

# THE PROHIBITION OF TORTURE: AN INTRODUCTORY GUIDE



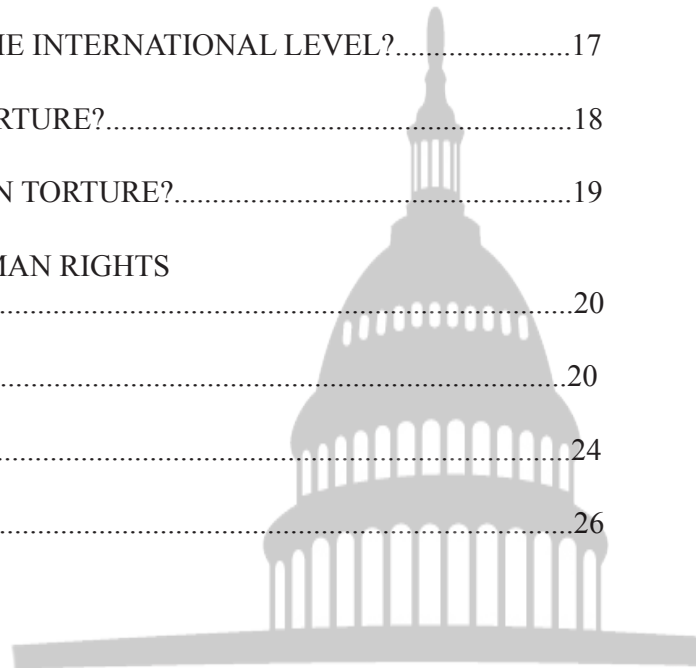
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CENTER FOR HUMAN RIGHTS  
& HUMANITARIAN LAW

This is a publication of the Center for Human Rights & Humanitarian Law at American University College of Law — authored by Associate Director of Impact Litigation and the Kovler Project Against Torture Jennifer de Laurentiis and Assistant Director of the Anti-Torture Initiative Andra Nicolescu, and designed by Center Program Coordinator Anastassia Fagan.

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## Message from Dean Camille A. Nelson

American University Washington College of Law (AUWCL) has a longstanding engagement in protecting and promoting human rights for all through legal education. Our community's engagement is evidenced through our teaching, scholarship, and service, as well as through a wide array of programs and initiatives involving our students, faculty, and staff.

The law school's **Center for Human Rights & Humanitarian Law** offers two projects focused specifically on preventing, exposing, and countering a most abhorrent human rights violation: torture. The **Kovler Project Against Torture** (formerly the United Nations Committee against Torture Project), and the **Anti-Torture Initiative**, enable students to deepen and apply their legal education to real-world fora fighting torture, *i.e.*, the United Nations Committee against Torture and the former UN Special Rapporteur on Torture. Through legal education both in and beyond the classroom, KPAT and ATI students make key contributions, under the guidance of faculty, to the fight against torture. They also develop crucial professional skills and knowledge, instrumental to effective lawyering in international settings, while engaging in a "deep dive" like none other on the prohibition of torture under international law.



This publication provides introductory information on the prohibition against torture and the ways that Center faculty, students, and staff in the Kovler Project Against Torture and the Anti-Torture Initiative contribute to strengthening that absolute prohibition. For further information, I invite you to visit the Center's KPAT and ATI web sites. These dynamic educational experiences, and many others, await you at American University Washington College of Law.

A handwritten signature in black ink, appearing to read 'C. Nelson', with a stylized flourish at the end.

Camille A. Nelson  
Dean and Professor of Law



# Message from Center Director, Professor Macarena Sáez

Despite great progress in the formal recognition of human rights, millions of people suffer torture and other ill-treatment at the hands of state agents or with the acquiescence of complicit governments. At the **Center for Human Rights & Humanitarian Law** (Center), we believe that law schools have a duty to teach the current legal framework against torture to future lawyers, policymakers, and judges. We believe that it is our duty to engage civil society and academia in discussions on how to increase compliance with international law. Many of AUWCL's projects and programs work to eradicate torture and other ill-treatment, including the Center's Anti-Torture Program, which focuses its efforts on two main initiatives: the Kovler Project Against Torture (KPAT) and the Anti-Torture Initiative (ATI).



Founded in 2004, the KPAT prepares a group of students each year to assist the UN Committee against Torture (Committee) during its official sessions. Since 2004, more than 100 students have attended the Committee's sessions in Geneva, worked side by side with the Committee, and gained valuable experience while making meaningful contributions to countering torture and other-ill treatment. The ATI began as a project supporting the mandate of the UN Special Rapporteur on Torture, organizing expert meetings in different countries and providing research and outreach support. Today, the ATI engages civil society and state actors in promoting mechanisms that increase compliance with international law against torture, and provides AUWCL students the unique opportunity to work with the ATI to strengthen anti-torture efforts around the world.

This publication introduces the international legal framework against torture and the key roles that the KPAT and ATI play in its development and enforcement. We hope this will serve as a resource for prospective and current law students, civil society, and other individuals committed to human rights, as you navigate the opportunities and challenges of this dynamic area of law. We are deeply committed to one day realizing a world free from torture and other ill-treatment and greatly value your contributions to this fundamental endeavor.

A handwritten signature in black ink, appearing to read 'Macarena Sáez'.

Macarena Sáez  
Director, Center for Human Rights & Humanitarian Law

## Introduction: Why does the prohibition of torture and other ill-treatment matter?

Torture is illegal under domestic and international law, and its prohibition is absolute. There is no exception under any circumstance to the absolute prohibition of torture. Like torture, other forms of cruel, inhuman, or degrading treatment or punishment (“other ill-treatment”) are also wholly unacceptable. Such repugnant behavior treats individuals as a means rather than ends unto themselves, and violates their inherent human dignity. **Torture and other ill-treatment diminish our humanity, endanger our security** – including that of men and women serving in the armed forces around the world – **and erode fundamental values and protections of the rule of law.** Although governments and officials often attempt to justify the use of torture in the name of fighting crime and terrorism, it is well established that the use of torture makes society less safe.

Torture breeds more torture. As witnessed in the wake of the heinous terrorist attacks of 9/11, abandoning the absolute prohibition of torture leads others to do the same. Torture also dishonors and dehumanizes those who engage in, order, or condone it. A soldier’s deep sense of honor is a powerful barrier to torture. **Torture cannot be justified by posturing that somewhere, on some occasion, it may provide some intelligence.** The claim that torture “works” cannot be considered in a vacuum. Torture has serious costs: the strong potential for bad intelligence, for instance; sending officials on wild goose chases and squandering precious resources that can no longer be used effectively; and eroding people’s basic trust and faith in government officials and institutions. Additionally, under domestic and international law, information obtained through torture is not admissible in court or other administrative or formal proceedings.



This is precisely because such information is unreliable, and because the methods used to obtain it are abhorrent. That torture leads to no – or worse yet, to bad or harmful – intelligence cannot be overlooked or dismissed, either. Torture and other ill-treatment dehumanize us.

They are ineffective, and they come with high costs. A world that normalizes torture and other ill-treatment is not a safe or safer world. Nor is it a world that values our common dignity, our shared humanity, or the importance of the rule of law.

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The claim that torture “works” has been debunked by the Senate Select Committee on Intelligence Report on the CIA’s Detention and Interrogation Program. This Report found that the CIA’s use of its enhanced interrogation techniques was not an effective means of acquiring intelligence or gaining cooperation from detainees. The Report further shows that the best intelligence was obtained through rapport-based interrogation tactics that did not involve torture.

Senate Select Committee on Intelligence Report, Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program  
(page 18 of report)

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Many people and organizations are working to counter and ultimately eradicate torture and other ill-treatment. **American University Washington College of Law** is actively engaged in this effort, utilizing legal education and programs including two specifically focused on eliminating torture: the **Kovler Project Against Torture** and the **Anti-Torture Initiative**. There are many ways for humankind to say “no” to torture and other ill-treatment, including:

- being a well-informed constituent and voter
- demanding accountability from your government and representatives for their treatment of the most vulnerable and marginalized persons in society, including prisoners and minorities at heightened risks of violence
- reviewing and promoting the use of the key guidelines for documenting torture: the **Istanbul Protocol**, formally known as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment.<sup>1</sup> Proper investigation and documentation are vital to providing redress for victims and survivors, and to fighting impunity by holding accountable those responsible for such reprehensible crimes.

