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The Status of White Torture in International Criminal Law: A Comparative Analysis of the Rome Statute and the Convention against Torture

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ABSTRACT

White torture constitutes a systematic set of psychologically destructive techniques that directly target the psyche and personal identity of the victim without leaving overt physical traces. Methods such as prolonged solitary confinement, sensory deprivation, manipulation of temporal and spatial perception, and continuous humiliation are among the principal manifestations of this form of torture. Owing to its hidden and intangible nature, white torture frequently remains outside the effective scope of many traditional legal systems. The present study examines the extent to which the Rome Statute of the International Criminal Court (1998) provides a legal framework capable of identifying and prosecuting perpetrators of white torture. This research adopts a descriptive-analytical methodology with a comparative approach. The findings indicate that the Rome Statute—particularly through its explicit reference to “severe mental suffering” in Article 7(2)(e), the omission of the “specific purpose” requirement (in contrast to the Convention against Torture of 1984), and the definition of conduct committed against persons “in custody or under the control” of the perpetrator—offers a theoretically favorable basis for the recognition of white torture. However, the absence of a clear standard for assessing the severity of psychological suffering, the inherent difficulty of proving such forms of torture due to the lack of physical evidence, and the heavy burden of proof imposed on victims and prosecutors together constitute serious practical obstacles to the criminal prosecution of perpetrators of white torture. The conclusion of the study is that the effective realization of the capacities embedded in the Rome Statute requires the formulation of a coherent and intelligent criminal policy, the establishment of transparent evaluative criteria, and the strengthening of international cooperation—measures that play a fundamental role in safeguarding human rights and protecting human dignity within the framework of international criminal law.

Keywords: White torture; Rome Statute; International Criminal Court; crime against humanity; severe mental suffering; psychological torture.

Introduction

The adoption of the Rome Statute of the International Criminal Court on 17 July 1998 in Rome constitutes a turning point in the history of international criminal law. This instrument, which entered into force in July 2002 following ratification by the sixtieth State Party, established the first permanent and independent international court for the prosecution and trial of perpetrators of international crimes. A fundamental distinction between the Rome Statute and the Convention against Torture of 1984 lies in the fact that the Convention primarily emphasizes the obligation of States to criminalize torture domestically and lacks a direct enforcement mechanism, whereas the



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Rome Statute, through the establishment of an effective judicial and enforcement body, provides a concrete framework for the genuine prosecution of international crimes at the global level (1-3).

White torture, or psychological torture, represents one of the most complex and concealed challenges of contemporary criminal law and has rarely been examined systematically within Persian legal scholarship. This form of torture, without leaving visible marks on the victim's body, directly targets the psyche, identity, and personality of the individual. The historical origins of this phenomenon can be traced to clandestine programs of the Central Intelligence Agency during the 1950s, when techniques such as prolonged solitary confinement, sensory deprivation, disruption of temporal and spatial perception, and continuous humiliation were developed as interrogation tools (4-6). The KUBARK manual of 1963 explicitly underscores the effectiveness of psychological torture in breaking individual resistance, an approach later reiterated in United States security and military documentation and training programs (7). These facts demonstrate that white torture is not merely a historical phenomenon but a persistent contemporary challenge within the domains of human rights and criminal justice.

The central research question of the present study is whether the definition of torture and the material elements required for its commission under the Rome Statute enable the effective identification of and response to white torture. The significance of this question lies in the reality that white torture, due to its concealed nature and the absence of physically documentable effects, frequently falls outside the scope of traditional definitions of torture, thereby creating serious obstacles to its proof and prosecution within conventional legal systems (8). This problem highlights the urgent necessity for the reassessment of existing legal and judicial approaches.

The need to address this subject can be explained on several grounds. First, despite the absolute prohibition of torture in international human rights instruments, the prevalence of white torture is increasing globally, revealing a profound gap between normative principles and practical reality (8, 9). Second, the International Criminal Court, as the only permanent judicial body with jurisdiction over the crime of torture, unlike the United Nations Committee Against Torture whose mandate is primarily supervisory, possesses genuine authority to prosecute and convict offenders and thus can play a decisive role in combating this phenomenon (2). Third, the scarcity of specialized and systematic research in this field reinforces the necessity of the present study and demonstrates the existence of serious theoretical and practical gaps. These factors collectively intensify the importance of addressing white torture within the framework of international criminal law.

