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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, Nils Melzer, submitted in accordance with Assembly resolution [72/163](#).

* [A/76/150](#).



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

Summary

In the present report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, examines the significance of accountability to the absolute and non-derogable prohibition of torture and ill-treatment, identifies the most important legal and practical challenges conducive to the current systemic accountability gap, provides an overview of the various functions and forms of accountability and makes recommendations to States with a view to improving accountability and redress for torture or ill-treatment.

I. Introduction

1. The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is universally recognized as absolute and non-derogable. Since the end of the Second World War, States have made unprecedented efforts towards establishing domestic and international normative and institutional frameworks for its practical implementation. Nevertheless, today torture and ill-treatment continue to be practised with almost complete impunity throughout the world, and victims of such abuse or their relatives rarely obtain the redress, reparation and rehabilitation to which they are entitled under international law.¹

2. The aim of securing accountability for torture and ill-treatment has been a critical motivation in the development of legal standards and institutional mechanisms for the effective implementation of the prohibition of torture and ill-treatment. In these efforts, accountability for torture and ill-treatment has been tied not only to punishment, redress and reparation, but also more broadly to ensuring justice, reconciliation and the rule of law, and preventing future violations. Furthermore, accountable institutions are intrinsically linked to the achievement of Sustainable Development Goal 16, aimed at creating transparent and inclusive societies where justice is accessible to all. Nonetheless, normative, institutional and procedural shortcomings, as well as systematic denial, deliberate obstruction and purposeful evasion of accountability, remain widespread globally and, in conjunction, maintain a structural “accountability gap” of systemic proportions.

3. In the vast majority of cases, those responsible for perpetrating, instigating, or consenting or acquiescing to torture or ill-treatment – whether States, their officials and agents, organizations, corporations or private individuals – are not being held to account. This creates a culture of impunity which severely undermines the effectiveness and credibility of States’ international commitments towards eradicating torture and ill-treatment. It also compounds the pain and suffering inflicted by torture and ill-treatment by proliferating and prolonging the trauma and injustice endured by individual victims and wider communities.

4. In the light of these sobering observations, and in line with the encouragement by the Human Rights Council to observe a victim-centred approach in the exercise of the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,² the present report examines questions relating to accountability for torture and ill-treatment. To inform work on the report, the Special Rapporteur conducted broad consultations with experts, States and other stakeholders, including through the circulation of a questionnaire. For the purposes of the report, accountability is understood in a broad sense:

(a) As referring to processes, mechanisms and other circumstances in which relevant stakeholders are called upon to account for their acts or omissions in respect of torture or ill-treatment and to face consequences and make amends for any violations, and through which victims of such abuse can obtain appropriate reparation, including redress and rehabilitation;

(b) As being not only reactive but also proactive, and not only corrective but also restorative;

(c) As taking many forms, from legal accountability to political and public forms of accountability, including the recognition that torture or ill-treatment

¹ A/73/207, para. 58.

² Human Rights Council resolution 43/20.

occurred, assigning responsibility and providing acknowledgment and redress of the suffering and harm endured by victims;

(d) As pertaining not only to the accountability of individuals, but also to that of States, institutions, organizations and other collective or corporate entities that may commit or enable torture or ill-treatment.

5. The present report offers an overview of the most important legal and practical challenges conducive to the current systemic accountability gap for torture and ill-treatment, examines various functions and forms which accountability can take and, based on a clarified, consolidated and more comprehensive understanding of accountability, makes recommendations on measures that can be taken to improve worldwide accountability for torture or ill-treatment.

6. The examples provided in the present report are not aimed at singling out individual States, rather but to illustrate points for which there may be plenty of other examples, which could not be comprehensively covered within the word limit.

II. Significance of accountability for torture and ill-treatment

7. As a thematic priority of work, the Office of the United Nations High Commissioner for Human Rights stated that:

The rule of law and accountability for human rights violations are critical for prevention of violations, conflict, and violence, the building and sustaining of peace, and achievement of inclusive development. The costs of lawlessness are starkly evident across the world: in failures of justice and impunity for crimes, conflict over unaddressed grievances, and oppressive, unaccountable rule. We need governance systems in which all duty bearers, institutions and entities, public or private, are accountable to laws that are publicly promulgated, equally enforced, independently adjudicated, and consistent with international human rights norms and standards.³

8. Accountability for torture or ill-treatment signifies the holding to account of individuals, public authorities or the State itself as an entity, as well as corporations, organizations and other collective bodies, in respect of any act or omission that may engage their responsibility under the prohibition of torture and ill-treatment. Such accountability encompasses a duty to make amends for any misconduct, notably through appropriate reparations, including rehabilitation. Accountability is relational, and its beneficiaries are not only the immediate victims of violations, but also any individuals and communities affected, as well as the wider public. Mechanisms of accountability may take various forms, pertaining to the legal, political, economic or social domains. Moreover, while accountability is often associated with individual responsibility, it pertains not only to matters of individual culpability but also to collective or institutional misconduct, as well as systemic and structural failings.⁴

9. The absolute prohibition of torture and ill-treatment has been codified in numerous universal, regional and national legal instruments but also reflects a general principle of law, namely “elementary considerations of humanity”.⁵ The prohibition is authoritatively recognized as a core principle of customary international law and,

³ www.ohchr.org/EN/AboutUs/ManagementPlan/Pages/law-accountability.aspx.

⁴ Danielle Hanna Rached, “The concept(s) of accountability: form in search of substance”, *Leiden Journal of International Law*, vol. 29, No. 2 (June 2016), pp. 317–342.

⁵ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment of 27 June 1986, I.C.J. Reports 1986, p. 14, with reference to the *Corfu Channel case (United Kingdom of Great Britain and Northern Ireland v. Albania)*, Judgment of 9 April 1949, I.C.J. Reports 1949, p. 4.

as far as torture is concerned, as having attained peremptory status (*jus cogens*). It is a norm of law from which no derogation is permitted. This legal position reflects the moral as well as legal imperative of protecting all human beings from torture and ill-treatment, without exception or discrimination of any kind and regardless of jurisdiction, territory or nationality. Compliance with the prohibition on torture and other ill-treatment is therefore a non-negotiable, universal obligation to which all States must be held.

10. Investigating and redressing non-compliance with the prohibition of torture and other ill-treatment are inextricably linked to the absolute and non-derogable character of the prohibition and the imperative of securing everyone's right to be free from torture and ill-treatment. Evasion or obstruction of accountability for torture or ill-treatment therefore entails the violation not only of the concrete legal obligations that the present report sets out, but also of the spirit and purpose of the entire normative edifice derived from the prohibition of torture and ill-treatment.

11. Moreover, accountability for torture and ill-treatment is closely connected to the pursuit of justice and the rule of law.⁶ Holding culpable actors to account is a fundamental element of the process of securing justice for survivors, as well as of vindicating the legal norm(s) violated and thereby more broadly upholding the rule of law. At the same time, a widespread lack of accountability tends to go hand in hand with systemic injustice, and is conducive to oppressive, exploitative and arbitrary rule.

