Accountability in Syria under the Convention against Torture: The Joint Canada/Netherlands’ Initiative

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Over the decade of conflict and violence in Syria, scores of international humanitarian law (IHL) violations and international human rights law (IHRL) violations and abuses have been committed by all parties. Efforts to ensure accountability have to date taken various forms, from the creation of the Independent International Commission of Inquiry on Syria and the International, Impartial and Independent Mechanism (IIIM) to submission of cases to the UN human rights mechanisms. With limited avenues, the focus has remained on holding individuals criminally responsible, and with the failed attempt to refer the situation in Syria to the International Criminal Court, proceedings to investigate and prosecute alleged perpetrators for crimes under international law occurred on the basis of the principle of universal jurisdiction before third States’ courts, such as in Germany.

In that respect the recent joint initiative by Canada and the Netherlands, based on the Convention against Torture (CAT), could potentially result in proceedings against Syria for violations of this treaty at the International Court of Justice (ICJ) and would offer a potential new avenue for accountability.

Nature of the process and procedural steps

The ICJ is the main judicial organ of the UN and only hears and settle cases of disputes between States in accordance with international law. Its decisions are binding on the parties to a given dispute. In the absence of a compulsory international court for States, any inter-State dispute brought before the ICJ must be based on consent, which can be expressed in various forms. Unlike criminal proceedings against individuals, contentious cases before the ICJ seek to hold a State accountable as a matter of State responsibility under international law.

When becoming parties to CAT, Canada, the Netherlands, and Syria agreed to the jurisdiction of the ICJ under Article 30(1) of this treaty for “[a]ny dispute between two or more States Parties concerning the interpretation or application of this Convention” and made no reservation with regard to this provision. In September 2020 and March 2021, the Netherlands and Canada respectively requested formal negotiations under CAT to hold Syria accountable.

If the procedure were to materialise at the ICJ, the Court could therefore make findings with regard to whether Syria is responsible under international law for violations of this convention.¹

However, before the case reaches the ICJ, a series of conditions must be met. First there must be a dispute in relation to the “interpretation” and “application” of CAT. Claims by Canada and the Netherlands of alleged violations of this treaty and denial by Syria could certainly qualify as a dispute.
Second, Article 30(1) also requires that if the dispute could not be settled through negotiations, it should be submitted to arbitration. If after six months following such an arbitration request, the parties cannot agree on the organisation of the arbitration, the dispute could be brought before the ICJ.

The notifications to Syria by the Netherlands on 18 September 2020 and by Canada on 3 March 2021 are therefore only the beginning of this process.

**Potential accountability and beyond before the ICJ under the CAT framework**

The use of the ICJ within the CAT framework offers a key avenue to complement existing accountability efforts to address human rights violations and abuses in Syria. While the dispute would be limited to this treaty’s norms, it would cover the wide range of obligations contained in CAT, both with regard to prevention of torture and addressing acts of torture that have occurred, with potentially far-reaching implications beyond holding Syria accountable.

In addition to the prohibition of torture and other forms of ill-treatment recognized under IHRL and to which traditional obligations to respect, to protect and to fulfil human rights apply, there is a further obligation to prevent its occurrence. Article 2 of CAT provides that States “shall take effective legislative, administrative, judicial or other measures” in this regard. This would mean that findings made by the ICJ could not only highlight the failure of the Government of Syria to prevent torture, but also the steps and reforms needed to prevent torture.

Furthermore, violations of additional specific obligations, such as that to investigate credible allegations against the background of years of documentation of torture and other forms of ill-treatment, in particular in governmental detention facilities, could be identified by the ICJ. It would also draw attention to the failure to provide victims with a remedy.²

This is particularly important in light of the recognition of victims’ rights under CAT, such as the obligation 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” and that “[i]n the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation”.³ The Committee against Torture specified that the term “redress” “entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention”.⁴

While still in the early stage, this new possible avenue for justice would not only help strengthen accountability for one of the most egregious patterns of violations committed in Syria, but it would do so through the implementation of the international responsibility of a State, an institution rarely used as a form of accountability in IHRL. This avenue would also potentially contribute to highlighting necessary reforms to ensure justice for victims and prevent further acts of torture.

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¹ See also, Alyssa Yamamoto and Balkees Jarrah, “The Netherlands’ Action Against Syria: A New Path to Justice”, 22 September 2020.
² Arts. 12 and 13 CAT.
³ Art. 14 CAT.
⁴ Committee against Torture, General Comment No. 3 (2012), para. 2.