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**Human Rights Council****Forty-ninth 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 on torture and other cruel, inhuman  
or degrading treatment or punishment, Nils Melzer***Summary*

In the present report to the Human Rights Council, which is the sixth and last of his tenure, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment evaluates the reception and utilization by States of his thematic reports as a driver of change in national laws, policies and practices towards the eradication of torture and ill-treatment, and he offers recommendations aimed at supporting that process.



## I. Introduction

1. The present report was prepared pursuant to Human Rights Council resolution 43/20.

## II. Activities relating to the mandate

2. First, the Special Rapporteur would like to sincerely thank the Government of Switzerland for its consistent support throughout the reporting period, without which the mandate holder would not have been able to operate effectively. At the same time, the Special Rapporteur notes with serious concern that, despite repeated requests for additional staff and funding contributions to support the activities and research efforts of the mandate, no other Governments have been prepared to provide additional staff or make even minor extrabudgetary contributions to support the mandate for the past four years, thus severely hampering its research and advocacy efforts and exacerbating the increasingly precarious financial situation under the general budget of the special procedures of the Human Rights Council.

3. In 2021, the Special Rapporteur transmitted 449 communications,<sup>1</sup> jointly with other mandate holders or individually, on behalf of individuals exposed to torture and other ill-treatment. As in previous years, and despite the Special Rapporteur's alarming conclusions in his previous report,<sup>2</sup> the vast majority of those communications either remained without any response or received an unsatisfactory response that failed to meet the standards of cooperation required by the Human Rights Council in its resolution 43/20 and that did not allow for a resolution to the case in question.

4. The Special Rapporteur sincerely appreciates that the proper processing and resolution of a constantly growing number of communications transmitting allegations of human rights violations by an increasing number of mandate holders requires significant human resources and administrative efforts from respondent States. He notes, however, that in most responses received, States remain evasive, provide insufficient or irrelevant information, or make formalistic assurances without effectively addressing the concerns expressed by the mandate holder. The reality is, however, that international human rights law obliges States to conduct a prompt and impartial investigation into each of these allegations, and that the purpose of the communications procedure, through transmitting credible allegations of torture, or risk of torture, cannot be achieved unless this obligation is diligently complied with in practice.

5. Due to the coronavirus disease (COVID-19) pandemic, travel restrictions remained in place during the first half of 2021. On 11 August, the Permanent Mission of Germany in Geneva facilitated an in-person meeting in Berlin between the Special Rapporteur and high-level authorities of the Bundesland Berlin and the Berlin Police, addressing serious concerns arising from numerous allegations regarding the use of excessive force, particularly in response to recent anti-COVID demonstrations, as well as related operational challenges, including violent attacks, experienced by the police. The Special Rapporteur sincerely thanks the German authorities for their expeditious and constructive facilitation of this meaningful dialogue.

6. During and after the mandate holder's interactive dialogue at the Human Rights Council's forty-sixth session, in March 2021, the Governments of Burkina Faso and South Africa had formally invited the Special Rapporteur to carry out official visits to their countries during the second half of 2021. Similarly, upon request by the Special Rapporteur, Switzerland had formally agreed for the mandate holder to carry out a visit between 15 November and 17 December 2021 in follow-up to an individual communication.

7. The Special Rapporteur regrets, however, that all three visits had to be postponed owing to delays in the handling of the mandate holder's related requests by the responding Governments. As a result, no country visits or other official travel could be carried out

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<sup>1</sup> Communications sent during the period from 1 January to 1 December 2021.

<sup>2</sup> [A/HRC/46/26](#).

throughout 2021 and the mandate's related budget for 2021 was lost, as it could not be carried forward to 2022. In this context, the Special Rapporteur would like to underline that once States have committed to hosting an official visit of any kind by the mandate holder, they are expected to ensure that such visit can be carried out effectively and expeditiously, within the agreed budget period, and to assume the administrative burden of coordinating and facilitating meetings with the local authorities as requested by the Special Rapporteur.

8. Since his previous report to the Human Rights Council, the Special Rapporteur has participated in consultations, workshops and events on issues relating to his mandate, the most notable of which are listed below.

9. On 5 March 2021, the Special Rapporteur held a side-event to the forty-sixth session of the Human Rights Council that was organized in cooperation with the Special Rapporteur on extrajudicial, summary or arbitrary executions, and the Geneva Human Rights Platform at the Geneva Academy of International Humanitarian Law and Human Rights, with the support of the Directorate of International Law of the Federal Department of Foreign Affairs of Switzerland. The event, on the topic of human rights responsibilities of armed non-State actors, built upon a public statement on the same topic, jointly issued by 44 independent United Nations human rights experts on 25 February 2021.<sup>3</sup>

10. On 23 March, the Special Rapporteur participated in an online global expert meeting, organized by OutRight Action International, on the topic of applying United Nations human rights mechanisms to end conversion practices relating to sexual orientation and gender identity and expression.

11. On 24 and 25 March, the Special Rapporteur participated in events for the Global Week against Torture, organized by the World Organisation against Torture. He contributed to a panel discussion addressing police brutality as a form of torture, where he underlined the importance of applying the international anti-torture protection framework in extra-custodial settings. He also provided concluding remarks during the closing session of the four-day event.

12. On 25 March, on the sidelines of the fifty-third session of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, the Special Rapporteur met with the Board, the Chairs of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Committee against Torture to strengthen collaboration among the four United Nations anti-torture mechanisms. They had a thematic discussion on the restriction of civic space, including through reprisals during the COVID-19 pandemic.

13. On 9 June, the Special Rapporteur participated in the launching event of the New Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles).<sup>4</sup> He expressed strong support for the initiative, which was initiated by his predecessor in 2016<sup>5</sup> with the aim of providing States with practical guidance towards replacing prohibited coercive interrogations with legitimate, rapport-based interviewing techniques and, thereby, contributing to the reinforcement of preventive measures against torture and other ill-treatment during the investigative process.

14. On 25 June, in commemoration of the International Day in Support of Victims of Torture and in celebration of the fortieth anniversary of the United Nations Voluntary Fund for Victims of Torture, the Special Rapporteur participated in a joint public webinar on fostering civic space to obtain redress and accountability for victims of torture, where he addressed the challenges in documentation and accountability for torture and ill-treatment, especially under restrictive national security policies.

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<sup>3</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), "Joint statement by independent United Nations human rights experts on human rights responsibilities of armed non-State actors", 25 February 2021.

<sup>4</sup> See [www.apt.ch/en/resources/publications/new-principles-effective-interviewing-investigations-and-information](http://www.apt.ch/en/resources/publications/new-principles-effective-interviewing-investigations-and-information).

<sup>5</sup> [A/71/298](#).

15. On 28 June, the Special Rapporteur participated, as a guest speaker, in an exchange of views on inhumane prison conditions in the European Union before and during the pandemic, which was organized by the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament.

16. On 13 August, the Special Rapporteur co-initiated a joint statement, endorsed by more than 40 special procedure mandate holders, calling for an end to police brutality worldwide.<sup>6</sup>

17. On 29 September, the Special Rapporteur participated in a side-event to the forty-eighth session of the Human Rights Council. The event, on the topic of ending extra-custodial torture and ill-treatment against protesters, was organized by the World Organisation against Torture, and it addressed the use of excessive force by law enforcement officials, particularly in the framework of assemblies.

