Contents

1 Contentious Issues Regarding What Constitutes Torture ............ 1
  1.1 The Torture of Children by Any Other Name is Still Torture .... 1
    1.1.1 Torture as an International Crime: Remaining Ambiguities in
          the Legal Concept .................................. 5
  1.2 ‘Child Abuse’ vs. ‘Child Torture’ as Legal Concepts Under
      International Law ....................................... 9
  1.3 More on the Indeterminacy in the Legal Concept of Torture
      as an International Crime ............................. 13
  1.4 Children as the Particularized Targets for Torture During
      Armed Conflict ........................................ 26
  1.5 The UN Designated Six Grave Crimes Against Children .......... 29
    1.5.1 The Six Grave Crimes Against Children and the
           Syrian Conflict .................................... 31
    1.5.2 The UN Designated Six Grave Crimes Against Children
           as Torture ........................................ 35
  References ............................................... 43
  Materials ............................................... 44
  Cases .................................................. 45

2 Selected ICC Cases Involving the Systematic Torture of Children
   Where Torture was Not Charged ................................ 47
  2.1 The Prosecutor v Joseph Kony, Vincent Otti, Okot Odhiambo,
       and Dominic Ongwen .................................. 47
  2.2 LRA Atrocities Perpetrated Against Children as Constituting
       Torture ............................................... 49
  2.3 The Backlash Against the Kony 2012 YouTube Video: Inconvenient
       Truths Regarding Barriers to Justice for Child Torture
       Victims under International Criminal Law ................ 61
  2.4 The Prosecutor v Thomas Lubanga Dyilo ......................... 70
    2.4.1 FPLC Child Soldiering: Torture as a War Crime ............ 72
    2.4.2 Sexual Violence Perpetrated Against the FPLC Child
           ‘Recruits’: Torture as a War Crime .................... 76
  2.5 Situation in the Republic of Cote D’Ivoire in the Case
       of the Prosecutor v Simone Gbagbo ........................ 79
2.6 The Situation in the Central African Republic in the Case of the Prosecutor v Jean-Pierre Bemba Gombo ................. 82
2.6.1 Bemba Gombo: Selected Excerpts from the Pre-trial Chamber II Confirmation Decision (15 June, 2009) .......... 82
2.6.2 Mass Rape as ‘Torture’ and an ‘Outrage on Personal Dignity’: The Cumulative Charging Issue .......... 87
References .................................................. 95
Literature ................................................... 95
Materials ................................................... 96
Cases ...................................................... 97

3 Selected ICC Cases in which Torture Charges Were Brought but the Special Targeting of Children for Torture Not Addressed .... 99
3.1 Situation in the Democratic Republic of Congo in the Case of the Prosecutor v Sylvester Mudacamura .................... 99
3.2 Commentary on the Prosecutor v Sylvester Mudacamura ......... 101
3.3 Situation in Darfur and the Prosecutor v Ahmad Muhammad Harun (“Ahmad Harun”) and Ali Muhammad Ali Abd-Al-Rahman (“Ali Kushayb”) .................................................. 102
References .................................................. 106
Literature ................................................... 106
Cases ...................................................... 106
Materials ................................................... 107

4 Lessons From the Inter-American Court of Human Rights: Addressing Child Torture ..................................... 109
4.1 Case of the Gómez-Paquiyauri Brothers v. Peru ................ 111
References .................................................. 125
Materials ................................................... 126
Cases ...................................................... 126

5 The Enforced Disappearance of Children as Torture ................. 127
5.1 Introduction ................................................................ 127
5.2 Additional IACtHR Cases Re the ‘Enforced Disappearance’ of Children .................................................. 130
5.2.1 Excerpts from Molina Theissen v Guatemala ............ 130
5.3 ‘Enforced Disappearance’ of Children as Torture Gone Unacknowledged by the ICC ......................... 134
5.4 A Case Example: ‘Enforced Disappearance’ in Darfur .......... 136
5.5 Some History on the Prosecution of ‘Enforced Disappearance’ Under International Criminal Law .................... 138
5.6 The Connection between the International Crimes of ‘Enforced Disappearance’, Torture and Murder ................... 140
5.7 The Continuous Nature of the Crime of ‘Enforced Disappearance’ of Children ........................................ 142
5.8 The IACtHR Serrano Cruz Sisters Case: Enforced Disappearance as a Continuous Crime .................................... 146
  5.8.1 Excerpts from the Dissenting Opinion of Judge Cancado Trinidade: IACtHR Judgement in Serrano Cruz Sisters Case .................................. 147

