

# The Committee Against Torture tackles violence against women: A conceptual and political journey

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*Violence against women is perhaps the most shameful human rights violation, and it is perhaps the most pervasive. It knows no boundaries of geography, culture, or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace.*

These were the words of former United Nations Secretary-General Kofi Annan in 1999 addressing the Inter-Agency Videoconference for a World Free of Violence against Women. He emphasized that the United Nations was doing something to combat such abuse, referring to States having “adopted international instruments prohibiting violence against women” and the International Criminal Tribunal for Rwanda defining rape as a crime of genocide. (Annan, 1999). Kofi Annan made these comments at the end of nearly a decade of attention to violence against women by UN bodies. The topic was addressed and refined during that time as a result of efforts by feminist lawyers, NGO representatives, government delegates, special rapporteurs and independent treaty body experts. Many of them criticized that, despite the prevalence of violence against women, the leading legal instrument aimed at preventing and punishing torture and ill-treatment, the 1984 Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or

Punishment (“the Convention”) (UN, 1984) and its monitoring committee, the Committee against Torture (“the Committee” or “CAT”), seemed to ignore addressing the violations faced by women, primarily because of the definition of what constitutes action by a “public official” (Byrnes, 1992; Copelon, 1994; Joachim, 2003; Edwards, 2006; 2011; Hall, 2014).

In this article, we will examine how the official treaty monitoring body, the Committee against Torture, demonstrated that violence against women was indeed a serious human rights problem that fell squarely within the purview of the Convention against Torture. Because States parties to the Convention are required to report about their compliance with the Convention routinely, the Committee developed a substantial data base on national practices and policies. In the course of examining these periodic reports of States parties, and then consolidating findings and conclusions into two general comments, the UN Committee Against Torture integrated violence against women in its jurisprudence on torture and ill-treatment by showing that existing provisions could and did incorporate the obligation to protect against and provide redress for torture and ill-treatment directed against women. Initiatives to raise these issues show how the Committee “placed the range of gender violence—from public to private –

squarely within the frame of the Torture Convention” (Copelon, 2008, 242). The article will recall how the adoption of two general comments to the Convention firmly integrated gender-based violence as a subject of concern under the Convention: General comment no 2 (2008) addressed Article 2 on the State obligation to prevent torture and ill-treatment and General comment no 3 (2012) focused on Article 14 which concerns the obligation to provide redress to victims of torture.

Both authors have been members of the Committee during these important years<sup>1</sup>, and it is our aim to provide an overview of the significant processes and decisions taken by the CAT that resulted in the strengthening of the Committee’s inclusiveness and comprehensiveness in the struggle to prevent torture. Finally, we will reflect on some future challenges faced by main anti-torture body/ies as part of global efforts to fight violence against women.

### Early steps

Violence against women was not understood to be a violation of women’s human rights until the 1990s. While “battered women and violence in the family” were mentioned in the Program of Action from the 1980 Copenhagen World Conference on Women, the subject was presented primarily as a “physical and mental health issue” affecting abused victims. In 1985, the Nairobi Forward Looking Strategies described violence against women as an “obstacle to the achievement of peace” – whose victims needed attention, again in the

context of health, not human rights, physical integrity and certainly not torture. States were urged to prevent violence against women, assist the victims, and provide education.

In 1989, the treaty monitoring committee for the Women’s Convention (CEDAW) adopted a very short General Recommendation about violence against women (UN, 1989). The CEDAW members later agreed to discuss the topic at their January 1992 meeting in preparation for the planned 1993 World Conference on Human Rights. Following an initiative of (and using a draft prepared by) the International League for Human Rights, an NGO in consultative status with the United Nations (ILHR, 1993), CEDAW members considered, revised, and finalized a new, longer, human rights-focused General Recommendation on violence against women, General Recommendation No. 19, and adopted it at the January 1992 meeting (UN, 1992).

Reports of rape and other abuses against women in the armed conflicts in Rwanda (1990-1994) and former Yugoslavia (1991 – 1995) brought even more attention to the subject (UN, 1993a). Seeing the issue as the closest to physical integrity issues and the kinds of violations already addressed by human rights bodies and finding widespread agreement in all world regions about the prevalence of this form of abuse, NGOs made it the centerpiece of their advocacy aimed at the June 1993 World Conference on Human Rights. There, the Vienna Declaration and Program of Action (VDPA) (UN, 1993c) declared that abuses against women were “an inalienable, integral, and indivisible part of universal human rights”. Significantly, the VDPA called for adoption by the UN General Assembly of a Declaration on Violence against Women and for the Commission on Human Rights to appoint a special rapporteur (an independent expert) to study and report on violence