18. On 12 October, the Special Rapporteur presented his thematic report on accountability for torture and other cruel, inhuman or degrading treatment or punishment<sup>7</sup> to the Third Committee of the General Assembly.

19. On 26 October, the Special Rapporteur was hosted by the Alumni Association of the International Committee of the Red Cross to speak about his mandate in general and, in particular, the results achieved thus far and his concerns related to the case of Julian Assange, the founder of WikiLeaks.

20. On 23 October, the Special Rapporteur participated in a public panel discussion at the Neumarkt Theatre in Zurich, detailing his efforts on behalf of a prisoner who, despite repeated communications by the mandate holder, continues to be held by the Swiss authorities in prolonged solitary confinement for more than three years.

21. On 5 November, as part of the drafting process for the present report, the Special Rapporteur hosted an online State consultation on the impact of thematic reports presented by the Special Rapporteur on torture.

22. On 7 November, the Special Rapporteur participated in an online conference, organized by the Journalist Support Committee, on the topic of implementing the rule of law to end impunity for crimes against journalists. During the conference, he addressed the persecution of journalists and the use of psychological torture to silence journalists, including the conclusions of his investigation in the case of Julian Assange.

23. On 15 November, the Special Rapporteur participated in the consultation on mental health and human rights, as called for under Human Rights Council resolution 43/13. The Special Rapporteur provided a video intervention highlighting the key aspects of legal reform based on the Convention on the Rights of Persons with Disabilities.

24. On 10 December, the Special Rapporteur participated in a panel discussion on ending coercive interrogation and the New Principles on Effective Interviewing for Investigations and Information Gathering. The event was organized by the Association for the Prevention of Torture and the Geneva Academy of International Humanitarian Law and Human Rights.

### **III. Utilization of thematic reports presented by the Special Rapporteur**

#### **A. Purpose and scope of the present report**

25. As explained in his previous report,<sup>8</sup> 35 years after the establishment of the mandate, and mindful of the need to be able to respond effectively to credible and reliable information that comes before the mandate holder,<sup>9</sup> the Special Rapporteur deemed it timely to evaluate

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<sup>6</sup> OHCHR, “UN experts call for an end to police brutality worldwide”, 13 August 2021.

<sup>7</sup> [A/76/168](#).

<sup>8</sup> [A/HRC/46/26](#), paras. 19–24.

<sup>9</sup> Commission on Human Rights resolution 1985/33.

the effectiveness of the cooperation of States with the mandate with a view to ensuring the prevention, investigation, prosecution and redress of torture and ill-treatment.

26. Accordingly, as a first step, the mandate holder's previous report contained an evaluation of the effectiveness of the cooperation shown by States in relation to the first two pillars of the work under the mandate, namely in States' responses and follow-up to official communications and to country visit requests transmitted by the mandate holder during the first four years of his tenure. The report also offered recommendations both to States and to relevant United Nations mechanisms with a view to achieving the standard of "full cooperation" set by the Human Rights Council concerning the cooperation between States and the mandate holder, and to ensuring full compliance of States with their legal obligations arising from the universal, absolute and non-derogable prohibition of torture and ill-treatment.

27. As set out in paragraph 24 of the mandate holder's previous report, the third pillar of the mandate holder's work, namely the follow-up of States to the conclusions and recommendations made in the Special Rapporteur's thematic reports to the Human Rights Council and the General Assembly, was subsequently evaluated in separate State consultations conducted between May and November 2021. The process and the results of that evaluation are the subject of the present report, along with recommendations offered by the Special Rapporteur with a view to facilitating States' recourse to the thematic reporting procedure as a resource of expertise and guidance supporting their compliance with the prohibition of torture and ill-treatment.

## **B. Standards of reference**

### **1. Resolutions of the Human Rights Council**

28. In 1985, the Commission on Human Rights adopted resolution 1985/33, creating the mandate of the Special Rapporteur. Since then, the Commission, and subsequently the Human Rights Council, have consistently renewed the mandate.

29. The mandate covers any act or omission amounting to torture and other cruel, inhuman or degrading treatment or punishment under applicable international customary and treaty law. The Special Rapporteur is mandated to examine questions relating to the prohibition, prevention, investigation and redress of such abuse in all current and aspiring Member States of the United Nations, regardless of their treaty obligations.

30. The Council stressed that the mandate holder is to discharge his or her duties in accordance with Human Rights Council resolutions 5/1, on institution-building, and 5/2, on the code of conduct for mandate holders, of 18 June 2007, and the annexes thereto. In particular, as far as is relevant for thematic reporting, in its resolution 43/20, the Council mandates the Special Rapporteur, *inter alia*, to do the following: 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; identify, exchange and promote best practices on measures to prevent, punish and eradicate torture and other cruel, inhuman or degrading treatment or punishment; integrate a gender perspective and a victim-centred approach; and report on all of the mandate's activities, observations, conclusions and recommendations to the Human Rights Council, and annually on relevant overall trends and developments to the General Assembly, with a view to maximizing the benefits of the reporting process.

31. Furthermore, 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 (hereafter: torture and ill-treatment), the Council notably urges States to cooperate fully with and to assist the Special Rapporteur in the performance of his or her tasks, and to ensure proper follow-up to the recommendations and conclusions of the Special Rapporteur.

32. The conclusions and recommendations of the Special Rapporteur regarding the issues raised in the thematic reports issued under the mandate should also be proactively taken into account by States in the implementation of their legal obligations to prevent, criminalize,

investigate, prosecute, punish and redress acts of torture and ill-treatment and to rehabilitate victims of such abuse.

## **2. Manual of Operations of the Special Procedures of the Human Rights Council**

33. Beyond the resolutions of the Human Rights Council, more specific guidance on the purpose and utilization of thematic studies can be found in the Manual of Operations of the Special Procedures of the Human Rights Council:

### *Paragraphs 75 and 76, on thematic studies*

“In addition to any other reports, mandate holders may opt to devote a separate report to a particular topic of relevance to the mandate. Such studies may be initiated by the mandate holder or undertaken pursuant to a specific request by relevant bodies. The practical arrangements in relation to the drafting and publication of these reports will be determined in consultation with OHCHR.

Such studies should be thoroughly researched and where appropriate take account of replies to questionnaires or other requests for information transmitted to governments, United Nations agencies, NGOs, treaty bodies, regional organizations, other experts, or partners.”

### *Paragraphs 106 to 108, on follow-up to thematic studies*

“Thematic studies undertaken by special procedures mandate holders can make important contributions to the overall body of knowledge in the field and to the understanding of complex problems and their possible solutions. Such studies can be used to raise awareness of particular problems and to shed light on the types of laws, policies and programmes which might best ensure the respect for human rights in such circumstances.

As noted above the information gathered in the preparation of thematic reports can be made available on the OHCHR website in a variety of formats. The reports themselves should also be widely disseminated by all appropriate means, including press releases, press conferences, and presentations to conferences and to meetings convened by other relevant groups such as civil society, academia and others.

Thematic studies can also be used to provide human rights input into the formulation of legislative, policy and other initiatives in the relevant fields.”

