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

## Torture and other cruel, inhuman or degrading treatment or punishment\*

### 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, Alice Jill Edwards, submitted in accordance with Assembly resolution [74/143](#).

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\* The present report was submitted after the deadline in order to reflect recent developments.



## **Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards**

### *Summary*

The present report is the first of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Alice Jill Edwards. It sets out her vision and approach to the mandate and the thematic priorities for her next reports and provides a summary of the applicable international legal framework. The Special Rapporteur was appointed in July 2022 in accordance with Human Rights Council resolution [43/20](#) and assumed her functions on 1 August 2022. She is the seventh Special Rapporteur on torture and the first woman to hold the mandate. The report is her first to the General Assembly.

## I. Introduction

1. The mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment was established by the Human Rights Commission in its resolution 1985/33 and extended without interruption by the Human Rights Council, most recently in its resolution 43/20.

2. In July 2022, the Human Rights Council appointed Alice Jill Edwards (Australia) as the Special Rapporteur; she began her tenure on 1 August 2022. The Special Rapporteur gratefully acknowledges the trust that has been placed in her appointment by the Council.

3. The Special Rapporteur is the first woman appointed to the position after 37 years of the mandate. This appointment carries symbolic and substantive significance. Symbolically, the appointment sends a positive signal to women everywhere that they can lead at the highest levels and in areas traditionally dominated by men, such as those covered by the mandate, including diplomacy, the military, security, police and law enforcement, and prison services. Substantively, women and girls make up half of the world's population and have an equal right to live their lives free from torture and other cruel, inhuman or degrading treatment or punishment. The Special Rapporteur has been working for the human rights of women and girls and for a world without discrimination for over 25 years and will bring this expertise and experience to bear on her programme of work.

4. The present report contains the Special Rapporteur's vision and approach to the mandate, announces the topics for her first thematic reports and provides a summary of the international legal framework pertaining to torture and other cruel, inhuman or degrading treatment or punishment. She will report on her activities to the Human Rights Council at its fifty-second session.

5. The Special Rapporteur wishes to express her deep appreciation and respect for the six previous mandate holders for their noteworthy contributions to the mandate; each of them has strengthened applicable international standards and the global commitment to the absolute prohibition of torture and other forms of ill-treatment or punishment.

## II. Understanding torture: causes, consequences and context

6. The prohibition of torture is one of the greatest social contracts of humanity. The prohibition underpins who we are as human beings, expressing our shared, universal aspiration to live in societies free of fear, discrimination, intimidation and oppression. The prohibition against torture and other cruel, inhuman or degrading treatment or punishment, as found in article 5 of the Universal Declaration of Human Rights of 1948 and many international treaties, is absolute and sacrosanct, yet it is a fragile right, constantly being tested, and at times, torture is tolerated or excused. It is our individual and collective responsibility to preserve it; without it, there is only darkness and despair.

7. Possessing power carries with it great responsibility. The act of torture is the ultimate betrayal of a State's pact with its citizens to govern in their interests, in respect for their human rights and within constitutionally set limits on government authority. Even a singular incident of torture or inhuman treatment can send ripple effects through society and community, instilling fear and suspicion. More broadly, the regular and unaddressed threat or actual use of such violence weakens a country's own short- and long-term political and economic stability and can spill over to its neighbours, creating fragile neighbourhoods. Long-term wounds from torture – often

embedded in discrimination and prejudice – are hard to repair, and we have seen how they are easy triggers for hatred against the “other”, provoked for ugly purposes, including insurrection, coups d’état, election violence, authoritarian rule, occupation and outright war. Torture is a threat to international peace and security. Confident human rights-promoting States neither employ nor tolerate torture; if incidents do occur, such States root them out quickly and investigate, prosecute and punish those responsible. Victims are compensated and rehabilitated.

8. Torture is cruelty, plain and simple. It is inherently inhumane and degrades, in effect or purpose, the victim. The impact of torture can be physical, psychological, social, functional and existential.<sup>1</sup> Physical forms of torture often cause psychological trauma, while psychological torture can result in short- and long-term physiological symptoms and illnesses;<sup>2</sup> the relationship is non-linear, life-altering and intergenerational. For families and wider communities too, and for countries, it can disrupt social norms and community coherence. Such trust is not easily restored.

9. While there continue to be many sensational or extreme forms of torture that rightly provoke our collective disgust and moral judgment, the majority of incidents that fall within the class of prohibited conduct are “everyday” or routine forms of inhuman or degrading treatment, perpetrated against persons deprived of their liberty or those who come into contact with the law, often committed by officers who are poorly trained, underprepared and prejudiced, and are emboldened to act owing to a lack of disciplinary consequences and impunity. Such abuse and misconduct by a public authority can be a telltale sign of other insipid problems of a society. We ignore perceived “minor” assaults at our peril.

10. The struggle to eradicate torture and ill-treatment is very real. Many of today’s conflicts are characterized by widespread and unconstrained torture and other similar war crimes perpetrated as deliberate military strategies or by delinquent or opportunistic soldiers, paramilitaries, militias, mercenaries and criminals. We continue to witness heavy-handedness, racism and discrimination by police and law enforcement<sup>3</sup> in many settings (see [A/HRC/47/53](#)). The revival and extension of torture and other inhumane practices in the name of counter-terrorism and fighting extremism undermine basic principles of humanity. In some countries, prisons are so overcrowded, and conditions so poor, that the whole system is on the verge of collapsing. Psychiatric hospitals, health-care settings and homes for orphans, juveniles, persons with disabilities and the elderly are prone to terrifying abuse and neglect compounded by the residents’ acute vulnerability and powerlessness (see [A/HRC/22/53](#)). The distressing risks, violence and exploitation facing refugees and migrants are unresolved and potentially worsening (see [A/HRC/37/50](#)), while the lack of legal recognition and nationality of stateless persons, and the consequent deprivation of rights, is tantamount to inhuman and degrading treatment. The global

<sup>1</sup> Nimisha Patel, “Good practices and current challenges in the rehabilitation of torture survivors”, discussion paper for a regional meeting of Organization for Security and Cooperation in Europe States convened by the Convention against Torture Initiative, Copenhagen, 23–24 June 2016, para. 13.

