Submission to inform the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment to be presented at the 52nd Session of the Human Rights Council in March 2023

concerning The duty to investigate crimes of torture in national law and practice

November 2022



1. **INTRODUCTION**

DIGNITY - Danish Institute against Torture submits the following responses to the Special Rapporteur in advance of her report on the duty to investigate crimes of torture in national law and practice.

The content of this submission is derived from DIGNITY’s expertise, partnerships and programs dedicated to combatting torture and other cruel, inhuman, and degrading treatment all over the world.

1. **Responses to Select Questions of the special Rapporteur**

**QUESTION 1: Challenges, impediments and obstacles to effective national investigations and prosecutions of acts of torture:** *What are the main impediments preventing full and prompt investigations into allegations of torture – consider matters such as gaps in legal and regulatory frameworks, political-cultural-leadership, institutional, practical and other challenges?*

Challenges are often rooted in a lack of political will at the government level and within the Executive to undertake effective investigations and ensure accountability for crimes of torture. This lack then creates a domino effect wherein investigating authorities are under-resourced, which in turn leads to weak investigations and case files, which in their own right either lead to investigations being closed prematurely as evidence is not gathered and preserved, or to acquittals or prosecutions for lesser charges. In sum, the challenges facing effective investigation of torture are entangled, interdependent, and reenforcing. Setting aside legal frameworks (addressed in responses to question 2), the main challenges can be broadly conceptualized by weaknesses or gaps in political and institutional environments.

The following outlines and characterizes numerous of the prevailing obstacles to effective investigations in which DIGINTY works and/or has expertise.

* Lack of political will

Government officials responsible for criminal justice processes often lack the political will to ensure effective investigations and to implement a strategy of zero tolerance of torture in law enforcement. As a result, those empowered to actually order, supervise or conduct investigations into instances of torture or ill-treatment are not determined to do so. In many contexts, such deficits are owing to countervailing pressures operating on investigators and dampening the initiative to ensure investigation, justice, and accountability for torture. For example, investigators may be concerned that an investigation: (1) would damage his/her or the police’s reputation; (2) departs too radically from conventional administrative or political practice; (3) could trigger too much social and/or political conflict; (4) that prevailing attitudes among political actors would not tolerate an investigation; (5) may upset interest groups which form the government’s political/social base; or (6) that other issues or crises are so compelling that a possible action must be shelved for the time being.

Civil society organizations in Uganda report that investigative bodies wait for instructions to take up torture cases.[[1]](#footnote-2) In other words, someone in a relatively high position of power must have an interest in having a case meaningfully investigated and prosecuted. According to one stakeholder, the opposite is also true, if-and-when police undertake to investigate torture under their own initiative, there are high levels of interference.[[2]](#footnote-3)

Where there is an absence of political will there is often a corresponding absence of faith among survivors in those responsible for investigating torture, leading to fear or resignation in filing formal complaints (Azerbaijan).[[3]](#footnote-4) The lack of political will is also commonly paired with extravagantly baseless claims of an absence of torture (Azerbaijan)[[4]](#footnote-5) or with cycles of investigative procedure that are intended to do nothing other than project a veil of action (Russian Federation).[[5]](#footnote-6)

A lack of political will further leads to situations in which the only torture cases that are successfully prosecuted are tokenized, highly visible or politically charged. For example, since the end of Tunisia’s Ben-Ali era in 2010, there has only been once successful case of torture brought against Tunisian police (and even in this case the perpetrators, sentenced to prison at trial, were issued only a fine on appeal).[[6]](#footnote-7)

* Personal interest of the investigators

Police investigators may also have personal interests in not opening or pursuing investigations as also described in the SRT report on the relationship between torture and corruption.[[7]](#footnote-8)

In Ukraine, those responsible for investigating torture (the State Bureau of Investigations (“SBI”) preference corruption or politically charged cases over allegations of torture as the former offer the potential for obtaining illegal personal benefits (financial, political or other) through activating or inhibiting such investigations.[[8]](#footnote-9)

Lack of Independent Entity to Receive Complaints of Torture

In many contexts there exists no independent state entity empowered to receive complaints and/or to effectively investigate alleged acts of torture. Where such independent bodies do exist, many do not have the mandate to press charges and are instead required to hand cases over to the ordinary prosecution services who decide the resolution of the case (which, for reasons of political will outlined above can be problematic).

For example, in Jordan there is no independent mechanism to investigate ill-treatment and allegations of torture. Moreover, the non-independent complaints mechanisms in Jordan, such as submitting a complaint to the Director of the prison or to the Grievances and Human Rights Office of the Public Security Directorate (PSD), lack confidentiality and fail to protect complainants and witnesses against intimidation.[[9]](#footnote-10) The Special Court system[[10]](#footnote-11) under which the Police Court has jurisdiction over torture committed by PSD also lacks independence and impartiality. The investigations by the Police Court into torture allegations committed by police officers are undertaken by a special prosecutor under the PSD who is a member of the police force. If the complaint is deemed admissible by the special prosecutor, it is handed to the Police Court, which is presided over by three judges, two of whom are also members of the police force, and the third being a civil judge.