Recent developments in the Court's jurisprudence, particularly the explicit recognition of severe mental suffering in cases such as *Prosecutor v. Ntaganda* (2019), reflect growing attention to the psychological dimensions of torture and may facilitate the identification of instances of white torture (10). Existing theoretical literature predominantly falls within three domains: the psychological effects of white torture, international instruments prohibiting torture, and legal analyses of the crime of torture under the Rome Statute (2, 5, 11, 12). This body of scholarship provides an appropriate foundation for examining the legal capacities and challenges in this area.

Accordingly, the principal hypothesis of the study is that the Rome Statute, through its express reference to "severe mental suffering" and the removal of the "specific purpose" requirement, possesses substantial theoretical capacity to recognize white torture; however, numerous practical challenges significantly obstruct the effective realization of this capacity. This issue remains a central concern of international criminal law.

Research Methodology

With respect to its objectives, the present research adopts a combined “basic–applied” orientation, in the sense that it examines the fundamental theoretical concepts of international criminal law concerning white torture while simultaneously seeking to apply its findings to legislative and judicial policymaking (1). From a methodological perspective, the study is “descriptive–analytical,” meaning that relevant legal provisions, jurisprudence, and scholarly viewpoints are first carefully identified and described and are then subjected to comparative and critical analysis in order to clarify their respective strengths and weaknesses (12).

The dominant approach of this research is “legal–interpretative,” whereby the provisions of the Rome Statute are interpreted and evaluated in light of the principles of treaty interpretation, particularly Articles 31 and 32 of the Vienna Convention on the Law of Treaties of 1969 (13). In addition, a comparative method is employed at three levels: first, the comparison of the definition of torture and its constitutive conditions in the Rome Statute and the Convention against Torture of 1984; second, the assessment and alignment of the elements of torture under Articles 7 and 8 of the Rome Statute; and third, the comparative examination of the jurisprudence of the International Criminal Court with that of earlier international criminal tribunals, such as those for the former Yugoslavia and Rwanda (2).

The research corpus and sources include international instruments and treaties (such as the Rome Statute, the Elements of Crimes, the Convention against Torture of 1984, and the Geneva Conventions), judgments and decisions of the International Criminal Court and prior international criminal tribunals (including cases such as *Ntaganda*, *Kunarac*, and *Čelebići*), reports of United Nations Special Rapporteurs on torture, and relevant scholarly literature (5, 6, 14). Data and information were collected through documentary and library-based research in order to ensure the comprehensiveness and accuracy of the analysis.

Data analysis proceeded in three stages: first, the relevant legal provisions and empirical materials were identified and explained; second, the elements and conditions of the crime of torture were aligned with the defining characteristics of white torture and the degree of their correspondence was assessed; and finally, the theoretical capacities of the international legal system and the practical challenges confronting the realization of criminal justice in this domain were evaluated.

Among the limitations of the research are the absence of explicit and direct jurisprudence of the International Criminal Court specifically addressing white torture, restricted access to certain classified documents, and the predominant reliance on English and Persian sources. Efforts were made, through careful methodological design and the use of diverse sources, to mitigate these limitations to the greatest extent possible and to preserve the validity of the research findings.

The Status of Torture within the Crime Structure of the Rome Statute

Article 7 of the Rome Statute of the International Criminal Court identifies torture as one of the principal manifestations of crimes against humanity and places it among the gravest international crimes. This legal status characterizes torture not merely as an individual offense or a violation of human rights, but as conduct which, when the contextual elements are fulfilled, acquires the quality of an international crime subject to universal jurisdiction and imprescriptibility. This development is clearly reflected in Schabas’s analysis, which emphasizes the fundamental transformation of torture within international criminal law (1). The significance of this approach

becomes more apparent when contrasted with the Convention against Torture of 1984, which primarily focuses on States' obligations of domestic criminalization and lacks a binding judicial enforcement mechanism. In contrast, the Rome Statute, by establishing a permanent international criminal court, enables the prosecution and punishment of perpetrators at the international level and thereby confers a distinct enforcement character upon this instrument (2). This structural difference has elevated the legal position of torture within the system of international criminal law.