<sup>2</sup> Pau Pérez-Sales, “Psychological torture”, in *Research Handbook on Torture*, Malcolm D. Evans and Jens Modvig, eds. (Cheltenham, United Kingdom, and Northampton, Massachusetts, Edward Elgar Publishing, 2020).

<sup>3</sup> The term “law enforcement officials” is widely interpreted as including all officers of the law who exercise police powers, especially powers of arrest and detention; see the Code of Conduct for Law Enforcement Officials (General Assembly resolution [34/169](#), annex). For the purposes of the Special Rapporteur’s work, she will be adopting a wider understanding of “law enforcement agencies” to refer to “police, gendarmerie, customs, immigration and border services, as well as related oversight bodies, such as ministries of interior and/or justice”. United Nations, Department of Peacekeeping Operations and Department of Field Support, “Community-oriented policing in United Nations peace operations”, 2018, p. 2.

campaign to end violence against women and girls and against lesbian, gay, bisexual, transgender and intersex persons often rooted in discriminatory laws, policies and practices has gained impressive momentum yet is far from attaining its goal that all persons be able to live their lives freely and peacefully, in their own way and able to take their own decisions, without risking private or public forms of harassment, abuse or torture.

11. Risks of abuse and torture are inextricably interlinked with the enjoyment and exercise of other human rights, such as those of freedom of expression and assembly, liberty and security of person, fair trial and the prohibition of discrimination in all its forms. Justice, reconciliation and the rule of law cannot exist alongside impunity for torture and other similar treatment or punishment. Sustainable Development Goal 16, which compels Governments to create transparent and inclusive societies where justice is available to all, is especially relevant to eradicating a number of underlying causes of torture and other ill-treatment. Moreover, economic disadvantage and poverty, which lie at the heart of the 2030 Agenda for Sustainable Development and which are compounded by other factors such as gender and/or ethnicity, also interface with a heightened risk of being subjected to torture or other misconduct and thus need to be addressed in national development and human rights strategies and plans. Lack of equality, recognition, participation and access to resources is an underlying risk factor facing persons living on the margins of society.<sup>4</sup> Relatedly, we must stay attuned to the impacts of climate change, as well as the design and implementation of mitigation and adaptation measures, so that all affected persons are treated humanely and with dignity.

12. At the same time, there has been marked progress in many countries. Every country in the world is party to at least one of the binding international treaties that prohibit torture and other ill-treatment (see sect. IV). Almost every regional grouping has additionally outlawed torture and other ill-treatment, and regional courts have developed a robust set of jurisprudence reinforcing guiding principles. Many countries and communities recovering from sustained periods of oppressive control have committed to never return to those dark days. Reconciliation and reparations processes have given voice to victims and survivors to tell their stories, as well as to have a say in the future design and governance of their communities. Torture-specific rehabilitation services, while far from sufficient to meet demand, are these days available in all corners of the globe, driven by the irreplaceable work being undertaken by civil society and private practitioners. Today there are more avenues than ever before for victims to obtain a remedy thanks to the growth in national human rights institutions and courts, the emergence and entrenchment of international criminal law and the deployment of the concept of universal jurisdiction, although far more action is required. The adoption of and training on the standard-setting Istanbul Protocol,<sup>5</sup> which was recently updated, is providing quality forensic reports to assist in the documentation and investigation of torture crimes, reports which are also relied upon in asylum hearings. In addition, there are small and bold actions, too numerous to mention, being taken every day by a wide number of countries and their officers, supported by civil society, to enforce a human rights-oriented society that is committed to preventing torture in all its forms. While the picture is far from perfect, and at times and in some places it can only be described as bleak, examples of progress provide us with symbols of hope.

<sup>4</sup> A/55/290, paras. 34–37; Committee against Torture, general comment No. 2 (2007), paras. 20–24; Lutz Oette, “The prohibition of torture and persons living in poverty: from the margins to the centre”, *International & Comparative Law Quarterly*, vol. 70, No. 2 (April 2021), pp. 307–341.

<sup>5</sup> See *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 2022 ed. (United Nations publication, 2022).

13. Decades of research and practice catalogue the best means of preventing torture and inhuman treatment, some of which include enacting clear laws and regulations (A/65/273, paras. 42–52; see A/76/168); actively enforcing legal and procedural safeguards and adopting non-coercive interviewing methods and techniques (see A/68/295 and A/71/298); investing in modern and human rights-infused training and education; open, transparent and non-discriminatory recruitment and promotions criteria and processes (Human Rights Council resolution 46/15, para. 23); rigorous disciplinary codes; oversight by independent, arm’s-length and fully funded visiting and monitoring entities (as envisaged in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; see A/61/259); safe complaints procedures and victim and witness protection; independent and impartial rights-based investigations, backed up by independent prosecutors and judges (see A/76/168); and clear rules that exclude from proceedings any evidence obtained by torture (A/61/259, paras. 44–48). Political, executive and military leaders are key to breaking cycles of entrenched, recurring or institutionalized abuse and impunity. Ministerial and parliamentary<sup>6</sup> responsibility, engagement and oversight are further prerequisites for a torture-proof society.