12. Unfortunately, in spite of the significance of accountability for the prohibition of torture and ill-treatment itself and for key values of the international legal order across the world, the vast majority of those responsible for perpetrating, instigating or consenting or acquiescing to torture or ill-treatment are not being held to account. Many national legal systems still do not adequately guarantee or effectively implement accountability for torture and ill-treatment, and some even establish legal and practical obstacles to accountability.⁷ Moreover, unduly narrow approaches to redressing torture and ill-treatment risk obscuring various facets of accountability and thereby restricting accountability's reparative, preventive and transformative potential.

A. State accountability for torture and ill-treatment

13. States are universally bound by the prohibition of torture and ill-treatment and must prevent, investigate, prosecute and redress any such act occurring within their territorial or personal jurisdiction. Torture and ill-treatment perpetrated, instigated or consented or acquiesced to by State agents or by individuals acting in an official capacity, including failure to act with due diligence to prevent such abuse, or to provide redress and reparation, conclusively amount to a violation of international law. On the international level, accountability for such violations is facilitated through a robust, but subsidiary, international and regional institutional framework.⁸ Primarily, however, accountability should be ensured at the national level, including through measures to ensure redress and non-recurrence.

14. On the international level, an important role in ensuring accountability for torture and ill-treatment is fulfilled by treaty-based judicial and quasi-judicial bodies mandated to oversee the implementation of specific human rights instruments, and by

⁶ Mark Bovens, "Analysing and assessing accountability: a conceptual framework", *European Law Journal*, vol. 13, No. 4 (7 June 2007), p. 447.

⁷ A/73/207, para. 24.

⁸ *Ibid.*, paras. 5–18.

the international criminal courts and tribunals that adjudicate a broad range of crimes, including torture and ill-treatment. Several international mechanisms serve to hold States accountable specifically in respect of their compliance with the prohibition of torture and ill-treatment, including the Committee against Torture, the Subcommittee on Prevention of Torture and the Special Rapporteur on torture. These are further complemented by monitoring and implementation mechanisms established through regional instruments. All these bodies' procedures – from monitoring and reporting to litigation – are aimed at maintaining a system of continuous accountability for torture and ill-treatment. This accountability takes different forms, which are complementary in nature. For example, through the reporting procedure, the Committee against Torture examines periodic reports submitted by States, raises specific concerns and makes recommendations through its concluding observations. The Committee also hears individual complaints, carries out confidential inquiries in response to reliable information on serious, grave or systematic violations by a State party, and issues general comments providing guidance for the interpretation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Subcommittee on Prevention of Torture conducts monitoring visits to States parties to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with a view to preventing and redressing torture and ill-treatment in places of deprivation of liberty. The Subcommittee also supports and provides advice on the establishment of a system of regular visits at the national level through national preventive mechanisms aimed at monitoring the treatment and conditions in places of deprivation of liberty. In contrast to treaty bodies, the Special Rapporteur on torture, mandated by Human Rights Council resolution [43/20](#), can engage in a direct dialogue with all States, regardless of their treaty obligations. In doing so, the Special Rapporteur transmits urgent appeals and other communications on behalf of individuals and groups exposed to acts or risks of torture or ill-treatment to the relevant Governments; undertakes official country visits with a view to assessing State practice, identifying challenges and providing recommendations in official reports; and submits thematic reports to the Human Rights Council and the General Assembly on key issues relating to the mandate, including recommendations aimed at improving the compliance of States with the prohibition of torture and ill-treatment in the thematic area under review.⁹

15. On the national level, continuous accountability for torture and ill-treatment is fostered through independent monitoring mechanisms operating according to internationally agreed standards, such as the national preventive mechanisms aimed specifically at the prevention of torture and ill-treatment,¹⁰ and national human rights institutions focusing on a broader range of human rights violations.¹¹ Also, depending on the context, domestic accountability may be ensured through a broad range of oversight and complaints mechanisms, such as parliamentary ombudspersons or specialized units or officials within the various relevant ministries and services, which can offer complaints procedures, investigate alleged misconduct, decide on disciplinary sanctions and refer relevant cases to the competent judicial authorities for prosecution and punishment.

16. In this regard, special emphasis should be placed on the contribution to accountability by bodies other than State institutions and, in particular, on the

⁹ On the effectiveness of State cooperation with the Special Rapporteur, see [A/HRC/46/26](#) and [A/HRC/46/26/Corr.1](#).

¹⁰ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Preventing Torture: The Role of National Preventive Mechanisms – A Practical Guide*, Professional Training Series No. 21 (New York and Geneva, 2018).

¹¹ Asia-Pacific Forum of National Human Rights Institutions, Association for the Prevention of Torture and OHCHR, *Preventing Torture: An Operational Guide for National Human Rights Institutions* (2010).

importance of a safe and supportive environment for civil society organizations, human rights defenders and a free and independent press. Likewise, the maintenance of the highest standards of transparency in government records and decision-making is indispensable for the pursuit of accountability for torture and ill-treatment. The invaluable work of civil society organizations, which document and report torture and ill-treatment, often in the face of systematic denial, deliberate obstruction or even threats and abuse on the part of State authorities, cannot be overstated.

17. The Convention against Torture requires States to ensure an effective system of continuous accountability, including through national legislation, policies and practices relevant to the prohibition, prevention, investigation and redress of torture and ill-treatment. For example, States should enact national legislation making torture, as defined in article 1 of the Convention, a specific offence subject to punishment commensurate with the gravity of the crime. The Committee against Torture stressed in its general comment No. 2 (2008) that torture must be made a distinct crime as that would “directly advance the Convention’s overarching aim”.¹² Moreover, article 11 of the Convention requires State authorities to maintain under systematic review existing rules, instructions, methods and practices related to the interviewing of suspects, as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment within their jurisdiction, with a view to preventing torture and ill-treatment. In conducting such review, States should be guided by the standards reflected in relevant international instruments, including soft law and expert guidance,¹³ and the advice provided by specialized independent bodies and civil society organizations and experts at both the national and international levels.

18. A critical dimension of accountability on the national level is the obligation of States: to promptly and impartially investigate acts of torture or ill-treatment suspected or alleged to have occurred within their jurisdiction; to ensure the right of alleged victims to complain to, and to have their case promptly and impartially examined by, the State’s competent authorities; and to ensure that victims obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.¹⁴

19. The duty to investigate is central to relevant jurisprudence by human rights bodies on the prohibition of torture and ill-treatment. In particular, it is firmly established in human rights case law that, where a violation of the prohibition is credibly alleged or suspected, States are bound to conduct a prompt, thorough and effective investigation aimed at establishing whether a violation has occurred; identifying and, where relevant, punishing those responsible; and providing redress for the victim(s).¹⁵ The duty to investigate is closely tied to securing redress and reparation for victims of torture and ill-treatment. The Human Rights Committee tied the duty to investigate to the right to an effective remedy, stating that: “[t]he right to lodge complaints against maltreatment prohibited by article 7 must be recognized in

¹² CAT/C/GC/2, para. 11.

¹³ For example, the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the Principles on Effective Interviewing for Investigations and Information Gathering (the Méndez Principles).