Only a very limited number of cases concerning torture or ill-treatment have been referred to the Police Court. Perhaps unsurprisingly, to date there are no convictions based on Article 208 of the Penal Code (Jordan’s penal provision relating to use of violence to extract confessions or information).

In Europe, the CPT has consistently stressed that in investigating allegations of torture or cruel, inhuman, or degrading treatment, it is essential to ensure that the officials responsible for the investigations are not from the same service as those who are the subject of the investigation.[[11]](#footnote-12) For example, see the CPT’s reports concerning its missions in Lithuania (2010),[[12]](#footnote-13) Albania (2018),[[13]](#footnote-14) and Serbia (2021)[[14]](#footnote-15) in which it determined that the respective authorities responsible for investigating and prosecuting allegations of ill-treatment were the very same agencies, and in some cases the same individuals, who allegedly committed or were complicit in the ill-treatment in question.

The situation is the same in Uganda, where victims are in some cases expected to go to the same police stations in which they suffered ill-treatment to make formal complaints.[[15]](#footnote-16) Alternatively, the Ugandan Directorate of Public Prosecutions (DPP), which is empowered to direct police to carry out investigations, as well as taking up, or discontinuing, investigations on its own initiative.[[16]](#footnote-17) However, stakeholders working on torture prevention in Uganda have complained that when the DPP takes over a case, it is often dropped without explanation to victims or the persons who initiated the complaint.[[17]](#footnote-18)

Esprit de corps/professional solidarity

In many contexts, police and those responsible for investigating torture protect one another by failing to investigate, undertaking limited investigations, having alleged perpetrators transferred to alternative duty stations, or pressure witnesses/complainants to retrack statements (this is especially the case where there is no independent body to receive complaints of torture, see above).

In Ukraine, investigators often know those whom they investigate—either personally, through their previous work, or through mutual friends/acquaintances—which is cause for scuttling or diverting complaints.[[18]](#footnote-19) Similar relationships exist between alleged perpetrators and the judges expected to hear respective cases.[[19]](#footnote-20) This culture of professional solidarity against accountability for torture is the result of a type of “regionalization” wherein most investigations of torture take place and/or are supervised at the regional level, where “everybody knows everybody.”[[20]](#footnote-21)

Similar dynamics are reflected in the CPT’s 2019 report on Portugal and its 2021 report on Bosnia-Herzegovina,[[21]](#footnote-22) as well as the Committee against Torture’s 2018 review of the Russian Federation.[[22]](#footnote-23)

In Uganda, the *esprit de corps* among criminal justice actors leads to case files disappearing, being ignored, or deprioritized, and alleged perpetrators being transferred or reassigned.[[23]](#footnote-24)

Confession evidence is heavily relied on

Despite the explicit prohibition against using statements obtained by torture in CAT, confession evidence remains highly relied upon and/or taken to be dispositive as to a detainee’s guilt. Naturally, such judicial and prosecutorial reliance creates incentives for police and investigators to procure confessions, including by torture and ill-treatment. As amply demonstrated by scientific research, such coercion, which may amount to torture, also leads to false confessions, wrongful convictions and miscarriages of justice.[[24]](#footnote-25)

Remarkably, in every single state party under review during the Committee against Torture’s most recent (74th session) alone, the Committee expressed concern about excessive use of force by police to obtain confessions or other evidence (Botswana, Nicaragua, Palestine, United Arab Emirates).[[25]](#footnote-26)

*Ex Officio* investigations are rarely initiated

In many contexts, ex officio investigations are exceedingly rare. Noting the difficulty in proving a negative, the CPT’s 2012 review of Azerbaijan stands out as a paradigmatic example of the failure of the court to initiate ex officio investigations:

a CPT delegation heard allegations of the judge, at the stage of remand in custody, not taking action despite detained persons having complained of ill-treatment. In other cases, despite the detained person clearly being injured, the judge had apparently refrained from pursuing the matter as the person had said that the injuries were “accidental” or simply had said nothing at all; this attitude of “no complaints, no questions” was also displayed by certain senior investigators met by the delegation, and even doctors.[[26]](#footnote-27)

Investigations are weak/poorly carried out

When investigations are in fact carried out, they are often plagued by myriad obstacles inhibiting their effectiveness, including:

