicial dialogues and capacity building strategies.

The world Organisation Against Torture (OMCT) is the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment and punishments. The strength of the OMCT lies in its SOS-Torture Network composed of almost 300 NGOs around the world. OMCT coordinates the NGO participation for the Committee against Torture sessions. In 1996, OMCT launched a programme to fight violence against women.

Co-sponsoring civil society organisations:

