



المركز السوري للإعلام وحرية التعبير
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🌟 🌟 **An Interview with Dr Ayman Hoda Menem on the** 🌟 🌟
🌟 🌟 **Crime of Torture in Syrian and International Law** 🌟 🌟

اليوم الدولي لمساندة ضحايا التعذيب
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An Interview with Dr Ayman Hoda Menem on the Crime of Torture in Syrian and International Law



Dr. Ayman Hoda Menem is a Syrian academic and researcher who holds a PhD in Constitutional Law from Beirut Arab University. He has published widely on various topics such as constitutional justice, modern Syrian history, human rights, and gender diversity. Ayman currently holds the position as the director of the legal office at the Syrian Center for Media and Freedom of Expression (SCM).



Content

- 1. What is the definition of torture? 4
- 2. What are the laws and conventions that criminalize and prohibit torture? 5
- 3. Does the law in Syria criminalise torture? 6
- 4. Are there rules or regulations that contribute to the impunity of those who practice or aid in torture? 8
- 5. What factors might prevent torture victims from reporting the crime?10
- 6. How is universal jurisdiction employed to prosecute crimes of torture committed in Syria?10

1. What is the definition of torture?

Torture is defined as intentionally inflicting great physical or psychological pain or suffering on an individual under the supervision or direct control of the defendant. This definition does not include pain or suffering that is part of or the result of a sanction. The definition of torture is also based on doing or refusing to do something in order to achieve tangible results through the infliction of physical or psychological pain on the victim.

The first article of the UN 1984 Convention against Torture defined torture as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanction”

International law still lacks an absolute definition of the crime of torture

In general, international law still lacks an absolute definition of the crime of torture; it has not provided a clear definition that describes the resulting pain, which, in addition to physical pain, includes psychological pain; neither does it describe the pain that results from having to resort to psychiatric hospitals. In addition, the definition limits the purpose of torture to the elicitation of information or a confession, whereas in actuality torture has been used as a form of punishment and even as a daily routine for detainees, such as in Syrian prisons over the past few decades. Despite being a broad concept that encompasses armed groups and terrorist organizations, the definition also excludes armed groups and terrorist organizations.

Torture is a crime with many descriptions: it can be described as a penal crime if it is committed by an individual. or a crime against humanity if it is committed on a wide scale in accordance with a systematic policy or genocide, According to the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, torture can be a part of the acts that seek to completely or partially wipe out a group of people

2. What are the laws and conventions that criminalize and prohibit torture?

Torture is absolutely prohibited in International Human Rights Law, International Humanitarian Law, and Customary International Law.

- * The Universal Declaration of Human Rights: Article 5: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”
- * International Covenant on Civil and Political Rights:
 - Article 7: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”
 - Article 10: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”
- * Standard Minimum Rules for the Treatment of Offenders as adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1957
- * Article 5 of The Code of Conduct for Law Enforcement Officials, adopted by the United Nations General Assembly in 1979
- * Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975.
- * Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, entered into force on 26 June 1987. This convention was ratified by the Syrian government in 2004, although it declared its reservations on the competences of the Committee as declared in Article 20 and as permitted in article 28.
- * The Optional Protocol to the Convention against Torture, 2002, it aims to authorize independent international and national bodies to carry out regular inspections of places where persons are deprived of their liberty, with the aim of preventing torture and all forms of cruel, inhuman or degrading treatment or punishment.

As for International Humanitarian Law:

- * First Geneva Convention for the Amelioration of the Condition of Wounded and Sick Members of Armed Forces in the Field article 3 and articles 12, 49 and 50.
- * Second Geneva Convention for the Amelioration of the Condition of Wounded and Sick Armed Forces Members at Sea Articles 3, 12 and 50.
- * Third Geneva Convention relative to the Treatment of Prisoners of War, articles 13 and 17.
- * Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, articles 32 and 147.
- * Additional Protocol I on International Armed Conflicts has articles 11. 75.
- * Torture also constitutes a grave breach that may amount to a crime against humanity according to Article V of the Statutes of the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda.

According to the classification of the International Commission of Customary Law - Rule 90 - the prohibition of torture is an absolute norm in international law and international humanitarian law that cannot be limited even in exceptional circumstances, and the absolute value of the principle of prohibition is a fundamental pillar of the rule of non-prescription of universal jurisdiction and the loss of immunity.

In Syria, there is no concept of the rule of law, And as demonstrated by the extensive practice of torture in Syria, it proves that it is a systematic policy adopted by the Syrian authorities.

3. Does the law in Syria criminalise torture?

It should be noted that in Syria, there is no concept of the rule of law, which is defined as “the restriction of individual and institutional behaviour, according to which all members of society (including members of the government) are equally subject to laws and legislation.” Which entails that the criminalization of torture in law does not necessarily mean that those involved in the crime of torture will be sanctioned by the authorities as demonstrated by the fact that members and heads of military and security forces enjoy complete immunity in Syria. And as demonstrated by the extensive practice of torture in Syria, it proves that it is a systematic policy adopted by the Syrian authorities.

In regards to policy, the second section of the 58th article of the Constitution of 2012 states that “No one may be tortured or treated in a humiliating manner, and the law shall define the punishment for those who do so.” In addition to that, the “Syrian Arab Republic” ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment through the 2004 Legislative Decree No. 39, this theoretically means that its provisions are binding law in Syria. As for legislation on the national level Law No. 16 of 2022 criminalizes torture, which I interpret as an attempt by the government to legalize impunity for torture crimes committed before the date of the law’s adoption, by exploiting the well-established legal principle that laws cannot be applied retroactively. The Law varies in determining the payable punishment to the perpetrators depending on the gravity of offence and the persons to whom it was committed. The punishment can range from 3 years in prison up to the death penalty, this law is reproachable when taking into consideration that it limits its interpretation of torture to criminal acts while ignoring other inhuman and degrading treatment or punishment, such as insults and scolding, or things such as what is known in Syria as “light beatings” and detention conditions. This indicates that these practices are normalized by the authorities seeing that they are not prohibited.

- * Article 391 of the Syrian Penal Code also prohibits the offence of torture: “Anyone who subjects a person to illegal acts of hardship to obtain from him a confession to an offence or information pertaining thereto shall be liable to a penalty of detention for a term of three months to three years.” As an aggravating circumstance for punishment in the articles
- * Article 556 stipulates that the offender shall be sentenced to temporary hard labour if the period of deprivation of liberty exceeds one month - if the person whose has been deprived liberty is subjected to physical or mental torture - if the offence is committed against an employee while performing his duty or in the course of performing it.
- * Article 534 life sentence to hard labour for second degree murder if committed: in the event of torture or brutal treatment.
- * The Syrian Police Service Law promulgated by Decree No. 1962 of 1930 also criminalises cruel, inhuman or degrading treatment or punishment, in articles 87 and 214.
- * Article 30 of the Penitentiary Law in Syria, as promulgated by Resolution No. 1222 of 20/6/1929 and its amendments, states: “It is prohibited for all employees and guard workers to act harshly towards detainees, call them derogatory nicknames, address them with obscene words, or tease them.”

Circulars issued by the Minister of Interior also state:

- * Circular No. 10 of December 26, 2004: “A successful investigator can reach the required results by following the effective scientific and technical methods to fully understand the subject without the need to use methods that violate the law.”
- * Circular No. 19439 of July 4, 2004 Police units need to comply with the provisions of Legislative Decree No. 39 of July 1, 2004 ratifying the Convention against Torture.

4. Are there rules or regulations that contribute to the impunity of those who practice or aid in torture?

In Syria, there is an integrated structure for impunity, as evidenced by a set of exaptational laws, the complete subordination of the judiciary to the executive authority, an extraordinary judicial system, the absence of judicial control on prisons, the prevalence of secret detention centers and the subordination of institutions to security services. As a result of the absolute power granted to the security and defense services, and their permanent innervation in government affairs, impunity has become a fundamental element of the administrative system. Granting their forces immunity from all forms of integration or accountability.

Legislation devoted to impunity and immunizing and excluding perpetrators of violations from accountability includes:

- * The 16th article of Legislative Decree No. 14 of the year 1969 which established the General Intelligence Directorate “General Security Directorate” stipulates that “No employee of the Department may be prosecuted for crimes committed during the execution or in the course of carrying out the tasks entrusted to them except by virtue of a prosecution order issued by the Director.”
- * The 74th article of the Law on the Internal Organizations of the General Security Directorate and the rules of service of its employees Legislative Decree No. 549 of the year 1969 “It is not permissible to prosecute any of the employees of the General Security Department, those seconded to it or its contractors, directly before the judiciary for crimes arising from the execution of their duty, or in the course of carrying it out, before referring them to the disciplinary board in the directory and obtaining a prosecution order from the director.”
- * Legislative Decree No. 64 of the year 2008: that amended the 47th article of the Code of Penal Procedure and Military Trial: the possibility of prosecuting members of the Interior and Political Security Forces and Customs Officers for crimes they committed in the course of their duties was restricted to prosecution before military courts only, per an order from the Defense Minister to strengthen the immunity of security force members.