Every contribution matters. No contribution is too small. Each of us *can make a difference. Together, our contributions are even stronger*, bringing us closer to ultimately realizing a world free from torture and other ill-treatment.

## What is torture?

Torture is a heinous crime prohibited by countries around the world through both domestic and international laws. The prohibition is part of key international and regional human rights instruments including:



- Universal Declaration of Human Rights (*Article 5*)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (*Article 1*)
- International Covenant on Civil and Political Rights (*Article 7*)
- American Convention on Human Rights (*Article 5*)
- Inter-American Convention to Prevent and Punish Torture (*Article 2*)
- Convention for the Protection of Human Rights and Fundamental Freedoms, more commonly referred to as the European Convention on Human Rights (*Article 3*)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (*Preamble*)
- African Charter on Human and Peoples' Rights (*Article 5*)
- Arab Charter of Human Rights (*Article 8*)

Additionally, torture is prohibited under customary international law, which, simply put, is law arising from the established practice of countries rather than from formal international treaties.<sup>2</sup> Accordingly, the prohibition is applicable to all States at all times, regardless of which international agreements they have or have not signed.

While international and regional human rights instruments prohibit torture, few define it. The most internationally agreed upon legal definition of torture is found in Article 1 of the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention), as discussed below.

Since its entry into force in June 1987, the Convention has been ratified by 162 countries, and has become the main international legal tool used by officials, lawyers, advocates, activists, medical professionals, and others around the world - including mechanisms like the United Nations Committee against Torture - to combat and prevent the use of torture. The Convention, as well as customary international law, categorically prohibit torture without any exception whatsoever.

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*It is essential to regain a universal moral condemnation of torture that we had before September 11, 2001, and counter fallacious arguments about the “inevitability” or “necessity” of torture, as well as the argument that it works. If we’re preoccupied with terrorism or with citizens’ insecurity ... then I think we should be worried about torture, because torture only breeds more crime and more terrorism. It is also completely untrue that it is an effective way of obtaining information and evidence. Torture diminishes the worth and dignity of victims, our institutions, and of our entire society, and it is up to us to recognize the essential moral imperative to prohibit torture and to fight against its use, and for accountability everywhere.*

Statement by former Special Rapporteur on Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, Mr. Juan E. Méndez (November 2010 – October 2016)  
(interview and publication excerpts)

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This broad-based consensus sends a powerful message that torture is absolutely unjustifiable.

While torture definitions vary in countries' respective legislation and other instruments, Article 1 of the Convention sets forth the definition most universally accepted by the international community, defining 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 sanctions.*

Thus, torture encompasses the following elements:

- the infliction of **severe physical or mental pain or suffering**
- which is **intentionally inflicted** on a person

- for a **specific prohibited purpose**
- by or at the **instigation** of or with the **consent or acquiescence** of a **public official** or person acting in **official capacity**

Additionally, the Committee against Torture, the Convention's supervisory body, has emphasized that "the discriminatory use of mental or physical violence is an important factor in determining whether an act constitutes torture."<sup>3</sup>

This approach reinforces the principle of non-discrimination, which is a fundamental tenet of the protection of human rights. It is also essential to the object and purpose of the Convention which, in defining torture in Article 1, specifically prohibits its specified acts when committed "for any reason based on discrimination of any kind." This sweeping language encompasses all types of discrimination including, for instance, discrimination on the basis of gender, ethnicity, religion, age, race, nationality, disability, and sexual orientation, to just name a few.





## What are “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture”?

Along with torture, the Convention also prohibits and mandates the prevention of “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.” Such acts, which are sometimes referred to as “other ill-treatment,” are addressed in Article 16. While “other ill-treatment” is not specifically defined in the Convention, Article 16 does require States parties to prevent it from occurring:

*Each State party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*

Thus, under the Convention, other ill-treatment – like torture – must be:

- by or at the instigation of or with the consent or acquiescence of a public official or person acting in an official capacity

However, other ill-treatment differs from torture in several key ways:

- **no specific intent** to mistreat the victims is required – that is to say, other ill-treatment can occur even when the perpetrator does not intend to mistreat the victim, for example, as a result of negligence
- **no specific prohibited purpose** for inflicting such treatment is required
- the level of intensity of the **physical or mental pain or suffering**, which is generally less for other ill-treatment than for torture. Whether such physical or mental pain or suffering is “severe” and thus may constitute torture considers the impact experienced by the individual subjected to such abuse

## What is the distinction between torture & other ill-treatment?

In reality, distinguishing between “torture” and “other ill-treatment” often is not simple. In fact, it can be quite difficult. Expert bodies such as the Committee against Torture recognize that there is much overlap between the two. On this point, the Committee has said that

*[t]he obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter ‘ill-treatment’) ... are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture .... In practice, the definitional threshold between ill-treatment and torture is often not clear. Experience demonstrates that the conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment.<sup>4</sup>*

Given that torture and other ill-treatment, and the conditions in which they arise, are so intertwined, the Committee “has considered the prohibition of ill-treatment to be likewise non-derogable under the Convention and its prevention to be an effective and non-derogable measure.”<sup>5</sup> In other words, both the prevention and prohibition of torture and other ill-treatment are absolute obligations without exception.

Within the Inter-American System of Human Rights, the Inter-American Court of Human Rights has found that “determinations of whether a form of treatment amounts to torture or other ill-treatment must be made ‘on a case-by-case basis, taking into account the peculiarities of the case, the duration of the suffering, the physical and mental effects on the victim, and the personal circumstances of the victim.’”<sup>6</sup> In other words, “the analysis of the gravity of the acts that may constitute cruel, inhuman or degrading treatment or torture” is both an objective and a subjective one, and is further “relative and depends on all the circumstances of the case, such as duration of the treatment, its physical and mental effects and, in some cases, the sex, age, and health of the victim, among others.”<sup>7</sup>

Bodies like the European Court of Human Rights have recognized that the characterization of certain acts or practices as torture or other ill-treatment is not necessarily static, and may change with time or circumstance. As stated by the Court:

*the fact that the [European] Convention [on Human Rights] is a “living instrument which must be interpreted in the light of present-day conditions” [means that] certain acts which were classified in the past as “inhuman and degrading treatment” as opposed to “torture” could be classified differently in the future (....) [T]he increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.<sup>8</sup>*





In *Déogratias Niyonzima v Burundi*,<sup>9</sup> the Committee against Torture concluded that the State party had violated several articles of the Convention against Torture including Article 1 (torture) and Article 16 (other ill-treatment). **In finding torture**, the Committee noted that officials had severely beaten Mr. Niyonzima with instruments of torture (*e.g.*, steel chains, iron bars, weighted ropes, tiny chains with pointed ends, batons, and other items) until he bled profusely and was nearly unconscious, and had forced a dirty stone in his mouth to stifle his screaming. Additionally, Mr. Niyonzima had endured violent blows including to his back, toes, legs and forearms, and received no medical treatment despite his requests during detention. **In finding other ill-treatment**, the Committee noted that Mr. Niyonzima was thereafter detained in a small, cramped, filthy cell with 16 other prisoners at the State party's Intelligence Service headquarters. Moreover, it observed that, despite his poor state of health while there and once transferred to an overcrowded, insanitary prison, Mr. Niyonzima's requests for medical treatment were again ignored.



## Can private actors commit “torture”?

The short answer is yes. Within the Inter-American system, for example, the Inter-American Court of Human Rights discussed the concept of State responsibility in a 1988 landmark decision on forced disappearance:

*an illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the [American] Convention [on Human Rights].<sup>10</sup>*

Accordingly, international human rights law imposes positive obligations on States to protect persons, including groups made vulnerable which may include minorities, women, children, and others, from the acts of violence and of torture or other ill-treatment by private actors, when the States **knew or should have known** of the violations. Although the Convention against Torture expressly refers to public officials, commonly known as State actors, it is well established that **non-State actors**, such as private individuals or members of rebel groups, may also engage in torture.