14. The extent to which Governments cover up, explain away or justify acts of torture, including through elaborate or obtuse legal arguments, tells us that it is a deeply shameful practice, not endorsed by any constitution or religion. Torture and related ill-treatment have no place in our contemporary world and should be relics of the past, relegated to museums of medieval and colonial periods. If left unchecked, excused or unaddressed, the perpetration or tolerance of torture and ill-treatment can lead to reputational damage, disruption of trade and tourism, and loss of international standing. Trying to recover one’s place among law-abiding nations after endemic or systemic torture is fraught with scepticism, suspicion and scrutiny.

15. Despite progress in many domains and countries, torture and other ill-treatment and punishment are widely practised. Taking action to address torture and ill-treatment ranked in the top five recommendations in the first three cycles of the universal periodic review, a salient reminder that much work remains to be done. It is our individual and joint responsibility to invest in that work. Acknowledging that no State has a perfect record would be a welcome breakthrough and allow authorities and the public to remedy and heal from past abuses, take steps to prevent recurrence, and move forward guided by human rights.

### III. Vision, approach and priorities of the Special Rapporteur

16. The Special Rapporteur will capitalize on the benefits of cooperation and constructive conversation, and she intends to share concrete and pragmatic advice in line with international law and best practice. She will place a heavy emphasis on leadership and ownership by relevant authorities. The key to sustained and long-term change is in the hands of leaders at all levels, who need to be involved in identifying the problem and being part of the solution. Without ownership and involvement, there is no impact. Credit will be given to progress made and reparations granted.

17. The Special Rapporteur will perform her functions in accordance with Human Rights Council resolutions 5/1 on the institution-building of the Council and 5/2 on the Code of Conduct for Special Procedure Mandate Holders of the Council, and the annexes thereto; and Council resolution 43/20 and later resolutions.

<sup>6</sup> Inter-Parliamentary Union and Office of the United Nations High Commissioner for Human Rights (OHCHR), *Human Rights: Handbook for Parliamentarians*, revised ed. (2016), pp. 129–135.

18. The Special Rapporteur, in accordance with Human Rights Council resolution [43/20](#), will put the rights of victims and survivors, as well as their families, centre stage, including their right to speak and to be heard, to participate in decisions affecting them, to rehabilitation and to a remedy. She will integrate a gender perspective and apply feminist techniques and methods, the basic premise of which is inclusiveness and equality, which can be helpfully transferable to other minority, marginalized, disadvantaged or underrepresented groups. She will work with Governments to adopt a whole-of-government approach such that policies, actions and solutions are coordinated and integrated across departments. Her programme of work will tackle root causes and be prevention- and justice-oriented.

19. **Country visits.** The country visits of the Special Rapporteur will be made up of constructive dialogue and will provide an opportunity for States to showcase some of their good laws, practices and innovations where progress has been made, as well as, importantly, to discuss and enquire into difficult areas where advice and guidance are particularly sought. The goal is to support the Governments visited to change and adjust their practices, drawing on best international practices and guided by international standards. She expects open and unhindered access to relevant ministries, as well as national human rights institutions, independent investigative bodies, national prevention mechanisms and the like, civil society, academia, victims and survivors, persons deprived of their liberty and their representatives and advocates.

20. **Communications.** The Special Rapporteur requests the cooperation of States with her mandate in responding in a timely manner to urgent appeals and other allegations of torture or ill-treatment (see [A/HRC/46/26](#)). Given the large demand by alleged victims for action and the associated heavy workload, there is a consequent need for streamlining and prioritizing. Although the Special Rapporteur is not a responder of last resort, as neither domestic nor international avenues of redress need to have been exhausted prior to seeking support from the mandate, she has a preference for following up on emblematic urgent actions or allegations that can support, encourage or catalyse institutional or structural changes, so that all victims, as well as society as a whole, can benefit from her interventions. In this respect, emblematic cases are those that form part of a pattern, trend or system-wide challenge. Such communications do not need to be the most extreme cases but can entail evidence of everyday patterns of common abuse or deprivation that need remedying and would benefit from the Special Rapporteur's intervention.

21. **Reports.** The reports of the Special Rapporteur will bring into sharp focus issues of the day and of the future and will be oriented to showcasing good practices in order to share and learn from others' experiences, enriching our international brain trust of solutions, while also recapping and raising the alarm on negative practices and trends. Reports and recommendations will be accessible, practical and implementable, with the hope that her reports (or parts thereof) will be transmitted directly to front-line ministries and functionaries. The next two reports<sup>7</sup> of the Special Rapporteur will focus on:

(a) Good practices in national criminalization, investigation, prosecution and sentencing for offences of torture, and remedies for victims, covering both common criminal and military contexts;

(b) Good practices in community-oriented, representative and accountable police and other law enforcement.

<sup>7</sup> To the Human Rights Council at its fifty-second session and to the General Assembly at its seventy-eighth session, in March and October 2023, respectively.



22. **Technical advice.** Technical advice will be built on real-life examples and practices, taking into account the fact that there is no one size fits all and differing national constitutional, legal and procedural systems and idiosyncrasies, cultural and political specificities (within limits of international law), localized conditions, and respect for difference and diversity. Her work and recommendations will be guided always by the applicable international legal frameworks, most notably international human rights law, international humanitarian law and international criminal law.

