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Note by the Secretary-General

The Secretary-General has the honour to transmit the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with General Assembly resolution 64/153.

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

Summary

In the present report, submitted pursuant to General Assembly resolution 64/153, the Special Rapporteur addresses issues of special concern to him, in particular overall trends and developments with respect to questions falling within his mandate.

The Special Rapporteur draws the attention of the General Assembly to his assessment that torture continues to be widely practised in the majority of States, with impunity being one of its root causes. According to him, no further standard-setting is required, as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment contains a broad range of positive State obligations aimed at preventing and combating torture. In particular, the Convention requires its 147 States parties to criminalize torture, to establish broad jurisdictions, to investigate all allegations and suspicions of torture and to bring the perpetrators of torture to justice. Unfortunately, those specific positive obligations aimed at combating impunity have not been implemented by most States. If the commission of torture is established by a competent authority, the victims should enjoy the right to fair and adequate reparation, including the means for as full medical, psychological, social and other rehabilitation as possible. States, therefore, have a legal obligation to establish or at least support a sufficient number of rehabilitation centres for victims of torture and to ensure the safety of the staff and patients of such centres. In order to further prevent torture, the Special Rapporteur calls upon all States to promptly ratify the Optional Protocol to the Convention against Torture and to establish, in accordance with its provisions, independent and professional national preventive mechanisms tasked with conducting regular and unannounced visits to all places of detention. They should be granted unrestricted access to all places of detention and the opportunity to have private interviews with detainees, as well as the necessary financial and human resources to enable them to conduct their work effectively.

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I. Introduction

1. The present report is the twelfth submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It is submitted pursuant to paragraph 38 of General Assembly resolution 64/153 and is the sixth and final report submitted by the present mandate holder. His previous report to the General Assembly (A/64/215 and Corr.1) was devoted to the appalling conditions of detention found by the Special Rapporteur during his country missions. Various factors, including malfunctioning criminal justice systems throughout the world, corruption and a lack of empathy for persons deprived of liberty, have led to a global prison crisis, supported by statistics on the overcrowding of prisons, a high level of pretrial detainees and similar indicators. The Special Rapporteur therefore continues to call upon the General Assembly to take action to improve the situation of the 10 million prisoners and many more detainees in police custody, psychiatric institutions and other places of detention worldwide. In particular, there is an urgent need to draft and adopt a special United Nations convention on the rights of detainees.

2. In the present report, the Special Rapporteur wishes to draw the attention of the General Assembly to the alarming situation concerning torture in the world. During the past six years, he carried out fact-finding missions to 17 countries around the world and three joint studies together with other special procedures. In all but one country (Denmark, including Greenland), he found clear evidence of torture. In some countries there seemed to be only isolated cases of torture, but in the majority of countries he visited (which constitute a representative sample of all countries in the world), torture is practised in a routine, widespread and sometimes even systematic manner. Taking into account that torture constitutes one of the most serious human rights violations and a direct attack on the core of the personal integrity and dignity of human beings, this is an alarming conclusion.

3. When the United Nations was founded in the aftermath of the Second World War and the Nazi Holocaust, it was undisputed that the prohibition of torture should be included as one of the few absolute and non-derogable rights in the International Bill of Human Rights. Nevertheless, the practice of torture persisted in many regions of the world, most notably in the military dictatorships in Latin America established in the late 1960s. This prompted the United Nations to draft and adopt the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1984. The Convention builds upon the absolute and non-derogable prohibition of torture and creates a number of specific obligations for States parties: to prevent torture, to criminalize torture and bring the perpetrators of torture to justice on the basis of a wide range of jurisdictions, including universal jurisdiction, and to provide victims of torture with the right to an adequate remedy and reparations for the harm suffered. In 2002, the Convention against Torture was supplemented by an Optional Protocol with the aim of preventing torture and improving prison conditions through a system of unannounced and regular visits to all places where persons may be deprived of their liberty. Today, 147 of the 192 States Members of the United Nations, including 15 of the 17 States visited by the Special Rapporteur, are parties to the Convention and 54 are parties to the Optional Protocol. If States take their obligations under the Convention and the Optional Protocol seriously, torture could easily be eradicated in today's world. There is no need for further standard-setting, only for the implementation of existing standards.

