NON-TYPICAL FORMS OF TORTURE AND ILL-TREATMENT

AN ANALYSIS OF INTERNATIONAL HUMAN RIGHTS AND INTERNATIONAL CRIMINAL JURISPRUDENCE

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The International Human Rights Law Clinic (IHRLC) designs and implements innovative human rights projects to advance the struggle for justice on behalf of individuals and marginalized communities through advocacy, research, and policy development. The IHRLC employs an interdisciplinary model that leverages the intellectual capital of the university to provide innovative solutions to emerging human rights issues. The IHRLC develops collaborative partnerships with researchers, scholars, and human rights activists worldwide. Students are integral to all phases of the IHRLC’s work and acquire unparalleled experience generating knowledge and employing strategies to address the most urgent human rights issues of our day.

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INTRODUCTION

Human rights mechanisms and international criminal tribunals long have recognized physical and violent State practices as violations of the prohibition against torture and other cruel, inhuman, or degrading treatment or punishment ("ill-treatment"). Yet, as new forms and manners of State-inflicted suffering come to light, the application of the prohibition to practices that are not customarily thought of as torture is evolving. This working paper addresses "non-typical" forms of torture and ill-treatment—i.e., those forms that are non-violent, non-physical, or psychological. These are elusive to identify due to misconceptions of what the prohibition protects. To address this gap, this working paper analyzes non-typical forms of torture and ill-treatment in international case law, identifying patterns in the jurisprudence. Thus, this working paper focuses on jurisprudence at the outer border of the prohibition against torture and ill-treatment. In so doing, it draws attention to a broader range of ways in which State action or inaction, whether deliberate or negligent, inflicts illegal suffering.

This research reviews relevant decisions drawn over the last three decades from the following international and regional human rights mechanisms: the Committee Against Torture ("CAT"), the Human Rights Committee ("HRC"), the African Commission on Human and People's Rights ("African Commission"), the European Court of Human Rights ("ECtHR"), the European Commission on Human Rights (ECHR), the Inter-American Commission of Human Rights ("Inter-American Commission"), and the Inter-American Court of Human Rights ("IACtHR"). In addition, researchers consulted international criminal law generated by the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea ("ECCC"), the International Criminal Tribunal for Rwanda ("ICTR"), the International Criminal Tribunal for the former Yugoslavia ("ICTY"), and the Special Court for Sierra Leone ("SCSL").[1]

Researchers assembled the cases from secondary literature on torture and ill-treatment, complemented by more recent jurisprudence. From this review, 176 cases

[1] The human rights and international criminal mechanisms collectively are referred to as "decisional bodies."

were identified from the period between 1981 and 2018. Researchers examined the cases in two ways: first, researchers coded the cases to identify common patterns and, more importantly, to note cases that recognize new or surprising, non-typical methods. Second, researchers conducted a qualitative analysis of the jurisprudence to highlight patterns of treatment and the reasoning of decisional bodies.

The legal analysis proceeds in the following manner: the first section examines cases of torture and ill-treatment by omission that concern the limitation of access to medical treatment, the failure to provide means to maintain adequate hygiene, and the failure to provide food. The second section focuses on cases in which a victim's torture and ill-treatment can inflict pain and suffering on a third party that rises to the level of torture or ill-treatment of the third party. The third section looks at cases that address threats of harm to victims, and threats made against the family members of victims. The fourth section analyzes cases from international criminal tribunals in which victims are subjected to a state of constant uncertainty or terror. The fifth section highlights cases that address the use of sound, temperature, and light to inflict pain and suffering that may arise to torture or ill-treatment in combination with other forms of mistreatment. The sixth section considers jurisprudence analyzing restrictions on detainees regarding space and movement within and outside of cells, and incommunicado detention. The seventh section considers cases in which treatment involves violence of a symbolic nature, which is instrumentalized through sexual and gendered forms. The eighth section analyzes situations in which decisional bodies address treatment that causes psychological suffering or the identity breakdown of victims. The ninth section discusses observations gleaned from the research. The final section concludes.

OMISSIONS REGARDING BASIC PHYSICAL NEEDS

In a number of cases, decisional bodies have found that the failure of the State to meet necessary physical needs of those under its effective control has contributed to their torture or ill-treatment. Most often, victims were in custody while these omissions

occurred. Such failures have been held to include: the withholding of medical treatment, the failure to provide means to maintain adequate hygiene, and the failure to provide food.[2]

A. WITHOLDING OF MEDICAL TREATMENT

Decisional bodies have held that the denial of free access to medical treatment in detention factors into findings of torture or ill-treatment. This type of omission was sometimes referred to without reference to a specific *need* for medical attention, or to the details of the lack of treatment, but was instead referred to as a lapse in more general terms.[3]

However, in some cases, medical attention was specifically denied to the victim after suffering violence, from which the victim had sustained physical injuries. This omission amplified the suffering caused by the violence. For example, in HRC case *Cariboni v. Uruguay*, the victim claimed to have suffered from "two heart attacks

[2] The extent to which courts and monitoring bodies considered in their judgments whether the particular medical treatment is generally available and accessible within the country in question is an important question that lies beyond the scope of the present analysis.

[3] *See* Prosecutor v. Simić, Case No. IT-95-9-T, Judgment, ¶ 773 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 17, 2003) (holding that detainees "did not have appropriate access to medical care," and that this contributed to the finding of ill-treatment); Ilascu and Others v. Moldova and Russia, Eur. Ct. H.R., App. No. 48787/99, ¶ 451 (2004) (holding that "a denial of all forms of appropriate medical assistance" in detention contributed to a finding of ill-treatment); Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 160, ¶ 295 (Nov. 25, 2006) (holding that "inmates did not receive medical attention" after a gas attack, without specifying whether this contributed to the finding of torture and ill-treatment); Kevin Mgwanga Gunme *et al*. v. Cameroon, Communication 266/03, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶¶ 18, 113, 114 (May 27, 2009) (finding that a "denial of medical treatment" was not justified even when the victim was detained in the context of "fighting terrorist activities," and contributed to a finding of torture and ill-treatment); Giri v. Nepal, ¶ 2.6, U.N. Doc. CCPR/C/101/D/1761/2008 (Mar. 24, 2011) (noting that the victim "was afraid to ask for medical assistance while in detention, and was only seen once by a doctor," although not making clear whether this specific omission contributed to the finding of torture and ill-treatment); Abdel Hadi, Ali Radi & Others v. Republic of Sudan, Communication 368/09, Afr. Comm'n H.P.R., ¶ 74 (Nov. 5, 2013) (holding that a "denial of access to medical care" contributed to a finding of ill-treatment); Sergei Kirsanov v. Russian Federation, ¶ 11.2, U.N. Doc. CAT/C/52/D/478/2011 (May 14, 2014) (noting that the complainant was denied medical assistance, but not specifying whether this was taken into account in the Committee's finding of ill-treatment); Déogratias Niyonzima v. Burundi, ¶ 2.7, U.N. Doc. CAT/C/53/D/514/2012 (Nov. 21, 2014) (holding that "despite repeated requests, he was not allowed to see a doctor," and that this contributed to a finding of torture); Abdulrahman Kabura v. Burundi, ¶ 7.8, U.N. Doc. CAT/C/59/D/549/2013 (Nov. 11, 2016) (noting that the complainant was detained without medical treatment, and that this contributed to a finding of ill-treatment); Simeonovi v. Bulgaria, App. No. 21980/04, Eur. Ct. H.R., ¶ 90 (2017) (noting "inadequate prison health-care services," without specifying whether this specifically contributed to the finding of torture and ill-treatment).

during torture," which required heart surgery and phonocardiograms while he was further detained.[4] The denial of this treatment left him "in danger of dying."[5] The Human Rights Committee found this denial to constitute, among other factors, "torture and inhuman and degrading treatment."[6]

In other cases, authorities did not entirely deny medical care. However, decisional bodies determined that detainees were denied *adequate* care, given the particular custodial context, because the medical system in the detention center was found to be lacking[7]. For example, in the ICTY case *Prosecutor v. Delalić*, the court found the medical care provided at a makeshift infirmary in a prison-camp was rendered inadequate by "a serious lack of basic medical supplies," like medicine.[8] The tribunal held that this contributed to a holding of ill-treatment.[9] More recently, in *Kaing Guek Eav alias Duch* from the ECCC, judges found "deprivation of medical treatment" to include the treatment of cuts, bruises, and other injuries with salty water, the provision of inadequate or ineffective medication, and the insufficient treatment of rashes, malaria, diarrhea, and severe dehydration.[10] The court described this treatment as a "lack of adequate . . . medical care."[11]

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[4] Cariboni v. Uruguay, ¶ 2.4, U.N. Doc. CCPR/C/31/D/161/1983 (Oct. 27, 1987).
[5] *Id.*, ¶ 2.4.
[6] *Id.*, ¶ 10. *See also* Danilo Dimitrijevic v. Serbia & Montenegro, ¶¶ 2.2, 7.1, U.N. Doc. CAT/C/35/D/172/2000 (Nov. 16, 2005) (holding that the denial of medical treatment to a victim after he was beaten, where "his injuries visibly required such [medical] attention," contributed to a finding of torture); Taoufik Elaïba v. Tunisia, ¶ 2.4, U.N. Doc. CAT/C/57/D/551/2013 (May 6, 2016) (noting that the victim "received no medical treatment [for the entire duration of his custody], even for the open wound on his belly from the cut inflicted by the piece of tin when he was arrested," and that this contributed to a finding of torture and ill-treatment); Ennaâma Asfari v. Morocco, ¶¶ 3.2, 13.9, U.N. Doc. CAT/C/59/D/606/2014 (Nov. 15, 2016) (finding that the victim's injuries, sustained from "acts of violence," caused him "acute suffering for months on end as a result of this lack of medical care" because his "access to a doctor . . . was restricted for several weeks.").
[7] The question of "reasonableness" in the medical care context, and how far it impacts the findings of judicial bodies, is interesting but not addressed in this analysis.
[8] Prosecutor v. Delalić, Case No. IT-96-21-T, Judgment, ¶ 1101 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).
[9] *Id.*, ¶ 1101.
[10] Kaing Guek Eav alias Duch, Case No. 001, Judgment, ¶ 273 (Extraordinary Chambers in the Cts. of Cambodia July 26, 2010).
[11] *Id.*, ¶ 372. *See also* Neshkov and Others v. Bulgaria, Eur. Ct. H.R., App. No. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12, 9717/13, ¶ 60 (2016) (noting that detainees who were in custody for less than three years did not have health insurance, and therefore limited access to outside specialists or hospitals, and that in combination with non-comprehensive examinations and a too-heavy patient load, this led to inadequate medical care).

In addition, in a large number of cases, decisional bodies found the medical care authorities provided failed to meet the specific prior medical *needs* of a detainee. For example, in HRC case *Sendic v. Uruguay*, the victim suffered from a hernia, because of which "he [could] only take liquids and [was] unable to walk without help."[12] He claimed that "he [was] not being given the medical attention" required by his ailment while detained, and that he required an operation that was not performed.[13] Along with other factors, the committee held that this omission constituted torture and ill-treatment.[14] Further, in a more recent IACtHR case, *Vélez Loor v. Panama*, the victim—suffering from a previous cranial fracture with no explicit cause—was denied "specialized treatment" in detention.[15] The court found that this failure to provide medical services in "a timely, adequate and complete manner," constituted cruel, inhuman, or degrading punishment or treatment.[16]

More recently, there have also been cases that address physical and mental disabilities. In *Zhaslan Suleimenov v. Kazakhstan* from HRC, for example, the victim was a "person with disabilities using a wheelchair."[17] The victim claimed that his "requests for medical assistance were ignored" and he was "not allowed to use his wheelchair" while detained, resulting in bedsores and an inability to move independently.[18] The committee held that the victim "suffer[ed] from the lack of adequate medical care."[19] The committee did not specify how this omission factored into its holding, but did find that it contributed to its finding of torture and ill-treatment.[20]

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[12] Sendic v. Uruguay, ¶ 16.2, U.N. Doc. CCPR/C/14/D/63/1979 (Oct. 20, 1981).
[13] *Id.*, ¶¶ 2.7, 16.2.
[14] *Id.*, ¶ 20.
[15] Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 218 (Nov. 23, 2010).
[16] *Id.,* ¶ 223. *See also* Nevmerzhitsky v. Ukraine*,* Eur. Ct. H.R., App. No. 54825/00, ¶¶ 103, 105, 106 (2005) (holding that a failure to treat the victim's "scabies and eczema," and to provide medical attention throughout his hunger strike constituted ill-treatment); Istratii and Others v. Moldova*,* Eur. Ct. H.R., App. No. 8721/05, ¶ 58 (2007) (holding that transporting a victim to a hospital three hours after suffering from "paraproctitis with rectal hemorrhage"—an "urgent" medical crisis—contributed to a finding of ill-treatment).
[17] Zhaslan Suleimenov v. Kazakhstan, ¶ 2.1, U.N. Doc. CCPR/C/119/D/2146/2012 (May 12, 2017).
[18] *Id.*, ¶¶ 2.5, 8.7.
[19] *Id.*, ¶ 8.7.
[20] *Id.*, ¶ 9. *See also* A.H.G. v. Canada*,* ¶ 10.4, U.N. Doc. CCPR/C/113/D/2091/2011 (June 5, 2015) ("the Committee considers that the deportation to Jamaica of the [victim], a mentally ill person in need of special protection . . . constituted a violation by the State party of its obligations under article 7 of the Covenant").

Further, a few cases spoke specifically to an omission of medical care in relation to the special medical needs of women and children. In a 2016 ECtHR case related to the rights of a mother and infant, *Korkeykova and Korneykov v. Ukraine*, the court held that a newborn to six-month-old baby (held in custody with its nursing mother) were denied adequate medical treatment.[21] Given the child's young age, inaccurate medical files and pediatric monitoring were found to result in "adequate health-care standards . . . not [being] met."[22] During the same year, another HRC case addressed the right of a woman to access medical care. In *Amanda Jane Mellet v. Ireland*, the victim was seeking to terminate her pregnancy.[23] Because abortion was legally prohibited in Ireland, she was unable to access this medical treatment despite carrying an unviable fetus. The committee held that by being forced to travel "overseas" for access to an abortion, she was denied the "healthcare and bereavement support she needed in Ireland."[24] The committee held that these facts, along with others, amounted to "cruel, inhuman or degrading treatment."[25]

For reference, there are comparatively few instances where decisional bodies have found that States have met the medical needs of petitioners. One example is the ECtHR case *Istratii and Others v. Moldova,* in which the court found that one victim's denial of medical care for his specific, individual needs in a medical crisis contributed to a finding of ill-treatment.[26] However, because two other detainees did not need "any medical assistance" either on a regular basis or for an emergency, no violation was found with respect to their medical treatment.[27] The court held that "the lack of medical assistance in circumstances where such assistance was not needed cannot, of itself, amount" to torture or ill-treatment.[28]

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[21] Korkeykova and Korneykov v. Ukraine, Eur. Ct. H.R., App. No. 56660/12, ¶ 157 (2016).
[22] *Id.,* ¶¶ 156-57. *See also* Juvenile Reeducation Institute v. Paraguay*,* Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 173 (Nov. 23, 2004) (holding that failing to provide "the regular medical supervision that would ensure . . . [detained] children's normal growth and development" constituted torture and ill-treatment).
[23] Amanda Jane Mellet v. Ireland, ¶ 7.2, U.N. Doc. CCPR/C/116/D/2324/2013 (Nov.17, 2016).
[24] *Id.*, ¶ 7.3.
[25] *Id.*, ¶ 7.6.
[26] Istratii and Others v. Moldova, Eur. Ct. H.R., App. No. 8721/05, 8705/05, 8742/05, ¶ 58 (2007).
[27] *Id.*, ¶¶ 49, 59.
[28] *Id.*, ¶ 49.