23. **Awareness-raising.** An important part of the Special Rapporteur's focus will be on raising the awareness of relevant stakeholders and the general public about their right to be treated humanely in all interactions with the State. She will participate in relevant events, conferences and capacity-building activities with this goal in mind, as well as utilize all forms of media. Reports show that, among the general public, there has been misunderstanding at times of one's rights and of what torture is, and some surveys have even shown a growing tolerance for it.<sup>8</sup> That complacency needs to be countered.

24. **Promoting international law.** The Special Rapporteur will promote the international legal framework and its adoption and implementation at the national level in all aspects of her work. While noting that her mandate is not bound by a specific treaty and will be exercised globally, the Special Rapporteur considers the ratification of the subject-specific treaty, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to be one of the clearest statements of a rejection of torture and a commitment to non-repetition and total eradication. As the fortieth anniversary of the Convention is in 2024, during the term of her mandate, the Special Rapporteur looks forward to reinforcing efforts by States, the United Nations and other organizations, as well as collective projects such as the State-led Convention against Torture Initiative, to bring about global ratification of the Convention. She will report periodically on progress towards this aim.

25. Another milestone during the tenure of the mandate holder is the anniversary of the mandate itself of the Special Rapporteur on torture, which will have been in operation for 40 years in March 2025. The anniversary presents another opportunity for the broad community of States and other stakeholders to acknowledge and take stock of progress made and to address continuing challenges.

26. As a contribution to the promotion of international law and the aforementioned anniversaries, the Special Rapporteur intends to update the general recommendations of the Special Rapporteur on torture, first prepared by Sir Nigel Rodley in 2001 (A/56/156, para. 39), and subsequently updated by Theo van Boven in 2002 (E/CN.4/2003/68, para. 26). Much has happened in the intervening 20 years since the previous update, and it is the intention of the current Special Rapporteur to reflect on the considerable legal and procedural developments and compile basic standards and best practices towards preventing and responding to torture and other ill-treatment.

27. Coordinating and cooperating with other mechanisms and treaty bodies. The Special Rapporteur will use all available means to advance the absolute prohibition against torture by promoting respectful dialogue in the tradition of the United Nations system, keeping doors of diplomacy open, and escalating in accordance with threat and risks. The Special Rapporteur will cooperate with other mechanisms, treaty bodies and special procedures, respecting mandates and independence.

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<sup>8</sup> See International Committee of the Red Cross, "People on war: perspectives from 16 countries", 2016; and Amnesty International, "Attitudes to torture: Stop Torture global survey", 2014.



## IV. Applicable international legal framework against torture and other ill-treatment

### A. Definition of torture under international law

28. The prohibition of torture, an *erga omnes* and *jus cogens* norm,<sup>9</sup> is one of the first and few absolute human rights, reflected in its non-derogability. It is prohibited in peacetime, in armed conflict and during other public emergencies and is without territorial limits. Lesser forms of cruel, inhuman or degrading treatment or punishment are prohibited under customary international law.<sup>10</sup>

29. Torture is within a unique class of international norm that is both (a) a human rights violation actionable by individuals against Governments and by Governments against Governments<sup>11</sup> and (b) a crime under international law. The systematic or widespread practice of torture constitutes a crime against humanity, while torture, cruel treatment and outrages upon human dignity committed during armed conflict are war crimes. Torture is often used as a form of genocide<sup>12</sup> and to reinforce apartheid systems and is regularly a precursor to enforced disappearances and extrajudicial executions. Rape and sexualized torture are prohibited in all circumstances.<sup>13</sup> Other prohibited conduct includes medical or scientific experimentation or punishment;<sup>14</sup> and corporal punishment used as an educative or disciplinary measure, or as unlawful punishment for a crime.<sup>15</sup> Torture and inhuman treatment can define the persecution from which refugees are granted asylum, representing the loss of protection of their own Governments.

30. What is understood globally as “torture” is best laid out in the definition contained in the Convention against Torture (art. 1 (1)):

The term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of

<sup>9</sup> *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, *I.C.J. Reports 2012*, p. 422, para. 99; International Tribunal for the Former Yugoslavia, *Prosecutor v. Mucić et al.*, IT-96-21-T, Judgment of 16 November 1998, para. 454; International Tribunal for the Former Yugoslavia, *Prosecutor v. Furundžija*, IT-95-17/1-T, Judgment of 10 December 1998, paras. 153 ff.; International Tribunal for the Former Yugoslavia, *Prosecutor v. Kunarac et al.*, IT-96-23-T and IT-96-23/1-T, Judgment of 22 February 2001, para. 466; Committee against Torture, general comment No. 2 (2007), para. 1; and the report of the International Law Commission on the work of its seventy-first session (29 April–7 June and 8 July–9 August 2019) (A/74/10), pertaining to peremptory norms of international law (*jus cogens*).

<sup>10</sup> General Assembly resolution 74/143, fourth preambular paragraph.

<sup>11</sup> See e.g. International Court of Justice, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Application Instituting Proceedings, 19 February 2009; European Court of Human Rights, *Cyprus v. Turkey*, Application No. 25781/94, Judgment of 10 May 2001; and European Court of Human Rights, *Ireland v. United Kingdom*, Application No. 5310/71, Judgments of 18 January 1978 and 10 September 2018. See also OHCHR, “Accountability in Syria under the Convention against Torture: the joint Canada/Netherlands’ initiative”, press release, December 2021.