The Committee has noted, for instance, that:

*where detention centres are privately owned or run, the Committee considers that personnel are acting in an official capacity on account of their responsibility for carrying out the State function without derogation of the obligation of State officials to monitor and take all effective measures to prevent torture and ill-treatment.<sup>11</sup>*

Accordingly, States have a due diligence obligation to prevent and respond to acts of torture or other ill-treatment committed by private actors. Failure to both do so, and do so effectively, violates the Convention, exposing States to being held accountable:

*[W]here State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials*

*should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts. Since the failure of the State to exercise due diligence to intervene to stop, sanction and provide remedies to victims of torture facilitates and enables non-State actors to commit acts impermissible under the Convention with impunity, the State's indifference or inaction provides a form of encouragement and/or de facto permission. The Committee has applied this principle to States parties' failure to prevent and protect victims from gender-based violence, such as rape, domestic violence, female genital mutilation, and trafficking.<sup>12</sup> (Emphasis added).*

As the methods of torture and other ill-treatment regrettably continue to evolve, and as understandings of what other practices can constitute or lead to torture and other ill-treatment in non-traditional scenarios and various circumstances continue to develop, so, too, must the methods used by States parties to prevent and eradicate them. States parties that fail to evolve and be effective in this regard are not fulfilling their Convention obligations.

## Are the Requirements to Effectively Prevent and Eradicate Torture and Other Ill-Treatment Static or Evolving?

The Committee has it made clear that implementing effective measures to prevent and eradicate torture and other ill-treatment is an ongoing, dynamic obligation:

*States parties are obligated to eliminate any legal or other obstacles that impede the eradication of torture and ill-treatment; and to take positive effective measures to ensure that such conduct and any recurrences thereof are effectively prevented. ... If the measures adopted by the State party fail to accomplish the purpose of eradicating acts of torture, the Convention requires that they be revised and/or that new, more effective measures be adopted.*

The Committee has specified that its “understanding of and recommendations in respect of effective measures are in a process of continual evolution, as, unfortunately, are the methods of torture and ill-treatment.”

## What does the Convention against Torture require?

The obligations under the Convention against Torture are extensive and varied. Articles 1-16 of the Convention set forth States parties' substantive obligations, while additional Convention articles address largely procedural and other aspects. Most obligations apply to all States parties that are signatories to the Convention,<sup>13</sup> and many are indeed reflective of customary international law and therefore apply to all States, including those that have not ratified the Convention. Some of the major obligations under the Convention, aside from the absolute prohibition on engaging in, instigating, acquiescing, or consenting to any act of torture or other ill-treatment, include:

1. to **prevent torture and other ill-treatment** through legislative, judicial, administrative, and other measures (Articles 2, 11 & 16), and to **reflect that prohibition in the domestic legal framework**, including in the training materials for all pertinent actors (Article 10)
2. to **refrain from** sending individuals to countries where they are in danger of being tortured, known as the principle of **non-refoulement** (Article 3)
3. to **provide redress and reparation**, including as full rehabilitation as possible, to survivors and victims (Article 14)
4. to **prohibit the use** of information obtained through torture, known as the **exclusionary rule** (Article 15)
5. to **investigate, prosecute, and punish** every act of torture (Article 12, along with Articles 4-9 and 13)
6. to **submit to the Committee an initial report, followed by periodic reports** every four years thereafter, outlining the steps the State party has taken to implement the Convention obligations (Article 19)

## What is the obligation to prevent torture & other ill-treatment?

Article 2 of the Convention imposes a wide-ranging **duty on States parties to prevent torture**. This duty is indivisible, interdependent, and interrelated with the obligation to prevent other ill-treatment under Article 16. This means that States parties are obligated to:

- eliminate any legal or other obstacles that impede the prevention of torture and other ill-treatment; and
- take positive measures to ensure that such conduct is effectively prevented.

Measures to prevent torture may be of a legislative, judicial, administrative, or other nature. Indeed, measures across and at different levels must be taken by States parties to meet their obligations under the Convention. Article 2 further establishes that the prohibition against torture is absolute and non-derogable. Accordingly, “[n]o exceptional circumstances whatsoever,” including a state or threat of war, a public emergency, or an order from a superior/authority, may be invoked to justify acts of torture. **Preventing torture is crucial to its prohibition**, and thus this sweeping requirement is an integral aspect of the extensive obligations throughout the Convention.

## What is the prohibition on sending individuals to countries where they are in danger of being tortured (non-refoulement)?

Article 3 of the Convention obligates States parties to ensure that they do not “expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that (s)he would be in danger of being subjected to torture.” This principle of non-refoulement is a fundamental tenet of human rights protections.





Article 3 also mandates the consideration of all relevant factors, including the existence of “a consistent pattern of gross, flagrant or mass violations of human rights” in the potential receiving State, when assessing whether such substantial grounds exist. The existence of a “consistent pattern” is not, in itself, sufficient to establish that substantial grounds exist. Generally, the individual must establish an arguable case that (s)he personally faces **a real and foreseeable risk**, although the **risk needn’t be proven to be highly probable**. States parties that expel, return or extradite an individual facing a foreseeable, real and personal risk of being tortured upon return, are in violation of the Convention.<sup>14</sup>

The case of *Ali Fadel v Switzerland*,<sup>15</sup> for example, involved a young Yemeni man who had escaped prison and fled to Switzerland, which later denied his application for asylum. In response, Mr. Fadel filed a “communication” (complaint) with the Committee, claiming that his return to Yemen by Switzerland would violate Article 3. Mr. Fadel indicated that he had been tortured by Yemeni authorities through abuse including severe beatings, sodomy, cigarette burnings, and plunging his head into a container of human urine and excrement. Switzerland defended its asylum decision, disputing and raising discrepancies in the facts presented by Mr. Fadel.

In finding that the State party’s return of Mr. Fadel would constitute a violation of Article 3, the Committee made numerous observations including:

- the State party’s failure to conduct a medical examination of Mr. Fadel, despite its own Federal Office for Migration having recommended one to help shed light on Mr. Fadel’s scars and injuries
- the State party’s dismissal of an earlier medical certificate, provided by Mr. Fadel, as having no probative value
- Mr. Fadel’s *in absentia* conviction in Yemen under a law applying to fugitives
- the lack of knowledge about the evidence before the Yemeni court and its subsequent sentence and penalty against Mr. Fadel
- the resulting uncertainty surrounding Mr. Fadel’s fate if returned to Yemen

- the extensive discrimination and alienation in Yemen against Mr. Fadel’s “low-status” Akhdam community
- the Committee’s own Concluding Observations on Yemen in 2010, finding that “the country’s security services enjoy complete impunity for acts of torture and that torture and ill-treatment are widespread in Yemeni prisons.”

In rebuking the State party’s failure to conduct the recommended medical examination, the Committee reasoned that

*although it is for the complainant to establish a prima facie case to request asylum, namely by submitting medical opinions on the torture to which he was subjected, **that does not absolve the State party from undertaking a review of the merits of these medical opinions.** Therefore, the Committee concludes that **by rejecting the complainant’s asylum request without further investigating his allegations or ordering a medical examination, the State party has failed to determine whether there were substantial grounds for believing that the complainant risked being subjected to torture if he were expelled.**<sup>16</sup> (Emphasis added).*

In finding that the State party’s return of Mr. Fadel to Yemen would violate Article 3 of the Convention, the Committee noted that it

*considers that the complainant faces a foreseeable, real and personal risk of being arrested and tortured again if returned to Yemen, where he is regarded as a fugitive, even if the charges against him, the proof of those charges and his conviction in absentia are not known with any certainty.<sup>17</sup>*

The majority of Article 22 communications before the Committee involve Article 3. The Committee’s jurisprudence involving all articles of the Convention, along with the jurisprudence of other human rights treaty bodies, is available on the online jurisprudence database of the UN Office of High Commissioner for Human Rights.

