

DIGNITY

TRAINING COLLECTION III



COLLECTION OF MATERIAL ABOUT PROHIBITION AND PREVENTION OF TORTURE AND OTHER CRUEL, INHUMANE AND DEGRADING TREATMENT OR PUNISHMENT

III: Overview of thematic torture resolutions by the UN Human Rights Council; omnibus resolutions by the UN General Assembly, and thematic reports by the UN Special Rapporteur on Torture 1990 - 2020

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Overview of omnibus resolutions by the UN General Assembly; thematic torture resolutions by the UN Human Rights Council, and thematic reports by the UN Special Rapporteur on Torture

1990 - 2019

Introduction

The UN General Assembly adopts bi-annually a resolution on torture and other cruel, inhuman or degrading treatment or punishment.¹ The UN Human Rights Council adopts a thematic resolution on torture every second year and has done so since 2013. These resolutions are usually adopted by consensus.

DIGNITY supports the adoption of these resolutions and provides technical input to the Danish delegations to the UN in New York and Geneva.

The UN Special Rapporteur on Torture annually adopts a thematic report, latest regarding the relevance of the prohibition of torture and other ill-treatment to the context of domestic violence.

UN General Assembly Omnibus-Resolutions on torture:²

Date:	Titel:	Resolution nr:	Link:
18 December 2019	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/74/143	https://undocs.org/en/A/RES/74/143
19 December 2017	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/72/163	https://undocs.org/en/A/RES/72/163
17 December 2015	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/70/146	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/70/146
18 December 2013	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/68/156	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/156
19 December 2011	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/66/150	http://www.un.org/en/ga/search/view_doc.asp?symbol=%20A/RES/66/150

¹ Prior to 2012, the resolution was adopted annually.

² The General Assembly also adopts other torture-related resolutions, by way of example the adoption of the Istanbul Protocol on 9 August 1999 and the adoption of important Rules on the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders, the so-called Bangkok Rules on 21 December 2010.

21 December 2010	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/65/205	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/65/205
18 December 2009	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/64/153	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/64/153
18 December 2008	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/63/166	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/63/166
18 December 2007	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/62/148	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/62/148
19 December 2006	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/61/153	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/61/153&Lang=E
16 December 2005	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/60/148	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/60/148
20 December 2004	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/59/182	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/59/182
22 December 2003	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/58/164	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/58/164
18 December 2002	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/57/200	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/57/200
19 December 2001	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/56/144	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/56/144
4 December 2000	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/55/89	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/55/89
17 December 1999	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/54/156	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/54/156

9 December 1998	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/53/139	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/53/139
12 December 1996	Torture and other cruel, inhuman or degrading treatment or punishment	A/RES/51/86	http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/51/86

Thematic Human Rights Council resolutions on torture:

Date:	Titel:	Resolution nr:	Link:
23 March 2018	The negative impact of corruption on the right to be free from torture and other cruel, inhuman or degrading treatment or punishment	A/HRC/37/19	https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/37/19
24 March 2016	Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pre-trial detention	A/HRC/31/31	https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/31/31
15 April 2014	Torture and other cruel, inhuman or degrading treatment or punishment: mandate of the Special Rapporteur	A/HRC/RES/25/13	http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/25/13
22 March 2013	Torture and other cruel, inhuman or degrading treatment or punishment: rehabilitation of torture victims	A/HRC/22/21	http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/22/21
26 March 2010	Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of judges, prosecutors and lawyers	A/HRC/13/19	http://ap.ohchr.org/documents/sdp_page_e.aspx?b=10&se=104&t=11
26 March 2009	Torture and other cruel, inhuman or degrading treatment or punishment: the role and responsibility of medical and other health personnel	A/HRC/RES/10/24	http://ap.ohchr.org/documents/alldocs.aspx?doc_id=16299

Thematic reports by Special Rapporteur on Torture:

Date:	Titel:	Resolution nr:	Link:
20 March 2020	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Conceptual, definitional and interpretative questions arising in relation to the notion of “psychological torture” under human rights law.	A/43/49	https://undocs.org/en/A/HRC/43/49
12 July 2019	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Relevance of the prohibition of torture and other ill-treatment to the context of domestic violence	A/74/148	https://undocs.org/A/74/148
16 January 2019	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: the relationship between corruption and torture or ill-treatment	A/HRC/40/59	https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/007/75/PDF/G1900775.pdf?OpenElement
20 July 2017	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: on extra-custodial use of force by State agents	A/72/178	https://documents-dds-ny.un.org/doc/UNDOC/GEN/N17/223/15/PDF/N1722315.pdf?OpenElement
5 August 2016	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: on legal, ethical, scientific and practical arguments against the use of torture, other ill-treatments and coercive methods during interviews of suspects, victims, witnesses and other persons in various investigative context.	A/71/298	http://ap.ohchr.org/documents/dpage_e.aspx?m=103

5 January 2016	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: The applicability of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in international law to the unique experiences of women, girls, and lesbian, gay, bisexual, transgender and intersex person	A/HRC/31/57	https://documentsddsny.un.org/doc/UNDOC/GEN/G16/000/97/PDF/G1600097.pdf?OpenElement
5 March 2015	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Children in custody	A/HRC/28/68	https://documentsddsny.un.org/doc/UNDOC/GEN/G15/043/37/PDF/G1504337.pdf?OpenElement
10 April 2014	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Use of information tainted by torture and the exclusionary rule	A/HRC/25/60	https://documentsddsny.un.org/doc/UNDOC/GEN/G14/134/68/PDF/G1413468.pdf?OpenElement
7 October 2013	Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: How to use SMR	A/68/295	http://www.unodc.org/documents/justiceand-prison-reform/SPECIAL_RAPPORTEUR_EN.pdf
1 February 2013	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Focusing on certain forms of abuses in health-care settings	A/HRC/22/53	https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/105/77/PDF/G1310577.pdf?OpenElement
9 August 2012	Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: On Death penalty	A/67/279	https://documentsddsny.un.org/doc/UNDOC/GEN/N12/458/12/PDF/N1245812.pdf?OpenElement
5 August 2011	Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment: On solitary confinement	A/66/268	https://documentsddsny.un.org/doc/UNDOC/GEN/N11/445/70/PDF/N1144570.pdf?OpenElement

3 February 2011	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Victim-centered approach	A/HRC/16/52	https://documentsddsny.un.org/doc/UNDOC/GEN/G11/105/87/PDF/G1110587.pdf?OpenElement
10 August 2010	Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Impunity as a root cause	A/65/273	http://www2.ohchr.org/english/issues/torture/rapporteur/docs/A.65.273.pdf
5 February 2010	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention	A/HRC/13/39/Add.5	https://documentsddsny.un.org/doc/UNDOC/GEN/G10/106/94/PDF/G1010694.pdf?OpenElement
3 August 2009	Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: Conditions of detention and children in detention	A/64/215	https://documentsddsny.un.org/doc/UNDOC/GEN/N09/437/92/PDF/N0943792.pdf?OpenElement



Seventy-fourth session

Agenda item 70 (a)

**Promotion and protection of human rights: implementation
of human rights instruments****Resolution adopted by the General Assembly
on 18 December 2019***[on the report of the Third Committee (A/74/399/Add.1)]***74/143. Torture and other cruel, inhuman or degrading treatment
or punishment***The General Assembly,**Reaffirming* its previous resolutions on torture and other cruel, inhuman or degrading treatment or punishment,*Reaffirming also* that no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment,*Recalling* that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law, including international human rights law and international humanitarian law, which must be respected and protected under all circumstances, including in times of international and non-international armed conflict or disturbance or any other public emergency, that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments and that legal and procedural safeguards against such acts must not be subject to measures that would circumvent this right,*Recalling also* that the prohibition of torture is a peremptory norm of international law without territorial limitation and that international, regional and domestic courts have recognized the prohibition of cruel, inhuman or degrading treatment or punishment as customary international law,*Recalling further* the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹ and the obligation of States to abide strictly by the definition of torture contained in article 1, without prejudice to any international instrument or national

¹ United Nations, *Treaty Series*, vol. 1465, No. 24841.



legislation which contains or may contain provisions of wider application, and emphasizing the importance of properly interpreting and implementing the obligations of States with respect to torture and other cruel, inhuman or degrading treatment or punishment,

Recognizing that States must protect the rights of those facing criminal sentences, including the death penalty and life imprisonment without the possibility of parole, and of other affected persons in accordance with their international obligations,

Noting that, under the Geneva Conventions of 1949,² torture or inhuman treatment are a grave breach and that, under the statute of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, the statute of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 and the Rome Statute of the International Criminal Court,³ acts of torture can constitute crimes against humanity and, when committed in a situation of armed conflict, constitute war crimes,

Recognizing the importance of the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance,⁴ which makes a significant contribution to the prevention and prohibition of torture, including by prohibiting secret places of detention and by ensuring legal and procedural safeguards for persons deprived of their liberty, and encouraging all States that have not done so to consider signing, ratifying or acceding to the Convention,

Recognizing also that the prevalence of corruption, including in law enforcement and justice systems, can have a negative impact on the fight against torture and other cruel, inhuman or degrading treatment or punishment, including by eroding fundamental safeguards and preventing victims of torture and other cruel, inhuman or degrading treatment or punishment from effectively seeking justice, redress and compensation through the justice system,

Recognizing further that the effective implementation of the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment promotes, inter alia, peaceful and inclusive societies for sustainable development, contributes to access to justice for all, builds effective, accountable and inclusive institutions at all levels and contributes to achieving the Sustainable Development Goals,⁵

Commending the persistent efforts of civil society organizations, including non-governmental organizations, as well as national human rights institutions and national preventive mechanisms, and the considerable network of centres for the rehabilitation of victims of torture, to prevent and combat torture and to alleviate the suffering of victims of torture,

Deeply concerned about all acts which can amount to torture and other cruel, inhuman or degrading treatment or punishment committed against persons exercising their rights of peaceful assembly and freedom of expression in all regions of the world,

² Ibid., vol. 75, Nos. 970–973.

³ Ibid., vol. 2187, No. 38544.

⁴ Ibid., vol. 2716, No. 48088.

⁵ See resolution [70/1](#).

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. *Also condemns* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security and counter-terrorism or through judicial decisions, and urges States to ensure the accountability of those responsible for all such acts;

3. *Stresses* that States must neither punish personnel for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment nor allow pleas of *respondeat superior* as a criminal defence in cases in which such orders were obeyed;

4. *Emphasizes* that acts of torture or inhuman treatment are grave breaches of the Geneva Conventions of 1949,² that acts of torture and cruel treatment in armed conflict are serious violations of international humanitarian law and in this regard constitute war crimes, that acts of torture can constitute crimes against humanity and that the perpetrators of all acts of torture must be prosecuted and punished, and in this regard notes the efforts of the International Criminal Court to end impunity by seeking to ensure accountability and punishment of perpetrators of such acts, in accordance with the Rome Statute,³ bearing in mind its principle of complementarity, and encourages States that have not yet done so to consider ratifying or acceding to the Rome Statute;

5. *Also emphasizes* that States must take persistent, determined and effective measures to prevent and combat all acts of torture and other cruel, inhuman or degrading treatment or punishment, stresses that all acts of torture must be made offences under national criminal law punishable by appropriate penalties that take into account their grave nature, and calls upon States to prohibit under national law acts constituting cruel, inhuman or degrading treatment or punishment;

6. *Stresses* that States must ensure that no statement that is established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, urges States to extend that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, and recognizes that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

7. *Urges* States not to expel, return (“refouler”), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, stresses the importance of effective legal and procedural safeguards in this regard, and recognizes that diplomatic assurances, where given, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement;

8. *Recalls* that, for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights;

9. *Urges* States to ensure that border control operations and reception centres fully comply with international human rights obligations and commitments, including

the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

10. *Calls upon* all States to adopt and implement effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, in particular in the context of the use of force by law enforcement officials and in places of detention and other places where persons are deprived of their liberty, including legal and procedural safeguards, as well as to ensure that the competent judicial or disciplinary authorities and, where relevant, the prosecution can effectively ensure compliance with such safeguards;

11. *Recalls* its resolution 43/173 of 9 December 1988 on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and in this context stresses that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person, and permitting prompt and regular medical care and legal counsel throughout all stages of detention, as well as visits by family members and independent monitoring mechanisms, are effective measures for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

12. *Stresses* the obligation of States to ensure that anyone who is arrested is informed at the time of arrest of the reasons for the arrest and is promptly informed of any charges against him or her, in accessible forms of communication, including in a language that he or she understands, and is provided with information about, and an explanation of, his or her rights;

13. *Calls upon* States to include education and information regarding the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment in the training of law enforcement personnel and other personnel authorized to resort to force or who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, which may include training on the use of force, all available modern scientific methods for the investigation of crimes and the critical importance of reporting instances of torture or other cruel, inhuman or degrading treatment or punishment to superior authorities;

14. *Emphasizes* that States shall keep under systematic review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under their jurisdiction, and stresses the importance of the development of domestic guidelines on the conduct of interrogations, with a view to preventing any cases of torture and other cruel, inhuman or degrading treatment or punishment;

15. *Welcomes* the collaboration between practitioners, experts and other relevant stakeholders on the elaboration of a set of universal standards for non-coercive interviewing methods and procedural safeguards aimed at operationalizing the presumption of innocence, improving effective policing and ensuring that no person is subjected to torture or other cruel, inhuman or degrading treatment or punishment during questioning, and encourages the continued collaboration between practitioners, experts and other relevant stakeholders towards this goal;

16. *Encourages* all States to take appropriate effective legislative, administrative, judicial and other measures to apply the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules);⁶

⁶ Resolution 70/175, annex.

17. *Reminds* all States that prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person and to ensure that prolonged incommunicado detention and secret places of detention and interrogation are abolished;

18. *Emphasizes* that conditions of detention must respect the dignity and human rights of persons deprived of their liberty, highlights the importance of reflecting on this in efforts to promote respect for and protection of the rights of persons deprived of their liberty, calls upon States to address and prevent detention conditions amounting to torture or other cruel, inhuman or degrading treatment or punishment, notes in this regard concerns about solitary confinement, and encourages States to take effective measures to address overcrowding in detention facilities, which may have an impact on the dignity and human rights of persons deprived of their liberty;

19. *Welcomes* the establishment of national preventive mechanisms to prevent torture and other cruel, inhuman or degrading treatment or punishment, urges States to consider establishing, appointing, maintaining or enhancing independent and effective mechanisms that have experts with the required capabilities and professional knowledge to undertake monitoring visits to places of detention, inter alia, with a view to preventing acts of torture or other cruel, inhuman or degrading treatment or punishment, and calls upon States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁷ to fulfil their obligation to designate or establish national preventive mechanisms at the latest one year after the entry into force of the Protocol or of its ratification or accession, that are truly independent, composed of experts with the required capabilities and professional knowledge, properly resourced and effective;

20. *Calls upon* all States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export, import and use of equipment that has no practical use other than for the purpose of torture or other cruel, inhuman or degrading treatment or punishment;

21. *Urges* States, as an important element in preventing and combating torture and other cruel, inhuman or degrading treatment or punishment, to ensure that no authority or official orders, applies, permits or tolerates any sanction, reprisal, intimidation or other prejudice against any person, group or association, including persons deprived of their liberty, for contacting, seeking to contact or having been in contact with any national or international monitoring or preventive body active in the prevention and combating of torture and other cruel, inhuman or degrading treatment or punishment;

22. *Also urges* States to ensure accountability for any act of sanction, reprisal, intimidation or other form of unlawful prejudicial conduct against any person, group or association, including persons deprived of their liberty, for cooperating, seeking to cooperate or having cooperated with any national or international monitoring or preventive body active in the prevention and combating of torture and other cruel, inhuman or degrading treatment or punishment, by ensuring impartial, prompt, independent and thorough investigations of any alleged act of sanction, reprisal, intimidation or other form of unlawful prejudicial conduct; to bring the perpetrators to justice; to provide access to effective remedies for victims, in accordance with their international human rights obligations and commitments; and to prevent any recurrence;

⁷ United Nations, *Treaty Series*, vol. 2375, No. 24841.

23. *Calls upon* States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹ to fulfil their obligation to submit for prosecution or extradite those alleged to have committed acts of torture, regardless of where such acts were committed, if the alleged offender is present in any territory under their jurisdiction, and encourages other States also to do so, bearing in mind the need to fight impunity;

24. *Encourages* States to consider establishing or maintaining appropriate national processes to record allegations of torture and other cruel, inhuman or degrading treatment or punishment and to ensure that such information is accessible in accordance with applicable law;

25. *Stresses* that an independent, competent domestic authority must promptly, effectively and impartially investigate all allegations of torture or other cruel, inhuman or degrading treatment or punishment, as well as wherever there is reasonable ground to believe that such an act has been committed, and that those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate such acts must be held responsible, brought to justice and punished in a manner commensurate with the severity of the offence, including the officials in charge of any place of detention or other place where persons are deprived of their liberty where the prohibited act is found to have been committed;

26. *Recalls*, in this respect, the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)⁸ as a valuable tool in efforts to prevent and combat torture and the updated set of principles for the protection and promotion of human rights through action to combat impunity;⁹

27. *Emphasizes* that it is important for law enforcement officials to be able to play their role in safeguarding the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, and for States to ensure the proper functioning of the criminal justice system, in particular by taking effective measures to combat corruption, establish proper legal aid programmes and provide for the adequate selection, training and remuneration of law enforcement officials;

28. *Encourages* all States to ensure that persons charged with torture or other cruel, inhuman or degrading treatment or punishment have no involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty while such charges are pending and, if such persons are convicted, after the conviction;

29. *Calls upon* all States to adopt a victim-oriented approach¹⁰ in the fight against torture and other cruel, inhuman or degrading treatment or punishment, paying special attention to the views and needs of victims in policy development and other activities relating to rehabilitation, prevention and accountability for torture;

30. *Also calls upon* all States to adopt a gender-responsive approach in the fight against torture and other cruel, inhuman or degrading treatment or punishment, including by taking into consideration the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules),¹¹ and to pay special attention to sexual and gender-based violence;

31. *Calls upon* States to ensure that the rights of persons who are marginalized and most vulnerable, including persons with disabilities, bearing in mind the

⁸ Resolution 55/89, annex.

⁹ E/CN.4/2005/102/Add.1.

¹⁰ See A/HRC/16/52.

¹¹ Resolution 65/229, annex.

Convention on the Rights of Persons with Disabilities,¹² are fully integrated into torture prevention and protection, and welcomes the efforts of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment in this regard;

32. *Stresses* that national legal systems must ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment have effective access to justice and obtain redress, and that the complainants and witnesses are protected against all ill-treatment or intimidation as a consequence of making a complaint or giving evidence;

33. *Calls upon* States to provide redress for victims of torture or other cruel, inhuman or degrading treatment or punishment, encompassing effective remedy and adequate, effective and prompt reparation, which should include restitution, fair and adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition, taking into full account the specific needs of the victim;

34. *Urges* States to ensure that appropriate rehabilitation services are promptly available to all victims without discrimination of any kind and without limitation in time, until the fullest rehabilitation possible has been achieved, and are provided either directly by the public health system or through the funding of private rehabilitation facilities, including those administered by civil society organizations, and to consider making rehabilitation services available to the immediate families or dependants of the victims and to persons who have suffered harm while intervening to assist victims in distress or to prevent victimization;

35. *Also urges* States to establish, maintain, facilitate or support rehabilitation centres or facilities where victims can receive such treatment and where effective measures for ensuring the safety of their staff and patients are taken;

36. *Urges* all States that have not yet done so to become parties to the Convention against Torture and the Optional Protocol thereto as a matter of priority;

37. *Urges* all States parties to the Convention that have not yet done so to make the declarations provided for in articles 21 and 22 of the Convention concerning inter-State and individual communications, to consider the possibility of withdrawing their reservations to article 20, to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18, with a view to enhancing the effectiveness of the Committee against Torture as soon as possible, and to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted in time, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning persons who are marginalized and most vulnerable, including children and juveniles and persons with disabilities, when submitting reports to the Committee;

38. *Welcomes* the work and the reports of the Committee and of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, recommends that their reports continue to include information on the follow-up by States parties to their recommendations, and supports the Committee and the Subcommittee in their efforts to further improve the effectiveness of their working methods;

39. *Emphasizes* the importance of the Committee and the Subcommittee having due regard to the principle of non-discrimination, paying particular attention to the rights of those who are marginalized, most vulnerable or in vulnerable

¹² United Nations, *Treaty Series*, vol. 2515, No. 44910.

situations, including through a victim-oriented and gender-responsive approach in the fight against torture and other cruel, inhuman or degrading treatment or punishment;

40. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution [48/141](#) of 20 December 1993, and other relevant United Nations entities, in accordance with their mandates and existing resources, to continue to provide, at the request of States, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee, for the implementation of recommendations of the Committee, and for the establishment and operation of national preventive mechanisms, as well as technical assistance, including for the development, production and distribution of teaching materials for this purpose, and further calls upon the United Nations High Commissioner for Human Rights to continue to provide the support necessary to enable the Subcommittee to provide advice and assistance to States parties to the Optional Protocol;

41. *Emphasizes* the importance of States ensuring proper follow-up to the recommendations and conclusions of the relevant treaty bodies and mechanisms, including the Committee, the Subcommittee, national preventive mechanisms and the Special Rapporteur, while recognizing the important role of the universal periodic review, national human rights institutions and other relevant national or regional bodies in preventing torture and other cruel, inhuman or degrading treatment or punishment;

42. *Takes note with appreciation* of the interim report of the Special Rapporteur addressing the achievements made towards eradicating torture and other ill-treatment and reflecting on the primary challenges facing the universal implementation of the Convention¹³ and of his report contained in document [A/74/148](#), encourages him to continue to include, in his recommendations, proposals on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations, requests him to continue to consider including in his reports information on the follow-up by States to his recommendations, visits and communications, including progress made and problems encountered, and on other official contacts, and further encourages future collaboration between practitioners, experts and other relevant stakeholders towards these goals;

43. *Calls upon* all States to cooperate with and assist the Special Rapporteur in the performance of his tasks, to supply all necessary information requested by him, to fully and expeditiously respond to and follow up on his urgent appeals, to give serious consideration to responding favourably to requests by him to visit their countries and to enter into a constructive dialogue with him on requested visits to their countries as well as with respect to the follow-up to his recommendations;

44. *Stresses* the need for the continued regular exchange of views among the Committee, the Subcommittee, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuit of cooperation with relevant United Nations programmes, notably the United Nations crime prevention and criminal justice programme, with regional organizations and mechanisms, as appropriate, and with civil society organizations, including non-governmental organizations, with a view to enhancing further their effectiveness and cooperation on issues relating to the prevention and eradication of torture by, inter alia, improving coordination;

¹³ [A/73/207](#).

45. *Requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in preventing and combating torture and assisting victims of torture or other cruel, inhuman or degrading treatment or punishment, including, in particular, the Committee, the Subcommittee and the Special Rapporteur, commensurate with the strong support expressed by Member States for preventing and combating torture and assisting victims of torture, in order to enable them to discharge their mandates in a comprehensive, sustained and effective manner, and taking fully into account the specific nature of their mandates;

46. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, appeals to all States and organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions, and welcomes the establishment of and encourages contributions to the Special Fund established by the Optional Protocol to support the implementation of the recommendations made by the Subcommittee and of educational programmes by the national preventive mechanisms;

47. *Requests* the Secretary-General to continue to transmit to all States the appeals of the General Assembly for contributions to the Funds, to include the Funds, on an annual basis, among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities, and to submit to the Human Rights Council, and to the General Assembly at its seventy-fifth, seventy-sixth and seventy-seventh sessions, a report on the operations of the Funds, and encourages the Chair of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture to continuously raise awareness among States and relevant stakeholders about the overall trends and developments in its operations;

48. *Welcomes and acknowledges* the work of the Convention against Torture Initiative, launched in March 2014 on the thirtieth anniversary of the adoption of the Convention, to achieve the universal ratification and improved implementation of the Convention by 2024, as well as related regional initiatives on the prevention and eradication of torture;

49. *Calls upon* all States, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and civil society organizations, including non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

50. *Decides* to consider at its seventy-fifth, seventy-sixth and seventy-seventh sessions the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture and the Special Fund established by the Optional Protocol, the report of the Committee, the report of the Subcommittee and the interim report of the Special Rapporteur;

51. *Also decides* to give its full consideration to the subject matter at its seventy-seventh session.