<sup>12</sup> International Criminal Tribunal for Rwanda, *Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T, Judgment of 2 September 1998, para. 504.

<sup>13</sup> *Ibid.*, para. 687; International Tribunal for the Former Yugoslavia, *Prosecutor v. Mucić et al.*, IT-96-21-T, Judgment of 16 November 1998, para. 495. See also A/74/148, paras. 29 ff. See further Alice Edwards, *Violence against Women under International Human Rights Law* (Cambridge, United Kingdom, Cambridge University Press, 2011), pp. 219–227.

<sup>14</sup> International Covenant on Civil and Political Rights, art. 7. See also Human Rights Committee, general comment No. 20 (1992), para. 7.

<sup>15</sup> Human Rights Committee, general comment No. 20 (1992), para. 5.

having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

31. Article 1 (1) represents the dominant definition accepted by the world's leading human rights bodies and courts, even if it is not the only international legal definition. Whereas certain modifications have been required to adapt that definition to specific contexts or for specific crimes, such as war crimes or crimes against humanity,<sup>16</sup> the essence of the definition has remained unchanged and unchallenged. A consensus definition of torture can be lauded as a successful achievement of the international community.

32. Perpetrated by those with power against those without it, torture and other ill-treatment are examples of an abuse of power or authority. They involve exercising *ultra vires* authority over its victims, rendering them powerless. However, powerlessness is not a legal criterion to establish torture as a definitional matter; rather, it is implicit in the observation of what is actually taking place when someone is put under the custody or control of an officer of the State and subjected to this unlawful conduct.

33. International law calls for a distinction between torture and other forms of ill-treatment and punishment. As torture carries a "special stigma",<sup>17</sup> the threshold for torture should be respected and reserved for the most heinous of crimes; unfortunately, such cases are not in short supply. In practice, however, navigating the boundaries between torture, on the one hand, and other forms of ill-treatment, on the other, can be difficult.<sup>18</sup> Making a distinction is nonetheless important and is most relevant when dealing with criminal activity, as the penalty must fit the crime.

34. Whether a particular harm amounts to torture often turns on factual, rather than legal, factors. Regrettably, we have not yet reached the limits of the deliberate or gratuitous ways or means by which public officials and Governments perpetrate torture, and forms of torture or inhuman treatment or punishment may never be fully elaborated. For this reason, the severe pain or suffering threshold is a dominant element of the definition of torture.<sup>19</sup> The definition of "torture", and its constituent elements, will be examined in more detail in the second report of the Special Rapporteur, on national criminalization, investigation and prosecution of torture and other ill-treatment.

35. The international community has spoken and repeatedly denied any excuses for torture.<sup>20</sup> While State necessity (or State preservation) as a doctrine may legitimize otherwise unlawful acts in certain carefully circumscribed circumstances, the doctrine is never applicable against peremptory norms of international law from which no

<sup>16</sup> See International Tribunal for the Former Yugoslavia, *Prosecutor v. Kunarac et al.*, IT-96-23-T and IT-96-23/1-T, Judgment of 22 February 2001, para. 470. See also International Criminal Court, Elements of Crimes, relating to arts. 7 (1)(f), 8 (2)(a)(ii)-1 and 8 (2)(c)(i)-4.

<sup>17</sup> European Court of Human Rights, *Ireland v. United Kingdom*, Application No. 5310/71, Judgment of 18 January 1978, para. 167; European Court of Human Rights, *Selmouni v. France*, Application No. 25803/94, Judgment of 28 July 1999, para. 96.

<sup>18</sup> Human Rights Committee, general comment No. 20 (1992), para. 4; Committee against Torture, general comment No. 2 (2007), para. 3.

<sup>19</sup> International Tribunal for the Former Yugoslavia, *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Judgment of 2 November 2001, para. 142, which states: "the severity of the pain or suffering is a distinguishing characteristic of torture that sets it apart from similar offences"; and European Court of Human Rights, *Cestaro v. Italy*, Application No. 6884/11, Judgment of 7 July 2015, para. 179.

<sup>20</sup> See, most recently, General Assembly resolution [74/143](#).

derogation is permissible.<sup>21</sup> As such, the relevance of the concept of proportionality that may apply to qualified freedoms, or arguments around balancing the harm in question with national security or other similar interests, are ruled out as justifications for torture. Likewise, torture is not an acceptable response in the face of terrorism or other similar serious threats, and there is ample evidence to demonstrate the inherent unreliability of deploying torture techniques as a method of intelligence or information gathering.<sup>22</sup> The legality of the actions of the victim is immaterial.<sup>23</sup> This is not to say that national security interests are not valid concerns, but rather it is to recognize that, in our modern times, we have adequate and effective ways to handle such situations without recourse to torture or other ill-treatment. Disseminating humane and rights-compatible interviewing and evidence-gathering techniques will be part of the Special Rapporteur's role.

36. The international framework, moreover, allows no personal justifications for torture or other inhuman treatment.<sup>24</sup> The orders of a superior officer or public authority do not exonerate from criminal liability, for example, a junior police officer who beats or harasses a suspect or witness, a prison warden who denies food, water or basic sanitation to a detainee, or a soldier who breaks the rules of war during armed conflict. Command responsibility for torture must be prosecutable, and public officials are accountable when they refuse or fail to protect citizens from harm (including the bystander phenomenon).<sup>25</sup> The absolute prohibition against torture permits no temporal limits on prosecution (also known as "statutes of limitations"),<sup>26</sup> amnesties<sup>27</sup> or immunities.<sup>28</sup>

37. Lesser forms of cruel, inhuman or degrading treatment or punishment are equally prohibited and are to be investigated and punished, commensurate with applicable penalties. They should not be underestimated as to their impact on victims or on institutional cultures in which impunity can create and incentivize conditions that can escalate to insipid forms of ill-treatment or even torture. Cumulative effects of lesser cruelty, however less dramatic, can amount to torture, and negligent mistreatment or deprivations of essential rights (safety, clean water, hygiene, social interaction) of persons deprived of their liberty are never to be tolerated.