## **C. Scope and practical relevance of thematic reports**

### **1. Historical overview of topics covered**

34. Since the creation of the mandate in 1985, thematic reports issued by the respective mandate holders have covered a wide variety of topics relevant to the prohibition of torture and ill-treatment and have made a significant contribution towards clarifying the substantive scope and practical meaning of that prohibition as well as the wide-ranging legal obligations of States that have been derived from it. At a time when the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been adopted but had not yet entered into force,<sup>10</sup> the Special Rapporteur on torture already played a pivotal role in addressing the widespread incidence of torture, and in driving the development of normative and practical frameworks designed to combat torture, in response to the constantly evolving context in which torture was being practised. The following lists of reports provide an overview of the topics covered by the thematic reports issued under the mandate since 1985. It does not include pure “activity reports”, covering operational activities, or “observation reports”, covering individual communications, that are not otherwise dedicated, at least in part, to specific thematic issues.

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<sup>10</sup> The Convention against Torture was adopted in December 1984 by the General Assembly in its resolution 39/46, and it entered into force in June 1987, after ratification by 20 States.

**Reports of mandate holder Nils Melzer (2016–2022)**

<i>Subject matter</i>	<i>Symbol</i>
Accountability for torture and ill-treatment	<a href="#">A/76/168</a>
Effectiveness of States' responses and follow-up to communications and visit requests	<a href="#">A/HRC/46/26</a>
Biopsychosocial factors conducive to torture and ill-treatment	<a href="#">A/75/179</a>
Psychological torture	<a href="#">A/HRC/43/49</a>
Relevance of the prohibition of torture and ill-treatment to the context of domestic violence	<a href="#">A/74/148</a>
Corruption-related torture and ill-treatment	<a href="#">A/HRC/40/59</a>
Seventieth anniversary of the Universal Declaration of Human Rights: reaffirming and strengthening the prohibition of torture and ill-treatment	<a href="#">A/73/207</a>
Migration-related torture and ill-treatment	<a href="#">A/HRC/37/50</a>
Extra-custodial use of force and the prohibition of torture and ill-treatment	<a href="#">A/72/178</a>
Thematic priorities and methodology of work of the Special Rapporteur: Nils Melzer	<a href="#">A/HRC/34/54</a>

**Reports of mandate holder Juan Mendez (2010–2016)**

<i>Subject matter</i>	<i>Symbol</i>
Non-coercive interviewing	<a href="#">A/71/298</a>
Gender-based torture and ill-treatment	<a href="#">A/HRC/31/57</a>
Extraterritorial application of the prohibition of torture and ill-treatment	<a href="#">A/70/303</a>
Torture and ill-treatment of children deprived of their liberty	<a href="#">A/HRC/28/68</a>
Role of forensic and medical sciences in the investigation and prevention of torture and other ill-treatment	<a href="#">A/69/387</a>
Use of information tainted by torture and the exclusionary rule	<a href="#">A/HRC/25/60</a>
Review of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)	<a href="#">A/68/295</a>
Torture and ill-treatment in health-care settings	<a href="#">A/HRC/22/53</a>
Death penalty and the prohibition of torture and cruel, inhuman and degrading treatment	<a href="#">A/67/279</a>
Commissions of inquiry into torture and other forms of ill-treatment	<a href="#">A/HRC/19/61</a>
Solitary confinement	<a href="#">A/66/268</a>
Thematic priorities and methodology of work of the Special Rapporteur: Juan Méndez	<a href="#">A/HRC/16/52</a>

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**Reports of mandate holder Manfred Nowak (2004–2010)**


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<i>Subject matter</i>	<i>Symbol</i>
Impunity as a root cause of the prevalence of torture, the role of rehabilitation centres for victims of torture and the role of national preventive mechanisms	<a href="#">A/65/273</a>
Mandate of the Special Rapporteur on torture and State cooperation; the definition of torture and other cruel, inhuman or degrading treatment or punishment and the distinction between them; and the principle of non-refoulement	<a href="#">A/HRC/13/39</a>
Study on the phenomena of torture, cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention	<a href="#">A/HRC/13/39/Add.5</a>
Conditions of detention, and children in detention	<a href="#">A/64/215</a>
Death penalty in the light of the prohibition of cruel, inhuman and degrading punishment, and the application of a human rights-based approach to drug policies	<a href="#">A/HRC/10/44</a>
Protecting persons with disabilities from torture, and solitary confinement	<a href="#">A/63/175</a>
Strengthening the protection of women from torture	<a href="#">A/HRC/7/3</a>
Role of forensic expertise in combating impunity for torture, and avoiding the deprivation of liberty as a means of preventing torture	<a href="#">A/62/221</a>
Obligation of States parties to establish universal jurisdiction according to the principle <i>aut dedere aut iudicare</i> ; cooperation with regional organizations; and the right of victims of torture to remedy and reparation	<a href="#">A/HRC/4/33</a>
Principle of the non-admissibility of evidence extracted by torture, and the entry into force of the Optional Protocol to the Convention against Torture	<a href="#">A/61/259</a>
Diplomatic assurances, and the distinction between torture and other cruel, inhuman or degrading treatment or punishment	<a href="#">E/CN.4/2006/6</a>
Corporal punishment, and the principle of non-refoulement and diplomatic assurances	<a href="#">A/60/316</a>

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**Reports of mandate holder Theo van Boven (2001–2004)**


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<i>Subject matter</i>	<i>Symbol</i>
Study on the situation of trade in and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms	<a href="#">E/CN.4/2005/62</a>
Absolute and non-derogable prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment; the principle of non-refoulement; and the impact of torture on victims	<a href="#">A/59/324</a>
Guarantees for individuals deprived of their liberty; HIV/AIDS and torture; and the situation of trade in and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms	<a href="#">E/CN.4/2004/56</a>
Prohibition of torture and other forms of ill-treatment in the context of anti-terrorism measures; study on the situation of trade in and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment; reparation for victims	<a href="#">A/58/120</a>



<i>Subject matter</i>	<i>Symbol</i>
of torture; and the prevention of torture and other forms of ill-treatment in psychiatric institutions	
Study on the situation of trade in and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms	<a href="#">E/CN.4/2003/69</a>
Prohibition of torture and other forms of ill-treatment in the context of antiterrorism measures; international and national mechanisms for visits to places of deprivation of liberty; and corporal punishment of children	<a href="#">A/57/173</a>
Non-derogability of the prohibition of torture and cruel, inhuman or degrading treatment or punishment	<a href="#">E/CN.4/2002/137</a>

### **Reports of mandate holder Nigel Rodley (1993–2001)**

<i>Subject matter</i>	<i>Symbol</i>
General recommendations of the Special Rapporteur	<a href="#">E/CN.4/2002/76</a>
Issues of concern: intimidation, enforced or involuntary disappearance, discrimination against sexual minorities, impunity, prevention and transparency	<a href="#">A/56/156</a>
General conclusions and recommendations	<a href="#">E/CN.4/2001/66</a>
Issues of concern: gender, children, human rights defenders, reparation for victims, and torture and poverty	<a href="#">A/55/290</a>
Issues of concern: gender-specific torture; violation of the prohibition of torture of children; corporal punishment; incommunicado detention; torture of human rights defenders; non-refoulement; impunity; compensation and rehabilitation of torture victims; ratification of and accession to the Convention against Torture; manual on the effective investigation of torture; and the International Criminal Court	<a href="#">A/54/426</a>

### **Reports of mandate holder Peter Kooijmans (1985–1993)**

<i>Subject matter</i>	<i>Symbol</i>
General conclusions and recommendations: assessment of what has been achieved after five years of rapporteurship on torture	<a href="#">E/CN.4/1991/17</a>
Advisory services by the Special Rapporteur and general recommendations on the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power	<a href="#">E/CN.4/1989/15</a>
National standards for correcting and/or preventing torture; issues of concern: corporal punishment, inhuman prison conditions, generally applied harsh treatment, prolonged stay on death row, and detention of minors together with adults; analysis of information received on the practice of torture; and preventive measures	<a href="#">E/CN.4/1988/17</a>
Background on the international legal concept of torture; measures to prevent acts of torture; measures to abolish torture or mitigate its effects; national legislation and regulations; and analysis of the information received on the practice of torture, including conditions under which torture is practised, types and methods of torture, trade in implements of torture, and torture and violation of other human rights	<a href="#">E/CN.4/1986/15</a>

## 2. Standard-setting impact of previous thematic reports

35. Each thematic report can serve as an important resource for States, international organizations and other stakeholders, and many reports have informed definitions, interpretations and provisions adopted in various international human rights instruments and in the practice of international human rights mechanisms.