*50th plenary meeting
18 December 2019*



Human Rights Council**Thirty-seventh session**

26 February–23 March 2018

Agenda item 3

**Resolution adopted by the Human Rights Council
on 23 March 2018****37/19. The negative impact of corruption on the right to be free from torture
and other cruel, inhuman or degrading treatment or punishment**

The Human Rights Council,

Recalling all resolutions on torture and other cruel, inhuman or degrading treatment or punishment adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council,

Recalling also all relevant resolutions of the Commission on Human Rights and the Human Rights Council on the negative impact of corruption on human rights,

Reaffirming that no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment,

Acknowledging that good governance, transparency, accountability and the rule of law play a central role both in the promotion and protection of human rights, including to ensure the absolute prohibition against torture and other cruel, inhuman or degrading treatment or punishment, and in preventing and combating corruption at all levels,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

Recognizing that the international legal frameworks for protecting human rights and fighting corruption are complementary and mutually reinforcing,

Recalling the correlation between the levels of corruption within a State and the prevalence of torture and other cruel, inhuman or degrading treatment or punishment recognized in the seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹

Recognizing that corruption has a disproportionate impact on persons in vulnerable situations and persons belonging to marginalized groups and may have an adverse impact on their access to justice, redress and compensation, including as victims of torture and other cruel, inhuman or degrading treatment or punishment, which may increase their risk

¹ CAT/C/52/2, para. 72.



of being subjected to torture and other cruel, inhuman or degrading treatment or punishment,

1. *Urges* all States that have not become a party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to do so, and to give early consideration to signing and ratifying the Optional Protocol thereto as a matter of priority;

2. *Also urges* all States that have not yet done so to consider ratifying the United Nations Convention against Corruption, and calls upon States parties to the Convention to effectively implement it;

3. *Stresses* that all acts of torture must be made offences under domestic criminal law punishable by appropriate penalties that take into account their grave nature, and calls upon States to prohibit under domestic law acts constituting cruel, inhuman or degrading treatment or punishment;

4. *Calls upon* States to adopt such legislative and other measures as may be necessary to establish acts of corruption as criminal offences, as required in the United Nations Convention against Corruption and in other relevant regional anti-corruption treaties to which they are a party;

5. *Stresses* that States must take effective legislative, administrative, judicial or other measures to prevent public officials, including law enforcement officials or other persons acting in an official capacity, from inflicting, instigating or consenting or acquiescing to any acts of torture or other cruel, inhuman or degrading treatment or punishment;

6. *Also stresses* that public officials should not commit any act of corruption, and that they should rigorously oppose and combat all such acts;

7. *Recognizes* that the prevalence of corruption, including in law enforcement and justice systems, can have a negative impact on the fight against torture and other cruel, inhuman or degrading treatment or punishment, including by eroding fundamental safeguards and preventing victims of torture and other cruel, inhuman or degrading treatment or punishment from effectively seeking justice, redress and compensation through the justice system;

8. *Recognizes with concern* that the threat or act of torture and other cruel, inhuman or degrading treatment or punishment may be used as a means of perpetrating acts of corruption;

9. *Recognizes* that measures to combat torture and other cruel, inhuman or degrading treatment or punishment should give due attention to the detrimental effects of corruption, and that efforts to prevent and combat corruption and efforts to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment can be mutually reinforcing;

10. *Urges* States to adopt, implement and comply fully with legal and procedural safeguards against torture and other cruel, inhuman or degrading treatment or punishment, and ensure that these safeguards are not compromised by any form or practice of corruption, recognizing that such safeguards can also be a valuable protection against corrupt practices;

11. *Underlines* that one key aspect of prevention measures against corruption is to address the needs of those in vulnerable situations and persons belonging to marginalized groups, who may be the first persons negatively affected by corruption and may consequently be at greater risk of being subjected to torture and other cruel, inhuman or degrading treatment or punishment;

12. *Invites* bodies working on the eradication and prevention of torture and other cruel, inhuman or degrading treatment or punishment to cooperate with national anti-corruption authorities and national human rights institutions, where they exist, in addressing how corruption negatively affects the right to be free from torture and other cruel, inhuman or degrading treatment or punishment, including through the exchange of relevant information;

13. *Emphasizes* the essential role of law enforcement officials, judges, prosecutors and lawyers in safeguarding the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, and that States should ensure the effective administration of justice, including by taking effective measures to combat corruption in the administration of justice, establishing proper legal aid programmes and having law enforcement officials, judges, prosecutors and lawyers adequately and in sufficient numbers selected, trained and remunerated;

14. *Calls upon* States, in the training of law enforcement personnel, judges, prosecutors and other relevant public officials, to include education and information regarding the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment and to enhance their awareness of how the risks of corruption in the performance of their functions may increase the risk of torture and other cruel, inhuman or degrading treatment or punishment;

15. *Stresses* that corruption in any area of the justice system has a negative impact on its independence, impartiality and effectiveness, including its mechanisms that investigate and prosecute acts of torture and other cruel, inhuman or degrading treatment or punishment and provide access to justice, redress and compensation for victims of such acts;

16. *Emphasizes* that independent oversight and complaints mechanisms and an independent, impartial and effective justice system contribute to accountability, which is essential to the prevention of corruption and of torture and other cruel, inhuman or degrading treatment or punishment, including if facilitated or practiced due to or as a result of corruption;

17. *Also emphasizes* that States are obligated to ensure that any person who alleges to have been subjected to torture or other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction has the right to complain to the competent authorities, and that steps are taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his or her complaint or any evidence given;

18. *Calls upon* States to ensure accountability for acts of torture and other cruel, inhuman or degrading treatment or punishment, and in this regard stresses that preventing and combating corruption are important in ensuring the ability of the competent national authorities to investigate promptly, effectively, independently and impartially all allegations of such acts;

19. *Takes note with appreciation* of the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment;²

20. *Invites* the Special Rapporteur and other relevant special procedures, within their respective mandates, to take the present resolution into account in their future work.

*54th meeting
23 March 2018*

[Adopted without a vote.]

² A/HRC/37/50.



Human Rights Council

Thirty-first session

Agenda item 3

Resolution adopted by the Human Rights Council on 24 March 2016**31/31. Torture and other cruel, inhuman or degrading treatment or punishment: safeguards to prevent torture during police custody and pretrial detention***The Human Rights Council,**Recalling* all resolutions on torture and other cruel, inhuman or degrading treatment or punishment adopted by the General Assembly, the Commission on Human Rights and the Human Rights Council,*Recognizing* that law enforcement officials play a vital role in the protection of the right to life, liberty and security, as enshrined in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,*Recognizing also* the role of law enforcement officials in serving the community and protecting all persons against acts of torture and other cruel, inhuman or degrading treatment or punishment, consistent with the important role of their profession, and that, in the performance of their duty, law enforcement officials are obligated to respect and protect the human rights of all persons,*Recalling* the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)¹ and the adoption of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules),²*Recalling also* that accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication,*Recalling further* article 11 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, according to which each State party shall keep under systematic review interrogation rules, instructions, methods and practices, as well as arrangements for the custody and treatment of persons subjected to any form of

¹ General Assembly resolution 65/229, annex.² General Assembly resolution 70/175, annex.

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arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture,

Mindful of existing principles, guidelines and standards relevant to interrogation, including the United Nations Code of Conduct for Law Enforcement Officials and the United Nations Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment, and also mindful of the Luanda Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa, adopted by the African Commission on Human and Peoples' Rights, the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, adopted by the Inter-American Commission on Human Rights, and the revised standards for law enforcement agencies, issued by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment,

1. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat all acts of torture and other cruel, inhuman or degrading treatment or punishment, stresses that all acts of torture must be made offences under domestic criminal law punishable by appropriate penalties that take into account their grave nature, and calls upon States to prohibit under domestic law acts constituting cruel, inhuman or degrading treatment or punishment;

2. *Urges* all States that have not yet become a party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to do so, and to give early consideration to signing and ratifying the Optional Protocol thereto as a matter of priority;

3. *Welcomes* the Convention against Torture Initiative, launched in March 2014 on the thirtieth anniversary of the adoption of the Convention, to achieve the universal ratification and improved implementation of the Convention by 2024, and related regional initiatives on the prevention and eradication of torture;

4. *Urges* States to adopt, implement and comply fully with legal and procedural safeguards against torture and other cruel, inhuman or degrading treatment or punishment, and to ensure that the judiciary, and where relevant the prosecution, can effectively ensure compliance with such safeguards;

5. *Stresses* that effective legal and procedural safeguards for the prevention of torture and other cruel, inhuman or degrading treatment or punishment include ensuring that any individual arrested or detained on a criminal charge is brought promptly before a judge or other independent judicial officer, and permitting prompt and regular medical care and legal counsel at any stage of detention and visits by family members;

6. *Also stresses* the obligation of States to ensure that anyone who is arrested is informed at the time of arrest of the reasons for the arrest, and is promptly informed of any charges against him or her in accessible forms of communication, including in a language that he or she understands, and be provided with information about and an explanation of his or her rights;

7. *Calls upon* States in the context of criminal proceedings to ensure access to lawyers from the outset of custody and during all interrogations and judicial proceedings, and timely access of lawyers to appropriate information to enable them to provide effective legal assistance to their clients;

8. *Encourages* States to ensure that a proper and consented medical examination by a medical practitioner is available to persons in police custody and pretrial detention as promptly as possible after their admission to the place of detention, and to ensure that the results of every examination and relevant statements by the detainee and the medical

practitioner's conclusions are duly recorded and made available to the detainee in accordance with relevant rules of domestic law;

9. *Also encourages* States to ensure the compilation and maintenance of up-to-date official registers and/or records of persons in police custody or pretrial detention, which, as a minimum, contain information about (a) the reasons for the arrest; (b) the time of the arrest and the taking of the arrested person to a place of custody, as well as that of his or her first appearance before a judicial or other authority; (c) the identity of the law enforcement officials concerned; (d) precise information concerning the place of custody; and to communicate such records to the detained person or his or her counsel, as prescribed by law;

10. *Stresses* the importance of developing corroborating methods of crime investigation to eliminate or reduce sole reliance on confessions for the purpose of securing convictions, and the importance of seeking corroborative evidence through all available modern, scientific methods of crime investigation, including through appropriate investment in equipment, skilled human resources and international cooperation on capacity-building;

11. *Also stresses* the importance of keeping under systematic review interrogation rules, instructions, methods and practices, and of developing domestic guidelines on how to conduct interrogations with a view to preventing any cases of torture and other cruel, inhuman or degrading treatment or punishment;

12. *Urges* States, during reviews of domestic interrogation rules, instructions, methods and practices to ensure that they observe their international obligations, that safeguards against torture and other cruel, inhuman or degrading treatment or punishment are in place, and that during such reviews they are mindful of the particular importance of safeguards, to ensure that:

(a) The physical environment and conditions during interrogation are humane;

(b) The length of interrogation sessions are in accordance with obligations under international human rights law, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Interrogated persons are not subjected to coercive methods of interrogation that impair their capacity of decision or their judgement, or forces them to confess, incriminate themselves or testify against any other person;

(d) All persons during police custody and pretrial detention subjected to interrogation are afforded the right to the presence and assistance of a lawyer and, if necessary, the presence and services of a properly qualified interpreter during interrogation sessions;

(e) Records of interrogation sessions during police custody and pretrial detention, including their duration and the intervals between sessions, and the identity of the law enforcement official who conduct the interrogations and other persons present are kept accurately, and that such records are stored safely;

(f) Rules are in place to obligate law enforcement officials to report instances of torture or other cruel, inhuman or degrading treatment or punishment to their superior authorities, with appropriate sanctions for non-reporting, and, where necessary, that independent organs are vested with reviewing or remedial power;

(g) Consideration is given at all times to the personal circumstances of the interrogated person;

13. *Stresses* that States must ensure that no statement that is established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, urges States to extend that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, and recognizes that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

14. *Calls upon* States to include education and information regarding the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment in the training of law enforcement personnel, which may include training on, inter alia, the use of force and all available modern scientific methods for crime investigation and the critical importance of reporting instances of torture or other cruel, inhuman or degrading treatment or punishment to superior authorities;

15. *Emphasizes* that it is important, for the ability of law enforcement officials to play their role in safeguarding the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, that States ensure the proper functioning of the criminal justice system, particularly by taking effective measures for combating corruption, establishing proper legal aid programmes and providing adequate selection, training and remuneration of law enforcement officials;

16. *Stresses* that inspections of places of police custody and pretrial detention by an independent authority contribute to the prevention of torture and other cruel, inhuman or degrading treatment or punishment, and that, to be fully effective, such visits should be regular and able to be made unannounced, and the authority should be empowered to examine all issues related to the treatment of persons in police custody and pretrial detention and to interview detained persons in full confidentiality, subject to reasonable conditions to ensure security and good order in such places;

17. *Emphasizes* that States are obligated to ensure that any person who alleges to have been subjected to torture or other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction has the right to complain to the competent authorities, and that steps are taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his or her complaint or any evidence given;

18. *Stresses* that an independent, competent domestic authority must promptly, effectively and impartially investigate all allegations of torture or other cruel, inhuman or degrading treatment or punishment, and wherever there is reasonable ground to believe that such an act has been committed, and that those who encourage, instigate, order, tolerate, acquiesce in, consent to or perpetrate such acts must be held responsible, brought to justice and punished in a manner commensurate with the severity of the offence, including officials in charge of any place of detention or other place where persons are deprived of their liberty where the prohibited act is found to have been committed;

19. *Invites* the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and other relevant special procedures, within their respective mandates, to take the present resolution into account in their future work;

20. *Takes note* of the latest report³ of the Special Rapporteur;

21. *Requests* the Office of the United Nations High Commissioner of Human Rights to convene, in 2017, an intersessional, full-day open-ended seminar, with

³ A/HRC/31/57.

interpretation in the six official languages of the United Nations, with the objective of exchanging national experiences and practices on the implementation of effective safeguards to prevent torture and other cruel, inhuman or degrading treatment or punishment during police custody and pretrial detention;

22. *Also requests* the Office of the High Commissioner to prepare a summary report of the above-mentioned seminar, and to submit the report to the Human Rights Council at its thirty-seventh session.

*64th meeting
24 March 2016*

[Adopted without a vote.]



General Assembly

Distr.: General
15 April 2014

Original: English

Human Rights Council

Twenty-fifth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Resolution adopted by the Human Rights Council

25/13.

Torture and other cruel, inhuman or degrading treatment or punishment: mandate of the Special Rapporteur

The Human Rights Council,

Reaffirming that no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment,

Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law that must be respected and protected under all circumstances, including in times of international and internal armed conflict or internal disturbance or any other public emergency, that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in the relevant international instruments, and that legal and procedural safeguards against such acts must not be subject to measures that would circumvent this right,

Recalling also that the prohibition of torture is a peremptory norm of international law, and that international, regional and domestic courts have recognized the prohibition of cruel, inhuman or degrading treatment or punishment to be customary international law,

Recognizing the importance of the work of the Special Rapporteur in the prevention and fight against torture and other cruel, inhuman or degrading treatment or punishment,

Appreciating the overall dedication of the Special Rapporteur in fulfilling the mandate,

Recalling Human Rights Council resolutions 5/1, on institution-building of the Council, and 5/2, on the Code of Conduct for Special Procedures Mandate Holders of the Council, of 18 June 2007, and stressing that the mandate holder shall discharge his or her duties in accordance with those resolutions and the annexes thereto,

Recalling also all relevant resolutions of the General Assembly, the Economic and Social Council, the Human Rights Council and the Commission on Human Rights,

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1. *Decides* to extend the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for a further period of three years:

(a) To seek, receive, examine and act on information from Governments, intergovernmental and civil society organizations, individuals and groups of individuals regarding issues and alleged cases concerning torture or other cruel, inhuman or degrading treatment or punishment;

(b) To conduct country visits with the consent or at the invitation of Governments and to enhance further dialogue with them, as well as to follow up on recommendations made in reports after visits to their countries;

(c) To study, in a comprehensive manner, trends, developments and challenges in relation to combating and preventing torture and other cruel, inhuman or degrading treatment or punishment, and to make recommendations and observations concerning appropriate measures to prevent and eradicate such practices;

(d) To identify, exchange and promote best practices on measures to prevent, punish and eradicate torture and other cruel, inhuman or degrading treatment or punishment;

(e) To integrate a gender perspective and a victim-centred approach throughout the work of his or her mandate;

(f) To continue to cooperate with the Committee against Torture, the Subcommittee on Prevention of Torture and relevant United Nations mechanisms and bodies and, as appropriate, regional organizations and mechanisms, national human rights institutions, national preventive mechanisms and civil society, including non-governmental organizations, as well as to contribute to the promotion of strengthened cooperation among the above-mentioned actors;

(g) To report on all of his or her activities, observations, conclusions and recommendations to the Human Rights Council in accordance with its programme of work, and annually on overall trends and developments with regard to his or her mandate to the General Assembly, with a view to maximizing the benefits of the reporting process;

2. *Urges* States:

(a) To fully cooperate with and assist the Special Rapporteur in the performance of his or her task, to supply all necessary information requested by him or her and to fully and expeditiously respond to his or her urgent appeals, and urges those Governments that have not yet responded to communications transmitted to them by the Special Rapporteur to answer without further delay;

(b) To respond favourably to the Special Rapporteur's requests to visit their countries, and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries;

(c) To ensure, as an important element in preventing and combating torture and other cruel, inhuman and degrading treatment or punishment, that no authority or official orders, applies, permits or tolerates any sanction, reprisal, intimidation or other prejudice against any person, group or association, including persons deprived of their liberty, for contacting, seeking to contact or having been in contact with the Special Rapporteur or any other international or national monitoring or preventive body active in the prevention and combat of torture and other cruel, inhuman or degrading treatment or punishment;

(d) To ensure proper follow-up to the recommendations and conclusions of the Special Rapporteur;

(e) To adopt a victim-centred and gender-sensitive approach in the fight against torture and other cruel, inhuman or degrading treatment or punishment, paying special attention to gender-based violence that constitutes torture or other cruel, inhuman or degrading treatment or punishment;

(f) To ensure appropriate follow-up to conclusions, recommendations, requests for further information and views on individual communications of the relevant treaty bodies, including the Committee against Torture and the Subcommittee on Prevention of Torture;

(g) To become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority, and to consider signing and ratifying the Optional Protocol thereto and to designating or establishing independent and effective national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment in a timely manner;

(h) To consider providing adequate support to the United Nations Voluntary Fund for Victims of Torture and the Special Fund established by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

3. *Takes note with appreciation* of the report of the Special Rapporteur;¹

4. *Requests* the Secretary-General to ensure, from within the overall budgetary framework of the United Nations, the provision of an adequate and stable level of staffing and the facilities and resources necessary for the Special Rapporteur, bearing in mind the strong support expressed by Member States for preventing and combating torture and assisting victims of torture;

5. *Decides* to continue to consider this matter in conformity with its annual programme of work.

*54th meeting
27 March 2014*

[Adopted without a vote.]

¹ A/HRC/25/60.



Human Rights Council**Forty-third session**

24 February–20 March 2020

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Torture and other cruel, inhuman or degrading treatment or
punishment****Report of the Special Rapporteur****Summary*

In the present report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment examines conceptual, definitional and interpretative questions arising in relation to the notion of “psychological torture” under human rights law.

* The present report was submitted after the deadline so as to include the most recent information.



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I. Introduction

1. The present report was prepared pursuant to Human Rights Council resolution 34/19.

II. Activities relating to the mandate

2. In 2019, the Special Rapporteur transmitted 114 communications, jointly with other mandate holders or individually, on behalf of individuals exposed to torture and other ill-treatment.
3. Since his previous report to the Human Rights Council in March 2019, the Special Rapporteur has participated in various consultations, workshops and events on issues relating to his mandate, the most notable of which are listed below.
4. On 9 and 10 May 2019, the Special Rapporteur and his medical team conducted a visit to meet with Julian Assange, detained at Belmarsh prison in London, and with relevant British authorities, in order to assess Mr. Assange's state of health and conditions of detention, as well as alleged risks of torture or ill-treatment arising in relation to his possible extradition to the United States of America.
5. On 5 June, the Special Rapporteur participated in a conference on "Effective multilateralism in the fight against torture: trends in the Organization for Security and Cooperation in Europe (OSCE) region and the way forward" organized by the OSCE Office for Democratic Institutions and Human Rights in Vienna.
6. From 12 to 15 June, the Special Rapporteur conducted a country visit to Comoros (A/HRC/43/49/Add.1).
7. On 26 June, in support of the International Day in Support of Victims of Torture, the Special Rapporteur co-organized a side event at the forty-first session of the Human Rights Council on the "Fault lines between non-coercive investigation and psychological torture".
8. On 15 October, the Special Rapporteur presented his thematic report (A/74/148) to the General Assembly on the relevance of the prohibition of torture and ill-treatment to the context of domestic violence.
9. On 18 October, the Special Rapporteur participated in a high-level conference on tackling ill-treatment by police, held in Bečići, Montenegro, and organized by the Council of Europe.
10. From 17 to 24 November, the Special Rapporteur conducted a country visit to Maldives. The Special Rapporteur issued extensive preliminary observations after the visit and will present his report to the Human Rights Council in March 2021.

III. Psychological torture

A. Background

11. The universal prohibition of torture is recognized to be of an absolute, non-derogable and peremptory character and has been restated in numerous international instruments of human rights, humanitarian and criminal law. Since its first proclamation in article 5 of the Universal Declaration of Human Rights, the international community has established an impressive normative and institutional framework for its implementation (A/73/207, paras. 5–18). At the same time, however, numerous States have invested significant resources towards developing methods of torture which can achieve purposes of

coercion, intimidation, punishment, humiliation or discrimination without causing readily identifiable physical harm or traces (A/73/207, para. 45).¹

12. In continuation of experiments conducted by the Nazi regime on concentration camp inmates during the Second World War,² the cold war era saw the emergence of classified large-scale and long-term projects involving systematic “mind control” experimentation with thousands of prisoners, psychiatric patients and volunteers unaware of the true nature and purpose of these trials and the grave health risks generated by them.³ These experiments resulted in the adoption and international proliferation of interrogation methodologies which – despite their euphemistic description as “enhanced”, “deep”, “non-standard” or “special” interrogation, “moderate physical pressure”, “conditioning techniques”, “human resource exploitation”, and even “clean” or “white” torture – were clearly incompatible with both medical ethics and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.⁴ While some of these methods involved significant physical violence, others were of a specifically psychological nature. In the recent past, some of these approaches have resurfaced most prominently in connection with interrogational torture in the context of counter-terrorism,⁵ “deterrence”-based detention of “irregular migrants” (see A/HRC/37/50), alleged mass internment for purposes of political “re-education”,⁶ and the abuse of individual prisoners of conscience.⁷ New and emerging technologies also give rise to unprecedented tools and environments of non-physical interaction which must be duly considered in the contemporary interpretation of the prohibition of torture.

13. Mandate holders have long recognized “psychological” or “mental” torture as an analytical concept distinct from physical torture (see E/CN.4/1986/15), have addressed specific methods or contexts of psychological torture,⁸ and have pointed to specific challenges arising in connection with the investigation and redress of this type of abuse (A/HRC/13/39/Add.5, para. 55), as well as to the inextricable link between psychological torture and coercive interrogation (A/71/298, paras. 37–45). They have also dedicated a full thematic report to the practice of solitary confinement (A/66/268), advocated the development of guidelines for non-coercive interviewing (see A/71/298), supported the recent update of the Manual on the Effective Investigation and Documentation of Torture

¹ Linda Piwowarczyk, Alejandro Moreno and Michael Grodin, “Health care of torture survivors”, *Journal of the American Medical Association (JAMA)*, vol. 284, No. 5 (2 August 2000).

² Jonathan D. Moreno, “Acid brothers: Henry Beecher, Timothy Leary, and the psychedelic of the century”, *Perspectives in Biology and Medicine*, vol. 59, No. 1 (Winter 2016), pp. 108–109.

³ Most notably, “Project MKUltra, the CIA’s Programme of Research in Behavioural Modification” (1953–1973).

⁴ United States of America, Central Intelligence Agency, *KUBARK Counterintelligence Interrogation* (1963), sect. IX; United States, Central Intelligence Agency, *Human Resource Exploitation Training Manual* (1983); United Kingdom of Great Britain and Northern Ireland, “Deep interrogation (five techniques)”, litigated at the European Court of Human Rights, *Ireland v. the United Kingdom*, Application No. 5310/71, Judgment, 18 January 1978; President of France, Emmanuel Macron, statement on the death of Maurice Audin, 13 September 2018, recognizing that successive French Governments had operated a system of political torture and disappearances in Algeria; Lawrence E. Hinkle, Jr. and Harold G. Wolff, “Communist interrogation and indoctrination of ‘enemies of the state’: analysis of methods used by the communist state police – a special report”, *American Medical Association Archives of Neurology and Psychiatry*, vol. 76, No. 2 (August 1956); and Scott Shane, “U.S. interrogators were taught Chinese coercion techniques”, *New York Times*, 2 July 2008.

⁵ United States, Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency’s Detention and Interrogation Program* (2014).

⁶ CAT/C/CHN/CO/5, para. 42; as well as two communications co-signed by the Special Rapporteur, communications Nos. OL/CHN18/2019, 1 November 2019, and OL/CHN15/2018, 24 August 2018. See also “China cables”, available at www.icij.org/investigations/china-cables/read-the-china-cables-documents/.

⁷ See, most prominently, the communications sent by the Special Rapporteur and his predecessor in the cases of Bradley/Chelsea Manning, communications Nos. UA G/SO 214 (53-24) USA 8/2011, 15 June 2011; and No. AL USA 22/2019, 1 November 2019; and Julian Assange, communications No. UA/GBR/3/2019, 27 May 2019; and No. UA GBR 6/2019, 29 October 2019).

⁸ See, for example, A/74/148, paras. 32–34; A/59/324, para. 17; and E/CN.4/2006/120, para. 52.

and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and raised awareness of the challenges of psychological torture in numerous individual communications. On 26 June 2019, on the occasion of the International Day in Support of Victims of Torture, the Special Rapporteur launched his thematic consultations on the topic at a side event of the forty-first session of the Human Rights Council including an expert panel on the “Fault lines between non-coercive investigation and psychological torture” and the screening of “Eminent Monsters”, a documentary film on the origins and devastating effects of contemporary psychological torture.⁹

14. Although these initiatives have been generally well received by States, national practice still tends to deny, neglect, misinterpret or trivialize psychological torture as what could be euphemistically described as “torture light”, whereas “real torture” is still predominantly understood to require the infliction of physical pain or suffering (so-called “materialist bias”).¹⁰ Some States have even adopted national definitions of torture excluding mental pain or suffering, or interpretations requiring that, in order to constitute torture, mental pain or suffering must be caused by the threat or infliction of physical pain or suffering, threats of imminent death, or profound mental disruption. Both the Committee against Torture and mandate holders have rejected these approaches as contrary to the Convention against Torture.¹¹ Beyond that, however, the use of the term “psychological torture” in jurisprudence and human rights advocacy remains fragmented, and both legal and medical experts have long called for its clarification.¹²

15. In the light of these considerations, in the present report, the Special Rapporteur:

- (a) Examines the predominant conceptual discrepancies arising in relation to the notion of “psychological torture”;
- (b) Proposes working definitions of “psychological” and “physical” torture from the perspective of international human rights law;
- (c) Offers recommendations regarding the interpretation of the constitutive elements of torture in the context of psychological torture;
- (d) Proposes a non-exhaustive, needs-based analytical framework facilitating the identification of specific methods, techniques or circumstances amounting or contributing to psychological torture;
- (e) Illustrates how various combinations of methods, techniques and circumstances – not all of which may amount to torture if taken in isolation and out of context – can form “torturous environments” violating the prohibition of torture;
- (f) Encourages the interpretation of the prohibition of torture in line with contemporary possibilities and challenges arising from emerging technologies and explores, in a preliminary manner, the conceivability and basic contours of what could be described as “cybertorture”.

⁹ See www.hopscotchfilms.co.uk/news/2019/7/26/eminent-monsters-to-be-screened-at-a-united-nations-side-event.

¹⁰ David Luban and Henry Shue, “Mental torture: a critique of erasures in U.S. law”, *Georgetown Law Journal*, vol. 100, No. 3 (March 2012).

¹¹ [A/HRC/13/39/Add.5](#), para. 74; [CAT/C/USA/CO/3-5](#), para. 9; [CAT/C/GAB/CO/1](#), para. 7; [CAT/C/RWA/CO/1](#), para. 7; [CAT/C/CHN/CO/4](#), para. 33; and [CAT/C/CHN/CO/5](#), para. 7.

¹² See, for example, Pau Pérez-Sales, *Psychological Torture: Definition, Evaluation and Measurement* (London, Routledge, 2017); Hernán Reyes, “The worst scars are in the mind: psychological torture”, *International Review of the Red Cross*, vol. 89, No. 867 (September 2007); Ergun Cakal, “Debility, dependency and dread: on the conceptual and evidentiary dimensions of psychological torture”, *Torture*, vol. 28, No. 2 (2018); Almerindo E. Ojeda, ed., *The Trauma of Psychological Torture* (West Port, Connecticut, Praeger Publishers, 2008); Nora Sveaass, “Destroying minds: psychological pain and the crime of torture”, *City University of New York Law Review*, vol. 11, No. 2 (Summer 2008), p. 303; and Metin Başoğlu, ed., *Torture and its Definition in International Law: An Interdisciplinary Approach* (New York, Oxford University Press, 2017), pp. 397 and 492.

16. The Special Rapporteur has conducted extensive research and stakeholder consultations, including through an open call for contributions by questionnaire.¹³ The present report reflects the resulting conclusions and recommendations of the Special Rapporteur. Given the substantive scope and complexity of the topic and the applicable constraints in terms of time and word-count, he examines the notion of psychological “torture” only. As, in practice, “torture” and “other cruel, inhuman or degrading treatment or punishment” are often closely interlinked, further research efforts should be undertaken to clarify the broader topic of psychological ill-treatment.