¹⁴ Convention against Torture, arts. 12–14.

¹⁵ See, inter alia, Inter-American Court of Human Rights, *Velásquez-Rodríguez v. Honduras*, Judgment of 29 July 1988; Human Rights Committee, general comment No. 20 (1992), para. 14; European Court of Human Rights, *Assenov and others v. Bulgaria* (application No. 24760/94), Judgment of 28 October 1998; and Human Rights Committee, *Teófila Casafranca de Gómez v. Peru*, Communication No. 981/2001 (CCPR/C/78/D/981/2001), 22 July 2003.

the domestic law. Complaints must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”¹⁶

20. Human rights jurisprudence delineates the duty of States to investigate in exacting terms, thus demonstrating the importance of accountability in fulfilling the right not to be tortured or ill-treated. As the European Court of Human Rights has elaborated:

The minimum standards applicable [in respect of the required investigation] include the requirements that the investigation be independent, impartial and subject to public scrutiny, and that the competent authorities act with exemplary diligence and promptness... In addition, for an investigation to be considered effective, the authorities must take whatever reasonable steps they can to secure the evidence concerning the incident, including, inter alia, a detailed statement concerning the allegations from the alleged victim, eyewitness testimony, forensic evidence and, where appropriate, additional medical reports.¹⁷

21. Moreover, the principle of thoroughness requires that:

The authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions....They must take all reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony and forensic evidence....Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of those responsible will risk falling foul of this standard.¹⁸

In order for an investigation to be independent and impartial, it must be firmly detached from the interests of those implicated in the alleged or suspected violation, and their hierarchical superiors, must be subject to public scrutiny and must ensure the effective participation of the victims or their next of kin, including by means of free legal representation.¹⁹

22. An investigation into whether torture or ill-treatment has occurred should be guided by the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment²⁰ and the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).²¹ These instruments are widely cited in relevant jurisprudence on the duty to investigate and outline a robust process for gathering evidence for the purpose of establishing whether torture has taken place.

23. Holding States and their institutions accountable in respect of incidents and patterns of torture or ill-treatment is vital, as a mere focus on individual responsibility

¹⁶ Human Rights Committee, general comment No. 20 (1992), para. 14.

¹⁷ European Court of Human Rights, *M and others v. Italy and Bulgaria* (application No 40020/03), Judgment of 31 July 2012, para. 100; see also European Court of Human Rights, *Çelik and İmret v. Turkey* (application No. 44093/98), Judgment of 26 October 2004, para. 55; and European Court of Human Rights, *Bati and others v. Turkey* (application Nos. 33097/96 and 57834/00), Judgment of 3 June 2004, para. 134.

¹⁸ European Court of Human Rights, *Sadkov v. Ukraine* (application No. 21987/05), Judgment of 6 July 2017, para. 92; see also Eric Svanidze, *Effective Investigation of Ill-Treatment: Guidelines on European Standards*, 1st and 2nd eds. (Council of Europe, 2009 and 2014).

¹⁹ European Court of Human Rights, *Savitskiy v. Ukraine* (application No. 38773/05), Judgment of 26 July 2012.

²⁰ Recommended by the General Assembly in its resolution 55/89 of 4 December 2000.

²¹ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol).

can operate to shield State authorities from a close review of institutional cultures, attitudes and/or practices, policies and laws which may have enabled or even encouraged or prescribed the violation. Relevant stakeholders observe that ensuring a systemic perspective to accountability is vital in contexts such as drug-related law enforcement, interrogation techniques, the policing of protests and the intersection between torture and corruption. Unfortunately, effective accountability at the level of State institutions and of the State's Government more broadly is often undermined or prevented by systematic denial, obstruction or diversion from institutional or systemic failings by focusing on the individual misconduct of so-called "bad apples".²² Such tendencies are widespread in spite of the prime importance of holding State agencies accountable with a view to identifying and addressing systemic and structural problems in order to ensure non-repetition.

B. Individual accountability for torture and ill-treatment

24. Those who perpetrate or are otherwise involved (through consent, instigation or acquiescence) in the infliction of torture or ill-treatment are implicated in one of the most serious violations of human rights. Holding these individuals accountable is a fundamental component of State obligations derived from the absolute and non-derogable prohibition of torture and ill-treatment. Individual accountability for torture and ill-treatment requires that individuals involved in violations of the prohibition, whether through acts or omissions, take or be assigned responsibility for their misconduct, face appropriate consequences and repair or contribute to repairing the harm caused for the benefit of victims, their next of kin and the wider community. While ensuring that individuals responsible for perpetrating or contributing to torture and ill-treatment are held to account, sanctioned and compelled to provide redress for the violation is an integral element of accountability for torture and ill-treatment, individual accountability is always complementary to State accountability, rather than being a substitute for State accountability or exhaustive of accountability for torture or ill-treatment.

25. Individual accountability for torture and ill-treatment is primarily sought by establishing criminal or civil liability, notably by means of a criminal investigation and prosecution or through relevant litigation. Prompt, independent, impartial and effective investigations, in accordance with the Istanbul Protocol, and legal accountability mechanisms not only ensure appropriate redress, but can also have a deterrent effect against the occurrence or repetition of violations. It is now firmly established in relevant jurisprudence that the duty of States to investigate credible allegations or suspected incidents of torture or ill-treatment requires them to pursue avenues of individual accountability that enable the identification and, where appropriate, the punishment of those responsible,²³ as well as the provision of reparations to the victim, which should encompass "compensation for the pecuniary and non-pecuniary damage flowing from the breach".²⁴

26. In practice, however, the overwhelming majority of perpetrators are never held to account and, of those who are, few receive sanctions commensurate with the gravity of their crimes. Widespread failure to hold perpetrators, whether State officials or non-State actors, accountable can create a prevailing sense that torture is largely tolerated or even desired rather than absolutely prohibited. The resulting climate of impunity in the widest sense sustains and proliferates practices of torture

²² [A/75/179](#).

²³ *Assenov and others*, para. 77.

²⁴ European Court of Human Rights, *Aleksakhin v. Ukraine* (application No. 31939/06), Judgment of 19 July 2012, para. 60.

and ill-treatment. This impunity is often shaped by formal obstacles to individual accountability enshrined in national laws, including, most notably, the absence of legal provisions specifically criminalizing torture and ill-treatment; the admissibility as evidence of self-incriminating confessions extracted through coercion; and the application of statutes of limitation, blanket amnesties and immunities or other jurisdictional impediments to the prosecution of torture and ill-treatment. Such obstacles tend to shield the powerful and abandon the vulnerable and powerless, and they are fundamentally incompatible with the duty of States to ensure accountability for torture or ill-treatment, redress and reparations for victims, and the effective prevention of such abuse.