1 Felice Gaer was elected a member of CAT in 1999 and served until December 2019, much of it as Vice-Chairperson. Nora Sveaass was elected in 2005 and served until 2013. From 2014 until today she has been a member of the Subcommittee on Prevention of Torture (SPT).

against women. Both recommendations were approved soon after Vienna, and the topic of violence against women was slated as a major topic for the 1995 Beijing World Conference on Women (UN, 1998a). Indeed, the Beijing Platform for Action devoted more than 25 pages to the issues of violence against women, trafficking, and armed conflict. Significantly, the Beijing world conference also called for accountability of the perpetrators as well as assistance to the victims. Beijing's Platform further identified a wide range of abuses as forms of violence against women, and asked for them to be prevented, criminalized, and punished. These included: female genital mutilation, rape; sexual abuse and harassment; trafficking in women and forced prostitution; forced sterilization and forced abortion; female infanticide; murder, rape, sexual slavery and forced pregnancy in armed conflict; as well as physical, sexual, and psychological violence in the family, including battering.

Observers began to remark on the failure of the Convention against Torture and its monitoring body to address violence against women. For example, international law scholar Andrew Byrnes in 1992 suggested that women's experiences are neglected both in international legal provisions and interpretations of torture, in large measure because the definition in the Convention against Torture focuses on direct violations by State actors (public officials), a conceptual framework that "renders invisible...many of the objective violations that women suffer" from private actors (Byrnes, 1992). Byrnes argued that many of these violations were acts affecting women in the family, unfortunately considered by the drafters of the Convention to be private and outside the purview of state officials. Consequently, Byrnes argued that abuses directed against women were notably absent in the work of the Committee against Torture in its

early years of activity. Moreover, he added, the Committee had not even addressed case examples of violations that women suffer *in the public sphere*. He called on CAT members, at a minimum, to "ascertain whether there are particular forms of torture or other ill-treatment which are directed mainly against women" (Byrnes, 1992; Gaer, 1998)

### **Convention against Torture and its monitoring committee, CAT**

Observers and practitioners may not be familiar with the distinctiveness of the Convention against Torture and the scope of responsibilities and authoritative status of its monitoring body, the Committee against Torture ("CAT" or "the Committee"). The Convention against Torture, recognizing that torture was prohibited in international law, obligated all states that ratify the 1984 treaty to "take effective legislative, administrative, judicial or other measures to prevent" acts of torture or ill-treatment. Such ratification thus entails a wide range of obligations for States. The Convention itself mandated creation of a "Committee against Torture," a body composed of 10 independent experts who are elected by the States that have ratified the Convention. In addition to the consideration of state reports, the CAT has the mandate to receive individual complaints on torture and to undertake inquiries when systematic torture is alleged (OHCHR, 2022).

All States parties are required by the Convention's article 19 to provide an initial report within one year of ratification. Thereafter, reports must be submitted every four years describing measures taken to prohibit and prevent torture and ill-treatment. Questions are raised by the Committee members to the state representatives, and the replies from the state are presented in public meetings. Based on this exchange, called a "con-

structive dialogue,” concluding observations are formulated and adopted by CAT, submitted to the States, and made public. In this way, the Committee, which the Convention authorizes to “establish its own rules of procedure,” sets forth its understanding of what constitutes “effective measures” to implement the Convention’s prohibition on torture and ill-treatment (Sveaass, 2017).

General comments of a human rights treaty body constitute an interpretation of the treaty by the expert bodies mandated to oversee its implementation, reflecting findings and conclusions by the relevant treaty body’s experts that result from their examinations of State party reports and other decisions. In this sense, general comments both consolidate the substantive case-by-case, country-by-country findings of the treaty body, and also reflect interpretive insights that are gained from the treaty body’s in-depth examinations of the States parties’ experiences of seeking to comply with their treaty obligations (Gaer, 2008).

The general comments adopted by CAT not only set out general obligations of states to prevent torture and ill-treatment and to provide redress, but also clarify some specific obligations of states in relation to violence against women under the Convention against Torture. As such, these general comments present significant guiding principles for tackling violence against women in the context of torture. As former Special Rapporteur on Torture Theo van Boven has written, the general comments adopted by the Committee against Torture “must be appreciated as an authoritative statement ‘in response to evolving threats, issues and practices’” (van Boven, 2008).

### **Human Rights Secretariat asks why CAT ignores violence against women**

In 1998 the Office of the UN High Commissioner for Human Rights (OHCHR) published a “Report by the Secretary-General” examining how various UN bodies, including five treaty-monitoring bodies, addressed and integrated gender related concerns into their jurisprudence (UN, 1998b). The report, entitled “Integrating the gender perspective into the work of the United Nations human rights treaty bodies”, in its second part summarized the steps that had been taken by human rights treaty “bodies to increase attention to gender aspects in their work” and suggestions were made with regard to areas where more efforts were required and further attention to the gender dimension needed.