* + *Not all evidence is secured in a timely fashion (e.g. instruments which may have been used to ill-treat, forensic evidence, such as DNA, crime scene investigation)*: In many instances, crucial evidence necessary to prove or establish torture is either not collected, ignored, or disappeared. See, for example, the CPT Reports on Montenegro (2017),[[27]](#footnote-28) Serbia (2021),[[28]](#footnote-29) the Committee against Torture’s 2016 concluding observations on Israel,[[29]](#footnote-30) and the European Court of Human Rights’ judgment in the *El-Masri v. the former Yugoslav Republic of Macedonia*.[[30]](#footnote-31)
  + *Medico-legal examinations are not ordered by the court*: See, CPT report on Serbia (2021).[[31]](#footnote-32)
  + *Not all alleged victims, suspects, and eyewitnesses are identified and interviewed*: See, CPT report on the Russian Federation (2019).[[32]](#footnote-33)
  + *Central evidence is ignored, hidden, destroyed or not available*: In Spain CCTV recordings have gone missing.[[33]](#footnote-34) In Uganda police have not adopted 2017 regulations for recording complaints, locating witnesses, and medical-legal documentation of ill-treatment.[[34]](#footnote-35) In Serbia and Russia, the CPT has documented evidence simply being ignored.[[35]](#footnote-36)
  + *Victims and witnesses are not protected against continued human rights violations or reprisals*: In Uganda, a witness protection bill has been stalled in parliament, despite a mandate for protection in the Prevention of Torture Act.[[36]](#footnote-37) As a result, witnesses sometimes disappear during accountability processes and otherwise fear for their lives.[[37]](#footnote-38) Moreover, chances of a successful cases are so low that victim and witness fear of reprisal displaces hope for justice and reparation.[[38]](#footnote-39) The situation is similar in Tunisia, where victims fail to make complaints for fear of reprisal, and are often threatened and pressured to withdraw in the event they do take their case to the authorities.[[39]](#footnote-40)
  + *Investigations/investigators are under resourced*: Investigators and investigating bodies often suffer from a lack of financial resources, human resources, and knowledge resources. For example, the CPT found that Montenegro’s investigative body, “was staffed by 15 police officers at the time of the 2017 visit…and had ten vacant positions. [These staff] perform their specific tasks in addition to their ordinary responsibilities and do not have the status of investigating police officers which means that they cannot conduct formal criminal investigations or act upon the authority of a prosecutor.”[[40]](#footnote-41) The CPT made similar findings regarding North Macedonia[[41]](#footnote-42) and Portugal.[[42]](#footnote-43) So too did the Committee against Torture’s 2018 review of Russia, expressing concern for “insufficient human and financial resources provided to the subdivision of the Investigative Committee that investigates criminal acts by law enforcement officials and the subdivision’s limited access to evidence of torture or ill-treatment located in detention facilities”.[[43]](#footnote-44) An additional hurdle in Uganda is a general lack of specific knowledge among police and investigators on how to conduct and put together a comprehensive case file responding to an allegation of torture.[[44]](#footnote-45) The CPT reported similar gaps in knowledge among investigators in Croatia, where only two of 12 case files shared with the committee reflected and attempt to conduct a thorough investigation.[[45]](#footnote-46)

Prosecutions have limited effect

In many instances, prosecutions are hobbled by the fact that all of the limitations outlined above contribute to alleged perpetrators being charged not for lesser crimes than torture—for example, abuse of power, or coercion—which carry milder sentences. For example, the CPT’s 2019 report on Portugal found that the vast majority of cases against law enforcement and prison officials concerned the crime of “serious bodily harm” rather than torture.[[46]](#footnote-47) The situation is the same in Tunisia where cases in which police have perpetrated torture or other ill-treatment are prosecuted as “abuses of authority” (prosecutions are pursuant to article 101 CC, *not* Article 101 bis of the Penal Code).[[47]](#footnote-48)

As a result of the lesser charges, perpetrators do not receive appropriate penalties but milder sentences, including suspended sentences. For example, in Serbia, according to the CPT:

A police officer from Arandjelovac Police Station was sentenced on 26 March 2019 by Arandjelovac Basic Court to a conditional sentence of one year of imprisonment with a grace period of three years under Article 137, paragraph 3, of the Criminal Code for having inflicted serious physical ill-treatment. The officer had inflicted blows with a truncheon to the soles of the feet (i.e. a well-known torture method called falaka) of two criminal suspects on 4 January 2016 in his office for the purpose of coercing them to confess to a case of theft. The police officer in question is still working at the same police establishment.[[48]](#footnote-49)

**QUESTION 2: Regulatory frameworks**: *How is torture (and other forms of cruel, inhuman or degrading treatment or punishment, as applicable) criminalized in your national legislation?* *Please provide examples (and copies) of national laws that criminalize torture (and other forms of cruel, inhuman or degrading treatment or punishment, as applicable), and approaches to questions such as immunities, amnesties, statutes of limitations, defences of superior orders, and sentencing.*

Broadly speaking, the regulatory frameworks in countries and contexts in which DIGNITY works fall into one of three categories:

* *Torture is not criminalized as such*. For example, in Denmark torture is not prohibited as a distinct and stand-alone criminal offence but is instead captured only as an aggravating circumstance to other prohibited acts of violence, coercion or abuse of public office.[[49]](#footnote-50)
* *Torture is criminalized, but not in accordance with definition of CAT*: For example, in Tunisia, torture is prohibited by Article 23 of the 2014 Constitution[[50]](#footnote-51) (which further establishes that torture will not be subject to any statute of limitations) and criminalized by Article 101bis of the Penal Code.[[51]](#footnote-52) However, the Penal Code’s definition of torture fails to incorporate all of the prohibited purposes articulated and required by CAT—specifically punishment. Moreover, the French version of the provision speaks of ‘general discrimination’ whereas the Arabic version only speaks of ‘racial discrimination’. In cases of conflict between the French and Arabic, the Arabic version takes precedence thereby leading to a narrower scope of discrimination than proscribed by CAT.
* *Torture is criminalized in accordance with CAT*;For example, Uganda enshrines the prohibition against torture in its national constitution,[[52]](#footnote-53) criminalizes torture through the Prevention of Torture Act,[[53]](#footnote-54) and implements the criminalization through promulgated regulations on the investigation and documentation of torture.[[54]](#footnote-55) However, it must be noted that while Uganda enjoys an very strong legal and regulatory framework, implementation, in particular of the 2017 regulations, is still wanting.[[55]](#footnote-56)

