



Legal Position Paper On the Syrian Government's Non-Compliance with the International Court of Justice's Provisional Measures Decision

The International Court of Justice (ICJ) has issued a ruling imposing provisional measures requiring the Syrian government to take immediate and effective actions to prevent acts of torture and cruel, inhuman, or degrading treatment. This paper addresses the legal implications and consequences of Syria's failure to comply with these legally binding measures.

Introduction:

Since the outbreak of the revolution in Syria in 2011, the Netherlands and Canada have documented extensive human rights violations based on international reports, testimonies from local Syrian organizations, and witness statements, including the "Caesar Files," which revealed systematic torture in detention centers operated by the Syrian government. Despite initial diplomatic efforts to engage in consultations with the Syrian government to ensure its compliance with the 1984 Convention Against Torture (CAT), these attempts failed due to the regime's refusal to cooperate or take serious steps to investigate these violations.

As a result, the Netherlands and Canada jointly filed a complaint before the International Court of Justice (ICJ) on July 12, 2023, accusing the Syrian government of committing grave violations, including systematic torture and ill-treatment. The complaint relied on credible evidence such as the "Caesar Files" and survivor testimonies, invoking Article 30 of the Convention Against Torture, which allows state parties to refer disputes concerning the interpretation or application of the Convention to the ICJ. The complaint aims to hold the Syrian government accountable under international law, promote respect for international legal norms, and combat impunity despite anticipated challenges such as Syria's rejection of jurisdiction or refusal to comply with the Court's decisions.

On November 16, 2023, the ICJ issued a binding decision requiring the Syrian government to adopt provisional measures. These measures include preventing acts of torture and ill-treatment in detention centers, improving detainee conditions, and preserving evidence related to crimes. However, reports indicate that the Syrian government continues to ignore these measures, presenting a significant challenge to international law and underscoring the need for additional efforts to achieve humanitarian justice.



The ICJ Decision: Its Background and Objectives

Text and Objectives of the Decision

On November 16, 2023, the International Court of Justice (ICJ) decided on provisional measures against the Syrian government based on the case brought by the Netherlands and Canada. The decision mandates the Syrian government to take immediate and comprehensive measures to prevent torture and related abuses, ensuring compliance with its obligations under the 1984 Convention Against Torture (CAT), to which Syria acceded in 2004.

The decision outlines three primary directives:

1.1 Preventing Torture

- **A.** The Syrian government must take all possible and available measures to halt the practice of torture in all its detention and interrogation facilities, whether formal or informal.
- **B.** Immediate compliance with the legal commitments under CAT, which prohibits torture under all circumstances, is required.

1.2 Preserving Evidence

- **A.** The Syrian government is obligated to ensure that no evidence related to human rights violations, particularly torture or ill-treatment, is destroyed or concealed.
- **B.** This includes preserving official records, physical evidence, and survivor testimonies, which may be crucial in future accountability processes.

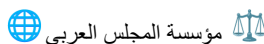
1.3 Ensuring Compliance with CAT

- **A.** Syria must implement tangible measures to demonstrate its commitment to the Convention, including establishing effective national mechanisms to prevent torture and investigate related allegations.

Background of the Decision

The ICJ's decision was issued following a growing body of documented international reports from UN bodies and non-governmental organizations, revealing a systematic pattern of torture and enforced disappearances in Syria since the outbreak of the conflict in 2011. The reports that prompted Canada and the Netherlands to bring the case before the ICJ highlighted:

2.1 Widespread and Systematic Violations





- **A.** International reports documented the torture of tens of thousands of detainees in Syrian prisons, including severe beatings, electric shocks, and summary executions.
- **B.** Survivor testimonies revealed the use of sexual violence as a method of torture against both men and women.

2.2 Inhumane Detention Conditions

- **A.** Detention centers operated by the Syrian regime are characterized by inhumane conditions, including severe overcrowding and lack of medical care, leading to the deaths of thousands of detainees due to diseases and neglect.

2.3 Enforced Disappearances

- **A.** It is estimated that tens of thousands of Syrians have been subjected to enforced disappearance and deprived of contact with their families or access to fair trials.

2.4 Systematic Use of Chemical Weapons

- **A.** The complaint also included accusations of the systematic use of chemical weapons against civilians, constituting severe violations of international humanitarian law.

This decision represents a significant step towards holding the Syrian government accountable and underscores the international community's commitment to combating impunity and ensuring justice for victims of systematic abuses.