Paragraph 1 of Article 7 of the Rome Statute specifies that a crime against humanity occurs when prohibited acts are committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." This condition distinguishes crimes against humanity from ordinary offenses and indicates that the existence of planning and organizational structure is essential for their commission. The International Criminal Court has likewise interpreted the concepts of "attack" and "policy" in cases such as *Katanga* in a manner whereby even non-military and non-armed conduct, if organized and widespread, may fall within the scope of this provision (15). This expansive interpretation broadens the application of crimes against humanity and is of particular importance for white torture, which is typically implemented through official and premeditated policies, thereby significantly enhancing the prospects for its international prosecution. This demonstrates the adaptability of international criminal law in addressing emerging forms of violence.

The definition of torture in Article 7(2)(e) of the Rome Statute constitutes a landmark development in international criminal law. The provision defines torture as "the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused," provided that such pain or suffering does not arise from lawful sanctions. The crucial element of this definition is the explicit inclusion of "severe mental suffering" alongside physical suffering, such that psychological harm alone, independent of physical injury, may satisfy the material element of the crime. Hall underscores that this approach represents a fundamental transformation in the understanding of torture (12). This definition substantially enhances the possibility of identifying and prosecuting white torture, which is predominantly grounded in psychological harm, and, as noted by Grassian and Pérez-Sales, distinguishes the Rome Statute from many traditional definitions of torture while providing a new framework for the protection of victims (5, 6). This development offers an appropriate response to the challenges posed by non-physical forms of torture within the international legal order.

A comparative analysis of the definition of torture in the Rome Statute and the Convention against Torture of 1984 reveals significant differences. First, unlike the Convention, the Rome Statute omits the requirement of a "specific purpose" from the definition of torture. This omission expands the scope of the offense and permits the prosecution of conduct carried out for purposes such as the destruction of personality or the disintegration of identity. Pérez-Sales emphasizes that the removal of the specific-purpose requirement is of particular importance for the recognition of white torture (6). Second, the Rome Statute dispenses with the requirement that the perpetrator be a State official and instead focuses solely on whether the victim is "in the custody or under the control" of the accused, thereby allowing for the prosecution of non-State actors and aligning closely with the structural nature of white torture, which typically occurs in closed and controlled environments (16). This feature enhances the practical effectiveness of the Statute in addressing modern forms of torture.

The jurisprudence of the International Criminal Court further confirms this theoretical capacity. In *Prosecutor v. Ntaganda*, the Court affirmed that severe mental suffering may result from conduct that has no direct physical impact on the body and that the presence of observable physical injury is not a prerequisite for establishing the

material element of torture (10). This interpretation paves the way for the future recognition of white torture and reflects the evolution of international criminal law toward the acknowledgment of the psychological dimensions of torture. This development promises expanded legal protection for victims of psychological violence and may serve as a foundation for the further development of judicial practice.

In sum, the position of torture within the crime structure of the Rome Statute, particularly as a crime against humanity, is significant in several respects: first, it enables the criminal prosecution of white torture even in times of peace and within the framework of organized policies; second, the Statute's expansive and flexible definition of mental suffering and its removal of restrictive conditions enhance the capacity to identify and prosecute this phenomenon; and third, the jurisprudence of the Court and prior international tribunals, through the acceptance of objective and customary criteria for assessing the severity of suffering—endorsed in instruments such as the Elements of Crimes and in judgments such as *Tadić*—has laid the groundwork for the development of legal standards in this field and established a firm foundation for global criminal justice (14, 17). Accordingly, the Rome Statute provides not only a theoretical but also a practical framework for addressing white torture in international criminal law, representing a major step toward comprehensive protection of human dignity and offering a model for other legal systems.

Case Study: The Five Techniques in Northern Ireland — A Historical Model of White Torture

During the 1970s, British security forces in Northern Ireland employed a set of interrogation methods known as the “five techniques,” which included forced stress positions, hooding, exposure to continuous loud noise, sleep deprivation, and severe restriction of food and water (4, 18). None of these methods involved direct physical ^{ضرر}, yet they constitute a classic example of white torture: acts that, without leaving visible physical traces, directly target the psyche and identity of the individual and are widely recognized in contemporary scholarship as paradigmatic forms of psychological torture (6), particularly in light of their enduring effects on victims’ mental health as confirmed by numerous studies.

The case of *Ireland v. United Kingdom* before the European Court of Human Rights was one of the earliest judicial examinations of this form of torture. The Court acknowledged that the techniques caused severe physical and psychological suffering and amounted to inhuman and degrading treatment, but held that they did not reach the threshold of the “particular intensity and cruelty” required for torture (18). This judgment was widely criticized, and the United Nations Committee Against Torture declared that the Court’s approach was incompatible with the definition contained in the Convention against Torture of 1984 (19). Although in 2014 the Government of Ireland sought revision of the judgment on the basis of newly discovered evidence, the Court rejected the request on procedural grounds in 2018, leaving the controversy regarding the legal characterization of the five techniques unresolved.