**QUESTION 3: Elements of human rights-compliant investigations and prosecutions**: *Please provide concrete examples of laws, regulations or practices that ensure that torture investigations and prosecutions are: a. independent and impartial, b. prompt, c. adequate and effective, d. accessible and safe, e. open to public scrutiny and transparent, and f. secure rights and remedies for victims and survivors.*

Concerning good practices on (f) securing rights and remedies for victims and survivors, Norway’s approach stands out as a model that ensures non-coercive interviewing of criminal suspects, in particular through research-based techniques on investigative interviewing.[[56]](#footnote-57)

Likewise, Uganda’s system offers victims and survivors a range of options to pursue accountability, redress and reparation. Ugandan victims can pursue a criminal track via filing a complaint with the police or prosecution services; a human rights track by initiating a case in Uganda’s national human rights commission; or a civil liability track in trial courts.[[57]](#footnote-58) These different options allow victims to choose the venue that most aligns with their interests and priorities (e.g. criminal justice versus compensation; safety from reprisal; timeline until resolution, etc.)

**QUESTION 4: Mechanisms/institutions/entities involved in complaints, investigations and prosecution**: *What are the institutional arrangements in place to secure independent and effective investigations and prosecutions of allegations of torture (and other forms of cruel, inhuman or degrading treatment or punishment, as applicable)? How are complaints initiated? Please elaborate on competence, composition and expertise, working methods, legal and regulatory framework, etc.*

Globally, several countries have established independent police complaints boards (IPCB) over the past decades and there is a trend towards greater independence and transfer of responsibilities.[[58]](#footnote-59) Mechanisms to ensure effective investigation of torture vary widely between contexts. In Denmark, the Independent Police Complaint Authority (IPCA) was established in 2012 to investigate criminal offences committed by police officers on duty and consider and decide on complaints of police misconduct.[[59]](#footnote-60) The IPCA exercises its functions in complete independence of both police and prosecutors. When investigations are complete, criminal cases are forwarded to the regional prosecutor who decides on whether to prosecute. Similarly, Norway established its Bureau for the Investigation of Police Affairs (BIPA) in 2005. BIPA is an independent organization administered under the Ministry of Justice. BIPA is mandated to investigate criminal offences allegedly committed by the police or the prosecutor’s office. The Bureau receives complaints and may also investigate ex officio, e.g. based on media reports. Importantly, BIPA holds not only investigative but also prosecutorial powers and, as such, it is a state-of-the-art mechanism.[[60]](#footnote-61)

Similar authorities exist in Ecuador and Peru dedicated specifically to receive and process complaints concerning violence against women and gender-based violence.[[61]](#footnote-62)

In Uganda, private lawyers can petition the courts for independent assessments into the medical-legal documentation of torture in individual cases.[[62]](#footnote-63) In some instances, Ugandan civil society is then designated by the court to carry out such an assessment.[[63]](#footnote-64) A similar process of referral also functions in the Ugandan Human Rights Commission.[[64]](#footnote-65)

Ukraine adopted a law in 2015 providing for the establishment of an independent central executive body – the State Bureau of Investigation (SBI) – mandated to “prevent, detect, stop, solve and investigate crimes within its jurisdiction”, which notably includes crimes committed by law enforcement officials.[[65]](#footnote-66) Nevertheless, independent and effective investigations of torture are hindered by a lack of cooperation among responsible authorities.[[66]](#footnote-67) This lack of cooperation is in part fueled by a high turnover of personnel in the authorities responsible for investigation, as well as an absence of a clear mandate from leadership to prioritize torture investigations.[[67]](#footnote-68)

In contexts where effective and independent investigations have proven impossible, especially where alleged instances of torture and other human rights violations occur *en masse*, the International Accountability Platform for Belarus (IAPB) has proven to be an effective means for civil society to investigate torture.[[68]](#footnote-69) The IAPB is a coalition of independent Belarusian and international NGOs that joined forces (in 2021) to collect, consolidate, verify, and preserve evidence of gross human rights violations constituting crimes under international law allegedly committed by Belarusian authorities and others in the run-up to the 2020 presidential election and its aftermath. The Platform is unprecedented insofar as it is the first-ever civil society initiative supported by over 20 countries and the EU with the aim of gathering evidence and assisting independent and fair criminal investigations and prosecutions, carried out in accordance with international law and standards, in national or international courts or tribunals that have or may have jurisdiction over those crimes. Investigations, including the collection of information from victims and witnesses and gathering open-source information, are ongoing and will support criminal justice authorities in a number of countries.