27. The Special Rapporteur draws particular attention to the necessity of criminalizing, in national law, not only perpetrators of torture and ill-treatment, but also those whose complicity or participation in such abuse consists of superior orders, instigation, consent or acquiescence. Moreover, criminal responsibility can also arise from deliberate or negligent omission, most notably through command or superior responsibility as reflected in article 28 (a) of the Rome Statute of the International Criminal Court and recognized in customary international criminal law. Accordingly:

A superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
- (ii) The crimes concerned activities that were within the effective responsibility and control of the superior; and
- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.²⁵

Thus, civilian and military superiors, including political leaders, failing to prevent or suppress torture or ill-treatment amounting to war crimes or crimes against humanity, or failing to prosecute their subordinates for such crimes, may well incur individual criminal responsibility by omission.

28. In this connection, the Special Rapporteur emphasizes the duty of judges and courts to enforce the law by examining cases involving torture and ill-treatment and, if allegations are confirmed, prosecuting and punishing perpetrators irrespective of their status or level of authority. The courts also have an essential role in overseeing the main components of accountability, notably through guaranteeing the independence and impartiality of criminal investigations and applying the exclusionary rule. For example, in Nepal, where the police were reluctant to investigate cases of torture or ill-treatment, the Supreme Court ordered the Government to establish a separate body, composed of independent experts separate from the police, to investigate cases of torture or ill-treatment in which police officials had allegedly been involved.²⁶ The implementation of anti-torture legislation and the

²⁵ Rome Statute of the International Criminal Court, art. 28 (b).

²⁶ Binod Ghimire, "Nepal has not seen a single conviction for torture and custodial deaths in the past three years", *The Kathmandu Post*, 7 June 2021, available at <https://kathmandupost.com/national/2021/06/27/nepal-has-not-seen-a-single-conviction-for-torture-and-custodial-deaths-in-the-past-three-years>.

holding to account of State officials and individuals involved in such crimes is the most effective measure of prevention and a deterrent against reoccurrence.

C. Accountability beyond the juridical sphere

29. Accurately understood as involving an obligation to explain and justify conduct,²⁷ as well as to redress and repair violations, accountability extends beyond the legal sphere and can be pursued and realized in non-judicial forums. Beyond the legal process and the court system, various other accountability processes and platforms can help effectively to uphold the virtues of continuous accountability, as well as the values of transparency, good governance and the rule of law. In the political arena, robust mechanisms enabling the legislature to hold members of the executive to account, and allowing the electorate to hold its elected representatives to account, are vital accountability tools, as is a thriving free press and civil society.

30. Some States have adopted various forms of non-judicial mechanisms of complaints and investigation within the security sector. For example, in Portugal, the Inspectorate General of Home Affairs²⁸ was established as an independent body of external control of police activity, under the Ministry of Home Affairs, conducting inspections and investigations to ensure the respect of fundamental rights of citizens and police compliance with the law. In Mexico, the Special Prosecutor's Office created a specialized unit for the investigation of the crime of torture. Those mechanisms, although in some cases lacking financial and human resources to effectively perform their mandates, pave the way for a culture of accountability for torture and ill-treatment.

31. However, in many situations marked by widespread and systematic allegations of torture and ill-treatment, there is no prospect of domestic investigation due to a lack of political will. In such circumstances in particular, national human rights institutions, civil society and media actors may be vital in documenting, investigating and pursuing accountability for the torture and ill-treatment. For example, the national inquiry conducted by the National Human Rights Commission in Mexico on the "Iguala case",²⁹ in which 6 people lost their lives, 42 were injured and 43 students disappeared, found a clear link between authorities and organized crime, including collusion of federal, local and municipal authorities to promote, allow or refrain from acting in the face of such links. This inquiry was instrumental in establishing the truth for families of victims in the face of lack of transparency of the State authorities' investigation. Likewise, a number of international and Belarusian non-governmental organizations have created the International Accountability Platform for Belarus to collect and preserve evidence of torture for future use, and to support human rights and universal jurisdiction claims. The Human Rights Council subsequently decided to create a United Nations investigative mechanism, which is expected to become operational in 2022.

32. The Special Rapporteur also refers to his predecessor's findings on the utility and significance of commissions of inquiry as valuable mechanisms for the investigation of widespread infliction of torture and ill-treatment. Such commissions can serve to pursue accountability for grave abuses with a focus on truth, acknowledgement and reparation going beyond the establishment of individual (or institutional) legal liability. Commissions of inquiry could consist of national and international commissions of inquiry and truth commissions, as well as investigations

²⁷ Mark Bovens, "Two concepts of accountability: accountability as a virtue and as a mechanism", *West European Politics*, vol. 3, No. 5 (2010), p. 946.

²⁸ www.igai.pt/en/Pages/default.aspx.

²⁹ https://www.cndh.org.mx/sites/default/files/documentos/2019-03/Com_2019_089.pdf.

undertaken by national human rights institutions, driven by the pursuit of accountability and the vindication of victims' rights. They are an especially potent tool for investigating patterns and systematic or widespread practices of torture and other cruel, inhuman or degrading treatment or punishment, often employed in States emerging from conflict or in a repressive regime. According to previous Special Rapporteur Juan E. Méndez:

Unlike other mechanisms commonly engaged in the aftermath of allegations of torture and other forms of ill-treatment, such as criminal investigations and prosecutions, commissions of inquiry provide unique opportunities for a deeper understanding of the underlying context in which violations were committed, review of governmental policies, practices and institutional shortcomings, truth-telling and contributing to the healing of victim communities, and independent expert recommendations on reparation and guarantees of non-repetition.³⁰

33. Commissions of inquiry can uncover distinct information from what is disclosed through formal criminal investigation and prosecution, or civil proceedings. In particular, they tend to “delve more deeply and broadly into the relevant facts and circumstances that led to the violations than a prosecutorial investigative authority would”, helping “to establish a more complete picture of how and why torture occurred by analysing not just the human, legal and political consequences of a State policy of torture but also by revealing insights into wider patterns of violations, institutional involvement and responsibility, and command responsibility”. Moreover, these commissions can make use of information that is not admissible in a court of law because the evidentiary standards applicable are not as stringent or rigid.³¹

34. An important dimension of accountability beyond the strictly juridical sphere is the pursuit of acknowledgement and truth, including historical truth and reparation, a dimension that may be missed if the focus is placed solely on the legal process, whether criminal, civil or administrative. Given the ubiquity of torture and ill-treatment throughout history and the world, a meaningful pursuit of accountability for torture and ill-treatment should involve a historical reckoning with practices of torture and ill-treatment, seeking truth and reparation, including effective guarantees of non-repetition. One mechanism by which such an endeavour can be pursued are commissions of inquiry which operate in line with the Istanbul Protocol and the recommendations previously made by this mandate.³²

35. An important element towards achieving accountability for torture and ill-treatment is the acknowledgment that such crimes took place. An example of such practice is the apology of the Government of the United Kingdom of Great Britain and Northern Ireland to the Mau movement veterans, who were tortured while held in detention camps by the Government of the United Kingdom in the 1950s, admitting that “Kenyans were subject to torture and other forms of ill treatment at the hands of the colonial administration. The British government sincerely regrets that these abuses took place, and that they marred Kenya’s progress towards independence. Torture and ill treatment are abhorrent violations of human dignity which we unreservedly condemn.”³³ Such acknowledgments can be an important first step towards accountability, truth and reconciliation, including reparation and rehabilitation of victims and their relatives.