B. Concept of psychological torture

1. Working definition

17. “Psychological torture” is not a technical term in international law, but has been used in various disciplines, including legal, medical, psychological, ethical, philosophical, historical and sociological, for different purposes and with varying interpretations. The Special Rapporteur acknowledges that all these understandings have their own legitimacy, validity and purpose in their respective fields. In line with the mandate bestowed upon him, in the present report he examines the concept of “psychological torture” from the perspective of international human rights law.

18. According to article 1 of the Convention against Torture, the substantive concept of “torture” comprises, most notably, the intentional and purposeful infliction of severe pain or suffering “whether physical or mental”. It is this explicit juxtaposition of “mental” and “physical” pain or suffering which is generally referred to as the legal basis for the concept of psychological torture. Accordingly, in human rights law, “psychological” torture is most commonly understood as referring to the infliction of “mental” pain or suffering, whereas “physical” torture is generally associated with the infliction of “physical” pain or suffering.¹⁴

19. In line with this position, shared by previous mandate holders (E/CN.4/1986/15, para. 118), the Special Rapporteur is of the view that, under human rights law, “psychological torture” should be interpreted to include all methods, techniques and circumstances which are intended or designed to purposefully inflict severe mental pain or suffering without using the conduit or effect of severe physical pain or suffering. The Special Rapporteur is further of the view that “physical torture” should be interpreted to include all methods, techniques and environments intended or designed to purposefully inflict severe physical pain or suffering, regardless of the parallel infliction of mental pain or suffering.

2. Distinguishing “methods” from “effects” and “rationales”

20. Although the proposed distinction between “physical” and “psychological” methods of torture appears fairly straightforward and to flow directly from the text of the Convention, its consistent and coherent application is subject to a number of caveats arising from the fact that the broader discussion of the psychological dimension of torture can be divided into at least three parallel and equally important strands, which relate to the psychological methods (i.e., techniques), psychological effects (i.e., sequelae) and psychological rationale (i.e., target) of torture.

21. First, the distinction between psychological and physical methods of torture should not obscure the fact that, as a matter of law, “torture” is a unified concept. All methods of torture are subject to the same prohibition and give rise to the same legal obligations, regardless of whether the inflicted pain or suffering is of a “physical” or “mental” character, or a combination thereof. Thus, the aim of the distinction between “psychological” and “physical” methods of torture is not to suggest any difference in terms of legal implications

¹³ See www.ohchr.org/Documents/Issues/Torture/Call/QuestionnairePsychologicalTorture.docx.

¹⁴ Luban and Shue, “Mental torture”.

or wrongfulness, but to clarify to what extent the generic prohibition of torture covers methods not using the conduit or effect of severe physical pain or suffering.

22. Second, the discussion of psychological methods (i.e., techniques) of torture should not be conflated with that of the psychological effects (i.e., sequelae) of torture. In reality, both physical and psychological methods of torture each have both physical and psychological effects (E/CN.4/1986/15, para. 118). Thus, the infliction of physical pain or suffering almost invariably also causes mental suffering, including severe trauma, anxiety, depression and other forms of mental and emotional harm. Likewise, the infliction of mental pain or suffering also affects bodily functions and, depending on intensity and duration, can cause irreparable physical harm or even death, including through nervous collapse or cardiovascular failure. In terms of severity, psychological and physical stressors have been shown to inflict equally severe suffering (A/HRC/13/39, para. 46).¹⁵ From a psychophysiological perspective, therefore, the distinction between “physical” and “psychological” torture is of predominantly conceptual, analytical and pedagogic benefit and does not suggest the parallel existence, in practice, of two separate and mutually exclusive dimensions of torture, or of any hierarchy of severity between “physical” and “psychological” torture.

23. A third, distinct aspect of the psychological dimension of torture is its inherently psychological rationale (i.e., target). From a functional perspective, any form of torture deliberately instrumentalizes severe pain and suffering as a vehicle for achieving a particular purpose (A/72/178, para. 31). Methodologically, these purposes can be pursued through the infliction of “physical” or “mental” pain or suffering, or a combination thereof, and in each case will cause varying combinations of physical and psychological effects. Functionally, however, torture is never of an exclusively physical character, but always aimed at affecting the minds and emotions of victims or targeted third persons.¹⁶ Many methods of physical torture deliberately create and exploit debilitating inner conflicts, for example by instructing captives to remain in physically painful stress positions under the threat of rape in case of disobedience. A similar inner conflict can be induced without physical pain, for example, by instructing the detainee to masturbate in front of guards and inmates, again under threat of rape in case of disobedience. Thus, the distinction between “physical” and “psychological” torture does not imply any difference in functional rationale but, rather, refers to the methodological avenue through which that rationale is being pursued by the torturer.

3. Distinguishing psychological from physical “no marks” and “no touch” torture

24. While methods of torture entailing visible bodily injury are generally not referred to as “psychological torture”, the term is sometimes conflated with “no marks” torture, the aim of which is to avoid visible traces on the victim’s body, and with “no touch” torture, the aim of which is to avoid inflicting pain or suffering through direct physical interaction. In reality, however, both “no marks” torture and “no touch” torture may also be of a physical nature and, in that case, are distinct from psychological torture.

25. More specifically, although the aim of physical “no-marks” torture is to avoid visible traces on the victim’s body, its purposes are still pursued through the deliberate infliction of severe physical pain or suffering. Some physical “no marks” techniques achieve the intended physical pain or suffering immediately and directly, such as beatings with insulated objects on selected parts of the body, simulated drowning (“waterboarding” or “wet submarine”) or asphyxiation with plastic bags (“dry submarine”). Other physical “no marks” techniques involve the prolonged and/or cumulative infliction of initially “low intensity” physical pain or suffering, calculated to gradually evolve to unbearable levels of severity, such as forced standing or crouching, or shackling in stress positions. While all these techniques are calculated to avoid physical marks visible to the naked eye and inexperienced observer, many of them still produce physical sequelae – such as swellings, abrasions, contusions and irritations – which experienced forensic experts can reliably

¹⁵ Başoğlu, “Torture and its definition in international law”, p. 37.

¹⁶ Sveaass, “Destroying minds”, pp. 313–314.

detect and document for periods ranging from days to several weeks. In practice, however, obstruction and delays, as well as lack of expertise, capacity and willingness on the part of the investigative authorities, entail that the vast majority of allegations regarding “no marks” torture are either not investigated at all, or are easily dismissed for lack of evidence.

26. Likewise, physical “no-touch” torture avoids direct physical interaction, but still intentionally manipulates or instrumentalizes physiological needs, functions and reactions to inflict physical pain or suffering. It typically includes pain inflicted through threat-imposed stress positions, or powerful sensory or physiological irritation through extreme temperatures, loud noise, bright light or bad smells, deprivation of sleep, food or drink, prevention or provocation of urination, defecation or vomiting, or exposure to pharmaceutical substances or drug-withdrawal symptoms. Although these techniques deliberately use the conduit of the victim’s body for the infliction of pain and suffering, they are sometimes discussed as psychological torture, mainly because of their psychological rationale and intended destabilizing effect on the human mind and emotions, and the limited physical contact between the torturer and the victim. If “no-touch” techniques inflict severe physical pain or suffering of any kind, however, they should be regarded as physical torture.

C. Applying the constitutive elements

27. The concept of psychological torture as defined above gives rise to a number of questions concerning the interpretation of the defining elements constitutive of torture beyond what has been stated in previous reports (A/72/178, para. 31; A/73/207, paras. 6–7; and E/CN.4/2006/6, paras. 38–41). All these questions relate to the “substantive” components of the definition, which define conduct that amounts to torture, whereas the “attributive” component, which defines the level of State agent involvement required in order for torture to give rise to State responsibility, has been discussed in depth in previous reports and does not need to be re-examined here (A/74/148, para. 5).

1. Severe pain or suffering

28. International anti-torture mechanisms have left no doubt that the definition of torture does not necessarily require the infliction of physical pain or suffering but may also encompass mental pain or suffering.¹⁷ It is worth underlining, however, that the devastating effects of psychological torture are frequently underestimated.

29. More controversial than this basic dichotomy between physical and mental is the interpretation of the required level of “severity” of the pain inflicted. While the objective measurement of physical pain or suffering gives rise to insurmountable difficulties and has entailed numerous unsatisfactory attempts at authoritatively categorizing methods of torture on the basis of resulting physical injuries and irreversible impairment, these problems are further exacerbated when trying to objectively evaluate mental or emotional pain or suffering.¹⁸ It has been emphasized that the term “severe” does not require pain or suffering comparable to the pain accompanying serious physical injury, such as organ failure or impairment of bodily functions or even death (E/CN.4/2006/6; and A/HRC/13/39, para. 54). However, the term “torture” should also not be used to refer to mere inconvenience or discomfort clearly incapable of achieving the purposes listed in the definition.

30. Whether the required threshold of severity is reached in a particular case may depend on a wide range of factors that are endogenous and exogenous to the individual, such as age, gender, health and vulnerability, but also duration of exposure and accumulation with other physical or mental stressors and conditions, personal motivation

¹⁷ Human Rights Committee, general comment No. 20 (1992) on the prohibition of torture, or other cruel, inhuman or degrading treatment or punishment, para. 5; see also Committee against Torture, case law, cited in footnote 11 above.

¹⁸ Pérez-Sales, *Psychological Torture*, p. 284.

and resilience and contextual circumstances.¹⁹ All these elements must be holistically evaluated on a case-by-case basis and in the light of the specific purpose pursued by the treatment or punishment in question. For instance, the threat of overnight detention combined with verbal abuse may be sufficiently severe to coerce or intimidate a child, whereas the same act may have little or no effect on an adult, and even less on a hardened offender. The severity of pain or suffering resulting from a particular type of ill-treatment is not necessarily constant but tends to increase or fluctuate with the duration of exposure and the multiplication of stressors. Also, while torture constitutes an “aggravated” form of cruel, inhuman or degrading treatment or punishment,²⁰ “aggravation” does not necessarily refer to aggravated pain and suffering, but to aggravated wrong in terms of the intentional and purposeful instrumentalization of pain and suffering for ulterior purposes. Thus, the distinguishing factor between torture and other forms of ill-treatment is not the intensity of the suffering inflicted, but rather the purpose of the conduct, the intention of the perpetrator and the powerlessness of the victim (A/72/178, para. 30; and A/HRC/13/39, para. 60).²¹

31. Several treaty provisions even suggest that the concept of torture includes conduct which, at least potentially, does not involve any subjectively experienced pain or suffering at all. Thus, article 7 of the International Covenant on Civil and Political Rights expressly prohibits “medical or scientific experimentation without free consent”. Although the provision does not clarify whether such conduct would amount to “torture” or to other “cruel, inhuman or degrading treatment”, its explicit mention suggests that it was regarded as a particularly grave violation of the prohibition. Even more explicit in this respect, but only of regional applicability, is article 2 of the Inter-American Convention to Prevent and Punish Torture, which expressly defines “torture” as including “methods intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish”. Relatedly, upon ratification of the Convention against Torture, the United States expressed its understanding that “mental pain or suffering” refers to “prolonged mental harm” caused by, inter alia, the threatened or actual “administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality”, wording intended to ban some of the interrogation methods developed by the United States Central Intelligence Agency (CIA) during the cold war, but also to deliberately narrow the definition established in the Convention.²² Although the Committee rejected this interpretation as too narrow and stated that psychological torture cannot be limited to “prolonged mental harm” (CAT/C/USA/CO/2, para. 13; and CAT/C/USA/CO/3-5, para. 9), it did not clarify whether the use of “procedures calculated to disrupt profoundly the senses or the personality” could amount to torture even in the absence of subjectively experienced pain or suffering. While this was already a salient question for the drafters of the various treaty texts during the cold war era, its practical relevance has increased exponentially in present times.

32. Given the rapid advances in medical, pharmaceutical and neurotechnological science, as well as in cybernetics, robotics and artificial intelligence, it is difficult to predict to what extent future techniques and environments of torture, as well as the “human enhancement” of potential victims and perpetrators in terms of their mental and emotional resilience, may allow the subjective experience of pain and suffering to be circumvented, suppressed or otherwise manipulated while still achieving the purposes and the profoundly

¹⁹ Inter-American Court of Human Rights, *Lysias Fleury and Others v. Haiti*, Judgment, 23 November 2011, para. 73.

²⁰ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1.

²¹ Gerrit Zach, “Definition of torture”, in Manfred Nowak, Moritz Birk and Giuliana Monina, eds., *The United Nations Convention against Torture and its Optional Protocols: A Commentary*, 2nd ed. (Oxford, United Kingdom of Great Britain and Northern Ireland, Oxford University Press, 2019), p. 47.

²² David Luban and Katherine S. Newell, “Personality disruption as mental torture: the CIA, interrogational abuse, and the U.S. Torture Act”, *Georgetown Law Journal*, vol. 108, No. 2 (January 2020), pp. 335–336 and 373–374, referring to Title 18 of the United States Code, sect. 2340(2)(B), 2012.

dehumanizing, debilitating and incapacitating effects of torture.²³ Given that States must interpret and exercise their international obligations in relation to the prohibition of torture in good faith (Vienna Convention on the Law of Treaties, arts. 26 and 31) and in the light of the evolving values of democratic societies (A/HRC/22/53, para. 14),²⁴ it would appear irreconcilable with the object and purpose of the universal, absolute and non-derogable prohibition of torture, for example, to exclude from the definition of torture the profound disruption of a person's mental identity, capacity or autonomy only because the victim's subjective experience or recollection of "mental suffering" has been pharmaceutically, hypnotically or otherwise manipulated or suppressed.

33. Previous Special Rapporteurs have stated that "assessing the level of suffering or pain, relative in its nature, requires considering the circumstances of the case, including ... the acquisition or deterioration of impairment as result of the treatment or conditions of detention in the victim", and that "medical treatments of an intrusive and irreversible nature", when lacking a therapeutic purpose and enforced or administered without free and informed consent, may constitute torture or ill-treatment (A/63/175, paras. 40 and 47; and A/HRC/22/53, para. 32). Building on this legacy, the Special Rapporteur is of the view that the threshold of severe "mental suffering" can be reached not only through subjectively experienced suffering but, in the absence of subjectively experienced suffering, also through objectively inflicted mental harm alone. In any case, even below the threshold of torture, the intentional and purposeful infliction of mental harm would almost invariably amount to "other cruel, inhuman or degrading treatment or punishment".

2. Intentionality

34. Psychological torture requires the intentional infliction of mental pain or suffering and thus does not include purely negligent conduct. Intentionality does not require that the infliction of severe mental pain or suffering be subjectively desired by the perpetrator, but only that it be reasonably foreseeable as a result, in the ordinary course of events, of the purposeful conduct adopted by the perpetrator (A/HRC/40/59, para. 41; and A/HRC/37/50, para. 60). Further, intentionality does not require proactive conduct, but may also involve purposeful omissions, such as the exposure of substance-addicted detainees to severe withdrawal symptoms by making the replacement medication or therapy dependent on a confession, testimony or other cooperation (A/73/207, para. 7). Where the infliction of severe mental pain or suffering may result from the cumulative effect of multiple circumstances, acts or omissions on the part of several participants, such as in the case of mobbing, persecution and other forms of concerted or collective abuse, the required intentionality would have to be regarded as present for each State or individual knowingly and purposefully contributing to the prohibited outcome, whether through perpetration, attempt, complicity or participation (Convention, art. 4 (1)).

3. Purposefulness

35. In order to amount to psychological torture, severe mental pain or suffering must be inflicted not only intentionally, but also "for purposes such as obtaining from the victim or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person", or "for any reason based on discrimination of any kind" (Convention, art. 1). Although the listed purposes are only of an indicative nature and not exhaustive, relevant purposes should have "something in common with the purposes expressly listed" (A/HRC/13/39/Add.5, para. 35). At the same time, the listed purposes are phrased so broadly that it is difficult to envisage a realistic scenario of purposeful infliction of severe

²³ A/HRC/23/47, para. 54; Adam Henschke, "'Super soldiers': ethical concerns in human enhancement technologies", Humanitarian Law and Policy blog, 3 July 2017; and Nayef Al-Rodhan, "Inevitable transhumanism? How emerging strategic technologies will affect the future of humanity", Center for Security Studies blog, 29 October 2013.

²⁴ Office of the United Nations High Commissioner for Human Rights (OHCHR), "Interpretation of torture in light of the practice and jurisprudence of international bodies", 2011, p. 8.

mental pain or suffering on a powerless person that would escape the definition of torture (A/72/178, para. 31).

36. While the interpretation of purposes such as “interrogation”, “punishment”, “intimidation” and “coercion” is fairly straightforward, the way “discrimination” is addressed in the Convention requires clarification, because it is the only qualifier not crafted in terms of a deliberate “purpose”. In order for discriminatory measures to amount to torture, it is sufficient that they intentionally inflict severe pain or suffering “for reasons related to discrimination of any kind”. It is therefore not required that the relevant conduct have a discriminatory “purpose”, but only a discriminatory “nexus”. As a matter of treaty law, this includes any distinction, exclusion or restriction on the basis of discrimination of any kind, which has either the purpose or the effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of any human right or fundamental freedom in the political, economic, social, cultural, civil or any other field (A/63/175, para. 48).²⁵

37. It must be stressed that purportedly benevolent purposes cannot, per se, vindicate coercive or discriminatory measures. For example, practices such as involuntary abortion, sterilization, or psychiatric intervention on the grounds of “medical necessity” or the “best interests” of the patient (A/HRC/22/53, paras. 20 and 32–35; and A/63/175, para. 49), or forcible internment for the “re-education” of political or religious dissidents,²⁶ the “spiritual healing” of mental illnesses (A/HRC/25/60/Add.1, paras. 72–77), or for “conversion therapy” related to gender identity or sexual orientation (A/74/148, paras. 48–50), generally involve highly discriminatory and coercive attempts at controlling or “correcting” the victim’s personality, behaviour or choices and almost always inflict severe pain or suffering. In the view of the Special Rapporteur, therefore, if all other defining elements are present, such practices may well amount to torture.

38. Last but not least, given that information gathering is an intrinsic part of legitimate investigative and fact-finding processes, it is necessary to clarify the fault lines between permissible non-coercive investigative techniques and prohibited coercive interrogation. Although of great practical importance, this particular distinction will not be discussed in the present report, as it has already been examined in depth in a full thematic report submitted by the previous Special Rapporteur (A/71/298), triggering an important and ongoing process of developing international guidelines on investigative interviewing and associated safeguards.²⁷

4. Powerlessness

39. Mandate holders have consistently held that, although not expressly mentioned in the treaty text, the “powerlessness” of the victim is a defining prerequisite of torture (A/63/175, para. 50; A/73/207, para. 7; A/HRC/13/39, para. 60; and A/HRC/22/53, para. 31). As has been shown, “all purposes listed in article 1 of the Convention against Torture, as well as the *travaux préparatoires* of the Declaration and the Convention, refer to a situation where the victim of torture is a detainee or a person ‘at least under the factual power or control of the person inflicting the pain or suffering’, and where the perpetrator uses this unequal and powerful situation to achieve a certain effect, such as the extraction of information, intimidation, or punishment”.²⁸

²⁵ Convention on the Rights of Persons with Disabilities, art. 2; Convention on the Elimination of All Forms of Discrimination against Women, art. 1; International Convention on the Elimination of All Forms of Racial Discrimination, art. 1; Universal Declaration of Human Rights, art. 7; and International Covenant on Civil and Political Rights, art. 26.

²⁶ CAT/C/CHN/CO/5, para. 42; as well as two communications co-signed by the Special Rapporteur, communications Nos. OL/CHN18/2019, 1 November 2019, and OL/CHN15/2018, 24 August 2018. See also “China cables”, available at www.icj.org/investigations/china-cables/read-the-china-cables-documents/.

²⁷ See www.apt.ch/en/universal-protocol-on-non-coercive-interviews/.

²⁸ Zach, “Definition of torture”, pp. 56–59. See also, Rome Statute of the International Criminal Court, art. 7 (2) (e).

40. In practice, “powerlessness” arises whenever someone has come under the direct physical or equivalent control of the perpetrator and has effectively lost the capacity to resist or escape the infliction of pain or suffering (A/72/178, para. 31). This is typically the case in situations of physical custody, such as arrest and detention, institutionalization, hospitalization or internment, or any other form of deprivation of liberty. In the absence of physical custody, powerlessness can also arise through the use of body-worn devices capable of delivering electric shocks through remote control, given that they cause the “complete subjugation of the victim irrespective of physical distance” (A/72/178, para. 51). A situation of effective powerlessness can further be achieved through “deprivation of legal capacity, when a person’s exercise of decision-making is taken away and given to others” (A/63/175, para. 50; and A/HRC/22/53, para. 31), through serious and immediate threats, or through coercive control in contexts such as domestic violence (A/74/148, paras. 32–34), through incapacitating medication and, depending on the circumstances, in collective social contexts of mobbing, cyberbullying and State-sponsored persecution depriving victims of any possibility of effectively resisting or escaping their abuse.

5. “Lawful sanctions” exception

41. The definition of torture in the Convention explicitly excludes “pain or suffering arising only from, inherent in or incidental to lawful sanctions” (art. 1 (1)). At the same time, the saving clause in article 1 (2) of the Convention makes clear that this exception may not be interpreted in a manner prejudicial to other international instruments or national legislation which does or may define torture more widely. The term “international instrument” has been shown to cover both binding international treaties as well as non-binding declarations, principles and other “soft law” documents.²⁹ Most notably, the “lawful sanctions” clause can be accurately understood only in conjunction with the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, from which it is directly derived, and which excludes only those lawful sanctions from the definition of torture that are “consistent with the Standard Minimum Rules for the Treatment of Prisoners” (art. 1). For example, therefore, even if permitted by domestic law, none of the following methods of inflicting mental pain or suffering can be regarded as “lawful sanctions”: prolonged or indefinite solitary confinement; placement in a dark or constantly lit cell; collective punishment; and prohibition of family contacts.³⁰

42. Importantly, in order to be “lawful”, sanctions cannot be open-ended, indefinite or grossly excessive to their purpose, but must be clearly defined, circumscribed and proportionate. For example, while it may be lawful to punish a witness for refusing to testify in court with a fixed monetary fine or even imprisonment of a pre-defined length, the use of open-ended detention and accumulation of monetary fines as a progressively severe means to coerce the recalcitrant witness to testify would defeat the very object and purpose of the Convention and, therefore, amount to psychological torture irrespective of its “lawfulness” under national law.³¹ More generally, the Special Rapporteur aligns with the understanding that the word “lawful” refers to both domestic and international law.³²

D. Predominant methods of psychological torture

43. In the present section, the Special Rapporteur aims to provide an overview of the characteristics, rationale and effects of some of the most predominant methods of psychological torture. In contrast to physical torture, which uses the body and its physiological needs as a conduit for affecting the victim’s mind and emotions, psychological torture does so by directly targeting basic psychological needs, such as

²⁹ Zach, “Definition of torture”, pp. 56–59.

³⁰ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), rule 43.

³¹ See, most notably, the individual communication sent by the Special Rapporteur in the case of Chelsea Manning, communication No. AL USA 22/2019, 1 November 2019.

³² Zach, “Definition of torture”, note 147.

security, self-determination, dignity and identity, environmental orientation, emotional rapport and communal trust.

44. The aim of the following, separate discussion of specific methods, as well as their categorization based on commonly experienced psychological needs, is not to be authoritative, comprehensive or free from overlaps, or to exhaust the ways in which methods of psychological torture could or should be described or classified for a variety of purposes.³³ Rather, it is to provide an easily accessible, basic analytical framework facilitating the identification of individual methods, techniques or circumstances which, without using the conduit or effect of severe physical pain or suffering, may amount or contribute to torture as prohibited under international human rights law, whether alone or in conjunction with other psychological or physical methods, techniques and circumstances.

45. Given the virtually unlimited forms that torture can take, the selected examples are for illustrative purposes only. Various methods of torture may have similar or overlapping effects or reinforce each other in various other ways. In practice, specific methods of torture are rarely applied in isolation, but almost always in combination with other methods, techniques and circumstances, forming what has aptly been described as a “torturing environment”.³⁴ The following, separate discussion of specific methods therefore has primarily didactic and analytical purposes and should not be taken as suggesting that any such rigid classification maps neatly onto the varied practical manifestations of torture.

1. Security (inducing fear, phobia and anxiety)

46. Perhaps the most rudimentary method of psychological torture is the deliberate and purposeful infliction of fear. The fact that the infliction of fear itself can amount to torture has been widely recognized, not only by mandate holders³⁵ but also by the Committee against Torture,³⁶ the European Court of Human Rights,³⁷ the Human Rights Committee,³⁸ the Inter-American Court³⁹ and other mechanisms.

47. In practice, fear can be induced through a virtually limitless variety of techniques; some of the most common include the following:

(a) Direct or indirect threats of inflicting, repeating, or escalating acts of torture, mutilation, sexual violence or other abuse, including against relatives, friends or other inmates;

(b) Withholding or misrepresenting information about the fate of the victims or their loved ones, mock executions, witnessing the real or purported killing or torture of others;

(c) Provoking personal or cultural phobia through actual or threatened exposure to insects, snakes, dogs, rats, infectious diseases, etc.;

(d) Inducing claustrophobia through mock burials or confinement in boxes, coffins, bags and other cramped spaces (depending on the circumstances, these methods may also inflict progressively severe physical pain or suffering).

48. The extreme psychological distress and enormous inner conflicts triggered by fear are often underestimated. In reality, the prolonged experience of fear, in particular, can be

³³ For other categorizations see, for example, Almerindo E. Ojeda, “What Is psychological torture?”, in Ojeda, ed., *The Trauma of Psychological Torture*, pp.1–2; and Pérez-Sales, *Psychological Torture*, pp. 257–258.

³⁴ Pérez-Sales, *Psychological Torture*, p. 284.

³⁵ A/56/156, paras. 3 and 7–8; E/CN.4/1986/15, para. 119; and E/CN.4/1998/38, para. 208.

³⁶ CAT/C/KAZ/CO/2, para. 7; and CAT/C/USA/CO/2, para. 24.

³⁷ European Court of Human Rights, Grand Chamber, *Gäfgen v. Germany*, Application No. 22978/05, Judgment, 1 June 2010, para. 108.

³⁸ Human Rights Committee, communication No. 74/1980, views of the Committee in the case of *Miguel Angel Estrella v. Uruguay*, para. 8.3.

³⁹ Inter-American Court of Human Rights, *Baldeón-García v. Perú*, Judgment, 6 April 2006, para. 119; and Inter-American Court of Human Rights, *Tibi v. Ecuador*, Judgment, 7 September 2004, paras. 147–149).

more debilitating and agonizing than the actual materialization of that fear, and even the experience of physical torture can be experienced as less traumatizing than the indefinite psychological torment of constant fear and anxiety. In particular, credible and immediate threats have been associated with severe mental suffering, post-traumatic stress disorder, but also chronic pain and other somatic (i.e., physical) symptoms.