Nevertheless, the nature of the five techniques remains subject to debate, and both the United Nations Special Rapporteur on Torture and the Nelson Mandela Rules have classified these practices as forms of psychological torture and even as absolute torture, reflecting the evolution of international attitudes toward such conduct and underscoring the necessity of revising the standards for identifying torture in contemporary international law (20, 21).

If these events were to be assessed under the Rome Statute of the International Criminal Court, the likelihood of a finding of torture would be considerably higher, given that Article 7(2)(e) of the Statute removes the specific-

purpose requirement and explicitly refers to “severe physical or mental suffering,” thereby adopting a more flexible approach than that of the European Court (3, 12). Furthermore, the systematic nature of these practices, implemented pursuant to official directives, would satisfy the contextual elements of Article 7, and it is significant that the jurisprudence of the former Yugoslavia Tribunal, by recognizing that “conditions of detention alone may constitute torture,” has adopted a broader interpretation encompassing the five techniques (11, 22). It may therefore be concluded that, had these events been examined under the Rome Statute, the outcome would likely have been different and the victims would have been brought closer to justice.

International Criminal Court Jurisprudence: The Evolution of Standards for Identifying White Torture

An examination of the jurisprudence of the International Criminal Court indicates that the Court has adopted a comparatively progressive approach to the psychological dimensions of international crimes, and that attention to these dimensions has become increasingly salient in recent developments of international criminal law. In *Prosecutor v. Bemba*, the Court held that “other inhumane acts” encompass any conduct that causes severe suffering or serious injury to mental health (23). A similar position was reiterated in *Prosecutor v. Ongwen*, where the Court emphasized that psychological harm may be as severe and enduring as physical harm (24). In *Prosecutor v. Gaddafi*, the Court further accepted that detention in inhuman conditions may constitute torture even in the absence of actively violent conduct, reflecting an expanded contemporary understanding of torture and opening a novel horizon for recognizing diverse manifestations of torture (14).

Notwithstanding these developments, the International Criminal Court has not yet adjudicated a case devoted directly to white torture as such. Nevertheless, the existing interpretative trajectory provides a meaningful foundation for the future identification and prosecution of white torture, a point that has also been noted in the legal literature (2). The “severity” requirement embedded in the statutory definition remains a key and challenging element that must be addressed when assessing psychological torture. Scientific research indicates that techniques such as solitary confinement exceeding fifteen days, complete sensory deprivation, and sleep deprivation beyond forty-eight hours typically generate severe mental suffering and may function as strong presumptive indicators of psychological torture, a conclusion supported by medical and psychological documentation (5, 20, 25). Accordingly, it may be expected that, in future cases before the Court, reliance on such specialized scientific findings will be pursued with greater rigor.

Overall, the Rome Statute provides a more suitable framework for identifying and criminally prosecuting white torture, and this advantage becomes more pronounced through the removal of the specific-purpose requirement and the resulting ability to prosecute perpetrators acting with diverse objectives (3). The elimination of the State-official requirement further enables the prosecution of non-State perpetrators, a development that constitutes one of the strengths of contemporary international criminal law (16). Possessing an effective criminal enforcement mechanism, the Rome Statute functions as a more operational instrument than the Convention against Torture of 1984; while the Convention—given its lack of a contextual element—may cover isolated incidents of torture, the organized character of white torture and the Convention’s enforcement limitations render the advantages of the Rome Statute more compelling, a point emphasized in comparative scholarship (11). This comparative assessment suggests that the Rome Statute is likely to play an increasingly prominent role in the future architecture of international justice.

Finally, a comparative review of the historical experience of the British “five techniques” and the evolving jurisprudence of the International Criminal Court indicates that contemporary international criminal law—by recognizing severe mental suffering as a material element of torture and removing restrictive conditions—has taken an important step toward identifying and confronting white torture, thereby strengthening the protection of human dignity and the advancement of human rights. However, the practical realization of these capacities requires the development of clear criteria, the acceptance of judicial presumptions, and enhanced international cooperation for the documentation and proof of this form of torture, because only through such complementary measures can international criminal justice be effectively realized in the field of white torture and victims obtain genuine access to justice.

