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| **The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**  **Answers by the Federal Republic of Germany to the questionnaire on sexual torture and related ill-treatment**  **23rd of April 2024** |

**I: Challenges, impediments and obstacles to effective identification, documentation, investigation and prosecution of crimes of sexual torture and related ill-treatment:**

**What are the main impediments preventing full and prompt investigations and prosecutions into allegations of sexual torture and related crimes committed during an armed conflict – consider matters such as gasps in civil or military legal and regulatory frameworks, political-cultural leadership, institutional, sociological, psychological, practical, forensic, health, other challenges? What are some examples of the strategies or good practices for addressing these challenges?**

In the past, the Federal Public Prosecutor General at the Federal Court of Justice has investigated a large number of cases of sexualized violence in connection with armed conflicts around the world and continues to do so. Examples include crimes in connection with the genocide in Rwanda, the actions of militia members of the "Forces Démocratiques de Libération du Rwanda" (FDLR) marauding in eastern Congo to the detriment of the civilian population there, members of the Syrian regime to the detriment of actual, suspected or alleged members of the opposition, and, in particular, because of the systematic sexualized violence committed by members of the so-called "Islamic State" against Yazidi women and girls and, most recently, in connection with Russia's war of aggression against Ukraine. Experience has shown that there is hardly any international or non-international conflict or crime against humanity in which sexualized violence is not used as a targeted weapon against the opposing party and especially against the civilian population.

In order to overcome the inhibition to testify, especially on the part of victim witnesses, and thus to achieve investigative success, the following approaches have proven to be effective:

The interrogations of female victims of sexualized violence are conducted exclusively in the presence of female persons. The investigators and interpreters appointed by the investigating authorities are exclusively female. Nevertheless, it happens time and again that male legal representatives of the victims want to take part in such hearings. Although this can have an extremely detrimental effect on the testimony, the investigating authorities cannot refuse to allow them to attend if the victims have nominated the legal advisors and/or if they attend at the request of the victims. However, it has proven positive to conduct the hearings in a protected and pleasant atmosphere. If witnesses so wish, other people close to them can also attend the hearing as supportive confidants. If the interrogations do not focus specifically on the sexual assaults to the detriment of the victim witness as an individual act, but instead present them as part of an overall procedure that characterizes an armed conflict or a crime against humanity, the victims can be spared the need to provide detailed information about their own ordeals in individual cases.

Despite this approach, which has proven itself in practice, the prosecution of offenses against sexual self-determination in the context of widespread or systematic attacks or in connection with an international or non-international armed conflict before German courts may reach its limits in individual cases, whereby the problems are primarily of a factual nature. In contrast, the available legal framework generally proves to be sufficient. This is for the following reasons:

Witnesses are often only able to report on sexual offenses from hearsay and not from their own perception or personal experience. It is obvious that in the case of international crimes, the witnesses have often neither observed nor suffered acts of sexualized violence themselves and are therefore unable to make any statements about such conduct. Even if there is an eyewitness statement that could be available as evidence for questioning in a main trial, it is not necessarily guaranteed that perpetrators can be identified and investigated and that they are present in the Federal Republic of Germany.

However, other factors can also be relevant. It is not uncommon for potential witnesses who have suffered sexualized violence to come from communities or cultural circles in which the fact of having been a victim of sexualized violence has stigmatizing consequences for both the victim and their relatives. Frequently, people who are even suspected of having been victims of sexualized violence are excluded from the family circle, as the act they have suffered is seen as a potential family disgrace. This phenomenon is particularly noticeable in investigations into crimes against sexual self-determination committed in the Arab cultural area in connection with conflicts there. In these cases, it is difficult to obtain any evidence of sexualized violence at all. It is also not uncommon to suspect that witnesses who report criminal acts against sexual self-determination to the detriment of third parties have suffered these themselves without being willing or able to admit it.

Even if victim witnesses have reported on sexual offences they have experienced in the preliminary proceedings, it must be taken into account that a statement in a public trial with a constitutionally guaranteed right of the defence and the accused to ask questions often has a retraumatizing and secondary victimizing effect. In the run-up to an indictment, it must be weighed up in each individual case whether the sexual offense with the associated problems for the witnesses should actually be brought to trial or whether this should be dispensed for reasons of victim protection with regard to other known offenses, because the offense against sexual self-determination would only carry insignificant weight in the assessment of the sentence.