4. The fact that torture continues to be practised on such an alarming scale throughout the world shows that most States do not seem to take those obligations seriously. In the present report, the Special Rapporteur provides an analysis of the three main obligations under the Convention and the Optional Protocol (fighting impunity, providing victims with rehabilitation and establishing effective national preventive mechanisms to inspect places of detention) and how they have been implemented by States, above all those visited by him. Those 17 countries serve as a representative sample of all countries in the world and the Special Rapporteur wishes to express his sincere gratitude to the respective Governments for having extended an invitation to him and for their cooperation during his country missions.

5. The Special Rapporteur draws attention to document A/HRC/13/39, his main report to the Human Rights Council at its thirteenth session, as well as document A/HRC/13/39/Add.5 in which he analysed the phenomena of torture and cruel, inhuman or degrading treatment or punishment in the world, including an assessment of conditions of detention.

II. Activities related to the mandate

6. The Special Rapporteur draws the attention of the General Assembly to the activities carried out pursuant to the mandate since the submission of his report to the Human Rights Council (A/HRC/13/39 and Add.1-6).

A. Communications concerning human rights violations

7. During the period from 19 December 2009 to 31 July 2010, he sent 34 letters of allegations of torture to 19 Governments, and 81 urgent appeals on behalf of persons who might be at risk of torture or other forms of ill-treatment to 46 Governments. In the same period, 71 responses were received.

B. Country visits

8. With respect to fact-finding missions, he undertook visits to Jamaica and Papua New Guinea. He also received an invitation from the Government of Greece to visit the country between 10 and 20 October 2010.

9. The Special Rapporteur visited Jamaica from 12 to 21 February 2010. At the conclusion of his mission, he thanked the Government for its invitation and cooperation. The Special Rapporteur did not find torture, in the classical sense of deliberately inflicting severe pain or suffering as a means of extracting a confession or information, to be a major problem in Jamaica. However, he found a considerable number of cases where persons were subjected to various degrees of beating as punishment. The Special Rapporteur was concerned about appalling conditions of detention, which reflect a complete disrespect for the human dignity of persons in conflict with the law. In addition, he found a general atmosphere of violence and aggression in almost all places of detention, as well as no clear separation of detainees according to the different stages of criminal procedure. With regard to children, the Special Rapporteur was greatly concerned that there is no clear definition or criteria in the legislation for the identification of an uncontrollable

child, allowing the judiciary to detain a relatively large number of children under such orders. The Special Rapporteur was encouraged by the fact that no death sentence has been executed since 1988. On the other hand, the rise in fatal shootings by the police, and the apparent lack of investigation and accountability were of great concern to him.

10. The Special Rapporteur conducted a visit to Papua New Guinea from 14 to 26 May 2010. At its conclusion, he expressed his appreciation to the Government for the full cooperation extended to him. The Special Rapporteur was concerned that the police are not always in a position to enforce the rule of law, leading to private security companies carrying out some of the police's main duties. He was particularly concerned about the lack of capacity to prevent and to investigate crimes relating to domestic violence, tribal fighting and victims of accusations of sorcery. The Special Rapporteur found systematic beatings of detainees upon arrest or within the first hours of detention, many times as a form of punishment. In correctional institutions, those who attempt to escape or succeed in escaping are tortured and disabled upon recapture. The Special Rapporteur was disappointed that the Police Juvenile Policy and Protocols were not implemented. He was also concerned to find boys mixed with adults in male correctional institutions. With regard to women, they are at high risk of abuse, both in the domestic and in the public spheres, with domestic violence being widespread. He also received many allegations of sexual abuse by arresting officers in exchange for release from custody.