36. One such example is the 2011 thematic report on solitary confinement,<sup>11</sup> which has decisively contributed to the definition and prohibition of “prolonged solitary confinement” in rules 43 and 44 of the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

37. Similarly, the conclusions of special rapporteurs on the inherently abusive nature of certain equipment and weapons, and the dedicated study on the trade in and production of such equipment, its origin, destination and forms<sup>12</sup> have significantly contributed to advancing the relevant European normative framework,<sup>13</sup> with the adoption of European Regulation 2019/125 on 16 June 2019, banning the trade in certain goods that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.<sup>14</sup>

38. In addition, the 2016 thematic report calling for a universal protocol on non-coercive interviewing<sup>15</sup> resulted in the initiation of a four-year expert process, which has resulted in the drafting of the Méndez Principles, providing guidance for the transition from confession-based, coercive interrogation to science-based, non-coercive interviewing.

39. Furthermore, thematic reports elaborating on the obligation to investigate,<sup>16</sup> the role of forensic and medical sciences,<sup>17</sup> the role of commissions of inquiry,<sup>18</sup> measures to combat impunity and achieve justice,<sup>19</sup> conditions of detention<sup>20</sup> and the role of judges and prosecutors in applying the exclusionary rule,<sup>21</sup> among others, contributed significantly to the revised text of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

40. In some cases, country visit reports have had a similar impact. For example, in the case *Martí de Mejía v. Peru*,<sup>22</sup> the Inter-American Commission considered that rape could amount to torture, following the findings of a former mandate holder in his country visit report,<sup>23</sup> and the 1992 statement to the Commission on Human Rights.<sup>24</sup> This interpretation was later adopted by the European Court of Human Rights<sup>25</sup> and the International Tribunal for the Former Yugoslavia,<sup>26</sup> referencing the conclusions of the Special Rapporteur’s report.

41. More generally, since the creation of the mandate, thematic reports have frequently addressed definitional questions, clarifying the applicability and substantive scope of the prohibition of torture and ill-treatment in specific contexts. Some examples include the

<sup>11</sup> A/66/268.

<sup>12</sup> A/72/178, E/CN.4/2005/62, A/59/324, E/CN.4/2004/56, A/58/120 and E/CN.4/2003/69.

<sup>13</sup> See <https://rm.coe.int/steering-committee-for-human-rights-cddh-preliminary-draft-feasibility/168094ef39>.

<sup>14</sup> See <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R0125&from=EN>.

<sup>15</sup> A/71/298.

<sup>16</sup> E/CN.4/1995/34, para. 926 (g); E/CN.4/1996/35, para. 136; and A/62/221, para. 46.

<sup>17</sup> A/62/221 and A/69/387.

<sup>18</sup> A/HRC/19/61.

<sup>19</sup> A/65/273.

<sup>20</sup> E/CN.4/1988/17, A/64/215, A/HRC/13/39/Add.5 and A/68/295.

<sup>21</sup> A/61/259 and A/HRC/25/60.

<sup>22</sup> See <http://www.cidh.org/annualrep/95eng/peru10970.htm>.

<sup>23</sup> E/CN.4/1986/15, para. 119.

<sup>24</sup> E/CN.4/1992/SR.21, para. 35.

<sup>25</sup> European Court of Human Rights, *Aydın v. Turkey*, 57/1996/676/866, Judgment, 25 September 1997.

<sup>26</sup> 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, *Prosecutor v. Delalić et al.* (the Čelebići case), Case No. IT-96-21, Trial Chamber II, Judgment, 16 November 1998.

following: extraterritorial settings,<sup>27</sup> extra-custodial settings,<sup>28</sup> health-care settings,<sup>29</sup> domestic violence<sup>30</sup> and corruption-related settings.<sup>31</sup> In relation to specific vulnerabilities, examples include torture and ill-treatment related to gender, sexual orientation, gender identity and expression,<sup>32</sup> children deprived of their liberty<sup>33</sup> and irregular migrants.<sup>34</sup> Other examples, in relation to specific forms of torture or ill-treatment, include psychological torture,<sup>35</sup> police brutality,<sup>36</sup> solitary confinement<sup>37</sup> and the death penalty.<sup>38</sup>

42. In its thematic reporting, the mandate has on several occasions adopted an interdisciplinary approach based not only on legal considerations, but also on the medical, neurobiological, psychological and socio-environmental sciences. Some examples include explaining the investigative and preventative role of forensic and medical sciences;<sup>39</sup> promoting the replacement of confession-based, coercive interrogation with science-based, non-coercive interviewing techniques;<sup>40</sup> and better understanding and remedying the biopsychosocial root causes for the persistent practice of torture and ill-treatment.<sup>41</sup>

43. The thematic reports of the special rapporteurs have also elaborated on the positive obligations of States to undertake judicial, legal and administrative measures to prevent acts of torture and ill-treatment on the part of both State officials and non-State actors and to ensure both individual and institutional accountability for such abuse.<sup>42</sup>

44. These non-exhaustive examples illustrate the practical relevance and the breadth and depth of the expertise made available in the mandate holders' thematic reports, and their direct and significant contribution to clarifying, interpreting and implementing the absolute and non-derogable prohibition of torture and ill-treatment under international law. Without any doubt, for the past 35 years, the thematic reports presented by the mandate holders have been, and continue to be, considered as important sources of knowledge, standard-setting and advocacy tools to civil society organizations, fostering dialogue among relevant stakeholders, influencing expert discussions at both the national and international levels, and clarifying, consolidating and further developing the normative framework pertaining to the prohibition of torture and ill-treatment.

## D. Consultation process

### 1. Methodology

45. The present report is aimed at evaluating the follow-up given by States to the conclusions and recommendations made in eight thematic reports<sup>43</sup> submitted by the current mandate holder to the Human Rights Council and the General Assembly from the beginning of his tenure on 1 November 2016 until the submission deadline for input in the written State consultation on 31 August 2021. The report also contains recommendations with a view to improving States' utilization of the thematic reporting procedure as a resource of expertise and guidance supporting their compliance with the prohibition of torture and ill-treatment.

<sup>27</sup> [A/HRC/4/33](#) and [A/70/303](#).

<sup>28</sup> [A/72/178](#).

<sup>29</sup> [A/HRC/22/53](#).

<sup>30</sup> [A/74/148](#).

<sup>31</sup> [A/HRC/40/59](#).