According to the Secretary-General’s report, CAT’s involvement with issues demonstrating gender sensitivity were minimal, indeed barely existing. The 1998 review concluded that, “over a five-year period, during which the situation in approximately 60 different States parties was examined, none of the Committee’s concluding comments made reference to the situation of women. This is particularly noteworthy as Committee members have either asked specific questions or made comments focusing on women or gender issues in approximately one fourth of the reports considered” (UN, 1998 b, 50).

This 1998 report reflected further on what CAT could and should be addressing: “... there are a number of issues the Committee could raise. In this regard, guidance can be obtained from the Platform for Action adopted at Beijing. Two of the areas discussed in the Platform, violence against women and women and armed conflict, contain provisions and recommendations that are pertinent to the Convention and the Committee’s work.” (UN, 1998b, p. 44). The issues that had been raised in the

context of CAT addressed a) rape and sexual offences; (b) segregation of male and female prisoners; (c) situation of pregnant women.

In other words, despite the initiatives and adoptions referred to above, the Committee against Torture was not addressing violence against women, whether in peacetime as in war, as constituting torture or cruel, inhuman, or degrading treatment or punishment falling under the Convention against Torture.

The absence of attention to violence against women by CAT was also criticized precisely because other authoritative UN bodies had addressed the issue so strongly in the years just before the Secretariat's report.<sup>2</sup>

International courts and tribunals paved the way for a stronger focus on sexual violence in conflict as war crimes and crimes against humanity. In 1993 the Statute of the International Criminal Tribunal for the former Yugoslavia included, as already noted, rape as a crime against humanity, as well as the crimes of torture and extermination. The International Criminal Tribunal for Rwanda (ICTR) decided that rape constituted a war crime and a crime against humanity and was the first international court to find an accused person

guilty of rape as a crime of genocide. Finally, the Rome Statute of the International Criminal Court, in force since July 2002, includes wartime sexual violence in its list of crimes against humanity and war crimes (art. 7 & 8) and defines sexual violence as "rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity" (Roma Statutes, 1999; Prinn, 2021).

International law expert Alice Edwards explained that this activity reflected a focused attempt to place these abuses within mainstream norms and institutions that resulted in "some significant advances...towards guaranteeing protection against and redress for women-specific and women-related torture and other forms of ill-treatment." (Edwards 2006, 350-51). Edwards found that "there has been an attempt to update traditional notions of torture to their contemporary setting."

### **The Convention Against Torture and violence against women**

The Committee against Torture later took some small steps to address acts of torture or ill-treatment directed against women. In a review of Tunisia in late 1998, CAT expressed concern over reports that female relatives of detainees had been "subjected to violence and sexual abuses" or threats to punish their relatives, by public officials or their agents (UN, 1999, para 99); while concluding observations cited this as a concern, no specific recommendation was made in this regard. Later, in May 2000, the Concluding observations on the review of China's report to CAT expressed concern over gender-based violence against women conducted by State officials. CAT stated: "The Committee expresses concern about reports of coercive and violent measures resorted to by some local officials in implementing the population policy of the

2 The widespread rapes of women during the war in the former Yugoslavia galvanized global attention: The Security Council's Commission of Experts to investigate violations of international humanitarian law in the former Yugoslavia (Resolution 780, 6 October 1992) identified systematic sexual assault as a priority in its report. (UN, 1993a; UN, 1998) and the Council's resolution 798 (18 December 1992) which identified "massive, organised and systematic detention and rape of women, in particular Muslim women, in Bosnia and Herzegovina" as "acts of unspeakable brutality" and urged further investigation. The Commission of Human Rights appointed a special rapporteur on violence against women whose medical experts concluded that the sexual violence served as "instruments of ethnic cleansing" (UN, 1993b; UN, 1998).

State party, contrary to the relevant provisions of the Convention” (UN 2000, para 122). While the Committee identified concern over this practice, it did not carry over this concern – referring both to reports of routine coerced sterilizations and forced abortions by public officials – into a specific recommendation. Nonetheless, its presence in the section on concerns marked a major step, recognizing these forms of gender-based violence against women and that they fall under the Convention’s purview. As recounted elsewhere (Gaer, 2021) the Committee chair initially resisted any reference to this subject – claiming it had no relationship to the Convention itself – but relented after a member offered a detailed explanation of why it fit firmly within the purview of the Convention and the country rapporteur on the China review also expressed support.