B. FAILURE TO PROVIDE ADEQUATE ACCESS TO HYGIENE

Decisional bodies have held that limited access to sanitary facilities—toilets, showers, and the ability to clean or wash cells, bedding, or clothing—factors into findings of torture and ill-treatment.

The complete denial of access to a toilet has been held to constitute torture or ill-treatment.[29] In many cases, though a toilet was present, authorities limited access by force or physical restriction. For example, in the ICTY case *Prosecutor v. Kvocka*, there were "two toilet facilities in the hangar building for use by over a thousand detainees," but victims would be beaten if they used them, and thus "relieved themselves in their clothing."[30] Further, in HRC case *Giri v. Nepal*, the detention facility contained "a toilet attached to the room, but no water."[31] In addition, the victim was blindfolded and handcuffed for "10 months of his 13-month detention," which "led to considerable difficulties for him to eat and use the toilet."[32] The committee held that this contributed to a finding of "torture and ill-treatment."[33]

Sometimes, the toilet facilities were themselves unhygienic. For example, in ECtHR case *Nevmerzhitsky v. Ukraine*, "the toilets were not properly partitioned off" and in many cells, "the toilets did not have a proper flush, which added to the ambient insalubrity."[34] The court recommended that "the toilets in all the cells . . . have a working flush" and found that the conditions of detention constituted torture and ill-

[29] *See* Danilo Dimitrijevic v. Serbia and Montenegro, ¶¶ 2.2, 7.1, U.N. Doc. CAT/C/35/D/172/2000 (Nov. 16, 2005) (finding that the victim was denied "the possibility of using the lavatory" while detained at a police station and that this constituted, along with other factors, torture).
[30] Prosecutor v. Kvocka, Case No. IT-98-30/1-T, Judgment, ¶ 58 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 2, 2001).
[31] Giri v. Nepal, ¶ 2.4, U.N. Doc. CCPR/C/101/D/1761/2008 (Apr. 27, 2011).
[32] *Id.,* ¶¶ 2.4, 7.3.
[33] *Id.,* ¶ 7.6. *See* also Ilascu and Others v. Moldova and Russia, Eur. Ct. H.R., App. No. 48787/99, ¶ 199 (2016) (noting that prisoners were only taken to the toilets "once a day by guards accompanied by an Alsatian dog . . .[,] they had only forty-five seconds in which to relieve themselves, knowing that the dog would be set on them if they took longer" and holding that this contributed to a finding of ill-treatment); Harakchiev and Tolumov v. Bulgaria*,* Eur. Ct. H.R., App. No. 56660/12, ¶¶ 17, 213 (2014) (finding that the victim was kept in a cell with no access to the toilet, but was taken to visit one three times each day "between 5.30 a.m. and 8 p.m.," and would otherwise have to "resort to [a] bucket for his sanitary needs," and holding that this contributed to a finding of torture and ill-treatment).
[34] Nevmerzhitsky v. Ukraine, Eur. Ct. H.R., App. No. 54825/00, ¶ 66 (2005).

treatment.[35] Similarly, in the more recent CAT case *Déogratias Niyonzima v. Burundi*, "all the [seventeen] detainees [in the cell] had to use one toilet that was in an appalling state."[36] The committee found that this condition of detention contributed to a finding of torture.[37]

In many cases, the decisional body noted the absence of *privacy* in relation to access to the toilet. For example, in IACtHR case *Miguel Castro Castro Prison v. Peru*, female inmates were sometimes "accompanied by an armed guard" when they wanted to use the bathroom, "who would not let them close the door and was pointing their weapon at them while they did their physiological needs."[38] The court found that these conditions contributed to a finding of "torture." [39] Further, in a more recent ECtHR case, *Neshkov and Others v. Bulgaria,* victims were subject to limited access to toilets—"a bucket in the cell, often in the presence of . . . cellmates"—while in detention, and "extremely limited personal space."[40] This was found to constitute ill-treatment.[41]

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[35] *Id.*, ¶¶ 66, 86.
[36] Déogratias Niyonzima v. Burundi, ¶ 2.7, U.N. Doc. CAT/C/53/D/514/2012 (Nov. 21, 2014).
[37] *Id*, ¶ 9. *See also* Lindström and Mässeli v. Finland, Eur. Ct. H.R., App. No. 24630/10 (2014); Korkeykova and Korneykov v. Ukraine, Eur. Ct. H.R., App. No. 56660/12, ¶¶ 26, 147, 148 (2016) (finding that as the "toilet was often blocked" in the cell of a breastfeeding mother, while in detention, this constituted, among other factors, torture and ill-treatment).
[38] Miguel Castro Castro Prison v. Peru*,* Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 160, ¶ 72 (Nov. 25, 2006).
[39] *Id.*, ¶ 105.
[40] Neshkov and Others v. Bulgaria, Eur. Ct. H.R., App. No. 36925/10, 21487/12, 72893/12, 73196/12, 77718/12, 9717/13, ¶ 247 (2016).
[41] *Id.*, ¶ 247. *See also* Juvenile Reeducation Institute v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶¶ 14, 147 (Sept. 2, 2004) (finding that "[t]he lavatories with latrines had no doors and were located inside the cellblock" and that this contributed to a finding of torture and ill-treatment); Istratii and Others v. Moldova, Eur. Ct. H.R., App. No. 8721/05, 8705/05, 8742/05, ¶ 76 (2007) (noting that "[the toilet] area was only partially partitioned by a small low wall less than one metre high, which meant that it was not possible to preserve one's privacy," and holding that this factored into their finding of torture and ill-treatment); Institute for Human Rights and Development in Africa v. Angola*,* Communication 292/04, Afr. Comm'n H.P.R., ¶¶ 5, 53 (May 22, 2008) (noting that "the bathroom was not separated from the sleeping and eating areas," and that this contributed to a finding of torture); Georgia v. Russia(I), Eur. Ct. H.R., App. No. 13255/07, ¶ 54 (2014) (noting also that "a bucket had served as a toilet and had not been separated from the rest of the cells" and that this contributed to a finding of torture and ill-treatment); Sergei Kirsanov v. Russian Federation, ¶¶ 2.3, 11.2, U.N. Doc. CAT/C/52/D/478/2011 (May 14, 2014) (finding that "instead of a toilet, the detainees used a metal bucket, and . . . had no privacy when using it as there were other people present in the cell," and that this constituted, among other factors "conditions" of ill-treatment).

As to washing facilities, decisional bodies sometimes noted when access was limited by both physical availability and specific usage restrictions. In ICTY case *Prosecutor v. Kvocka*, for example, male detainees "had no washing facilities, even when they soiled themselves," although they were sometimes hosed down.[42] Due to the "insufficient washing facilities," lice and skin rashes, diarrhea, and dysentery were widespread.[43] The tribunal held that this contributed to a finding of torture and ill-treatment.[44] Further, in IACtHR case *Vélez Loor v. Panama*, the prison had "shortcomings in access to basic services, such as the lack of showers."[45] The court held that "the overall conditions of imprisonment . . . constituted a cruel, inhumane and degrading treatment."[46]

Some cases also spoke to the inability of victims to wash their cells, bedding, or clothing, or to the unclean conditions of detention spaces. For example, in IACtHR case *Juvenile Reeducation Institute v. Paraguay*, the cells were only cleaned "if the inmates cleaned them . . . [and only] with water, since inmates were not supplied with cleaning agents and materials."[47] The court held that this treatment, among other factors, constituted a violation of the prohibition against torture or ill-treatment.[48] More recently, in an ECtHR case related to the rights of a mother and infant, *Korkeykova and Korneykov v. Ukraine*, the pair were detained in a cell with a toilet "separated from the living area by a waist-high wall [which] leaked," and a leaking shower cubicle

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[42] Prosecutor v. Kvocka, Case No. IT-98-30/1-T, Judgment, ¶ 60 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 2, 2001).
[43] *Id.*, ¶ 61.
[44] *Id.*, ¶ 151.
[45] Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 212 (Nov. 23, 2010).
[46] *Id.*, ¶ 227. *See also* Bouton v. Uruguay, ¶¶ 2.5, 13, U.N. Doc. CAT/C/101/D/1761/2008 (Apr. 27, 2011) (finding that the victim was only "allowed to take a bath every 10 or 15 days" and that this contributed to a finding of "inhuman and degrading treatment"); Giri v. Nepal, ¶¶ 2.4, 7.6, U.N. Doc. CCPR/C/101/D/1761/2008 (Apr. 27, 2011) (finding that the victim was "only allowed to shower on two occasions during his detention" and was "never provided with a change of clothes," and that this contributed to a finding of "torture and ill-treatment"); Déogratias Niyonzima v. Burundi, ¶¶ 2.14, 9, U.N. Doc. CAT/C/53/D/514/2012 (Nov. 21, 2014) (holding that as the victim was kept in a cell with a "toilet-shower" but only had water between "3 and 4 a.m.," this contributed to a finding of torture); Harakchiev and Tolumov v. Bulgaria, Eur. Ct. H.R., App. No. 56660/12, ¶¶ 17, 213 (2014) (finding that as "inmates . . . could only take a shower once every fourteen or fifteen days," this contributed to a finding of torture and ill-treatment).
[47] Juvenile Reeducation Institute v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 14 (Sept. 2, 2004).
[48] *Id.*, ¶ 147.

with "mould . . . mice and lice."[49] Given the child's young age, the court stated that it could not "but stress that adequate hygienic conditions are vital for a new-born baby and a nursing mother."[50] It held that the victims' detention conditions, among other factors, constituted ill-treatment.[51]

C. DENIAL OF FOOD

Decisional bodies have consistently held that a denial of food constitutes torture or ill-treatment, although they have often spoken about this omission generally.[52]

However, in some cases food *was* provided, but by its very nature was found to be inadequate. In one HRC case, *Cariboni v. Uruguay*, the victim was given "usually a very hot clear soup with hardly anything in it . . . and nothing else" while in detention.[53] The committee determined along with other factors–including the denial of medical treatment, the injection of hallucinogens, and violence–this constituted "torture and

[49] Korkeykova and Korneykov v. Ukraine, Eur. Ct. H.R., App. No. 56660/12, ¶ 49 (2016).
[50] *Id.*, ¶ 140.
[51] *Id.*, ¶ 147. *See also* Nevmerzhitsky v. Ukraine, Eur. Ct. H.R., App. No. 54825/00, ¶¶ 66, 86, 114 (2005) (finding that "prisoners had to wash their belongings and sheets and blankets in their cells with the means at their disposal, under highly dubious conditions of hygiene" and that this contributed to a finding of torture and ill-treatment); Kaing Guek Eav alias Duch, Case No. 001, Judgment, ¶¶ 270, 373 (Extraordinary Chambers in the Cts. of Cambodia July 26, 2010) (holding that as "detainees were not permitted to wash in hygienic conditions," and when their cells were cleaned, it was "by hosing water from a window or door," this lack of hygiene constituted an "inhumane act").
[52] *See* Sendic v. Uruguay, ¶¶ 2.3, 2.4, 20, U.N. Doc. CCPR/C/14/D/63/1979 (Oct. 20, 1981) (holding that subjecting the victim to a "lack of food" while in detention was, in addition to other factors, a form of torture and ill-treatment); Polay Campos v. Peru, ¶¶ 2.1, 8.7, U.N. Doc. CCPR/C/61/D/577/1994 (Nov. 6, 1997) (noting while the victim was detained, "the food [was] deficient" and that this contributed to a finding of torture and ill-treatment); Danilo Dimitrijevic v. Serbia and Montenegro, ¶¶ 2.2, 7.1, U.N. Doc. CAT/C/35/D/172/2000 (Nov. 16, 2005) (finding that the victim was "denied food and water" and that this omission was found, along with other factors, to constitute torture; Miguel Castro Castro Prison, No. 160, ¶¶ 37, 44, 103 (Nov. 25, 2006) (finding that inmates "did not receive food [or] . . . water" during an attack on the prison where they were detained, and that this contributed to a finding of torture); Institute for Human Rights and Development in Africa v. Angola, Communication 292/04, Afr. Comm'n H.P.R., ¶¶ 51, 53 (May 22, 2008) (holding that as "food was not regularly provided" to victims in detention, and was "insufficient," this contributed to a finding of torture); Prosecutor v. Popovic, Case No. IT-05-88-T, Judgment, ¶ 844 (Int'l Crim. Trib. for the Former Yugoslavia June 10, 2010) (finding that victims "were detained in intolerable conditions of overcrowded facilities with no food" and that this contributed to a finding of ill-treatment); Abdel Hadi, Ali Radi & Others v. Republic of Sudan, Communication 368/09, Afr. Comm'n H.P.R., ¶ 74 (Nov. 5, 2013) (holding that the general conditions of detention, which included the deprivation of food, constituted ill-treatment); Franck Kitenge Baruani v. Democratic Republic of Congo, ¶ 2.4, U.N. Doc CCPR/C/110/D/1890/2009 (Apr. 23, 2014) (holding that the deprivation of "food and water" contributed to a finding of torture and ill-treatment); Abdulrahman Kabura v. Burundi, ¶ 7.8, U.N. Doc. CAT/C/59/D/549/2013 (Nov. 11, 2016) (noting that the victim was denied "water . . . [and] food," which contributed to a finding of ill-treatment).
[53] Cariboni v. Uruguay, ¶ 4, U.N. Doc. CCPR/C/31/D/161/1983 (Oct. 27, 1987).

inhuman and degrading treatment."[54] Similarly, in IACtHR case *Juvenile Reeducation Institute v. Paraguay*, inmates were given food that was "horrible" and "almost always 'beans with stew.'"[55] Victims noted that the food in detention was similar to "pig's slop," and caused illness.[56] The court held that this treatment, among other factors, constituted a violation of prohibition against torture or ill-treatment.[57]