11. The Special Rapporteur would like to recall requests for invitations sent to the following States: Afghanistan (2005); Algeria (request first made in 1997); Belarus (2005); Bolivia (Plurinational State of) (2005); Côte d'Ivoire (2005); Egypt (1996); Eritrea (2005); Ethiopia (2005); Fiji (2006); Gambia (2006); India (1993); Iran (Islamic Republic of) (2005); Iraq (2005); Israel (2002); Liberia (2006); Libyan Arab Jamahiriya (2005); Russian Federation with respect to the Republic of Chechnya (2000); Saudi Arabia (2005); Syrian Arab Republic (2005); Tunisia (1998); Turkmenistan (2003); United States of America (2004); Uzbekistan (2006); Yemen (2005). He regrets that some of those requests are long-standing. The Governments of Cuba and Zimbabwe extended invitations to visit their countries in 2009; the mission to Zimbabwe was postponed at the last minute and his mission to Cuba did not take place.

C. Key press statements

12. On 22 December 2009, the Special Rapporteur issued a statement expressing serious concern about the forcible return of 20 ethnic Uyghurs from Cambodia to China, before completion of determination of their refugee status.

13. On 31 December 2009, the Special Rapporteur issued a joint statement with another mandate holder urging the Government of Thailand to stop the expulsion of ethnic Hmongs.

14. On 8 March 2010, on the occasion of International Women's Day, the Special Rapporteur issued jointly with other special procedures mandate holders a press release setting out a vision for women's rights.

15. On 9 June 2010, the Special Rapporteur issued a statement expressing his disappointment that his official mission to Cuba would not take place.

16. On 26 June 2010, on the occasion of the International Day in Support of Victims of Torture, the Committee against Torture, the Subcommittee on Prevention of Torture, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the Special Rapporteur issued a statement recalling that despite an established international legal framework, torture prevails in many regions of the world and is often accompanied by an alarming degree of impunity.

D. Highlights of key presentations/consultations/training courses

17. On 23 February, the Special Rapporteur met with representatives of the Embassy of the Islamic Republic of Iran in Vienna to discuss several issues related to the country and to the mandate.

18. On 24 February, the Special Rapporteur attended the Fourth World Congress against the Death Penalty in Geneva and gave a presentation entitled "The death penalty and human dignity".

19. On 3 March, the Special Rapporteur participated together with other mandate holders in a panel on the theme "Violence is not culture — end violence against women and girls in the name of 'culture'" organized in New York by the Global Campaign to Stop Killing and Stoning Women.

20. On 4 March, the Special Rapporteur delivered the keynote address at the annual symposium organized by the University of Iowa College of Law on "A critical juncture: human rights and United States standing in the world under the Obama Administration". On 5 March, he made a presentation on a panel on "Torture, military prosecutions, habeas corpus and United States standing in the world".

21. On 10 March, the Special Rapporteur gave a lecture at the Geneva Academy of International Humanitarian Law and Human Rights, on the topic "Torture and other cruel, inhuman and degrading treatment".

22. On 10 March, the Special Rapporteur participated in the Human Rights Council's annual meeting on the rights of the child, on the theme of the fight against sexual violence against children, and made a presentation entitled "Sexual violence in institutions, including in detention facilities".

23. From 9 to 12 March, the Special Rapporteur participated in several side events during the thirteenth session of the Human Rights Council, including the Berkeley University Panel on Project 2048; "Exploring sustainable systems to document torture: the role of health professionals" organized by the International Rehabilitation Council for Torture Victims and the World Medical Association; "Torture and accountability: the responsibility of the legal profession" organized by the International Commission of Jurists; "Human rights in Zimbabwe: one year on. Time to ratify conventions?" organized by the Zimbabwe Human Rights NGO Forum; and "Religion in prisons" organized by Penal Reform International.

24. On 8 and 9 April, the Special Rapporteur gave two lectures on "Torture and other cruel, inhuman or degrading treatment or punishment: experience of the Special Rapporteur on torture", at Pomona College and Loyola Law School in Los Angeles, United States of America. In addition, he made a presentation on "Torture as a tool in the war on terror and legal obligations of the Obama Administration", at Pomona College.

