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Statement by Mr. Nils Melzer

SPECIAL RAPPORTEUR ON TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT

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Distinguished Chair, Ladies and Gentlemen,

It is with great honour that I address this Assembly in my capacity as the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. I first would like to thank the States here represented for the many constructive exchanges since my last report and I look forward to continuing these important working relationships for the remaining year of my tenure. I also would like to thank the Swiss Government for their continued support and encourage other States to provide additional financial and human resources. Every day, this mandate continues to be overwhelmed with requests for urgent interventions but, due to a persistent lack of resources and capacity, only a fraction of these requests can be adequately considered.

Due to the Covid-19 crisis and the related travel restrictions, my mandate has not been able to carry out any country missions or other official travel during the past year. The Covid crisis has entailed a sharp deterioration in conditions of detention in many parts of the world. In many places, where inmates depend on families for their daily supplies of food, hygienic items and prescription drugs, the lock-down has gravely exacerbated their situation. We have also received numerous reports of lethal force, but also unrestrained police brutality and other forms of torture and ill-treatment being used to enforce lock-down measures or punish perceived transgressions, such as unauthorized protests against restrictive anti-Covid measures.

Most worryingly, throughout all regions and contexts, these acts of violence and abuse have often been encouraged by divisive, discriminatory and inflammatory narratives spread or condoned by political leaders, local authorities, and parts of the media, and by the resulting atmosphere of near complete impunity for perpetrators. This flagrant lack of accountability has further fuelled tensions and has given rise to a growing sense of powerlessness, fear, and resentment, not

only among victims and their relatives, but throughout the most vulnerable and politically exposed parts of the population.

My current report examines questions relating to accountability for torture and ill-treatment. In doing so, my report:

- (a) offers an overview of the most important legal and practical challenges conducive to what can be described as a “worldwide accountability gap” for torture and ill-treatment;
- (b) examines various functions and forms which accountability can take; and
- (c) makes recommendations on measures that can be taken to improve worldwide accountability for torture or ill-treatment.

When confronted with allegations of torture or ill-treatment States almost invariably tend to either deny such abuse, or to portray it as isolated acts of individual officials. Experience shows, however, that torture and ill-treatment is almost always a systemic problem.

This rhetoric, which focuses on blaming any wrongdoing on a few isolated “bad apples”, tends to further perpetuate and exacerbate the risk of torture and ill-treatment, as it allows States to deny the existence of structural or systemic patterns and to evade their duty to take effective preventative and corrective measures, including through reforming laws, policies and practices conducive to such abuse.

In this context, I would like to emphasise that accountability for torture and ill-treatment involves not only criminal prosecution and punishment of perpetrators, as well as redress and reparation for individual misconduct, but also more broadly the legal responsibility and obligations of states and institutions.

Thus, accountability also involves systemic challenges such as ensuring justice, reconciliation, the rule of law, and the prevention of future violations, all of which are intrinsically linked to the achievement of Sustainable Development Goal 16.

In reality, however, there still is a persistent accountability gap for torture and ill-treatment worldwide, caused by normative, institutional and procedural shortcomings, as well as by systematic denial, deliberate obstruction and purposeful evasion of accountability on the part of public authorities.

Many national legal systems still do not adequately guarantee or effectively enforce accountability for torture and ill-treatment, and some even establish legal and practical obstacles to accountability. As a result, the vast majority of those responsible for perpetrating, instigating, consenting or acquiescing to torture or ill-treatment are never held to account.

A multi-layered system of accountability is indispensable to fulfil States obligations. In this respect, States should empower and allocate sufficient resources to investigative, prosecuting and judicial authorities as well as quasi-judicial bodies engaged in the pursuit of accountability for torture and ill-treatment, and to rehabilitation centres for victims of torture and ill-treatment in order to enable them to efficiently perform their role.

Although the absolute prohibition of torture and other ill-treatment obliges states to prevent, investigate, prosecute and redress any such abuse occurring within their jurisdiction, accountability processes often continue to be obstructed through States' denial, legal and structural barriers, delay in investigations, scapegoating, deficient procedures, lack of victims' participation, and the use of torture and ill-treatment as a form of intimidation, coercion, discrimination or punishment.

While States are often keen to point to human rights violations of other States in order to further their own political agendas, they almost invariably deny any wrongdoing and obstruct, delay or evade cooperation with international mechanisms whenever confronted with allegations of torture or ill-treatment occurring within their own jurisdiction, even in the face of compelling evidence.

In fact, as I reported to the Council in March this year (A/HRC/46/26), based on a statistical analysis covering the first four years on my mandate, 90 per cent of our official communications transmitting allegations of torture or ill-treatment to States did not receive constructive responses meeting the standards of cooperation set by the Council, a trend which has remained largely unchanged during the 35 years of the existence of this mandate.

This generalized attitude of denial and trivialization betrays not only millions of individual victims and their families but, more generally, profoundly damages the credibility and integrity of states' commitment to the prohibition of torture and ill-treatment and to the international system of human rights protection as a whole.

In my report, I therefore recommend that all States take determined steps towards ensuring a comprehensive implementation and enforcement of the absolute prohibition of torture and ill-treatment, in line with their obligation to prevent, investigate, prosecute, punish and redress such crimes.

Distinguished Chair, Ladies and Gentlemen,

In order to close the worldwide accountability gap for torture and ill-treatment, decisive action is required. Any government should start by honestly asking themselves whether they want to be part of the problem or part of the solution and, in both cases, whether they are prepared to pay the price.

States should objectively and impartially review their cooperation with international mechanisms, their national legislation and regulations, as well as their own track-record of investigating, prosecuting, and redressing torture and ill-treatment wherever it may occur, not only in investigative processes, but also in the management of assemblies or of irregular migration movements and other similar extra-custodial contexts.

If we are ever to achieve the peaceful, just, and sustainable world envisaged by the UN Charter, the Universal Declaration of Human Rights and the Sustainable Development Goals, states must distance themselves from any form of window-dressing and demonstrate the political courage and determination required to eradicate systemic patterns of secrecy, collusion, and impunity for torture and ill-treatment and to ensure both institutional and individual accountability for such abuse.

I thank you for your attention!