36. The Special Rapporteur calls for the adoption of a systematic and comprehensive approach to accountability for torture and ill-treatment, on both the

³⁰ A/HRC/19/61, para. 78.

³¹ Ibid., paras. 52 and 53.

³² Ibid., paras. 47–77 and 78–79.

³³ William Hague, statement to Parliament on settlement of Mau claims, 6 June 2013, available at www.gov.uk/government/news/statement-to-parliament-on-settlement-of-mau-mau-claims.

domestic and international levels, through the acknowledgement of such violations and the commitment to create effective mechanisms of redress and rehabilitation.

III. Accountability and prevention

37. Accountability is not just an *ex post facto* obligation. Rather, the meaningful pursuit of accountability for torture or ill-treatment should be understood to be a continuous endeavour, not limited to the aftermath of violations of the prohibition. The proactive and continuous nature of accountability is tied to the obligation of States to prevent torture and ill-treatment, which is well elaborated both in treaty instruments³⁴ and in a rich corpus of human rights jurisprudence.³⁵ It requires mechanisms and procedures to be in place to establish whether torture or ill-treatment is taking place, identify the risks factors conducive to torture and ill-treatment, and assess what is being done in the “here and now” to prevent and/or put an end to practices of torture or ill-treatment.

38. The establishment of effective mechanisms of accountability encourages a culture of transparency in State institutions and promotes human rights-compliant practices. National preventive mechanisms created in accordance with the Optional Protocol to the Convention against Torture, with a view to promoting independent monitoring and accountability of institutions where persons are deprived of their liberty, through a system of unannounced visits to places of detention, are an example of preventive accountability. Such institutions aim to continuously analyse the system of deprivation of liberty and all its structural aspects, considering risks factors at the institutional, legal and policy levels and providing recommendations and advice to State authorities with the purpose of improving the treatment and conditions of persons deprived of their liberty and establishing a society where the principles of human rights and the rule of law are observed.

39. Among other legal mechanisms of accountability which include fundamental safeguards that need to be systematically observed and guaranteed are the rights of detained persons to contact a lawyer and to be examined by a medical doctor, which constitute mechanisms of accountability and prevention.³⁶ Access to a lawyer from the outset of detention, and throughout judicial proceedings, represents a significant safeguard against torture and ill-treatment. Lawyers warrant the application of the law, detect and report abusive practices, inform the detainees about their rights to complain without being subjected to reprisals, and provide legal support to obtain redress and rehabilitation. Furthermore, judges and lawyers can be guarantors of the observance of principles of fair trial, including the exclusion of any evidence obtained under torture or coercion.

40. The pursuit of non-recurrence is not only an integral element of the duty to investigate but is also associated with the “guarantees of non-repetition”, which are part of the reparations outlined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.³⁷ As previously highlighted by the Special Rapporteur on violence against women, its causes and consequences, the need to guarantee the non-repetition of the violation at issue should trigger “a discussion about the underlying structural causes of the violence”, including its “gendered manifestations”, as well as “about the broader

³⁴ See, notably, Convention against Torture, arts. 2, 11 and 16; see also [CAT/C/GC/2](#).

³⁵ [A/74/148](#), paras. 22–23.

³⁶ [A/73/207](#), para. 26.

³⁷ General Assembly resolution [60/147](#), annex, paras. 18 and 23.

institutional or legal reforms that might be called for to ensure non-repetition”.³⁸ Accordingly, full accountability for torture and ill-treatment, to capture both the reparative and preventive functions of accountability, should involve establishing and addressing the wider circumstances in which such abuse took place and/or in which any more systematic or systemic patterns of violation are embedded.

41. Indeed, the reparative dimension of accountability is not exhausted by redress for the specific violation. Rather, a proper recognition of the gravity of torture and ill-treatment, and of the wider circumstances in which such abuse was embedded, calls for transformative reparations. Transformative reparations are orientated not only at redressing or correcting the individual violations at issue themselves, but also at transforming the enabling conditions in which such violations have occurred and proliferated. This transformative dimension of reparations attacks the wider circumstances conducive to such violations, and by implication has significant preventive potential.

42. In particular, it is well-established that torture and ill-treatment spread and metastasize in conditions in which systemic discrimination, material inequality and other sources of stigmatization, marginalization, exclusion and vulnerability prevail.³⁹ Accountability in its fullest sense must involve recognizing and seeking to transform these conditions. The recognition of such conditions can be enabled through: (a) the adoption of a wide lens in the investigation of alleged or suspected incidents of torture or ill-treatment, which should be capable of establishing the existence of a pattern or systemic issue, as well as the wider factors enabling or entrenching abuse; and (b) the examination of such systemic and structural factors by mechanisms orientated at preventing torture on the national and international plane. The transformation of these conditions would include revising violent or discriminatory political narratives, policies and practices, as well as pursuing measures to remedy legal, structural and socioeconomic conditions that may increase exposure to violence and abuse by State officials and non-State actors.⁴⁰ A truly transformative approach to accountability for torture and ill-treatment should accommodate and embrace socioeconomic, redistributive measures that meaningfully alleviate the unequal structures in which persons are systematically victimized.

43. Crucially, a transformative orientation means that accountability mechanisms must look beyond laws and procedures that apportion individual responsibility for the wrongdoing at issue and include wider processes of inquiry, reparation and reform that are better capable of tackling the “ecology” of torture.⁴¹ As highlighted by the mandate of the Special Rapporteur on violence against women: “While criminal and tort procedures may seek to apportion individual responsibility for moral and material harm and grant reparations to victims, they do not provide the proper framework for rehabilitation and guarantees of non-repetition, which may have the greatest transformative potential.”⁴² Accountability, therefore, must be understood as a participatory process which identifies, acknowledges and addresses the legal and institutional framework, as well as the structural and environmental conditions, which enabled the violation, and is capable of triggering transformative responses to these findings.

³⁸ [A/HRC/14/22](#), para. 62.

³⁹ [A/73/207](#), paras. 60–74; see also [A/HRC/13/39/Add.5](#), paras. 171–172.

⁴⁰ [A/73/207](#), para. 77.

⁴¹ Danielle Celermajer, *The Prevention of Torture: An Ecological Approach* (Cambridge University Press, 2018).

⁴² *Ibid*, para. 36.

IV. Accountability and reparation, including rehabilitation

44. Accountability for torture and ill-treatment requires processes and mechanisms to be available and effectively deployed to deliver, either individually or in combination, full reparation to victims of torture and ill-treatment. Full reparation is understood to encompass restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁴³ It should be emphasized that the reparations offered must be, and be implemented in a manner that is, gender-sensitive, and furthermore must take into account the race, ethnic, religious or indigenous background, social or migration status, sexuality, age or disability of the victim(s).