There were also a number of cases where the food provided contained inedible elements. For example, in IACtHR case *Miguel Castro Castro Prison v. Peru*, one victim was given food that had "kerosene, camphor and rat skin thrown" into it.[58] Another was forced to eat food "on various occasions" that contained "grounded glass, urine… rat parts, and it was not given [to victims] warm or at adequate hours."[59] Another victim was given food that was "dirty" with "small rocks."[60] The court found that these conditions, along with acts of violence including, electrical shocks, solitary confinement, and limited medical care, contributed to a finding of inhumane treatment.[61] Similarly, in a more recent CAT case, *Déogratias Niyonzima v. Burundi*, the victim was "served disgusting food consisting of beans and rice crawling with insects" while in custody.[62] He was "allowed to receive [outside] food from his wife," and this "water [and] food" was provided exclusively by his family throughout his detention. The committee found that this condition of his detention contributed, along with violence, limited access to sanitary facilities, and limited access to medical care, to a finding of torture.[63]

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[54] *Id.*, ¶ 10.
[55] Juvenile Reeducation Institute v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 16 (Sept. 2, 2004).
[56] *Id.*, ¶ 25.
[57] *Id.*, ¶ 147. *See also* Sergei Kirsanov v. Russian Federation, ¶¶ 2.3, 11.2, U.N. Doc. CAT/C/52/D/478/2011 (May 14, 2014) (noting that the victim was "fed once a day" in detention and that the food "was of bad quality," but not clarifying whether this contributed to their finding of "conditions" of ill-treatment).
[58] Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 160, ¶ 37 (Nov. 25, 2006).
[59] *Id.*
[60] *Id.*, ¶ 51.
[61] *Id.*, ¶ 105.
[62] Déogratias Niyonzima v. Burundi, ¶ 2.7, U.N. Doc. CAT/C/53/D/514/2012 (Nov. 21, 2014).
[63] *Id.*, ¶ 9. *See also* Muteba v. Zaire, ¶¶ 2.1, 8.2, 10.2, U.N. Doc. CCPR/C/22/D/124/1982 (July 24, 1984) (noting that outside food also needed to be brought by the victim's family in response to the provision of "insufficient" food, and the "withholding" of food while in detention, which contributed to a finding of torture and ill-treatment); Juvenile Reeducation Institute v. Paraguay, Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 112, ¶ 18 (Sept. 2, 2004) (noting that "the food was

Sometimes, the *manner* in which food was provided was noted by the decisional body as problematic. For example, in HRC case *Cariboni v. Uruguay,* the victim had to eat the "little food" he was given "by kneeling on the floor and using the same chair as a table" and "use [his]" fingers to eat soup.[64] This was found to constitute, among other factors, "torture and inhuman and degrading treatment."[65] Further, in the recent HRC case of *Giri v. Nepal*, a sentry passed the victim "food and water . . . through the cell window" and for a period of time, the victim was blindfolded and his handcuffs were not taken off "at mealtime."[66] This led to "considerable difficulties for him to eat."[67] The committee held that this contributed to a finding of torture and ill-treatment.[68]

Further, the manner of food provision sometimes included *physical* violence. In ICTY case *Kvocka*, for example, detainees were only given "three minutes to eat, then one minute to return to their quarters" while being beaten.[69] The tribunal held that this contributed to a finding of torture and ill-treatment.[70] In addition, in ECtHR case *Nevmerzhitsky v. Ukraine*, authorities justified force-feeding detainees who were on a hunger strike as "a measure of last resort aimed at preserving life."[71] The process included applying "handcuffs, a mouth-widener (*роторозширювач*) [and] a special rubber tube inserted into the food channel . . . in the event of resistance."[72] The court rejected this argument and held that this use of "equipment"—in circumstances in which there was no proven "medical necessity"—to subject a detainee to force feeding, and in which the detainee "resisted" the force feeding, constituted "treatment of such a severe character warranting the characterization of torture."[73]

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not fit for human consumption because it was prepared on the bathroom floor," and that this contributed to a finding of torture and ill-treatment).

[64] Cariboni v. Uruguay, ¶ 4, U.N. Doc. CCPR/C/31/D/161/1983 (Oct. 27, 1987).

[65] *Id.*, ¶ 10.

[66] Giri v. Nepal, ¶ 2.4, U.N. Doc. CCPR/C/101/D/1761/2008 (Apr. 27, 2011).

[67] *Id.*, ¶ 2.4

[68] *Id.*, ¶ 7.6. *See also* Istratii and Others v. Moldova, Eur. Ct. H.R., App. No. 8721/05, 8705/05, 8742/05, ¶ 62 (2007) (noting that "all detainees had to eat standing up" because there were no chairs in their cells, although the decisional body did not clarify whether this factored into their finding of torture and ill-treatment).

[69] Prosecutor v. Kvocka, Case No. IT-98-30/1-T, Judgment, ¶ 64 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 2, 2001).

[70] *Id.*, ¶ 151.

[71] Nevmerzhitsky v. Ukraine, Eur. Ct. H.R., App. No. 54825/00, ¶ 1.9 (2005).

[72] *Id.,* ¶ 97.

[73] *Id.,* ¶¶ 96-98.

THIRD PARTY VICTIMS OF TORTURE OR ILL-TREATMENT

Decisional bodies have acknowledged that a victim's torture or ill-treatment can inflict, by itself, pain or suffering on someone else that amounts to torture or ill-treatment of the third party under certain circumstances. This is characterized usually by the third party either witnessing or being made aware of the direct victim's mistreatment by State authorities due to their negligence or purposeful acts or by a failure of State officials to provide third parties (family members) with information about their loved ones.

A. KNOWLEDGE OF OR WITNESSING MISTREATMENT OF OTHERS

Knowledge of or witnessing others' mistreatment can be considered in itself ill-treatment.[74] In the seminal case *Rochela Massacre*, the Inter-American Court concluded that witnessing the conditions under which detainees were held and how loved ones were tortured and treated in the detention center during a massacre by police officers constituted inhuman treatment of the family members. The court also noted how seeing the death of friends and colleagues affected the detainees' mental health.[75] International criminal courts have also taken into account acts in which a third party is involved. For example, in the 2009 case from the Special Court for Sierra Leone in which a couple was forced to have intercourse in front of their daughter and the daughter later was forced to wash her father's penis, the SCSL concluded that

[74] *See* Prosecutor v. Simić, Case No. IT-95-9-T, Judgment, ¶¶ 737-71 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 17, 2003) (stating that beatings "took place in front of the other detainees in order to instill a sense of fear"); Prosecutor v. Brdanin, Case No. IT-99-36-T, Judgment, ¶ 507 (Int'l Crim. Trib. for the Former Yugoslavia Sept. 1, 2004) (noting that civilian Bosnian Muslims were executed while others were forced to watch with the purpose of intimidating them); M.K.M v. Australia, ¶ 8.8, U.N. Doc. CAT/C/60/D/681/2015 (May. 10, 2017) (holding that being forced to witness the decapitation of a father and another detainee, and the infliction of other acts of unspecified violence, constituted torture); *but see* Prosecutor v. Limaj, Case No. IT-03-66-T, ¶¶ 292-94 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 30, 2005) (no criminal responsibility in a case in which victims saw detainees being beaten, a mock execution, and threatened to kill their son because the suffering was not sufficiently serious and the mens rea was not proven); Prosecutor v. Delić, Case No. IT-04-83-T, Judgment, ¶¶ 299-307 (Int'l Crim. Trib. for the Former Yugoslavia Sept. 15, 2008) (not finding cruel treatment in a case where detainees heard the sound of beatings, screams, and shots fired).

[75] Rochela Massacre v. Colombia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 163, ¶¶ 135, 138 (May 11, 2007).

these actions "severely humiliated the couple and their daughter and violated their dignity."[76] The court noted perpetrators knew that these actions "degraded [the family's] personal dignity" and constituted sexual violence.[77]

Decisional bodies have held that knowledge of others' mistreatment by hearing the sounds of such suffering has been held to contribute to a holding of ill-treatment. An example is the seminal case of *Aleksovski*, in which the ICTY found degrading or humiliating treatment because authorities played detainees audio recordings of beatings and screams, and detainees witnessed other detainees being beaten.[78] Another common scenario was presented in the ICTY case *Brdanin*, in which Bosnian Muslim men were forced to assist Bosnian Serbs by collecting dead bodies, including the ones of their neighbors and friends. Bosnian Serb authorities' treatment was designed to intimidate Bosnian Muslims and caused them severe pain and suffering.[79]

B. KNOWLEDGE ABOUT FAMILY MEMBERS' DISAPPEARANCE OR DEATH

The anguish and suffering that comes with the lack of information surrounding the disappearance or death of a family member might amount to torture or ill-treatment. In the majority of forced disappearance cases, judiciary bodies hold that the victim's family members are victims of ill-treatment.[80] For instance, in *Pitsayeva*, the ECtHR held that close relatives, such as spouses, children and parents, of victims of forced

[76] Prosecutor v. Sesay, Case No. SCSL-04-15-T, Judgment, ¶¶ 1293-98, 1302-05 (Special Ct. for Sierra Leone Mar. 2, 2009).
[77] *Id.,* ¶¶ 1304-05.
[78] Prosecutor v. Aleksovski, Case No. IT-95-14/1-T, Judgment, ¶¶ 187, 228 (Int'l Crim. Trib. for the Former Yugoslavia June 25, 1999). *See* Prosecutor v. Krnojelac, Case No. IT-97-25-T, Judgment, ¶¶ 143, 273-74 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 15, 2002) (reasoning that exposure to sounds of torture and beatings made detainees nervous and panicky, and created an atmosphere of fear, which supported the ill-treatment holding).
[79] Prosecutor v. Brdanin, Case No. IT-99-36-T, Judgment, ¶¶ 508-11 (Int'l Crim. Trib. for the Former Yugoslavia Sept. 1, 2004); *see* Prosecutor v. Limaj, Case No. IT-03-66-T, Judgment, ¶ 300 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 30, 2005) (reasoning that being compelled to bury other detainees' disfigured and brutalized corpses increased the suffering that amounted to cruel treatment).
[80] Bousroual v. Algeria, ¶¶ 9.8, 10, U.N. Doc. CCPR/C/86/D/1085/2002 (Mar. 15, 2006) (holding that the suffering caused to the wife of the victim of an enforced disappearance subjected her to torture or ill-treatment); Guerrero Larez v. Venezuela (Bolivarian Republic of), ¶ 6.10, U.N. Doc. CAT/C/54/D/456/2011 (May 15, 2015) (holding that close relatives of victims of forced disappearance suffer anguish and distress that amounted to ill-treatment under the CAT Convention). Researchers did not specifically control for whether the decisional authorities took into account the nature of the efforts State authorities exerted to ascertain and provide information in making these determinations, i.e. whether State officials exercised due diligence.

disappearances suffered ill-treatment under the European Convention given the "distress and anguish suffered, and continue to suffer" from the lack of knowledge about the whereabouts of their loved one and the "authorities' reactions and attitudes to the situation when it is brought to their attention."[81]

Lack of information regarding the details surrounding a family member's death has also been considered inhuman and degrading treatment when the suffering amounts to more than the level of suffering inherent in the death of the relative.[82] In *Spilg*, the African Commission held that failure to publish the unsuccessful outcome of a death penalty appeal petition and to give notice to the family and the detainee of the date and time of execution caused pain and suffering to the family that amounted to ill-treatment.[83] The commission reasoned that the lack of information about the execution denied the detainee and his family "the opportunity to have closure with the dignity of their last farewells" and that detainees and families should have the opportunity to be visited by family members, receive "spiritual advice and comfort," and "arrange [personal] affairs."[84]

While in *Spilg*, the African Commission focused on the authorities' failure to give notice to the family members, in an ECtHR case, the court focused on the inherent suffering stemming from the passing away of a relative. Here, the ECtHR held that there is no violation where military personnel showed the victims' relatives' naked

[81] Pitsayeva and Others v. Russia, Eur. Ct. H.R., App. No. 61243/08, ¶¶ 477-49 (2014); *see also* González v. Mexico, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 205, ¶ 424 (Nov. 16, 2009) (reasoning that the inadequate response by State authorities—lack of diligence in determining the identity of remains and, causes of death, and lack of information about the investigation—towards the family members of victims of forced disappearances constitutes degrading treatment); Giri v. Nepal, ¶ 7.7, U.N. Doc. CCPR/C/101/D/1761/2008 (Mar. 24, 2011) (holding that the anguish and distress caused by the victim's incommunicado detention and disappearance was ill-treatment or torture); Gudiel Álvarez v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253, ¶ 301 (Nov. 20, 2012) (also noting that the denial of the information about the whereabouts of a victim of forced disappearance is cruel and inhuman treatment for the closest relatives).
[82] *See* Elberte v. Latvia, Eur. Ct. H.R., App. No. 61243/08, ¶ 118 (2015) (holding that the victim's husband's tissue was illegally removed without her consent or knowledge until two years after the fact, and she was not informed about what tissue was removed, and in what manner or why, which made her go through a "long period of uncertainty, anguish and distress" that amounted to degrading treatment); Khalilova v. Tajikistan, ¶ 7.7, U.N. Doc. CCPR/C/83/D/973/2001 (Mar. 30, 2005) (concluding that failure to inform a mother about his son's execution and the location of his gravesite amounts to ill-treatment).
[83] Spilg and Mack & Ditshwanelo v. Botswana, Communication 277/03, Afr. Comm'n H.P.R., ¶ 174 (Dec. 16, 2011).
[84] *Id.*, ¶¶ 177-78.

bodies in a military base for purposes of identification because suffering of the family was not "a dimension and character distinct from the emotional distress" inherent in the passing away of a relative.[85] Further, the State had an interest in showing the bodies for identification purposes.