Finally, witnesses living in Germany are not wrong to fear that their relatives still living in the country where the crime was committed will be subjected to reprisals if they report such crimes, as has been repeatedly stated in relation to the Syrian regime.

In addition to the fact that eyewitnesses in Germany are sometimes absent or unwilling to testify, often no other evidence can be obtained for crimes against sexual self-determination. The crimes in question take place in conflict regions abroad, which means that the German prosecution authorities often have no access to the crime scenes. The path of judicial legal assistance is regularly blocked for factual reasons, as the underlying crimes are often ongoing and the potential perpetrators are still the dominant conflict actors at the scene of the crime. For this reason, witnesses in the country where the crime took place are usually not available for questioning in German criminal proceedings. In addition, the crimes in question often occurred some time ago before German law enforcement authorities learn about them – for example through people who have fled to Germany.

A positive example of how crimes of the aforementioned type can be investigated and those responsible for them convicted by German courts are the convictions for acts committed against Yazidi women by the so-called Islamic State. A large number of witnesses to these crimes are in Germany. Due to the close ties within the Yazidi community and the general agreement within the community to enable criminal proceedings against the perpetrators of the genocide against the Yazidis and to report sexualized violence for this purpose, Yazidi victims have testified as witnesses before German courts. The witnesses were interrogated by specially trained German police interrogators and employees of international evidence-gathering mechanisms (UNITAD, IIIM), who interrogated the victims of sexualized violence with particular cultural sensitivity. In court proceedings, the witnesses have also made use of the existing legal options of joint plaintiff representation and witness assistance and, in appropriate cases, psychosocial trial support. In many cases, they also received advice and support from NGO staff.

**II: Regulatory frameworks - civilian and military codes:**

**Does the national legislative or regulatory framework account for sexual torture inflicted during armed conflict?**

**1) How is torture of sexual nature (and related forms of cruel, inhuman or degrading treatment or punishment, as applicable) prohibited and criminalized in national legislation? Please refer to both general criminal code, as well as any applicable military laws.**

In the context of armed conflict and other systematic violence, German law criminalises sexualized violence as well as torture.

Section 8 (war crimes against persons) paragraph 1(3) and (4) of the Code of Crimes against International Law (Völkerstrafgesetzbuch – VStGB) state:

*“Whoever in connection with an international armed conflict or with an armed conflict not of an international character […]*

*3. treats a person who is to be protected under international humanitarian law cruelly or inhumanly by causing him or her substantial physical or mental harm or suffering, especially by torturing or mutilating that person,*

*4. sexually coerces, rapes, forces into prostitution or deprives a person who is to be protected under international humanitarian law of his or her reproductive capacity, or confines a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population, […]*

*shall be punished, […] in the cases referred to under numbers 3 to 5, with imprisonment for not less than three years, […].”*

In violent situations which do not reach the threshold of an armed conflict, but of a widespread or systematic attack directed against a civilian population, section 7 (crimes against humanity) paragraph 1(5), (6) and (9) VStGB provide for the respective crimes:

*“Whoever, as part of a widespread or systematic attack directed against any civilian population, […]*

*5. tortures a person in his or her custody or otherwise under his or her control by causing that person substantial physical or mental harm or suffering where such harm or suffering does not arise only from sanctions that are compatible with international law, […]*

*6. sexually coerces, rapes, forces into prostitution or deprives a person of his or her reproductive capacity, or confines a woman forcibly made pregnant with the intent of affecting the ethnic composition of any population, […]*

*9. treats a person who is to be protected under international humanitarian law in a gravely humiliating or degrading manner […]*

*shall be punished, […] in the cases referred to under numbers 3 to 7, with imprisonment for not less than five years […].”*

In summer 2023, the Federal Ministry of Justice has submitted a draft bill on the further development of international criminal law, which takes into account the need for revision, particularly in the area of sexualized violence. It aims to integrate new elements of the crime of sexual slavery, sexual assault and forced abortion, as well as to expand the element of the crime of forced pregnancy. The government draft bill was adopted by the Federal Cabinet in November 2023, the parliamentary process is expected to be complete before summer 2024.