In 2001, the Committee expressed concern about domestic violence and trafficking in its conclusions on Greece and Georgia, both of which were urged to take measures to prevent and punish violence against women (UN, 2001), and more of this followed. Not long after, the Committee began to consider preparation of a general comment on article 2 of the Convention, which specifies that states parties have an obligation to “take effective legislative, administrative, judicial or other measures to prevent acts of torture.” In 2005, two new female members were elected to the Committee, bringing the total number of women to three. Questions about treatment of female detainees and about government failure to protect victims of rape and other forms of violence against women not only proliferated but were increasingly reflected in the conclusions of CAT.

In 2006, Alice Edwards concluded that “the Committee against Torture now openly views women-specific or gender-related harm as being of the same nature or sever-

ity as torture under article 1 of the UNCAT.” Among the topics she cited that appeared in the CAT conclusions were female genital mutilation, forced abortion, forced marriage, rape, and domestic violence (Edwards, 2006, p. 370).

### **General Comment 2 on effective measures to prevent torture**

In 2004, members of the Committee against Torture began to draft a general comment to clarify the “distinct interrelated and essential principles that undergird the Convention’s absolute prohibition against torture” in Article 2 of the Convention. This effort, which would conclude in November 2007, addressed the obligations set forth in the text of the treaty as to what constitute “effective legislative, administrative, judicial and other measures to prevent acts of torture.” General Comment No. 2 (“GC2”) not only collected and summarized the Committee’s experiences from its first 15 years of reviewing country compliance with the Convention, but also offered States parties a guide for future reporting and action in accord with their treaty obligations (UN, 2008; Gaer, 2008; 2013). As Professor Rhonda Copelon wrote: “The General Comment is particularly significant because it consolidates this understanding as the considered and formal interpretation of the Convention against Torture that will guide its review of State reports. It thus encourages non-governmental submissions respecting gender violence, signals an end to the era of discriminatory application of the norm of torture as well as underscores the urgency of State responsibility to exercise due diligence to prevent, punish and eliminate it” (Copelon, 2008, 243).

GC2 of CAT notably points out that States bear international responsibility not only for the acts but also for the omissions of their offi-

cial as well as the acts of State agents, private contractors, and others acting in official capacity or on behalf of the State or under its direction or control. It points out that each State party has obligations to prohibit, prevent and redress torture and ill treatment in a wide variety of contexts in which it has control: this can include prisons, hospitals, schools, institutions that care for “children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm” (para 15). GC2 thus clarifies the Committee’s longstanding practice of inquiring as to how the Convention applies outside prisons and that the Convention is engaged by the failure of State officials or their agents to prohibit, prevent or redress torture and ill-treatment in these diverse contexts.

GC2 clarifies that a systematic failure to provide protection against ill-treatment or torture and to hold the perpetrators accountable would engage the Convention’s attention. It also emphasizes the Committee’s practice of addressing such situations “where State authorities or others [...] know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish [...]”. It explains that such inaction becomes a “form of encouragement and/or de facto permission” (18).

GC2’s explicit discussion of the concept of due diligence clarifies that systematic failure to protect persons from torture or ill-treatment amounts to acquiescence, and that the Committee’s monitoring includes examining both private violence and public responses to it.

Article 1 of the Convention against Torture identifies prohibited acts set forth in the definition when carried out for “any reason based on

discrimination of any kind [...]”. GC2 explains that laws on obligations under the Convention must be “in practice applied to all persons” regardless of such factors as race, age, religious belief or affiliation, gender, sexual orientation, transgender identity, mental or other disability (para 21). In keeping with the concept of due diligence, GC2 specifies that each State party has an obligation to protect members of these or other groups especially at risk of torture “by fully prosecuting and punishing all acts of violence and abuse against these individuals [...]” (para 21). GC2 makes it clear that private individuals and groups made vulnerable by discrimination must be protected under the Convention.

Also explained by GC2 is the view that “The contexts at which women are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes [...]” (para 22). Significantly, CAT asks States parties to identify such situations and report on the measures taken to punish and prevent them.

Article 2 not only obligates States parties to take administrative, legislative, judicial, and other measures to prevent torture, but also that these measures must be effective. CAT calls on States to re-evaluate preventive measures for their effectiveness and to revise and replace them as needed.

GC2 further informs States parties that, under the Convention, “effective measures” require more than words: they require continual evaluation. Such evaluation is to be conducted by CAT, which requires information about compliance with the norms of the Convention in regular periodic reports from the States parties (para 23). Moreover, it specifies that such information should include disaggregated data to enable the Committee to identify, compare and recommend steps that would

otherwise go unnoticed and unaddressed. This has enabled CAT's ongoing monitoring of acts of torture or ill-treatment which were once invisible – for example, domestic violence, rape, trafficking, and other items mentioned in GC2 itself.

