Questionnaire

The Special Rapporteur seeks contributions from States, including specific State agencies involved in the identification, documentation, investigation and prosecution of crimes of sexual torture, such as, inter alia, civilian and military law enforcement agencies, investigators/prosecutors, forensic services (legal and medical services), medical and health services, judicial institutions and monitoring institutions.

It would also welcome contributions from national human rights institutions, national preventive mechanisms or other monitoring bodies, bodies responsible for finding missing persons, civil society organisations and academics, including those representing the views and experiences of people who have been directly affected by crimes of sexual torture in armed conflict.

In particular, the Special Rapporteur would like to receive information on the following points concerning sexual torture and related ill-treatment in armed conflicts:

Challenges, obstacles and impediments to the effective identification, documentation, investigation and prosecution of crimes of sexual torture and related ill-treatment: What are the main obstacles to the full and prompt investigation and prosecution of allegations of sexual torture and related crimes committed during armed conflict?

*In our country, the DR Congo, the situation of insecurity prevailing in many villages and their occupation by armed groups means that these areas are uncontrolled by the government and where justice has no access, making it impossible to investigate cases of sexual torture and related crimes.*

- take into account issues such as gaps in civil or military legal and regulatory frameworks (see below), political, cultural and leadership, institutional, sociological, psychological, practical, medico-legal, health, etc. challenges. What are some examples of strategies or good practice to address these challenges?

*In political terms, once the situation of insecurity has been re-established, the State will be able to impose itself in the area under rebel control and set up a judicial system whose mission will be to investigate and punish the alleged perpetrators of crimes of sexual torture and related crimes, in accordance with the national legislation in force in this area and other international legal instruments ratified by the DRC.*

Regulatory frameworks - civil and military codes: Does the national legislative or regulatory framework take account of sexual torture inflicted during armed conflicts?

*Depending on the political context, the regulatory framework and the legislative framework take into account whether the situation is exceptional or ordinary. In the DRC, for example, in areas under a state of siege, cases of sexual torture or any form of sexual violence fall within the jurisdiction of the military courts, whereas in normal circumstances, this jurisdiction falls to the civil courts.*

*In both situations, there is no specific code that punishes these offences, only the ordinary criminal code on the one hand and the law on sexual violence on the other.*

Sub-questions: How is sexual torture (and related forms of cruel, inhuman or degrading treatment or punishment, if any) prohibited and criminalised in national legislation? Please refer to the general penal code and any applicable military law.

*In national legislation, there is a law on the repression of sexual violence, which was promulgated in 2006, and the ordinary criminal code, which punishes any form of act against physical integrity, as well as a law criminalising torture: law no. 11/008 of 09 July 2011 criminalising torture.*

Is "sexual torture" explicitly defined in national legislation? If so, is it a separate offence, or has your national legislation defined "discrimination" as included in the definition of torture in Article 1 of the UN Convention against Torture?

Congolese legislation does not contain an explicit definition of sexual torture, but rather a law on torture and a law on sexual violence.

If there is no explicit crime of sexual torture, does the general crime of torture include the sexualised nature of torture as an aggravating factor likely to increase criminal penalties? Does the law incorporate other approaches that deal specifically with the sexual nature of the crime?

No, in the law on torture, the Congolese legislator has instead increased the penalty for the offence of torture insofar as this crime has caused the victim serious trauma, illness, permanent work incapacity, physical or psychological impairment, or when the victim is a pregnant woman, a minor or a person of advanced age or living with a disability. Cfr Article 48 ter of Law *n°11/008 of 09 July 2011 criminalising torture*.

Please provide examples (and copies) of national laws or significant judgments that criminalise sexual torture (and related forms of cruel, inhuman or degrading treatment or punishment, where applicable), and the penalties applied.

*- Law n°11/008 of 09 July 2011 on the criminalisation of torture, article 48 ter of which states:*

*Article 48b*

*The offender shall be punished by ten to twenty years' rigorous imprisonment and a fine of one hundred thousand Congolese francs to two hundred thousand Congolese francs where the acts referred to in article 48 bis above have caused the victim serious trauma, illness, permanent incapacity for work, physical or psychological impairment, or where the victim is a pregnant woman, a minor or a person of advanced age or living with a disability.*

*He will be punished by life imprisonment if the same acts cause the death of the victim.*

*- Law no. 06/019 of 20 July 2006 amending and supplementing the Decree of 06 August 1959 on the Congolese Code of Criminal Procedure*

Participation and protection of victims during investigations and prosecutions : What special provisions (procedures, standards, protocols, good practices) and protections are available for victims of sexual torture and related ill-treatment in armed conflict? Are there platforms for consultation and/or discussion that allow victims and survivors of crimes of sexual torture committed in the context of armed conflict to participate actively in the design, implementation and evaluation of the legal and/or administrative processes specifically established for justice and reparation for these crimes?

In judicial practice, for crimes of sexual violence, the courts either order a closed session, or the victim is veiled to protect her dignity and honour and also to stigmatise her.

Collection of evidence and documentation in accordance with the Istanbul Protocol: What are the practical, logistical and other challenges involved in collecting evidence of sexual torture in armed conflict? What good practices are used to address these challenges?

Firstly, there is the challenge of the distance between jurisdictions in several villages, the shame of presenting one's situation before the courts for fear of being indexed and denigrated on the grounds that the victim has given himself up to his executioner, the reprisals of the executioner if he is denounced, and the weakness of the justice system in gathering clues and evidence.

Provide examples of specialised policies, protocols and practices used to identify, document and secure the collection of evidence regarding crimes of sexual torture in armed conflict and related ill-treatment and harm to individuals, families and communities. Please provide information on any specialised expertise or interview techniques used.

- in matters of sexual violence, the investigation is confidential as for any other matter, the law on sexual violence requires that the procedure in this matter be confidential, as in the case of article 7 of Law no. 06/019 of 20 July 2006 amending and supplementing the Decree of 06 August 1959 on the Congolese Code of Criminal Procedure, which states:

Article 7a

"Without prejudice to the legal provisions relating to the "flagrante delicto" procedure, the preliminary investigation into sexual violence "shall be carried out within a maximum of one month from the date of referral to the judicial authority. The investigation and the pronouncement of judgment shall be carried out within a maximum of three months from the time the matter is referred to the judicial authority.

"The investigation by the Judicial Police Officer is immediate. It is carried out without delay so as to provide the officer of the Public Prosecutor's Office with the main elements of assessment.

"A Judicial Police Officer to whom an offence relating to sexual violence has been referred shall notify the Public Prosecutor's Office within 24 hours.

"During all phases of the procedure, the victim is assisted by a counsel.

Has your country recognised the Istanbul Protocol? Have your authorities identified any specific difficulties in applying the Istanbul Protocol to victims and survivors of sexual torture or related ill-treatment? What are their best practices in applying the Istanbul Protocol to victims and survivors of sexual torture?

With regard to the content of the Istanbul Protocol, the DRC's legal system applies the provisions of the ordinary criminal code and the law on sexual violence.

Rehabilitation: What specialist rehabilitation approaches and services are available to victims, witnesses, families and communities who have been affected by sexual torture and related ill-treatment in the context of armed conflict? How do they differ from the rehabilitation assistance provided to victims of torture? How do they differ from rehabilitation provided in situations of non-armed conflict? How should the nature or process of rehabilitation be adapted to different groups of victims (for example, taking into account cross-cutting characteristics such as sex/gender, age, other health conditions, civilian versus military victims, etc.)? What is the link with other forms of reparation (compensation, restitution, satisfaction and non-repetition)? N/A