**QUESTION 6: Complex investigations**: *Please share concrete examples of handling complex investigations and prosecutions, including those where the crime was committed outside the territory of the prosecuting state (extradite or prosecute), during ongoing armed conflict or occupation or ongoing public emergency. Do you have experience of mutual legal assistance in torture cases, or universal jurisdiction? Also please share information about handling situations where both domestic and international investigations and prosecutions are occurring simultaneously.*

Regarding investigating conflict-related sexual violence, two recent international initiatives have made notable progress on survivor-centered documentation efforts.

In 2014 the UK's Preventing Sexual Violence Initiative published the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict.[[69]](#footnote-70) The Protocol takes an intentional survivor-centered approach to elaborating basic standards of best practice on documentation of sexual violence as a crime under international law.

More recently the Murad Code set out a code of conduct for investigators and others collecting information from survivors of systematic and conflict-related sexual violence.[[70]](#footnote-71) Named after Nobel Peace Prize Laureate Nadia Murad, the core commitments of the Code are to reflect and codify the survivors’ wishes on how documenters engage with them.

Additionally, the United Nations Team of Experts on the Rule of Law and Sexual Violence in Conflict works closely with national governments and United Nations missions and Country Teams to support the investigation, prosecution of perpetrators and adjudication of crimes under civilian and military systems, legislative reform, the protection of victims and witnesses.[[71]](#footnote-72)

But, and crucially, these practices and initiatives do not adequately address conflict-related sexual violence *as torture*; and history has shown that even the most survivor-centered investigations may be hobbled by gender discriminations or blind spots harbored by prosecutors and judges. After all, in one of the most foundational cases of sexual violence as an international crime (including as ill-treatment), the International Criminal Tribunal’s *Prosecutor v. Akayesu*, charges of sexual violence were only included after the original indictment was amended following significant civil society pressure.[[72]](#footnote-73)

Indeed, international prosecutions, and by extension the underlying investigations, of sexual and gender-based violence reflect highly gendered conceptions of the international crimes of torture or ill-treatment.

In its case law, international humanitarian law distinguishes between forms of ill-treatment, in part, by the level of severity of pain—severe (torture); serious (cruel or inhuman treatment); or reasonably outrages to the ordinary person (outrages on personal dignity including humiliating and degrading treatment).[[73]](#footnote-74) In determining the severity of pain, international criminal tribunals have looked at a mix of objective and subjective factors, including “the nature of the act or omission, the context in which it occurs, its duration and/or repetition, the physical, mental and moral effects of the act on the victim and the personal circumstances of the victim, including age, sex and health.”[[74]](#footnote-75)

Despite this relatively neutral set of criteria, courts have nevertheless more readily designated acts of sexual and gender-violence as “outrages” crimes (lesser severity of pain) rather than as “torture” or “cruel treatment” (greater severity of pain).

That is, while international criminal tribunals have said that rape ‘per se’ meets the severity threshold for torture[[75]](#footnote-76) and elsewhere found that forced witnessing of sexual violence against an acquaintance also constituted torture,[[76]](#footnote-77) they have been less reserved in determining the same and other acts of sexual and gender-based violence constitute outrages on personal dignity (including forced public nudity,[[77]](#footnote-78) rape and sexual violence,[[78]](#footnote-79) sexual slavery, including the abduction of women and girls as “bush wives”,[[79]](#footnote-80) and enduring the constant fear of being subjected to physical, mental or sexual violence[[80]](#footnote-81)). This disparity is all-the-more perplexing as many acts of sexual violence are fundamentally discriminatory in nature and design, and thus satisfy torture’s purpose requirement.

One explanation for this discrepancy lies on the shoulders of investigators and prosecutors. International humanitarian law, no less than international human rights law, has suffered from a historical bent to protect women’s “honor”—including a woman’s place in the family and/or community—rather than personal integrity, leading to a preoccupation with describing gendered violence in the terms of dignity rather than bodily harm.[[81]](#footnote-82) In the aftermath of wartime atrocities, victims are sifted into categories by investigators and prosecutors, and while massive progress has been made, prejudicial conceptions of gender and victimhood have been a barrier to a more accurate reading of certain acts of sexual and gender-based violence as torture or cruel treatment under international humanitarian law.

**QUESTION 7: Evidence collection and innovation**: *Please provide examples of innovative practices to secure evidence collection and any associated challenges around use of new technologies, open source documentation, application of the Istanbul Protocol, or other innovative practices and developments.*

Uganda’s 2017 Prevention and Prohibition of Torture Regulations[[82]](#footnote-83) stand out as strong models to facilitate comprehensive documentation and investigations of instances of torture. Specifically, the Regulations include seven forms for police and investigators to use in investigation allegations of torture. Notably, Form 4 covers medical examination of victims of torture, and is modeled after the Istanbul Protocol.

1. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY. [↑](#footnote-ref-2)
2. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY [↑](#footnote-ref-3)
3. CPT Report on Azerbaijan, 2017, para 27-28, [16808c5e46 (coe.int)](https://rm.coe.int/16808c5e46). [↑](#footnote-ref-4)
4. CPT Report on Azerbaijan, 2017, para 27-28, [16808c5e46 (coe.int)](https://rm.coe.int/16808c5e46). See also Committee against Torture, Concluding Observations of Azerbaijan’s Fourth Periodic Review, UN Doc. CAT/C/AZE/CO/4, 27 Jan. 2016, para. 8. [↑](#footnote-ref-5)
5. CPT Public Statement on the Russian Federation, 2019, para 24-31, [16809371ee (coe.int)](https://rm.coe.int/16809371ee). [↑](#footnote-ref-6)
6. Interview with Tunisian civil society representative working on torture prevention, on file with DIGNITY. [↑](#footnote-ref-7)
7. U.N. Doc A/HRC/40/59, 17 January 2019. [↑](#footnote-ref-8)
8. Interview with staff member of Ukraine’s prosecution service, on file with DIGNITY. [↑](#footnote-ref-9)
9. Committee agaisnt Torture, Concluding Observations on Jordan’s third periodic review, U.N. Doc. CAT/C/JOR/CO/3, 29 January 2016, para 33 [↑](#footnote-ref-10)
10. In Jordan, security legislation provides that police and military officials are under the jurisdiction of special courts. A special court attached to security or military forces is usually an internal forum to maintain discipline and the integrity of the institution, and therefore lacks the independence, transparency and the essential elements of criminal justice. [↑](#footnote-ref-11)
11. CPT 14th General Report (2003-04) on impunity, para 32, [14th General Report on the CPT's activities (coe.int)](https://rm.coe.int/1680696a80). [↑](#footnote-ref-12)
12. CPT Report on Lithuania, 2010, para 35, [1680697337 (coe.int)](https://rm.coe.int/1680697337). [↑](#footnote-ref-13)
13. CPR Report on Albania, 2018, para 17, [168097986b (coe.int)](https://rm.coe.int/168097986b). [↑](#footnote-ref-14)
14. CPT Report on Serbia, 2021, para 21-33, [1680a5c8a4 (coe.int)](https://rm.coe.int/1680a5c8a4). [↑](#footnote-ref-15)
15. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY [↑](#footnote-ref-16)
16. Constitution of Uganda, Article 120(1) and (3). [↑](#footnote-ref-17)
17. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY [↑](#footnote-ref-18)
18. Interview with staff member of Ukraine’s prosecution service, on file with DIGNITY. [↑](#footnote-ref-19)
19. Interview with staff member of Ukraine’s prosecution service, on file with DIGNITY. [↑](#footnote-ref-20)
20. Interview with staff member of Ukraine’s prosecution service, on file with DIGNITY. [↑](#footnote-ref-21)
21. CPT Report on Portugal, 2019, para 24-34, [1680a05953 (coe.int)](https://rm.coe.int/1680a05953); CPT Report on Bosnia-Herzegovina, 2012, para. 19, [DisplayDCTMContent (coe.int)](https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680694015). [↑](#footnote-ref-22)
22. Committee against Torture, concluding observations on the Russian Federation’s sixth periodic review, U.N. Doc. CAT/C/RUS/CO/6, 28 August 2018, para. 14. [↑](#footnote-ref-23)
23. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY [↑](#footnote-ref-24)
24. Mendez Principles on Effective Interviewing for Investigations and Information Gathering, p. 6-8. [↑](#footnote-ref-25)
25. Committee against Torture: Concluding Observations on Botswana’s initial periodic review, U.N. Doc. CAT/C/BWA/CO/1, 23 August 2022, para. 31; Concluding Observations on Nicaragua’s second periodic review, U.N. Doc. CAT/C/NIC/PCO/2, 1 Sept 2022, para. 21; Concluding Observations on the State of Palestine’s initial periodic review, U.N. Doc. CAT/C/PSE/CO/1, 23 August 2022, para. 30; Concluding Observations on the United Arab Emirates initial periodic review, U.N. Doc. CAT/C/ARE/CO/1, 22 August 2022 para. 33. [↑](#footnote-ref-26)
26. CPT Report on Azerbaijan, CPT report 2012, para 44, [16808c5e1f (coe.int)](https://rm.coe.int/16808c5e1f). [↑](#footnote-ref-27)
27. CPT Report on Montenegro, 2017, para 18, [1680925987 (coe.int)](https://rm.coe.int/1680925987). [↑](#footnote-ref-28)
28. CPT Report on Serbia, 2021, para 21-33, [1680a5c8a4 (coe.int)](https://rm.coe.int/1680a5c8a4). See also Committee against Torture, Concludiing Observations on Serbia’s third periodic review, U.N. Doc. CAT/C/SRB/CO/3, 20 December 2021, para. 13. [↑](#footnote-ref-29)
29. Committee against Torture, Concluding Observations on Israel’s fifth periodic review, CAT/C/ISR/CO/5, 2 June 2016, para. 20. [↑](#footnote-ref-30)
30. ECtHR judgement, d (El-Masri v. the former Yugoslav Republic of Macedonia [GC], 2012, para. 183. [↑](#footnote-ref-31)
31. CPT Report on Serbia, 2021, [1680a5c8a4 (coe.int)](https://rm.coe.int/1680a5c8a4). [↑](#footnote-ref-32)