The security services do not adhere to any law or clear hierarchy, and they do not cite any legal documents, systems, or legal bases to justify their unsupervised practices. Security Forces were also given the authority to detain suspects for indeterminate periods of time without a court order. By Decree No. 55 of 2011, the arbitrary governor or his official representative was granted the authority to “arrest suspects or those who pose a threat to security or public order as a precautionary arrest.” This decree maintained the powers of the agencies, whose members enjoyed legal immunity for their violations against the Syrian people. The lack of accountability extends beyond the absence of legislation to the absence of free media, which can cast light on the practices and arbitrariness of the agencies as well as the government’s complete control of the various forms of media.

The unsupervised detention facilities became a space where the practices of various human rights violations becomes possible

The unsupervised detention facilities became a space where the practices of various human rights violations becomes possible, detention facilities range from official prisons to those belonging to security branches or military units, as well as secret prisons run by local militias such as the “National Defense Forces” and foreign militias such as the Lebanese Hezbollah, as well as those run by influential figures or those close to the highest authority.

The Law No. 16 of 2022 that criminalizes torture does not address any legal provision that permits, allows, or facilitates monitoring by international or independent human rights bodies or organizations in prisons or security headquarters, where torture is frequently carried out.

The lack of an independent judicial authority, which is affiliated by law with the executive authority (the President of the Republic, the Minister of Justice), perpetuates a culture of impunity

The lack of an independent judicial authority, which is affiliated by law with the executive authority (the President of the Republic, the Minister of Justice), perpetuates a culture of impunity due to the absence of judicial control over prisons and detention centers and the lack of commitment of judges to jurisprudence, as the Syrian Court of Cassation issued dozens of rulings, whether in penal chambers or its Plenary Assembly, that acknowledge in its content the practices of torture in the security departments and the judicial police agencies and partially nullifies the legal effects resulting therefrom, as the statements contained in the seizure and extracted under torture and coercion are considered information that is not fully considered by the court that re-interrogates the accused, who has the right to deny the confessions extracted from him under torture.

- * The accused is not bound by his prior statements or previous declaration (Jurisprudence of the Court of Cassation 765/873, dated December 26, 1963).
- * The court should expand the investigation to ensure the validity of the confession (Jurisprudence of the Court of Cassation 314/357).
- * If the judge suspects that the confession has been tainted by coercion, he must analyze this coercion in light of legal principles in order to accomplish justice (Jurisprudence of the Court of Cassation 297/374, dated April 20, 1966).

In addition, the exceptional judicial system, such as the Military Field Court and the Terrorism Court, which are considered direct arms of the government, has perpetuated the culture of impunity by codifying violations through the issuance of sentences based on confessions extracted during arrest or interrogation at the headquarters of the security services. Additionally, the establishment of these courts reduces the three levels of litigation that were established to safeguard the rights of citizens to only one or two levels, thereby perpetuating impunity and preventing victims from appealing their rulings.

The integrated structure of impunity

5. What factors might prevent torture victims from reporting the crime?

All of the aforementioned information regarding the integrated structure of impunity and the inability to hold perpetrators accountable under the law, in addition to the influence of the security services over different aspects of life and the lack of judicial independence, discourages victims from reporting abuse.

Universal jurisdiction refers to the right of all nations to prosecute and penalize the perpetrators of international offenses that affect not only the victim but all of humanity.

6. How is universal jurisdiction employed to prosecute crimes of torture committed in Syria?

The crime of torture is subject to universal jurisdiction based on a well-established principle in international law known as “collective obligation,” which gives any country a legal interest in exercising jurisdiction over suspects of crimes against humanity, including torture. Universal jurisdiction refers to the right of all nations to prosecute and penalize the perpetrators of international offenses that affect not only the victim but all of humanity.

The international community has also recognized the competence of every countries to hold those responsible for enforced disappearance accountable, bring them to justice, and exercise universal jurisdiction, given that enforced disappearance is a form of torture, which was confirmed by the

United Nations Human Rights Committee considering that enforced disappearance exposes the families of victims to severe psychological pain, which is a violation of Article VII of the Rome Statute criminalizing torture and other cruel, inhuman, and degrading treatment or punishment.

The General Assembly of the United Nations also adopted principles for international cooperation regarding the search for persons accused of committing war crimes and crimes against humanity in its Resolution No. 3074 issued on December 3, 1973, which stipulated expanded obligations for all countries regarding cooperation with each other to bring those responsible for crimes against humanity, including torture, to justice, regardless of where they were committed.

