

Call for input to thematic report of the SR Torture to HRC49 (March 2022):

“Impact of thematic reports presented 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 (HRC), have consistently renewed the mandate of the Special Rapporteur.

Pursuant to the HRC resolution 43/20, the Special Rapporteur, Professor Nils Melzer, is initiating the consultation to his upcoming thematic report to the 49th Session of the HRC in March 2022.

II. Background

The mandate of the Special Rapporteur covers any act or omission amounting to torture and 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, investigation 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, HRC resolution 43/20, in its first paragraph, mandates the Special Rapporteur, *inter alia*, "(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; (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."

Furthermore, recognizing the importance of the work of the Special Rapporteur in the prevention and fight against torture and ill-treatment, the Council urges States, most notably: "(a) To cooperate fully with and to assist the Special Rapporteur in the performance of his or her tasks, ...; (d) To ensure proper follow-up to the recommendations and conclusions of the Special Rapporteur (...)."

III. Global impact analysis of the thematic reports presented by the Special Rapporteur (2016-2021)

a) Purpose of the report

With a view to assess the impact of his mandate on the States' commitment to prevent, prohibit and redress torture in law and in practice, the Special Rapporteur presented his conclusions to the 46th session of the HRC regarding the effectiveness of States' responses and follow-up to communications and visit requests. To complete his assessment, the Special Rapporteur aims to evaluate the impact of his thematic reports as a driver of change in laws, policies, and practices towards the eradication of torture and ill-treatment.

Since the beginning of his tenure, the Special Rapporteur has presented a total of eight¹ thematic reports to the HRC and the General Assembly (GA) covering a broad range of topics and trends relevant to the implementation of the worldwide normative and institutional framework for the prohibition, prevention, investigation, prosecution and redress of torture and ill-treatment. In this context, the Special Rapporteur intends to:

- conduct a comprehensive study, based on broad consultations with States, civil society, and other relevant stakeholders² through a questionnaire, evaluating the impact of thematic reports presented by the Special Rapporteur in the respective national contexts of current and aspiring UN member States, and
- where appropriate, recommend effective measures to be taken by States in order for them to integrate the recommendations of the Special Rapporteur into their policy and legal frameworks with a view to enhancing compliance with their universally recognized legal obligations arising from the absolute and non-derogable prohibition of torture and ill-treatment.

b) Process

The report will be based on an analysis of all information made available to the mandate including, most notably, **case law, legislative and policy reforms** related to the matters addressed in the thematic reports, as well as **responses received from States, civil society organisations and other stakeholders to the Questionnaire**, aiming to systematize the required data.

Where available and appropriate, the analysis will also take into account information contained in States' comments on Country visit reports transmitted by the Special Rapporteur and/or concluding observations of the Committee Against Torture, the Human Rights Committee and other relevant UN human rights mechanisms.

c) Reporting period

¹ The initial report the Special Rapporteur (A/HRC/34/54) outlined the priorities and the vision of the mandate and did not include recommendations for implementation by States. It is therefore not evaluated in the framework of this Questionnaire.

² Such as National Human Rights Institutions, National Mechanisms for the Prevention of Torture and other monitoring bodies.

The report will cover the period from the beginning of the tenure of the current Special Rapporteur through the submission deadline for thematic reports to HRC49 (1 November 2016 until 31 August 2021).

Questionnaire

(Thematic reports of the Special Rapporteur on Torture)

Remarks:

- Please keep your responses **as concise as possible and provide specific examples.**
- Due to limited translation services, please provide responses **in English or French**, if possible.
- Please provide your response in **word or pdf** format.
- Please submit your response **by 31 August 2021.**
- All responses provided will be **published on the mandate's webpage:**
(<https://www.ohchr.org/en/issues/torture/srtorture/pages/srtortureindex.aspx>).

I. Report on Extra-custodial use of force

Summary: The Special Rapporteur presented his report to the 72nd session of the General Assembly (A/72/178), where he examined whether and in which circumstances the extra-custodial use of force by State agents amounts to torture or other cruel, inhuman or degrading treatment or punishment and how the prohibition of torture and ill-treatment applies to the development, acquisition, trade and use of weapons in law enforcement.

Questions:

1. How relevant was the report to the national context?

2. What impact, if any, did the recommendations included in the report have (providing examples):

- a) on national case law and judicial practice;
- b) on national legislation and other parliamentary activities;
- c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures);
- d) on relevant mechanisms of investigation and accountability;
- e) on national activities such as research, public communication and awareness raising?

II. Migration-related torture and other cruel, inhuman or degrading treatment

Summary: The Special Rapporteur presented his report to the 37th session of the Human Rights Council (*A/HRC/37/50*), where he recalled the broad range of international legal obligations arising from the prohibition of torture and ill-treatment; examined the legal implications of these obligations for some of the most prevalent laws, policies and practices employed by States in response to irregular migration; and made recommendations with a view to supporting States in addressing irregular migration in full compliance with these obligations, avoiding protection gaps and preventing impunity for violations.