The Role of the Elements of Crimes in Interpreting Torture under the Rome Statute

The Rome Statute, as the constitutive instrument of the International Criminal Court, provides general definitions and core components of international crimes. However, for more precise interpretation and effective implementation of those definitions, a complementary instrument entitled the “Elements of Crimes” was adopted. This document plays a central role in specifying the material and mental elements of each crime, including torture, and functions as an interpretative guide for judges and prosecutors in applying the Statute (2). Its practical role in the Court’s practice further accentuates its significance.

1. Legal Status and Function of the Elements of Crimes

Pursuant to Article 9 of the Rome Statute, the Elements of Crimes were drafted to assist the Court in the interpretation and application of Articles 6 to 8 (covering genocide, crimes against humanity, and war crimes). Although the Elements of Crimes do not possess the formal status of a treaty, they operate as an authoritative interpretative instrument for the Court and, in practice, constitute a primary reference for defining the precise components of each crime (12). The importance of this document lies in its capacity to address ambiguities and lacunae in the general wording of the Statute by providing more detailed elements and explanatory notes, thereby enhancing the coherence and effectiveness of the international criminal justice system. For that reason, it is frequently relied upon in judicial analysis.

2. Specification of the Elements of Torture under Articles 7 and 8 of the Rome Statute

Under Article 7 (crimes against humanity), the Elements of Crimes enumerate three core elements for torture: (1) the perpetrator inflicted severe physical or mental pain or suffering intentionally; (2) the victim was in the custody or under the control of the perpetrator; and (3) the conduct was committed as part of a widespread or systematic attack directed against a civilian population (14). In this context, the Elements of Crimes clarify that “pain or suffering” may be exclusively mental and that proof of physical injury is not required. They further explain that “custody or control” refers to the deprivation of freedom of action and does not necessarily require formal detention. A further salient point is the omission of the “specific purpose” requirement; unlike the Convention against Torture, proof of a particular motive (such as obtaining information or imposing punishment) is not necessary for the establishment of torture as a crime against humanity (11). The removal of this requirement broadens the scope of torture under Article 7 and enhances the possibility of prosecuting novel forms of torture, including white torture.

Under Article 8 (war crimes), the Elements of Crimes set out the following elements for torture: (1) the infliction of severe physical or mental pain or suffering; (2) the existence of a specific purpose (such as obtaining information, punishment, intimidation, or coercion); (3) the victim must be among “protected persons” under the Geneva

Conventions; and (4) the conduct must have been committed in the context of and associated with an armed conflict (14). In this framework, unlike Article 7, the specific-purpose requirement reappears and the category of victims is narrowed. These differences, arising from the interpretative function of the Elements of Crimes, directly affect the identification and prosecution of white torture and must be carefully accounted for in comparative analysis.

3. The Impact of the Elements of Crimes on Proof and Identification of White Torture

By explicitly recognizing that torture may be constituted solely through severe mental suffering, the Elements of Crimes facilitate the identification of manifestations of white torture (6). In particular, under Article 7, the removal of the specific-purpose requirement and the acceptance of psychological suffering as an independent element provide a favorable theoretical basis for prosecuting white torture. By contrast, under Article 8, the reinstatement of the specific-purpose requirement and the limitation of the protected-victim category make proof of white torture more difficult, because many forms of white torture are inflicted for purposes beyond those enumerated (such as identity destruction or personality breakdown) and victims may fall outside the definition of “protected persons.” These constraints may reduce the practical utility of Article 8 in addressing white torture and generate challenges for judicial authorities.

4. Practical Challenges Arising from Interpretative Divergences

These interpretative divergences may produce a form of “intra-instrument inconsistency.” On the one hand, Article 7, through a broader interpretation, enables the identification and prosecution of white torture even in peacetime and against any person under the perpetrator’s control. On the other hand, Article 8, through a more restrictive interpretation, narrows the scope of applicability. This may create difficulties in selecting prosecutorial strategies and may even contribute to inconsistent outcomes, as prosecutors and judges must determine in each case which interpretative framework should govern. Divergent approaches in practice may undermine coherence in judicial reasoning, a concern that has been repeatedly discussed in the legal literature (2).