In the general German Criminal Code (Strafgesetzbuch – StGB), neither sexualized torture nor torture constitute a separate crime, but can be punished as a form of sexual assault or abuse, depending on the case, particularly under Section 177 StGB, which deals with sexual assault, sexual coercion and rape. Aggravating circumstances under this section may include, in relation to torture, for example, the use of threats of imminent danger to life or limb, the use of weapons or other dangerous implements, or the joint commission of the offence by more than one person. Additionally, depending on the individual case, torture can be punishable particularly under Sections 224 and 226 StGB (dangerous and grievous bodily harm).

**2) Is "sexual torture" defined explicitly in national law? If so, is it a separate offence, or has your national law defined 'discrimination' as contained in the definition of torture in Article 1 of the UN Convention against Torture?**

Neither the VStGB nor the German Criminal Code provide for a separate crime of “sexual torture”.

**3) If there is no explicit crime of sexual torture, does the general crime of torture include the sexualized nature of the torture as an aggravating factor that may increase any criminal penalties? Does the law incorporate any other approaches that specifically address the sexualized nature of the crime?**

By not providing for a separate crime of “sexual torture”, the VStGB follows the example of the Rome Statute of the International Criminal Court, which also does not contain this offence. However, sexualized torture can be punished under the respective provisions of sections 7 and 8 of the VStGB as described under 1). It is generally acknowledged that sexual coercion and rape in armed conflicts regularly amount to torture (see Geiß/Zimmermann in Munich Commentary on Section 8 VStGB, para. 142, 4th ed. 2022). Courts can take into account the nature and gravity of the torture when determining the exact penalty.

**4) Please provide examples (and copies) of national laws, or leading judgments, that criminalize sexual torture (and related forms of cruel, inhuman or degrading treatment or punishment, as applicable), and the penalties applied.**

For national law, see under question 1.

In 2022, the Higher Regional Court in Koblenz found Anwar Raslan, a former colonel of the Syrian regime, guilty of co-perpetration of crimes against humanity in the form of torture, murder in 27 cases, assault in 25 cases, in addition to several counts of rape and sexual assault. Anwar Raslan was sentenced to life imprisonment (judgment of 13 January 2022 – 1 StE 9/19 (available only in German) / an English translation of the first instance’s judgment from 24 February 2021 is available at <https://iiim.un.org/wp-content/uploads/2023/02/1StE3_21-Judgment_Unofficial-IIIM-Translation_EN.pdf> ).

**III: Victim participation and protection during investigation and prosecution:**

**What special arrangements (procedures, standards, protocols, good practices) and protections are available for victims of sexual torture and related ill­ treatment in armed conflicts? Are there any consultation and/or discussion platforms to enable victims and survivors of sexual torture crimes committed in armed conflicts to actively participate in the design, implementation and evaluation of the legal and/or administrative processes specifically established for justice and reparations of such crimes?**

The German Code of Criminal Procedure (Strafprozessordnung, StPO) and Court Constitution Act (Gerichtsverfassungsgesetz, GVG) contain a number of regulations for the protection of crime victims. The following special measures shall be highlighted for victims of sexual and other grave crimes:

1. Victims of sexual crimes and other grave crimes can take an active role in criminal proceedings as joint plaintiffs (section 395 (1) no. StPO). Joint plaintiffs have the right to be present during the trial, to ask questions, to request evidence and to appeal if the defendant is not convicted by the court.
2. Victims of sexual crimes and other grave crimes are entitled to be assigned a lawyer free of charge to represent them in court even before they have declared that they want to join the indictment as joint plaintiffs (sections 397 a, 406h (1), (3) sentence 2 StPO).
3. Section 406 g StPO stipulates psychosocial assistance in court proceedings. Minors under the age of 18, who have been victims of sexual crimes or other grave crimes are entitled to apply for a psychosocial assistant, who is appointed free of charge by the court, without having to claim special vulnerability. Grown-up victims of severe sexual or violent crimes can apply for an appointment of a psychosocial assistant free of charge when they are vulnerable.
4. Furthermore protective measures include inter alia:
   * the recording in picture and sound of testimonies of all victims of sexual crimes, that are given before a judge during the investigation proceedings and the possibility to use the recording in the main hearing instead of a new hearing to avoid revictimization through repeated interviews (section 58a, 255a StPO). However, additional questioning of the victim is still admissible especially with regard to new facts or evidence or in cases where a direct impression of the witness is of particular importance (see 255a StPO).
   * the possible exclusion of the public from the trial because of reasoned privacy interests of the affected person (see section 171b, 172 GVG).