2. Self-determination (domination and subjugation)

49. A psychological method applied in virtually all situations of torture is to purposefully deprive victims of their control over as many aspects of their lives as possible, to demonstrate complete dominance over them, and to instil a profound sense of helplessness, hopelessness and total dependency on the torturer. In practice, this is achieved through a wide range of techniques including, most notably:

- (a) Arbitrarily providing, withholding or withdrawing access to information, reading material, personal items, clothing, bedding, fresh air, light, food, water, heating or ventilation;
- (b) Creating and maintaining an unpredictable environment with constantly changing and erratically disrupted, prolonged or delayed schedules for meals, sleep, hygiene, urination and defecation and interrogations;
- (c) Imposing absurd, illogical or contradictory rules of behaviour, sanctions and rewards;
- (d) Imposing impossible choices forcing victims to participate in their own torture.

50. All these techniques have in common that they disrupt the victim's sense of control, autonomy and self-determination and, with time, consolidate in total despair and complete physical, mental and emotional dependency on the torturer ("learned helplessness").

3. Dignity and identity (humiliation, breach of privacy and sexual integrity)

51. Closely related to the suppression of personal control, autonomy and self-determination, but even more transgressive, is the proactive targeting of victims' sense of self-worth and identity through the systematic and deliberate violation of their privacy, dignity and sexual integrity. This may include, for example:

- (a) Constant audiovisual surveillance, through cameras, microphones, one-way glass, caging and other relevant means, including during social, legal and medical visits and during sleep and personal hygiene, including urination and defecation;
- (b) Systematic derogatory or feral treatment, ridicule, insults, verbal abuse, personal, ethnic, racial, sexual, religious or cultural humiliation;
- (c) Public shaming, defamation, calumny, vilification or exposure of intimate details of the victim's private and family life;
- (d) Forced nudity or masturbation, often in front of officials of the opposite gender;
- (e) Sexual harassment through insinuation, jokes, insults, allegations, threats or exposing genitalia;
- (f) Breach of cultural or sexual taboos, including the involvement of relatives, friends or animals;
- (g) Dissemination of photographs or audio/video recordings showing the victim being tortured or sexually abused, making a confession or otherwise in compromising situations.

52. It must be stressed that the humiliating and degrading nature of abuse does not necessarily relegate it to the realm of "other cruel, inhuman or degrading treatment", which is sometimes (incorrectly) regarded as a "lesser" wrong than torture. Systematic and prolonged violations of privacy, dignity and sexual integrity are known to instil severe mental suffering, including emotions of profound vulnerability, humiliation, shame and

guilt, often exacerbated by anxiety about social exclusion, self-hatred and suicidal tendencies. As with other methods, therefore, it is the intentionality and purposefulness of degrading treatment, and the powerlessness of the victim, which are decisive for its categorization as either torture or other ill-treatment.⁴⁰

4. Environmental orientation (sensory manipulation)

53. Sensory stimuli and environmental control are a basic human need. Deliberate sensory manipulation and disorientation through sensory deprivation or hyperstimulation involves both the sensory organs and the cognitive processing of sensory perception. Sensory hyperstimulation, in particular, is thus at the very interface between physical and psychological torture.

54. While short-term sensory deprivation alone can trigger extreme mental torment, prolonged deprivation generally produces apathy, followed by progressively severe disorientation, confusion and, ultimately, delusional, hallucinatory and psychotic symptoms. Accordingly, the Body of Principles for Protection of All Persons under Any Form of Detention or Imprisonment explicitly prohibits holding a detainee “in conditions which deprive him, temporarily or permanently, of the use of any of his natural senses, such as sight or hearing, or of his awareness of place and the passing of time”.⁴¹ In practice, such deprivation involves the partial or complete elimination of sensory stimulation through an accumulation of measures such as:

- Suppression of oral communication with the victim
- Constant monotonous light
- Visually sterile environment
- Sound-proof insulation of the cell
- Hooding
- Blindfolding
- Use of gloves
- Use of facial masks
- Use of earmuffs

55. Sensory hyperstimulation below the threshold of physical pain, such as through constant bright light, loud music, bad odours, uncomfortable temperatures or intrusive white noise, induces progressively severe mental stress and anxiety, inability to think clearly, followed by increasing irritability, outbursts of anger and, ultimately, total exhaustion and despair. Extreme sensory hyperstimulation which, immediately or with the passage of time, causes actual physical pain or injury should be regarded as physical torture. This may include, for example, blinding victims with extremely bright light, or exposing them to extremely loud noise or music, or to extreme temperatures causing burns or hypothermia.

5. Social and emotional rapport (isolation, exclusion, betrayal)

56. A routine method of psychological torture is to attack the victim’s need for social and emotional rapport, through isolation, social exclusion, mobbing and betrayal. Persons deprived of meaningful social contact and subjected to emotional manipulation can quickly become deeply destabilized and debilitated.

57. The predominant method of isolation and social exclusion is solitary confinement, which is defined as “the confinement of prisoners for 22 hours or more a day without meaningful human contact”.⁴² Under international law, solitary confinement may be

⁴⁰ See also, Cakal, “Debility, dependency and dread”, pp. 23–24.

⁴¹ General Assembly resolution 43/173, annex.

⁴² The Nelson Mandela Rules, rule 44.

imposed only in exceptional circumstances, and “prolonged” solitary confinement, in excess of 15 consecutive days, is regarded as a form of torture or ill-treatment.⁴³ The same applies to frequently renewed measures which, in conjunction, amount to prolonged solitary confinement.⁴⁴ Even more extreme than solitary confinement is “incommunicado detention”, which deprives the inmate of any contact with the outside world, in particular with medical doctors, lawyers and relatives and has repeatedly been recognized as a form of torture.⁴⁵

58. Other methods of targeting the victim’s need for social rapport include deliberate medical, linguistic, religious or cultural isolation within a group of inmates, as well as the instigation, encouragement or tolerance for oppressive situations of harassment, bullying or mobbing against targeted individuals or groups. For example, the discriminatory or punitive detention of individual homosexual men in collective cells with violent, homophobic inmates will foreseeably create a situation of mobbing involving social isolation, threats, humiliation and sexual harassment and inflict severe levels of constant stress and anxiety likely to amount to torture regardless of the occurrence of physical violence.

59. The severe psychological and physical effects of incommunicado detention, solitary confinement and social exclusion, including mobbing, are well documented and, depending on the circumstances, can range from progressively severe forms of anxiety, stress and depression to cognitive impairment and suicidal tendencies. Particularly if prolonged or indefinite, or combined with the death row syndrome, isolation and social exclusion can also cause serious and irreparable mental and physical harm.

60. Apart from, and generally in combination with, isolation and social exclusion, torturers frequently target victims’ need for emotional rapport through deliberate emotional manipulation. This may include methods such as:

- Fostering and then betraying emotional rapport and personal trust
- Provoking “misconduct” through “guilty/guilty” choices and then inducing emotions of guilt or shame for betraying the torturer’s trust
- Destroying emotional ties by forcing victims to betray or participate in the abuse of other prisoners, relatives and friends, or vice versa
- Deceptive, disorienting or otherwise confusing information or role play

6. Communal trust (institutional arbitrariness and persecution)

61. Every human being has the inherent need for communal trust. Confronted with the overwhelming power of the State, individuals must be able to compensate for their own powerlessness by relying on the community’s ability and willingness to exercise self-restraint, most notably through adherence to the rule of law and the principles of due process. As long as administrative or judicial error, negligence or arbitrariness can be effectively, if at times imperfectly, addressed and corrected through a regular system of institutional complaints and remedies, the resulting inconveniences, injustices and frustrations may have to be tolerated as an inevitable side effect of the constitutional processes that govern democratic societies.

62. As discussed in detail in the Special Rapporteur report on the interrelation between corruption and torture (A/HRC/40/59, paras. 16 and 48–60), these constitutional processes are fatally corrupted when administrative or judicial power is deliberately misused for arbitrary purpose, and when the relevant institutional oversight mechanisms are complacent, complicit, inaccessible or paralysed to the point of effectively removing any prospect of due process and the rule of law.

⁴³ Ibid., rule 43 (1) (b); and [A/66/268](#), para. 26.

⁴⁴ [A/68/295](#), para. 61.

⁴⁵ [A/HRC/13/42](#), paras. 28 and 32; Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, Judgement, 29 July 1988, para. 187; [CCPR/C/51/D/458/1991](#), annex, para. 9.4; and [CCPR/C/61/D/577/1994](#), para. 8.4.

63. Typical of contexts marked by systemic governance failures, or by the persecution of individual or groups, sustained institutional arbitrariness fundamentally betrays the human need for communal trust and, depending on the circumstances, can cause severe mental suffering, profound emotional destabilization and lasting individual and collective trauma. In the view of the Special Rapporteur, when institutional arbitrariness or persecution intentionally and purposefully inflicts severe mental pain or suffering on powerless persons, it can constitute or contribute to psychological torture. In practice, this question is of particular, but not exclusive, relevance in relation to the deliberate instrumentalization of arbitrary detention and related judicial or administrative arbitrariness.

64. Apart from incommunicado detention and solitary confinement, discussed above, some of the most notable forms of arbitrary detention include:

- **Enforced disappearance.** This involves the arrest, detention, abduction or any other form of deprivation of liberty by or with the authorization, support or acquiescence of State officials, followed by a refusal to acknowledge such detention or by concealment of the fate or whereabouts of the disappeared persons, which places them outside the protection of the law.⁴⁶ Enforced disappearance can amount to a form of torture in relation both to the disappeared person and to their relatives (A/56/156, paras. 9–16).⁴⁷
- **Coercive detention.** This involves the deliberate instrumentalization of the progressively severe suffering inflicted by prolonged arbitrary detention for the purpose of coercing, intimidating, deterring or otherwise “breaking” the detainee or third persons.
- **Cruel, inhuman or degrading punishment.** This involves excessively long or harsh prison sentences, imposed for the purpose of deterrence, intimidation and punishment, but grossly disproportionate to the seriousness of the offence and incompatible with fundamental principles of justice and humanity. It can also include the severe mental and emotional suffering inflicted by “death row syndrome”.⁴⁸

65. Whether a particular situation of confinement qualifies as “detention” depends not only on whether persons concerned have a de jure right to leave, but also on whether they are de facto able to exercise that right without exposing themselves to serious human rights violations (principle of non-refoulement).

66. Whether arbitrary detention and related judicial or administrative arbitrariness amount to psychological torture must be determined on a case-by-case basis. As a general rule, the longer a situation of arbitrary detention lasts and the less detainees can do to influence their own situation, the more severe their suffering and desperation will become. Victims of prolonged arbitrary confinement have demonstrated post-traumatic symptoms and other severe and persistent mental and physical health consequences. In particular, the constant exposure to uncertainty and judicial arbitrariness and the lack of restrained or insufficient communication with lawyers, doctors, relatives and friends induces a growing sense of helplessness and hopelessness and, over time, may lead to chronic anxiety and depression.

67. Therefore, as the Special Rapporteur has repeatedly stressed both in the context of irregular migration (A/HRC/37/50, paras. 25–27) and in individual communications,⁴⁹ where arbitrary detention and judicial arbitrariness is intentionally imposed or perpetuated

⁴⁶ International Convention for the Protection of All Persons from Enforced Disappearance, art. 2.

⁴⁷ CAT/C/54/D/456/2011, para. 6.4.

⁴⁸ A/67/279, para. 42. European Court of Human Rights, *Soering v. the United Kingdom*, Application No. 14038/88, Judgment, 7 July 1989, para. 111.

⁴⁹ See, most prominently, individual communications sent by the Special Rapporteur in the cases of Chelsea Manning, communication No. AL USA 22/2019, 1 November 2019; and Julian Assange, communications Nos. UA/GBR/3/2019, 27 May 2019; and UA GBR 6/2019, 29 October 2019.

for purposes such as coercion, intimidation, deterrence or punishment, or for reasons related to discrimination of any kind, it may amount to psychological torture.

7. Torturous environments (accumulation of stressors)

68. The above outline of specific methods should not obscure the fact that, in practice, torture victims are almost always exposed to a combination of methods, techniques and circumstances deliberately designed to inflict both mental and physical pain or suffering. If applied in isolation or for a short period of time, some of these techniques and circumstances may not necessarily amount to torture. In combination and with increasing duration, however, they have a devastating effect.⁵⁰ Thus, a finding of torture may depend not only on the specific characteristics of particular techniques or circumstances, but also on their cumulative and/or prolonged effect, sometimes in conjunction with external stress factors or individual vulnerabilities that are not under the control of the torturer and may not even be consciously instrumentalized by him. As aptly stated by the International Tribunal for the Former Yugoslavia, torture “may be committed in one single act or can result from a combination or accumulation of several acts, which, taken individually and out of context, may seem harmless ... The period of time, the repetition and various forms of mistreatment and severity should be assessed as a whole”.⁵¹

69. Particularly in the absence of physical pain and suffering, due consideration must always be given to the context in which certain methods are used. For example, while in normal circumstances, publicly expressed insults and defamation may amount to a criminal offence, but not to torture, such an assessment might change significantly when the same conduct becomes a matter of systematic, State-sponsored vilification and persecution involving additional measures such as arbitrary detention, constant surveillance, systematic denial of justice and serious threats or intimidation.⁵² Moreover, each person may react differently to a particular method of torture. In practice, therefore, torture techniques must always be evaluated by reference to the targeted victim’s individual vulnerabilities (A/73/152), whether attributable to disability (A/63/175), migration status (A/HRC/37/50) or any other reason.

70. In such situations, rather than looking at each factor in isolation and asking which ones cross the “severity” threshold, it is more appropriate to speak of a “torturous environment”, that is to say, a combination of circumstances and/or practices designed or of a nature, as a whole, to intentionally inflict pain or suffering of sufficient severity to achieve the desired torturous purpose.⁵³ This reflects the reality that victims tend to experience and respond to torture holistically, and not as a series of isolated techniques and circumstances, each of which may or may not amount to torture.⁵⁴

E. Cybertorture

71. A particular area of concern, which does not appear to have received sufficient attention, is the possible use of various forms of information and communication technology (“cybertechnology”) for the purposes of torture. Although the promotion, protection and enjoyment of human rights on the Internet has been repeatedly addressed by the Human Rights Council (see A/HRC/32/L.20; and A/HRC/38/L.10/Rev.1), torture has

⁵⁰ Physicians for Human Rights and Human Rights First, *Leave No Marks: Enhanced Interrogation Techniques and the Risk of Criminality* (2007), p. 6.

⁵¹ International Criminal Tribunal for the former Yugoslavia, Trial Chamber II, *Prosecutor v. Milorad Krnojelac*, Case No. IT-97-25, Judgment, 15 March 2002, para. 182; see also, European Court of Human Rights, *Ireland v. the United Kingdom*, Application No. 5310/71, para. 168.

⁵² Large-scale historical examples of such abuse were the so-called “struggle sessions” used during the Chinese Cultural Revolution (1966–1976) to publicly humiliate, abuse and torture political dissidents. See Tom Phillips, “The cultural revolution: all you need to know about China’s political convulsion”, *The Guardian*, 10 May 2016. For a recent individual case, see OHCHR, “UN expert says ‘collective persecution’ of Julian Assange must end now”, 31 May 2019.

⁵³ Pérez-Sales, *Psychological Torture*, p. 284.

⁵⁴ Luban and Newell, “Personality disruption as mental torture”, pp. 363 and 374.

been understood primarily as a tool used to obstruct the exercise of the right to freedom of expression on the Internet, and not as a violation of human rights that could be committed through the use of cybertechnology.

72. This seems surprising given that some of the characteristics of cyberspace make it an environment highly conducive to abuse and exploitation, most notably a vast power asymmetry, virtually guaranteed anonymity and almost complete impunity. States, corporate actors and organized criminals not only have the capacity to conduct cyberoperations inflicting severe suffering on countless individuals, but may well decide to do so for any of the purposes of torture. It is therefore necessary to briefly explore, in a preliminary manner, the conceivability and basic contours of what could be described as “cybertorture”.

73. In practice, cybertechnology already plays the role of an “enabler” in the perpetration of both physical and psychological forms of torture, most notably through the collection and transmission of surveillance information and instructions to interrogators, through the dissemination of audio or video recordings of torture or murder for the purposes of intimidation, or even live streaming of child sexual abuse “on demand” of voyeuristic clients (A/HRC/28/56, para. 71), and increasingly also through the remote control or manipulation of stun belts (A/72/178, para. 51), medical implants and, conceivably, nanotechnological or neurotechnological devices.⁵⁵ Cybertechnology can also be used to inflict, or contribute to, severe mental suffering while avoiding the conduit of the physical body, most notably through intimidation, harassment, surveillance, public shaming and defamation, as well as appropriation, deletion or manipulation of information.

74. The delivery of serious threats through anonymous phone calls has long been a widespread method of remotely inflicting fear. With the advent of the Internet, State security services in particular have been reported to use cybertechnology, both in their own territory and abroad, for the systematic surveillance of a wide range of individuals and/or for direct interference with their unhindered access to cybertechnology.⁵⁶ Electronic communication services, social media platforms and search engines provide an ideal environment both for the anonymous delivery of targeted threats, sexual harassment and extortion and for the mass dissemination of intimidating, defamatory, degrading, deceptive or discriminatory narratives.

75. Individuals or groups systematically targeted by cybersurveillance and cyberharassment are generally left without any effective means of defence, escape or self-protection and, at least in this respect, often find themselves in a situation of “powerlessness” comparable to physical custody. Depending on the circumstances, the physical absence and anonymity of the perpetrator may even exacerbate the victim’s emotions of helplessness, loss of control and vulnerability, not unlike the stress-augmenting effect of blindfolding or hooding during physical torture. Likewise, the generalized shame inflicted by public exposure, defamation and degradation can be just as traumatic as direct humiliation by perpetrators in a closed environment.⁵⁷ As various studies on cyberbullying have shown, harassment alone in comparatively limited environments can expose targeted individuals to extremely elevated and prolonged levels of anxiety, stress, social isolation and depression and significantly increases the risk of suicide.⁵⁸ Arguably, therefore, much more systematic, government-sponsored threats and harassment delivered through cyber-technologies not only entail a situation of effective powerlessness but may well inflict

⁵⁵ Al Elmondi, “Next-generation nonsurgical neurotechnology”, Defense Advanced Research Projects Agency, available at www.darpa.mil/program/next-generation-nonsurgical-neurotechnology.

⁵⁶ See Human Rights Council resolutions 32/13 and 38/7. See, most notably, the 2013 disclosures by Edward Snowden of the global surveillance activities conducted by the United States National Security Agency and its international partners, see Ewan Macaskill and Gabriel Dance, “NSA files: decoded – what the revelations mean for you”, *The Guardian*, 1 November 2013.

⁵⁷ Pau Pérez-Sales, “Internet and torture” (forthcoming).

⁵⁸ Ann John and others, “Self-harm, suicidal behaviours, and cyberbullying in children and young people: systematic review”, *Journal of Medical Internet Research*, vol. 20, No. 4 (2018); Rosario Ortega and others, “The emotional impact of bullying and cyberbullying on victims: a European cross-national study”, *Aggressive Behavior*, vol. 38, No. 5 (September/October 2012).

levels of anxiety, stress, shame and guilt amounting to “severe mental suffering”, as required for a finding of torture.⁵⁹

76. More generally, in order to ensure the adequate implementation of the prohibition of torture and related legal obligations in present and future circumstances, its interpretation should evolve in line with new challenges and capabilities arising in relation to emerging technologies not only in cyberspace, but also in areas such as artificial intelligence, robotics, nanotechnology and neurotechnology, or pharmaceutical and biomedical sciences, including so-called “human enhancement”.

IV. Conclusions and recommendations

77. On the basis of the above observations and considerations on the substantive dimensions of the concept of “psychological torture”, and informed by broad stakeholder consultations, the Special Rapporteur, to the best of his knowledge and judgment, proposes the conclusions and recommendations set out below.

78. **Prevalence.** Psychological torture occurs in a wide variety of contexts, including ordinary criminal investigations, police detention, “stop-and-search” operations, intelligence gathering, medical, psychiatric and social care, immigration, administrative and coercive detention, as well as in social contexts such as domestic violence, mobbing, cyberbullying and political or discriminatory persecution.

79. **General recommendations.** Psychological torture constituting a subcategory to the generic concept of torture, the Special Rapporteur herewith reiterates the general recommendations of his mandate (E/CN.4/2003/68, para. 26) and emphasizes their full applicability, *mutatis mutandis*, to methods, techniques and circumstances amounting to “psychological torture”.

80. **Non-coercive investigation.** Given the practical importance of continuing to clarify the fault lines between permissible non-coercive investigative techniques and prohibited coercive interrogation, the Special Rapporteur reaffirms the conclusions and recommendations in the thematic report submitted by his predecessor (A/71/298) and invites States to actively support the ongoing process towards developing international guidelines on investigative interviewing and associated safeguards.

81. **Istanbul Protocol.** Personnel tasked with medical examinations, the determination of migration status or the judicial adjudication of potential cases of torture should be provided with function-specific training in the identification and documentation of the signs of torture and ill-treatment, in accordance with the updated Protocol.

82. **Specific recommendations.** More specifically with regard to the notion of “psychological torture”, the Special Rapporteur recommends that States adopt, incorporate and implement the following definitions, interpretations and understandings throughout their national normative, institutional and policy frameworks, including, in particular, their training and instruction of medical, judicial, administrative, military and law enforcement personnel.

83. **Working definitions.** For the purposes of human rights law, “psychological torture” should be interpreted to include all methods, techniques and circumstances which are intended or designed to purposefully inflict severe mental pain or suffering without using the conduit or effect of severe physical pain or suffering. Conversely, “physical torture” should be interpreted to include all methods, techniques and environments which are intended or designed to purposefully inflict severe physical pain or suffering, regardless of the parallel infliction of mental pain or suffering.

84. **Constitutive elements:** In the context of psychological torture,

⁵⁹ Samantha Newbery and Ali Dehghantanha, “A torture-free cyber space: a human right”, 2017.

(a) “Mental suffering” refers primarily to subjectively experienced mental suffering but, in its absence, can also refer to objectively inflicted mental harm alone;

(b) “Severity” of mental pain or suffering depends on a wide range of factors that are endogenous and exogenous to the individual, all of which must be holistically evaluated on a case-by-case basis and in the light of the specific purpose pursued by the treatment or punishment in question;

(c) “Powerlessness” refers to the victim’s inability to escape or resist the infliction of mental pain or suffering, and can be achieved not only through physical custody but also, for example, through incapacitating medication, deprivation of legal capacity, serious and immediate threats and social contexts marked by coercive control, mobbing, cyberbullying and persecution;

(d) “Intentionality” is present where the perpetrator knew or should have known that, in the ordinary course of events, his or her acts or omissions would result in the infliction of severe mental pain or suffering, whether alone or in conjunction with other factors and circumstances;

(e) “Purposefulness” is present when mental pain or suffering is inflicted for purposes such as interrogation, punishment, intimidation and coercion of the victim or a third person, or with a discriminatory nexus, regardless of purportedly benevolent purposes such as “medical necessity”, “re-education”, “spiritual healing”, or “conversion therapy”;

(f) “Lawful sanctions” cannot include any sanctions or measures prohibited by relevant international instruments or national legislation, such as prolonged or indefinite solitary confinement, sensory manipulation, collective punishment, prohibition of family contacts, or detention for purposes of coercion, intimidation, or for reasons related to discrimination of any kind.

85. **Predominant methods.** In contrast to physical torture, which uses the body and its physiological needs as a conduit for affecting the victim’s mind and emotions, psychological torture does so by directly targeting one or several basic psychological needs, such as:

(a) **Security (inducing fear, phobia and anxiety);**

(b) **Self-determination (domination and submission);**

(c) **Dignity and identity (humiliation, breach of privacy and sexual integrity);**

(d) **Environmental orientation (sensory manipulation);**

(e) **Social and emotional rapport (isolation, exclusion and emotional manipulation);**

(f) **Communal trust (institutional arbitrariness and persecution).**

86. **Torturous environments.** In practice, torture victims are almost always exposed to a combination of techniques and circumstances inflicting both mental and physical pain or suffering, the severity of which depends on factors such as duration, accumulation and personal vulnerability. Victims tend to experience and respond to torture holistically, and not as a series of isolated techniques and circumstances, each of which may or may not amount to torture. Accordingly, psychological torture may be committed in one single act or omission or can result from a combination or accumulation of several factors which, taken individually and out of context, may seem harmless. The intentionality, purposefulness and severity of the inflicted pain or suffering must always be assessed as a whole and in the light of the circumstances prevailing in the given environment.

87. **Challenges of new technologies.** In order to ensure the adequate implementation of the prohibition of torture and related international legal obligations in present and future circumstances, its interpretation should evolve in line with new challenges and capabilities arising in relation to emerging technologies

not only in cyberspace, but also in areas such as artificial intelligence, robotics, nanotechnology and neurotechnology, or pharmaceutical and biomedical sciences including so-called “human enhancement”.



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Promotion and protection of human rights: implementation of human rights instruments

Relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, submitted in accordance with General Assembly resolution [72/163](#).

* [A/74/50](#).



Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment examines the relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence and, in the light of his conclusions, offers recommendations to States with a view to strengthening their capacity to prevent torture and other cruel, inhuman or degrading treatment or punishment in that context.

I. Domestic violence as a human rights issue

1. Domestic violence is perpetrated every day against millions of children, women and men worldwide. It is experienced by all generations, nationalities, cultures and religions and on all socioeconomic and educational levels of society. It constitutes a major obstacle to the universal fulfilment of human rights and to the achievement of the 2030 Agenda for Sustainable Development and it severely damages the physical, sexual, emotional, mental and social well-being of innumerable individuals and families, often leaving lasting trauma not only on its direct victims but also within entire communities. For countless people, it makes the home a place of danger, humiliation and untold harm, rather than a place of refuge, trust and protection.

2. In essence, domestic violence refers to “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim”.¹ Moreover, while a person’s home is most commonly understood to be the family or foster home, it may also be a communal care setting, whether community-based or institutional. On the basis of that generic understanding, domestic violence includes a wide range of abusive conduct, from culpable neglect and abusive or coercive or excessively controlling behaviour that aims to isolate, humiliate, intimidate or subordinate a person, to various forms of physical violence, sexual abuse and even murder. In terms of the intentionality, purposefulness and severity of the inflicted pain and suffering, domestic violence often falls nothing short of torture and other cruel, inhuman or degrading treatment or punishment (also referred to as “torture and ill-treatment”). It is particularly concerning, therefore, that it remains both extremely widespread and routinely trivialized.

3. In quantitative terms, data provided by the United Nations Office on Drugs and Crime indicate that, in 2017 alone, approximately 78,000 individuals (64 per cent female and 36 per cent male) were killed by intimate partners or family members,² a gruesome “tip of the iceberg” pointing towards a far greater number of victims that are beaten, raped, threatened and humiliated in their own homes every day. Indeed, it has been estimated that, depending on the country, between 15 and 70 per cent of the female population – and a worldwide average of 30 per cent of women – have suffered intimate-partner violence at some point in their lives,³ and that between 50 and 75 per cent of children worldwide (up to 1 billion) experience physical, sexual, or emotional violence at home.⁴ Those staggering numbers are exacerbated by the fact that, in general, the exposure of victims to domestic violence continues for many years and often lasts an entire lifetime. Contrary to some perceptions, therefore, domestic violence is neither an exceptional occurrence nor a matter of lesser importance, but in fact represents one of the predominant sources of humiliation, violence and death

¹ See Article 3 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).

² United Nations Office on Drugs and Crime, *Global Study on Homicide: Gender-related Killing of Women and Girls* (2018), pp. 10–11.