45. Restitution should, whenever possible, restore the victim to the original situation before the torture or ill-treatment occurred. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case. Rehabilitation should include medical and psychological care, including trauma therapy, as well as legal and social services. Satisfaction should include the cessation of continuing violations, full and public disclosure of the truth in respect of what occurred, an official declaration or a judicial decision restoring the dignity, reputation and rights of the victim and of persons closely connected with the victim, a public apology that acknowledges the facts and accepts responsibility, and appropriate sanctions imposed for criminal wrongdoing. Guarantees of non-repetition encompass measures that ensure civilian oversight of law enforcement and military authorities; strengthen the independence of the judiciary and protect legal, medical, health-care and media professionals and human rights defenders; provide education and training to all relevant authorities to promote better compliance with the prohibition; and review and reform laws contributing to or allowing torture or ill-treatment to occur.⁴⁴

46. The Special Rapporteur would place particular emphasis on holistic rehabilitation for victims of torture and ill-treatment, both as an outcome of accountability processes and as a mechanism supporting victims to engage with such processes. In particular, considering the length and complication of many accountability processes and the urgent need of victims, victims of torture or ill-treatment should be provided with the means for as full a rehabilitation as possible at the earliest possible point in time without awaiting the finalization of proceedings. At the same time, the Rapporteur would emphasize that rehabilitation is a fundamental entitlement of all victims of torture or ill-treatment, irrespective of the progress of any investigatory or other accountability-driven proceedings and the involvement of the victims therein.

47. Victims should participate and be foregrounded in determining what amounts to meaningful reparation and rehabilitation in response to their abuse. Victims are best placed to define what meaningful reparation is, for example, in relation to the content and form of public apologies and from whom they are comfortable receiving rehabilitation services. Both in individual and collective accountability processes, victims should have effective access to present their views on this issue. Fundamentally, therefore, accountability processes should be reparative and responsive to the needs of victims. The pursuit of redress and the holding of individuals and States responsible for torture and ill-treatment should operate alongside restorative measures for victims of torture and ill-treatment, which

⁴³ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, paras. 18–23.

⁴⁴ *Ibid.*, paras. 19–23.

foreground their well-being and are orientated at repairing the trauma they have endured.

48. Going further than this, as discussed above, reparations should be transformative: they should seek to alleviate the enabling conditions in which torture and ill-treatment occur and proliferate, including the factors contributing to the marginalization and disempowerment of persons who are systematically victimized. The Rapporteur would also underline that reparations should be gender-sensitive and appropriately address the particular challenges faced by women and girls in the context or aftermath of serious violence.⁴⁵ A gender-sensitive approach to reparations demands a transformative orientation that seeks to alleviate the conditions in which women and girls are systemically subordinated and abused.⁴⁶

V. Key challenges to accountability

49. The key challenges set out below relate primarily to State responses to torture and ill-treatment, but can also concern the behaviour of non-State actors and how it is addressed by State institutions.

A. Denial

50. State responses to allegations or suspicions of torture and ill-treatment are often characterized by denial and obfuscation rather than by the rigorous pursuit of accountability. Through denying that torture or ill-treatment took place and controlling the levers of investigation, States can effectively prevent any process of accountability from even beginning. In this context, the Special Rapporteur recalls his recent observation that State responses to credible allegations of torture and ill-treatment are generally characterized by one of three patterns of denial: denial of fact, denial of responsibility or denial of wrongfulness. Depending on the circumstances, different strategies of denial can overlap or can be applied cumulatively or consecutively, both on an individual and on a collective scale. Denial is often practised on an institutional and/or systemic level, and can go hand in hand with secrecy, evasion or diffusion of responsibility, the neutralization or undermining of legal and political checks and balances, and the spread of indifference and complacency within governance structures.⁴⁷

51. Within a systemic culture of denial, those alleging torture or ill-treatment face an uphill struggle. One of the most significant reasons for the accountability gap in respect of torture and ill-treatment is the profound power asymmetry between perpetrators and victims, particularly in terms of institutional control, political strength or support, and resources, as well as discrimination and the enduring legacies of colonialism. These power imbalances lead to double standards in the application of the law, benefiting not only States but also powerful and influential multinational corporations, as well as individuals that are implicated in grave exploitation and ill-treatment of individuals and communities.

⁴⁵ Ruth Rubio-Marín, ed., *What Happened to the Women? Gender and Reparations for Human Rights Violations* (New York, Social Science Research Council, 2006); and Ruth Rubio-Marín, ed., *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press, 2009).

⁴⁶ [A/HRC/14/22](#).

⁴⁷ [A/75/179](#).

B. Obstruction

52. One of the most significant challenges in respect of accountability for torture and ill-treatment is the deliberate and/or systematic obstruction of accountability processes.⁴⁸ Obstructions operate on various levels. They may arise on a systemic level, and include legal and structural barriers to accountability. In many States, acts of torture or ill-treatment are subject to statutes of limitations, contrary to the absolute character of the prohibition and the Committee against Torture’s jurisprudence,⁴⁹ and in contradiction of the obligation to investigate, prosecute and sanction acts of torture and other ill-treatment.⁵⁰ Statutes of limitation can be particularly challenging for victims of torture and ill-treatment, as they may face trauma, symptoms of post-traumatic stress disorder such as avoidance and dissociation, or stigmatization and marginalization, all of which can hinder their timely engagement with the legal process. Furthermore, some legal systems provide for immunities from prosecution for law enforcement officials involved in acts of torture and ill-treatment, under justifications such as national security.⁵¹

53. Disturbingly, a growing number of States seem prepared to restrict accountability for torture and ill-treatment by adopting such measures, which operate in effect as a licence to torture and ill-treat in complete impunity. Examples of such initiatives include the Overseas Operations Act of the United Kingdom, a previous version of which risked creating a de facto statute of limitations for the prosecution of torture and ill-treatment. The final version of the Act eventually excluded torture and other international crimes from the scope of the law, but it is evident that such attempts to circumvent the absolute prohibition embolden other States to question long-held assumptions about the absolute character of the prohibition of torture and ill-treatment. For instance, in the Sudan, immunities are granted to a range of security actors, including the police, army and intelligence services in respect of all acts “related to official business”, and the decision to waive immunities lies with the director of each body, without judicial review. The transitional Government of the Sudan has eliminated some immunities through recent legislative amendments, but most accountability efforts remain stymied by a failure to enforce the amendments, as well as other existing immunities.⁵² More broadly, immunities also pose challenges to prosecution of and redress for “overseas” torture under the principle of universal jurisdiction.⁵³

54. Obstructions also consist of targeted action aimed at hindering particular investigations and avoiding accountability. The Special Rapporteur has received extensive indications over the course of his mandate, and in response to the questionnaire, of victims of torture and ill-treatment often being ignored or being denied access to vital evidence, including their own medical reports, and of other deliberate interference with procedures aimed at revealing State wrongdoing and bringing relevant actors to account. Furthermore, the obstruction of accountability for torture and ill-treatment is often undertaken by disempowering those pursuing

⁴⁸ Ruth Blakeley and Sam Raphael, “Accountability, denial and the future-proofing of British torture”, *International Affairs*, vol. 96, No. 3 (May 2020), p. 691.

⁴⁹ See, for example, CAT/C/ESP/CO/6, para. 9; CAT/C/GTM/CO/5-6, para. 8; and CAT/C/UZB/CO/5, para. 25.