The impact of GC2 has been substantial. The Committee expanded its attention to violence against women, and routinely referenced different manifestations of this abuse in its examination of States parties reports and the conclusions and recommendations that resulted. Data is requested in lists of issues sent in advance of the submission of reports and questions are commonly raised to follow up on this in the “constructive dialogue” between CAT members and the State party's delegation. The number of such references to diverse aspects of violence against women rose dramatically after the adoption of GC2 (Gaer, 2012, p. 1111-1113). Again, in the words of Rhonda Copelon, “The General Comment combines both an important theoretical as well as practical approach to monitoring the broad range of gender violence... It underscores the urgency of and the priority that must be given to the project of prevention” (Copelon, 2008, p. 263).

### **General Comment 3 on the right to redress and violence against women**

In 2012, CAT adopted another General Comment: it deals with the right to redress, which is one of the distinctive elements in the Convention against Torture. The right to redress for victims of torture is formulated in Article 14 as the obligation of each member state to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible” (UN, 1984, art. 14). General Comment No. 3 (GC3) (UN,

2012), highlights that “redress” refers both to effective remedy and reparation, and that the “reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention” (GC3, para 2).

The range of reparative measures, as summarized by GC3 is wide. GC3, based on the jurisprudence of CAT, defines, and provides advice on reparative measures for victims of gender based/related violence, and the conditions under which such violence is considered acts of torture. GC3 notably clarifies the responsibilities of States parties both in relation to violence against women, including domestic violence and violence by non-state or private actors – namely the obligations to prevent, to protect, to investigate, to punish perpetrators (all discussed earlier under GC2) and the obligation to provide redress, reparation and/or rehabilitation to victims of such violence (Sveaass, Gaer & Grossman, 2020).

GC3 spotlights some of the principles and requirements of the right to redress as laid out in GC3, with a special focus on violence against women. First, the principle of non-discrimination is essential to ensure that victims of torture or ill-treatment in fact can enjoy the right to redress. The Committee “considers that article 14 is applicable to all victims of torture and acts of cruel, inhuman or degrading treatment or punishment (hereafter “ill-treatment”) without discrimination of any kind, in line with the Committee's General Comment No. 2” (GC3, para 1). GC3 reiterates that structural violations linked to various forms and grounds of discrimination, such as gender, sexual orientation, disability, political or other opinion, ethnicity, age, and religion, must be addressed, to ensure that the access to restitution is not denied due to discrimi-



natory reasons (GC3, para 8). The need to establish effective rehabilitation services and programs in each State party is paramount. These must be accessible for victims without discrimination and take into account variations in victims' "culture, personality, history and background" (GC3, para 15).

Ensuring redress, including rehabilitation, after acts of violence against women, requires the existence of fair and non-discriminatory procedures both in judicial and non-judicial proceedings. GC3 refers to the need for gender sensitive procedures, impartial judiciary and equal weight to be given to the testimony of women and girls, as it should be for all other victims, as these are essential to avoid "re-victimisation and stigmatisation of victims of torture or ill-treatment" (GC3, para 33).

The Committee further considers that "complaints mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses such as sexual violence and abuse, rape, marital rape, domestic violence, female genital mutilation, and trafficking are able to come forward and seek and obtain redress" (GC3, para 33).

CAT advises States to establish and fully guarantee in national legislation the rights to redress of victims of torture and other cruel, inhuman, or degrading treatment to enforce this right.

In GC3, weight is given to the requirement to use gender sensitive approaches to train "relevant police, prison staff, medical personnel, judicial personnel and immigration personnel, including training on the Istanbul Protocol" (GC3, para 34, 35). Similarly, GC3 emphasizes the need to prepare health and medical personnel to inform victims of gender-based and sexual violence about the availability of physical as well as psychological emergency procedures. For example, in

the Concluding observations on Chile, CAT advised the State to "incorporate a gender policy encompassing training and awareness-raising for the officials responsible for dealing with the cases of victims of assault or sexual violence; increase the efforts in regard to reparation, compensation and rehabilitation so as to ensure fair and appropriate reparation for all victims of torture" (UN, 2009a).

The need to highlight the obligation regarding training on gender related issues, was based upon CAT's observations over the years that lack of preparedness, lack of gender informed approaches and lack of knowledge in the health care system as well as in the police and judiciary systems represent serious obstacles for women subjected to violence to come forth with their experiences and claims. In general, the adoption of GC3 clarified the Committee's positions on violence against women, including by defining victims of such violence as entitled to redress, compensation, and rehabilitation.