³ World Health Organization (WHO), *Multi-country study on women’s health and domestic violence against women* (Geneva, 2005).

⁴ Office of the Special Representative of the Secretary General on Violence against Children, *Toward a world free from violence: Global survey on violence against children* (New York, 2013); United Nations Children’s Fund (UNICEF), *Child Disciplinary Practices at Home: Evidence from a Range of Low- and Middle-Income Countries* (New York, 2010); and UNICEF, *Hidden in Plain Sight: A statistical analysis of violence against children* (New York, 2014), pp. 165–166.

worldwide; roughly comparable to all of the killing and abuse caused by armed conflict.⁵

4. In the light of these observations, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment is of the view that domestic violence cannot be regarded as a private matter, but constitutes a major human rights issue of inherently public concern that requires examination, inter alia, from the perspective of the prohibition of torture and ill-treatment. Building on the work of his predecessors and other mechanisms, the Special Rapporteur conducted extensive research and broad stakeholder consultations with experts, government representatives, international organizations and civil society organizations, including through a general call for submissions in response to a thematic questionnaire posted on the website of the Office of the United Nations High Commissioner for Human Rights. The present report reflects the resulting observations, conclusions and recommendations of the Special Rapporteur.

II. Relevance of the prohibition of torture and ill-treatment to the context of domestic violence

A. “Substantive” and “attributive” components of torture and ill-treatment

5. The international legal concepts of “torture” and of “other cruel, inhuman or degrading treatment or punishment” have two distinct components, which could be described as “substantive” and “attributive”. The “substantive” component defines the conduct that amounts to torture and, respectively, other cruel, inhuman or degrading treatment or punishment, whereas the “attributive” component defines the level of State agent involvement required in order for torture or ill-treatment to give rise to the State’s international legal responsibility.

6. From a substantive perspective, torture and ill-treatment as conceptualized under international law need not necessarily involve a State agent, but can also be committed by private actors without a State agent’s participation, instigation, consent or acquiescence. For example, international humanitarian law prohibits any act of torture and other or cruel, humiliating and degrading treatment committed by organized armed groups in armed conflict.⁶ Similarly, the Rome Statute of the International Criminal Court criminalizes war crimes and crimes against humanity that involve torture and ill-treatment by any perpetrator, irrespective of their status or of any State agent involvement.⁷ In international human rights law, it is widely recognized that torture or ill-treatment at the hands of private perpetrators can trigger a wide range of positive State obligations, including in the context of domestic violence.⁸ Thus, the question of State agent involvement is most significant in determining whether a particular act of torture or ill-treatment is legally attributable to a State or to delineating positive State obligations under human rights law.

7. In the context of domestic violence, it is of particular importance to distinguish between the substantive analysis of whether domestic violence amounts to torture and ill-treatment within the generic meaning of those terms under international law and

⁵ Small Arms Survey, *Global Violent Deaths 2017: Time to Decide* (Geneva, 2017), p. 10.

⁶ See, e.g. art. 3 common to the Geneva Conventions and art. 4 (2) (a) of their Additional Protocol II. See also REDRESS, *Not only the State: Torture by non-State actors* (London, 2006).

⁷ Articles 7 (2) (e) and 8 (2) (a) (ii)/(iii) and (c) (i)/(ii) of the Rome Statute of the International Criminal Court.

⁸ See, for example, the factsheet on domestic violence produced by the European Court of Human Rights, available from www.echr.coe.int/Documents/FS_Domestic_violence_ENG.pdf.

the attributive analysis into the way the State may be held responsible for its involvement in, including its failure to take appropriate action against, domestic violence.

B. Substantive analysis: domestic violence as torture or ill-treatment

8. From a substantive perspective, torture and ill-treatment can take many forms but, in essence, always involve a violation of physical, mental or emotional integrity that is incompatible with human dignity. Under universally applicable human rights law, torture denotes the intentional infliction on a powerless person of severe pain or suffering, whether physical or mental, for purposes such as obtaining information or a confession, punishment, intimidation or coercion, or for any reason based on discrimination of any kind, whereas ill-treatment denotes any other cruel, inhuman or degrading treatment or punishment that, contrary to torture, does not necessarily require the intentionality and purposefulness of the act or omission, the severity of the resulting pain or suffering, or the powerlessness of the victim (A/72/178, para. 31, and E/CN.4/2006/6, paras. 38–41). As the Special Rapporteur has previously clarified, “powerlessness” means that someone is overpowered or otherwise under the control of the perpetrator and, at the time of the relevant act or omission, cannot effectively resist or escape the infliction of pain or suffering (A/72/178, para. 31). Conceptually, torture and ill-treatment can occur in both custodial and extracustodial contexts as well as in both the public and the private sphere, however these may be defined.

9. As illustrated by the predominant patterns discussed in the present report, domestic violence degrades, humiliates, coerces, brutalizes and otherwise violates the physical, mental and emotional integrity of persons who are often subjected to controlling and disempowering situations or environments. In this context, pain or suffering is in general inflicted intentionally, or even systematically, for purposes such as punishment, intimidation or coercion of any kind, or to express or consolidate gender-based or other forms of discrimination. Depending on the circumstances, the pain, suffering or humiliation resulting from domestic violence can range from comparatively moderate and brief to extremely severe and long-lasting but, being abusive by definition, always amounts to a violation of physical, mental and emotional integrity that is incompatible with human dignity.

10. From a substantive perspective under international law, and regardless of questions of State responsibility and of individual criminal culpability, both of which need to be separately assessed, domestic violence therefore always amounts to cruel, inhuman or degrading treatment or punishment and very often to physical or psychological torture.

C. Attributive analysis: international practice concerning State responsibility in the context of domestic violence

11. The reports of previous mandate-holders and the practice and jurisprudence of universal and regional oversight mechanisms have confirmed that domestic violence gives rise to a wide range of human rights obligations, including the obligation of States to prevent acts of torture and ill-treatment within their jurisdiction, including at the hands of private actors (arts. 2 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

12. Thus, the Special Rapporteur has previously observed that States are internationally responsible for torture or ill-treatment when they fail to exercise due diligence to protect against such violence or when they legitimize domestic violence

by, for instance, allowing husbands to “chastise” their wives or failing to criminalize marital rape ([A/HRC/31/57](#), para. 55). With reference to article 7 of the International Covenant on Civil and Political Rights, the Human Rights Committee has repeatedly condemned the failure of States to prevent and redress domestic violence (e.g. [CCPR/C/JAM/CO/4](#), para. 23; and [CCPR/C/LKA/CO/5](#), para. 9), and the Committee Against Torture has done the same with reference to the Convention against Torture (e.g. [CAT/C/GRC/CO/5-6](#), para. 23). Moreover, in paragraphs 18 and 19 of its general comment No. 2 (2007) on the implementation of article 2 by States parties, the Committee Against Torture confirmed States’ due diligence obligations to prevent, investigate, prosecute and punish acts of torture or other cruel, inhuman or degrading treatment by non-State actors, including gender-based violence, such as rape, domestic violence, female genital mutilation and trafficking. Importantly, according to the Committee, if a person is to be transferred or sent to the custody or control of an individual or institution known to have engaged in torture or ill-treatment, or the State has not implemented adequate safeguards, the State is responsible, and its officials subject to punishment for ordering, permitting or participating in this transfer contrary to the State’s obligation to take effective measures to prevent torture.

13. At the regional level, the European Court of Human Rights has repeatedly found violations of the prohibition of torture and ill-treatment owing to States’ failure to take general and specific measures to effectively protect persons from domestic violence,⁹ or because the domestic court’s approach suggested that “isolated and random” acts of violence could be tolerated within the family.¹⁰ In doing so, the Court has elaborated States’ positive obligations to protect persons facing domestic violence.¹¹ Thus, the Court has found, for example, that States should strive expressly and comprehensively to protect children’s dignity against domestic violence, most notably through an adequate legal framework affording protection through effective deterrence against serious breaches of personal integrity, through reasonable steps to prevent abuse of which the authorities have, or ought to have, knowledge and through effective official investigations of credible allegations of ill-treatment.¹² Other cases in which the Court has found a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms on the basis of States’ response to domestic violence also concerned the right to life,¹³ the right to private and family life¹⁴ and the prohibition of discrimination.¹⁵

14. The Inter-American Commission on Human Rights has found the failure to protect a victim of domestic violence and her children to be in breach of the American Declaration of the Rights and Duties of Man, notably the right to life, liberty and security of person and the right to equality before the law, in particular owing to the State’s failure to enforce a restraining order against the victim’s husband.¹⁶ The Inter-

⁹ See, inter alia, *Opuz v. Turkey*, App. No. 33401/02, Judgment of 9 June 2009; *N. v. Sweden*, App. No. 23505/09, Judgment of 20 July 2010; *E.M. v. Romania*, App. No. 43994/05, Judgment of 30 October 2012; *Valiulienė v. Lithuania*, App. No. 33234/07, Judgment of 26 March 2013; *B. v. Republic of Moldova*, App. No. 61382/09, Judgment of 16 July 2013; *T.M. and C.M. v. Moldova*, App. No. 26608/11, Judgment of 28 January 2014.

¹⁰ *D.M.D. v. Romania*, App. No. 23022/13, Judgment of 3 October 2017, paras. 40–53.

¹¹ See factsheet on domestic violence produced by the European Court of Human Rights.

¹² *D.M.D. v. Romania*, para. 51.

¹³ See, for example, *Kontrová v. Slovakia*, App. No. 7510/04, Judgment of 31 May 2007; and *Branko Tomašić and Others v. Croatia*, App. No. 46598/06, Judgment of 15 January 2009.

¹⁴ See, for example, *Bevacqua and S. v. Bulgaria*, App. No. 71127/01, Judgment of 12 June 2008; and *A. v. Croatia*, App. No. 55164/08, Judgment of 14 October 2010.

¹⁵ See, for example, *Eremia v. Republic of Moldova*, App. No. 3564/11, Judgment of 28 May 2013.

¹⁶ *Jessica Lenahan (Gonzales) et al v. United States of America*, report No. 80/11, case 12.626, Inter-American Commission on Human Rights, 21 July 2011.

American Court of Human Rights has elaborated States' positive human rights obligations in relation to acts of private perpetrators through the "due diligence" standard, in the following terms: "An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention".¹⁷ According to the Court, the actions required of the State are not isolated to establishing an appropriate legal framework. Instead, the State must "conduct itself so as to effectively ensure" the enjoyment of human rights.¹⁸

15. Furthermore, under the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (the Convention of Belém do Pará), adopted in 1994, States are obliged to take a range of measures towards the eradication of violence against women. Although the term "domestic violence" is not used in that instrument, it is approached as a facet of violence against women more generally. In addition, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention), adopted in 2011, elaborates States' obligations to take a variety of measures to counter violence against women and domestic violence. The measures contained in that Convention are "without prejudice to the positive obligations on states to protect the rights recognized by the [European Convention on Human Rights]."¹⁹

16. With respect to the African Union, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol), adopted in 2003, places a range of obligations on States parties in relation to violence against women, including domestic violence. Furthermore, the African Charter on the Rights and Welfare of the Child enshrines specific human rights protections for children, including protection from violence (art. 16). The African Court on Human and Peoples' Rights has, for example, found one particular national family code that permitted underage marriage and marriage without consent and that discriminated against women in matters of inheritance to be discriminatory and to perpetuate practices harmful towards women and children, in violation of applicable human rights law.²⁰

17. Specialized mechanisms also have long recognized domestic violence to give rise to human rights obligations. The Committee on the Elimination of Discrimination against Women recognizes that the Convention on the Elimination of All Forms of Discrimination against Women prohibits violence against women in both the public and the private sphere.²¹ The Committee has regularly made recommendations to States on how to address domestic violence and related discriminatory attitudes and practices and has developed a formidable body of guidance in that respect.²² The Committee has affirmed that gender-based violence, including domestic violence, is

¹⁷ See *Velasquez Rodriguez v. Honduras*, Judgment of 29 July 1988, Inter-American Court of Human Rights (ser. C) No. 4 (1988), para. 172.

¹⁸ *Ibid.*, para. 167.

¹⁹ See Council of Europe, Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence (2011), para. 29. Available from <https://rm.coe.int/16800d383a>.

²⁰ *APDF and IHRDA v. Mali*, App. No. 046/2016, African Court on Human and Peoples' Rights, 11 May 2018.

²¹ Committee on the Elimination of Discrimination against Women, general recommendation No. 19 (1992) on article 3 of the Convention, para. 9, and general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19.

²² R. McQuigg, *International Human Rights Law and Domestic Violence* (Routledge 2011).

a pernicious form of discrimination.²³ Furthermore, in 1994, the Special Rapporteur on violence against women, its causes and consequences, was appointed by the Commission on Human Rights and, soon after, produced a framework for model legislation on domestic violence (E/CN.4/1996/53/Add.2), followed by a key report on the related due diligence obligations of States (E/CN.4/2006/61) and, more recently, on shelters and protection orders (A/HRC/35/30).

18. Moreover, article 19 of the Convention on the Rights of the Child provides that States shall take “all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.” This provision complements and reinforces the generic prohibition of torture and ill-treatment, enshrined in article 37 of the Convention, which applies across custodial and extra-custodial contexts, and in both the public and private sphere.

19. In its general comment No. 13 (2011) on the right of the child to freedom from all forms of violence, the Committee on the Rights of the Child found that States are required to take a range of measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse. The Committee emphasized the enormously deleterious implications of violence against children, which often occurs at the hands of members of their own household and which includes threats to their survival and their physical, mental, spiritual, moral and social development.

20. The practice of international human rights mechanisms therefore supports the conclusion that, in principle, domestic violence triggers a range of relevant legal obligations of States under international human rights law, including their duties under the universal, absolute and non-derogable prohibition of torture and ill-treatment.

D. Attributive analysis: due diligence and “perpetration”, “instigation”, “consent” and “acquiescence” in the context of domestic violence

21. **Negative duty to “respect” the prohibition of torture and ill-treatment.** By definition, domestic violence occurs in the context of the family or the home and, therefore, is rarely seen as an official act of the State. Nevertheless, in certain circumstances, State officials can be direct perpetrators of domestic violence, namely when the State is involved in providing a home, such as in an orphanage or certain forms of social care. Moreover, certain policies and practices adopted by the State may amount to the instigation of torture or ill-treatment by private actors within the meaning of articles 1 and 16 of the Convention against Torture. In the context of domestic violence, this can include calls by political or State-endorsed religious leaders to “discipline” household members through violence; official endorsement of “honour”-based violence or other harmful practices, or of the social norms dictating such practices, including coercive control over family members; or discriminatory political narratives openly encouraging violence and abuse against persons or groups that are being marginalized for reasons such as gender, age, origin, race, religion, disabilities or sexual orientation. The prohibition of torture and ill-treatment

²³ Committee on the Elimination of Discrimination against Women, general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, para. 21.

unequivocally outlaws any direct perpetration, instigation or other encouragement of domestic violence by State officials.

22. Positive duty to ensure the right to be free from torture and ill-treatment.

In the context of domestic violence, State responsibility for torture and ill-treatment most frequently arises in connection with the violation of its positive duty to ensure human rights by preventing, protecting against, responding to and offering redress for abuse perpetrated by private actors (art. 2 in conjunction with art. 7 of the International Covenant on Civil and Political Rights), and in connection with policies and practices that may be regarded as “acquiescence” or “consent” within the meaning of articles 1 and 16 of the Convention against Torture. In particular, States must take effective legislative, administrative, judicial or other measures to prevent acts of torture or ill-treatment in any territory under their jurisdiction (arts. 2 and 16 of the Convention against Torture). Failure to exercise due diligence to prevent, investigate, prosecute and redress torture and ill-treatment by private perpetrators, including in the context of domestic violence, amounts to consent or acquiescence in torture or ill-treatment (Committee against Torture, general comment No. 2, para. 18).

23. Positive obligations require States to take “effective measures”, both general and individualized, to prevent, protect against, respond to and provide redress for torture and ill-treatment. Those duties do not necessarily entail strict State responsibility for every act of torture or ill-treatment committed by private actors within the State’s jurisdiction, and States are neither expected nor entitled to impose constant surveillance on every family home. Rather, States incur international legal responsibility when they fail to take those measures of prevention, protection and redress that are reasonably available to them and likely to have the desired effect. The State’s positive obligations must be interpreted and complied with in good faith, in line with the spirit and purpose of the prohibition (A/HRC/37/50, para. 14), and without discrimination of any kind.²⁴ They can be categorized as follows:

(a) **General duties.** States are required to establish legal provisions, mechanisms and processes that effectively protect people from torture and ill-treatment, including in the context of domestic violence.²⁵ Beyond the direct prevention, investigation and redress of acts of torture and ill-treatment, States must also take appropriate measures to transform societal structures and values that perpetuate and entrench domestic violence (E/CN.4/2006/61, paras. 15–16) and to remedy legal, structural and socioeconomic conditions that may increase exposure to domestic violence by private actors (A/73/207, para. 77 (i)), as well as to establish and facilitate access to services and support for (potential) victims, such as telephone hotlines and online platforms, health care, counselling centres, legal assistance, shelters and financial aid. States must provide particular protection to persons in vulnerable situations and establish structures to address the increased risk of torture and ill-treatment that they are exposed to, in line with human rights norms developed to eliminate various forms of discrimination, such as discrimination against women, children and persons with disabilities (A/73/207, para. 64).²⁶

(b) **Operational duties.** States must also take effective measures to protect individuals from particular risks of torture or ill-treatment of which they know or ought to know. This requires them to establish avenues and mechanisms for receiving,

²⁴ Art. 26 and 31 (1) of the Vienna Convention on the Law of Treaties, and art. 26 of the International Covenant on Civil and Political Rights.

²⁵ For a recent overview of the current state of the national and international normative and institutional framework, see World Bank “Compendium of International and National Legal Frameworks on Domestic Violence” (January 2019), available from **Error! Hyperlink reference not valid.**

²⁶ Committee against Torture, general comment No. 2 (2008) on implementation of article 2 by States parties, para. 21.

recording and responding effectively to complaints of torture or ill-treatment, including domestic violence and to establish services and institutions capable of initiating and implementing protective measures in a prompt and effective manner.²⁷

(c) **Investigative and procedural duties.** Investigative and procedural duties require an investigation into all credible allegations or suspicions of torture or ill-treatment, which must be independent and impartial, effective, prompt, expeditious, sufficiently open to public scrutiny, capable of identifying those responsible and holding them to account; and which involves the victims or their next-of-kin to the extent necessary to safeguard their legitimate interests in the proceedings. The duty to investigate credible allegations of domestic violence can be intrinsically linked to the operational duty in respect of an ongoing situation, and an investigation may trigger duties to take specific measures for the protection of (potential) victims who are at risk from private perpetrators.²⁸

(d) **Redress, reparation and non-recurrence.** States must secure avenues towards redress and reparation for all victims of torture or other ill-treatment, including victims of domestic violence, and take concrete measures to ensure non-recurrence (A/HRC/14/22, paras. 62–64).

III. Applying the substantive definition of torture and ill-treatment to predominant patterns of domestic violence

24. The present section applies the substantive aspect of the definitions of torture and ill-treatment to concrete manifestations of domestic violence, without prejudice to the question of State responsibility and of individual criminal culpability, both of which need to be separately assessed. Given the virtually unlimited forms that domestic violence can take, and given that some of the described practices can also manifest in contexts other than domestic violence, the following examples are not comprehensive or exclusive, but instead focus on patterns of domestic violence that are highly prevalent throughout the world.

A. Killings

25. Approximately one in five homicides globally is perpetrated by an intimate partner or family member (64 per cent female and 36 per cent male victims), and at least one in seven exclusively by an intimate partner (82 per cent female and 18 per cent male victims).²⁹ The staggering numbers of women killed by an intimate partner recently led to a call by numerous international human rights mechanisms for measures to end what can only be described as a “global epidemic of femicide”.³⁰ In practice, those killings are commonly the culmination of a history of domestic violence. Likewise, children face the highest risk of homicide by parents and someone they know.³¹

²⁷ See, for example, *Opuz v. Turkey*. See also REDRESS and Amnesty International, *Gender and Torture* (2011), pp. 15–17.

²⁸ See *D. v. Commissioner of Police of the Metropolis* (Liberty and others intervening); *V. v. Commissioner of Police of the Metropolis* (Liberty and others intervening), Supreme Court of the United Kingdom of Great Britain and Northern Ireland (2018), UKSC 11.

²⁹ United Nations Office on Drugs and Crime, *Global Study on Homicide: Gender-related Killing of Women and Girls* (2018), p. 11; Heidi Stöckl et al, “The global prevalence of intimate partner homicide: a systematic review”, *The Lancet*, vol. 382 (September (2013) pp. 859–865.

³⁰ www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23921&LangID=E.

³¹ Heidi Stöckl et al, “Child homicide perpetrators worldwide: a systematic review”, in *British Medical Journal Paediatrics Open*, vol. 1, iss. 1 (2017).

26. In the view of the Special Rapporteur, killings that result from or are preceded by domestic violence, including culpable neglect or physical, psychological or emotional abuse resulting in self-harm, engage not only the right to life, but also the prohibition of torture and ill-treatment and the related positive obligations and aggravate the crime or violation in question.

B. Physical violence

27. Physical violence within the home or between family members, including former spouses or partners, is widespread throughout the world. In the context of domestic violence, the use of physical force is always abusive, save for very exceptional circumstances, in which its use is absolutely necessary and proportionate for self-defence or to otherwise protect a person against imminent death or serious injury. Physical violence may include a wide range of transgressions including, inter alia, hitting, slapping, pushing, kicking, misuse of medication and inappropriate restraint. Physical violence includes all forms of corporal punishment, which is defined as any punishment in which physical force is used and intended to cause some degree of pain or discomfort. In its general comment No. 13, the Committee on the Rights of the Child affirmed that no form of violence against children, however light, could be tolerated, including in the familial sphere, and reiterated the States' obligation to prevent violence and protect child victims. The Committee further reiterated that corporal or physical punishment is invariably degrading and must be prohibited (A/61/299, paras. 56, 60 and 62). As the Committee underlined in paragraph 61 of the above-mentioned general comment, the "best interests of the child" criterion cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, that conflict with the child's human dignity and right to physical integrity.

28. In the view of the Special Rapporteur, any form of physical abuse occurring within the home or between family members amounts to cruel, inhuman or degrading treatment or punishment and, in case of intentional and purposeful or discriminatory infliction of severe pain and suffering on a powerless person, to torture.

C. Sexual violence

29. Sexual violence includes rape and any other non-consensual act of a sexual nature between adults, including current and former spouses,³² as well as any act of a sexual nature by adults with children. Between adults, consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances. Consent can be conditional on a multitude of personalized factors, such as the use of contraceptives or protection against the transmission of disease, and can be unilaterally withdrawn at any time. Sexual violence can also include sexual harassment, namely any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.³³

30. Sexual violence is always an attack on human dignity and inflicts lasting and multifaceted harm on victims, capable of destroying childhoods and entire lives. Both female and male victims can be subjected to sexual violence at any age, including during childhood and old age, at the hands of parents, siblings or other relatives, caregivers, intimate partners or acquaintances, as well as strangers. According to a

³² See also Istanbul Convention, art. 36.

³³ Ibid., art. 40.

study by the World Health Organization (WHO), in practice, the risk of sexual violence at the hands of intimate partners, members of the victim's household or persons known to them is significantly higher than at the hands of strangers.³⁴ As far as children are concerned, approximately 18 to 19 per cent of women and 8 per cent of men report to have been sexually abused during childhood.³⁵ Moreover, studies on marital rape indicate a prevalence of 10 to 14 per cent among all married women and 40 to 50 per cent of battered women.³⁶ Transposed globally, those figures suggest that hundreds of millions of children, women and men are likely to have been or to currently be exposed to sexual abuse. That disturbing extrapolation becomes even more devastating considering that, given various barriers to reporting and recording such incidents, the figures are likely in fact to be a considerable underrepresentation of the true scale of the problem. The Special Rapporteur has repeatedly affirmed that sexual violence amounts to cruel, inhuman or degrading treatment and, in some circumstances, even to torture (A/HRC/13/39/Add.5, para. 53; A/72/178, para. 34).³⁷

31. In the view of the Special Rapporteur, any form of sexual violence constitutes cruel, inhuman or degrading treatment or punishment, and amounts to torture when it intentionally inflicts severe pain or suffering on a powerless person for purposes such as obtaining information, coercion, punishment or intimidation, or for any reason based on discrimination of any kind, including mere sexual or sadistic gratification or unequal gender power relations.

D. Psychological and emotional violence, including coercive control

32. Domestic violence can include various forms of severe and/or systematic psychological or emotional violence. Psychological or emotional violence can include verbal assault, serious neglect, enforced isolation from the outside world, persistent ridicule, the use of intimate information to threaten or degrade and “gaslighting” – a form of psychological manipulation seeking to make a person question their own memory, perception or even sanity – through persistent misdirection, lies or other attempts to destabilize and create self-doubt. Emotional and psychological violence targets the emotional and psychological resilience, stability and well-being of the victim and is often a precursor to, or inflicted in combination with, physical violence.

33. States are also increasingly recognizing and addressing the phenomenon of “coercive control”, which can be understood as an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish or frighten their victim, with a view to coercing or controlling them. Thus, for example, “coercive” behaviour has been described as encompassing psychological, physical, sexual, financial and emotional abuse, and “controlling” behaviour as making a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.³⁸

34. In the view of the Special Rapporteur, psychological and emotional violence, including coercive control, amounts to cruel, inhuman or degrading treatment or

³⁴ WHO, *Multi-country Study on Women's Health and Domestic Violence against Women* (Geneva, 2005).

³⁵ M. Stoltenborgh et al, “A global perspective on child sexual abuse: meta-analysis of prevalence around the world”, in *Child Maltreatment* (2011), pp. 79–101.

³⁶ E.K. Martin et al, “A review of marital rape” in *Aggression and Violent Behaviour* (2007).

³⁷ Office of the United Nations High Commissioner for Human Rights, fact sheet No. 4 (Rev.1), *Combating Torture* (2002), pp. 31–32.

³⁸ United Kingdom domestic abuse bill (2019).

punishment and, where it involves the intentional and purposeful or discriminatory infliction of severe suffering on a powerless person, amounts to torture.

E. Economic violence

35. In the context of domestic violence, economic or financial violence rarely happens in isolation from other patterns of abuse. It involves the use or misuse of money or other resources so as to limit, control or coerce a person's actions. It can include, for example, interference with a person's ability to acquire, use and maintain material resources, such as money and means of transportation. It tends to centre on creating and abusing economic dependency on the perpetrator. It can leave victims with no funds for basic essentials, such as food and clothing, and with no access to any independent income and can isolate them and proliferate their abuse, thus causing severe suffering and lasting harm.³⁹

36. In the view of the Special Rapporteur, economic violence can cause significant suffering and can amount to cruel, inhuman or degrading treatment or punishment and, when such abuse is intentional, purposeful or discriminatory and inflicts severe suffering on a powerless person, amounts to torture.