THREATS CONSTITUTING TORTURE OR ILL-TREATMENT

There is ample jurisprudence recording use of threats as a manner or technique of torture and/or ill-treatment. Threats often have been categorized as psychological or mental suffering by the decisional bodies and, depending on the level of severity, have been constitutive of the findings of torture and/or ill-treatment. The Inter-American Court of Human Rights has reiterated the ECtHR principle that "creating a threatening situation or threatening an individual with torture may, at least in some circumstances, constitute inhuman treatment."[86]

A. THREATS OF HARM TO PERSON

Threats are often used in combination with different techniques to break the resistance of the victims and to perpetuate fear. For example, in *Ramiro Ramírez Martínez*, CAT held that death threats along with beatings, suffocation, and prolonged arbitrary detention constituted torture.[87] Similarly, in *S.B.B v. Denmark*, CAT held that being threatened, stabbed with a knife, and arrested constituted prior "ill-treatment."[88]

However, in other instances, some threats, due to their nature, are on their own sufficient to break the resistance of the victims. For example, in *Simić*, the ICTY took note of two instances in which an unloaded gun was pressed to the head of the victims during interrogation and the trigger was pulled to terrorize them. According to

[85] Cangöz and Others v. Turkey, Eur. Ct. H.R., App. No. 7469/06, ¶ 168 (2016).
[86] Villagran-Morales v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 63, ¶ 165 (Nov. 19, 1999). Most threats may be divided into two categories: threat of harm to person and threat of harm to a family member. No distinction has been made between verbal and non-verbal threats in the following sub-sections as non-verbal threats have been treated at par with verbal by these decisional bodies.
[87] Ramiro Ramírez Martínez v. Mexico, ¶ 17.2, U.N. Doc. CAT/C/55/D/500/2012 (Aug. 4, 2015).
[88] S.S.B v. Denmark, ¶ 8.6, U.N. Doc. CAT/C/60/D/602/2014 (Apr. 28, 2017).

the court, the "psychological burden on the detainees was immense" and supported the conviction on the charge of ill-treatment.[89] Similarly, in the Omarska detention camp, an elderly Bosnian Muslim was ordered to rape a young female detainee. The elderly detainee resisted and his screams and the sound of beatings were heard by the female detainee. The Trial Chamber, by majority, found that the threat of rape constituted a sexual assault *vis-à-vis* the female detainee.[90]

Decisional bodies also have taken into account the context in describing the specific manner in which threats were employed to victims of torture and ill-treatment. This means that effects of these threats are created or are heightened by the context in which they are administered. For example, in *Cestaro*, ECtHR held that G8 summit protestors had been subjected to torture where police officers "stormed in" to the school where the protesters were taking shelter.[91] Police officers "assaulted virtually all those present, including people who were sitting or lying on the floor, punching, kicking, clubbing and threatening them."[92] The court took note that the incident occurred at night, at a school where people were taking shelter, and the victims witnessed police officers beating others, which created "feelings of fear and anguish."[93]

A similar context was observed in the seminal *Estrella* case in which the victim—a pianist—was put through mock amputations of his hand and told that he would lose his hands. CAT found that the threat "subjected [him] to severe physical and psychological torture … . This ill-treatment had lasting effects, particularly to his arms and hands."[94] The mock executions of a victim while he is on death row, as in *Ilascu,* is another treatment in which the specific context of the death row is relevant. The ECtHR in *Ilascu* held that the threat of execution along with the conditions of his

[89] Prosecutor v. Simić, Case No. IT-95-9-T, Judgment, ¶¶ 692, 723 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 17, 2003).
[90] Prosecutor v. Brdanin, Case No. IT-99-36-T, Judgment, ¶ 516 (Int'l Crim. Trib. for the Former Yugoslavia Sept. 1, 2004).
[91] Cestaro v. Italy, Eur. Ct. H.R., App. No. 6884/11, ¶ 147 (2015).
[92] *Id.*, ¶ 165.
[93] *Id.*, ¶ 178.
[94] Estrella v. Uruguay, ¶¶ 1.6, 8.3, U.N. Doc. CCPR/C/18/D/74/1980) (Mar. 29, 1983) (this observation was made in reference to the committee's finding on torture).

detention while under the threat of execution, amounted to torture.[95]

However, even when considering a threatening context, the decisional body sometimes found that the severity of harm did not rise to the level of ill-treatment.[96] In *R.B.*, the victim and her daughter, of Roma origin, were threatened by members of an anti-Romani organization while the demonstrators passed by her house brandishing a whip and threatened to build a house out of her blood, but the threat did not to amount to ill-treatment.[97]

Custodial settings are also fertile grounds for non-verbal threats because of the vulnerability of the individuals in custody. Such threats include display of torture instruments, photographs of tortured victims, or forcing victims to witness torture of other individuals. For example, in the African Commission case of *Monim Elgak*, authorities detained human rights defenders due to their cooperation with the ICC. The commission stated that besides being subjected to "sustained and severe beatings," the defenders were "subjected to credible threats and a pervasive climate of fear that caused anxiety" and found that this "resulted in severe physical and mental pain and suffering."[98] When describing the climate of fear, the commission referenced multiple forms of mistreatment: authorities threatened one of the victims with rape and put out a cigarette in his eye; exposed another detainee to torture instruments and made him witness his friend's torture; and interrogators threatened the third victim with torture by dimming the lights of the room, removing his glasses, and brandishing sticks and hoses known to be used for purposes of torture.[99] A similar atmosphere was created for a victim in an Inter-American Court case in which authorities showed her photographs of corpses that had been mutilated at the war front, and told her that her family would find her in the same condition if she did not collaborate with the interrogation.[100]

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[95] Ilascu and Others v. Moldova and Russia, Eur. Ct. H.R., App. No. 48787/99, ¶¶ 269-70, 440 (2016).
[96] R.B. v. Hungary, Eur. Ct. H.R., App. No. 64602/12, ¶ 51 (2016).
[97] *Id.,* ¶¶ 7, 14, 32.
[98] Monim Elgak, Osman Hummeida and Amir Suliman v. Sudan, Communication 379/09, Afr. Comm'n H.P.R., ¶¶ 75-76, 96-99 (Mar. 14, 2014).
[99] *Id.*, ¶ 76.
[100] Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No.

Among the methods used to break the resistance and perpetuate fear in the S-21 and S-24 detention camps in Cambodia were use of display of torture instruments, propaganda, exploitation of fear, and threats concerning family members. Several of these techniques did not involve verbal threats, yet the ECCC found that the techniques created an environment of extreme fear and also noted that threats were routinely put into practice and caused detainees severe pain and suffering, both physical and mental.[101]

Threats are not always inflicted for the purpose of interrogation, but may be used as a tool to humiliate or to display power, which may constitute ill-treatment. A detainee in a case from the ICTY recalled that on one occasion while he was emptying the bucket that served as a toilet, a guard pointed a gun to his head and told him not to move his head.[102] Another example of both a display of power and humiliation is when the accused (a commander of an armed group), while interrogating a witness, forced her to be naked in front of approximately forty soldiers. [103] The accused then drew a knife over the body and thigh of the witness, threatening, *inter alia*, to cut out her private parts if she did not cooperate. The witness was also sexually assaulted and raped. The ICTY noted that this overall treatment caused severe pain and suffering and amounted to torture and humiliating treatment.

Threats are also tools used to enable sexual assault. In *Delalić*, the ICTY took note of a female detainee who was threatened by a soldier with being sent to another camp if she did not comply with his orders and who was then ordered to take her clothes off at gunpoint and was raped.[104] In the case of *Kunarac*, the court noted that a soldier wielded a knife and threatened to draw a cross on the back of another victim to

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103, ¶ 58.6 (Nov. 27, 2003).
[101] Kaing Guek Eav alias Duch, Case No. 001, Judgment, ¶¶ 241, 245 (Extraordinary Chambers in the Cts. of Cambodia July 26, 2010).
[102] Prosecutor v. Limaj, Case No. IT-03-66-T, Judgment, ¶ 300 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 30, 2005).
[103] Prosecutor v. Furundzija, Case No. IT-95-17/1-T, Judgment, ¶¶ 82, 266-67, 272 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 10, 1998).
[104] Prosecutor v. Delalić, Case No. IT-96-21-T, Judgment, ¶ 955 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998). *See also* Prosecutor v. Kunarac, Case No. IT-96-23-T & IT-96-23/1-T, Judgment, ¶ 645 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001) (the witness testified that prior to rape, she had been threatened with death by a soldier to satisfy the desires of his commander).

baptize her so that he could rape her.[105]

B. THREATS OF HARM TO FAMILY MEMBERS

In many cases, threats made to the victims are directed against their family members. This sub-category does not suggest that a different standard of treatment is observed for these particular threats in the decisional bodies, and only signals a separate class of threats than that in the previous section. While the decisional bodies in the following cases made no specific observations as to the effects of threats of harm to family members, we suggest that these cases constitute a distinct category because of the increased powerlessness of the victims who are made to believe that they are the reason for the risk to their family members, and find themselves unable to protect them.[106]

In *Kunarac*, while trying to obtain a confession from a victim, the accused took the victim to the banks of a river and threatened to slaughter her son. The victim was later also raped and humiliated. The ICTY held that the overall treatment inflicted on the victim amounted to torture.[107] Similarly, in Inter-American Court case of *Maritza Urrutia*, the victim was threatened with death of her family members, with a specific reference to her son. The court expounded that this treatment was constitutive of torture.[108] In a case decided by CAT, the victim felt threatened and feared for the safety of her husband, when the police officers who had supposedly never seen the victim's husband, knew his distinct ethnic identity.[109] The committee found the overall treatment of the victim constituted torture, but gave no specific findings on the threat

[105] Prosecutor v. Kunarac, Case No. IT-96-23-T & IT-96-23/1-T, Judgment, ¶ 667 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001).
[106] Interestingly, the victims in most of these cases are women, although based on this sample we cannot conclude whether this is representative of all victims who are subjected to threats of harm against family members.
[107] Prosecutor v. Kunarac, Case No. IT-96-23-T & IT-96-23/1-T, Judgment, ¶ 711 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001) (the ICTY did not analyze the individual elements of the treatment separately and gave an overall opinion).
[108] Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶¶ 58.6, 92, 94 (Nov. 27, 2003) (finding authorities threatened victim to cooperate, showing her photographs of her son and other members of her family during interrogation and that such "threat or real danger of subjecting a person to physical harm produces, under determined circumstances, such a degree of moral anguish that it may be considered 'psychological torture.'").
[109] S. Ali v. Tunisia, ¶ 2.5, U.N. Doc. CAT/C/41/D/291/2006 (Nov. 21, 2008).

described above.[110]

Additional pressure can also be created by having the family member present in front of the victim. In one instance, the victim's father was brought from his workplace and beaten in front of the victim. The victim was then threatened with his father's death if he did not comply with the demands of his interrogators.[111] In the ECtHR *Elci* case, the wife of a victim was not brought before him; however, the victim was aware that his wife was also in custody of his interrogators as upon arrival at the interrogation facility, the couple had been detained and separated. During his interrogation, the interrogators threatened him that his wife would be raped in order to coerce him into signing a confession.[112]

Lastly, in another instance of abuse also in the ECtHR case *Elci*, while interrogating a couple jointly (a different couple than the one previously mentioned), interrogators threatened each spouse with torture. This made each spouse a witness to threats against the other.[113] While the court attributed no specific legal conclusions to this finding of fact, it is interesting to note that the nature of the threat was not only physical harm to the direct victim, but also the threat of psychological suffering that witnessing a loved one being tortured would induce.

CONDITIONS CREATING AN ATMOSPHERE OF TERROR

This category of treatment closely resembles threats. In *Delalić*, the ICTY described the "atmosphere of terror" as a situation of constant uncertainty where individuals are forced to live in an ever-present fear of being killed or subjected to physical abuse.[114]

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[110] *Id.*, ¶ 15.4.
[111] Maryam Khalilova v. Tajikistan, ¶¶ 2.6, 7.2, U.N. Doc. CCPR/C/83/D/973/2001 (Mar. 30, 2005).
[112] Elci and Ors. v. Turkey, Eur. Ct. H.R., App. No. 23145/93 and 25091/94, ¶ 21 (2004) (these facts were overall responsible for the finding of ill-treatment).
[113] *Id.,* ¶ 54 (while the decisional body did not distinguish this threat of being tortured in front of spouse, it cumulatively found the treatment of the couple as amounting to torture and ill-treatment).
[114] Prosecutor v. Delalić, Case No. IT-96-21-T, Judgment, ¶ 1087 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).

While the decisional bodies[115] have often considered conditions creating an atmosphere of terror and threats together, a crucial distinguishing point has been observed in this memorandum. The cases reviewed suggest authorities create a general atmosphere of terror to instill fear in all persons, rather than being directed towards a specific individual. To this effect, decisional bodies note that these actions directed against groups are often arbitrary[116] and may be randomly directed[117] or seek to instill fear,[118] humiliate,[119] or even to derive sadistic pleasure.[120] A majority of these cases arise in international criminal tribunals and occur in detention camps or other prison-like custodial settings in which authorities manipulate the ambient climate, which may account for the generalized nature of the fear created by authorities.

Shooting exercises are a prominent example observed in the jurisprudence.[121] "The random beating of and shooting at the prisoners create[s] an atmosphere of terror that cause[s] severe physical and mental suffering to the prisoners."[122] In *Brdanin*, noting the purpose to be intimidation, the court concluded that shooting bullets that deliberately missed the targeted victim supported its finding of ill-treatment.[123] In

[115] Most cases observed in this category belong to the international criminal tribunals. This may be attributed to the accused-centric nature of these cases, as opposed to victim-centric approach of the human rights bodies. It may also be due to the fact that several of these international criminal cases deal with offences occurring in large detention camps, that may facilitate these conditions.
[116] Prosecutor v. Blaskic, Case No. IT-95-14-T, Judgment, ¶ 688 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 3, 2000) (personal valuables were confiscated and detainees were forced to beat one another). *See also* Prosecutor v. Aleksovski, Case No. IT-95-14/1-T, Judgment, ¶ 187 (Int'l Crim. Trib. for the Former Yugoslavia Jun. 25, 1999) (soldiers could enter the cells at night to beat and demand money from the detainees).
[117] Prosecutor v. Brdanin, Case No. IT-99-36-T, Judgment, ¶ 503 (Int'l Crim. Trib. for the Former Yugoslavia Sept. 1, 2004).
[118] Prosecutor v. Aleksovski, Case No. IT-95-14/1-T, Judgment, ¶ 185 (Int'l Crim. Trib. for the Former Yugoslavia June 25, 1999) (guards in charge of detainee arrival threatened to kill anyone who had military identification papers or did not empty out their pockets fast enough). *See also* Prosecutor v. Delalić, Case No. IT-96-21-T, Judgment, ¶ 1087 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998) (mere voice of the perpetrator-Esad Landzo terrified the detainees).
[119] Prosecutor v. Naletilic, Case No. IT-98-34-T, Judgment, ¶ 354 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 31, 2003) (all detainees were ordered to "get down," kiss the Croatian soil, and crawl back in mud in single file).
[120] Prosecutor v. Simić, Case No. IT-95-9-T, Judgment, ¶ 733 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 17, 2003) (the victims immediately after being beaten with police truncheons were ordered to laugh).
[121] Estrella v. Uruguay, ¶¶ 1.12, 9.1, U.N. Doc. CCPR/C/18/D/74/1980) (Mar. 29, 1983) (the victim referred to a "state of anxiety" in the detainees as a result of shooting exercises and the committee took the overall view that the conditions of imprisonment were inhuman).
[122] Prosecutor v. Naletilic, Case No. IT-98-34-T, Judgment, ¶ 394 (Int'l Crim. Trib. for the Former Yugoslavia Mar. 31, 2003).
[123] Prosecutor v. Brdanin, Case No. IT-99-36-T, Judgment, ¶¶ 499-500 (Int'l Crim. Trib. for the Former

another case at the ICTY, the court found similar support for its finding of ill-treatment of detainees through psychological abuse; the detainees were forced to stand facing sideways so that the guard could aim his gun better at them.[124]

Another closely related practice observed is that of forcing others to witness these arbitrary exercises. In *Delalić*, the ICTY remarked that forcing the detainees to witness physical abuse inflicted on "defenseless victims" compelled those detainees to live in ever-present fear, and such "psychological terror was compounded by the fact that many of the detainees were selected for mistreatment in an apparently arbitrary manner, thereby creating an atmosphere of constant uncertainty."[125] In *Kaing Guek Eav alias Duch*, the ECCC taking note of the "conditions of detention" stated that the detainees were left in a constant state of fear and anguish.[126]

Similar to forcing third parties to witness torture, coercive participation in atrocities is another manner in which the conditions of terror may be created. Noting the purpose to be intimidation, the ICTY has found that coercing individuals to "collect the bodies of other[s] . . . particularly those of their neighbours and friends, and bury them . . . could not but cause severe pain and suffering."[127] Decisional bodies have also taken note of the additional effects of the pervasive atmosphere of terror. In *Delalić*, the ICTY also took note of the evidence that the detainees were afraid to report or complain about mistreatment in such conditions.[128]

Yugoslavia Sept. 1, 2004) (a detainee, forced to crawl after his interrogation, was shot at by the guards; however, the bullets were deliberately directed to miss him).