References .................................................. 153
Materials ................................................... 153
Cases ...................................................... 153

6 The Non-Materialization of ICC Charges of ‘Enforced Disappearance’ ............................................. 155
  6.1 On ‘Enforced Disappearance’ in Darfur: Re-Examining the View of Former ICC Prosecutor Mr. Moreno-Ocampo ........ 155
  6.1.1 Child Recruitment and Deployment .......................... 156
  6.1.2 Armed Groups: .................................... 156
  6.1.3 Armed Groups in Darfur .................................... 157
  6.1.4 Chadian-Backed Sudanese Armed Opposition Groups ... 157
  6.1.5 Lord’s Resistance Army (LRA): ................................... 157

  6.2 Situation in the Libyan Arab Jamahiriya: Prosecutor v Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi, and Abdullah Al-Senussi ...................................... 158

References .................................................. 159
Cases ...................................................... 159

7 ‘Murder’, ‘Wilful Killing’ or ‘Extra-Judicial Killings’ of Children as Conflict Strategy and a Form of Torture ...................... 161

  7.2 ‘Murder’ and ‘Wilful Killing’ as Psychological Torture: The ICC Case of Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui (Democratic Republic of Congo) ....................... 163

References .................................................. 170
Literature ................................................... 170
Materials ................................................... 170
Cases ...................................................... 170

8 The International Legal Responsibility to Child Victims of Systematic Torture During Armed Conflict .......................... 171
  8.1 Preliminary Comments ................................. 171

  8.2 Lessons Yet to be Learned Given the Failure of the ICC to Acknowledge the Systematic Widespread Torture of Children During Armed Conflict .............................................. 173

  8.2.1 Child Soldiering for Perpetrator Armed Forces as Torture ................................................................. 173
8.2.2 The Rape of Children by Perpetrator Armed Forces as Torture ........................................  179
8.2.3 Torture Under the Rome Statute and the Young Age of the Victims ................................. 185
8.2.4 Children’s Juridical Personality, Their Right to the Full Measure of International Criminal Justice and to Reparations for Torture Suffered During Armed Conflict . . . . 186
8.2.5 The Widespread and Systematic Targeting of Children for Torture as Intimidation of the Populace: A Cautionary Tale on the ‘International Responsibility to Protect’ the Vulnerable ................................................. 188

8.3 Speaking of Torture and the Complicity of the International Community ........................................... 190

8.4 UN Peacekeepers and the Torture of Children as an International Crime ........................................... 191
8.4.1 On the Issue of the Number of Victims and Gravity of the International Crime: UN Peacekeepers as Victims . . . . 191
8.4.2 The Prosecutor v Abdallah Banda Abaeker Nourain and Saleh Mohammed Jerba Jamus ................... 193
8.4.3 UN Peacekeepers as Perpetrators: The Torture and Murder of Shidane Abukar Arone by Canadian UN Peacekeepers as a Case Example ................................................. 194
8.4.4 Gender-Based International Crimes Perpetrated by UN Peacekeepers ......................................... 198
8.4.5 Prosecuting UN Peacekeepers at the ICC for Torture and Other Grave International Crimes Perpetrated Against Children ......................................................... 200

References .................................................. 211
Literature ................................................... 211
Materials ................................................... 212
Cases ...................................................... 213

9 Conclusion .................................................. 215
9.1 A Final Comment ........................................ 215

References .................................................. 223

Index ......................................................... 225
The Torture of Children During Armed Conflicts
The ICC’s Failure to Prosecute and the Negation of Children’s Human Dignity
Grover, S.C.
2014, XVIII, 228 p., Hardcover
ISBN: 978-3-642-40688-1