Objectives of the ICJ Decision

The International Court of Justice's decision aims to achieve a series of legal and humanitarian objectives, detailed as follows:

1. Protection of Human Rights

- **A.** The decision seeks to ensure a minimum level of protection for Syrian detainees' rights and to halt all forms of cruel, inhuman, or degrading treatment.
- **B.** It reaffirms that torture is a grave violation of human dignity and cannot be justified under any circumstances.

2. Strengthening Legal Accountability

- **A.** The decision aims to end the impunity that has characterized the Syrian authorities' handling of torture crimes.



- **B.** It supports preserving evidence of violations as a preparatory step towards prosecuting those responsible for these crimes in the future.

3. Preventing Escalation of Violations

- **A.** The decision comes amid deteriorating humanitarian conditions in Syria, making immediate intervention imperative to prevent further escalation of violations.
- **B.** It serves as an international warning to the Syrian government that its actions are under scrutiny and that the continuation of these crimes will not go unchallenged.

4. Upholding the Rule of International Law

- **A.** The decision sends a clear message to all state parties to the Convention Against Torture that adherence to this treaty is both a legal and moral obligation and violations will be met with firm responses.
- **B.** It reinforces the ICJ's role as an effective mechanism for protecting human rights and ensuring compliance with international treaties.

Challenges to Implementation

Despite the clarity of the ICJ's decision and its objectives, significant challenges hinder its implementation:

1. Syrian Government's Non-Cooperation

- The Syrian government has a well-documented history of refusing to cooperate with international mechanisms, obstructing the application of provisional measures.

2. Lack of Effective International Enforcement Mechanisms

- The ICJ lacks an enforcement mechanism to compel states to comply with its decisions, relying heavily on political and diplomatic pressure from UN member states.

3. Continuing Armed Conflict

- Given the ongoing Syrian conflict, implementing the decision is further complicated by the lack of security and political stability in the country.

The ICJ's decision stands as a pivotal legal and moral stance against the Syrian government's violations, but its success depends on international solidarity and persistent efforts to overcome these challenges.

Reasons for the ICJ Decision

On November 16, 2023, the International Court of Justice (ICJ) issued its decision as a response to fundamental factors highlighting the urgent need for international measures to halt severe violations in Syria. These reasons stem from the systematic nature of the violations, the escalation of crimes against



detainees, and the necessity to safeguard human rights amidst the absence of local accountability mechanisms.

Systematic Violations of the Convention Against Torture

The 1984 Convention Against Torture (CAT), which Syria acceded to in 2004, obligates state parties to prevent all forms of torture and cruel, inhuman, or degrading treatment or punishment, whether by state officials or with the implicit approval of the state. However, numerous reports have documented systematic violations by Syrian authorities, including:

1.1 Organized Torture

- Evidence indicates that torture in Syria is not merely a series of isolated acts but part of a deliberate policy implemented by the country's security apparatus, constituting a blatant violation of Article 2 of the CAT.

1.2 Lack of Accountability

- Syrian authorities have failed to undertake serious investigations or hold perpetrators accountable for torture, violating Article 12 of the CAT, which requires prompt investigations into allegations of torture.

1.3 Enforced Disappearances and Arbitrary Detention

- Thousands of detainees are denied legal rights, constituting an additional breach of Syria's obligations under the Convention.

Complaints by the Netherlands and Canada Regarding Torture

The Netherlands and Canada jointly filed the case before the ICJ following a prolonged series of international complaints and pressures to address crimes committed in Syria. Key motivations for their action include:

2.1 Post-2011 Escalation

- Since the outbreak of armed conflict in 2011, torture crimes have dramatically escalated, with detention centers becoming sites of systematic violations. Reports highlight the daily torture of thousands of detainees and mass deaths under torture.

2.2 Transnational Impact of Violations



- The crimes transcend Syria's borders, affecting Syrian refugees in other countries and compelling the international community to act decisively to enforce international laws.

2.3 Call for International Accountability

- With perpetrators evading justice domestically, the two nations deemed the ICJ the only viable option to achieve justice and compel the Syrian government to adhere to international law.

Urgent Need for Measures to Protect Detainees and Prevent Ongoing Crimes

The ICJ based its decision on the recognition of an imminent and direct threat to the lives and dignity of Syrian detainees. Reasons supporting the urgent adoption of provisional measures include:

3.1 Scale of Violations

- Reports estimate that over 100,000 individuals have been forcibly disappeared in Syria since the conflict began, with most subjected to torture or execution. These figures represent a major humanitarian crisis requiring immediate intervention.

3.2 Nature of Crimes Committed

- The crimes in Syrian detention centers, such as systematic torture, extrajudicial executions, sexual violence, and inhumane detention conditions, qualify as crimes against humanity under international law.