5. Practical Challenges and Proposed Solutions

The practical challenges and proposed solutions relating to the identification and prosecution of white torture within the framework of the Rome Statute form a coherent conceptual and structured continuum that must be examined through an analytically integrated approach. Although the Rome Statute—particularly Article 7—offers a suitable theoretical basis for recognizing and prosecuting white torture, the operationalization of this capacity confronts serious and complex obstacles that largely derive from the inherent characteristics of white torture (5, 12). This reality amplifies the necessity of accurately identifying barriers and proposing feasible, practice-oriented responses.

The first, and perhaps most fundamental, challenge is the ambiguity surrounding the standard for assessing the “severity” of psychological suffering. Neither the Rome Statute nor even the Elements of Crimes provides an objective and clear threshold for determining “severity.” This ambiguity stems from the individualized and subjective nature of psychological suffering: different persons may react in markedly different ways to comparable conditions. Moreover, the psychological effects of white torture often manifest with delay, making it more difficult to establish a causal nexus between the torturer’s conduct and the resulting psychological harm. Consequently, the Prosecutor, in order to establish “severe mental suffering,” is often compelled to rely on specialized evidence and psychiatric assessments, which introduces additional complications (6, 25). The evidentiary problem of proving the intensity of psychological suffering thus has both theoretical and practical dimensions and requires careful legal craftsmanship.

The second challenge concerns the difficulty of documenting white torture. This form of torture is designed precisely to avoid leaving physical traces; accordingly, victims frequently lack observable bodily injuries. Although the Istanbul Protocol and certain international guidelines propose criteria for assessing psychological effects, their implementation in practice faces obstacles such as delayed evaluation, the need for highly qualified experts, and the difficulty of demonstrating a causal relationship between detention conditions and psychological injury (25, 26). This situation places a disproportionate evidentiary burden on victims and prosecutors and makes the proof of white torture far more difficult than the proof of physical torture. The problem is particularly pronounced in legal systems where medical and psychiatric documentation is treated as decisive evidentiary material.

The third obstacle consists of strategies of denial and justification by States. Many States conceal or rationalize manifestations of white torture under headings such as “necessary security measures” or “lawful interrogation methods.” This approach not only undermines transparency, but also restricts access to evidence and limits the feasibility of documentation. A prominent illustration can be found in United States policies following the attacks of 11 September 2001, where techniques such as sleep deprivation and sensory deprivation were presented as “enhanced interrogation techniques” and thereby framed as legitimate (4, 20). Such policies compound the difficulties of identification and prosecution and underscore the need for transparency and accountability, to the extent that victims in some cases may be unable to substantiate their experiences.

To address these challenges, several solutions may be proposed at multiple levels. At the level of the International Criminal Court, it is necessary to formulate clear and operational criteria for assessing the severity of psychological suffering. The Court could adopt an objective–customary approach, treating practices that typically generate severe suffering in ordinary persons as constituting psychological torture (5, 6). In addition, the acceptance of rebuttable judicial presumptions—such as a presumption of State responsibility where psychological injury arises in custody—may help recalibrate the burden of proof (27). It is also useful to emphasize the documentation of objective detention conditions rather than focusing exclusively on proving internal psychological injury; in this sense, precise recording of cell conditions, lighting, access to air, the feasibility of sleep and nutrition, and the degree of contact with the outside world may serve as indicia of white torture and can materially strengthen the Prosecutor’s evidentiary position.

At the international level, the development of an additional protocol to the Convention against Torture of 1984 with a specific focus on psychological torture and with objective indicators for its identification and documentation could partially remedy existing normative gaps (28). Further development and clarification of the Nelson Mandela Rules to explicitly prohibit sensory and sleep deprivation and to establish measurable indicators for solitary confinement periods and cumulative effects of combined techniques may also serve as complementary measures capable of improving international standards in this field (21). In addition, international institutions should provide specialized guidelines, training, and support to States and monitors so that documentation and reporting processes can be conducted effectively and coherently.

Ultimately, overcoming the evidentiary and documentation barriers associated with white torture requires a paradigmatic shift away from an exclusive focus on internal, individualized harm toward a focus on objective and environmental conditions, combined with the acceptance of judicial presumptions and typological criteria for assessing severity. Such an approach, while respecting fair trial guarantees, would meaningfully enhance the prospects for effective prosecution of perpetrators of white torture and would constitute an important step toward the realization of international criminal justice and the protection of human dignity. This shift in approach can

strengthen the protection of victims and contribute to preventing the recurrence of such crimes in the future, a core necessity for contemporary systems of criminal justice.