32. CPT Public Statement on the Russian Federation, 2019, para 24-31, [16809371ee (coe.int)](https://rm.coe.int/16809371ee). [↑](#footnote-ref-33)
33. CPT Report on Spain, 2020, para 15, [1680a47a76 (coe.int)](https://rm.coe.int/1680a47a76). [↑](#footnote-ref-34)
34. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY [↑](#footnote-ref-35)
35. CPT Report on Serbia, 2021, para 27, [1680a5c8a4 (coe.int)](https://rm.coe.int/1680a5c8a4); CPT Public Statement on the Russian Federation, 2019, para 31, [16809371ee (coe.int)](https://rm.coe.int/16809371ee). [↑](#footnote-ref-36)
36. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY. [↑](#footnote-ref-37)
37. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY. [↑](#footnote-ref-38)
38. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY. [↑](#footnote-ref-39)
39. Interview with Tunisian civil society representative working on torture prevention, on file with DIGNITY. [↑](#footnote-ref-40)
40. CPT Report on Montenegro, 2017, para 18, [1680925987 (coe.int)](https://rm.coe.int/1680925987). [↑](#footnote-ref-41)
41. CPT Report on North Macedonia, 2019, para 21, [1680a26b8f (coe.int)](https://rm.coe.int/1680a26b8f): “That said, the specialised prosecutors expressed their concern that none of the nine judicial police officers (investigators) had yet been recruited to support them which meant that they had to rely on the DIC in particular to conduct pre-investigative actions (e.g. interviews with staff, witnesses and examination of CCTV recordings). However, the DIC staff were not under the direct authority of the prosecutors, nor were they appropriately trained to carry out the functions of a specialised investigator. Further, the DIC referred to them many complaints which clearly contained no identifiable elements of any criminal responsibility by law enforcement officers and which consumed a disproportionate amount of their limited resources.” [↑](#footnote-ref-42)
42. CPT Report on Portugal, 2019, para 24-34, [1680a05953 (coe.int)](https://rm.coe.int/1680a05953): The Regional criminal investigation and action department (DIAP) for Lisbon is composed of only three prosecutors and four officials. It is not only responsible for crimes involving the use of force by public officials, but also investigates and prosecutes “violent, economic and financial crimes, which are highly organised or of special complexity”. [↑](#footnote-ref-43)
43. Committee against Torture, Concluding Observations on the Russian Federation’s sixth periodic review, U.N. Doc. CAT/C/RUS/CO/6, 28 August 2018, para. 14. [↑](#footnote-ref-44)
44. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY. [↑](#footnote-ref-45)
45. CPT Report on Croatia, 2020, para 25, [1680a4c199 (coe.int)](https://rm.coe.int/1680a4c199). [↑](#footnote-ref-46)
46. CPT Report on Portugal, 2019, para 24-34, [1680a05953 (coe.int)](https://rm.coe.int/1680a05953). [↑](#footnote-ref-47)
47. Interview with Tunisian civil society representative working on torture prevention, on file with DIGNITY. [↑](#footnote-ref-48)
48. CPT Report on Serbia, 2021, para 21-33, [1680a5c8a4 (coe.int)](https://rm.coe.int/1680a5c8a4). [↑](#footnote-ref-49)
49. Danish Criminal Code, § 157a. See also Committee against Torture, Concluding Observations on Denmark’s sixth and seventh periodic reports, U.N. Doc. CAT/C/DNK/CO/6-7, 4 Feb. 2016, paras. 10-11. [↑](#footnote-ref-50)
50. Constitution of Tunisia, 2014, Art. 23. [↑](#footnote-ref-51)
51. Penal Code of the Tunisian Republic, Art. 101bis. [↑](#footnote-ref-52)
52. Constitution of Uganda, Arts. 24 and 44. [↑](#footnote-ref-53)
53. Prevention and Prohibition of Torture Act, 2012 (No. 3 of 2012). [↑](#footnote-ref-54)
54. The Prevention and Prohibition of Torture Regulations, 2017. [↑](#footnote-ref-55)
55. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY. [↑](#footnote-ref-56)
56. CPT Report on Norway, 2018, para 26-30, [1680909713 (coe.int)](https://rm.coe.int/1680909713). [↑](#footnote-ref-57)
57. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY. [↑](#footnote-ref-58)
58. Graham Smith, International Police Complaints Reform, 2015. [↑](#footnote-ref-59)
59. Denmark, Administration of Justice Act Part 93b, 93c; see also Denmark, Independent Police Authority, <https://politiklagemyndigheden.dk/english/>. [↑](#footnote-ref-60)
60. Norway Bureau of Police Affairs, Complaints against the police, <https://www.spesialenheten.no/complaints-against-the-police/complaints-against-the-police/>; see also J. Byrne & W. Priestly, Police oversight mechanisms in the Council of Europe members states, Sept. 2015, p 44-46, <https://rm.coe.int/police-oversight-mechanisms-in-the-coe-member-states/16807175dd>. [↑](#footnote-ref-61)