[124] Prosecutor v. Aleksovski, Case No. IT-95-14/1-T, Judgment, ¶ 185 (Int'l Crim. Trib. for the Former Yugoslavia June 25, 1999).

[125] Prosecutor v. Delalić, Case No. IT-96-21-T, Judgment, ¶¶ 1086-87 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).

[126] Kaing Guek Eav alias Duch, Case No. 001, Judgment, ¶¶ 264, 276 (Extraordinary Chambers in the Cts. of Cambodia July 26, 2010) (detainees saw that other detainees returning from interrogations showed signs of severe beating, mutilation, bruises, and cuts. Some detainees died in their cells due to such abuses and their bodies could be left lying there for hours).

[127] Prosecutor v. Brdanin, Case No. IT-99-36-T, Judgment, ¶ 511 (Int'l Crim. Trib. For the Former Yugoslavia Sept. 1, 2004) (Bosnian-Muslim non-combatants were forced to watch the execution of others of the same ethnicity and thereafter were forced to bury them).

[128] Prosecutor v. Delalić, Case No. IT-96-21-T, Judgment, ¶ 1090 (Int'l Crim. Trib. For the Former Yugoslavia Nov. 16, 1998). Several of the cases cited above point to the intent of the perpetrator to commit such acts, however the judicial findings are specific to ill-treatment. Given the significantly higher threshold that the criminal tribunals maintain for severity, in particular for psychological suffering, judges have not found these instances rise to the level of torture.

SENSORY MANIPULATION

Sensory manipulation is a manner through which the sensory input of the victim is modified in a controlled setting. The senses may be stimulated for example, through loud noises, or deprived through hooding. The stimuli that have been observed to be modulated are sound, temperature and lighting, and inflict a psychological toll on the victim. Often these manners of treatment are used in combination with each other[129] and authorities are increasingly justifying these practices as "standard conditions."[130] The ECtHR has stated that recourse to these practices causes "deep fear, anxiety and distress," and use of "standard" protocol for this treatment shows premeditation, organized and predictable implementation.[131]

A. SOUND

Decisional bodies have taken note of instances in which victims have been forced to listen to loud music and other disturbing sounds such as white noise,[132] screams of other individuals being tortured,[133] as well as nationalist songs,[134] and found these manners to be a part of their findings on ill-treatment.

In the IACtHR case, *Maritza Urrutia*, in which the victim was handcuffed to a bed with the light on and radio on full volume, the court noted that the treatment was designed to prevent her from sleeping and was a form of mental torture.[135] In the ECtHR case of *Elci*, several detainees made reference to the practice of authorities playing deafening music in the detention center. While the court did not offer specific

[129] Elci and Ors. V. Turkey, Eur. Ct. H.R., App. No. 23145/93 and 25091/94, ¶¶ 38, 46, 51, 54-55, 58 (2004) (multiple victims were locked in dark and damp cells, forced to listen to loud music, and without heating and other adequate measures to combat the freezing temperatures).
[130] Husayn (Abu Zubaydah) v. Poland, Eur. Ct. H.R., App. No. 7511/13, ¶ 507 (2015).
[131] *Id.*, ¶¶ 510-12.
[132] *Id*. *See also* Al Nashiri v. Poland, Eur. Ct. H.R., App. No. 28761/11 (2015).
[133] Elci and Ors. v. Turkey, Eur. Ct. H.R., App. No. 23145/93 and 25091/94, ¶ 55 (2004). *See also* Prosecutor v. Aleksovski, Case No. IT-95-14/1-T, Judgment, ¶ 187 (Int'l Crim. Trib. for the Former Yugoslavia June 25, 1999); Cariboni v. Uruguay, ¶ 4, U.N. Doc. CCPR/C/31/D/161/1983 (Oct. 27, 1987).
[134] Elci and Ors. v. Turkey, Eur. Ct. H.R., App. No. 23145/93 and 25091/94, ¶ 58 (2004). *See also* Prosecutor v. Aleksovski, Case No. IT-95-14/1-T, Judgment, ¶ 187 (Int'l Crim. Trib. for the Former Yugoslavia June 25, 1999).
[135] Maritza Urrutia v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 103, ¶¶ 84, 93, 94 (Nov. 27, 2003).

observations on the use of sound, it found that the overall treatment amounted to ill-treatment.[136]

While in some instances, this treatment is specifically noted with respect to individuals and their suffering, its use has also been recorded as a manner creating an atmosphere of terror. In *Aleksovski*, where authorities played loud music and screams of people being beaten over the loudspeakers of a detention camp all night, the ICTY found that this supported its finding of severe psychological abuse.[137] Similarly in *Kaing Guek Eav alias Duch*, the ECCC found that being forced to hear the screams of other individuals in the detention camp being tortured also constituted ill-treatment.[138]

B. TEMPERATURE

Decisional bodies have addressed temperature manipulation in two forms. The first form occurs when officials fail to provide adequate protection against the extreme weather. In *Polay Campos v. Peru*, the HRC found that the temperature in the prison was constantly between zero and minus five degrees Celsius, and relied on this fact to hold that the overall detention conditions amounted to ill-treatment.[139] This is a classic form of treatment by omission. The second form of temperature manipulation occurs when authorities actively create extreme temperature such as cold-showers or sweat boxes.[140] In *Herrera Espinoza*, the IACtHR observed that cold night baths were part of acts aimed at getting the victims to confess to criminal acts and amounted to torture.[141] Similarly, in *Elci*, observing that several detainees had been hosed down with pressurized cold water during interrogations, the ECtHR found that, in the light of the circumstances of the case as a whole and the suffering of physical and mental

[136] Elci and Ors. v. Turkey, Eur. Ct. H.R., App. No. 23145/93 and 25091/94, ¶¶ 28, 46, 55, 58, 97, 130, 646 (2004).
[137] Prosecutor v. Aleksovski, Case No. IT-95-14/1-T, Judgment, ¶¶ 187, 190 (Int'l Crim. Trib. for the Former Yugoslavia June 25, 1999) ("The searching of some detainees accompanied by threats, [and] the noise and screams relayed over the loudspeaker . . . clearly constituted serious psychological abuse of the detainees.").
[138] Kaing Guek Eav alias Duch, Case No. 001, Judgment, ¶ 262 (Extraordinary Chambers in the Cts. of Cambodia July 26, 2010).
[139] Polay Campos v. Peru, ¶ 8.4, U.N. Doc. CCPR/C/61/D/577/1994 (Nov. 6, 1997).
[140] Husayn (Abu Zubaydah) v. Poland, Eur. Ct. H.R., App. No. 7511/13, ¶¶ 1.3.5, 510 (2015).
[141] Herrera Espinoza v. Ecuador, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 316, ¶¶ 109-10 (Sept. 1, 2016).

violence, the treatment inflicted on those detainees amounted to torture.[142]

C. LIGHT

The IACtHR has held that confinement in a small dark cell without light and ventilation (called "hole" by the inmates) violated international norms regarding detention and constituted torture.[143] Specifically the court took note of an expert report stating: "lack of 'light [for] a prolonged period of time [. . .] causes depression [. . . and] a pretty strong damage on the psychological system and the glands [of the] brain, [as well as affects . . .] the body's hormonal structures.'"[144]

The ECtHR has found that:"[h]ooding . . . has already been found to cause, if not actual bodily injury, at least intense physical and mental suffering to the persons subjected to it."[145] In *Cariboni*, the Human Rights Committee found the victim, hooded by authorities, lost sense of day or night and described a "feeling of oppression and persistent pain in the chest."[146] Similarly, as noted by the decisional bodies, authorities often blindfold detainees.[147] Deprivation of light is however not the only method of manipulating the senses. Use of constant bright lights during the night and throughout the detention is another manner that has been observed in some cases. Here the decisional bodies, taking note of the overall circumstances of detention, have found the treatment inhuman and degrading.[148]

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[142] Elci and Ors. v. Turkey, Eur. Ct. H.R., App. No. 23145/93 and 25091/94, ¶ 646 (2004).
[143] Miguel Castro Castro Prison v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 160, ¶ 325 (Nov. 25, 2006).
[144] *Id.*, ¶ 329.
[145] El-Masri. v. Former Yugoslav Republic of Macedonia, Eur. Ct. H.R., App. No. 39630/09, ¶ 209 (2012) (The victim was "shackled and hooded, and subjected to total sensory deprivation" while he was being transported. The court found that the measures were used with the aim of causing pain and suffering and constituted torture.).
[146] Cariboni v. Uruguay, ¶ 4, U.N. Doc. CCPR/C/31/D/161/1983 (Oct. 27, 1987) (the victim was kept hooded for a period of days and this was found to constitute, among other factors, torture and ill-treatment).
[147] Ennaâma Asfari v. Morocco, ¶¶ 2.3-2.7, U.N. Doc. CAT/C/59/D/606/2014 (the victim was constantly kept hooded during custody, however the court made no remarks on it when finding the overall treatment constitutive of torture).
[148] Harakchiev and Tolumov v. Bulgaria, Eur. Ct. H.R., App. No. 56660/12, ¶¶ 14, 204, 213 (2014) (victim was detained in a cell lit at night by an incandescent bulb and no low intensity night lighting); John D Ouko v. Kenya, Communication 232/99, Afr. Comm'n H.P.R., ¶¶ 22-23 (Nov. 6, 2000) (the victim was detained in a room where a 250-watt electric bulb was kept on throughout his ten months of detention).

Additionally, the ECtHR has noted, when circumstances call for it, the young age and state of health of the victim as relevant factors in assessing the severity of the harm.[149] In *Blokhin v. Russia*, a minor boy suffering from Attention Deficit Hyperactivity Disorder (ADHD) was placed in a juvenile centre in which the lights were kept on all night.[150] His treatment by authorities throughout his period of detention sharply aggravated his need for medical attention and the ECtHR found the State's failure to take adequate measures after being informed of the boy's condition constituted torture or ill-treatment.[151]

DETENTION REGIME AND PHYSICAL CONDITIONS OF DETENTION FACILITIES

In evaluating whether detention conditions rise to the level of ill-treatment or torture, decisional bodies look at the accumulation of restrictions on space and movement within and outside the cell, prohibitions on communication with lawyers and family, and physical conditions (e.g., bed/mattress, ventilation, light, and cell cleanliness) of detention. Restrictions on space and movement include an analysis of overcrowding and cell size, as well as access to sanitary facilities and permission to go outdoors. Decisional bodies also look at the extent and period of incommunicado detention.

A. RESTRICTIONS ON SPACE AND MOVEMENT

Decisional bodies usually analyze cell sizes and overcrowding to decide whether detention conditions constitute torture or ill-treatment. This analysis includes the space that each detainee has to move around the cell, whether detainees have enough space to sleep lying down, and whether they are allowed to leave the cell to go to the toilet themselves.

[149] Blokhin v. Russia, Eur. Ct. H.R., App. No. 47152/06, ¶ 141, 148 (2016).
[150] *Id*., ¶¶ 29, 142.
[151] *Id*., ¶¶ 146, 148.

1. Cell Size and Overcrowding in Detention Centers

The amount of personal space a detainee has use of is a factor decisional bodies consider in their analysis of detention conditions.[152] This analysis usually includes an examination of cell size, how many detainees were in the cell, and how frequently detainees could move outside the cell. For instance, the African Commission held that lack of adequate detention facilities amounted to degrading and inhuman treatment in a case in which migrants in Angola were held in overcrowded detention centers usually used to house animals "just prior to its conversion into a detention centre to hold approximately 300 people."[153] Even though the African Commission does not specify a bright-line rule for what constitutes overcrowding, the amount of personal space for individuals was part of its evaluation of detention conditions.

Most decisional bodies have not set a standard for the minimum size of a cell. Instead, these bodies examine sleeping conditions in detention centers, such as whether detainees are able to lie down or have a mattress and blankets.[154] For example, in *Kvocka*, the ICTY ruled that detention conditions constituted cruel treatment in a scenario in which between 220 and 500 individuals were detained in

[152] *See* Déogratias Niyonzima v. Burundi, ¶¶ 2.7, 8.8, U.N. Doc. CAT/C/53/D/514/2012 (Jan. 13, 2015) (holding that detention in a damp four by six meter cell with sixteen other detainees for one week and for more than five months at a three by five meters cell with two other detainees after they subjected the Complainant to violence and, no access to washing facilities, a clean toilet, ventilation, or a bed, constituted ill-treatment); Ciprian Vlâdut and Ioan Florin Pop v. Romania, Eur. Ct. H.R., App. No. 43490/07, 44304/07, ¶ 58 (2015) (stating that personal space is a "central factor" in the analysis of detention conditions).

[153] Institute for Human Rights and Development in Africa v. Angola*,* Communication 292/04, Afr. Comm'n H.P.R., ¶¶ 2, 5, 50 (May 22, 2008).