F. Serious neglect

37. Serious neglect involves the refusal or failure of a caregiver to meet the basic needs of a person in their care. Serious neglect can include the failure to protect a person from harm or to provide them with food or clothing, chronic inattention, exposure to violence between others or drug or alcohol abuse, withholding of essential medical care, or abandonment.⁴⁰ It may or may not involve an intention to inflict physical or emotional suffering. In some States, serious neglect is the most common form of child abuse and is a highly prevalent form of elder abuse.⁴¹ Frequently, serious neglect will occur in combination with other forms of abuse. Besides children and elderly dependents, persons with disabilities can be in a particularly vulnerable position in respect of such abuse.

38. In the view of the Special Rapporteur, serious neglect can amount to cruel, inhuman or degrading treatment or punishment and, where it involves the intentional and purposeful or discriminatory infliction of severe suffering on a powerless person, to torture.

G. Female genital mutilation

39. Female genital mutilation describes "all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons".⁴² It is estimated that more than 200 million girls and women alive today have undergone female genital mutilation in the countries where the practice is concentrated. Furthermore, there are an estimated 3 million girls at risk

³⁹ R.J. Voth Schrag, S.R. Robinson and K. Ravi, "Understanding Pathways within Intimate Partner Violence: Economic Abuse, Economic Hardship and Mental Health", in *Journal of Aggression, Maltreatment and Trauma*, November 2018.

⁴⁰ See, e.g., European Court of Human Rights, *Z. and others v. United Kingdom*, App. No. 29392/95, 10 May 2001.

⁴¹ WHO, *World report on violence and health* (Geneva, 2002), chap. 5.

⁴² World Health Organization, *Eliminating female genital mutilation: an interagency statement – OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO* (Geneva, 2008), p. 4.

of undergoing female genital mutilation every year. In some countries, the prevalence rates are at over 80 per cent.⁴³

40. Female genital mutilation causes severe and prolonged suffering and its purposes are generally of discriminatory character, given that it is inflicted with a view to enforcing patriarchal standards of female chastity through the elimination of sexual pleasure and, indeed, the perpetuation of suffering.⁴⁴ It is generally inflicted on girls who are, in the circumstances, powerless to resist or escape such abuse. Female genital mutilation has been consistently regarded as torture or ill-treatment by the Special Rapporteur (A/HRC/7/3, paras. 50–53; A/HRC/31/57, para. 61–62) and, for the purposes of refugee law, as persecution.⁴⁵

41. In the view of the Special Rapporteur, given that female genital mutilation involves the intentional and purposeful or discriminatory infliction of severe pain or suffering on powerless persons, the practice amounts to torture or, in the absence of one or more of those constitutive elements, to other cruel, inhuman or degrading treatment or punishment.

H. “Honour” crimes

42. “Honour” crimes are crimes perpetrated by family members predominantly on women or girls deemed to have defiled the honour of the family, in a purported attempt to redeem such familial honour. Every year, such crimes expose countless women to severe suffering and serious injury and result in thousands of “honour” killings across the world.⁴⁶ As the Special Rapporteur on violence against women has stated in that context: “Honour is defined in terms of women’s assigned sexual and familial roles as dictated by traditional family ideology. Thus adultery, premarital relationships (which may or may not include sexual relations), rape and falling in love with an ‘inappropriate’ person may constitute violations of family honour” (E/CN.4/1999/68, para. 18). Furthermore, LGBTI persons can also become victims of such violence, including “honour” killings, carried out against them because they are seen to have brought shame on their family, often for transgressing gender norms or societal expectations in respect of sexuality and behaviour (A/HRC/19/41, para. 25). The purported intent of “honour” crimes is to redeem personal or family honour by taking action against the alleged culprit, which invariably involves elements of punishment, coercion or intimidation and, in general, aims to enforce a deeply discriminatory social order.

43. In the view of the Special Rapporteur, the intentional and purposeful or discriminatory infliction of severe pain or suffering on a powerless person with the purported aim of redeeming personal or familial honour amounts to torture or, in the absence of one or more of those constitutive elements, to other cruel, inhuman or degrading treatment or punishment.

I. Trafficking of family members

44. Human trafficking involves the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion,

⁴³ UNICEF, “Female genital mutilation/cutting: a global concern” (New York, 2016); and UNICEF, *Female Genital Mutilation/Cutting: A statistical overview and exploration of the dynamics of change* (New York, 2013).

⁴⁴ *Eliminating Female Genital Mutilation*, pp. 5–7.

⁴⁵ Office of the United Nations High Commissioner for Refugees, *Guidance Note on Refugee Claims relating to Female Genital Mutilation* (May 2009).

⁴⁶ <http://hbv-awareness.com/statistics-data/>.

abduction, fraud, deception, abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.⁴⁷ The trafficking of family members is a widespread phenomenon in many parts of the world and concerns predominantly children. In fact, the extent of family involvement in the trafficking of children (41 per cent) is more than four times higher than in cases of adult trafficking (9 per cent).⁴⁸ In practice, the trafficking of family members invariably involves the intentional infliction of severe physical or mental pain and suffering, often on the basis of discriminatory criteria, for the purpose of coercive exploitation including, most notably, forced prostitution and other sexual abuse, forced marriage, forced labour, forced recruitment into armed groups and criminal gangs, or even organ removal (A/HRC/7/3, paras. 56–58; CAT/C/RUS/CO/4, para. 11).⁴⁹

45. In the view of the Special Rapporteur, the trafficking of family members amounts to cruel, inhuman or degrading treatment or punishment and, where it involves the intentional and purposeful or discriminatory infliction of severe pain or suffering on a powerless person, to torture.

J. Child, early and forced marriage

46. Child, early and forced marriage is a human rights violation and a harmful practice that disproportionately affects women and girls globally, preventing them from living their lives free from all forms of violence.⁵⁰ The practice is detrimental to the victims' capacity to realize the full range of their human rights (A/HRC/26/22) and contradicts the Sustainable Development Goals, in particular Goal 5.3, on eliminating all harmful practices. Child marriage, or early marriage, is any marriage where at least one party is a child and, as the Committee of the Rights of the Child states in paragraph 29 of its general comment No. 13, it is considered to be a form of violence against children. While the practice of child marriage is declining, UNICEF estimates that a staggering 650 million girls and women alive today were married before their eighteenth birthday.⁵¹ Forced marriage is marriage that lacks the full and free consent of one or both parties, or where a person desiring to end or leave their marriage is prevented from doing so, and is recognized as a form of domestic violence.⁵² Child marriage is considered to be a form of forced marriage, given that one or both parties have not expressed full, free and informed consent. Data on other forms of forced marriage is scarcer, but the practice is strongly linked to contexts marked by patriarchal structures imposing discriminatory status and treatment on women. Both child marriage and forced marriage can inflict lasting harm, including severe psychological, emotional and physical suffering, marital rape and other forms of sexual abuse, servitude and life-threatening early pregnancies or unwanted pregnancies. These consequences being predictable given the children's young age, the resulting infliction of suffering must be regarded as intentional and is generally rooted in profoundly discriminatory views of women and girls.

⁴⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 3.

⁴⁸ www.iom.int/sites/default/files/our_work/DMM/MAD/Counter-trafficking%20Data%20Brief%20081217.pdf.

⁴⁹ United Nations Office on Drugs and Crime, Global Report on Trafficking in Persons 2018 (Vienna, 2018).

⁵⁰ <https://www.ohchr.org/EN/Issues/Women/WRGS/Pages/ChildMarriage.aspx>.

⁵¹ <https://data.unicef.org/wp-content/uploads/2018/07/Child-Marriage-Data-Brief.pdf>.

⁵² European Union Agency for Fundamental Rights, *Addressing forced marriage in the EU: legal provisions and promising practices* (Vienna, 2014).

47. Building on the views expressed by his predecessors and the Committee Against Torture, the Special Rapporteur is of the view that both the marriage of children (A/HRC/31/57, paras. 63–64; and CAT/C/YEM/CO/2, para. 31) and forced marriage (e.g. CAT/C/SEN/CO/3, para. 14; and A/HRC/31/57, paras. 58 and 63–64) amount to cruel, inhuman or degrading treatment and, where it involves the intentional and purposeful or discriminatory infliction of severe pain or suffering on a powerless person, to torture.

K. Forced “conversion therapy”

48. So-called “conversion therapy”, sometimes referred to as “reparative therapy”, describes a range of highly discredited practices that could involve electric shock, medication, psychotherapy or spiritual interventions or faith “healings”, that aim to change a person’s sexual orientation or gender identity or expression. Children are especially vulnerable to being subjected to such practices, in particular at the instigation of their parents or guardians, including through pressure or coercion.⁵³ The practice of “conversion therapy” has been rejected by every mainstream medical and mental health organization for decades, but due to continuing discrimination and societal bias against LGBTI people, remains widespread. Undergoing such so-called “therapy” can cause severe physical and mental suffering and lead to depression, anxiety, drug use, homelessness and suicide.

49. While the extent of the use of “conversion therapy” is not known, even conservative estimates suggest that many thousands of children and adults are being subjected to it in many parts of the world.⁵⁴ By the end of 2018, only three States Members of the United Nations had banned “conversion therapy”, although some efforts towards a national ban have been made at the subnational level in other States.⁵⁵ The practice of “conversion therapy” has been condemned by the Special Rapporteur (A/HRC/31/57, para. 48; and A/56/156, para. 24), as well as by the Committee against Torture (CAT/C/ECU/CO/7, paras. 49–50; and CAT/C/CHN/CO/5, paras. 55–56), the Subcommittee on Prevention of Torture (CAT/C/57/4, paras. 68–69) and the Office of the United Nations High Commissioner for Human Rights (A/HRC/29/23, paras. 14, 38).

50. In the view of the Special Rapporteur, given that “conversion therapy” can inflict severe pain or suffering, given also the absence both of a medical justification and of free and informed consent, and that it is rooted in discrimination based on sexual orientation or gender identity or expression, such practices can amount to torture or, in the absence of one or more of those constitutive elements, to other cruel, inhuman or degrading treatment or punishment.

L. Reproductive coercion

51. Reproductive coercion is frequently perpetrated by intimate partners or the wider family and involves behaviour that interferes with contraceptive, pregnancy and other reproductive choices, including about continuing or terminating a pregnancy. Examples of reproductive coercion are intentional destruction or removal

⁵³ C. Ryan et al, “Parent-Initiated Sexual Orientation Change Efforts with LGBT Adolescents: Implications for Young Adult Mental Health and Adjustment”, in *Journal of Homosexuality*, November 2018.

⁵⁴ See, for example, C. Mallory, T. Brown and K. Conron, “Conversion Therapy and LGBT Youth” (Williams Institute, 2018).

⁵⁵ International Lesbian, Gay, Bisexual, Trans and Intersex Association, “State-Sponsored Homophobia 2019” (Geneva, 2019).

of a chosen method of contraception (contraceptive sabotage), as well as efforts to coerce pregnancy, pregnancy outcomes, or abortion. All of those phenomena are associated with serious reproductive consequences including unintended pregnancy, abortion, sexually transmitted infections, poor pregnancy outcomes and psychological trauma.⁵⁶ Women experiencing partner violence tend to be at higher risk of experiencing reproductive coercion.⁵⁷

52. There is a continuum between certain forms of reproductive coercion and laws that restrict reproductive freedom. In particular, as repeatedly pointed out by the Committee Against Torture, denying victims of rape access to medically safe abortion can violate the prohibition of torture and ill-treatment (CAT/C/BOL/CO/2, para. 23; CAT/C/POL/CO/5-6, para. 23; CAT/C/PER/CO/5-6, para. 15).

53. In the view of the Special Rapporteur, given that reproductive coercion intentionally interferes with the personal dignity, integrity and autonomy of the victim for coercive or discriminatory purposes and can inflict severe pain or suffering, it can amount to torture or, in the absence of one or more of those constitutive elements, to other cruel, inhuman or degrading treatment or punishment.

IV. Prioritizing the rights and needs of victims, including the best interests of the child

54. By definition, domestic violence takes place within the sphere of the family or the home and, more often than not, is perpetrated in a context where perpetrators exercise economic, social, legal and/or emotional power over the victims. In that context, ensuring effective and adequate enforcement of the law and protection of victims is a particularly delicate and complex matter. In particular, as the Special Rapporteur has indicated before, prosecution and the imposition of sanctions, including imprisonment, must result from a nuanced determination that prioritizes the rights and needs of victims, including the best interests of the child (A/HRC/31/57, para. 62).

55. In practice, victims of domestic violence are often deprived of access to justice. Some victims may be separated from their families or institutionalized as a result of their experiences coming to the authorities' attention. When domestic violence is litigated or prosecuted, victims are frequently re-traumatized by the manner in which subsequent civil and criminal legal proceedings are conducted. Perpetrators of serious violence may be unjustly acquitted or punished with a mere fine and set free without any, or without adequate, preventative or protective measures for the victim. Even where perpetrators are convicted and imprisoned, victims often experience severe additional suffering through social pressure, loyalty conflicts, feelings of guilt and shame and, crucially, through economic hardship when the perpetrator is also the breadwinner of the family.

56. When addressing the complex challenges arising in the context of domestic violence, States should therefore take a comprehensive approach and all measures of prevention, intervention and redress should be informed and guided primarily by the rights and needs of the victims, including the best interests of the child. Most notably, in order to avoid undue social pressure and manipulation, States confronted with circumstances and cases indicative of domestic violence should systematically conduct full *ex officio* investigations with a view to establishing the facts and ensuring

⁵⁶ J. Park et al, "Reproductive coercion: unclouing an imbalance of social power", in *American Journal of Obstetrics and Gynecology*, August 2015.

⁵⁷ E. Miller et al, "Reproductive Coercion: Connecting the Dots Between Partner Violence and Unintended Pregnancy" in *Contraception*, June 2010, vol. 81, iss. 6, pp. 457–459.

accountability. In doing so, the authorities should avoid making their investigation or decisions exclusively dependent on the testimony of the victim.

57. At the same time, the consequent protective measures, legal processes and criminal sanctions should prioritize the rights and needs of the victims, including the best interests of the child. This means that the design and functioning of relevant protective and redress-orientated mechanisms must be victim-centred, responsive and accessible, including supported decision-making in circumstances where a victim's capacity is compromised (CRPD/C/ESP/CO/1; and A/HRC/22/53, para. 27). Where appropriate and supported by free, genuine and informed consent, criminal, civil and administrative investigations and proceedings relating to allegations of domestic violence can be complemented, but not replaced, by measures of mediation, reconciliation and restorative justice.⁵⁸

58. In all cases, however, the primary objective of any decision, measure or sanction taken in response to domestic violence must be:

- (a) To prevent further abuse on the part of the same or other likely perpetrators;
- (b) To prevent re-traumatization or abuse of victims of domestic violence through subsequent procedures, measures and sanctions;
- (c) To provide victims with rehabilitation and redress, including just compensation and the means, support and protection required to establish and sustain a dignified and protected life without domestic violence or other abuse in the long term.

V. Conclusions

59. **On the basis of the preceding observations and considerations, and informed by broad stakeholder consultations, the Special Rapporteur, to the best of his personal judgment and conviction, has drawn the conclusions set out below.**

60. **Every day, millions of people across the world are exposed to domestic violence in intimate relationships, within the home and in communal or State-run settings replacing the family home. Children in particular are vulnerable to experiencing or witnessing domestic violence. Among adults, including older people, domestic violence disproportionately affects women. In terms of both scale and severity, domestic violence is one of the predominant sources of humiliation, violence and death worldwide, and claims a similar number of lives as armed conflict.**

61. **Like war, domestic violence is a veritable scourge of humanity, traumatizing countless individuals, in particular women and children, on a daily basis and brutalizing human society for generations to come. Unlike war, however, domestic violence is still widely considered to be a “private matter”, a social taboo to be dealt with at the discretion of the perpetrator or the family in the perceived legal “black hole” of the home. As long as a substantial part of the world's population is oppressed, abused and even murdered by their own family members or within their homes, the promises of the Universal Declaration of Human Rights and the 2030 Agenda for Sustainable Development will remain a far cry from reality. Consequently, domestic violence must be regarded as a human rights issue of inherently public concern.**

⁵⁸ IARS et al., “Restorative Justice and Domestic Violence: A Guide for Practitioners” (January 2016).

62. From a substantive perspective, domestic violence amounts to cruel, inhuman or degrading treatment or punishment and, where it involves the intentional and purposeful or discriminatory infliction of severe pain or suffering on a powerless person, to torture. From the attributive perspective of State responsibility, States have not only the negative obligation to refrain from engaging in, instigating or otherwise encouraging domestic violence, but also the positive obligation to effectively prevent, protect against, respond to, investigate, prosecute and provide redress for such abuse at the hands of private actors.

63. While it is not possible for States to eliminate the risk of domestic violence completely, a range of measures can and must be taken to mitigate such risk substantially, to empower those exposed to such risk and to support and offer redress to survivors. States must take all measures reasonably available to them to fulfil their legal obligations in line with the principles of non-discrimination, due diligence and good faith.

64. The particular context in which domestic violence occurs and the wider environment in which patterns and enabling factors of domestic violence are embedded give rise to particular challenges in terms of prevention, investigation, accountability and redress, which must be considered. In particular, the domestic context of the family and the home is largely withdrawn from the purview of the State and protected, to a certain extent, by the right to privacy, resulting in considerable difficulties with regard to the effective detection, identification and protection of victims, perpetrators and situations of risk.

65. Domestic violence frequently occurs, or is exacerbated or perpetuated, at the intersection of different types of discrimination. Societal indifference to, or even support for, the subordinate status of certain persons, in particular of women and children, together with the existence of discriminatory and disempowering laws, combined with the sometimes systematic or systemic failure of States to prevent and redress abuse, create conditions under which victims are subjected to severe forms of domestic violence with impunity and for prolonged periods of time.

66. In most cases of domestic violence, the relationship between perpetrators and victims is marked by factors such as legal and/or economic dependence or otherwise unequal power relations, social expectations, or strong emotional ties, which add further complexity to the identification and implementation of adequate preventive, protective and punitive measures in line with the rights and needs of the victims, including the best interests of the child.

67. The trivialization of domestic violence is often a consequence of a systemic and/or systematic failure of States to regard as a matter of public concern abuse that predominantly affects women, children, sexual and gender minorities, older persons, disabled persons and other marginalized groups. That trivialization often goes hand-in-hand with the stigmatization of the victims of domestic violence, in particular those perceived to have transgressed dominant social norms, for example by breaching a so-called “honour” code, or by reporting a close relative to the authorities.

68. In many contexts, perpetrators of domestic violence are still excused or even encouraged by dominant social or legal norms, including systemic tolerance of certain abuses and suspicion towards, or even legally enshrined or societally administered punishment of, complainants. The effect of such dynamics is often further compounded by legal, structural and socioeconomic conditions that may increase certain persons’ exposure to violence and abuse. Those conditions are in general the result of public governance failures and must be alleviated by States through systematic reform of relevant policies and practices.

69. In the light of the scale and nature of this phenomenon and of the societal factors that sustain it, States should adopt multifaceted strategies and measures to prevent and combat it effectively. In determining appropriate policies, measures and practices, the victims' rights and needs, including the best interests of the child, should be prioritized and safeguarded at all times.

VI. Recommendations

70. In the light of the above observations, the Special Rapporteur offers the following recommendations to States with a view to strengthening their capacity to ensure the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment in the context of domestic violence.

A. Ratification or adoption of international instruments

71. States should adopt and/or ratify, without reservations, all international legal instruments aiming to give effect to the prohibition of torture and ill-treatment, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol thereto, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto, and the Convention on the Rights of Persons with Disabilities. States should also adopt the measures set out in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) and in other relevant universal and regional instruments relating to gender-based violence and the protection of the child.

B. National laws, policies and practices

72. States should refrain from promoting violent, discriminatory or dehumanizing narratives, policies and practices that contribute to societal norms and structures that uphold and perpetuate domestic violence.

73. States should repeal or reform any laws, policies and practices that instigate, permit, enable or tolerate domestic violence, for instance, by allowing husbands to "chastise" their wives or children; by excluding marital rape from criminal prosecution; by restricting access to divorce, property, inheritance or child custody rights and related legal proceedings; or by limiting the capacity of victims to prevent, escape from or otherwise protect themselves against domestic violence.

74. States should take legislative and other measures to criminalize and prevent domestic violence and to empower victims or potential victims to resist or escape from such abuse. They should reform judicial systems and procedures so as to enable victims or potential victims to obtain protective measures against any form of domestic violence.

75. In particular, States should never perpetrate, instigate or otherwise encourage domestic violence, but instead should explicitly prohibit, prevent, investigate and ensure appropriate accountability and redress for such abuse, including between current and former spouses. That includes, inter alia, any form of the following predominant patterns of domestic violence, all of which are relevant under the prohibition of torture and ill-treatment: killings; physical violence; sexual violence; psychological and emotional violence, including

coercive control; economic violence; serious neglect; female genital mutilation; “honour” crimes; trafficking of family members; child, early and forced marriage; forced “conversion therapy”; and reproductive coercion.

76. States should ensure, as a matter of domestic law, that factors such as culture, custom, religion, tradition or so-called “honour” shall not be considered as justification or mitigating circumstance for domestic violence.

C. Protective measures

77. States should dedicate sufficient resources towards establishing accessible help lines, data-collection processes and intervention services capable of taking prompt and effective measures with a view to protecting victims and potential victims and their dependents from a real and immediate risk of domestic violence.

78. In order to have an objective basis for designing relevant policies and measures, States should collect relevant statistical data at regular intervals on all forms of domestic violence; support research on all forms of domestic violence, in particular with a view to examining its incidence and root causes and effects, as well as the effectiveness of measures to combat it; and ensure that data collected and research conducted on domestic violence are made available to the public.

79. In order to ensure safe accommodation for victims and their dependents, States should establish a sufficient number of accessible shelters across the entire territory within their jurisdiction. Any accommodation of victims in detention centres for their own protection from domestic violence must be exceptional, temporary and subject to the victims’ free and informed consent for the entire duration of such placement.

80. Where there is reason to suspect domestic violence but the perpetrator cannot be arrested, States should issue and enforce strict compliance with emergency “barring orders”, as well as court-mandated restraining or protection orders, to prevent the perpetrator from approaching or otherwise contacting the victim, subject to dissuasive sanctions.

81. States should regularly monitor all institutional and community-based long-term care settings where people may be accommodated and cared for and, where necessary and appropriate, should provide independent decision-making support services, in particular for people with disabilities and older people.

82. States should develop and implement at all levels and in an adequate geographical distribution comprehensive, coordinated policies and programmes to combat domestic violence, including gender-sensitive training of public officials as well as public education and awareness campaigns.

83. States should place the rights and needs of the victim, including the best interests of the child, at the centre of all legislative, judicial and administrative measures and implement those through effective cooperation among all relevant agencies, institutions and organizations.

84. Under no circumstances should States expel persons to places where there are substantial grounds for believing that they would be in danger of domestic violence amounting to torture or cruel, inhuman or degrading treatment or punishment.

D. Judicial measures

85. Wherever there is reasonable ground to believe that domestic violence has occurred or is likely to occur, States are obliged, *ex officio*, to conduct a prompt and impartial investigation and, where appropriate, take protective measures, ensure administrative, civil and criminal accountability of perpetrators and ensure that victims receive adequate redress and rehabilitation.

86. States should provide for the right to free legal assistance for victims of domestic violence. Victims who experience particular vulnerability, such as children, older persons in need of care or persons with disabilities, should be effectively empowered and their rights and needs should be respected, including the best interests of the child.

87. States should ensure that, in the determination of custody and visitation rights in relation to children, domestic violence incidents are duly considered and their severity properly weighted. In particular, States should take every reasonable step to ensure that the exercise of any visitation or custody rights does not threaten the physical or mental integrity of victims of domestic violence or their children.

E. Full compensation and rehabilitation

88. States should ensure in their legal systems that victims of domestic violence obtain redress and have an enforceable right to fair and adequate compensation, including the means for the fullest possible rehabilitation. In doing so, States should follow the comprehensive and gender-sensitive guidance provided by the Special Rapporteur on violence against women, its causes and consequences on the topic of reparations ([A/HRC/14/22](#)) as well as Committee against Torture general comment No. 3 (2012) on implementation of article 14 by States parties.

89. States should take the legislative or other measures necessary to provide victims with adequate civil remedies, including compensation, against the perpetrator, as well as adequate civil remedies, including compensation, against State authorities that have failed in their duty to take the preventive or protective measures necessary within the scope of their powers.

90. States should ensure that specialized centres and other mechanisms for the support and rehabilitation of victims are available and accessible, in an adequate geographical distribution across their jurisdiction. Those services should include legal advice, psychological counselling, financial support, adequate housing, education or training and assistance in finding employment. Access to those centres and services should not be dependent on attempted or successful pursuit of legal proceedings.

91. Where appropriate and supported by free, genuine and informed consent, criminal, civil and administrative investigations and proceedings relating to allegations of domestic violence should be complemented by measures of mediation, reconciliation and restorative justice. Such processes must only be conducted in parallel to, and not in lieu of, criminal, civil and administrative investigations and proceedings relating to allegations of domestic violence. Facilitators of restorative justice and other complementary dispute resolution processes should be trained to recognize the contextual complexity of domestic violence and its different patterns, especially the incidence of structural and pervasive control and asymmetry of power and the risk of revictimization. Facilitators should engage in a continuous process of risk assessment to ensure

that the safety, rights and needs of victims, including the best interests of the child, are safeguarded at all times.

F. Structural measures

92. States should take all reasonable steps to eliminate legal, structural and socioeconomic conditions that may increase exposure to, or perpetuate patterns of, domestic violence. Given that most forms of domestic violence are intrinsically linked to discriminatory patterns, structural subordination and systemic marginalization, measures of redress must go beyond individual reparation and include action aiming at structural and systemic transformation (A/HRC/31/57, para. 66; A/HRC/14/22, para. 24).

G. Non-discrimination

93. In addressing the challenges arising in relation to domestic violence, all legislative, protective, judicial, reparative, structural and other measures should be taken in good faith and without any discrimination based on grounds such as gender, race, language, religion, political or other opinion, national or social origin, property, birth, sexual orientation, age, state of health, disability, marital status, migrant or refugee status, or other any other, similar grounds.



Human Rights Council**Fortieth session**

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Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development****Torture and other cruel, inhuman or degrading treatment or
punishment****Report of the Special Rapporteur****Summary*

In the present report, the Special Rapporteur examines the relationship between corruption and torture or ill-treatment, outlines the predominant patterns of interaction between the two phenomena as well as their systemic root causes, and offers recommendations with a view to strengthening the protection against torture and ill-treatment in contexts affected by corruption.

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



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I. Introduction

1. The present report has been prepared pursuant to Human Rights Council resolution 34/19.

II. Activities relating to the mandate

2. Throughout 2018, the Special Rapporteur participated in a number of thematic consultations, workshops and events on various issues, including torture prevention and ill-treatment of migrants; strengthening national preventive mechanisms; procedural safeguards regarding the development of a universal protocol for investigation interviewing; and strengthening the protection mechanisms of gender-specific violence.
3. In 2018, the Special Rapporteur transmitted 136 communications, jointly with other mandates or individually, on behalf of individuals exposed to torture and other ill-treatment.
4. From 13 to 24 November 2017, the Special Rapporteur conducted a country visit to Serbia and Kosovo¹ (A/HRC/40/59/Add.1).
5. From 9 to 20 April 2018, the Special Rapporteur conducted a country visit to Argentina (A/HRC/40/59/Add.2).
6. From 28 May to 8 June 2018, the Special Rapporteur conducted a country visit to Ukraine (A/HRC/40/59/Add.3).