3.3 Absence of Domestic Protection Mechanisms

- Syria's legal system has failed to offer protection to detainees or hold violators accountable. International intervention thus became essential to ensure minimal protection standards.

3.4 Ongoing Risk

- The court emphasized that these violations are not merely historical but persist today, with evidence indicating continued torture and ill-treatment in detention centers.

Examples of Documented Crimes and Violations Cited in the Case

1. Unofficial Detention Centers

- Reports revealed secret detention facilities run by intelligence agencies where detainees are subjected to brutal torture methods, such as electric shocks and beatings to death.

2. Survivor Testimonies



- The case included detailed survivor accounts of severe abuse, including deprivation of sleep and food, sexual violence, and forced witnessing of fellow detainees being tortured or killed.

3. Deaths Under Torture

- Thousands of deaths in Syrian prisons due to torture have been documented by organizations, with photographic evidence such as the “Caesar Files” depicting bodies bearing signs of severe abuse.

Ongoing Syrian Government Torture Despite the ICJ Decision

Despite the International Court of Justice (ICJ) decision condemning grave violations by the Syrian government, reports from human rights and international organizations highlight the continued systematic nature of these abuses. While international pressure mounts to halt such practices, the Syrian government persists in its repressive policies, ignoring its legal and humanitarian obligations.

A. Continued Torture and Violations

Although the ICJ's decision on November 16, 2023, mandated Syrian authorities to end torture and cruel treatment, evidence indicates ongoing systematic abuses:

1. Arbitrary Detention and Enforced Disappearances

- The Syrian Network for Human Rights documented 1,161 cases of arbitrary detention, including 18 children and 43 women, with 1,023 individuals forcibly disappeared—over 88% of those detained. Only 138 detainees were released.

2. Use of Torture

- Organizations such as *Human Rights Watch* and *Amnesty International* report that torture remains widespread, employed to extract confessions or punish dissenters.

3. UN Findings

- United Nations investigations confirm continued torture, including sexual violence, in Syrian detention centers despite the legally binding court ruling.

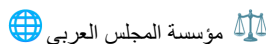
B. Violations Against Returning Refugees

Syrian refugees returning to their home country face increasing risks, contradicting international obligations and further exposing the persistence of government repression.

1. Documented Abuses

- Reports highlight cases of arbitrary detention, enforced disappearances, and torture among returnees. These violations deter potential returns and reflect the government's continued disregard for human rights.

2. Systematic Repression





- The targeting of returnees underscores the Syrian government's use of systematic practices to silence opposition and assert control.

C. Efforts to Conceal Evidence

The Syrian government has undertaken actions interpreted by human rights organizations as attempts to obscure evidence of its crimes.

1. Abolishment of Military Field Courts

- While framed as a reform measure, abolishing military field courts is seen as an effort to avoid accountability and erase evidence of widespread violations committed over the years.

2. Erosion of Accountability Mechanisms

- The government seeks to shield itself from international scrutiny and legal consequences by dismantling institutions that could provide evidence of abuses.

Legal Obligations of the Syrian Government Under the Convention Against Torture

As a state party to the **Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)** of 1984, Syria is bound by a series of legal obligations aimed at preventing torture and ensuring the protection of human rights. These obligations are central to the international legal framework in order to avoid human rights abuses. Syria's failure to comply with these commitments constitutes a clear violation of the Convention and exposes the government to potential international legal accountability.

1. Prohibition of Torture

Article 2 of the CAT mandates that:

"Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."

● Required Effective Measures

The Convention demands that Syria take specific steps to prevent torture, including:

A. Training Security and Judicial Personnel: Ensuring that law enforcement and judiciary personnel are trained to respect human rights.

B. Independent Mechanisms for Complaints: Establishing independent bodies to investigate allegations of torture.

C. Legal Reforms: Updating national laws to define torture and ensure accountability for perpetrators clearly.

D. Current Reality: Despite these obligations, reports from international bodies indicate that



Syrian detention facilities remain sites of systematic torture, including beatings, electric shocks, sexual violence, and denial of food and medical care to detainees.

2. Preservation of Evidence

Article 12 of the CAT stipulates:

"The competent authorities of the State Party shall proceed to a prompt and impartial investigation whenever there is reasonable ground to believe that an act of torture has been committed."

- **Obligations Related to Evidence Preservation**

These obligations include:

A. Documentation of Torture Cases: Recording all incidents of detention and torture transparently and thoroughly.

B. Retention of Documents and Records: Keeping detailed records and documents that provide evidence of human rights violations.