<sup>32</sup> [A/HRC/31/57](#).

<sup>33</sup> [A/64/215](#) and [A/HRC/28/68](#).

<sup>34</sup> [A/HRC/37/50](#).

<sup>35</sup> [A/HRC/43/49](#).

<sup>36</sup> [A/72/178](#).

<sup>37</sup> [A/66/268](#).

<sup>38</sup> [A/67/279](#).

<sup>39</sup> [A/69/387](#).

<sup>40</sup> [A/71/298](#).

<sup>41</sup> [A/75/179](#).

<sup>42</sup> [A/76/168](#).

<sup>43</sup> [A/72/178](#), [A/HRC/37/50](#), [A/73/207](#), [A/HRC/40/59](#), [A/74/148](#), [A/HRC/43/49](#), [A/75/179](#) and [A/HRC/46/26](#).

46. The information required from States to conduct the evaluation and to issue recommendations relates to the practice of each of the 193 Member States with regard to the thematic reports issued under the mandate. Such information is not at the disposal of the Special Rapporteur or otherwise readily accessible to the mandate holder. The feasibility and outcome of the present evaluation therefore depended entirely on the willingness of Governments and other stakeholders to review and provide information on State practices and procedures in response to the thematic reports submitted by the mandate holder.

47. As announced during the mandate holder's interactive dialogue with the Human Rights Council during its forty-sixth session, in order to compile the relevant information, between May and November 2021, the Special Rapporteur conducted a broad multi-stakeholder<sup>44</sup> consultation through a written questionnaire and an additional online consultation for all Member States. In both consultations, the mandate holder sought information on judicial practice and on legislative and/or policy reforms related to the matters addressed in the thematic reports, both through the written responses received from States, civil society organizations and other stakeholders to a questionnaire, and through input received from States during an online State consultation organized by the Special Rapporteur.

## 2. Multi-stakeholder consultation by questionnaire

48. On 3 June 2021, the Special Rapporteur launched a round of written State consultations by means of a questionnaire, inviting all current or aspiring Member States of the United Nations, as well as civil society actors and other stakeholders, to do the following:

- (a) Provide information on the relevance, if any, of each thematic report presented by the Special Rapporteur to the respective national context;
- (b) Provide examples of the impact, if any, of each thematic report on:
  - (i) National case law and judicial practice;
  - (ii) National legislation and other parliamentary activities;
  - (iii) National regulations, policies, practices and procedures, including codes of conduct, training manuals and disciplinary procedures;
  - (iv) Relevant mechanisms of investigation and accountability;
  - (v) National activities such as research, public communication and awareness-raising;
- (c) Identify specific areas, if any, where further thematic support or advice from the mandate holder may be required;
- (d) Bring to the attention of the Special Rapporteur any other requests, recommendations or concerns regarding the thematic reporting under the mandate.

49. The questionnaire was aimed at providing States with a simple and structured template to help them to evaluate the impact of each thematic report and, where appropriate, identify potential improvements that could be made to the thematic reporting process, with a view to rendering the reports more easily accessible to States and other stakeholders and to facilitating the mainstreaming of their conclusions and the implementation of their recommendations.

50. An initial deadline for receiving contributions from States was set at 31 August 2021. A written reminder was transmitted to all States on 24 August 2021, and the Special Rapporteur accepted late submissions from States until the first week of October.

51. Of the 193 Member States solicited by the mandate holder, 186 States (96 per cent) did not provide any response whatsoever, whereas 7 States (less than 4 per cent) responded to the questionnaire.<sup>45</sup> The Special Rapporteur sincerely thanks the Governments of

<sup>44</sup> Including States, civil society organizations, national human rights institutions, national mechanisms for the prevention of torture, and other monitoring bodies.

<sup>45</sup> Responses submitted are available at <https://ohchr.org/EN/Issues/Torture/SRTorture/Pages/CFI-SRT-49th-HRC-session.aspx>.

Azerbaijan, Iraq, Italy, Mauritius, Poland, Qatar and Switzerland for their responses to the questionnaire. Likewise, the Special Rapporteur expresses his gratitude for the contributions received from civil society organizations, namely the Amman Center for Human Rights Studies; the Center for the Human Rights of Children, Loyola University Chicago; the Facts and Norms Institute; the Geneva Support Group for the Protection and Promotion of Human Rights in Western Sahara; Human Rights in China; International Lesbian and Gay Association Asia and Civil Authorize Negotiate Organization Myanmar; International Lesbian and Gay Association Asia, Equité Sri Lanka and Equal Ground; and the Tibet Advocacy Coalition.

52. At the same time, the Special Rapporteur sincerely regrets that the overwhelming majority of States failed to provide any feedback concerning the added-value and practical utilization of the mandate holder's thematic reporting, or concerning potential challenges arising in the mainstreaming of the conclusions and in the implementation of the recommendations contained therein.

### 3. Online State consultation

53. On 12 October, during his interactive dialogue with the Third Committee of the General Assembly, the Special Rapporteur expressed his concern at the extremely low level of State participation in the written consultation by questionnaire and announced an additional two-hour online consultation with the aim of providing another opportunity for States to directly engage with the mandate holder and to provide their input and express their views and suggestions, including on possible improvements to the current reporting system, without necessarily requiring a detailed impact analysis on their part for their respective national contexts.

54. On 18 October 2021, the Special Rapporteur sent a written invitation to all 193 Member States to attend the online consultation, which was held on 5 November 2021. The declared objectives were to do the following:

- (a) Receive contributions from States on national developments, including case law, administrative, legislative and policy reforms related to the matters addressed in the thematic reports;
- (b) Identify challenges impeding States' implementation of the recommendations included in the thematic reports;
- (c) Examine thematic areas where further support or advice from the mandate holder was required;
- (d) Discuss potential measures aimed at reinforcing the engagement of States with the mandate holder on torture and to embolden constructive and effective dialogue.

55. Of the 193 States invited to the online consultation, 28 (14 per cent) initially confirmed their participation,<sup>46</sup> but only 20 (10 per cent) actually attended. Unfortunately, of the 20 States in attendance, only 2 States (equivalent to 1 per cent of the invited States) actually contributed to the discussion, namely Denmark and Guatemala. The microphones and cameras of all other registered participants remained muted/off throughout the meeting, even when the Special Rapporteur asked all State representatives whether they would welcome the creation of a database making the mandate's thematic reports more easily accessible through search terms. After none of the remaining States provided any input or an explanation for their silence, despite several calls to take the floor, the online consultation had to be brought to an early close without being able to achieve its declared objectives.

56. While the Special Rapporteur is grateful for the positive and motivated engagement shown by the representatives of Denmark and Guatemala, he is deeply disappointed that, despite two broad consultation processes organized by the mandate holder in writing and online, 96 per cent and 99 per cent of Member States, respectively, were unwilling to provide

<sup>46</sup> Angola, Australia, Azerbaijan, China, Cyprus, Denmark, Guatemala, India, Italy, Lebanon, Libya, Lithuania, Luxembourg, Maldives, Malta, Mauritius, Morocco, Nigeria, Portugal, Qatar, Russian Federation, Saudi Arabia, Sri Lanka, Switzerland, Ukraine, Uruguay, Venezuela (Bolivarian Republic of) and Zimbabwe.

any input whatsoever regarding the impact, relevance and usefulness of the thematic reporting issued by the current mandate holder, or to make any recommendations as to potential improvements that could be made to the process or, at least, to express some measure of appreciation for the significant thematic work diligently accomplished by the respective mandate holders in the course of the past 35 years.

