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

REFERENCE:

12 August 2020

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 34/19. In this regard, I have decided to examine the effectiveness of States' responses, follow-up to communications and visit requests transmitted during the first four years of my tenure from 1 November 2016 to 31 October 2020. This work aims to contribute to achieving full cooperation from Governments and uphold universally recognized legal obligations arising from the absolute and non-derogable prohibition of torture and ill-treatment.

Submissions are sought from all member States of the United Nations, in all regions, in order to inform and contribute to my upcoming thematic report to be considered at the 46th Session of the Human Rights Council in March 2021.

The consultation is structured around a questionnaire, which contains four sections, as follows:

1. Procedures for the processing of official communications and requests;
2. Interaction regarding 'Urgent Appeals', 'Allegation Letters' and 'Other Letters';
3. Interaction regarding Country Visit Requests; and
4. State recommendations / requests.

Attached is an explanatory background note on the consultation and the questionnaire.

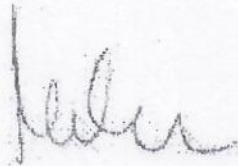
I kindly ask that your Excellency's Government review and fill the questionnaire and submit written contributions electronically in word or pdf format to the mandate email: sr-torture@ohchr.org indicating "State Consultation – SR torture report" in the subject heading. I would appreciate receiving submissions by 15 October 2020, at the latest. Due to the lack of translation services, please submit your responses in English only.

Kindly note that all submissions will be published on the mandate's webpage. If your Excellency's Government wish to share additional information that should not be made public, please send it in a separate document.

To all Permanent Missions to the United Nations Office and other international

Should you have any questions, please do not hesitate to contact staff supporting my mandate at the Office of the High Commissioner for Human Rights, through the email provided above.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in dark ink, appearing to read 'Nils Melzer', written in a cursive style.

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

STATE CONSULTATION

Call for input to thematic report of the SR Torture to HRC46 (March 2021):

“Effectiveness of States’ responses and follow-up to communications and visit requests transmitted by the Special Rapporteur on Torture”

I. Introduction

In 1985, the Human Rights Commission adopted resolution 1985/33 creating the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. Since then, the Commission, and subsequently the Human Rights Council, have consistently renewed the mandate of the Special Rapporteur (most recently: A/HRC/43/L.30 of 31 March 2020). Pursuant to the HRC resolution, the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Professor Nils Melzer, is initiating the consultation to the next thematic report to the Human Rights Council.

II. Background

1. Responsibilities of the mandate

In terms of thematic scope, the mandate of the Special Rapporteur covers any act or omission amounting to torture or other cruel, inhuman or degrading treatment or punishment (hereafter: torture and ill-treatment) under applicable international customary and treaty law. The Special Rapporteur is mandated to examine questions relating to the prohibition, prevention and redress of such abuse in all current and aspiring member States of the United Nations, regardless of their treaty obligations.

The Council stressed that the mandate holder shall discharge his or her duties in accordance with Human Rights Council resolutions 5/1 (institution-building) and 5/2 (Code of Conduct), of 18 June 2007, and the annexes thereto. In particular, the Council has mandated the Special Rapporteur:

- (a) To seek, receive, examine and act on information (...) regarding issues and alleged cases concerning torture or ill-treatment;
- (b) To conduct country visits with the consent or at the invitation of Governments and to enhance further dialogue with them, and to follow up on recommendations made in visit reports;
- (c) To comprehensively study trends, developments and challenges in relation to combating and preventing torture and ill-treatment, and to make recommendations and observations concerning appropriate measures to prevent and eradicate such practices;
- (d) To identify, exchange and promote best practices on measures to prevent, punish and eradicate torture and ill-treatment;
- (e) To integrate a gender perspective and a victim-centred approach;

(f) To cooperate with, and promote the cooperation between, universal, regional and national mechanisms, as well as civil society, on matters pertaining to the mandate;

(g) To 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.