As referred to above, the failure of the State to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking, is considered a violation of the obligation to prevent such impermissible acts, and, as such, as a violation of the Convention (GC2, para 18). It follows from this that the right to redress is established for individuals where the State's failure to protect has resulted in acts of torture or ill-treatment, including at the hands of non-state actors. GC3 refers to this in paragraphs on restitution (8), on guarantees of non-repetition (18) and on the right to redress (7).

CAT's recommendation to Portugal called for it to "Ensure that all cases of gender-based violence, especially those involving actions or omissions by State authorities or other entities which engage the international responsi-

bility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished appropriately, and that the victims or their families receive redress, including adequate compensation” (UN, 2019c, para 42). In this way, CAT draws attention to the principle that both State action and failure to act – omissions – fall under the purview of the Convention and that States need to recognise their obligation to avoid both leading to torture or ill-treatment.

The rights to redress for women exposed to forms of sexual violence perpetrated during armed conflict have been raised regularly by the CAT. When Peru’s report was considered in 2013, (UN, 2013a), CAT referenced “underreporting of cases of sexual violence against women and girls during the armed conflict, the limited number of investigations, the absence of sentences and the lack of effective redress to victims of sexual violence during the conflict....”.

GC2 pointed out (UN, 2008 para 22) that women and girls are at risk of torture or ill treatment in the context of medical treatment, particularly involving reproductive decisions. Violations of reproductive rights may include rights to legal abortions or denial or even criminalization of abortions, forced abortions, forced sterilizations, treatment of women in labor. Recommendations have been provided to Peru (UN, 2013) and Slovakia (UN, 2015) with regard to forced sterilizations. The fact that women are denied abortions after incest and rape, even in situations where the mother herself is only a child, and the criminalization of doctors who perform abortions after such violations, as well as of the women, have been raised as issues of serious concern in the reviews of Nicaragua (UN, 2009b), Paraguay (UN, 2011), Poland (UN, 2013b; 2019b), Niger (UN, 2019a) and others. And as noted

earlier, CAT’s Concluding observations on China (UN, 2016) cited concern over “Use of coercive measures in the implementation of the population policy”.

Like GC2, GC3 has had great impact, principally on redress and rehabilitation for victims of torture and ill-treatment. The way that redress, in its different forms were laid out in the general comment, as well as the groups for whom redress was defined as a right, has contributed to a strengthened and more nuanced awareness about the obligations under art 14.

Below, we look into some of the work and challenges facing CAT following the adoption of the two general comments as well as the higher profile of gender-based issues in the Committee’s ongoing work.

#### **Approaching violence against women – from the perspective of torture- takes root**

As CAT was refining its attention to gender-based violence and its relevance to torture and ill-treatment in the early 21<sup>st</sup> century, many stakeholders took notice of these developments. For example, in 2008, the City University of New York’s Law School held a symposium that focused on CAT’s GC2 and its significance regarding gender-based violence against women (Gaer, 2008). Two former special rapporteurs on torture, the gender adviser to the ICC Prosecutor, and two CAT members, participated along with several academics. The Special Rapporteur on Torture, Manfred Nowak, organised a workshop in September 2007 on “Strengthening the protection of women from torture” which was incorporated in his 2008 report to the Human Right Council (UN Special rapporteur, 2008). The report included chapters on torture and ill-treatment of women in the public sphere as well as in the private sphere. On torture and violence against

women Nowak concluded: “In regard to violence against women, the purpose element is always fulfilled, if the acts can be shown to be gender-specific, since discrimination is one of the elements mentioned in the CAT definition. Moreover, if it can be shown that an act had a specific purpose, the intent can be implied” (para 30; p. 7). His report also addressed justice, rehabilitation and reparation for women-survivors of torture. The Rapporteur’s report was important in the later discussions in CAT and has also frequently been quoted and referred to in discussions on women, violence and torture (see Mendez & Nicolescu, 2017). In her 2014 book on the gender dimensions in relation to torture, Ronli Sifris described some of the steps forward on ways the Committee dealt with gender related issues and reproductive rights under the Convention (Sifris, 2014).

CAT’s GC3 was the centerpiece of a Chatham House program on redress and rehabilitation (Gaer, 2013). Members of CAT were invited to brief other UN experts on their efforts – including treaty committees like CEDAW and special rapporteurs, at their annual meeting of experts. NGOs began to advertise that CAT was a forum to consider with regard to documentation on gender-based violence against women. For example, the highly regarded University of Minnesota Law Library’s human rights documentation website featured a page on sexual violence against women which stated “Women’s advocates may use the Committee against Torture and other cruel, inhuman or degrading treatment or punishment” to promote women’s rights...” It explained that “The Committee against Torture” views violence against women, including sexual violence and trafficking, as gender-based acts of torture and within the purview of the Committee” (Human Rights Library, 2003).