With regards to sexual crimes in armed conflicts, the position of victims will be further strengthened through the Bill on the Development of the German International Criminal Law Code (Gesetz zur Fortentwicklung des Völkerstrafrechts), which is currently undergoing the legislative process. Section 7 of the VStGB, which specifies crimes against humanity and section 8 VStGB, which specifies war crimes against persons, are to be amended to include sexual slavery, sexual assault and forced abortion (see also question II, subquestion 1). Victims of crimes pursuant to sections 6 to 8 VStGB and sections 10 to 12 VStGB, who are violated in certain legal rights such as physical integrity, life or freedom, and the relatives of those killed as a result of these crimes, will be able to take an active role in the criminal proceedings as joint plaintiffs, with the above mentioned rights because they are victims of the aformentioned crimes. To that end, section 395 StPO will be amended. If recognized as joint plaintiffs, the victims will be assigned a lawyer free of charge as well as psychosocial assistance free of charge without any further requirements. To that end, section 397a StPO and section 406g StPO will also be amended.

**IV: Evidence collection and documentation pursuant to the Istanbul Protocol:**

**What are the practical, logistical or other challenges in evidence collection of sexual torture in armed conflict? What good practices are used to address such challenges?**

**Please provide examples of the specialized policies, protocols and practices used to identify, document and secure evidence collection in respect of crimes of sexual torture in armed conflict and related ill-treatment and the damages caused to individuals, families, and communities. Please provide information on any specialist skills sets or interviewing techniques applied.**

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

Please refer also to the answers to questions of part I.

While the Istanbul Protocol is not an international treaty it serves as a useful manual, which can be accessed easily by the relevant stakeholdes in Germany.

The German government has ensured that a German translation of the Istanbul Protocol is available in the open access section of a scientific publishing house, which can be accessed free of charge at: <https://www.vr-elibrary.de/doi/pdf/10.14220/9783737000307>

In 2015, all of the Land Ministries of Justice and of the Interior were informed of this new manual having become available; the significance of the Protocol for the training courses provided to members of staff was once again highlighted in order to warrant its corresponding use in the respective training programmes of the Länder and of the Federal Office for Migration and Refugees. Above and beyond this, the National Agency for the Prevention of Torture (Nationale Stelle zur Verhütung von Folter), the German Institute for Human Rights (Deutsches Institut für Menschenrechte), the Human Rights Centre (Menschenrechtszentrum) of the University of Potsdam, the Forum for Human Rights (Forum Menschenrechte), the Treatment Centre for Victims of Torture (now renamed “Centre Überleben”, Zentrum ÜBERLEBEN gGmbH), and further NGOs were also informed of the opportunity to access this Protocol free of charge; they were asked to likewise contribute to disseminating the Istanbul Protocol further.

The translation of the revised version of the Istanbul Protocol of 2022 is intended.

**V: Rehabilitation:**

**What specialist rehabilitation approaches and services are provided to victims, witnesses, families and communities that have been impacted by sexual torture and related ill-treatment in armed conflict? How do these differ from other rehabilitation support provided to victims of torture? How do they differ from rehabilitation provided in non-armed conflict situations? How should the nature or process of rehabilitation be tailored to different groups of victims (e.g. take into account intersecting characteristics as sex/gender, age, other health circumstances, civilian versus military victims, etc.), or the types of sexual torture suffered du ring armed conflict? How do these relate to the provision of other forms of reparation (compensation, restitution, satisfaction, and non-repetition)?**

Persons who have been impacted by sexual torture and related ill-treatment in armed conflict are usually only encountered in Germany once they have fled their country of origin.

In Germany, care for refugees is a task that is given great importance. The states (“Bundesländer”) and municipalities are responsible for these services, and they are supported in this by the federal government.

Refugees who are victims of sexual torture or related ill-treatment can use the specialized services available in numerous psychosocial centres, facilities, and projects which are committed to the medical, psychotherapeutic and psychosocial care and rehabilitation of victims of torture and other serious violations of human rights.

One of their umbrella organisations is the German Association of Psychosocial Centres for Refugees and Victims of Torture (BAfF, https://www.baff-zentren.org/english/). It works with charities, medical and psychotherapist chambers, and decision-makers in the health and social sectors, thereby promoting the professional exchange of experience and knowledge. The organisation also develops and documents ethical and professional standards for the appropriate treatment of traumatized refugees in order to secure quality standards for the appropriate treatment of traumatized refugees