C. Prevention of Evidence Destruction: Ensuring that evidence of torture is not destroyed or concealed, either through direct action or by disbanding courts that deal with such violations.

D. Syrian Shortcomings: UN reports and human rights organizations point to attempts by Syrian authorities to hide evidence, including burning documents, arbitrarily transferring prisoners, and closing military field courts in a suspected attempt to obscure the truth about these abuses.

3. International Cooperation

Article 9 of the CAT requires that states cooperate with international efforts to ensure accountability for torture crimes, which includes providing legal assistance and extraditing suspects when requested.

- **International Expectations for Syria**

A. Compliance with ICJ Rulings: Syria is expected to cooperate with the International Court of Justice (ICJ) and implement the provisional measures ordered against it.

B. Access for International Investigators: Allowing international investigators into prisons and detention facilities to verify the conditions.

C. Access to Documents and Testimonies: Ensuring that relevant documents and testimonies are available to facilitate investigations.

D. Syrian Non-Compliance: Syria has consistently refused to cooperate with international courts and UN bodies, dismissing the legal cases against it as "political conspiracies." This ongoing refusal constitutes a continued violation of its international obligations.

4. Protection of Returning Refugees



Article 3 of the CAT prohibits the return of individuals to a country where they are at risk of being tortured. Syria has an obligation to ensure that any returnees are not subjected to torture or ill-treatment.

- **Direct Responsibility of Syria**

The Convention requires Syria to take necessary measures to ensure the safety of returning refugees, including:

A. **Prevention of Arbitrary Detention:** Ensuring that returnees are not arbitrarily detained.

B. **Protection from Torture and Retribution:** Guaranteeing that returnees are not tortured or subjected to cruel treatment or revenge for having fled the country.

C. **Effective Legal Safeguards:** Providing effective legal mechanisms to protect returnees.

D. **Reality on the Ground:** Human rights reports indicate that returning refugees have been subjected to enforced disappearances, arbitrary detention, and torture in detention centers, which is a blatant violation of Article 3 of the Convention. This ongoing failure to protect returnees has sparked growing international concern about their safety.

Ignoring International Obligations by the Syrian Government and Its Legal Consequences

The Syrian government's disregard for these obligations not only violates the Convention Against Torture but also exposes it to serious legal consequences, including:

1. **Accountability before International Courts:** The continued violations could lead to the imposition of additional international sanctions or strict legal actions against those responsible for torture.
2. **Asset Freezing and Suspension of International Cooperation:** States parties to the Convention may impose economic and diplomatic sanctions on Syria for its non-compliance with international rulings.
3. **They are strengthening Lawsuits Based on Universal Jurisdiction:** Countries that apply universal jurisdiction may take legal action against Syrian officials involved in torture.

Consequences of Non-Compliance and Its Implications:

1. **Weakening the International Justice System:** Non-compliance by the Syrian government with the International Court of Justice ruling represents a direct threat to the international legal system, which relies on countries adhering to their obligations under international treaties and laws. a. **Threat to the Ability of the International Community to Enforce the Law:** This disregard weakens international legal tools, such as international court rulings and human rights conventions, undermining the credibility of international organizations and institutions in enforcing the rule of law. b. **Encouraging Other Countries to Disregard Rulings:** When a country like Syria evades compliance with an international court decision, it encourages other states to



ignore rulings by international courts, leading to the spread of a culture of non-compliance and impunity.

2. **Further Violations Against Civilians:** The continued human rights violations by the Syrian government without any deterrent exacerbate the humanitarian crisis in the country, leaving deep impacts on civilians: a. **Escalation of Systematic Violations:** Impunity allows those responsible for torture and enforced disappearances to continue their brutal practices without fear of accountability. b. **Intensification of Victim Suffering:** The ongoing torture and ill-treatment in Syrian prisons lead to more victims and compound the suffering of families who have lost loved ones due to enforced disappearance or death under torture. c. **Undermining Justice Opportunities:** The concealment or destruction of evidence, as suspected by human rights organizations regarding Syrian authorities, hinders efforts to document violations and achieve justice in the future.
3. **Impact on Refugees and Host Countries:** a. **Risk to Returning Refugees:** The continued torture and violations place returning Syrian refugees at risk of enforced disappearance, arbitrary detention, and torture. b. **Pressure on Host Countries:** Countries hosting Syrian refugees face both international and domestic pressures to manage the refugee crisis, potentially leading to increased forced repatriations or the imposition of policies that restrict refugees' rights. c. **Exacerbating Regional Conditions:** The return of refugees amid continued violations heightens instability in the region, adding pressure on humanitarian organizations and countries facing challenges in hosting refugees.