Similarly, a blog at the London School of Economics highlighted that “The UN Special Rapporteur on Torture and the Committee against Torture have both acknowledged the devastating impact of violence against women and argued for its inclusion in the anti-torture framework” (see <https://blogs.lse.ac.uk/vaw/int/treaty-bodies/convention-against-torture/>).

In addition, the World Organization against Torture (OMCT) ran a feature series of video interviews that featured two CAT expert members timed to run on the international day to mark violence against women, November 25<sup>th</sup>, in 2017.<sup>3</sup> While the remarks on these videos were made in the individual, private capacity of the members, each speaker reflected on the achievements of the Committee as a whole and spoke positively about measures to prevent violence against women that had been adopted by the treaty body.

Like other UN human rights treaty bodies, CAT’s membership rotates; each of its ten members are elected to 4-year terms of office. In 2015, there was high turnover at the CAT elections: out of 5 persons elected, 4 were new to the Committee. In 2017, when five others were up for election, three more new members were elected.

With so much change in Committee membership, some questioned – after years of progress— whether gender-based violence issues should continue to be addressed by the CAT or relegated to the CEDAW Committee. This has been a relatively common refrain heard by CAT members, and one which notably seems to marginalize the human rights of women rather than integrate those rights into the work

3 “Felice Gaer and the UN Committee against Torture say no to violence against women.” Available online at <https://vimeo.com/244666803> and “Nora Sveaass says no”, available online at <https://vimeo.com/244371568> ]

of UN human rights mechanisms and treaty bodies. In fact, according to the World Organisation against Torture (OMCT), the non-governmental organisation that coordinates the presence and presentation of information by non-governmental organisations from all over the world at the meetings of CAT, a tendency exists in Geneva for human rights violations against men to be addressed by the general human rights treaty bodies, but “women’s human rights violations are dealt with by the UN Committee on the Elimination of Discrimination against Women...” (World Organization against Torture, 2018, p. 3).

#### **Clarifying progress on violence against women and torture in international human rights bodies**

Beginning in 2015, a series of briefings were initiated by CAT on topics on which it might offer conclusions and recommendations, and which were of concern for the CAT members either because of new cases, new data or new questions being asked. Between 2015-2019, 15 such sessions were held, including briefings on the right to rehabilitation, on non-refoulement, on victim and witness protection systems, on overcrowding, on psychiatric institutions and on ill-treatment and children. When CAT members asked for a briefing on gender-based violence against women, the Secretariat invited a non-governmental group, World Organization against Torture, (OMCT) to organise it.

According to the concept note, a thematic briefing on “Protecting women from violence through the UN Convention against Torture” was conducted on 4 December 2018 for two meetings of the CAT (OMCT, 2018). The concept note explains: “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...” Further: “A major step forward came in January 2008 when the CAT adopted 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.” OMCT also referenced the important analytic contributions on gender-based violence against women of Special Rapporteurs on Torture, Manfred Novak in 2008 and Juan Mendez in 2016 (Mendez, 2016), as well as a number of case decisions in regional and international courts.

The briefing for Committee members was quite wide-ranging and compelling. It was sponsored by prominent non-governmental organisations, Women’s Link Worldwide and the World Organization against Torture (OMCT), and co-sponsored by Amnesty International and the Global Justice Center. Briefers were distinguished professionals in the field of torture prevention: The first major address was provided by the Special Rapporteur on Torture, Nils Melzer, who reminded the CAT members that gender-based violence against women was the result of “rampant discrimination” and often wrongly justified on the pretext of tradition, culture or religion. He discussed violence against women in both custodial and non-custodial settings and advised how and when rape constituted torture within the meaning of the Convention, and about States’ responsibility to ensure that their authorities exercised due diligence. A wide range of other forms of violence against women fall within the scope

of the Convention, he explained, from female genital mutilation, trafficking, domestic violence and early marriage to so-called honor crimes and exculpatory provisions for rapists. Denial of safe abortion services and the practice of forced sterilization also fell within the purview of the Convention. Significantly, the Rapporteur called on CAT to make it “absolutely clear” that gender-based violence against women “amounted to nothing less than torture” and to join him in recognizing that when States fail to exercise due diligence in preventing such practices, they become complicit in the commission of acts of torture and ill-treatment and incur international responsibility under the Convention (UN Document CAT/C/SR.1713, paras. 9-17).