6. White Torture as a War Crime under the Rome Statute (Article 8)

Under the Rome Statute, Article 8 addresses torture as a war crime, and the status of white torture in this framework must be analyzed carefully through the prism of its structural and conceptual elements. It is essential to note at the outset that Article 8 recognizes torture as a war crime in both international and non-international armed conflicts. However, the establishment of this crime depends on specific contextual and constitutive elements that directly affect the feasibility of identifying and prosecuting white torture, an issue that has also been examined in the literature of international criminal law (2).

First, the contextual element of Article 8—namely, that the conduct must occur in the context of and be associated with an armed conflict—is of fundamental importance. This means that only acts of torture committed during or in connection with an armed conflict may fall under the heading of war crimes. This requirement significantly restricts the scope of Article 8, because many instances of white torture, particularly in detention facilities and prisons, occur in peacetime or in contexts outside armed conflict and therefore fall outside the provision’s reach (29). Nevertheless, where white torture is perpetrated in military detention facilities or in the course of armed conflict, prosecution as a war crime remains possible, a point underscored by international practice (30). This practical implication should not be overlooked.

A further significant element is the reintroduction of the “specific purpose” requirement in the Elements of Crimes for Article 8. Unlike Article 7 of the Rome Statute, which removes the specific-purpose requirement and requires only the intentional infliction of severe physical or mental suffering, the Elements of Crimes specify that torture under Article 8 must be committed for a specific purpose, such as obtaining information, punishment, or intimidation (14). This reinstatement narrows the scope of Article 8 relative to Article 7 and, in cases of white torture—where the aims may be less conventional or more diffuse, such as the destruction of personality or the disintegration of identity—may impede proof and prosecution. This issue has been repeatedly analyzed in psychological and legal scholarship, which emphasizes the significance of the divergence between the Article 7 and Article 8 approaches (6), because the nature of the purpose may be determinative for establishing the mental element in white torture cases.

In addition, Article 8 limits the category of victims to “protected persons” under the Geneva Conventions. This constraint, unlike Article 7 which extends protection to any person in custody or under control, narrows the group of potential victims and may exclude many victims of white torture who fall outside that definition, thereby reducing the availability of international criminal protection (31). In practice, this difference may mean that certain severe and widespread manifestations of white torture fall outside Article 8 and may be prosecutable only under Article 7, a reality that should inform criminal policy and strategic litigation.

From an evidentiary perspective, white torture generates serious challenges due to its invisible and psychological nature. Proving severe mental suffering without physical traces requires psychiatric evidence, victim testimony, and precise documentation of detention conditions. This increases the prosecutorial burden and, in practice, makes proof of white torture more difficult. Specialized scholarship and international instruments such as the Istanbul Protocol emphasize these difficulties (5, 25). International tribunal practice also commonly relies on expert testimony, documentation of objective detention conditions, and rebuttable presumptions to establish psychological torture, a practice that reinforces the need for training and capacity-building for judges and prosecutors.

Despite these limitations, Article 8 of the Rome Statute can, in theory, support the identification and prosecution of white torture in the context of armed conflict. Broad interpretations of torture by international tribunals—particularly the recognition of severe mental suffering as an independent material element—strengthen this possibility (28). For example, the ICTY in the *Ćelebići* case held that conditions of detention alone may constitute torture, and it did not treat the specific-purpose requirement as indispensable for establishing torture (22). In the *Kunarac* appeal, the ICTY also emphasized that torture may be established solely through the infliction of severe psychological suffering and does not require physical injury. These developments in international jurisprudence may influence the interpretative practice of the International Criminal Court and increase prospects for legal development in this area.

However, compared with Article 7 of the Rome Statute—which removes both the armed-conflict contextual element and the specific-purpose requirement and covers a broader range of victims—Article 8 provides a more restrictive framework for prosecuting white torture, a distinction of substantial practical significance. This difference should be taken into account in the Court’s prosecutorial strategies as well as in future legal reforms (2, 14).

Accordingly, although Article 8 of the Rome Statute can theoretically recognize white torture as a war crime, the practical realization of this potential faces serious conceptual and operational barriers. These barriers include the contextual limitation (the requirement of armed conflict), the reinstatement of the specific-purpose requirement, restrictions on the category of victims, and the difficulty of proving severe mental suffering. Therefore, while Article 8 may provide an enforcement tool in particular circumstances, Article 7—due to its broader scope and greater flexibility—offers a more suitable and effective framework for prosecuting white torture within international criminal law, and this should remain a central focus for scholars and policymakers in the field.