## What is the obligation to provide redress & reparative measures to survivors and victims?

Article 14 of the Convention requires States parties to ensure that **survivors and victims of torture and acts of other cruel, inhuman or degrading treatment or punishment have access to remedies:**

*Each State party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.*

In 2012, the Committee issued General Comment 3, which explains and clarifies the content and scope of State party obligations under Article 14. General Comment 3 has been recognized as “a benchmark authoritative interpretation of Article 14” and a critical tool for assisting stakeholders working to ensure full reparation to victims of torture.<sup>18</sup> General Comment 3 discusses both procedural and substantive obligations under this far-reaching requirement:

*To satisfy their procedural obligations, States parties shall enact legislation and establish complaints mechanisms, investigation bodies and institutions, including independent judicial bodies, capable of determining the right to and awarding redress for a victim of torture and ill-treatment, and*



Generally speaking, people suffering violations of their human rights are sometimes broadly referred to as “victims” or “survivors.” Some individuals and organizations have a preference for the term “survivors” over the term “victims,” or vice versa, and some prefer other terms. For purposes of the Convention against Torture, the Committee’s General Comment 3 explains that:

*[v]ictims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted, and regardless of any familial or other relationship between the perpetrator and the victim. The term “victim” also includes affected immediate family or dependents of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization. The term “survivors” may, in some cases, be preferred by persons who have suffered harm. The Committee uses the legal term “victims” without prejudice to other terms which may be preferable in specific contexts.*

### General Comment 3 at paragraph 3

*ensure that such mechanisms and bodies are effective and accessible to all victims. At the substantive level, States parties shall ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible.<sup>19</sup>*

*and scope of the State parties’ obligations under article 14 of the Convention to provide full redress and the means for full rehabilitation to victims of torture.*

General Comment 3 discusses the following five forms of reparation included in redress:

The Committee has also underscored the expansive nature of redress and reparation in its reviews of States parties’ reports under Article 19 of the Convention. In its 2016 Concluding Observations for Armenia, for instance, the Committee concluded that:

*[t]he State party should provide for adequately funded specialized rehabilitation services for victims of torture and ill-treatment, including medical, psychological, social and legal services for the victims. It should provide the Committee with data on the total number of requests for compensation received, the number of requests granted and the amount of the compensation awarded by courts. The Committee draws the State party’s attention to its general comment No. 3 (2012) ... in which it elaborates on the nature*

- **Restitution** seeks to re-establish the survivor/victim in his/her individual situation before the violation. Specifics of each individual case must be considered. Further, States parties should address structural causes for the violation.

- **Compensation** includes the “prompt, fair and adequate” monetary settlements for economically assessable damage due to torture or other ill-treatment, both pecuniary and non-pecuniary, such as reimbursement of medical expenses and costs of future medical expenses, loss of earnings and earning potential from the physical and mental harm caused, loss of opportunities such as employment and education, and legal or specialized attention to the survivor/victim. Monetary compensation alone does not satisfy Article 14 obligations.

- **Rehabilitation** means “the restoration of function or the acquisition of new skills” required by

## What Exactly is a “General Comment”?

General comments are “[a] treaty body’s interpretation of the content of human rights provisions, on thematic issues or its methods of work. General comments often seek to clarify the reporting duties of State parties with respect to certain provisions and suggest approaches to [implementing] treaty provisions.” For treaty bodies such as the Committee on the Elimination of Racial Discrimination (CERD) and the Committee on the Elimination of Discrimination Against Women (CEDAW), “general comments” may be called “recommendations.”

Office of the United Nations High Commissioner for Human Rights

the changed circumstances of a survivor/victim. Rehabilitation strives to enable the maximum possible level of self-sufficiency and function for the individual. States parties must consider the survivor/victim’s specific history, culture, personality, and background. “A holistic approach ... which also takes into consideration the strength and resilience of the victim is of the utmost importance.”

- **Satisfaction and the right to truth** include, along with the obligations to investigate, prosecute, and punish perpetrators, many remedies such as measures to stop continuing violations; the verification of facts and public disclosure of truth in a manner that will not further harm the survivor/victim, his or her family, witnesses, or any persons who intervened to help; public apologies; and the search for and identification of the disappeared and killed.

- **Guarantees of non-repetition** require States parties to combat impunity and adopt measures to prevent and address torture and other ill-treatment. Examples include providing clear instructions to officials on the Convention obligations including the absolute prohibition of torture.

In *Gerasimov v. Kazakhstan*,<sup>20</sup> the Committee found that the State party violated Article 14 by preventing the complainant from bringing civil proceedings for compensation in the hopes of obtaining redress, under domestic laws that only

recognized the right to compensation after convictions by criminal courts. The Committee stated that:

*[w]ith regard to the alleged violation of article 14 of the Convention, the Committee notes that it is uncontested that the absence of criminal proceedings deprived the complainant of the possibility of filing a civil suit for compensation since, according to domestic law, the right to compensation for torture arises only after conviction of the responsible officials by a criminal court .... If criminal proceedings are required by domestic legislation to take place before civil compensation can be sought, then **the absence or undue delay of those criminal proceedings constitute a failure on behalf of the State party to fulfil its obligations under the Convention.** The Committee emphasizes that disciplinary or administrative remedies without access to effective judicial review cannot be deemed to constitute adequate redress in the context of article 14.<sup>21</sup> (Emphasis added)*

The Committee went on to reiterate the fundamental principle that **“redress should cover all the harm suffered by the victim, including restitution, compensation, rehabilitation of the victim and measures to guarantee that there is no recurrence of the violations, while always bearing in mind the circumstances of each case.”<sup>22</sup>** (Emphasis added).





*The Special Rapporteur reiterates that efforts to combat torture require a more victim-centred perspective that seeks an integrated long-term approach to adequate redress and reparation, including compensation and rehabilitation for victims of torture and their families.*

Report by former Special Rapporteur on Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, Mr. Juan E. Méndez (November 2010 – October 2016)

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*Torture unfortunately continues to be practised in many countries, made possible by the dehumanization of the victim, torturer and society at large.*

Statement by former UN CAT Chairperson, Mr. Claudio Grossman (2008 – 2015)  
UN Int'l Day in Support of Victims of Torture





## What is the prohibition of the use of evidence obtained through torture or other ill-treatment (exclusionary rule)?

Article 15 of the Convention requires State parties to ensure that no evidence obtained through torture is used in any proceedings. States parties must therefore ensure that any statement that is made as a result of torture is excluded from any proceedings, including extraditions.

The exclusionary rule applies not only to statements, but also to documentary or other evidence elicited through torture or other ill-treatment. In the case of *Déogratias Niyonzima v Burundi*,<sup>23</sup> discussed earlier, the complainant was taken into custody based on his alleged involvement in preparing a coup d'état and a plan to assassinate the country's president. Authorities tortured Mr. Niyonzima to obtain his forced confession, which they then used to charge him with involvement in an attempted coup d'état.

The Committee noted the State party's obligation to verify whether Mr. Niyonzima's confession was obtained through torture. The Committee further noted that by not conducting any such verifica-


tion and by using the confession in the proceeding against the complainant, the State party violated its obligations under Article 15 of the Convention:

*the general nature of the provisions of article 15 derives from the absolute nature of the prohibition of torture and therefore implies an obligation for any State party to verify that statements included in a proceeding under its jurisdiction were not made under torture.*<sup>24</sup>

Excluding information tainted by torture is fundamental to upholding the prohibition of torture. It serves to strongly discourage individuals and groups such as those involved in detaining people (e.g., officials, law enforcement, prison guards, and others) from resorting to mistreatment to elicit forced confessions or other information. Furthermore, there is an obligation to exclude evidence obtained in violation of the numerous procedural safeguards designed to prevent other ill-treatment, such as, among many others, the access to legal counsel.







*The purpose of the exclusionary rule is to discourage torture, even though in addition it is a key feature of the right to a fair trial to which all criminal defendants are entitled. The torturer must know that his mistreatment of the person under interrogation jeopardizes the State's ability to bring charges and successfully punish offenders.*

Statement by former Special Rapporteur on Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, Mr. Juan E. Méndez (November 2010 – October 2016), during the 16th Session of the Human Rights Council


## **What is the obligation to investigate, prosecute, & punish every act of torture?**

The Convention establishes the obligation to investigate, prosecute, and punish every act of torture (Articles 4 – 9); to investigate *ex officio* possible acts of torture, i.e., whenever there are reasonable grounds to believe that torture has been committed (Article 12); and to ensure that all allegations and complaints of torture are promptly and impartially investigated (Article 13).