The Special Rapporteur’s detailed presentation was followed by other experts, including a judge on the European Court of Human Rights, the President of the International Law Association, several academic experts and human rights advocates from diverse parts of the world and with diverse experiences, including with the CAT, as well as a member of the CEDAW Committee and a Special Rapporteur of the Human Rights Council (UN Docs. CAT/C/SR.1713 and CAT/C/SR.1714, 10 December 2018).

At the request of the Committee members, the World Organization against Torture (OMCT, 2019) subsequently prepared and published a summary of the briefing on its website. The briefing offered presentations and discussions with CAT members on torture against women under international law; trafficking in women and girls; rape and other forms of sexual violence; country cases; protection of women from torture; and access to justice and reparation, including rehabilitation.

A key take-away lesson of the briefing was that CAT’s efforts on gender-based violence were indeed substantial, very much in line with

the jurisprudence of regional and international courts and mechanisms and had influenced the other bodies substantially. Briefers concluded it was “essential that the Committee should continue to systematically address gender-based violence against women in its work, and approach its mandate and work in a gender-sensitive manner” (CAT/C/SR. 1714, para 46).

This message was not lost on CAT members. In the days and sessions that followed, the CAT’s Chairperson often referred back to the definitive analyses offered by the many experts and jurists at the briefing. As a result, Committee members have continued to address gender-based violence against women as a form of torture or ill-treatment within the scope of the Convention.

### **Future perspectives and reflections**

One question that has frequently been asked over the years, by a few States but by no means a majority and as well as certain Committee members, is whether CAT conclusions should be gender neutral and information on gender-based violence could be sent instead to the CEDAW Committee. The authors note that some of these objections are not substantive but reflect an ongoing concern about treaty body harmonisation and are actually about administrative streamlining of the treaty body system. We wish to emphasize again that the Beijing World Conference on Women affirmed that “women’s rights are human rights” and this understanding has been demonstrated time after time in the ongoing reviews and other work of CAT, as well as in other UN human rights bodies. Today, the gender mainstreaming agenda and policies of the UN are not optional and are certainly not open to be marginalized as in the past. Further, the scheduling of country reviews, the extensive reservations to the CEDAW convention, and the differing states parties that have ratified each treaty must

be borne in mind. If all gender-based violence issues were assigned to CEDAW, cases of gender-based violence could easily fall through the cracks of the human rights system. Furthermore, the authors of this article wish to point out the views of former Special Rapporteur on Violence Against Women, Rashida Manjoo, who recalled that so-called gender-neutral texts can themselves be gender-biased when they ignore or suppress attention to gender-based treatment or impact (Manjoo, 2004). On its 20 years journey, CAT has successfully and firmly integrated a gender perspective into their ongoing activities and they have elevated both the attention and responses to this previously ignored topic.

It is now recognised that violence against women and girls satisfy both the severity threshold for torture and the purpose or intent requirement, because of discrimination ‘of any kind.’ GCs 2 and 3 on articles 2 and 14 have provided guidance on gender-based violence that influenced other torture prevention bodies including regional courts, UN expert mechanisms, and the work of the Convention’s Subcommittee on Prevention. Significantly, the expert briefers demonstrated to everyone working in and with the UN Secretariat, CAT, and a wide array of torture prevention organisations, that blindness to women’s experiences of torture has been ended at the international level.

One of the important ways in which concerns and criticisms can be expressed, and states can be urged authoritatively how to protect and prevent violence against women, including by private actors, is for CAT to continue to focus on this issue routinely. How these questions are dealt with in the treaty body can have a considerable multiplier effect. The nature of information that is provided to CAT by NGOs changed when the Committee indicated an openness to discuss violence against women. Similarly, the

kinds of issues the Secretariat staff members would prepare as background to inform CAT members has changed along with the increased Committee interest in issues such as rape, trafficking, domestic violence, and other forms of violence against women.

The inputs from and dialogue with civil society organisations have always been of priority to CAT as they often ensure that critical points and recommendations are disseminated and create pressure for implementation and follow-up. At the same time, CAT’s work and awareness on and interest in forms of torture and ill-treatment that affect women and girls have provided tools and inspiration for others working to eradicate torture at the national, regional and international levels, including non-governmental representatives and lawyers. Last but not least, recommendations of CAT have had an important influence on other torture prevention bodies as well as on governmental actors at the regional and national levels. We began this article with a quote by Kofi Annan, and we would like to end by reiterating that it is essential that the Committee against Torture continue its important efforts to apply the Convention in the global fight against “the most shameful human rights violation.... and perhaps the most pervasive.”

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