[154] *See* Prosecutor v. Aleksovski, Case No. IT-95-14/1-T, Judgment, ¶¶ 154, 219 (Int'l Crim. Trib. for the Former Yugoslavia Jun. 25, 1999) (holding that there was no offense where detention conditions were unintentional and that overcrowding—cells were less than 10 square meters without lighting or windows and between 10 to 40 people were placed in the cell—and inadequate resources were outside of the perpetrator's control); Prosecutor v. Simić, Case No. IT-95-9-T, Judgment, ¶¶ 737, 743, 775 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 17, 2003) (holding that overcrowded cells with not enough room to sit, and often only a cardboard to sleep on, and little family contact—in addition to unhygienic conditions and inadequate access to food, water, medical care—constituted cruel and inhumane treatment); Kaing Guek Eav alias Duch, Case No. 001, Judgment, ¶ 372 (Extraordinary Chambers in the Cts. of Cambodia July 26, 2010) (concluding that the physical conditions prevailing at the detention camps constituted an offence under "other inhumane acts" for being degrading and humiliating in nature and taking note of the deplorable living conditions in the camps, which included detention in overly small or overcrowded cells, shackling and chaining, blindfolding, and handcuffing when being moved outside the cells); Abdulrahman Kabura v. Burundi, ¶ 7.8, U.N. Doc. CAT/C/59/D/549/2013 (Jan. 24, 2017) (holding that detention in a twelve square meter cell for seventeen days with ten other detainees sleeping on the floor in "appalling sanitary conditions" without windows, light, water, food, or medical treatment, under unsanitary conditions, and with the denial of access to a doctor, constituted ill-treatment).

one cell that was twelve meters long by seven or eight meters wide.[155] This made it impossible for everyone to lie down and detainees were only allowed to leave the room to use sanitary facilities.[156] In addition, some detainees had to sleep outside.[157] The ICTY did not delve into why these conditions constituted cruel treatment. Further, the overcrowding analysis was taken into consideration for the finding of cruel treatment. It was not taken into consideration for the conviction on charges of outrages upon personal dignity, which was grounded in the detainees' constant fear of being subjected to violence in the camp and being forced to relieve bodily functions in one's clothing.[158]

In contrast, the ECtHR has set a standard for minimum cell size that may constitute ill-treatment. In *Muršić*, the court ruled that holding a detainee for twenty-seven days in a 2.62 squared meters cell amounted to degrading treatment because detention was continuous and over a long period.[159] However, during the time in which the detainee was placed in a cell measuring more than three squared meters, this size was found to be offset by other factors, resulting in no finding of degrading treatment.[160] These factors included allowing the detainee the ability to exercise outdoors for two hours per day, to leave his cell and moving freely for three hours a day within the prison, and to leave his cell for meals.[161] The court also mentioned that even though he was not able to work, he was provided adequate food and hygiene conditions.[162] The ECtHR reasoned that collective cells of less than three squared meters—including furniture but not counting sanitary facilities in-cell—raises a strong presumption of ill-treatment.[163] This presumption may be rebutted by the cumulative effects of other detention conditions that compensate for the inadequate size of personal space, such as short, occasional and minor detention in small cells, adequate outdoor activities,

[155] Prosecutor v. Kvocka, Case No. IT-98-30/1-T, Judgment, ¶¶ 112, 116-17, 164 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 2, 2001).
[156] *Id.*, ¶ 112.
[157] *Id.,* ¶ 82.
[158] *Id.*, ¶ 173.
[159] Muršić v. Croatia, Eur. Ct. H.R., App. No. 7334/13, ¶ 102 (2016).
[160] *Id.*, ¶¶ 171- 72.
[161] *Id.*, ¶ 162.
[162] *Id.*, ¶ 164.
[163] *Id.,* ¶ 124.

sufficient freedom of movement outside the cell, and decent detention conditions.[164]

Furthermore, the ECtHR further refined its analysis of overcrowding conditions in instances in which there is a lack of resources. In *Khlaifia*, the ECtHR held that overcrowding in a reception center and two vessels for migrants in Italy did not constitute ill-treatment.[165] To determine the threshold of severity, the court analyzed the context of the ill-treatment and whether the victim was in a vulnerable situation.[166] The court noted that even though authorities placed migrants in overcrowded facilities, this was due to the "major migration crisis" resulting from the aftermath of conflict following the Arab Spring. As such, the migration flow created an "exceptional" context.[167] The court held that the detention conditions in the reception center and the two vessels did not constitute ill-treatment given that migrants stayed only about three days, were provided with basic needs, and were able to move freely inside the facility.[168]

2. Access to Sanitary Facilities

To determine whether detention conditions are constitutive of ill-treatment, decisional bodies look at detainees' access to bathrooms and showers, such as whether access is limited and the type of facilities available.[169] Although criminal tribunals and human rights courts take into account detainees' access, inadequate sanitary facilities by themselves are not considered to reach the pain and suffering threshold to find a violation of the prohibition.[170]

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[164] *Id.*, ¶¶ 130-33.
[165] Khlaifia v. Italy, Eur. Ct. H.R., App. No. 16483/12, ¶¶ 200, 210 (2016).
[166] *Id.,* ¶ 160.
[167] *Id.*, ¶¶ 4-6.
[168] *Id.,* ¶¶ 180, 195, 200.
[169] *See* Sergei Kirsanov v. Russian Federation*,* ¶ 11.2, U.N. Doc. CAT/C/52/D/478/2011 (May 14, 2014) (noting that inability to walk outside while in detention in a temporary confinement cell, in addition to the denial of bedding, and other toiletry items including a toilet and regular warm showers constituted ill-treatment); Varga and Others v. Hungary, Eur. Ct. H.R., App. No. 14097/12, 45135/12, 73712/12, 34001/13, 44055/13, 64586/13, ¶¶ 88, 90 (2015) (holding that treatment was degrading in violation of article 3 where the lavatory was only separated from the living area by a curtain, the living quarters were infested with insects, there was no adequate ventilation or sleeping facilities, detainees had limited access to the shower and their time outside their cell was limited, and where a detainee was held in a cell less than three square meters for at least three years).
[170] Szafrański v. Poland, Eur. Ct. H.R., App. No. 17249/12, ¶¶ 27-29 (2015) (noting that detainee's sanitary

The ICTY *Limaj* case exemplifies analysis of sanitary facilities by international bodies. The criminal tribunal ruled that the detention conditions—consisting of an overcrowded storage room and cowshed without adequate ventilation—constituted ill-treatment. The ICTY reasoned that even though detainees in the storage room were allowed to go outside "once in a while to be able to have some fresh air, the atmosphere and conditions in the room remained deplorable."[171] The detainees in the cowshed were typically chained to the wall or tied to other detainees so they had to relieve themselves in their clothes.[172] There were about thirteen to fifteen detainees confined, and some were tied up all day in the storage room, which was about two by three or four meters with a low ceiling and only a small window.[173] Every three or four days, detainees could walk a little outside.[174] The court concluded that these conditions amounted to a "serious attack upon the dignity of the detainees."[175] The attack on the dignity of the detainees was part of the court's cruel treatment analysis. Yet, in the same case, the ICTY found no criminal responsibility in a situation in which detainees could use, under permission, sanitary facilities located in the yard and slept on a carpet or on a foam mattress in a house.[176]

Further, criminal tribunals and human rights courts also review restrictions on access to sanitary facilities as well as their condition. In *Delálic*, the ICTY concluded that inadequate sanitary facilities, sleeping facilities, and the creation of an atmosphere of terror in the Čelebići prison-camp constituted ill-treatment.[177] In one of the tunnels in Čelebići, detainees were restricted to relieving themselves only twice a day, often for less than a minute, in the ground at the end of the tunnel.[178] The African Commission in *Institute for Human Rights* reviewed the conditions of sanitary facilities at issue and

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facilities were only separated from the rest of the cell by a fiberboard partition and had no doors, but the court reasoned that this, by itself, did not cause suffering constitutive of ill-treatment).

[171] Prosecutor v. Limaj, Case No. IT-03-66-T, Judgment, ¶¶ 292-94 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 30, 2005).

[172] *Id.*, ¶¶ 285-88.

[173] *Id.,* ¶ 286.

[174] *Id.*

[175] *Id.,* ¶ 289.

[176] *Id.,* ¶ 287.

[177] Prosecutor v. Delalić, Case No. IT-96-21-T, Judgment, ¶¶ 1114, 1119 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).

[178] *Id.*

noted that 500 detainees were provided with only two buckets of water to use in the bathroom, which was not separated from the sleeping and eating areas.[179] The commission concluded that the detention facilities, as well as inadequate sanitary facilities, food, and water, was "degrading and inhuman."[180]

3. Limitations on Outside Cell Activities

Decisional bodies also evaluate limitations on being allowed to engage in activities outside detainees' cells to decide whether detention conditions are constitutive of ill-treatment.[181] Most cases focused on the duration of outside activities. In the seminal case of *Estrella,* the HRC found inhumane detention conditions where cells were so small that one detainee had to sit when the other one walked, and where detainees were kept twenty-three hours per day in their cells, could not engage in outdoor exercise, and were allowed to go into the open air for only an hour per day.[182] In *Alimov*, a ECHR case, authorities detained the victim in an overcrowded detention center in which the only area for detainees to spend time outside of their cell was in the cafeteria, the size of which was inadequate to accommodate all the detainees.[183] In addition, Mr. Alimov was not allowed any outdoor exercise during the 104 days he was detained.[184] The ECHR concluded that the conditions constituted ill-treatment.[185] It reasoned that in some cases overcrowding or small spaces can be "compensated" by the possibility of moving freely within the detention center or access to natural light, but that it was not the case in this detention center.[186] The ECHR also stated that all detainees have a right to at least one hour of exercise in the open air every day, but

[179] Institute for Human Rights and Development in Africa v. Angola*,* Communication 292/04, Afr. Comm'n H.P.R., ¶ 5 (May 22, 2008).
[180] *Id.,* ¶ 51.
[181] *See* Sergei Kirsanov v. Russian Federation*,* ¶ 11.2, U.N. Doc. CAT/C/52/D/478/2011 (May 14, 2014) (noting that inability to walk outside while in detention in a temporary confinement cell, in addition to the denial of basic utilities constituted ill-treatment); Simeonovi v. Bulgaria, Eur. Ct. H.R., App. No. 21980/04, ¶¶ 88-90 (2017) (holding that conditions of detention plus the "restrictive regime" where the detainee was serving a life sentence amounted to ill-treatment because the prisoner was confined twenty-three hours a day to his cell, mostly on his bed, he only had a few minutes of access to the prison library, was only allowed to attend the prison chapel twice a day, and could not meet other prisoners).
[182] Estrella v. Uruguay, ¶ 1.10, U.N. Doc. CCPR/C/18/D/74/1980) (Mar. 29, 1983).
[183] Alimov v. Turkey, Eur. Ct. H.R., App. No. 14344/13, ¶ 81 (2016).
[184] *Id.*, ¶ 82*.*
[185] *Id.,* ¶ 84.
[186] *Id.,* ¶¶ 78, 84.

did not specify whether the lack thereof leads to a presumption of a violation of the prohibition on torture and ill-treatment.[187]

B. INCOMMUNICADO DETENTION

Holding a victim incommunicado—without communication to individuals, like lawyers or family members, outside the detention center—for a certain period of time can also constitute ill-treatment.[188] In *Article 19*, the African Commission held that the continued incommunicado detention for about two years without trial of at least eighteen journalists and political dissidents constituted a violation of the right to be free from torture and ill-treatment.[189] The African Commission's reasoning was based on its past jurisprudence holding that prohibiting family contact and refusing to inform the detainee's family of their whereabouts is inhuman treatment.[190] Its reasoning was also based in HRC's past jurisprudence holding that States should protect detainees from incommunicado detention.[191] On the other hand, the IACtHR held that restricting communication with family members to twenty to thirty minute family visits per day did not cause sufficient psychological suffering to reach the ill-treatment threshold.[192]

Incommunicado detention can also be accompanied by other detention conditions that aggravate the pain and suffering.[193] For example, in *Ennaâma Asfari v. Morocco*, the CAT held that solitary confinement, unsanitary conditions, incommunicado detention,

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[187] *Id.*, ¶ 83.

[188] *See* Giri v. Nepal, ¶¶ 2.5, 7.6, U.N. Doc. CCPR/C/101/D/1761/2008 (Mar. 24, 2011) (evaluating detainee's incommunicado detention, without any access to contact his family or lawyer, for almost thirteen months, which amounted to ill-treatment); Bousroual v. Algeria, ¶ 9.8, U.N. Doc. CCPR/C/86/D/1085/2002 (Mar. 15, 2006) (holding that incommunicado detention constituted ill-treatment); Kayum Ortikov v. Uzbekistan, ¶ 10.2, U.N. Doc. CCPR/C/118/D/2317/2013 (Jan. 27, 2017) (holding that almost three months of incommunicado detention amounted to a violation of article 7, which protects people from ill-treatment and torture).

[189] Article 19 v. Eritrea*,* Communication 275/03, Afr. Comm'n H.P.R., ¶¶ 2, 102 (May 30, 2007).

[190] *Id.,* ¶ 101.

[191] *Id.*

[192] Galindo Cárdenas *et al.* v. Peru, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 301, ¶¶ 242-43 (Oct. 2, 2015).

[193] Loayza-Tamayo v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 33, ¶ 58 (Sep. 17, 1997) (concluding that incommunicado detention, solitary confinement in a tiny cell with no natural light, blows and maltreatment, and a restrictive visiting schedule all constitute forms of ill-treatment); Cantoral-Benavides v. Peru, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 69, ¶¶ 81-82, 89, 105 (Aug. 18, 2000) (holding that detention in a small cell, incommunicado for eight days is ill-treatment and that incommunicado detention may constitute an "act contrary to human dignity").

the denial of outdoor exercise, and physical and verbal abuse while detained constituted ill-treatment.[194] And the ECCC found that several specific practices were put in place in the S-21 and S-24 detention camps to ensure degrading treatment of all detainees.[195] These practices included separating families and not allowing the prisoners any family contact, including between parents and children, as well as failing to meet basic needs.[196]

SEXUAL AND GENDER-BASED DEGRADATION

Human rights courts and international criminal tribunals have long recognized that some types of sexual and gender-based violence cause suffering that is constitutive of torture.[197] This type of violence usually includes acts such as rape, sexual molestation, sexual slavery, or forced public nudity.[198] In the seminal case *Akayesu*, the ICTR defined sexual violence as "any act of a sexual nature which is committed on a person under circumstances which are coercive . . . not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact."[199] This definition includes symbolic acts and sexual degradation, and makes no reference to gender identity. Yet, this research indicates that decisional bodies have not usually included in their definition of sexual and gender-based violence acts of degradation and tend only to find ill-treatment when the victims are male.

[194] Ennaâma Asfari v. Morocco, ¶ 13.9, U.N. Doc. CAT/C/59/D/606/2014 (Nov. 15, 2016).
[195] Kaing Guek Eav alias Duch, Case No. 001, Judgment, ¶ 260 (Extraordinary Chambers in the Cts. of Cambodia Jul. 26, 2010).
[196] *Id*., ¶¶ 261-63.
[197] Raquel Martí de Mejía v. Perú, Case 10.970, Inter-Am. Comm'n H.R., Report No. 5/96, OEA/Ser.L/V/II.91 Doc. 7, ¶ 157 (1996) (finding that rape causes severe suffering constitutive of torture and an assault to the victim's dignity); Prosecutor v. Furundzija, Case No. IT-95-17/1-T, Judgment, ¶¶ 83, 264 (Int'l Crim. Trib. for the Former Yugoslavia Dec. 10, 1998) (finding an offense of torture in a case in which victims were raped and sexually assaulted).
[198] Prosecutor v. Kvocka, Case No. IT-98-30/1-T, Judgment, ¶ 180 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 2, 2001) (reaffirming Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment (Int'l Crim. Trib. for Rwanda Sept. 2, 1998)).
[199] Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 688 (Int'l Crim. Trib. for Rwanda Sep. 2, 1998).