The lack of fair and effective investigations and prosecutions of cases of torture and other ill-treatment in many jurisdictions is a grave problem. Impunity is a primary reason fueling the continuation of these practices in the 21st century. Impunity allows torturers to operate without fear of identification, arrest, prosecution, or punishment, abolishing any potential deterrence for would-be perpetrators. Impunity also undermines the rule of law, the integrity of criminal justice systems, and public faith and trust in institutions.

In order to be effective, investigations must be impartial, independent, prompt, and thorough, and must result in prosecutions of offenders, meaningful sanctions of perpetrators, and the provision of redress to survivors and victims. The obligations imposed by the Convention must be enshrined in domestic legislation by all States, and implemented by relevant authorities, including prosecutors, defense attorneys, judges, law enforcement, prison and military personnel, and forensic and health professionals.

Article 13 of the Convention requires States parties to ensure that complainants and witnesses are protected against reprisals as a consequence of complaints made or evidence given. Accordingly, the Committee designated rapporteurs to address allegations of reprisals under the Convention, and adopted guidelines in 2015 on the receipt and handling of allegations of reprisals against individuals and organizations cooperating with the Committee.<sup>25</sup>



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*[O]ur fellow human beings deserve nothing less than full realization of the Convention against Torture. Thirty-one years ago, the members of this institution agreed to adopt the Convention based on the shared understanding that the prohibition against torture and ill-treatment is integral to human dignity. It is up to us to work even harder to fulfil this objective.*

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Statement by former UN Committee against Torture Chairperson,  
Mr. Claudio Grossman (2008 – 2015), at the 70th Session of the  
United Nations General Assembly Third Committee (2015)

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## What mechanisms are helping fight torture at the international level?

The **UN Committee against Torture**<sup>26</sup> and the **UN Special Rapporteur on Torture** are two of the mechanisms within the United Nations for fighting torture. Each has its own mandate, framework, and procedures for combating and preventing torture. Other mechanisms also make important contributions with regard to preventing torture. These include:

- The **UN Subcommittee on Prevention of Torture (SPT)** was established under the **Optional Protocol to the Convention Against Torture**, which entered into force in June 2006. The SPT, which began its work in February 2007, conducts visits to places of detention in State parties; advises States parties with regard to the establishment of National Preventive Mechanisms (NPMs) at the domestic level, and advises NPMs themselves, once established; and cooperates with other national, regional, and international organizations working to strengthen protections against torture and other ill-treatment.

- The **UN Voluntary Fund for Victims of Torture (UNVFVT)** was established in 1981 to

assist survivors/victims of torture and their family members to rebuild their lives through providing immediate and accessible remedies. Direct humanitarian assistance is provided in the fields of medical, psychological, social, legal, and financial matters.

- The **UN Working Group on Arbitrary Detention (WGAD)** was established in 1991 by the predecessor to the UN Human Rights Council, the former UN Commission on Human Rights. The WGAD is a body of independent human rights experts that investigates individual cases of arbitrary arrest and detention inconsistent with international human rights law, and conducts country visits to assess arbitrary deprivation of liberty of persons.

- The **International Criminal Court (ICC)** was established in 2002 under the **Rome Statute**, which currently has 124 State party signatories. The Court has jurisdiction over the four main crimes of genocide, war crimes, crimes against humanity, and aggression. Under the Rome Statute, torture is defined as the “intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused.” Torture can be prosecuted both as a war crime (if it happened in the context of an armed conflict) and a crime against humanity (if it was part of a widespread or systematic attack).

## What is the United Nations Committee against Torture?

The Committee against Torture is the supervisory organ responsible for monitoring implementation of the Convention against Torture. It has 10 members who are “experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity.” Members are elected to a term of four years, and may run for reelection, by States parties to the Convention, giving consideration to “equitable geographical distribution and to the usefulness of the participation of some persons having legal experience” (Article 17, para. 1).

The Committee has several mechanisms through which it monitors implementation of the Convention obligations:

Under **Article 19**, the Committee examines State party reports on a cyclical basis. State parties must submit an initial report, and subsequent periodic reports every four years thereafter, clearly documenting how they are complying with the extensive Convention obligations. The Committee examines each report including through a public, web casted in-session dialogue with State party delegations,<sup>27</sup> and private meetings with NGOs and other members of civil society. Upon conclusion of its session, the Committee issues documents known as Concluding Observations for each country, addressing what it refers to as “positive aspects” and “principal subjects of concern and recommendations.” In 2014, the General Assembly adopted Resolution 68/268 on strengthening and enhancing the effective functioning of the human rights treaty body system. Pursuant to this Resolution, the Committee increased its sessions from 2 to 3 per year totaling 11.6 weeks in session. Since then, the Committee has reviewed roughly 18 State party reports yearly.

Under **Article 20**, the Committee may undertake confidential inquiries, including in-country visits, upon receiving credible information that torture is

being “systematically practiced,” intentionally or unintentionally, in a State party:

*The Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be **habitual, widespread and deliberate** in at least a considerable part of the territory of the country in question. **Torture may in fact be of a systematic character without resulting from the direct intention of a Government.** It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice.*<sup>28</sup> (Emphasis added).

The Committee may invoke this procedure only for States parties that have formally recognized the Committee’s competence under Article 20,<sup>29</sup> and in doing so it always pursues the State party’s cooperation.

Under **Article 21**, the Committee considers inter-State complaints alleging violations of the treaty by another State party. To date, it has never been utilized.

Under **Article 22**, the Committee considers individual “communications,” more generally known as complaints, from or on behalf of survivors/victims of alleged violations of the Convention by the States parties. This procedure applies only to States parties that formally recognize the Committee’s competence under Article 22, currently totaling 68. The Committee’s decisions on communications are key to understanding how the Convention and State party obligations apply to actual situations. Since 1989 through May 2016, the Committee had registered 749 complaints, issued 294 decisions on the merits, and found violations of the Convention in 119 cases.<sup>30</sup>





## What is the mandate of the Special Rapporteur on Torture?

The Special Rapporteur on Torture is an independent human rights expert mandated with investigating and reporting on cases and issues involving torture and other cruel, inhuman or degrading treatment and punishment worldwide. The position was created in 1985 by the UN Commission on Human Rights. The Special Rapporteur now functions under the Human Rights Council under the UN Special Procedures branch. The Special Rapporteur on Torture is elected by the Human Rights Council for three-year terms, renewable once, and there have been six mandate-holders to date.

The Special Rapporteur on Torture also issues press releases on timely issues, engages in advocacy on issues of torture prevention, and works closely with stakeholders across the board, including other international and regional human rights mechanisms, civil society, and grassroots organizations and actors worldwide, and governments. The Special Rapporteur can submit legal opinions, in the form of amicus briefs and expert testimonies, to courts. The mandate of the Special Rapporteur on Torture covers all countries, irrespective of whether a State has ratified the Convention. While the mandate is not bound by a specific treaty, it operates with reference to the legal principles contained in the Convention against Torture, as well as with reference to other relevant international and regional human rights standards.

## The Special Rapporteur on Torture engages in the following three principal activities:

- Receiving complaints and transmitting urgent appeals to States with regard to individuals reported to be at risk of torture or other ill-treatment, as well as communications on past alleged cases of torture or other ill-treatment. The Special Rapporteur on Torture may choose to publish his legal conclusions on each individual case, including replies by States where available, in yearly compilations known as Observations Reports.
- Undertaking fact-finding country visits to assess the situation of torture or other ill-treatment, at the invitation of the respective country's government.
- Submitting annual reports on activities, thematic issues, and the mandate and methods of work biannually to the Human Rights Council and the General Assembly.