#### 4. Substantive responses received from States

57. The Special Rapporteur deeply regrets the near complete indifference demonstrated by States in response to his requests for contribution through the questionnaire and during the online consultation. In the absence of a minimum level of cooperation and information provided by States, the Special Rapporteur does not find himself in a position to come to comprehensive or detailed conclusions as to the impact of the thematic reports issued under the mandate on national legislation, policy and practice, or to report on potential challenges encountered by States in utilizing the expertise provided in these reports in support of their compliance with the prohibition of torture and ill-treatment.

58. Based on the information received from seven States, the following conclusions can be drawn for each of the thematic reports under review:

(a) *Extra-custodial use of force*<sup>47</sup>

59. In response to the first question of the questionnaire, on the relevance of the report on extra-custodial use of force to the national context, four of the seven contributing States indicated that it was relevant. One State mentioned that the report was primarily useful for research and awareness-raising activities, while another State shared a good practice in preventing and investigating allegations of excessive use of force by the police, stating the practice of standardized use of body cameras by police officers, in particular those performing patrol duties. The recordings of these cameras provide material proof in cases of allegations of excessive use of force, which have been utilized in judicial proceedings as corroborative evidence.

60. The Special Rapporteur notes with great concern that, despite a widely reported, dramatic increase in excessive force used by law enforcement officials in a wide range of contexts, which has led more than 40 mandate holders to publicly call for an end to police brutality, 189 of 193 States (98 per cent) do not appear to regard the mandate holder's thematic report on that topic as relevant to their national context, including States having recently received urgent appeals or allegation letters regarding police brutality.<sup>48</sup> Among others, such States include Germany (DEU 6/2021), Cuba (CUB 3/2021), Iran (Islamic Republic of) (IRN 32/2021), Eswatini (SWZ 1/2021), Mexico (MEX 18/2021), Belarus (BLR 1/2021), the Sudan (SDN 6/2021), India (IND 15/2021), Brazil (BRA 4/2021), China (CHN 12/2019), Colombia (COL 6/2021) and the United States of America (USA 13/2020).<sup>49</sup>

(b) *Migration-related torture and ill-treatment*<sup>50</sup>

61. Only two of the seven contributing States considered the thematic report on migration-related torture and ill-treatment to be relevant to their national context. One State, which found the report to be irrelevant, mentioned that the existence of reasonable grounds to believe that an individual would be at risk of torture if forcibly returned to the country of origin was not provided for in its national legislation. One State shared a good national practice pertaining to signing memorandums of understanding preventing the Ministry of Interior from forcibly deporting asylum seekers, even if not granted refugee status by the national authority in charge. This practice further includes the collaboration of the Government with a specialized international non-governmental organization in reviewing all cases of migrants and refugees. Another good practice consisted of legislative reforms to guarantee the right of asylum seekers to independent legal representation to accelerate the asylum procedures and reduce the uncertainty about the status of asylum requests, in addition

<sup>47</sup> A/72/178.

<sup>48</sup> OHCHR, "UN experts call for end to police brutality worldwide", 13 August 2021.

<sup>49</sup> Communications are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>50</sup> A/HRC/37/50.

to the exploration of alternatives to administrative detention, in particular for children and families.

62. The Special Rapporteur notes with great concern that, despite an enormous worldwide humanitarian crisis involving around 65 million forced migrants and giving rise to countless deaths and serious human rights violations on a daily basis, 191 of 193 States (99 per cent) do not appear to regard the mandate holder's thematic report on that topic as relevant to their national context, including States having recently received urgent appeals or allegation letters regarding migration-related torture or ill-treatment. Among others, such States include Chile (CHL 8/2021), Tajikistan (TJK 3/2021), Belarus (BLR 9/2021), Poland (POL 5/2021), Cyprus (CYP 2/2021), Tunisia (TUN 6/2021), the Bahamas (BHS 2/2021), Morocco (MAR 3/2021), Spain (ESP 3/2021), Switzerland (CHE 2/2021), Japan (JPN 3/2021), Peru (PER 2/2021), Malaysia (MYS 3/2021), Mexico (MEX 3/2021), the United States (USA 34/2020) and Australia (AUS 4/2019).<sup>51</sup>

(c) *Reaffirming and strengthening the prohibition of torture and ill-treatment*<sup>52</sup>

63. Five of the seven contributing States said that the report on reaffirming and strengthening the prohibition of torture and ill-treatment was relevant to their national context. Examples provided included the ratification and implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Optional Protocol to the Convention against Torture; the creation of a national preventive mechanism; the establishment of complaint mechanisms; and the referral of alleged cases of torture to the competent judicial authorities. An example of good practice consisted of the adoption in detention facilities of specific measures aimed at protecting the rights of persons in situations of vulnerability, such as LGBTIQ persons.

64. The Special Rapporteur notes with great concern that, despite a clear and significant discrepancy between the absolute and non-derogable prohibition of torture and ill-treatment and the persistent tolerance and impunity for various forms of such abuse in virtually all countries of the world, 188 of 193 States (97 per cent) do not appear to regard the mandate holder's thematic report on that topic as relevant to their national context, thus confirming the prevalent patterns of denial invariably shown by all States in response to allegations of torture or ill-treatment transmitted by the Special Rapporteur.

(d) *Corruption-related torture and ill-treatment*<sup>53</sup>

65. Four of the seven contributing States considered the report on corruption-related torture and ill-treatment to be relevant to their national context. Three of them provided positive practices involving the ratification of the United Nations Convention against Corruption; the enactment of stand-alone legislation or the addition of articles to the Penal Code, with a view to countering corrupt behaviour and practices by public officials; and imposing punishment, including imprisonment. One State further indicated the adoption of a national strategy to enhance the transparency of all governmental functions and strengthen public trust in governmental institutions.

66. The Special Rapporteur notes with great concern that 189 of 193 States (98 per cent) do not appear to regard the mandate holder's thematic report on that topic as relevant to their national context, despite the fact that the persistent tolerance and impunity for some forms of torture or ill-treatment in virtually all States of the world is inextricably linked to systemic failures involving varying degrees of institutional corruption.

(e) *Relevance of the prohibition of torture and ill-treatment to the context of domestic violence*<sup>54</sup>

67. Six of the seven contributing States found the report on the relevance of the prohibition of torture and ill-treatment to the context of domestic violence to be relevant to

<sup>51</sup> Communications are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>52</sup> [A/73/207](#).

<sup>53</sup> [A/HRC/40/59](#).

<sup>54</sup> [A/74/148](#).



their national context. Good national practices in this regard included the adoption of national strategies to combat domestic violence, including concrete practical measures and involving in the implementation all relevant official stakeholders, such as the Ministry of Interior, the Ministry of Justice and the Office of the Prosecutor. Furthermore, in this context, one State mentioned undergoing a full revision of its national legislation to eliminate discriminatory provisions and ensure compliance with the Convention on the Elimination of All Forms of Discrimination against Women. One response indicated that cases of domestic violence should be subject to mediation within the context of the family, which reflects the ongoing social restrictions and stigmas against the possible criminalization of domestic abuse, as recommended in the report.