Suggestions for Addressing Violations and Ensuring Compliance:

1. **Role of Governments and the International Community:** A. **Pressuring Syria for Compliance:** Countries should use their diplomatic and political influence to compel the Syrian government to comply with the decisions of the International Court of Justice. B. **Imposing Targeted Sanctions on Perpetrators:** Sanctions should be imposed on individuals responsible for violations to ensure they are held accountable under the law. C. **Supporting Victims and Holding Perpetrators Accountable:** Funding initiatives that provide psychological, social, and legal support to the victims of human rights violations. D. **Strengthening Accountability Mechanisms:** Enhancing cooperation with international courts and human rights organizations to ensure accountability for the violations committed.
2. **Protection of Refugees:** A. **Stopping Forced Repatriation:** Host countries must commit to preventing the forced return of refugees to Syria as long as documented violations persist. B. **Providing Support to Host Countries:** Financial and technical assistance should be provided to countries facing pressure from hosting refugees to ensure the protection of their rights. C. **Enhancing Resettlement Programs:** Ensuring the safety of refugees through third-country resettlement programs, especially when their return to Syria is not possible.
3. **Additional International Mechanisms:** A. **Strengthening International Investigations:** Support independent efforts to investigate crimes committed in Syria, including documenting violations



and preserving evidence for future legal proceedings. B. **Enabling the Independent International Commission of Inquiry on Syria to Access Sites and Prisons:** Grant the commission full access to sites and prisons in Syria for further investigation of violations. C. **Establishing a Special International Court for Syria:** Consider the creation of a specialized international court to prosecute crimes committed in Syria, similar to the International Criminal Tribunal for the former Yugoslavia or Rwanda. D. **Activating Universal Jurisdiction:** Utilize national laws in countries that allow for universal jurisdiction to prosecute those responsible for crimes against humanity and war crimes committed in Syria.

Recommendations of the Arab Council:

1. Continued International Condemnation of Syrian Government Violations:

A. Member states of the United Nations, international organizations, and human rights councils should continue issuing official statements condemning the documented violations committed by the Syrian government.

B. Diplomatic pressure campaigns should be organized at the United Nations General Assembly and the Security Council level to ensure that violations are highlighted and remain on the international agenda.

C. Regional organizations, such as the Arab League and the European Union, should be urged to clearly condemn the violations and impose targeted sanctions on those responsible for the crimes.

2. Strengthening Judicial Investigations Against Syrian Officials Using Universal Jurisdiction:

A. Support countries that apply the principle of universal jurisdiction to prosecute individuals accused of crimes against humanity and war crimes committed in Syria.

B. Allocate additional resources to document evidence, either through independent investigative teams or in cooperation with local and international human rights organizations.

C. Enhance cooperation between national and international judicial authorities to facilitate the exchange of information and evidence regarding those responsible for the violations.

D. Develop training programs for investigators and judges to enhance their ability to handle complex cases related to Syrian violations.

3. Stop Forced Repatriation and Ensure Refugee Rights Are Respected:



A. Demand that all host countries immediately stop forced repatriation of Syrian refugees, as it exposes returnees to the risk of torture or arbitrary detention.

B. Pressure countries that consider certain areas of Syria "safe" to revise their policies based on United Nations and human rights organizations' reports that confirm the dangerous conditions.

C. Strengthen international protection mechanisms for Syrian refugees by expanding resettlement programs and providing humanitarian assistance to host countries to alleviate their burden.

D. Monitor and enforce international standards that protect refugees from forced repatriation and human rights violations.

4. **Increasing International Pressure to Ensure Syria's Compliance with the International Court of Justice's Decisions:**

A. Use economic and diplomatic sanctions to force the Syrian government to comply with international decisions regarding the prevention of torture and the preservation of evidence.

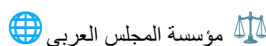
B. Activate United Nations mechanisms, including the Security Council and the General Assembly, to impose binding measures on Syria.

C. Organize international conferences to highlight the Syrian government's violations and propose concrete solutions to ensure compliance with the court's decisions.

D. Encourage influential international actors to mediate and pressure Syria to take tangible steps toward respecting international law.

Through these practical and focused steps, the international community can reduce the continuation of violations in Syria, enhance pathways to achieve justice for the victims, and ensure respect for international law. The commitment of states to address violations and their consequences represents a legal and ethical responsibility that requires continuous international coordination to ensure the cessation of ongoing crimes and the protection of human rights, while promoting the values of combating impunity.

The Arab Council - Portal to Accountability (Strategic Litigation)



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