## Anti-torture programs in action: Center for Human Rights & Humanitarian Law



### Kovler Project Against Torture

The Kovler Project Against Torture provides AUWCL students with “hands-on” learning both in and beyond the classroom in a real-world environment where torture survivors and victims as well as NGOs, legal, medical, and other professionals contribute to countering torture. The Kovler Student Scholars Against Torture, selected each spring through a competitive application process, work under the guidance of Project faculty and under confidentiality agreements to:

- **provide the United Nations Committee against Torture’s chairperson and country rapporteurs with research and information** on human rights and compliance records regarding obligations under the Convention
- **develop, sharpen, and apply professional skills and insights instrumental to effective lawyering in international settings.** The Project’s specialized fall-semester practicum, Committee simulation, and briefings in Geneva, cultivate, test, and augment these skills
- **continue their learning in Geneva, Switzerland, with Project faculty, at the United Nations Committee against Torture proceedings.** While observing the Committee’s dialogue with stakeholders including State party delegations, students identify germane developments and issues, meet in strategy and briefing sessions, and conduct follow-up research
- **establish professional contacts with AUWCL alumni and friends through the Project’s focused networking opportunities and site visits.** Places of interest have included the International Committee of the Red Cross, the World Organization Against Torture (OMCT), the Association for the Prevention of Torture, the World Trade Organization, the World Economic Forum, and leading law firms such as Sidley Austin and King & Spalding
- **undertake a practice-oriented “deep dive” on the prohibition of torture in international law,** through the Project’s specialized practicum, simulation, and week at the United Nations in Geneva, Switzerland

*The use of torture, whether Syria and Assad today, or other figures in other countries at other times, cannot be ignored. It is quite important that a new generation not tolerate torture. I am so proud to be associated with the work of the law school’s Kovler Project Against Torture.*

Peter Kovler, Chairman of the Board of the Blum-Kovler Foundation, Founder of the Marjorie Kovler Center for Survivors of Torture

*The Kovler Project Against Torture is legal education in action, training future lawyers on the knowledge, skills, and value reflection instrumental to effective lawyering in international settings. By utilizing legal education to help strengthen human dignity for all through the prohibition and prevention of torture and other ill-treatment, the Kovler Project’s real-life educational and human rights contributions are extremely meaningful.*

Claudio Grossman, Professor and Dean Emeritus, AUWCL Member, UN International Law Commission (elected Nov. 2016 for a 5-year term)  
Project Co-founder, former UN CAT Member (2004-2015) and Chairperson (2008-2015)

*The fight against torture is a struggle which requires all the knowledge and skills we can gather. It requires us to work closely together across professions in many sectors, with the legal and medical professions playing a key role. The Kovler Project Against Torture is making a vital contribution to this fight by equipping talented students of law with the knowledge and skills needed to make strong contributions to the fight against torture.*

UN CAT Chairperson  
Jens Modvig, MD, PhD  
Director of Health Department, CMO  
Dignity - Danish Institute Against Torture



The Project's work has helped develop the prohibition of torture and other ill-treatment to include **rape, marital rape, sexual harassment, solitary confinement, the violation of refugee rights, and discrimination for any reason including sexual orientation**. The Project also contributed to the development of the **extensive obligations to provide full redress and reparation to victims and survivors**, as detailed in the Committee's General Comment 3.

Originally known as the United Nations Committee against Torture (UN CAT) Project, the Project was co-founded in 2004 by **Professor/Dean Emeritus Claudio Grossman**, then WCL Dean, and the **Project's Associate Director Jennifer de Laurentiis**, a WCL

alumna. Professor Grossman served on the Committee from 2004 through 2015 and was its Chairperson from 2008-2015.

The Kovler Project Against Torture was endowed in December 2016, in recognition of the Blum-Kovler Foundation's generous support since 2009. The Foundation's support has enabled more students to intensively counter torture and promote human rights through legal education. In December 2016, Ms. Kelsey Lee Offield also provided much-appreciated support to the Project. Since its creation, over 100 students have participated in this unique, practice-oriented learning experience, with 10 or so students enrolled each year.



*For me, the UN CAT Project was a remarkable experience that provided a concrete way to study international law. International law courses often cover so much material that it can be difficult to get more than a surface level understanding. However, the UN CAT Project allowed me to study a single treaty, evaluate its case law, and observe and participate in the oversight process that facilitates adherence to the Convention. Traveling to Geneva, Switzerland, to observe and contribute to one of the three sessions held by the Committee each year, was the most exciting and rewarding part of the class. While in Geneva, we met with the Committee chairperson to discuss matters under the Convention against Torture. After a semester of research and learning, it was extremely rewarding to hear from practitioners and discuss the challenges facing the Committee in the coming years. As an added bonus, we met with several alumni working at the World Trade Organization and top law firms in Geneva.*

# Our Alumni

Project alumni form a global network committed to strengthening human rights and ending torture worldwide. Their range of experiences, both in the U.S. and abroad, cuts across all sectors - government, multi-lateral and international organizations, civil society and NGOs, law firms and associations, tribunals and courts, academia, and public service/public interest – and includes the areas and organizations identified below.

## GOVERNMENT

Capitol Hill; numerous Judicial Clerkships; Offices of United States Attorneys; Peace Corps; Public Defenders Services; U.S. Agency for International Development (USAID); U.S. Citizenship and Immigration Services (USCIS); U.S. Department of Homeland Security; U.S. Department of Justice; U.S. Department of Labor; U.S. Department of State; U.S. Navy JAG Corps; the White House

## INTERNATIONAL COURTS, ORGANIZATIONS, AND CIVIL SOCIETY

American Association for the Advancement of Science; American Civil Liberties Union; Amnesty International; Anti-Torture Initiative (ATI); Atlanta Volunteer Lawyers Foundation; Ayuda; Center for Constitutional Rights; Center for Justice and International Law (CEJIL); Center for Reproductive Rights; Chemonics; Children's Law Center, Development Alternatives; Girls Foundation of Tanzania; Habeas Corpus Counsel; Inherit Your Rights; Inter-American Commission on Human Rights; Organization for Security and Co-operation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR); International Committee of the Red Cross; International Criminal Tribunal for the former Yugoslavia (ICTY) and its successor UN Mechanism for International Criminal Tribunals (MICT); Legal Aid Societies; Lex Mundi Pro Bono Foundation; NGOs founded by KPAT/UN CAT Project alumni (e.g., Justice & Empowerment Initiatives in Nigeria, and Juvenile Justice Advocates International in Mexico); Open Society Justice Initiative; The World Bank; Torture Survivors Project; United Nations High Commissioner for Refugees; Women Empowered Against Violence (WEAVE); World Organisation Against Torture (OMCT)

## LAW FIRMS

Cadwalader, Wickersham & Taft; Grossman Law; Hammond Young Immigration Law; Skadden, Arps, Slate, Meagher & Flom; Venable; White & Case; WilmerHale

One hundred percent of the Project participants surveyed in spring 2017 indicated that:

- they would recommend participating in the Project to other students
- the Project contributed to their knowledge of and skills in 5 key areas including international human rights law, monitoring and strengthening compliance with treaties; and advocating more effectively through skills, strategies, etc., before an international body

Additionally:

- 94 percent indicated that their Project experiences helped them to be better prepared for their present job
- three-fourths indicated that their Project experiences helped them secure internships, externships, clerkships, and other professional experiences including jobs

Alumni indicate that their Project experiences have helped launch and shape their careers in international, human rights and other areas of the law, while strengthening their efforts to make positive social change:

*“My experience allowed me to be employed by the Torture Survivors Project of the Legal Aid Foundation of Los Angeles, where I provided legal services to survivors of torture.”*

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*“In my current role as Chief Legal and Policy officer for a community health center, I do a lot of advocacy and policy work. Understanding both the power and limitations of the UN system and UNCAT has informed my current work of how to work towards social change.”*

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*“The UNCAT Project was one of the most valuable experience[s] I had in law school, and I still draw upon that experience today when considering legal strategies for causes and clients.”*

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*“The Kovler/UN CAT Project has played a significant role in my legal education. It gave me very valuable experience in advocacy skills and an in-depth knowledge about the Committee and Convention [a]gainst Torture. It was very fulfilling to go to Geneva and see our work being used in a practical way during the Committee Sessions.”*





## Anti-Torture Initiative

The Anti-Torture Initiative (ATI) was set up in 2011 as a core project of the Center for Human Rights & Humanitarian Law, with the purpose of expanding the reach and practical implementation of the work of the former Special Rapporteur on Torture, WCL Professor Juan E. Méndez, to fight and prevent torture worldwide. Since then, the ATI has become a critically important player in the global movement against torture. From 2011 to November 2016, the ATI worked vigorously to complement the activities of the Rapporteurship, particularly in the areas of follow-up, implementation, and dissemination. From November 2016 onward, the ATI has continued its mission by devising a new set of programmatic and country-specific activities in key thematic areas, which it continues to pursue.