68. The Special Rapporteur notes with great concern that, although domestic violence consistently results in more death and injury worldwide than all armed conflicts taken together, and although virtually all States still face major shortcomings in effectively preventing domestic violence and providing victims with protection and redress, 187 of 193 States (97 per cent) do not appear to regard the mandate holder's thematic report on that topic as relevant to their national context, including States having recently received urgent appeals or allegation letters regarding allegations of domestic violence. Among others, such States include Spain (ESP 6/2021), El Salvador (SLV 4/2021) and Malaysia (MYS 3/2021).<sup>55</sup>

(f) *Psychological torture*<sup>56</sup>

69. Only one contributing State mentioned that the report on psychological torture was relevant to its national context, primarily for research and awareness-raising activities. Another State indicated that the definition of torture, according to its Penal Code, incorporated "physical or mental" pain or suffering, hence criminalizing psychological torture.

70. The Special Rapporteur notes with great concern that, although psychological methods of torture and ill-treatment are proliferating rapidly throughout the world, including the use of prolonged solitary confinement and indefinite deprivation of liberty, and although there is an almost generalized lack of expertise on the topic among national authorities as well as legal and medical professionals, 192 of 193 States (99 per cent) do not appear to regard the mandate holder's thematic report on that topic as relevant to their national context, including States having recently received urgent appeals or allegation letters regarding allegations of prolonged solitary confinement, indefinite detention or other methods of psychological torture. Among others, such States include Iran (Islamic Republic of) (IRN 18/2021), the United Kingdom of Great Britain and Northern Ireland (GBR 3/2019 and GBR 4/2021), the United States (USA 14/2019, USA 22/2019, USA 29/2020 and USA 3/2020), Ecuador (ECU 10/2019), Sweden (SWE 2/2019), Switzerland (CHE 5/2021 and CHE 6/2021) and the Russian Federation (RUS 8/2020).<sup>57</sup>

(g) *Biopsychosocial factors conducive to torture and ill-treatment*<sup>58</sup>

71. Two of the seven contributing States found the report on biopsychosocial factors conducive to torture and ill-treatment to be relevant to the national context. One State indicated that the report did not provide any practical legal references, but rather a general recommendation to reform the governance system based on the rule of law, and principles of transparency, accountability and legality. A good practice that was shared included the creation of internal mechanisms of accountability, notably within the police unit, in charge of investigating allegations of torture.

72. The Special Rapporteur notes with great concern that, in responding to allegations of torture and ill-treatment, virtually all States show one or several patterns of denial described in the report in question, and thus fail to effectively prevent and redress torture and ill-treatment in their respective jurisdictions. Nevertheless, 191 of 193 States (99 per cent) do

<sup>55</sup> Communications are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>56</sup> [A/HRC/43/49](#).

<sup>57</sup> Communications are available at <https://spcommreports.ohchr.org/Tmsearch/TMDocuments>.

<sup>58</sup> [A/75/179](#).



not appear to regard the mandate holder's thematic report on that topic as relevant to their national context.

(h) *Effectiveness of the cooperation of States with the mandate holder on official communications and requests for country visits*<sup>59</sup>

73. Three of the seven contributing States considered the report on effectiveness of the cooperation of States with the mandate holder on official communications and requests for country visits to be relevant and reiterated their willingness to cooperate with the mandate of the Special Rapporteur on communications and country visits. One State expressed concern about the apparent lack of cooperation with the mandate and indicated the incorporation of such cooperation as part of the Government's policy on human rights' diplomacy.

74. The Special Rapporteur notes with great concern that, although States' responses to 90 per cent of individual allegations of torture and ill-treatment and 85 per cent of country visit requests transmitted under the mandate fall short of the standards of cooperation set by the Human Rights Council, which consistently leaves the overwhelming majority of allegations of torture and ill-treatment worldwide without any form of adequate investigation and redress, and which moreover prevents the establishment of a truly independent and effective system of monitoring visits by the Special Rapporteur, 190 of 193 States (98 per cent) do not appear to regard the mandate holder's thematic report on that topic as relevant to their national context, including numerous States having received one or several follow-up communications by the Special Rapporteur expressing dissatisfaction regarding their level of cooperation on previous communications.

## 5. State recommendations and requests

75. In the last section of the questionnaire, States and other stakeholders were invited to submit recommendations and requests on issues where, in their view, more thematic support from the Special Rapporteur was still required, and on means to improve States' current cooperation and dialogue with the mandate holder regarding the implementation of thematic recommendations.

76. In response to the questionnaire, one State requested that Special Rapporteur provide technical support on the development of national legislative and regulatory frameworks to prevent torture and ill-treatment, in particular within law enforcement.

77. During the online State consultation, one State mentioned the need for the support of the Special Rapporteur on questions of delays in judicial procedures, and the related issue of systematic and prolonged pretrial detention, which gives rise to problems of prison overcrowding. In this regard, the State requested training for penitentiary personnel.

78. Two States have further requested that the Special Rapporteur reinforce cooperation with national human rights institutions, including national preventive mechanisms, national human rights institutions and ombudsman institutions, and support the implementation of their recommendations by national authorities.

79. Furthermore, one State recommended that the mandate holder increase references to the United Nations resolutions relevant to the mandate in his work and specify suggested themes on which future resolutions could be developed.

80. The Special Rapporteur takes due note of the recommendations and requests made by States. To the extent possible and appropriate, he will try to address them in good faith within the framework of the resources made available to the mandate, and will remain open to a constructive dialogue with States.

81. The Special Rapporteur notes with concern, however, that none of these requests and recommendations point to challenges that could explain or justify the almost total indifference demonstrated by States to the consultation process on the practical utility and impact of the mandate holder's thematic reporting. Furthermore, none of these requests and

<sup>59</sup> A/HRC/46/26.

recommendations provide any guidance as to how the thematic reporting procedure could be rendered more accessible and valuable to States.

## IV. Conclusions

82. The present report evaluating the utilization by States of the mandate holder's thematic reports complements the previous report<sup>60</sup> and concludes the Special Rapporteur's assessment of the effectiveness of States' interaction with the three main pillars of work under the mandate, namely individual communications, country visits and thematic reporting.

83. There was a near complete failure on the part of States to contribute to the written and online consultations conducted by the Special Rapporteur in preparation for the present report, with 96 per cent and 99 per cent, respectively, of States failing to provide feedback. Given that lack of engagement and in the light of the limited information provided by the seven States that did respond to the questionnaire, it appears that Governments rarely, if ever, take measures to incorporate the conclusions and recommendations of the Special Rapporteur's thematic reports into their national laws, regulations, policies or practices.

84. It also appears that, in practice, States generally do not engage more than superficially with the thematic reports of the mandate holder and do not seem to consider them as a valuable resource supporting the practical implementation of their legal obligations to prevent, investigate, prosecute and redress acts of torture and ill-treatment.

85. It further appears that States strongly underestimate the practical relevance to their national contexts of the specific topics addressed in the eight most recent thematic reports, which were the focus of the consultations conducted by the mandate holder from May to November 2021. In effect, of 193 States invited to contribute to the consultations, only between 1 and 6 States (1 per cent to 3 per cent) considered any of the following thematic topics covered by the Special Rapporteur to be relevant to their national context:

- (a) Extra-custodial use of force as torture or ill-treatment;
- (b) Migration-related torture and ill-treatment;
- (c) Reaffirming and strengthening the prohibition of torture and ill-treatment;
- (d) Corruption-related torture and ill-treatment;
- (e) Domestic violence and the prohibition of torture and ill-treatment;
- (f) Psychological torture;
- (g) Effectiveness of State cooperation with the mandate;
- (h) Accountability for torture and ill-treatment.