Ultimately, to achieve effective international criminal justice concerning white torture, it is necessary not only to invoke the theoretical capacities of the Rome Statute but also to pursue legal reforms, develop clear criteria for assessing the severity of psychological suffering, and strengthen international cooperation in documentation and victim support. Only through such an integrated approach can the available legal mechanisms be effectively mobilized to confront this concealed and destructive form of torture and to safeguard human dignity in the international sphere, where it occupies a foundational place in international criminal law (5, 28).

Conclusion

The present study was conducted with the aim of analyzing the capacities and challenges of the Rome Statute of the International Criminal Court in the identification and criminal prosecution of white torture, and it demonstrates that this legal instrument, from a theoretical standpoint, provides a suitable framework for addressing this phenomenon. The explicit reference in Article 7(2)(e) to “severe mental suffering” and the removal of the “specific purpose” requirement from the definition of torture significantly strengthen the possibility of recognizing and prosecuting white torture—which is predominantly based on psychological harm—within the structure of international criminal law (5, 12). This feature distinguishes the Rome Statute from the Convention against Torture of 1984 and expands its scope to encompass conduct aimed at the destruction of personality, the disintegration of identity, or the infliction of psychological suffering, even in the absence of manifest physical injury (6). Consequently, the Rome Statute plays an important role in enhancing protection for victims of white torture, thereby underscoring the significance of its normative potential.

A comparative analysis of Articles 7 and 8 of the Rome Statute further demonstrates that Article 7, due to the removal of the specific-purpose requirement and its broader category of protected victims, offers a more suitable framework for the prosecution of white torture than Article 8, which addresses war crimes. Whereas Article 8, through the reinstatement of the specific-purpose requirement and the restriction of victims to “protected persons,” narrows the scope of prosecution (14), Article 7, by focusing on a “widespread or systematic attack” directed against a civilian population, enables prosecution even in peacetime and within the context of organized policies. The jurisprudence of international courts, particularly in the *Ntaganda* case (10) and the *Čelebići* case (22), confirms this theoretical capacity by adopting an expansive interpretation of psychological suffering and detention conditions as constituting torture, offering valuable guidance for the Court and other international bodies.

Nevertheless, the present research shows that the practical realization of these capacities faces serious obstacles. Ambiguity in assessing the severity of psychological suffering, difficulties in documentation in the absence of physical traces, the heavy evidentiary burden placed on prosecutors and complainants, and State strategies of denial and justification constitute major structural barriers to the criminal prosecution of white torture (25, 26). These challenges, particularly in relation to proof and documentation, often deprive victims of white torture of effective access to justice and allow perpetrators to evade accountability, thereby undermining the realization of criminal justice in practice.

To overcome these barriers, the study proposes solutions at three levels. First, at the level of the International Criminal Court, the development of typological and customary criteria for assessing the severity of psychological suffering, the acceptance of rebuttable judicial presumptions, and a focus on documenting objective detention conditions can facilitate the proof of white torture (5, 20). Second, at the international level, the drafting of an additional protocol to the Convention against Torture with a particular emphasis on psychological torture and the further development of the Nelson Mandela Rules can contribute to raising the standards for identifying and combating this phenomenon (21, 28). Third, at the national level, the independent criminalization of white torture and the establishment of effective oversight mechanisms can help remedy existing gaps within domestic legal systems. Taken together, these measures present a more promising outlook for the realization of justice in addressing white torture.

Ultimately, the findings of this study confirm the principal hypothesis: the Rome Statute, by recognizing severe mental suffering and eliminating the specific-purpose requirement, possesses the theoretical capacity to identify and prosecute white torture, but the effective implementation of this capacity in practice requires intelligent policymaking, the establishment of clear standards, evidentiary realism, and broad international cooperation (1, 2). The struggle against white torture is not merely a legal necessity, but also a moral and humanitarian responsibility that serves the preservation of human dignity and the realization of international criminal justice. Only through a comprehensive and multidimensional approach can white torture be fully exposed, its perpetrators held accountable, and the international community brought closer to its human rights ideals.

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Authors' Contributions

All authors equally contributed to this study.

Declaration of Interest

The authors of this article declared no conflict of interest.

Ethical Considerations

All ethical principles were adhered in conducting and writing this article.

Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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