25. From 10 to 17 April, the Special Rapporteur attended the Twelfth United Nations Congress on Crime Prevention and Criminal Justice in Salvador de Bahia, Brazil, and gave a speech at the opening plenary session on “Children, youth and crime”. The Special Rapporteur was a speaker at the Open Society Justice Initiative meeting on “Prioritizing pretrial justice: transformative systems that contribute to socio-economic development and the rule of law” on the topic “Pretrial detention and torture”. On 13 April, he was a speaker on the “History and significance of the Optional Protocol to the Convention against Torture” at the Association for Prevention of Torture/Japan Federation of Bar Associations/Penal Reform International meeting on “Visiting mechanisms and transparency in prison: the Optional Protocol to the Convention against Torture and worldwide developments”. On 14 April, the Special Rapporteur was a speaker at the meeting on “The need for a United Nations convention on the rights of detainees” organized by the International Commission of Catholic Prison Pastoral Care; he was also a speaker at a meeting organized by Penal Reform International and Transparency International on “Inspections of places of detention”. On 15 April, the Special Rapporteur was keynote speaker of the Workshop B “Survey of United Nations and other best practices in the treatment of prisoners in the criminal justice system” on “Conditions of detention and the need for a United Nations convention on the rights of detainees”. On 17 April, the Special Rapporteur was a speaker on the topic “HIV/AIDS in prison settings” at the United Nations Office on Drugs and Crime meeting on “HIV and criminal justice”.

26. On 12 May, the Special Rapporteur gave two presentations in Port Vila, Vanuatu, entitled “From international recognition of the prohibition of torture to its implementation at the national level, or why is it worthwhile to ratify the Convention against Torture?” and “Good examples of accountability mechanisms for torture at the international level”, on the occasion of a round-table discussion and workshop on the prevention of torture and ill-treatment, organized by the Ministry of Justice, the Ministry of Foreign Affairs and the Regional Office for the Pacific of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and held in the presence of the President of Vanuatu.

27. On 24 May, the Special Rapporteur gave a lecture at the University of Papua New Guinea, Port Moresby, on “The mandate of the Special Rapporteur on torture, and the prevention of torture”.

28. On 2 June, the Special Rapporteur together with other mandate holders presented their joint study on global practices in relation to secret detention in the context of countering terrorism (A/HRC/13/42) at the fourteenth session of the Human Rights Council.

29. On 7 and 8 June, the Special Rapporteur gave a series of lectures on the Convention against Torture and the prohibition of refoulement, organized by the Law Society of Hong Kong.

30. On 15 and 16 June, the Special Rapporteur held several meetings with representatives of the United States State Department and Congress in Washington, D.C., to discuss topics related to the country and the mandate. On 16 June, he held a meeting at the Inter-American Commission on Human Rights of the Organization of American States to discuss the situation in Central America in relation to the mandate. On 18 June, the Open Society Institute organized a conference at which the Special Rapporteur presented his work and spoke about the United States and the fight against terrorism and torture.

31. Between 28 June and 2 July 2010, the Special Rapporteur attended the annual meeting of special rapporteurs, representatives, independent experts and chairpersons of working groups of the Human Rights Council, in Geneva. On 29 June, the Special Rapporteur gave a keynote speech at a workshop organized by Linking Solidarity, on enforced disappearances in Africa.

32. On 14 July, the Special Rapporteur gave training to approximately 80 staff members of the United Nations Office on Drugs and Crime on "Human rights and HIV/AIDS", in Vienna.

33. On 17 July, the Special Rapporteur was part of a panel on the topic "Which future for the Council and its review?", at the Diplomatic Conference "2011 review of the Human Rights Council", organized in Venice, Italy, by the European Inter-University Centre for Human Rights and Democratization.

34. On 20 July, in the context of the XVIII International AIDS Conference in Vienna, the Special Rapporteur attended a meeting of the Inter-Parliamentary Union and the Austrian Parliament, on the topic of "Criminal justice and public health". On the same day, the Special Rapporteur participated in an event with another mandate holder and the Director of the European Union Agency for Fundamental Rights on "The role of human rights mechanisms in advancing the AIDS response", organized by the International AIDS Society. On 23 July, he gave a speech on "HIV and incarceration: prison and detention" at the plenary session of the Conference.