<sup>21</sup> See the report of the International Law Commission on peremptory norms of general international law (*jus cogens*) (A/CN.4/L.967), in which "the prohibition of torture" is listed as a peremptory norm of general international law (conclusion 23). Conclusion 18 clarifies that "no circumstance precluding wrongfulness under the rules on the responsibility of States for internationally wrongful acts may be invoked with regard to any act of a State that is not in conformity with an obligation arising under a peremptory norm of general international law (*jus cogens*)".

<sup>22</sup> See, for instance, United States Senate Select Committee on Intelligence, Committee study of the Central Intelligence Agency's detention and interrogation programme, 2014. See also Shane O'Mara, *Why Torture Doesn't Work: The Neuroscience of Interrogation* (Cambridge, Massachusetts, and London, Harvard University Press, 2015).

<sup>23</sup> European Court of Human Rights, *Selmouni v. France*, Application No. 25803/94, Judgment of 28 July 1999. The character of the applicant is equally immaterial in non-refoulement cases; European Court of Human Rights, *Soering v. the United Kingdom*, Judgment of 7 July 1989, paras. 86, 90–91; and European Court of Human Rights, Grand Chamber, *Chahal v. United Kingdom*, Application No. 22414/93, Judgment of 15 November 1996, para. 80.

<sup>24</sup> Convention against Torture, art. 2 (3); see also Human Rights Committee, general comment No. 20 (1992), para. 3.

<sup>25</sup> *Hajrizi Dzemajl et al. v. Yugoslavia* (CAT/C/29/D/161/2000).

<sup>26</sup> Committee against Torture, general comment No. 3 (2012), para. 40; and European Court of Human Rights, *Abdülşamet Yaman v. Turkey*, Application No. 32446/96, Judgment of 2 November 2004, para. 55.

<sup>27</sup> Committee against Torture, general comment No. 2 (2007), para. 5.

<sup>28</sup> See the report of the International Law Commission on the work of its seventy-second session (A/76/10), chap. VI.

38. “Discrimination” is one of the explicit purposes in the article 1 (1) definition of torture in recognition of the fact that it is often the reason for torturous behaviour being perpetrated against specific individuals or groups, or why it is neither investigated nor prosecuted and why victims are so regularly left without a remedy. Previous Special Rapporteurs have dealt with discriminatory forms of torture and ill-treatment in the context of domestic violence (see [A/74/148](#)) and in respect of women, girls, and lesbian, gay, bisexual, transgender and intersex persons (see [A/HRC/31/57](#)). Where abuse is perpetrated by private actors, the State is accountable where it fails in its “due diligence” responsibilities to prevent said harm by failing to take all reasonable steps to protect the victim, or to investigate and prosecute those responsible, and provide redress.<sup>29</sup> States have an obligation to enact legislation that provides “effective protection” against rape and sexual assault, and such legislation must go beyond only investigating or prosecuting crimes where the victim physically resisted.<sup>30</sup> International case law robustly portends that only consent-based rape laws meet the standard of legislative due diligence required for compatibility with the obligations to prohibit and prevent torture and other cruel, inhuman or degrading treatment or punishment.

## B. International and regional standards

39. There is no State in the world that has not voluntarily accepted the obligation to prohibit, prevent and respond to torture and other ill-treatment, in one or more of the treaties below covering a range of contexts or in respect of particular protected groups.

40. The absolute prohibition of torture is found in and reinforced by a wide number of international treaties and declarations:

- Universal Declaration of Human Rights (1948), art. 5
- Convention on the Prevention and Punishment of the Crime of Genocide (1948), art. II (b) and (c)
- Geneva Conventions (1949), various articles<sup>31</sup> and Additional Protocols (1977)<sup>32</sup>
- The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), art. 5
- International Convention on the Elimination of All Forms of Racial Discrimination (1965), art. 5 (b)
- International Covenant on Civil and Political Rights (1966), art. 7

<sup>29</sup> Committee against Torture, general comment No. 2 (2007), para. 20. See Inter-American Court of Human Rights, *Velásquez Rodríguez v. Honduras*, series C, No. 4, Judgment of 29 July 1988, para. 172; European Court of Human Rights, *M.C. v. Bulgaria*, Application No. 39272/98, Judgment of 4 December 2003, para. 166; European Court of Human Rights, *Opuz v. Turkey*, Application No. 33401/02, Judgment of 9 September 2009, para. 129; Inter-American Court of Human Rights, *González et al. (“Cotton Field”) v. Mexico*, series C, No. 205, Judgment of 16 November 2009; *A.T. v. Hungary* (CEDAW/C/36/D/2/2003), para. 9.2.

<sup>30</sup> European Court of Human Rights, *M.C. v. Bulgaria*, Application No. 39272/98, Judgment of 4 December 2003, para. 166; see the report of the Special Rapporteur on violence against women, its causes and consequences ([A/HRC/47/26](#)).

<sup>31</sup> Geneva Convention I, art. 12; Geneva Convention II, art. 12; Geneva Convention III, arts. 13, 17 and 87; Geneva Convention IV, arts. 27 and 32; and Geneva Conventions I to IV, common art. 3 and arts. 50, 51, 130 and 147, respectively.