It is important to note that there are cases involving some degree of physical violence, in addition to degrading or humiliating acts of a sexual nature or that are gender-based, that are considered ill-treatment.[200] For instance, one court found non-violent gendered treatment to constitute a violation of the prohibition against torture and ill-treatment. In *Rodríguez Vera,* the IACtHR found that coerced cutting or threat of cutting of the hair may constitute ill-treatment.[201] The court reasoned that this conduct constitutes violence against women because, even though it is not violent per se, when done to a woman, it has "connotations and implications relating to their femininity as well as an impact on their self-esteem."[202]

Other instances of degrading acts include situations which involved some degree of physical violence, in addition to sexual degradation and humiliation.[203] In *Simić*, the ICTY found ill-treatment where a victim was hit in his genitals and told "Muslims should not propagate."[204] Further, in an African Commission case the victim was "ordered to stick his penis in the sand and imitate sexual positions until he masturbated."[205] After he did not satisfactorily perform these actions, the perpetrators hit his genitals with a stick.[206] The African Commission ended up dismissing the victim's torture claim given that he did not provide enough evidence to show State responsibility.[207] The commission did not discuss whether these acts caused the victim suffering or pain.

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[200] *See* Ousborne v. Jamaica, ¶¶ 3.3, 9.1, U.N. Doc. CCPR/C/68/D/759/1997 (Apr. 13, 2000) (finding ill-treatment in a case in which victim's sexual organs were put in a barrel while he was stripped naked); Errol Pryce v. Jamaica, ¶ 2.4, U.N. Doc. CCPR/C/80/D/793/1998 (May 13, 2004) (noting that victim's sexual organs were put in a barrel while he was whipped constituted ill-treatment).
[201] Rodríguez Vera *et al.* v. Colombia*,* Preliminary Objections, Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 287, ¶ 427 (Nov. 14, 2014).
[202] *Id*.
[203] X. v. Denmark and Ethiopia, ¶ 2.2, U.N. Doc. CAT/C/53/D/458/2011 (Jan. 20, 2015) (holding ill-treatment in a case in which authorities beat the victim during arrests including her breasts and genitals); *see* Lucía Arzuaga Gilboa v. Uruguay, ¶ 4.3, U.N. Doc. CCPR/C/OP/2 (1990) (finding a violation of the prohibition on torture and ill-treatment in a case in which the victim was forced to remain naked).
[204] Prosecutor v. Simić, Case No. IT-95-9-T, Judgment, ¶¶ 699-71 (Int'l Crim. Trib. for the Former Yugoslavia Oct. 17, 2003).
[205] Zimbabwe Human Rights NGO Forum v. Zimbabwe*,* Communication 245/02, Afr. Comm'n H.P.R., ¶ 94 (May 15, 2006).
[206] *Id.*
[207] *Id.,* ¶ 183.

Secondly, rape usually constitutes torture, but there are some cases in which decisional bodies have only found ill-treatment in cases of sexual violence. These were cases in which the victims were male or the treatment was mainly degrading. For instance, in *Delić*, the court held that the rape constituted only ill-treatment[208] and in *Martić*, male detainees were forced to perform mutual oral sex and oral sex with prison guards, as well as mutual masturbation, but the ICTY held this only constituted ill-treatment.[209]

The case of *Delalić* further exemplifies the inconsistency in the legal conclusions human rights courts and criminal tribunals draw in cases of male victims of sexual violence. In this case the ICTY found the perpetrator guilty of torture of a woman where, among other violent acts, a woman was raped because of her husband's involvement with armed rebel forces.[210] Following the reasoning in the seminal *Akayesu* ICTR case, the ICTY accepted the definition of rape as "a physical invasion of a sexual nature, committed on a person under circumstances that are coercive."[211] In another instance of rape in the *Delalić* case, the court reasoned that "rape was inflicted upon her by [the perpetrator] because she [was] a woman" and found the accused guilty of torture.[212] In contrast but also in *Delalić*, the ICTY found the perpetrator guilty of ill-treatment where two brothers were forced to commit fellatio with one another in front of other people.[213] Here, the ICTY further clarified that "the aforementioned act could constitute rape for which liability could have been found if pleaded in the appropriate manner."[214] And it also only found ill-treatment where perpetrators intentionally removed a victim's trousers in public, "plac[ing] a slow-burning fuse against his bare skin around his waist and genitals," and later setting

[208] Prosecutor v. Delić, Case No. IT-04-83-T, Judgment, ¶ 20 (Int'l Crim. Trib. for the Former Yugoslavia Sept. 15, 2008).
[209] Prosecutor v. Martić, Case No. IT-95-11-5, Judgment, ¶ 288 (Int'l Crim. Trib. for the Former Yugoslavia June 12, 2007).
[210] Prosecutor v. Delalić, Case No. IT-96-21-T, Judgment, ¶¶ 937, 941-43 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).
[211] *Id.*, ¶¶ 478-479 (reaffirming Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 598 (Int'l Crim. Trib for Rwanda Sept. 2, 1998)).
[212] *Id.,* ¶ 963.
[213] *Id.,* ¶¶ 1064, 1066, 1072.
[214] *Id*., ¶ 1066.

light to the fuse.[215]

Thirdly, there are also instances of cases of threats that involve sexual or gendered violence in which decisional bodies tend to find the act constitutive of ill-treatment or even torture. In *Saadi Ali* and in *Al Nashiri*, the HRC and the ECtHR, respectively, found torture in instances in which the victim received rape threats.[216] In the seminal case *Espinoza González*, the IACtHR noted that being threatened with being infected with AIDS was part of what led the court to find ill-treatment.[217] In the *Elçi* case at the ECtHR one of the victims was taken to an interrogation room where he was tortured including by being "threat[ened with] damage [to] his sexual organs."[218] Even though the ECtHR analyzed accounts of torture and ill-treatment, it did not make any mention of these threats in its reasoning.

FORCED BETRAYAL OF PERSONAL LOYALTIES, IDEOLOGICAL COMMITMENTS, AND RELIGIOUS OR CONSCIENTIOUS BELIEFS

The cases in this category illustrate the ways in which abusers target victims' identities to aggravate the effects of their mistreatment by causing victims psychological suffering or identity breakdown. Further, in order to show the range of circumstances in which decisional bodies have linked identity betrayal to legal findings of torture and ill-treatment, the cases here contain either, or both, violent and non-violent acts.

In a number of cases, the decisional body focused on the particular cultural context. For example, in ICTY case *Prosecutor v. Kunarac*, the court made note of the treatment inflicted on victims by Kunarac, who was "motivated by their being Muslims"

[215] *Id*., ¶ 1040.
[216] Saadi Ali v. Tunisia, ¶ 3.8, U.N. Doc. CAT/C/41/D/291/2006 (Nov. 21, 2008) (finding that a victim who was subjected to rape threats while he was half-naked constituted torture); Al Nashiri v. Poland, Eur. Ct. H.R., App. No. 28761/11, ¶¶ 504, 511, 516 (2015) (finding that threats of sodomy, arrests, and rape constituted torture).
[217] Espinoza González v. Peru, Preliminary Objections, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 33, ¶¶ 58, 159, 179 (Sept. 17, 1997).
[218] Elçi and Others v. Turkey, Eur. Ct. H.R., App. No. 23145/93, 25091/94, ¶ 30 (2003).

in the context of the "armed conflict between Bosnian Serbs and Bosnian Muslims."[219] Kunarac told women that "they would give birth to Serb babies," and told one victim that "there would be no Muslims left in [Foca] after he raped her twice[] and ejaculated on her face."[220] The tribunal held that he had "committed the crimes of torture and rape."[221] In addition, in the more recent ECCC case *Kaing Guek Eav alias Duch*, victims were "forc[ed] to pay homage to images of dogs or objects."[222] One of the images of dogs had "the head of Ho Chi Minh" and another "the head of Lyndon B. Johnson."[223] Given the "Cambodian cultural context," this caused the victims extreme humiliation and severe emotional distress.[224] The court held that this constituted a form of torture.[225]

In other cases, the individual characteristics of the victim rendered their treatment a forced betrayal of their identity. In ECtHR case *Yankov v. Bulgaria,* for example, the victim's head was forcibly shaved while in detention.[226] He claimed that this "barbaric" act caused him to suffer particular "humiliation" as a person "55 years old at the time . . . with higher education and a doctorate."[227] Because such an act would subdue and debase the victim in these circumstances, the court held that it constituted "degrading" treatment.[228] In other cases, family members were forced to engage in incestuous sexual acts. In SCSL case *Prosecutor v. Sesay*, the court noted a circumstance where a couple was forced "to have sexual intercourse in the presence of . . . their daughter."[229] After the "enforced rape," the rebels "forced the man's daughter to wash her father's penis."[230] It held that these acts "severely humiliated the couple and their

[219] Prosecutor v. Kunarac, Case No. IT-96-23-T, IT-96-23/1-T, Judgment, ¶¶ 2, 654 (Int'l Crim. Trib. for the Former Yugoslavia Feb. 22, 2001).
[220] *Id.*, ¶ 322.
[221] *Id.*, ¶ 656.
[222] Kaing Guek Eav alias Duch, Case No. 001, Judgment, ¶ 360 (Extraordinary Chambers in the Cts. of Cambodia July 26, 2010).
[223] *Id.,* ¶ 243.
[224] *Id.*, ¶ 243.
[225] *Id*., ¶ 360.
[226] Yankov v. Bulgaria, Eur. Ct. H.R., App. No. 39084/97, ¶ 101 (2003).
[227] *Id*.
[228] *Id*., ¶ 122.
[229] Prosecutor v. Sesay, Case No. SCSL-04-15-T, Judgment, ¶ 1302 (Special Ct. for Sierra Leone Mar. 2, 2009).
[230] *Id*.

daughter and violated their dignity."[231] Similarly, in ICTY case *Prosecutor v. Delalić,* two brothers were forced to "commit fellatio" with one another in front of other people.[232] The tribunal held that this constituted ill-treatment.[233]

Often, indeed, the *dignity* of the victim was critical to the decisional body. In one ICTY case, *Prosecutor v. Delić*, victims were forced to kiss the decapitated head of their co-detainee.[234] A member of the Bosniak forces entered the detainees' room (who were members of the Army of Republika Srpska) carrying their co-detainee's head, from which "blood dripped."[235] The fighter took the severed head from one detainee to another, forcing them to "kiss [their] brother."[236] The tribunal held that this constituted a "serious attack . . . on human dignity" and was therefore a form of "cruel treatment."[237] In addition, in SCSL case *Prosecutor v. Sesay*, the decisional body noted the physical and mental suffering resulting from forced marriages and held that the practice was an "outrage … on personal dignity."[238] The court explained that "'wives' were 'married' against their will, forced to engage in sexual intercourse and perform domestic chores, and were unable to leave their 'husbands'" and noted that this caused a "lasting social stigma" for victims.[239] In becoming a "forced wife," many women were forced to leave their "husbands, parents and home villages."[240] The court stated that the perpetrators "intended to deprive the women of their liberty by exercising powers attaching to the right of ownership over them."[241] It also held that forced marriage constituted an "inhumane act … ."[242]

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[231] *Id*., ¶ 1305.
[232] Prosecutor v. Delalić, Case No. IT-96-21-T, Judgment, ¶¶ 1064, 1072 (Int'l Crim. Trib. for the Former Yugoslavia Nov. 16, 1998).
[233] *Id*.
[234] *Id*., ¶ 261.
[235] *Id.*
[236] *Id.*
[237] *Id.,* ¶ 273.
[238] Prosecutor v. Sesay, Case No. SCSL-04-15-T, Judgment, ¶¶ 1293, 1299 (Special Ct. for Sierra Leone, Mar. 2, 2009).
[239] *Id.,* ¶¶ 1293, 1296.
[240] *Id.,* ¶ 1155.
[241] *Id.,* ¶ 1294.
[242] *Id.,* ¶ 1297.

DISCUSSION

Researchers offer the following observations about the body of cases analyzed. These address trends in doctrinal development, areas in which standards are inconsistently applied or underdeveloped, and the differential contribution of international human rights law and international criminal law to interpretations of the universal prohibition of torture and ill-treatment.

A. DOCTRINAL TRENDS

International courts and monitoring bodies have expanded human rights protections encompassed by the prohibition against torture and ill-treatment in certain areas. For example, the jurisprudence is evolving to recognize that family members of individuals who have been victims of enforced disappearances or punished with the death penalty may suffer from a lack of information about their loved ones which rises to the level of torture or ill-treatment.

In particular, the jurisprudence regarding torture and ill-treatment in detention facilities expands protections and raises the question of whether it is time for a searching reconsideration of the duties of the State toward individuals deprived of their liberty and under State control. For example, detention conditions that fail to provide for basic human needs—like food, medical access, and space—deprive detainees of their dignity and violate human rights norms. Under some circumstances, international decision makers find these State-created conditions to violate the prohibition against torture and ill-treatment. Human rights and international criminal courts more recently have recognized failures of State authorities to meet individualized medical requirements of detainees as violations of the prohibition. In making these determinations, judges and commissioners have begun to measure the needs of detainees in light of the particular physical and mental abilities of detainees. In other words, States are being put on notice that they may violate the prohibition against torture and ill-treatment if they fail to consider health vulnerabilities of those in its custody. Further, there is a trend across decisional bodies to examine the amount of

personal space a detainee has use of in determining whether detention conditions violate the prohibition against torture.

More generally, research indicates that international courts and monitoring bodies are recognizing the individual vulnerabilities of victims in considering whether their treatment arises to the level of torture or ill-treatment. Most of the victims in the jurisprudence are members of communities that are marginalized due to socio-economic class, gender, sexuality, migrant-status, health condition, cultural sensibilities, race or, religion, which create special social and cultural vulnerabilities. Decision makers consider how perpetrators take advantage of these vulnerabilities, and how these vulnerabilities impact the degree of suffering of victims, even if wrongdoers did not intentionally target the victims. The Special Rapporteur should highlight this trend and re-enforce its application across all relevant contexts. Marginalization makes individuals and groups especially susceptible to torture and ill-treatment, at the same time that these actions may be overlooked unless international law making bodies analyze suffering in light of the context-specific characteristic of victims.

B. DOCTRINAL AREAS IN NEED OF DEVELOPMENT AND HARMONIZATION

Researchers noted that the prohibition against “non-typical” manners of torture and ill-treatment is underdeveloped in a few areas and would benefit from the articulation and application of robust and consistent standards. Human rights bodies and international criminal courts inconsistently have analyzed cases in three areas: (1) cases concerning the pain and suffering of male victims of sexual violence, (2) cases regarding symbolic uses of gender-based degradation (which do not necessarily involve violence); and, (3) cases regarding sensory manipulation.

Review of the jurisprudence reveals that decision makers do not evaluate similar cases of male victims of sexual violence similarly, raising the question of what standards apply to this class of victims. Relatedly, there is not a consistent approach across jurisdictions to cases in which women and men are victims of symbolic,

gendered degradation (e.g. forced masturbation, forced grooming).