2. Responsibilities of States

Recognizing the importance of the work of the Special Rapporteur in the prevention and fight against torture and ill-treatment, the Council urged States, most notably:

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

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

(c) To prevent any sanction, reprisal, intimidation or other prejudice against any person, group or association, including persons deprived of their liberty, for contacting, seeking to contact or having been in contact with the Special Rapporteur (...);

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

(e) To adopt a victim-centred and gender-sensitive approach in the fight against torture and ill-treatment (...);

3. Responsibilities of the United Nations

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

Like all other special procedures of the Human Rights Council, the mandate of the Special Rapporteur is supported by the Office of the High Commissioner for Human Rights through thematic, fact-finding, policy and legal expertise, research and analytical work, and administrative and logistical services (Manual of Operations of the Special Procedures of the Human Rights Council, August 2008, para 21).

III. The Report: Evaluating the effectiveness of States' interaction with the mandate

a) Purpose

Thirty-five years after the creation of the mandate, and mindful of the "need to be able to respond effectively to credible and reliable information that comes before him" as evoked by the Human Rights Commission (E/CN.4/res/1985/33, para. 6), the Special Rapporteur deems it timely to:

- conduct a longitudinal study, through statistical analysis and State consultation by questionnaire, evaluating the effectiveness of the cooperation shown by Governments in their responses and follow-up to official communications, country visit requests, as well as country visit reports and thematic reports transmitted by the Special Rapporteur, and
- where appropriate, recommend effective measures to be taken by States in order for them to: (a) achieve the standard of "full cooperation" set by the Human Rights Council for their interaction with the mandate of the Special Rapporteur, and (b) meet their universally recognized legal obligations arising from the absolute and non-derogable prohibition of torture and ill-treatment.

b) Process

Mindful of the significant amount of information to be collected and analysed, the Special Rapporteur intends to divide this process into two parts, dedicating his last two reports to the Human Rights Council to this process as follows:

- Report to HRC46 (March 2021): Evaluation of States' responses to **communications and country visit requests** transmitted by the Special Rapporteur from 1 November 2016 to 31 October 2020.
- Report to HRC49 (March 2022): Evaluation of States' follow-up on **thematic reports and country visit reports** transmitted by the Special Rapporteur from 1 November 2016 to 31 October 2020.

c) State consultation

These reports will be based on a comprehensive analysis of all information made available to the mandate including, most notably, the responses received from States to official **communications, requests and reports**, as well as the responses received from States to two **Questionnaires** - one for each report - aiming to systematize the required data through governmental reporting and self-evaluation.

d) Reporting period

Both reports will cover the first four years of the current Special Rapporteur's tenure (**1 November 2016 until 31 October 2020**) but, where available and specifically indicated, will also take into account systematized information made available by his predecessors through means such as their "Observations Reports on Communications".

IV. Questionnaire for States
(Communications and Visit Requests of the Special Rapporteur)

Remarks:

- Please keep your responses concise, either directly in the space provided below or in a separate document.
- In the absence of translation services, please provide responses in English only, if possible.
- Please submit your response by 15 October 2020.
- All responses provided by Governments will be published on the mandate's webpage: (<https://www.ohchr.org/en/issues/torture/srtorture/pages/srtortureindex.aspx>).

A. Procedures for the processing of official communications and requests

Question: Please describe the procedures applied by your Government in responding to / following-up on official communications transmitted by the Special Rapporteur, in line with the responsibilities of States outlined in para 2 of Human Rights Council resolution A/HRC/43/L.30 of 31 March 2020, including the initiation of measures of prevention, investigation, prosecution and redress as may be required under applicable international law.