<sup>32</sup> Additional Protocol I, art. 75 (2)(a)(ii)–(iv), (b) and (e); and Additional Protocol II, art. 4 (2)(a), (e) and (h).

- International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), art. II (a)(ii), (a)(iii), (b), (c), (d) and (f)
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1975)
- Convention on the Elimination of All Forms of Discrimination against Women (1979), art. 1 (interpretation)<sup>33</sup>
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
- Convention on the Rights of the Child (1989), arts. 37, 39 and 40 (1)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), art. 10
- Rome Statute of the International Criminal Court (1998), various articles<sup>34</sup>
- Optional Protocol to the Convention against Torture (2002)
- Convention on the Rights of Persons with Disabilities (2006), arts. 15 and 16

41. In addition to the list above, there are a number of other widely accepted express obligations in respect of ensuring humane treatment in places where persons are deprived of their liberty (e.g. International Covenant on Civil and Political Rights, art. 10) and to respect the right to liberty and security of person (e.g. *ibid.*, art. 9).

42. Being at risk of torture further gives rise to international obligations to protect persons through the provision of asylum and the customary norm to protect such persons from *refoulement*:

- Convention relating to the Status of Refugees (1951), art. 1
- Convention relating to the Status of Stateless Persons (1954), art. 1

43. These early and widely ratified conventions provide status, rights and standards of treatment for persons seeking sanctuary in States other than their country of nationality or former habitual residence, such that the denial of said standards has been held to run counter to the prohibition against inhuman or degrading treatment or punishment. They also crucially protect against *refoulement* to risks of persecution, which is also a peremptory norm of international law;<sup>35</sup> so do the Convention against Torture and other human rights treaties explicitly prohibit removal in any manner to a threat of torture.<sup>36</sup> An estimated 30 per cent of refugees in Europe are torture victims, and rates elsewhere are likely to be similar or higher, making these conventions and the rights of refugees and asylum-seekers of relevance to the mandate.

44. Regional treaties and declarations are equally unanimous in their condemnation of torture and are instructive, along with related case law, on how to prevent and respond to it:

<sup>33</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19.

<sup>34</sup> Arts. 8 (2)(a)(ii) and 8 (2)(c)(i) and (ii), rights of persons during an investigation (art. 55 (1)(b)), as well as crimes against humanity (art. 7 (1)(f) and (k)).

<sup>35</sup> See the Declaration of States Parties to the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, adopted at the Ministerial Meeting of States Parties of 12–13 December 2001 (HCR/MMSP/2001/09), preambular para. 4. See also Executive Committee conclusion No. 25 (XXXIII), para. (b), in which the Executive Committee of the Office of the United Nations High Commissioner for Refugees observed that “the principle of non-*refoulement* ... was progressively acquiring the character of a peremptory rule of international law”; see further [A/52/12/Add.1](#).

<sup>36</sup> Convention against Torture, art. 3.

- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (1950), art. 3
- American Convention on Human Rights (1969), art. 5 (2)
- African Charter on Human and Peoples' Rights (1981), art. 5
- Inter-American Convention to Prevent and Punish Torture (1985)
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987)
- African Charter on the Rights and Welfare of the Child (1990), arts. 16 and 17
- Charter of Fundamental Rights of the European Union (2000), arts. 4 and 19
- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003), arts. 3, 4 and 5
- Arab Charter on Human Rights (2004), art. 8
- African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009), art. 9 (c)
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011), art. 61 (2)
- Association of Southeast Asian Nations (ASEAN) Human Rights Declaration (2012), art. 14
- Cairo Declaration of the Organization of Islamic Cooperation on Human Rights (2021), art. 4

45. Arguably, the prohibition against torture is the most regulated fundamental right under international law, supported further by an impressive array of soft law standards.<sup>37</sup>

46. In summary, as part of their international obligations to prohibit, prevent, punish and remedy acts of torture and ill-treatment, States are called upon:

(a) To take effective legislative, administrative, judicial or other measures to prevent torture and other ill-treatment;

(b) To protect persons against expulsion, refoulement or extradition of any individual where there are substantial grounds for believing that the person would be subjected to torture or ill-treatment;

(c) To create and prosecute offences of torture under domestic law, including legislating for universal jurisdiction and extraterritorial application of domestic laws to cover illegal actions of law enforcement, military and other service personnel operating abroad;

<sup>37</sup> Global soft law standards include the Code of Conduct for Law Enforcement Officials (1979), the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982), the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (1990), Guidelines on the Role of Prosecutors (1990), the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) (2000), the revised United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) (2015) and the revised Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2022).

(d) To establish procedures allowing for the prompt and impartial examination of any complaints, as well as victim and witness protection and whistle-blower protection;

(e) To investigate allegations of torture promptly and impartially and establish bodies independent of police and other law enforcement to carry out such investigations;

(f) To cooperate on the extradition of persons indicted for the crime of torture and, where extradition is not possible, prosecute alleged offenders;

(g) To educate and train law enforcement personnel, public officials or other persons who may be involved in the custody, interrogation or treatment of any arrested, detained or imprisoned individuals on the prohibition of torture;

(h) To review interrogation rules, instructions, methods and practices systematically;

(i) To provide redress within the legal system and an enforceable right to fair and adequate compensation, including full rehabilitation for victims or, where death results from torture, the entitlement of dependants to compensation;

(j) To establish safeguards against the admission of any statements made as a result of torture as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

47. These obligations are express in the Convention against Torture and ancillary to the obligations expressed in other international treaties and under international human rights law. Their full implementation would lead to a sizeable reduction in risks of torture and other ill-treatment.