⁵⁰ Committee against Torture, *Sonko v. Spain*, Communication No. 368/2008 (CAT/C/47/D/368/2008), para. 10.6.

⁵¹ See, for example, CAT/C/COD/CO/2, para. 22.

⁵² REDRESS, “Sudan: human rights two years after Al-Bashir’s removal” (2021).

⁵³ Mark Gibney and Erik Roxström, “What a pity! Sovereign immunity, State responsibility, and the diminution of accountability under international human rights law”, *Journal of Human Rights*, vol. 11, No. 4 (2012), pp. 443–459.

accountability, notably by undermining the work of civil society, human rights defenders and others seeking to hold powerful actors to account.

C. Delay

55. Although the prompt and expeditious investigation of credible allegations or suspected incidents of torture or ill-treatment is a fundamental dimension of the duty of States to investigate, there are often long delays across every stage of the investigative process, from the gathering of relevant evidence to the pursuit and conclusion of civil and criminal cases against perpetrators. Such delays can serve to degrade evidence, demoralize victims, exceed applicable statutes of limitations or undermine the establishment of truth about the relevant facts. Such delays may either be deliberately aimed at obstructing accountability, or simply be the product of deficient and/or underresourced investigatory mechanisms, yet the outcome of serious delays in accountability processes is equally obstructive, whether this is intended or not.

56. The Special Rapporteur has received extensive reports of the compounding of delays in the context of the ongoing pandemic crisis of many processes that enable victims or potential victims of torture or ill-treatment to obtain access to justice and/or seek to challenge their detention, where relevant. This exacerbates the vulnerability experienced by those victimized and/or deprived of their liberty.

D. Scapegoating

57. One of the major shortcomings in the way accountability for torture and ill-treatment is widely conceived and pursued is a tendency to view incidents of torture and ill-treatment as only implicating a few “bad apples”: isolated individuals or groups acting aberrantly in isolated incidents, who are then used as scapegoats for a structural or systemic problem. Indeed, experience demonstrates that cases of torture and ill-treatment rarely amount to isolated events and that State agents involved in such abuse are rarely prosecuted or punished. Rather, such acts are almost always part of a broader system or pattern of abuse, of which the relevant authorities are generally well aware if not implicated, and which is often sustained by normative, institutional and structural enabling factors. Unfortunately, when abuse is acknowledged, State responses regularly tend to perpetuate the few “bad apples” thesis: the idea that torture is typically a unique malevolent act undertaken by particularly corrupt or depraved individuals, rather than a practice allowed or even encouraged by existing laws, policies and behaviours. This in turn can allow States to deny the existence of any structural or systemic pattern and absolve themselves of broader institutional responsibility, and therefore also of the need to reform laws, policies and practices that encourage abuse or allow it to persist.

E. Deficient and/or underfunded procedures

58. There is frequently a substantial gap between legal provisions and the reality faced by those seeking to hold individuals and authorities accountable for torture and ill-treatment. The mandate repeatedly observes and receives reports of various de facto limitations and obstacles arising across many different stages of the accountability process. These include, from the outset, barriers and delays in the exercise of the right of detainees to contact a third party or to receive legal assistance, delays or denials of access to an independent medical doctor, preventing prompt detection and documentation, lack of interpretation services for those who need them

and reliance on interrogation techniques heavily based on coercion and intimidation. Deficiencies frequently arise in the handling of complaints, notably a lack of information about complaints procedures, undue delays and significant shortcomings in the investigation of complaints, lack of independence or impartiality of the officials comprising the relevant complaints body or inadequate protection against reprisals and intimidation. Investigatory mechanisms are often underresourced, underequipped and/or undertrained, leading to poor investigative procedures and outcomes.

F. Barriers to victim participation

59. It is also widely observed that legal processes, including investigatory and judicial procedures and, notably, the criminal legal process, can present serious barriers to meaningful participation by victims of torture and ill-treatment, who may suffer from grave psychological trauma. For instance, victims of sexual violence are often reluctant to disclose their experience even in therapeutic settings, yet they may have to or be expected to do so in interviews with investigators or judges, who may interview them only a single time and base charging and judicial decisions solely on such interviews. Similarly, the effects of trauma on memory and recall and the provision of testimony are not widely understood, and key actors within investigatory and judicial procedures often have unrealistic expectations about what details victims should be able to recall and how they should tell their story. For example, judges often find a flat affect, which may signal dissociation, to lack credibility, or they may incorrectly associate inconsistencies in minor details with lying. The doubting of victims' testimony in such circumstances not only denies victims the possibility of effective redress but can traumatize them further and cause revictimization.

60. There are other reasons why survivors are unwilling or unable to report their experiences to the criminal justice system, including mistrust of State authorities, fear of reprisals and perceptions that legal accountability is slow and often unsuccessful or unresponsive to survivors' immediate needs such as safety and material support. These de facto barriers to victim participation are very difficult to alleviate, and require meaningful structural reform.

G. The long shadow of impunity

61. As experts on the phenomenon of torture and ill-treatment have observed, States' contemporary practice of, and involvement in, such abuse is deeply rooted in historical practices of torture and ill-treatment and the conditions that enabled them, notably in colonial contexts.⁵⁴ A failure to fully account for the historical wrongdoing and injustices that shape present abuse is a key part of the symbiotic relationship between past and present torture. This insight is transposable to the continuum of torture and ill-treatment without accountability across the world and across history. The evasion of accountability connects past, present and future practices of torture and ill-treatment. A refusal or failure to acknowledge and address past torture and ill-treatment shapes present tolerance for such practices and drives future practices of torture, ill-treatment and further evasion of accountability. No lessons are learned, no reparations are made and no guarantees of non-repetition are offered.

⁵⁴ Blakeley and Raphael, "Accountability, denial and the future-proofing of British torture", p. 692.

H. Torture and ill-treatment as a form of punishment

62. Legislation providing for corporal punishment or chastisement and/or tolerating domestic violence and sexual abuse, in particular against women and children, stigmatization and persecution based on sexual orientation, or any other discriminatory treatment or punishment places persons at a higher risk of torture and ill-treatment. Such practices are incompatible with a contemporary understanding of human dignity and, therefore, cannot be justified as “lawful sanctions” within the meaning of article 1 of the Convention against Torture.⁵⁵

63. Any form of discrimination, whether through stigmatization, demonization, marginalization, disregard or otherwise, almost invariably entails a significantly increased risk of torture or ill-treatment. Indeed, not only is the principle of non-discrimination a general principle in the protection of human rights, but the intentional infliction of severe pain and suffering “for any reason based on discrimination of any kind” also constitutes a distinct form of torture. Any dehumanizing ideologies that mark certain persons or groups as inferior or unworthy of human rights protections must be rejected as incompatible with the absolute and non-derogable prohibition of torture and ill-treatment and with human dignity as enshrined in the Universal Declaration of Human Rights as a whole.⁵⁶

VI. Conclusions and recommendations

Criminalization of torture and ill-treatment in law and practice

64. States should review their national legislation to ensure that torture is included as an offence, in accordance with the definition provided for in article 1 of the Convention against Torture, and indicate sanctions commensurate with the gravity of the crime. Legal provisions should be complemented and reinforced by the adoption of policies allowing zero tolerance for abusive practices and centred on the protection of human dignity. Such policies could be reflected in the elaboration of rules and procedures for law enforcement agencies to ensure the compliance of their operations with principles of human rights and impose disciplinary measures in cases of misconduct.