86. Given the indisputably generic and universal importance of each of these topics and the very frequent and widespread occurrence of serious violations coming within the thematic purview of each of these reports in all regions of the world, the failure of States to at least acknowledge their practical relevance for their own national contexts can only be described as gravely divorced from reality, suggesting a generalized, strongly distorted self-perception consistent with the biopsychosocial patterns of denial described in the Special Rapporteur's 2020 report to the General Assembly.<sup>61</sup>

87. Unfortunately, this disconcerting observation is fully consistent with the statistical analysis provided in the Special Rapporteur's previous report, demonstrating that 90 per cent of individual communications and 85 per cent of visit requests transmitted by the Special Rapporteur receive either no response or an unsatisfactory response from States. This trend has remained unchanged since the establishment of the mandate in 1985 and persists even after the discussion about this problem during the Special Rapporteur's interactive dialogue with the Human Rights Council in March 2021.

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<sup>60</sup> [A/HRC/46/26](#).

<sup>61</sup> [A/75/179](#).

88. Overall, it is difficult to avoid the impression that, apart from ceremonial expressions of support and appreciation during the interactive dialogues with the Special Rapporteur at the Human Rights Council and the General Assembly, the overwhelming majority of States demonstrate an attitude of indifference with regard to the topics addressed, the conclusions reached and the recommendations made in the thematic reports issued under the mandate, as well as with regard to individual communications and country visit requests transmitted by the Special Rapporteur.

89. Despite the general acceptance of the universal, absolute and non-derogable nature of the prohibition of torture and ill-treatment, and despite the impressive normative and institutional frameworks established for its implementation, virtually no State confronted by the current Special Rapporteur with individual allegations of torture and ill-treatment, or with legislative and regulatory shortcomings, has shown a satisfactory level of cooperation with the mandate holder as required by resolution 43/20 of the Human Rights Council or, indeed, by the State's legal obligations under international customary and treaty law.

90. While the Special Rapporteur sincerely appreciates that the proper utilization and incorporation on the national level of a constant flow of thematic reports transmitted by an increasing number of mandate holders requires significant resources and elaborate procedures from respondent States, most of the thematic conclusions reached and recommendations made by the Special Rapporteur relate to the effective implementation of absolute and non-derogable obligations under international human rights law and generally cannot lawfully be ignored or otherwise left unheeded by States.

91. In the experience of the Special Rapporteur, with very few exceptions, the work of his mandate has not proven effective in ensuring or even improving the compliance of States with their legal obligations derived from the prohibition of torture and ill-treatment, whether in individual cases or in relation to thematic issues. This lack of effectiveness does not reflect any quantitative or qualitative shortcomings in the work of the Special Rapporteur and former mandate holders, but is due exclusively to the lack of political will on the part of States to acknowledge systemic shortcomings and to take the measures required to eradicate torture and ill-treatment, including strict accountability for any violation of the prohibition of such practices.

92. While States readily demand respect for human rights in other States with a view to criticizing or sanctioning political adversaries, they rarely, if ever, demonstrate a genuine and convincing intention to effectively address alleged violations or shortcomings identified by the Special Rapporteur in their own jurisdictions, as they are legally required to do under the absolute and non-derogable prohibition of torture and ill-treatment and a wide range of legal obligations derived from that prohibition.

93. On the contrary, in practice, States tend to systematically deny credible allegations of torture and ill-treatment; attempt to justify clearly abusive detention and interrogation practices; avoid effective investigations and accountability for clear violations of the prohibition of torture and ill-treatment; procrastinate or reject legally required normative and institutional reforms; and generally leave proven victims of torture and ill-treatment without any form of redress and rehabilitation.

94. Whenever the Special Rapporteur expresses dissatisfaction with the evasive responses provided by States and insists that his questions be answered and that credible allegations of violations be investigated as required by international law, States generally persist in not complying with their obligations but tend to adopt an increasingly defensive, obstructive or even aggressive stance, or decide to evade accountability by terminating the dialogue altogether.

95. Overall, as long as State practice and policy does not evolve beyond the currently generalized attitude of indifference, self-righteousness and denial, there is no realistic prospect of the prohibition of torture and ill-treatment ever becoming a reality for all members of the human family, as promised by the Universal Declaration of Human Rights.

96. Indeed, without fundamental and determined change, the despicable practice of torture and ill-treatment will continue to remain widespread, and impunity rampant, producing millions of victims and rendering the work of the Special Rapporteur and other

anti-torture mechanisms, organizations and human rights defenders a Sisyphean endeavour without any prospect of ever achieving the effective eradication of torture and ill-treatment.

## V. Recommendations

97. In order to be able to effectively address the challenges outlined in the present report, all States should unequivocally acknowledge and reaffirm that effective prevention, investigation, prosecution and redress of torture and ill-treatment within their jurisdictions are not a matter of policy, but an absolute and non-derogable legal obligation binding upon all States, regardless of their treaty obligations.

98. In line with the guidance provided by the Human Rights Council, States should further acknowledge the great value of thematic reports of the respective Special Rapporteurs as an important resource supporting their practical implementation of these legal obligations. Accordingly, States should establish procedures and provide the human and financial resources required to effectively process and utilize the thematic reports of the Special Rapporteur and their conclusions and recommendations on the level of national laws, policies and practices.

99. Complementing these recommendations, which are specific to thematic reports, the Special Rapporteur once more expressly reiterates the generic recommendations made in his previous report to the Human Rights Council,<sup>62</sup> the systemic recommendations made in his 2020 report to the General Assembly,<sup>63</sup> the general recommendations of the Special Rapporteur on torture<sup>64</sup> and, for the respective topics addressed, to the recommendations made in all previous thematic reports since the establishment of the mandate.

100. Lastly, given that the challenges described in the present report are not limited to the mandate of the Special Rapporteur but, with some variations and nuances, are likely to arise in the interaction of States with all special procedures, the Special Rapporteur recommends that:

(a) Other mandate holders engage in a similar process of evaluating the utilization of their thematic reports by States;

(b) The Office of the High Commissioner lead a broader multi-stakeholder process aiming to identify agreed generic standards for evaluating and improving the utilization of thematic reports and make them more easily accessible for States, civil society, the media and other stakeholders through a searchable online database comprising all thematic reports of all special procedures of the Human Rights Council.

101. This is the sixth and last report of the current mandate holder to the Human Rights Council. The Special Rapporteur would like to take this opportunity to sincerely thank the Council and its Member States for the privilege of their confidence and for the many frank and constructive exchanges held during the past six years. The faithful fulfilment of this important mandate, including the task of reminding 193 Member States of their absolute and non-derogable obligations under the universal prohibition of torture and ill-treatment, sometimes requires an uncompromising stance, candid communication and a significant degree of perseverance. Having always conducted his mandate to the best of his knowledge and ability, in full independence and in a spirit of constructive dialogue, the Special Rapporteur will use his remaining time in office to conclude his work and ensure a smooth handover to his successor, to be appointed by the Council in due course.

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<sup>62</sup> [A/HRC/46/26](#).

<sup>63</sup> [A/75/179](#).

<sup>64</sup> [E/CN.4/2003/68](#), para. 26.