### **C. Gaps in the regulation of the prohibition of torture in international law**

48. Despite this comprehensive library of guidance, there are three areas worth highlighting that impinge on the prohibition of torture and other ill-treatment and yet are largely unregulated at the level of international law; consequently, there is a lack of settled guidance for Governments and public authorities. The below-mentioned subject areas will be on the agenda of the Special Rapporteur.

49. The first gap relates to the manufacture, export and use of weapons, equipment and devices used in law enforcement, some of which appear to be designed for no legitimate reason except to inflict unnecessary harm on arrested or detained persons. Where they meet this threshold, such devices should be banned outright.<sup>38</sup>

50. The second subject area that has not been fully addressed at the global level relates to the use of technology in various aspects of law enforcement or in psychiatric, medical and correctional facilities. Such technology is wide-ranging,<sup>39</sup> and there is a growing reliance on it in many jurisdictions and sectors. Many such

<sup>38</sup> See the report of the Group of Governmental Experts on torture-free trade entitled "Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards" (A/76/850).

<sup>39</sup> Includes information technology management systems such as electronic detention registers and medical records and other crime-filing systems, fingerprinting and other forensic science, audio and video recording of interviews, remote connection to lawyers or interpreters or participation in court proceedings (including detention or *habeas corpus* hearings), polygraphs, closed-circuit television, vehicle or body-worn cameras, tasers, infrared and thermal immigration controls, ankle bracelets, global navigation satellite system technology for house arrest or bail systems, and facial recognition software (this list is not exhaustive).



developments have brought efficiencies, advanced humane treatment and prevented torture. Some have brought about safer and more reliable justice outcomes, such as more secure evidence collection and preservation and greater protection of rights of arrested or detained persons, as well as protection of the authorities from false allegations, when used correctly. Their management is, however, at times an afterthought. The regulation, management and deployment of technologies in the criminal justice, immigration and military sectors and their relationship with the prohibition of torture and other ill-treatment require deeper study and analysis<sup>40</sup> and will be integrated into the work of the mandate holder.

51. Third, a good body of research argues that the risks of torture and ill-treatment are greatest in the first hours when an individual is arrested and/or detained by police and other law enforcement (see [A/71/298](#)), especially where the regular legal and procedural safeguards are not applied. While there are a wide number of soft law standards in relation to safeguards, a growing number of States have recognized that they should develop domestic guidelines and training on the conduct of interrogations with a view to preventing torture and ill-treatment (General Assembly resolution [74/143](#), paras. 13–15). The Special Rapporteur recommends to all States the expert- and practitioner-drafted Principles on Effective Interviewing for Investigations and Evidence Gathering (also referred to as the Méndez Principles).<sup>41</sup>

## V. Conclusions and recommendations

**52. In the present interim report, the Special Rapporteur shares her vision and approach to the mandate and her first thematic report priorities. Her programme of work will balance the reactive and proactive pressures of the position. The Special Rapporteur is energized to activate all aspects of the mandate bestowed on her by the Human Rights Council, and reiterates her appreciation for the trust placed in her appointment.**

**53. Cognizant of the breadth and depth of responsibilities and the significance of the universal struggle against torture and other ill-treatment, the Special Rapporteur looks forward to engaging collaboratively and constructively with all stakeholders, noting the lead role that must be played by States.**

**54. With this in mind, she appeals to all States to take the following actions:**

**(a) For top leadership to speak out loudly against torture and other cruel, inhuman or degrading treatment or punishment and make it known – by taking action – that any form of torture is not acceptable in any form;**

**(b) Follow up on recommendations made by international bodies relevant to the absolute prohibition against torture and other ill-treatment and integrate them into national strategies and plans;**

**(c) Ratify or accede to the Convention against Torture without reservations;**

**(d) Recognizing that the prohibition of torture is non-reservable and non-derogable, review and remove any remaining reservations in any treaty that**

<sup>40</sup> See [A/HRC/51/17](#), para. 9, in which reference is made to the risk of hacking and mining personal data on human rights defenders and the associated risks of torture or inhuman treatment.

<sup>41</sup> See also Convention against Torture Initiative, “Investigative interviewing for criminal cases”, Training Tool No. 1/2017 (Geneva, 2017); and *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture* (see footnote 5).

pertains to torture and other cruel, inhuman or degrading treatment or punishment;

(e) For States parties to the Optional Protocol to the Convention against Torture to establish or designate national preventive mechanisms where these are lacking and ensure that they are properly funded and capacitated;

(f) Express an open invitation to the Special Rapporteur to conduct a visit;

(g) Follow up diligently regarding any queries concerning urgent actions or letters of allegations, and enter into a constructive dialogue with the Special Rapporteur;

(h) Share examples of laws, policies and practices as well as challenges in response to the Special Rapporteur's calls for submissions to her reports, so that we may all learn from the collection and dissemination of good practices and solutions.

55. The Special Rapporteur invites, among others, international organizations, non-governmental organizations and civil society, national human rights institutions, national preventive mechanisms, and academics and researchers to be in touch with the Special Rapporteur and to share the latest reports, research studies and articles.

56. Torture and other cruel conduct are stains on the fabric of humanity. As long as the practice persists, we are far from our global aspiration of a United Nations built by and for peoples who are equal in rights and freedoms. Let this be the start of a period of renewed action.

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