Central to the ATI's mission and values has been the understanding that a commitment to preventing torture and other ill-treatment is also an essential litmus test for adherence to other fundamental principles of human rights, human dignity, and democracy. The ATI has been particularly active in pursuing concerted strategic efforts to combat and prevent torture in different parts of the world, and in all of its guises. Despite the solid

normative framework prohibiting torture and other ill-treatment at the international and regional levels, and important practical achievements in torture prevention over the last decades, we continue to witness a rise in incarceration rates around the world, exacerbated by broken criminal justice systems; a proliferation of human rights abuses committed by States in the name of fighting crime and countering terrorism, coupled with an escalation of inflammatory rhetoric and ambiguous attitudes by authorities and politicians towards the pursuit of justice and accountability; and a rise in abusive practices and conditions that often affect the most vulnerable and marginalized persons, including by private actors, in non-traditional settings worldwide.

In this context, the strategies employed by the ATI, the methods developed, and the targeted focus on both country-specific and thematic follow-up work have had a tremendous impact on the landscape of efforts to fight and prevent torture in a very short period of time. The ATI has created a variety of new mechanisms and strategies which enabled torture prevention work to have great impact and reach, and has helped both deepen and broaden the scope of the global anti-torture movement.



*During my tenure as UN Special Rapporteur on Torture, I received high-quality research support from students, faculty, and other colleagues at AUWCL. The Center for Human Rights & Humanitarian Law worked with me from the beginning of my tenure as Special Rapporteur to develop the project that has become the ATI. During my mandate as Special Rapporteur, the ATI's coordinators, volunteers, and fellows assisted me in organizing consultations with experts, drafting thematic and country-specific reports, and writing my views on specific cases where torture or ill-treatment was alleged, among other activities. I am delighted that the ATI lives on beyond the end of my term as Special Rapporteur in November 2016, which enables me and my colleagues, as well as interested students, to join the fight against many forms of torture, for the rights of persons deprived of liberty, and for a future torture-free world.*

Juan E. Méndez,  
former UN Special Rapporteur on  
Torture (2010-2016)

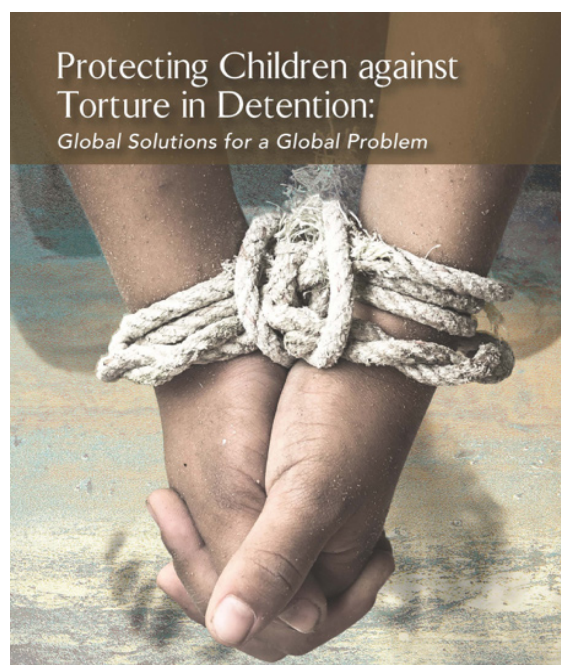
*“Working as a Dean’s Fellow for the ATI was one of the most significant aspects of my law school experience. As a student specializing in human rights, my experience with the ATI not only allowed me to contextualize and apply the knowledge I was gaining through my academic coursework, but deepened my understanding of international law, human rights, and the prohibition of torture. It truly was a profound honor for me to learn from Professor Méndez’s vast experience and contribute to his important work.”*

Vanessa Drummond Alvarez,  
former ATI Dean’s Fellow, J.D. ‘17

Significantly, the ATI has played a role in supporting the development of norms, providing technical assistance and capacity building, and promoting the implementation of reforms and best practices in different jurisdictions. It has also engaged in strategic advocacy around thematic issues not traditionally encompassed by the torture and other ill-treatment framework, whether in terms of abuses in health-care settings or the treatment of women, LGBTI persons, and gender non-conforming individuals and children. Since 2012, the ATI has provided tremendous opportunities for AUWCL students to become involved in the fight against torture worldwide, and has worked in collaboration with partners from around the world, ranging from governments, international and regional organizations, NGOs and grassroots organizations, as well as survivors and their families. The unique projects undertaken by the ATI feature opportunities for students to engage in legal research and writing, advocacy, and the development and execution of practical activities and events around the world.

The ATI’s country-specific work has included diverse work in Africa, Central Asia, Europe, North and South America. Such work ranges from detention monitoring in Ghana, Tunisia, and Tajikistan and the provision of capacity building and technical assistance in Brazil, to advocacy in support of the abolition of the death penalty and of curbing the use of solitary confinement in the United States and advocacy around the implementation of anti-torture recommendations in Mexico, Uruguay, and Morocco.

Work by the ATI has contributed to important discussions around normative developments in intersectional areas of human rights law. These discussions range from the prohibition of torture and other ill-treatment in criminal justice systems around the world, such as solitary confinement and the death penalty, to key international legal obligations pertinent to the prohibition, such as the exclusionary rule and standards for the investigation and documentation of torture, and accountability for extraterritorial acts of torture and other ill-treatment, and minimum standards for the deprivation of liberty and the treatment of prisoners. The ATI has also addressed the topics of gender perspectives on torture, children deprived of liberty and torture, and torture in health-care settings, including by publishing edited volumes on these topics.



Protecting Children against  
Torture in Detention:  
Global Solutions for a Global Problem



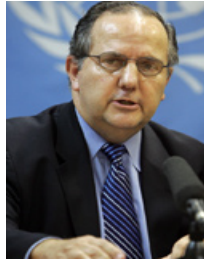
## Center Experts



**Claudio Grossman** is Professor of Law, Dean Emeritus and the Raymond Geraldson Scholar for International and Humanitarian Law at AUWCL. After serving as AUWCL's Dean from 1995 to July 2016, Professor Grossman returned to the faculty and was appointed Dean Emeritus by American University's Board of Trustees.

Throughout his academic career, Professor Grossman has contributed to promoting human rights, the rule of law, and legal education in both international and domestic organizations. He was elected to the United Nations International Law Commission in November 2016 for a five-year term, and has served as President of the Inter-American Institute of Human Rights since 2014. He is a board member of the OSF's Open Society Justice Initiative, of Robert F. Kennedy Human Rights, and of the ABA's Rule of Law Initiative. He is also a member of numerous associations including the American Law Institute. Professor Grossman previously served as member (elected 2003-2015) and chairperson (4 terms, from 2008-2015) of the UN Committee against Torture, as chair of the UN Human Rights Treaty Bodies for a one-year term, and as a member (1993-2001) and President (in 1996 and again in 2001) of the Inter-American Commission on Human Rights, among other positions. Professor Grossman has published extensively in areas such as international law, international organizations, human rights, and legal education, and he is the recipient of numerous distinctions and awards for his contributions to human rights, international law, and legal education.

**Juan E. Méndez** is a Professor of Human Rights Law in Residence at the American University Washington College of Law, where he is Faculty Director of the Center's Anti-Torture Initiative. He was the UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment between November 2010 and October 2016.