Response:

1. 'Allegation letters' (AL) and 'urgent appeals' (UA) on specific alleged specific acts or risks of torture or ill-treatment:

~~as a national mechanism the inpt is an independent authority who receive by the force of the organic law n 43 date of 21/10/2013 allegation letters and urgent appeals on risks of torture: we make an urgent visit and start investigation on the suspected fact than we send our recommendations to the institution after we complain to ju but the problem is about the probative force of our PV; the question is to know if judges v~~

2. ~~take our pv as an official one or not~~ (20.) Relating to current or envisaged legislation, regulation or policy measures:

~~as a regulator authority we recommended to the government the urgent need to promulgate the definition of torture in the national criminal law to be compatible with the international one in order to end impunity in the other side the law regulating prisons in tunisia still needs to be revised~~

3. Country visit requests:

~~we urgent need in tunisia to stop the violence of the police~~



B. Interaction regarding 'Urgent Appeals', 'Allegation Letters' and 'Other Letters'

Question: How does your Government self-evaluate its interactions with the mandate of the Special Rapporteur relating to official communications on specific concerns or allegations regarding torture or ill-treatment during the past four years (1 November 2016 until 31 October 2020)?

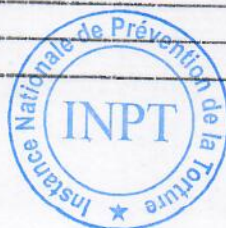
Remarks: For your response, please choose one or several options from the four-step classification system explained below, which builds on Human Rights Council in resolution A/HRC/43/L.30 of 31 March 2020, and on universally recognized international legal obligations arising from the absolute and non-derogable prohibition of torture and ill-treatment:

1. **"Fully cooperative"**: (a) Full and expeditious responses, which (b) supply all information requested and (c) ensure proper follow-up to the recommendations and conclusions of the Special Rapporteur including, as a minimum, (d) evidence for the initiation of all measures of prevention, investigation, prosecution and redress required by applicable international law.
2. **"Partially cooperative"**: Responses which fail to meet one or several of the criteria listed under 1 (a) – (d) above, but which have entailed some level of constructive dialogue between the Government and the Special Rapporteur.
3. **"Non-responsive"**: Failure or refusal to respond to the official communications transmitted by the Special Rapporteur.
4. **"No communication received"**: During the past four years (2017-2020), no official communication has been transmitted by the Special Rapporteur.

Please explain your Government's response and, where appropriate, describe any challenges, concerns, grievances or other causes, which may be preventing your Government from achieving a "fully cooperative" interaction.

Response:

partially cooperative



C. Interaction regarding Country Visit Requests

Question: How does your Government self-evaluate its interactions with the mandate in response to official requests transmitted by the Special Rapporteur to conduct a country visit during the past four years (1 November 2016 until 31 October 2020)?

Remarks: For your response, please choose one or several options from the four-step classification system explained below, which builds on Human Rights Council in resolution A/HRC/43/L.30 of 31 March 2020:

1. **"Fully cooperative"**: During the past four years (1 November 2016 until 31 October 2020), the Government has extended either a standing invitation or an bilateral invitation to the Special Rapporteur to conduct a country visit in full compliance with the terms of reference of the mandate, and the visit: (a) has taken place, or (b) has been scheduled, or (c) has been postponed or declined by the Special Rapporteur for reasons not in the responsibility of the Government.
2. **"Partially cooperative"**: During the past four years (1 November 2016 until 31 October 2020), the Special Rapporteur has transmitted one or several official country visit requests, which have not received a favourable response, but which have entailed some level of constructive dialogue between the Government and the Special Rapporteur.
3. **"Non-responsive"**: Failure or refusal to respond to the official country visit requests transmitted by the Special Rapporteur.
4. **"No request received"**: During the past four years (1 November 2016 until 31 October 2020); no official country visit request has been transmitted by the Special Rapporteur.

Please explain your Government's response and, where appropriate, describe any challenges, concerns, grievances or other causes, which may be preventing your Government from achieving a "fully cooperative" interaction with the mandate as expected by the Council.

Response:

fully cooperativewe



D. State recommendations / requests

Question: Please describe and explain any measures which should be taken, and by which authority, mechanism or institution, in order for your Government to achieve a “fully cooperative” interaction on official communications and visit requests transmitted by the Special Rapporteur, in line with resolution A/HRC/43/L.30 of 31 March 2020 and applicable norms of international law.

Response:

~~we still not have a national mechanism to follow up on national recommendations formulated by the national authority for the prevention of torture INPT but it exists in the ministry of human rights and relations with the constitutional bodies and civil society a committee charged with following up the international reports~~