61. Ecuador, Comisarías de la Mujer y la e Familia, <https://www.gobernacionnapo.gob.ec/new/comisarias-de-la-mujer-y-la-familia/>, UN Women, Ecuador Comisarías de la Mujer y la e Familia <https://evaw-global-database.unwomen.org/fr/countries/americas/ecuador/1997/comisarias-de-la-mujer-y-de-la-familia>. UN Women, Peru, Comisarías de la Mujer y las Secciones de Investigación de Violencia Familiar, [Comisarías de la Mujer y las Secciones de Investigación de Violencia Familiar (unwomen.org)](https://evaw-global-database.unwomen.org/fr/countries/americas/peru/2010/comisarias-de-la-mujer-y-las-secciones-de-investigacion-de-violencia-familiar). [↑](#footnote-ref-62)
62. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY [↑](#footnote-ref-63)
63. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY [↑](#footnote-ref-64)
64. Interview with Uganda civil society representative working on torture prevention through litigation, on file with DIGNITY [↑](#footnote-ref-65)
65. Section 216 (4) of the Code of Criminal Procedure. [↑](#footnote-ref-66)
66. Interview with staff member of Ukraine’s prosecution service, on file with DIGNITY. [↑](#footnote-ref-67)
67. Interview with staff member of Ukraine’s prosecution service, on file with DIGNITY. For further details, please also see the CPT’s report on its 2020 visit to Ukraine, p. 17-2 [1680a0b93c (coe.int)](https://rm.coe.int/1680a0b93c) [↑](#footnote-ref-68)
68. *See* International Accountability Platform for Belarus, Progress Report 9/2021-1/2022, [IAPB\_SecondReport\_Public\_FINAL\_2022.pdf (iapbelarus.org)](https://iapbelarus.org/wp-content/uploads/2022/04/IAPB_SecondReport_Public_FINAL_2022.pdf). [↑](#footnote-ref-69)
69. International Protocol on the Documentation and Investigation of Sexual Violence in Conflict -Basic Standards of Best Practice on the Documentation of Sexual Violence as a Crime under International Law, First Edition: June 2014, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf>. [↑](#footnote-ref-70)
70. The Murad Code Project, <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf>. [↑](#footnote-ref-71)
71. Office of the Special Representative of the Secretary General on Sexual Violence in Conflict - UN Team of Experts on Rule of Law and Sexual Violence in Conflict, <https://www.un.org/sexualviolenceinconflict/our-work/team-of-experts/>. [↑](#footnote-ref-72)
72. *See* Beth Van Schaack, Engendering Genocide: The Akayesu Case Before the International Criminal Tribunal for Rwanda, 1 July 2008, Santa Clara Law Digital Commons, <https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1626&context=facpubs>. [↑](#footnote-ref-73)
73. International Committee of the Red Cross, 2016 Commentaries to Geneva Convention I, common Article 3, paras. 629-632, 664. Of note, The ICC Elements of Crimes requires ‘severe’ physical or mental pain or suffering for both torture and cruel treatment, but retains the reasonable person standard for outrages on personal dignity. See ICC Elements of Crimes, <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>. [↑](#footnote-ref-74)
74. ICTY, *Krnojelac* Trial Judgment, 2002, para. 131; see also *Hadžihasanović* Trial Judgment, 2006, para. 33; *Orić* Trial Judgment, 2006, para. 352; *Martić* Trial Judgment, 2007, para. 80; *Delić* Trial Judgment, 2008, para. 51; *Lukić and Lukić* Trial Judgment, 2009, para. 957; and *Tolimir* Trial Judgment, 2012, para. 854. [↑](#footnote-ref-75)
75. ICTY, Brđanin Trial Judgment, 2004, para. 485; Stanišić and Župljanin Trial Judgment, 2013, para. 48; Delalić Trial Judgment, 1998, para. 495; Kunarac Appeal Judgment, 2002, para. 151; and ICTR, Akayesu Trial Judgment, 1998, para. 682. [↑](#footnote-ref-76)
76. ICTY, Furundžija Trial Judgment, 1998, para. 267. See also Kvoćka Trial Judgment, 2001, para. 149. [↑](#footnote-ref-77)
77. ICTY, Kunarac Trial Judgment, 2001, paras 766–774. [↑](#footnote-ref-78)
78. ICTY, Furundžija Trial Judgment, 1998, paras 270–275; ICTR, Ndindiliyimana Trial Judgment, 2011, para. 2158. [↑](#footnote-ref-79)
79. SCSL, Taylor Trial Judgment, 2012, para. 432. [↑](#footnote-ref-80)
80. ICTY, Kvočka Trial Judgment, 2001, para. 173. [↑](#footnote-ref-81)
81. And specifically, the dignity of “women”—as this historical and patriarchal bent also describes why sexual and gender-based violence crimes have historically only been investigated and prosecuted when committed against women, excluding the experiences of male and LGBTIQ victims of sexual violence in war. [↑](#footnote-ref-82)
82. Uganda, Prevention and Prohibition of Torture Regulations, 2017, [The-Prevention-and-Prohibition-of-Torture-Regulations- 2017.pdf (chapterfouruganda.org)](https://chapterfouruganda.org/sites/default/files/downloads/The-Prevention-and-Prohibition-of-Torture-Regulations-%202017.pdf). [↑](#footnote-ref-83)