He is the author (with Marjory Wentworth) of "Taking A Stand: The Evolution of Human Rights" (New York: Palgrave MacMillan, 2011). In early 2017 Professor Méndez was elected Commissioner of the International Commission of Jurists, Geneva, Switzerland. In February 2017, he was named a member of the Selection Committee to appoint magistrates of the Special Jurisdiction for Peace and members of the Truth Commission set up as part of the Colombian Peace Accords. He was an advisor on crime prevention to the Prosecutor, International Criminal Court from 2009 to 2011 and Co-Chair of the Human Rights Institute of the International Bar Association in 2010 and 2011. A native of Argentina, Mr. Méndez has dedicated his legal career to the defense of human rights, primarily in the Americas. As a result of his representation of political prisoners, the Argentinean military dictatorship arrested him and subjected him to torture and administrative detention for more than a year. During this time, Amnesty International adopted him as a "Prisoner of Conscience." After his expulsion from his country in 1977, Mr. Méndez moved to the United States. For 15 years, he worked with Human Rights Watch, on human rights issues in the western hemisphere. Mr. Méndez was the Executive Director of the Inter-American Institute of Human Rights in Costa Rica, Professor of Law and Director of the Center for Civil and Human Rights at the University of Notre Dame, Indiana, and member and President of the Inter-American Commission on Human Rights.



**Jennifer de Laurentiis** is the Associate Director of Impact Litigation and the Kovler Project Against Torture (formerly the United Nations Committee against Torture (UN CAT) Project), the latter which she co-founded with Professor/Dean Emeritus Claudio Grossman in 2004. An Adjunct Professor of Law, she teaches on the prohibition of

torture under international law and strategic/impact litigation. Ms. de Laurentiis also supervises and participates in litigation before the Inter-American human rights bodies, and speaks Italian and Spanish. She received the 2016 AUWCL Public Interest/Public Service Scholarship Program Award for “enduring contributions as a public service advocate,” and is an AUWCL alumna.

**Andra Nicolescu** is the Assistant Project Director of the Center’s Anti-Torture Initiative. She has experience working on issues related to torture prevention, civil and political rights, human rights, and transitional justice mechanisms in post-conflict situations. While pursuing her J.D., Ms. Nicolescu was a Dean’s Fellow for the Anti-Torture Initiative, a Research Assistant for the Chair of the UN Committee Against Torture, and a Research Associate with the Public International Law and Policy Group, where she advised countries, including Libya and Tunisia, on topics such as the implementation of transitional justice mechanisms and constitution drafting. Ms. Nicolescu has also spent time working at INTERIGHTS, where she assisted counsel in conducting strategic human rights litigation at the European Court of Human Rights on issues involving the treatment of persons with disabilities, LGBTI persons, and minorities, and for a legal aid organization in Bamenda, Cameroon.



## Center Faculty & Staff

**Robert K. Goldman**, Professor of Law, Louis C. James Scholar, & Faculty Co-director

**Claudio Grossman**, Professor of Law, Dean Emeritus, Raymond Geraldson Scholar for International and Humanitarian Law, & Faculty Co-director

**David Hunter**, Professor of Law & Faculty Co-director

**Juan E. Méndez**, Professor of Human Rights Law in Residence & Faculty Co-director

**Diane Orentlicher**, Professor of International Law & Faculty Co-director

**Herman Schwartz**, Professor of Law & Faculty Co-director

**Richard J. Wilson**, Professor of Law Emeritus & Faculty Co-director

**Macarena Sáez**, Director of the Center and a Fellow in International Legal Studies

**Melissa C. del Aguila**, Associate Director of the Center

**Jennifer de Laurentiis**, Associate Director of the Center’s Impact Litigation & Kovler Project Against Torture

**Andra Nicolescu**, Assistant Project Director of the Center’s Anti-Torture Initiative

**Rebecca DeWinter-Schmitt**, Director (*pro bono*) of the Center’s Human Rights in Business Program

**Anastassia Fagan**, Program Coordinator of the Center & a PhD candidate in Anthropology, American University

# Notes

1. <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.
2. See Manfred Nowak. UN Covenant on Civil and Political Rights. CCPR Commentary (2nd rev. ed.). Kehl am Rhein: Engel, 2005.
3. The Committee against Torture's General Comment No. 2: Implementation of Article 2 by States Parties (2008) at para. 20.
4. General Comment No. 2 at para. 3.
5. General Comment No. 2 at para. 3.
6. Lizardo Cabrera v Dominican Republic, Case 10832, Report No. 35/96, 17 Feb. 1998, at para. 76 (*italics added*).
7. Gómez-Paquiyaury Brothers v Peru (2004), *op. cit.*, at para. 113.
8. Selmouni v. France, 25803/94, European Court of Human Rights (28 July 1999), at para. 101.
9. Comm. No. 514/2012 (decided on 21 Nov. 2014).
10. Velasquez-Rodriguez v. Honduras, (Ser. C) No. 4, Inter-American Court of Human Rights (29 July 1988), at para. 172.
11. General Comment No. 2 at para. 17.
12. General Comment No. 2 at para. 18.
13. An exception is Article 22, which applies only to States parties that have explicitly opted into it. Under Article 22, the Committee considers "communications" (more generally known as petitions or complaints) from/on behalf of victims and survivors alleging that a State party has violated the Convention. Conversely, Article 20 applies to all States parties except those who explicitly opt out of it at the time of signature or ratification of, or accession to, the Convention. Under Article 20, the Committee may conduct confidential inquiries upon receipt of well-founded information of systematic torture in a State party. Of the 162 States parties to the Convention, all but 15 recognize the Committee's competence under Article 20, and 68 have accepted its competence under Article 22.
14. The Committee against Torture recently held a General Discussion (GD) for the purpose of issuing a Revised General Comment 1. The current General Comment 1, as well as the anticipated Revised General Comment 1, concern the implementation of Article 3 in the context of Article 22 communications. Thus, these documents are germane to this important issue, and interested parties should monitor developments regarding the expected issuance of Revised General Comment 1 and carefully consider its language.
15. Comm. No. 450/2011 (decided on 14 Nov. 2014).
16. Comm. No. 450/2011 at para. 7.6.
17. Comm. No. 450/2011 at paras. 7.8 and 8.
18. Amnesty International, Public Statement (IOR 51/005/2012), United Nations Committee against Torture adopts landmark general comment on the right to reparation, 26 Nov. 2012.
19. General Comment No. 3 at para. 5.
20. Comm. No. 433/2010 (decided on 24 May 2012).
21. Comm. No. 433/2010 (*citing Dimitrijevic v. Serbia and Montenegro*, Comm. No. 207/2002, decided on 24 Nov. 2004, at para. 5.5).

22. Comm. No. 433/2010 (*citing Salem v. Tunisia*, Comm. No. 269/2005, decided on 7 Nov. 2007, at para. 16.8).
23. Comm. No. 514/2012 (decided on 21 Nov. 2014).
24. Comm. No. 514/2012 at paragraph 8.7 (*citing Ntikarahera v. Burundi*, Comm. No. 503/2012, decided on 12 May 2014, at para. 6.6).
25. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/200/17/PDF/G1520017.pdf?OpenElement>.
26. In addition to the UN Committee against Torture and the UN Subcommittee on the Prevention of Torture, there are eight other UN human rights treaty bodies, or committees of independent experts, that monitor implementation of the core international human rights treaties. These include the Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights, and the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, the Committee on Enforced Disappearances, the Committee on the Rights of Persons with Disabilities, the Committee on Migrant Workers, and the Committee on the Economic, Social and Cultural Rights. These treaty bodies often deal with questions of torture and other ill-treatment in their work and jurisprudence.
27. See UN WebTV, The United Nations Live & On-demand, available at: <http://webtv.un.org/meetings-events/human-rights-treaty-bodies/committee-against-torture/> (last visited June 21, 2017).
28. See Confidential Inquiries under Article 20 of the Convention against Torture, available at: <http://www.ohchr.org/EN/HR-Bodies/CAT/Pages/InquiryProcedure.aspx> (last visited June 21, 2017).
29. See United Nations Human Rights Office of the High Commissioner, Status of Ratification Interactive Dashboard for Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, available at: <http://indicators.ohchr.org/> (last visited June 21, 2017).
30. Committee against Torture Annual Report, Seventy-first Sess., Supp. No. 44 (A/71/44) (2016) at p. iii, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f71%2f44&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A%2f71%2f44&Lang=en).



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