III. Corruption-related torture and ill-treatment

7. In recent years, there has been a growing awareness of the pervasive, incapacitating impact of corruption on the effective, transparent and accountable functioning of public institutions (target 16.6 of the Sustainable Development Goals), including the protection of human rights. Corruption not only hinders the effective implementation of human rights obligation, but also creates an environment conducive to human rights abuses, including torture and ill-treatment.
8. The mandate of the Special Rapporteur has long recognized that “corrupt and malfunctioning criminal justice systems are a root cause of torture and ill-treatment of detainees”² and, in 2014, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment produced a seminal report highlighting the correlation between corruption and torture or ill-treatment in places of detention, concluding that the fight against torture and ill-treatment demands appropriate measures to eradicate corruption, underpinned by robust democratic principles (CAT/C/52/2, paras. 72–100). In parallel, there has been a growing body of legal and policy analysis exploring the interrelations between corruption and human rights abuses more generally,³ including by

¹ Throughout this document, the reference to Kosovo shall be understood in full compliance with United Nations Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

² Manfred Nowak, in his capacity as Special Rapporteur, addressing the Commission on Crime Prevention and Criminal Justice on 24 April 2009. See www.unodc.org/unodc/en/frontpage/un-human-rights-rapporteur-denounces-torture.html.

³ See, inter alia, Anne Peters, *Corruption as a Violation of International Human Rights*, Research Paper No. 2016-18 (Heidelberg, Max Planck Institute for Comparative Public Law and International Law, 2016); International Council on Human Rights Policy, *Corruption and Human Rights: Making the Connection* (Geneva, 2009); Martine Boersma and Hans Nelen, eds., *Corruption and Human Rights: Interdisciplinary Perspectives* (Intersentia, 2010); Martine Boersma, *Corruption: A Violation of Human Rights and a Crime Under International Law?* (Intersentia, 2012); Kolawole Olaniyan, *Corruption and Human Rights Law in Africa* (Hart, 2014); and Office of the United Nations High

the Human Rights Council Advisory Committee which, in its 2015 report, recommended that the special procedures of the Council should consider paying attention to the linkage between corruption and human rights (A/HRC/28/73, para. 52).

9. More recently, in its resolution 37/19, the Human Rights Council recognized the importance of understanding the interrelation between corruption and torture or ill-treatment and invited the Special Rapporteur and other relevant special procedures to take this question into account in their future work. In response to this invitation, the Special Rapporteur submits the present report, in which he specifically examines the relationship between corruption and torture or ill-treatment, outlines the predominant patterns of interaction between the two phenomena and offers recommendations for States with a view to strengthening the protection against torture and ill-treatment in contexts where such abuse is linked to corruption.

10. Building on the work undertaken by his predecessors and other mechanisms, the Special Rapporteur conducted extensive research and broad stakeholder consultations with experts, government representatives, international organizations and civil society organizations, including through a general call for submissions in response to a thematic questionnaire posted on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR). The present report reflects the resulting observations, conclusions and recommendations of the Special Rapporteur.

A. Basic characteristics of corruption, torture and ill-treatment

1. Corruption

11. The United Nations Convention against Corruption, which has been ratified by 185 States, provides the key normative framework for the prevention of corruption⁴ and enumerates 10 specific offences which States parties shall, or shall consider to, criminalize within their jurisdiction. The offences set out in the Convention, some of which can also be committed by private actors, most notably include bribery, embezzlement, misappropriation or other diversion of property, trading in influence, abuse of function, illicit enrichment, concealment or laundering of the proceeds of crime and obstruction of justice. However, neither this treaty nor any other international instrument provides a generic and universally recognized definition of corruption.

12. A widely used understanding of corruption proposed by Transparency International refers to “the abuse of entrusted power for private gain”. While a good starting point, this conceptualization of corruption may be insufficiently specific for the purposes of the criminal law and, at the same time, warrants expansion to capture, for example, the abuse of power that is appropriated rather than “entrusted”, or the abuse of power for an undue advantage which may not result in “private” gain but may unduly benefit a public entity. The Subcommittee on Prevention of Torture in its report focusing on the context of

Commissioner for Human Rights (OHCHR) and Geneva Academy, *Human Rights and Countering Corruption* (2016).

⁴ See also United Nations Convention against Transnational Organized Crime; African Union Convention on Preventing and Combating Corruption (2003); Inter-American Convention against Corruption (1996); Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (1997); Criminal Law Convention on Corruption (1999) and Additional Protocol thereto (2003), and Civil Law Convention on Corruption (1999) of the Council of Europe; Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests (1995); Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union (1996); Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (1997); and Southern African Development Community Protocol against Corruption (2001). See the analysis provided in Jan Wouters, Cedric Ryngaert and Ann Sofie Cloots, “The international legal framework against corruption: achievements and challenges”, *Melbourne Journal of International Law*, vol. 14, No. 1 (June 2013).

deprivation of liberty used a broader, more elaborate understanding of corruption as “dishonest misuse or abuse of a position of power to secure undue personal gain or advantage, or to secure undue gain or advantage for a third party” (CAT/C/52/2, para. 73).

13. Building on these proposals, and having in mind the existing body of treaty law, the present report will use the concept of corruption as referring to the “abuse of entrusted or appropriated power to secure an undue advantage for any person or entity”. In principle, it should be irrelevant for a finding of corruption whether the abuse of power occurs by act or by omission, whether the transfer of an undue advantage actually takes place or whether it is merely offered or requested, and whether the perpetrators are State officials or non-State actors placed in a comparable position of power. Furthermore, “undue advantages” should be interpreted to include not only money or tangible goods, but also “favours” such as sexual acts, labour, or acts or omissions aiming to secure favourable outcomes in administrative or judicial proceedings, or unduly preventing, suspending or terminating such proceedings.

2. Contextual prevalence and levels of corruption

14. Corruption is widely practised both in developed and in developing States, although its characteristics may vary from context to context. As the Subcommittee has observed, “while corruption in developed countries is often more sophisticated, subtle and less visible than in developing countries, and hence may be more difficult to detect, that does not mean that it is not present” (CAT/C/52/2, para. 83). Moreover, both States and business corporations belonging to the “developed” world often contribute to, or are even responsible for, corruption in “developing” countries (*ibid.*, paras. 74–75 and 83). Indeed, corruption in one country can be triggered, facilitated or fostered by political, corporate or other actors in other countries.

15. Corruption can manifest on all levels of local, national and international authority and is usually categorized as “petty” or “grand” corruption and, sometimes, as “political” corruption. “Petty” corruption occurs primarily where people directly interact with mid- or low-level officials when trying to access basic public goods and services and generally involves comparatively modest sums of money or other individualized benefits. Petty corruption is widespread and pervasive in many countries, contexts and situational “niches” throughout the world and has been frequently encountered by the Special Rapporteur and other anti-torture mechanisms, especially in environments where the risk of torture and ill-treatment is highest, such as in places of detention and other institutionalization, in extra-custodial police practices and across various stages of irregular migrants’ journeys (A/HRC/13/39/Add.5, paras. 64–66; A/HRC/37/50, paras. 8, 30–34; and CAT/C/52/2, para. 80).

16. By contrast, “grand” corruption involves high-level public officials and often large sums of money or other benefits, such as the misallocation of State resources and the sale or otherwise undue provision of political appointments or lucrative public procurement or licensing contracts. When grand corruption involves the manipulation of policies, institutions and procedures by political decision makers in order to sustain their power, status and wealth or to secure undue benefits for their relatives and political entourage, it is sometimes also referred to as “political” corruption. Typical examples of this variation of grand corruption include vote buying, illicit campaign funding and the silencing of political opposition. All forms of grand corruption betray good governance and the public interest, deplete or divert public resources, severely undermine the proper functioning of public services and institutions and are conducive to the spread of corruption throughout society. Thus, grand corruption can permeate government policy and law-making, the implementation of the law and the administration of justice in ways which undermine or even paralyse every aspect of the fight against torture and ill-treatment, from misappropriating or otherwise diverting or depleting resources that should have been used for the prevention and redress of torture and ill-treatment, to condoning or enabling torture and ill-treatment or ensuring impunity for such abuse.

3. Torture and ill-treatment

17. As this mandate has previously observed, the generic concept of “torture” denotes the intentional infliction of pain or suffering on a powerless person with the aim of achieving a particular purpose. Thus, while the unlawfulness of corruption is derived primarily from the pursuit of an inherently unlawful purpose (undue advantage), the unlawfulness of torture stems primarily from the employment of an inherently unlawful means (purposeful infliction of pain or suffering). Furthermore, for the purposes of the present report, any other cruel, inhuman or degrading treatment or punishment that lacks one or several elements constitutive of torture, such as the required intentionality or purposefulness, the required severity of the inflicted pain or suffering or the required powerlessness of the victim, will be referred to as “ill-treatment” (A/72/178, para. 31; A/73/207, para. 7; and E/CN.4/2006/6, paras. 34–41).

18. Torture and ill-treatment can take virtually unlimited forms, including physical violence or psychological abuse, sensory deprivation, stress positions, humiliation, coercive interrogation, instrumentalization of drug withdrawal symptoms, denial of family contacts or medical treatment, cruel, inhuman or degrading detention conditions or prolonged or otherwise abusive solitary confinement, just to name a few. While not all manifestations of torture and ill-treatment involve the same severity, intentionality and purposefulness, all involve violations of physical or mental integrity that are incompatible with human dignity and, therefore, cannot be justified under any circumstances.

4. Accountability for corruption and torture or ill-treatment

19. Apart from international responsibility of States, as regulated in the applicable treaties and in general international law,⁵ acts of torture or ill-treatment, as well as corruption related to such abuse, can give rise to individual criminal responsibility for war crimes or crimes against humanity, including for commanders and other superiors.⁶ Moreover, States have obligations with regard to the criminalization in their national law both of corruption and of torture and ill-treatment, including complicity and all other forms of culpable participation in such crimes. Where culpable involvement in corruption foreseeably results in acts of torture or ill-treatment, perpetrators should be held accountable for their participation not only in corruption, but also in torture or ill-treatment.

20. At the same time, in determining criminal culpability for acts of corruption, due account must be taken of mitigating circumstances of coercion, including through the threat, risk or infliction of torture and ill-treatment. In particular, in the view of the Special Rapporteur, persons who are coerced to offer money, sexual acts, forced labour or other undue advantages through the abuse of entrusted or appropriated power should be regarded not as perpetrators but as victims of corruption. Depending on the nature of such coercion, they also might have to be considered victims of acts or threats of torture or ill-treatment, for example where the cessation of – or protection against – torture and ill-treatment is made conditional on the transfer of an undue advantage.

5. Systemic nature of corruption, torture and ill-treatment

21. When examining the correlation between corruption and torture or ill-treatment, it is of utmost importance to understand the predominantly structural and systemic nature of both forms of abuse. Contrary to common misperceptions, both corruption and torture or ill-treatment are rarely isolated in a few “bad apples” but, figuratively speaking, tend to extend to “rotten branches” or even “rotten orchards”.⁷ For example, in the context of policing, the practice of corruption and of torture or ill-treatment typically goes beyond individual officers and extends to their units or even entire police departments, often

⁵ See International Law Commission, articles on responsibility of States for internationally wrongful acts.

⁶ Rome Statute of the International Criminal Court, arts. 7, 8 and 28.

⁷ Maurice Punch, “Rotten orchards: ‘pestilence’, police misconduct and system failure”, *Policing and Society*, vol. 13, Issue 2 (2003), pp. 171–196; and Maurice Punch, *Police Corruption: Deviance, Accountability and Reform in Policing* (Willan, 2009).

exacerbated by collusion at worst or acquiescence at best on the part of the judiciary and open or implicit complacency on the part of policymakers. Overall, the resort by individual officials to corruption or to torture and ill-treatment is more often the result of their professional environment than of their personal character.⁸

22. As a general rule, therefore, while individual accountability is an indispensable element of any serious fight against corruption or torture and ill-treatment, neither phenomenon can be eradicated through criminal prosecution alone, as individualized criminal justice cannot adequately address systemic and structural factors conducive to both corruption and torture or ill-treatment (A/HRC/28/73, para. 25), and more comprehensive, systemic measures are required in response. Recruitment practices, training, professional culture, remuneration and conditions of work can, for example, play an important role in increasing or mitigating the risk of both police brutality and corruption.⁹

B. General relationship between corruption and torture or ill-treatment

23. When mapping out the interrelation between corruption and torture or ill-treatment, it must first be acknowledged that, from a conceptual perspective, not every act of torture and ill-treatment necessarily involves or relates to corruption, and not every act of corruption necessarily involves or relates to torture or ill-treatment. While the present report focuses exclusively on contexts, subcontexts and situational “niches” marked by some degree of interaction between corruption and torture or ill-treatment, the absence of such a link does not by any means diminish the inherent gravity of relevant infractions, nor does it absolve States of their legal obligations to promptly and effectively prevent and redress such abuse.

24. In the broad range of contexts in which corruption and torture or ill-treatment interact, the relationship between the two phenomena tends to be cyclical: each breeds and exacerbates the other. Not only is corruption often deliberately employed to enable, perpetuate and protect the practice of torture and ill-treatment, but torture and ill-treatment also are often deliberately employed to enable, perpetuate and protect the practice of corruption. For example, corruption within the judiciary has been found to gravely undermine accountability for human rights violations, including torture or ill-treatment (e.g. A/HRC/13/39, para. 71; and CCPR/C/TKM/CO/2, para. 31). At the same time, acts or threats of torture and ill-treatment are also used to interfere with the judiciary, including with regard to the investigation and adjudication of corruption. Although this mutually reinforcing interaction between corruption and torture or ill-treatment represents a generalized phenomenon, it is particularly prevalent and noxious in contexts of deprivation of liberty and in environments marked by discrimination, socioeconomic marginalization or other circumstances where individuals or communities are rendered vulnerable to abuse.

25. When designing measures to eradicate a specific pattern of interaction between corruption and torture or ill-treatment, it is key to understand the causal relations linking the two phenomena in that particular context. On the more general level of systemic governance, however, causal interactions between corruption and torture or ill-treatment tend to remain fluid, turning the identification of a precise and fixed causal chain into an exercise resembling the classic “chicken and egg” dilemma. From a systemic perspective, corruption and torture or ill-treatment are better understood as two concurrent effects of the same original cause, namely a failure of the surrounding governance system to prevent the abuse of power through effective checks and balances. Thus, while preventive and prosecutorial measures targeting corruption and torture or ill-treatment at the level of individual officials, institutions and processes remain indispensable, there generally is no realistic prospect for eradicating either phenomenon without effectively addressing the

⁸ Sanja Kutnjak Ivković, “Rotten apples, rotten branches, and rotten orchards: a cautionary tale of police misconduct”, *Criminology & Public Policy*, vol. 8, No. 4 (November 2009), pp. 777–785, at p. 780.

⁹ United Nations Office on Drugs and Crime (UNODC), *Handbook on Anti-Corruption Measures in Prisons* (Vienna, 2017), p. 11.

underlying governance failures conducive to both forms of abuse. In the same vein, blanket or selective crackdowns on petty corruption that are not accompanied by appropriate system-level reform, including relevant socioeconomic measures, tend to severely affect poor, marginalized and disadvantaged communities without adequately addressing the root causes of either corruption or torture and ill-treatment.

26. Finally, whereas the present report focuses specifically on the relation between torture or ill-treatment and acts of corruption, the Special Rapporteur is also seriously concerned at reports that, in some contexts, torture and ill-treatment have even been employed on the pretext of fighting corruption, most notably through coercive interrogation, incommunicado detention or prolonged solitary confinement of purported corruption suspects, who often also are political opponents, human rights defenders and other critical voices. It is therefore vital to ensure, through regulation, prevention and independent oversight, that anti-corruption narratives are not abused to pursue – and do not purport to legitimize – inherently unlawful policies and practices that are incompatible with the prohibition of torture and ill-treatment, and with human rights more generally.¹⁰

C. Predominant patterns of causal interaction

27. Corruption and torture or ill-treatment can interact in a variety of different context-specific ways, each of which may require a tailored set of measures in terms of prevention, accountability and redress. Based on broad stakeholder consultations and on the observations made in the course of his own work, the Special Rapporteur proposes to distinguish six predominant patterns of interaction between corruption and torture or ill-treatment. This categorization does not aim to be comprehensive or free from overlaps, or indeed to exhaust the ways in which such interactions could or should be described for a variety of purposes. Rather, it aims to provide an analytical framework based on distinct degrees of causal proximity between corruption and torture or ill-treatment and, in doing so, to facilitate the identification of pattern-specific measures for the prevention and eradication of torture and ill-treatment in environments affected by corruption, in line with the corresponding obligations reflected in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Part I), as well as the United Nations Convention against Corruption (chap. II).

1. Demanding “undue advantages” that per se amount to torture or ill-treatment

28. Without any doubt, the closest interaction between corruption and torture or ill-treatment occurs in circumstances in which the undue advantage constitutive of corruption amounts per se to torture or ill-treatment. For example, when a person is forced to engage in a sexual act in return for the performance of an official duty, such “undue advantage” would per se constitute cruel, inhuman or degrading treatment and, in some circumstances, may even amount to torture. The same applies when State agents render protection from other forms of torture or ill-treatment conditional on the provision of undue advantages in the form of sexual acts. In practice, this type of overlap between corruption and sexual violence most frequently, but not exclusively, affects socioeconomically marginalized women and children, who may be dependent on the people and systems that victimize them, including in contexts such as the sex industry, irregular migration, or any form of deprivation of liberty or institutionalization.¹¹ Apart from sexual acts, undue advantages which may per se amount to torture or ill-treatment can include the trafficking of persons, the provision of forced labour, or similar situations of cruel, inhuman or degrading exploitation.

¹⁰ See International Council on Human Rights Policy and Transparency International, *Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities* (Geneva, 2010).

¹¹ Naomi Hossain, Celestine Nyamu Musembi and Jessica Hughes, *Corruption, Accountability and Gender: Understanding the Connections* (United Nations Development Programme and United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), 2010), p. 5.

29. Where the undue advantage integral to a corrupt transaction per se amounts to torture or ill-treatment, any remedial efforts must be directed simultaneously at both components of the relevant interactive pattern between corruption and torture or ill-treatment. Of course, persons coerced to provide undue advantages that per se amount to torture or ill-treatment should not be regarded as perpetrators of corruption, but should be viewed as victims of both corruption and torture or ill-treatment and, accordingly, should receive support throughout any accountability process, and be provided with full redress and rehabilitation.

30. The risk of such profoundly abusive interactions is highest in, but by no means isolated to, contexts of armed conflict or other situations marked by a prevalence of unchecked power, generalized or systemic violence, structural discrimination and impunity. In such contexts, torture and ill-treatment are unlikely to be eradicated, or even significantly reduced, without comprehensive measures towards preventing the abuse of entrusted or appropriated power and ensuring good governance, non-discrimination and the rule of law, most notably through checks and balances, separation of powers and effective monitoring and oversight. In order for such remedial action to be effective, it is vital to stabilize the entire environment, to strengthen the institutions and procedures of good governance and to empower both civil society and (potential) victims, including by alleviating the legal, structural and socioeconomic conditions conducive to corruption, torture and ill-treatment (A/73/207, para. 77 (i)).

2. Instrumentalizing torture or ill-treatment for “undue advantages”

31. The next closest interaction between corruption and torture or ill-treatment is marked by a direct and intended causal connection, namely where acts or threats of torture or ill-treatment are deliberately employed as a tool for obtaining an undue advantage, enforcing a corruption scheme or preventing accountability for corruption. This pattern of abuse is widespread in all regions of the world. It thrives in all contexts, systems or situational “niches” where officials or those acting on their behalf or with their consent or acquiescence are effectively free to exercise coercion arbitrarily and with near-total impunity, whether as a consequence of a complete breakdown of law and order (e.g. armed conflicts and natural disasters), of discriminatory policies and practices (e.g. marginalized communities and irregular migrants) or of corruption schemes exploiting situational vulnerabilities (e.g. prisoners and other institutionalized persons).

32. In many contexts, it is a widespread practice, for example, for corrupt prison staff, soldiers, police officers, border officials or armed non-State actors to deliberately employ acts or threats of torture or ill-treatment as a tool to extort money and other valuables from victims, their families or friends (A/HRC/13/39/Add.5, para. 64). Similarly, detainees or their families may be forced to pay bribes to State officials in order to get them to abstain from torture or ill-treatment or to alleviate cruel, inhuman or degrading prison conditions (e.g. A/HRC/13/39/Add.5, paras. 64–66; and CAT/C/52/2, paras. 80 and 84).¹² Another, increasingly widespread, practice is corruption schemes operated in the context of irregular migration, where border officials give access to regular procedures or turn a blind eye on clandestine entries in return for money, valuables or other undue advantages, and enforce this “business model” through the deliberate infliction of violent abuse on any migrant caught crossing the border without complying with their demands (A/HRC/37/50, para. 30). Acts or threats of violence and abuse amounting to torture or ill-treatment are also deliberately employed as a tool for obstructing the prevention, investigation, prosecution and adjudication of corruption, most commonly by: (a) coercing victims or witnesses not to report corruption; (b) coercing false confessions, testimonies or denunciations in order to conceal or evade accountability for corruption; (c) coercing judicial or law enforcement officials into disregarding their duties in the fight against corruption; or (d) intimidating or

¹² See also “Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 May 2010”, document CPT/Inf (2011) 24; and Association for the Prevention of Torture and Prison Reform International, *Institutional Culture in Detention: A Framework for Preventive Monitoring*, 2nd ed. (London, 2015), p. 9.

even “disappearing” or otherwise suppressing anti-corruption activists (e.g. A/70/217, paras. 69–70; and CAT/C/THA/CO/1, para. (14) (b)).

33. In all of these examples, acts or threats of torture or ill-treatment supply the coercive element compelling victims or their relatives to offer or contribute to the requested undue advantage and, therefore, constitute an instrumental part of the related act or scheme of corruption. Given that a primary driver for this pattern of torture and ill-treatment is the pursuit of an undue advantage, such abuse cannot be addressed only through improvements in regulation, training or equipment, or through the investigation and prosecution of individual acts of torture and ill-treatment, all of which presuppose a functioning governance system based on the rule of law. Rather, the deliberate instrumentalization of torture and ill-treatment for corrupt purposes can only be eradicated through decisive and simultaneous action towards purging the overarching corrupt environment as a whole, including widespread root causes of corruption such as inadequate remuneration of public sector employees (CAT/C/52/2, paras. 84, 89–90 and 94) and the inadequate resourcing of public bodies more generally, the perceived normalization of corruption within State institutions, and the absence of accessible, independent and sufficiently staffed and funded monitoring, oversight and complaints mechanisms capable of detecting, investigating, prosecuting and compelling reform towards the non-recurrence of both corruption and torture or ill-treatment.

3. Instrumentalizing “undue advantages” for torture or ill-treatment

34. The direct causal link between corruption and torture or ill-treatment can also be inverse, that is where undue advantages are deliberately offered or sought for the purpose of inducing acts or threats of torture or ill-treatment, or to protect such abuses from investigation and adjudication. For example, in practice, police officers may be offered money, drugs and other undue advantages in return for intimidating, punishing or coercing persons on behalf of criminal networks or, conversely, criminals may be offered such advantages in order to intimidate, punish or coerce victims, witnesses, political opponents or human rights defenders on behalf of corrupt officials (e.g. A/70/217, para. 70). Similarly, in the migration context, smuggling networks often bribe border officials in order for them to intimidate and ill-treat migrants caught crossing the border without having solicited smuggling services (A/HRC/37/50, para. 30). In the prison context, dominant inmates may be offered undue advantages in return for agreeing to intimidate, punish or coerce other inmates on behalf of the prison guards (CAT/OP/MLI/1, para. 82).

35. An important dimension of this interactive pattern is corruption whose purpose is to “protect” the practice of torture or ill-treatment, most notably by obstructing or interfering with oversight mechanisms or the judicial system. This may include a variety of actions, including: (a) bribery of witnesses or public officials as a means of preventing or obstructing an investigation, prosecution or other aspect of the justice process in relation to torture and ill-treatment; (b) State officials trading in influence in order to obstruct investigations, prosecutions and other aspects of the justice process in relation to torture and ill-treatment; (c) State officials condoning, through inaction or inadequate measures, abuse inflicted by private individuals, corporations and other non-State actors in return for financial, political or other undue advantages being granted to them or any other person or entity, including their own Government. The Special Rapporteur has received numerous and consistent allegations according to which police and other security forces were, in various contexts, reluctant to protect indigenous and other socioeconomically marginalized communities against violence at the hands of corporate actors and other private individuals aiming to take possession of their lands for purposes such as extraction of natural resources, deforestation, or the construction of settlements, dams or other infrastructure projects (A/73/207, paras. 64–65). Similarly, in custodial contexts, officials are frequently reported to turn a blind eye to violence inflicted by dominant inmates in return for bribes and other undue advantages. It must be emphasized that any such conduct of State officials amounts to consent or acquiescence to torture or ill-treatment perpetrated by non-State actors and, at the very least, violates the due diligence obligation of States to prevent, investigate and prosecute such abuse.

36. In all of these examples, undue advantages are offered or requested in return for conduct violating obligations derived from the prohibition of torture and ill-treatment. This pattern of torture and ill-treatment involves corruption as a mere “facilitator” and, therefore, cannot be effectively addressed through anti-corruption efforts alone, but requires a broad understanding of the key factors contributing to a particular environment conducive to torture and ill-treatment such as confessions-based investigative methodologies, misconceived and discriminatory policies in areas such as counter-terrorism, law enforcement, minority protection and immigration, systemic failings in providing humane conditions of detention and a general failure of the justice system to prevent impunity, including for corruption and torture or ill-treatment.

4. Exploiting exposure to torture or ill-treatment for “undue advantages”

37. Another frequent pattern of interaction between corruption and torture or ill-treatment is where State officials demand the transfer of undue advantages by deliberately exploiting a pre-existing exposure of persons to acts, threats or risks of torture or ill-treatment on the part of other perpetrators. This variation of interaction between corruption and torture or ill-treatment can be particularly pervasive in armed conflicts and other situations of systemic violence marked by widespread torture and ill-treatment. The heightened risk of torture and ill-treatment prevailing in such situations, whether it is of a general or personalized nature, is deliberately exploited to extort undue advantages in exchange for offering to prevent or reduce the exposure to such risk. For example, in urban policing, violent areas or hotspots may be exploited for profit by law enforcement officials demanding bribes and other undue advantages from inhabitants and shopkeepers in return for protection from abuse at the hands of criminal gangs. Similarly, in the context of irregular migration, corrupt State agents, smugglers and other criminal elements often demand the payment of bribes and other undue advantages from migrants or their relatives in return for allowing them to apply for asylum or subsidiary protection or for refraining from extraditing, returning or otherwise deporting them to a country or territory where they would face a real risk of torture or ill-treatment (A/HRC/37/50).