Finally, decisional bodies have failed to develop consistent standards regarding the use of sensory manipulation as a manner of ill-treatment or torture. A more consistent recognition by decisional bodies of such of sensory manipulation could check the growing acceptability of these practices. States regularly practice and defend these techniques, a clear enunciation of the standards of treatment would strengthen the prohibition against torture and ill-treatment of detainees.

The Special Rapporteur could play a helpful role in reiterating how the prohibition applies and, where needed, to offer an interpretation of how international law in these areas should develop to better protect victims from these manners of torture and ill-treatment.

C. DIFFERENTIAL CONTRIBUTION OF INTERNATIONAL HUMAN RIGHTS AND INTERNATIONAL CRIMINAL JURISPRUDENCE

International human rights jurisprudence regarding torture and ill-treatment differs from jurisprudence on this topic generated by international criminal courts and tribunals. Human rights jurisprudence covers a broader range of contexts, which may inadvertently signal that human rights bodies adopt a more protective standard. It is therefore important to identify at least two important differences between these legal sources, the combination of which may help to explain their distinct approaches. The first difference is that the scale of atrocities and number of victims that international criminal bodies adjudicate generally is higher than human rights bodies. Further, criminal courts and tribunals have jurisdiction over a narrow range of torture and ill-treatment that arise in the most serious international atrocities: war crimes, genocide, or crimes against humanity. These are crimes which, by their nature, are complex and involve multiple wrongdoers.

The second difference is that an international criminal court or tribunal must establish individual criminal responsibility applying an evidentiary standard of beyond reasonable doubt. By contrast, human rights bodies apply a lower standard (generally

a balance of probabilities) to determine State responsibility. International criminal judges render findings that are more tightly circumscribed than human rights bodies as criminal judges must isolate and consider the individual accused's behavior and mental state. The combination of the definitions of international crimes and the requirements of determining individual criminal responsibility gives the jurisprudence from international criminal bodies the mistaken appearance of applying a higher standard of severity to establish torture or ill-treatment than human rights bodies. This is an area to which the Special Rapporteur could contribute conceptual and doctrinal clarity and thereby strengthen the prohibition against torture and ill-treatment in both the human rights and international criminal contexts.

CONCLUSION

As State practices of torture and ill-treatment evolve so must the scope of the prohibition against torture in order to maintain the absolute prohibition of these practices. This research identifies and catalogs "non-typical" State practices of torture and ill-treatment identified through the 176 cases drawn from selected international human rights bodies and international criminal tribunals, and traces evolving standards.

Given the aim of identifying practices as well as international norms, there are limits to this analysis, based on the methodology employed. Evidence of State practice is limited by sample size and selection parameters. By focusing on jurisprudence from select international human rights bodies and international criminal tribunals, the data set omits cases from national courts and jurisprudence from UN Special Procedures as well as NGO reports and field experience that may consider "non-typical" forms of torture and ill-treatment. A further limitation is geographic scope: The most developed regional human rights bodies focus on Europe and Latin America. The African system is more recent and has fewer cases, there is no regional mechanism for Asia, and no international human rights court has jurisdiction over Australia or New Zealand.

Nevertheless, the study identifies patterns of treatment which constitute or form part of torture and ill-treatment. It sheds light on State-inflicted suffering and the extent to which the prohibition against torture and ill-treatment applies to atypical practices. Focusing on current treatment of these areas in international law facilitates further review of these understudied ways of inflicting torture and ill-treatment and supports progressive advancement of protections to halt these violations.

ANNEX

RESEARCH METHODOLOGY

This annex explains the methodology employed to generate the body of 176 cases researchers analyzed in this research memorandum. These torture and ill-treatment cases are drawn from primary and secondary sources over the period from 1981 to 2018. To identify the major, relevant cases discussing non-typical forms of torture and ill-treatment, researchers relied on cases cited in secondary literature regarding the development of the international law on torture.[243] Researchers supplemented these cases with additional jurisprudence drawn from more recent periods.

A. SECONDARY LITERATURE

The secondary literature cited torture and ill-treatment jurisprudence from human rights treaty bodies, regional human rights courts, and international criminal courts and tribunals.[244] Researchers coded these cases according to a set of coding rules.

For human rights treaty bodies, the secondary literature yielded eight cases from the Committee Against Torture and seventeen cases from the Human Rights Committee, which were coded.

For regional human rights courts, researchers identified and coded twenty cases from the Inter-American Court of Human Rights in the secondary literature, in addition to two cases from the Inter-American Commission of Human Rights. Researchers found

[243] Christoph Burchard, *Torture in the Jurisprudence of the Ad Hoc Tribunals: A Critical Assessment*, 6 J. INT'L CRIM. JUST. 159, 159-182 (2008); Craig Haney & Shirin Bakhshay, *Contexts of Ill-Treatment: The Relationship of Captivity and Prison Confinement to Cruel, Inhuman, or Degrading Treatment and Torture*, *in* TORTURE AND ITS DEFINITION IN INTERNATIONAL LAW: AN INTERDISCIPLINARY APPROACH 139, 139-374 (Metin Basoglu ed., 2017); Manfred Nowak, *Challenges to the Absolute Nature of the Prohibition of Torture and Ill-Treatment*, 23 NETH. Q. HUM. RTS. 674, 674-688 (2005); Pau Pérez-Sales, PSYCHOLOGICAL TORTURE: DEFINITION, EVALUATION AND MEASUREMENT 70, 70-80 (2016); Nigel S. Rodley & Matt Pollard, THE TREATMENT OF PRISONERS UNDER INTERNATIONAL LAW 1-90 (2009).

[244] Researchers eliminated the International Criminal Court case because the charges for torture and ill-treatment therein had been dropped by the Pre-Trial Chamber due to cumulative charging. Situation in the Central African Republic in the Case of Prosecutor v. Bemba, Case No. ICC-01/05-01/08, Decision on Charges, ¶ 204-05 (June 15, 2009) (evidence presented reflected the same conduct as underlying the count of rape and therefore the act of torture was fully subsumed in the count of rape).

forty-nine cases from the European Court of Human Rights, but given the large volume of jurisprudence, researchers coded cases only from the last fifteen years, which amounted to nineteen cases. In addition, although no cases from the African Court on Human and Peoples' Rights were found in the secondary literature, all forty-three available cases from the African Court were reviewed. However, as no case discussed torture or ill-treatment, these were not coded. However, three cases from the African Commission on Human and Peoples' Rights were found in the secondary literature, and were coded.

For international criminal courts and tribunals, there were fifteen cases referenced in the secondary literature. Of these fourteen, researchers coded twelve cases from the International Criminal Tribunal for the former Yugoslavia, and one each from the International Criminal Tribunal for Rwanda, the Extraordinary Chambers in the Courts of Cambodia, and the International Criminal Court.

Table 1: Relevant torture cases in secondary sources for human rights bodies and international criminal tribunals

Decisional Body	Total Number of Relevant Cases	Time Period
Committee Against Torture	8	2002-2013
Human Rights Committee	17	1981-2011
African Commission on Human and Peoples' Rights	3	2000-2003
European Court of Human Rights	19	2003-2015
Inter-American Commission of Human Rights	2	1995-2000
Inter-American Court of Human Rights	20	1997-2010
Extraordinary Chambers in the Courts of Cambodia	1	2010
International Criminal Tribunal for the former Yugoslavia	12	1998-2008
International Criminal Tribunal for Rwanda	1	2001

B. CASES FROM PRIMARY SOURCES

Researchers complemented relevant cases from the secondary literature with more recent jurisprudence (or, in some cases, other relevant cases from the international criminal tribunals). These cases were drawn from multiple jurisdictions and time periods, as explained below:

1. Human rights bodies

As the secondary literature cited cases through 2015, researchers consulted primary databases to capture more recent cases. For each decisional body, the search methodology and terms used are described here:

For cases from the Committee Against Torture, the "Jurisprudence" database available at http://juris.ohchr.org/ was used with "CAT" as the relevant body. The search terms used were "torture" and "cruel, inhuman or degrading treatment or punishment." Additionally, cases tagged as violations of articles "CAT 1-1" (torture) or "CAT 16" (ill-treatment) of the Convention Against Torture were also noted.

For the Human Rights Committee cases, the "Jurisprudence" database at http://juris.ohchr.org/ was used, with "CCPR" as the relevant body. The search terms were "torture" and "cruel, inhuman or degrading treatment or punishment" and cases tagged as violations of article "CCPR 7" (torture and ill-treatment) of the International Covenant on Civil and Political Rights were also noted.

For the African Court on Human and Peoples' Rights, all of the finalized cases in the African Court on Human and Peoples' Rights database at http://www.african-court.org/en/ were reviewed in order to identify cases where torture or ill-treatment was one of the claims brought by victims. Unfortunately, the cases contained discussions that were too synoptic to allow for coding. Consequently, researchers used the "torture and ill treatment" section of the "Keywords" tab of the database located at http://caselaw.ihrda.org/body/acmhpr/, to search for cases from the African Commission on Human and Peoples' Rights. The most recent ten cases with relevant

discussions on torture and ill-treatment were coded to supplement those found in the secondary literature.

For the European Court of Human Rights, researchers used the database at http://hudoc.echr.coe.int, and selected cases tagged as "prohibition of torture." Additionally, cases were filtered to "case reports" and "level 1 cases." According to the court's user manual, Case Reports are cases that make a significant contribution to case-law and level 1 cases are "judgments not selected for the Case Reports but which nevertheless make a significant contribution to the development, clarification or modification of its case-law, either generally or in relation to a particular State." The cases were narrowed with the keywords "degrading punishment and treatment," "inhuman punishment and treatment," and "torture."

For the Inter-American Court, in the "Jurisprudence" database located at http://www.corteidh.or.cr/, the search terms "tortura," "trato cruel," and "trato inhumano" were used.[245] An additional filter of "decisions and judgments" was used to limit results. The research was focused on only preliminary objections, merits, reparations and costs, excluding the "interpretation of the judgment," which is a separate proceeding.

The time periods that were reviewed for each of the decisional bodies varied depending on the frequency of relevant cases. Researchers collected relevant cases from the past three years and extended this period if necessary to capture a sufficient sample size from jurisdictions with lighter caseloads. The total number of cases and time periods varied as reflected below in Table 2.

[245] "Tortura," "trato cruel," and "trato inhumano" are translated as "torture," "cruel treatment," and "inhuman treatment," respectively.

Table 2: Relevant torture cases in primary sources for human rights bodies		
Decisional Body	Total Number of Relevant Cases	Time Period
Committee Against Torture	67	2014-2018
Human Rights Committee	135	2014-2018
African Commission on Human and Peoples' Rights	10	2006-2014
European Court of Human Rights	1,721	2014-2018
Inter-American Court of Human Rights	12	2011-2018

2. International criminal tribunals

Researchers consulted primary sources to identify torture and ill-treatment cases adjudicated under international criminal law. In addition to the international criminal tribunals already referred to in the secondary sources, researchers also considered cases from the Special Court for Sierra Leone.

For the Extraordinary Chambers in the Courts of Cambodia, there was no specific case-law or jurisprudence database. Accordingly, a review of the cases available on the "Case-load" section of their website at https://www.eccc.gov.kh/en/case-load was conducted. The review required a reading of the charges framed against the accused persons and revealed that there were no cases in addition to those found by researchers in the secondary literature concerning "torture," "inhumane treatment," or "other inhumane acts."

Similarly, there was no specific case-law or jurisprudence database for the Special Court for Sierra Leone and a review of all cases available at http://www.rscsl.org/index.html was conducted. The review required a reading of the charges framed against the accused persons on "torture," "cruel treatment," "humiliating and degrading treatment," and "other inhumane acts."

The research for the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda was conducted together on the "Case Law Database" available at http://cld.unmict.org/?q=en/cases/ictr-icty-case-law-database.[246] The relevant cases were identified by the use of legal "notions,"[247] "torture," "cruel treatment," and "other inhumane acts" as search terms. However due to the incomplete nature of this database, a separate search was conducted. In the Case Law Database of the International Criminal Tribunal for Rwanda, available at http://www.ictrcaselaw.org/FullSearch.aspx, keyword searches were made with the following phrases: "torture," "cruel treatment," "humiliating and degrading treatment," and "inhumane act." No similar function was available for the International Criminal Tribunal for the former Yugoslavia, so all ninety-six cases were reviewed using the "find" search feature with the terms "torture," "cruel treatment," "humiliating and degrading treatment," or "other inhumane acts" to identify relevant cases with torture related offences. This review was conducted through the cases tab of their website, available at http://www.icty.org/en/action/cases/.

Due to the limited number of relevant cases from the international criminal tribunals, researchers coded all of them, irrespective of the time period. The totals and time periods varied as reflected below in Table 3.

[246] The joint database has been created and is managed by the United Nations Mechanism for International Criminal Tribunals (UNMICT).
[247] The criteria of "legal notions" is used by the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda's "Case Law Database" as a tool to search for the relevant law. The list of "notions"—or, search terms—includes, for example: "amnesty," "customary law," and "genocide."

Table 3: Relevant torture cases in primary sources of international criminal tribunals

Decisional Body	Total Number of Relevant Cases	Time Period
Extraordinary Chambers in the Courts of Cambodia	0	2010-2018
International Criminal Tribunal for the former Yugoslavia	6	1997-2018
International Criminal Tribunal for Rwanda	2	2001-2018
Special Court for Sierra Leone	3	2007-2012

After compiling the recent jurisprudence, researchers conducted another round of case selection in order to obtain balanced caseloads from the human rights decisional bodies, which had a large number of relevant and recent cases. In this respect, all the recent cases from the Committee Against Torture and the Human Rights Committee were examined to determine if there was any mention of non-typical forms of torture or ill-treatment. Specifically, researchers reviewed the brief fact patterns and holdings to identify cases for substantive analysis. For the European Court of Human Rights, the cases were ranked using the "relevancy" function in the database, which orders the documents based on the most occurrences of a particular keyword. The top twenty-three cases dating back to 2014 were selected. Table 4 shows the total cases from each body generated by the searches as well as the number from each body that were coded.

Table 4: Coded cases from secondary and primary sources

Decisional Body	Secondary literature cases [total/coded]	Recent cases [total/ coded]	Total cases coded
Committee Against Torture	8/8	67/17	25
Human Rights Committee	17/17	135/20	37
African Commission on Human and Peoples' Rights	3/3	10/10	13
European Court of Human Rights	49/19	1,721/23	42
Inter-American Commission of Human Rights	2/2	-	2
Inter-American Court of Human Rights	20/20	12/12	32
Extraordinary Chambers in the Courts of Cambodia	1/1	-	1
International Criminal Tribunal for the former Yugoslavia	12/12	6/6	18
International Criminal Tribunal for Rwanda	1/1	2/2	3
Special Court for Sierra Leone	-	3/3	3
Total	114/84	1,955/92	176

Once researchers complied a dataset of 176 cases, they coded the cases to capture particular details of the relevant treatment. A set of "coding rules" was used to focus on specific elements of the violation and the characteristics of the manner in which torture or ill-treatment was committed. Coding facilitated discerning the patterns among cases which are discussed in the body of working paper.