Questions:

1. How relevant was the report to the national context?

2. What impact, if any, did the recommendations included in the report have (providing examples):

- a) on national case law and judicial practice;
- b) on national legislation and other parliamentary activities;
- c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures);
- d) on relevant mechanisms of investigation and accountability;
- e) on national activities such as research, public communication and awareness raising?

III. Reaffirming and strengthening the prohibition of torture and other cruel, inhuman or degrading treatment or punishment

Summary: On the seventieth anniversary of the Universal Declaration of Human Rights, the Special Rapporteur presented his report to the 73rd session of the General Assembly (*A/73/207*), where he examined the achievements made on the road to realizing the absolute prohibition of torture and ill-treatment since 1948; reflected on the primary challenges facing its universal implementation today and offered recommendations on how to overcome these challenges.

Questions:

1. How relevant was the report to the national context?

2. What impact, if any, did the recommendations included in the report have (providing examples):

- a) on national case law and judicial practice;
- b) on national legislation and other parliamentary activities;
- c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures);
- d) on relevant mechanisms of investigation and accountability;
- e) on national activities such as research, public communication and awareness raising?

IV. Corruption-related torture and ill-treatment

Summary: The Special Rapporteur presented his report to the 40th session of the Human Rights Council (*A/HRC/40/59*), where he examined the relationship between corruption and torture or ill-treatment, outlined the predominant patterns of interaction between the two phenomena as well as their systemic root causes, and offered recommendations with a view to strengthening the protection against torture and ill-treatment in contexts affected by corruption.

Questions:

1. How relevant was the report to the national context?

2. What impact, if any, did the recommendations included in the report have (providing examples):

- a) on national case law and judicial practice;
- b) on national legislation and other parliamentary activities;
- c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures);
- d) on relevant mechanisms of investigation and accountability;
- e) on national activities such as research, public communication and awareness raising?

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

Summary: The Special rapporteur presented his report to the 74th session of the General Assembly (A/74/148), where he examined the relevance of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment to the context of domestic violence and, in the light of his conclusions, offered recommendations to States with a view to strengthening their capacity to prevent torture and ill-treatment in that context.

Questions:

1. How relevant was the report to the national context?

2. What impact, if any, did the recommendations included in the report have (providing examples):

- a) on national case law and judicial practice;
- b) on national legislation and other parliamentary activities;
- c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures);
- d) on relevant mechanisms of investigation and accountability;
- e) on national activities such as research, public communication and awareness raising?

VI. Psychological Torture

Summary: The Special Rapporteur presented his report to the 43rd session of the Human Rights Council (A/HRC/43/49), where he examined conceptual, definitional and interpretative questions arising in relation to the notion of “psychological torture” under human rights law and offered recommendations in that regard.

Questions:

1. How relevant was the report to the national context?

2. What impact, if any, did the recommendations included in the report have (providing examples):

- a) on national case law and judicial practice;
- b) on national legislation and other parliamentary activities;
- c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures);
- d) on relevant mechanisms of investigation and accountability;
- e) on national activities such as research, public communication and awareness raising?

VII. Biopsychosocial factors conducive to torture and ill-treatment

Summary: The Special Rapporteur presented his report to the 75th session of the GA (*A/75/179*), where he explored the root causes of the current worldwide complacency with regard to torture and ill-treatment, based on well-documented neuro-biological and psychosocial patterns of self-deception and denial, and recommended the urgent and proactive incorporation of his science-based conclusions into ongoing, policy-based global governance reform processes, including the 2030 Agenda for Sustainable Development.

Questions:

1. How relevant was the report to the national context?

2. What impact, if any, did the recommendations included in the report have (providing examples):

- a) on national case law and judicial practice;
- b) on national legislation and other parliamentary activities;
- c) on national governance reform actions through regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures);
- d) on relevant mechanisms of investigation and accountability;
- e) on national activities such as research, public communication and awareness raising?

VIII. Effectiveness of the cooperation of States with the mandate holder on official communications and requests for country visits

Summary: The Special Rapporteur presented his report to the 46th session of the HRC (A/HRC/46/26), where he evaluated the effectiveness of the cooperation shown by States in their responses and follow-up to official communications and country visit requests transmitted by the Special Rapporteur, and recommended appropriate measures with a view to strengthening the interaction of States with the mandate of the Special Rapporteur and improving the compliance of States with their obligations arising from the absolute and non-derogable prohibition of torture and ill-treatment.

Questions:

1. How relevant was the report to the national context?

2. What impact, if any, did the recommendations included in the report have (providing examples):

- a) on national case law and judicial practice;
- b) on national legislation and other parliamentary activities;
- c) on national regulations, policies, practices and procedures (including codes of conduct, training manuals and disciplinary procedures);
- d) on relevant mechanisms of investigation and accountability;
- e) on national activities such as research, public communication and awareness raising?

IX. General question

1. In your view, what are specific areas, where the State may require further thematic support or advice from the mandate of the Special Rapporteur?

2. What further requests, recommendations or concerns regarding the thematic reporting of the mandate would you like to bring to the attention of the Special Rapporteur?