38. Here too, the coercive element compelling victims or their relatives to offer the requested undue advantage is the alternative prospect of torture and ill-treatment, albeit this time at the hands of perpetrators unrelated to the corrupt official exploiting this risk, who may even be located in a different jurisdiction. In addition to broader efforts towards restoring the rule of law and remedying the surrounding risks of torture and ill-treatment, eradicating the exploitation of such risks by corrupt officials generally requires robust anti-corruption measures, including accessible, independent and sufficiently staffed and funded monitoring, oversight and complaints mechanisms capable of detecting, investigating and prosecuting violations.

5. Torture or ill-treatment as foreseeable “side effect” of corruption

39. Even when not deliberately and purposefully interlinked with acts, threats or risks of torture or ill-treatment, corruption can cause or contribute to the exposure of persons to torture or ill-treatment or pose an obstacle to its prevention, investigation, or redress and rehabilitation. Corrupt practices of this kind may include, for example, high-level officials taking bribes or other undue advantages from extractive companies or other corporate actors in return for contracts involving resource exploitation or similar activity, such as mining, deforestation or construction contracts which, in the circumstances, pose a real risk of coercive practices against persons such as local residents, indigenous populations, activists and workers, including threats, harassment, violence and forced evictions, or living or working conditions amounting to cruel, inhuman, or degrading treatment or even torture.¹³

¹³ Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 15; European Parliament, *Workshop on Corruption and Human Rights in Third Countries* (2013), p. 13; United Nations Human Settlements Programme (UN-Habitat) and

40. Furthermore, corruption may foreseeably cause or contribute to the exposure of persons to torture and cruel, inhuman or degrading treatment through misallocation, misappropriation, diversion or depletion of financial or other resources allocated to key public services. For example, in his daily work for the mandate, the Special Rapporteur has observed a widespread practice of embezzling resources allocated to safeguarding humane detention conditions, including adequate infrastructure and staffing of detention facilities; appropriate training, equipment and remuneration of staff; and the provision of basic commodities and services to inmates such as food, water, heating, repair, laundry, hygiene, health care and educational and recreational opportunities.

41. Even where such corrupt practice does not deliberately aim to cause pain or suffering, it foreseeably downgrades conditions of detention to levels that may be cruel, inhuman or degrading. Moreover, the resulting shortage of prison staff and equipment almost inevitably triggers situations or practices conducive to violence and abuse, such as the inability of the remaining staff to ensure a safe and orderly management of facilities in line with the legitimate needs of the inmates and the de facto delegation of internal discipline to dominant inmates and heads of cells. Although these causal effects may not be purposefully intended or desired by the perpetrators, they are reasonably foreseeable by them as part of the ordinary course of events and, therefore, must be regarded as intentional for the purposes of State and individual accountability.

42. The negative impact of corruption on the effective implementation of the prohibition of torture and ill-treatment applies both to “grand” and to “petty” corruption but, as a general rule, disproportionately affects persons in vulnerable situations such as persons deprived of their liberty; members of social minorities and indigenous groups; irregular migrants or other non-nationals; persons with physical or mental disabilities, illnesses or substance dependence; lesbian, gay, bisexual, transgender and intersex persons; and, depending on the context, children, women and older persons and similar groups exposed to marginalization and discrimination. For example, the Committee on the Elimination of Discrimination against Women has highlighted that a prevalence of corruption in police stations acts as a systemic barrier to effectively addressing violence against women (CEDAW/C/UGA/CO/7, para. 23), also affirming the broad and diffuse capacity of corruption to obstruct the prevention of torture and ill-treatment.

43. In this pattern, corruption is the primary driver for torture and ill-treatment, particularly in conjunction with a permissive environment conducive to abuse and impunity. The manifestation of torture and ill-treatment as a “side effect” of corruption cannot effectively be addressed through anti-torture measures alone. Accordingly, the obligation to take effective measures for the prevention of torture and ill-treatment can be said to include a duty to take comprehensive and decisive action for the eradication of the corrupt practices and corrupt environments conducive to such abuse.

6. Torture or ill-treatment and corruption as foreseeable “side effects” of other policies and practices

44. Even policies, laws and practices which do not, in themselves, constitute or involve acts of corruption or of torture and ill-treatment can be instrumental in exposing persons to various combinations of corruption and torture or ill-treatment. Indeed, States’ failure to prevent corruption or torture and ill-treatment can often be traced to high-level policies and decisions that do not deliberately aim to facilitate corruption or torture and ill-treatment but may concern a wide range of issues, such as the conclusion or denunciation of international agreements, memorandums of understanding or soft-law instruments; the criminalization or decriminalization of certain conduct and the systematic incarceration of certain persons; the allocation of resources and the introduction of budget cuts; the organization of institutions and the delivery of public services; the structure and practice of law enforcement and criminal justice systems; and, more generally, the policies and practices adopted in contexts

OHCHR, *Forced Evictions*, Fact Sheet No. 25/Rev.1 (2014), p. 4; and David Hess, “Business, corruption, and human rights: towards a new responsibility for corporations to combat corruption”, *Wisconsin Law Review*, vol. 2017, No. 4, pp. 641–693, at pp. 667–669.

such as public security, migration, the protection of minorities and social and economic welfare.

45. For example, excessively punitive policies on small-scale, non-violent criminality generally entail an overuse of incarceration that, in turn, leads to prolonged pretrial detention in overcrowded and understaffed places of detention marked by cruel, inhuman or degrading conditions and high levels of violence by staff and between inmates (A/73/207, para. 40). In practice, this trend is very likely to go hand in hand with high levels of corruption among police officers, prison staff and within the judicial system, involving all kinds of extortion in exchange for alleviating cruel, inhuman or degrading prison conditions, protection against abuse, access to legal counsel, timely court hearings and favourable verdicts or sentences.

46. Moreover, political decisions depriving migrants of safe and regular migration pathways and thereby in practice eroding the meaningful implementation of the principle of non-refoulement, including through the criminalization of humanitarian assistance to migrants (A/73/314), push migrants towards irregular pathways controlled by smugglers, traffickers and corrupt officials and expose them to very significant risks of abuse and exploitation, including torture and ill-treatment for ransom, organ removal, forced labour, slavery or servitude, sexual abuse, forced adoption, child soldiering, begging and coerced criminal activities (A/HRC/37/50, paras. 31–35). As the Special Rapporteur concluded in his report to the Human Rights Council, “the primary cause for the massive abuse suffered by migrants in all regions of the world, including torture, rape, enslavement, trafficking and murder, is neither migration itself, nor organized crime, nor the corruption of individual officials, but the growing tendency of States to base their official migration policies and practices on deterrence, criminalization and discrimination rather than protection, human rights and non-discrimination” (A/HRC/37/50, para. 66).

47. In sum, even in the absence of any deliberate aim to do so, high-level political decisions may give rise to policies and practices conducive to corruption and torture or ill-treatment. In order to fulfil their mutually reinforcing obligations under the absolute and non-derogable prohibition of torture and ill-treatment, therefore, Governments and political leaders should carefully evaluate the foreseeable implications and consequences of their decisions, as well as the policies and practices likely to arise from them, and ensure that they will not, in the ordinary course of events, create, maintain or contribute to any environment conducive to corruption and torture or ill-treatment (see, too, A/73/207).

D. Systemic governance failures conducive to corruption and torture or ill-treatment

48. On the level of systemic governance, corruption and torture or ill-treatment are best understood as two concurrent effects of the same original cause, namely a failure of the surrounding governance system to prevent the rise and exercise of unchecked power. Apart from extreme circumstances marked by a near complete suppression or collapse of the rule of law, such as in dictatorial regimes, failed States, armed conflicts or natural disasters, unchecked power tends to result from systemic governance failures that may not necessarily, or not at first sight, be perceived as conducive to corruption and torture or ill-treatment. Nevertheless, wherever there is a causal connection between systemic governance failures and corruption, torture and ill-treatment, regardless of the intentionality or purposefulness of that connection, an international legal obligation to take systemic remedial measures can be derived directly from the duty of States to take effective measures for the prevention of torture and ill-treatment and of corruption.¹⁴

1. Systemic tolerance for unchecked power

49. One of the most fundamental root causes of corruption and torture or ill-treatment committed, facilitated or tolerated at all levels of State authority is the absence of effective

¹⁴ Convention against Torture, Part I and United Nations Convention against Corruption, chap. II.

checks and balances and the strict separation of powers between the executive, judicial and legislative branches of Government. While systemic governance failures are fairly obvious in States with autocratic regimes or weak democratic institutions, they nonetheless also permeate States with strong democratic institutions and formal guarantees of institutional independence, albeit less visibly.

50. For example, throughout the world, judges, prosecutors, parliamentarians and political leaders are often reluctant to impartially investigate or adjudicate accusations of corruption, torture or ill-treatment against lower courts, military and civilian security services or administrative authorities and, instead, tend to display an attitude ranging from complacency to complicity that is irreconcilable with their democratically mandated role. Similarly, in virtually all States, legislative or regulatory projects aiming to subject corporate actors or other influential stakeholders to adequate taxes or to legal liability for adverse human rights and environmental impacts at home and abroad are routinely hindered or significantly watered down by powerful lobbying machineries in ways that are irreconcilable both with the human rights obligations of the State and with legislators' duty to serve the public interest.

51. Analogous failures of good governance, impartiality and oversight can also be observed at the level of international organizations and other entities created by States, including those tasked with the protection of human rights and the investigation or adjudication of violations. In short, lack of transparency, trading in influence, arbitrariness and denial of justice are common practices across national and international governance systems, albeit at varying levels of sophistication and subtlety, ranging from open violence and abuse to corrupt practices almost completely removed from public awareness. As a direct consequence of this sobering reality, in all regions of the world the vast majority of abuse involving corruption and torture or ill-treatment is not, or not adequately, investigated, adjudicated and remedied, thus resulting in a worldwide prevalence of structural impunity for such abuse.

52. Overall, the most fundamentally destructive effect of these systemic governance failures is the creeping establishment of systems, environments and situational "niches" where power can be abused with impunity, thus providing a fertile environment for the spread of corruption and, through the relevant patterns of interaction, also for the unchecked practice of torture and ill-treatment. Therefore, while measures targeting corruption and torture or ill-treatment at the level of individual officials, institutions and processes remain indispensable, the only realistic prospect for eradicating either phenomenon is to effectively address the underlying systemic governance failures conducive to both forms of abuse.

2. Normative and institutional shortcomings

53. Beyond the need for checks and balances, the fight against corruption, torture and ill-treatment requires an effective international and national normative and institutional framework and its rigorous implementation, including by means of fostering best practice, such as forensic investigations and non-coercive interviewing. As the mandate has highlighted repeatedly, and most recently in the latest thematic report to the General Assembly, some States have yet to ratify key international legal instruments against torture and ill-treatment, and all too many States fall short in establishing and ensuring the effective national operation of key safeguards and mechanisms oriented and tailored towards preventing torture and ill-treatment (A/73/207, paras. 19–21 and 26–27). Similarly, some States have yet to ratify key international legal instruments against corruption and many fall short in establishing and ensuring the effective national operation of key safeguards and mechanisms aimed at preventing and redressing corruption.¹⁵ The absence

¹⁵ It is worth noting that, as of 7 November 2018, the United Nations Convention against Corruption had reached near-universal ratification, with 186 ratifications. On lessons learned regarding the implementation of the Convention, see CAC/COSP/2017/5. On national implementation strategies, see UNODC, *National Anti-Corruption Strategies: A Practical Guide for Development and Implementation* (Vienna, 2015).

of the requisite normative and institutional framework against both corruption and torture or ill-treatment, and/or of the political will and systemic capacity to make it effective, is a fundamental impediment to the eradication of such abuses and their mutually reinforcing manifestations.

3. Insufficient accountability of corporate actors

54. The past 30 years have witnessed a dramatic increase in the number and influence of transnational corporations, growing investment and trade flows between countries and the emergence of global supply chains. In addition, major development projects have increasingly involved corporate actors and private investments, often in the form of public-private partnerships between State agencies and foreign private investors. This trend has given rise to various standard-setting processes aiming to address the increasing human rights impacts of business activities including, most notably, the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. While the Guiding Principles do not focus on the interrelations between business, human rights and corruption, States clearly have a positive duty to protect against human rights abuses related to corporate practices, including those involving corruption.

55. The interrelation between corruption and torture or ill-treatment in such contexts can include a wide range of practices, from acts or threats of violence on the part of State officials or private security personnel against protesters, journalists and human rights defenders to the harassment and forced eviction of local inhabitants, indigenous peoples and others perceived as an obstacle to corporate interests and expropriation of their property, and can even extend to manipulating the administration of justice in favour of unchecked corporate power. In practice, acts or threats of violence, forced labour, modern slavery, inhuman working conditions and human trafficking at the hands of corporate actors are often facilitated and enabled by corruption and lack of transparency in complex corporate supply chains, in contexts such as agricultural farming of raw materials like sugar, cotton, cocoa and tobacco, but also in construction, mining and quarrying, as well as garments and textiles (A/HRC/30/35). In view of the often very substantial sums of money and other benefits involved in corporate investment projects, this is an area particularly prone to grand corruption involving the top level of Government and corporate leadership in both developing and developed States.

4. Inadequately resourced public services and institutions

56. It is widely recognized that inadequate funding of public services, including poor infrastructure and equipment, and insufficient number, remuneration and training of staff significantly increase the risk of corruption and abuse. The risks of torture and ill-treatment arising in conjunction with corruption are particularly high where insufficiently resourced public services and institutions are authorized to use force and coercion, such as military and police forces, border guards, prison staff and, in some contexts, publicly mandated private security contractors. In detention facilities, inadequate staffing, infrastructure and supplies often significantly downgrade the general conditions of detention and create fertile ground for cycles of corruption, discrimination and torture or ill-treatment. In such facilities, prison staff tend to delegate part of internal discipline to dominant inmates and to establish systems of corrupt exchanges in which money or favours are exchanged for “privileges” such as protection from violence, alleviating cruel, inhuman or degrading detention conditions or providing access to sufficient food, water, hygienic articles and medical care, or visits by lawyers and family members. Conversely, rigorous recruitment and training processes and appropriate remuneration of prison staff have been found to contribute towards reducing or eradicating endemic corruption and torture or ill-treatment.¹⁶

¹⁶ See, further, UNODC, *Handbook on Anti-Corruption Measures in Prisons*, chap. 4.

5. Socioeconomic marginalization and discrimination

57. As the Subcommittee on Prevention of Torture has observed, corruption violates the rights of all those affected by it, but it has a disproportionate impact on people belonging to groups exposed to particular risks such as minorities, indigenous peoples, migrant workers, people with disabilities, those with HIV/AIDS, refugees, prisoners, women, children and those living in poverty (CAT/C/52/2, para. 80). Indeed, wherever certain communities, groups or individuals are marginalized by prejudice, social exclusion and economic disempowerment, their situation tends to be exacerbated by an increased exposure to both corruption and torture or ill-treatment, including widespread or systematic practices of extortion, gender-based violence, arbitrary arrests and forced confessions or denunciations. At the same time, “tough on crime” policies expose the most marginalized to an almost inescapable downward spiral of brutalization.

58. In practice, such abuse is almost never investigated, prosecuted and adjudicated, thus giving rise to societal “niches” of near complete impunity and denial of justice. Practices of corruption and torture or ill-treatment that exploit and consolidate significant imbalances of power based on social, political or socioeconomic exclusion and marginalization can only be eradicated by measures that comprehensively address and effectively remove the underlying social injustice in line with the universal principles of non-discrimination and of effective separation of powers.¹⁷ While growing awareness of these issues has resulted in multiple national and international normative and policy initiatives, including in the framework of the 2030 Agenda for Sustainable Development, significant efforts remain necessary to remedy the negative consequences of discrimination and marginalization worldwide (A/73/207, paras. 63–74 and 77).

6. Excessive incarceration and involuntary institutionalization

59. So-called “tough on crime” policies, which excessively penalize non-violent offences, are not only counterproductive in terms of failing to reduce long-term crime rates but also create environments conducive to corruption and torture or ill-treatment. For example, criminalizing and imposing mandatory investigative and punitive detention for irregular border crossings, minor drug offences or other frequent but non-violent transgressions inevitably leads to excessive incarceration, prolonged pretrial detention and overcrowded, under-resourced detention facilities, with all the above-mentioned manifestations of corruption and abuse to be expected in such situations.

60. Moreover, the case-by-case handling of petty offences is often left to police discretion, which encourages extortion or the use of torture to obtain forced confessions. Similar “niches” of corruption, abuse and impunity also result from widespread practices of prolonged or indefinite administrative detention of irregular migrants, or of involuntary institutionalization of older people or persons affected by actual or perceived psychosocial disabilities. In order to avoid corruption and torture or ill-treatment in the context of excessive deprivation of liberty and forced institutionalization, States should develop policies and practices comprehensively addressing the challenges arising in areas as diverse as crime prevention, migration management and social care, and should avoid any deprivation of liberty or involuntary institutionalization that is not lawful, strictly required and proportionate in the circumstances.

IV. Conclusions

61. On the basis of the observations and considerations expressed above, and informed by broad stakeholder consultations, the Special Rapporteur, to the best of his personal judgment and conviction, comes to the conclusions set out below.

¹⁷ Kristian Lasslett, “Countering grand corruption and kleptocracy through transformative justice: a victims of corruption approach”, draft paper, on file with the Special Rapporteur.

General relationship between corruption and torture or ill-treatment

62. Despite the general consensus that both corruption and torture or ill-treatment are inherently unlawful and fundamentally destructive for any society tolerating such abuse, both practices continue to be widespread and deeply entrenched in national and international governance systems throughout the world. From a conceptual perspective, not every act of torture and ill-treatment necessarily involves or relates to corruption, and not every act of corruption necessarily involves or relates to torture and ill-treatment. In practice, however, there is a wide range of contexts, subcontexts and situational “niches” that are marked by some degree of interaction between corruption and torture or ill-treatment.

63. Both corruption and torture or ill-treatment are rarely isolated in a few “bad apples” but, figuratively speaking, almost always extend to “rotten branches”, or even “rotten orchards”, and therefore are predominantly structural and systemic phenomena. Wherever corruption and torture or ill-treatment coexist, their relationship tends to be cyclical and mutually reinforcing, making it important to understand the predominant patterns of causal interaction. Nevertheless, from a systemic perspective, corruption and torture or ill-treatment are best understood as concurrent effects of the same original cause, namely a failure of the relevant governance system to prevent the abuse of unchecked power. Thus, while measures targeting corruption and torture or ill-treatment on the level of individual officials, institutions and processes remain indispensable, there is no realistic prospect for eradicating either phenomenon without effectively addressing the underlying systemic governance failures conducive to both forms of abuse.

Predominant patterns of causal interaction

64. In terms of causal proximity, the Special Rapporteur proposes to distinguish the following predominant patterns of interaction between corruption and torture or ill-treatment:

- (a) Demanding “undue advantages” that per se amount to torture or ill-treatment;
- (b) Instrumentalizing torture or ill-treatment for “undue advantages”;
- (c) Instrumentalizing “undue advantages” for torture or ill-treatment;
- (d) Exploiting exposure to torture or ill-treatment for “undue advantages”;
- (e) Torture or ill-treatment as a foreseeable “side effect” of corruption;
- (f) Torture or ill-treatment and corruption as foreseeable “side effects” of other policies and practices.

65. Given the cyclical and mutually reinforcing relationship between torture or ill-treatment, and regardless of the intentionality or purposefulness of that interaction, an international legal obligation to take anti-corruption measures can be derived directly from the duty of States to take effective legislative, administrative, judicial and other measures to prevent acts of torture and ill-treatment,¹⁸ and a legal obligation to take anti-torture measures can be derived directly from their duty to develop and implement or maintain effective, coordinated anti-corruption policies and practices.¹⁹

Systemic governance failures conducive to corruption and torture or ill-treatment

66. The most important systemic governance failures conducive to corruption and torture or ill-treatment include:

- (a) Systemic tolerance for unchecked power;
- (b) Normative and institutional shortcomings;
- (c) Unchecked power of corporate actors;

¹⁸ Convention against Torture, Part I.

¹⁹ United Nations Convention against Corruption, chap. II.

- (d) Inadequately resourced public services and institutions;
- (e) Socioeconomic marginalization and discrimination;
- (f) Excessive incarceration and involuntary institutionalization.

67. Wherever there is a causal connection between systemic governance failures and corruption, torture or ill-treatment, regardless of the intentionality or purposefulness of that connection, an international legal obligation to take systemic remedial measures can be derived directly from the duty of States to take effective legislative, administrative, judicial and other measures to prevent acts of torture and ill-treatment,²⁰ as well as from their duty to develop and implement or maintain effective, coordinated anti-corruption policies and practices.²¹

V. Recommendations

68. On the basis of his observations and conclusions, the Special Rapporteur endorses and reinforces the recommendations of the Human Rights Council (resolution 35/25) and its Advisory Committee (A/HRC/28/73, paras. 47–55) in respect of the negative impact of corruption on the enjoyment of human rights and, in response to Council resolution 37/19, offers the following recommendations to States with a view to strengthening their capacity to ensure the effective prevention of and accountability for torture and other cruel, inhuman or degrading treatment or punishment in settings affected by corruption.

Ratification and implementation of international instruments

69. States should adopt and/or ratify, without reservations, the United Nations Convention Against Corruption, the Convention against Torture and its Optional Protocol and all other universal and regional treaties and soft law instruments relevant to the prevention of corruption and torture and ill-treatment respectively, and should ensure their comprehensive and effective implementation across national legal and institutional frameworks.

Zero-tolerance policies on corruption and on torture or ill-treatment

70. States should adopt and implement strict policies of zero tolerance for both corruption and torture or ill-treatment throughout all branches and levels of public authority, not only through strict enforcement at the level of individual officials, services and processes, but also through decisive corrective action that may be required at the systemic level. In doing so, States should duly consider the predominant patterns of causal interaction between corruption and torture or ill-treatment. In determining criminal culpability for involvement in corruption, they should duly consider mitigating circumstances of coercion, including through risks, threats or acts of torture and ill-treatment. Furthermore, States should complement repressive and corrective action with proactive efforts to ensure adequate funding, training and equipping of public services and institutions, and fostering a general culture of personal and professional integrity throughout all public services.

Integration and mutual mainstreaming

71. States should proactively integrate their anti-torture and anti-corruption policies and practices, including through mutual mainstreaming. Thus, the prevention of torture and ill-treatment should be systematically incorporated into anti-corruption policies and practices and the prevention of corruption should be systematically incorporated into anti-torture policies and practices. At the most basic level, this also means that any anti-corruption measure must fully comply with the absolute and non-

²⁰ Convention against Torture, Part I.

²¹ United Nations Convention against Corruption, chap. II.

derogable prohibition of torture and ill-treatment, and vice versa. Moreover, States should ensure that their decisions, policies and practices in other areas of governance will not, in the ordinary course of events, create, maintain or contribute to any environment conducive to corruption and torture or ill-treatment.

Independent monitoring and reporting

72. States should establish and maintain accessible, well-resourced and fully independent monitoring, oversight and accountability mechanisms for the prevention of corruption and of torture or ill-treatment including, but not limited to, those foreseen in articles 6 and 36 of the United Nations Convention against Corruption and articles 2 and 16 of the Convention against Torture in conjunction with article 3 of its Optional Protocol. Beyond what is already foreseen in treaty law, such mechanisms should be formally empowered to carry out comprehensive monitoring and proactive investigations and to publicly report their findings; to initiate, oversee and contribute to national and international judicial proceedings and other accountability processes; and to exchange information and cooperate with each other with a view to exposing context-specific acts or patterns of corruption and torture or ill-treatment, where appropriate in coordination with the national human rights institution. In addition to officially mandated mechanisms, States should provide a transparent and safe environment enabling and protecting the monitoring, reporting and advocacy activities of civil society organizations, human rights defenders and whistle-blowers and ensure their unhindered access to individual witnesses, victims or their relatives.

Contexts particularly exposed to corruption and torture or ill-treatment

73. While maintaining comprehensive anti-corruption and anti-torture policies and practices, States, monitoring mechanisms and civil society stakeholders should focus their efforts specifically on contexts particularly prone to corruption and torture or ill-treatment, including:

(a) The extra-custodial use of force and other coercive powers by State officials or private security contractors, for example in relation to arrests, house searches, crowd management, checkpoints and immigration control;

(b) Persons who are deprived of their liberty or institutionalized without their free and informed consent, for example in prisons, police stations, military barracks, closed camps or shelters, migration centres, orphanages, psychiatric hospitals, social care centres or any other similar place;

(c) Policies, procedures and practices relating to asylum, migration and border control, including the treatment and living conditions of irregular migrants and the application of the principle of non-refoulement with regard to the risk of torture and ill-treatment;

(d) The administration of justice, including decisions about deprivation of liberty and forced institutionalization; the initiation, suspension and dismissal of investigations into allegations of torture or ill-treatment and related corruption; the investigative questioning of persons; and the provision of redress and rehabilitation to survivors of torture and ill-treatment;

(e) The protection of persons against corruption, violence, intimidation and abuse committed, instigated or facilitated by corporate actors, security contractors, criminal organizations or other non-State actors;

(f) The protection of civil society representatives, human rights defenders, political opponents, whistle-blowers and witnesses and victims of corruption or human right violations against violence, intimidation and reprisals;

(g) Policies, procedures and practices influencing the treatment, living conditions, rights and duties of minorities and other persons, groups or communities exposed to social exclusion, socioeconomic marginalization and discrimination due to factors such as their ethnic, religious or indigenous background, social or migration status, gender, sexual orientation, age or disability;

(h) The formulation, adoption, implementation and interpretation of law pertaining to any of the above, including any lobbying activities undertaken in this respect.

Transnational efforts

74. Given the increasingly transnational character, reach and consequences of the activities and transactions undertaken by States and international organizations and by multinational corporations and other non-State actors, States should cooperate internationally in order to ensure effective policies and practices for the prevention and eradication of corruption and torture or ill-treatment. Any international exchange of information or extradition undertaken in this context remains subject to the exclusionary clause prohibiting the use as evidence of any information obtained through torture or ill-treatment²² as well as the prohibition of refoulement towards a real risk of torture or ill-treatment,²³ which may be substantiated with evidence of systemic governance failures and corruption.²⁴

Synergies within the United Nations

75. United Nations agencies and mechanisms such as, most notably, UNODC, OHCHR, the Committee against Torture, the Subcommittee on Prevention of Torture and the United Nations Voluntary Fund for Victims of Torture, as well as the special procedures of the Human Rights Council, including the mandate of the Special Rapporteur, should systematically examine the interaction between corruption and human rights violations, including torture and ill-treatment, in their respective reporting and should strengthen their exchanges, coordination and cooperation with a view to fostering, throughout the United Nations, a holistic understanding of the shared root causes and the causal interactions between corruption and human rights violations, and of the most effective measures for the prevention and eradication of such abuse (A/HRC/28/73, paras. 51–55).

Human Rights Council

76. The Special Rapporteur specifically endorses the recommendations of the Advisory Committee that the Human Rights Council establish a thematic special procedure mandate (i.e. a special rapporteur, independent expert or working group) tasked with examining the causal connections between corruption and human rights violations and that the examination of this question be expressly integrated both into the universal periodic review and into the Council's complaints procedure (A/HRC/28/73, paras. 52–54).

²² Convention against Torture, art. 15.

²³ Ibid., art. 3.

²⁴ Center for the Advancement of Public Integrity, Columbia Law School, *The Corruption and Human Rights Connection: Government Acquiescence in Torture* (2018).