Overcoming patterns of denial

65. Accountability for torture and ill-treatment can be realized only if States overcome their patterns of denial and obstruction of accountability processes and demonstrate the political will to hold themselves and others accountable for torture and ill-treatment in all circumstances in which such violation occurs, including by lifting the culture of secrecy that often surrounds the operations in which torture and ill-treatment occur. As the mandate has previously observed, the prohibition of torture and ill-treatment and associated legal duties must be interpreted and implemented in good faith and in line with the object and purpose of protecting the inherent dignity of every human being. Accordingly, any governance and judicial systems based on intimidation, discrimination, violence and coercion must be reformed, and independent and impartial monitoring and accountability rigorously implemented to ensure compliance with the absolute and non-derogable prohibition of torture and ill-treatment.⁵⁷

⁵⁵ A/73/207, para. 44.

⁵⁶ Ibid., para. 74.

⁵⁷ A/HRC/46/26, para. 73.

Fostering continuous accountability

66. State Governments should actively foster, and remove all barriers to, continuous accountability for torture and ill-treatment. This encompasses:

(a) Ratifying, without reservations, the Convention against Torture and its Optional Protocol, and setting up national preventive mechanisms, with unconditional access to all places of deprivation of liberty, sufficient resources and de jure and de facto independence;

(b) Cooperating fully with international bodies which hold States to account for their compliance with the prohibition of torture and ill-treatment, including the Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on torture, and other relevant treaty bodies and independent mandates;

(c) Upholding the highest standards of freedom of information and transparency regarding State practices;

(d) Fostering democratic deliberation on all matters having an impact on the adherence of States to the prohibition of torture and ill-treatment, including by enabling civil society organizations, human rights defenders and investigative journalists to document violations of human rights and support victims and their families;

(e) Facilitating through cooperation and material support, and not interfering with, the work of investigative and judicial authorities and other bodies engaged in the pursuit of accountability for torture and ill-treatment;

(f) Guaranteeing access to fundamental safeguards against torture and ill-treatment from the outset of deprivation of liberty, including access to legal representation, contact with family and the right to be examined by an independent medical doctor;

(g) Ensuring that mechanisms tasked with investigating allegations of torture conduct their work in full independence and impartiality, and in compliance with the standards provided for in the Istanbul Protocol.

Adequate capacity-building and resourcing of accountability mechanisms

67. States should dedicate adequate resources to, and build the capacity of, investigatory, prosecuting and judicial authorities and other bodies engaged in the pursuit of accountability for torture and ill-treatment, as well as rehabilitation centres for victims of torture and ill-treatment. Given the widespread shortcomings in accountability processes identified in the present report, all States should consider increasing the resources allocated to accountability mechanisms and to the provision of reparation, including rehabilitation, for torture and ill-treatment.

Support for civil society and human rights defenders

68. States should ensure that civil society and, in particular, human rights defenders can work in an environment free from threats, discrimination and harassment, and that they can freely access, document and impart information that enables accountability for victims of torture and ill-treatment.

Systematic prompt and impartial investigations

69. States should uphold their responsibility to investigate all allegations of torture and ill-treatment that are brought to their attention, as well as “whenever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”. This obligation to investigate is extended to the cases

documented and reported by civil society organizations, and allegations transmitted by the Special Rapporteur on torture.

A focus on contextualization and prevention

70. As torture and ill-treatment remain widespread in spite of continued efforts to eradicate them, accountability must be pursued on a wide scale to identify patterns, systems and structures of abuse, detect risky policies and practices, and develop appropriate responses aimed not only at redress but also at prevention. To this end, States should have in place and effectively implement layered accountability mechanisms that provide legal avenues for establishing civil and criminal liability for torture and ill-treatment, as well as the responsibility of State bodies for involvement in torture and ill-treatment; ensure the non-repetition of violations, whether individual or systematic; and introduce systemic changes aimed at eliminating abusive practices and enhancing protective measures against such practices.

Full reparation, including rehabilitation

71. States should establish and implement accountability procedures that deliver, either individually or in combination, full reparation to victims of torture and ill-treatment, understood to include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.⁵⁸ Reparations programmes must be designed and implemented in consultation with victims and their representatives and must be, and be implemented in a manner that is, gender-sensitive, and furthermore take into account the race, ethnic, religious or indigenous background, social or migration status, sexuality, age or disability of the victim(s). Victims of torture or ill-treatment, and their families, must be provided with the means for as full a rehabilitation as possible at the earliest possible time within accountability proceedings.

Facilitating the active participation of victims and other stakeholders

72. States should facilitate the full and active participation of victims and survivors in accountability processes. In facilitating this, the category of “victim”⁵⁹ should be understood in a wide sense to include any persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law or serious violations of international humanitarian law.⁶⁰ In order for accountability processes to be effective in redressing and repairing the harm caused and ensuring that it does not happen again, it is vital that States engage not only immediate victims and survivors but also their families and communities, as well as other actors with specific knowledge and expertise relevant to the case. This includes victims’ organizations, civil society organizations, torture rehabilitation centres, medical forensic experts and experts from regional and international organizations.

⁵⁸ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, paras. 18–23.

⁵⁹ In line with the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the term “victim” should also, where appropriate, include the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

⁶⁰ *Ibid.*, para. 8.

Ensuring accessibility

73. Special measures should be taken to make accountability processes effectively accessible for persons with particular needs or in particular situations of vulnerability, such as women and children, persons with psychosocial or learning disabilities, persons experiencing mental distress, including post-traumatic stress disorder, and any persons facing difficulty in understanding, speaking, reading or writing in the official language(s) employed in the proceedings. Access to rehabilitation should be provided at the earliest possible opportunity, including as a means of facilitating the participation of victims in accountability processes. Additionally, States should take measures to alleviate the stigmatization and marginalization faced by many victims of torture and ill-treatment, including asylum-seekers, drug users and people living with HIV.⁶¹

Holding States and individuals responsible for accountability deficits

74. State failure to establish appropriate accountability mechanisms or to take reasonable and adequate measures to secure accountability for torture and ill-treatment violates the prohibition on torture and ill-treatment and should be condemned accordingly on the national, regional and international planes. Moreover, it should be recalled that widespread or systematic breaches of the prohibition of torture and ill-treatment not only engage the legal responsibility of States but may also give rise to individual criminal responsibility for crimes against humanity and war crimes before international and national courts. Failure to take the measures required by law to ensure accountability for torture and ill-treatment gives rise to legal responsibility, including not only State responsibility but also, in some circumstances, individual responsibility under international criminal law.

⁶¹ See also [A/73/207](#), paras. 60–74 and 77.