III. Impunity as a root cause of the prevalence of torture

A. Prevalence of torture

35. The scale and scope of impunity found in many countries visited by the Special Rapporteur has been one of his most disappointing findings. During his time as mandate holder, the Special Rapporteur has been witness to the distressing reality that both torture and ill-treatment are widespread practices throughout the world. The existing international legal framework provides a broad range of norms and standards to prohibit, prevent and eradicate torture. Their effective application, however, continues to be a challenge.

36. States bear the main responsibility for implementing international human rights standards, including the prohibition of torture. However, torture occurs because national legal frameworks are deficient and do not properly codify torture as a crime with appropriate sanctions. Torture persists because national criminal systems lack the essential procedural safeguards to prevent its occurrence, to effectively investigate allegations and to bring perpetrators to justice. Moreover, torture remains entrenched because of a climate of tolerance of excessive use of force by law enforcement officials in many countries.

B. Convention against Torture

37. Article 4 of the Convention against Torture sets out the obligation of States parties to ensure that all acts of torture are an offence under their criminal legislation and that appropriate penalties are foreseen. Article 4, paragraph 1, must be read in conjunction with article 1, paragraph 1, of the Convention, since it would

be very difficult for a State party to criminalize an offence, establish the corresponding jurisdiction and institute prosecution, without formulating a proper definition of torture.

38. The alignment of national legislations with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is crucial for its effective implementation. Therefore, the definition of torture contained in article 1, paragraph 1, of the Convention, with all its elements (infliction of severe pain or suffering; intention and specific purpose; and involvement of a public official), must be taken into account by States when making torture an offence under domestic criminal law.

39. The Committee against Torture has been clear about the requirement to make "all acts of torture", including acts of attempt, complicity and participation, an offence under criminal law, with penalties commensurate to the gravity of the crimes. In addition, even if not explicitly stated in the Convention, the Committee considers instances that include "instigation, consent or acquiescence", to be covered by the terms "complicity or participation", giving rise to individual criminal responsibility under article 4 of all public officials sufficiently involved under article 1.

40. The Convention does not explicitly provide for a specific penalty and type or extent of sentence for the offence of torture, leaving it to the discretion of the State party to decide, taking into account the grave nature of the crime. The Committee against Torture has stated on several occasions that consideration of the appropriate penalty must take into account not only the gravity of the offence but the severity of penalties established for similar crimes in each State.

C. Factors contributing to impunity

41. During his fact-finding missions, the Special Rapporteur has been able to identify various factors that contribute to impunity and therefore to the persistence of torture. They include the lack of proper criminalization of torture; the absence of impartial investigations into allegations; and the lack of prosecution of perpetrators.

1. Criminalization of torture in domestic law

42. Of all the countries visited by the Special Rapporteur, only Jamaica and Papua New Guinea have not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The other 15 countries have ratified the Convention and accepted the obligations contained therein, including those of making torture an offence under criminal law and establishing appropriate penalties for perpetrators.

43. However, the reality is quite different. For the general prohibition of torture to become effective, national criminal legislation should incorporate such a prohibition and make torture a punishable offence. The Special Rapporteur found instances, including in Denmark, Nigeria and Jamaica, where torture is not explicitly defined in domestic criminal law. In Nepal, for example, torture is not a criminal offence and in Indonesia, although it is defined in its Human Rights Law, there are no provisions concerning torture in the criminal legislation.

44. In certain cases, the definition of torture in national criminal law is too narrow and/or leaves out important elements established in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In the case of Mongolia, the definition fails to include any of the essential elements of torture, including that the act (or omission) causes severe pain or suffering, whether physical or mental, that it is intentionally inflicted for a specific purpose and by or at the instigation of or with the consent or acquiescence of a public official acting in an official capacity. Article 251 of the Mongolian Code of Criminal Procedure was amended in 2008 but the provision does not apply to all public officials or persons acting in an official capacity.

45. With regard to the first element of the definition (causing severe pain or suffering, whether physical or mental), both Georgia and Togo limit their definitions to physical pain. The legislation of Jordan only partly covers the aspect of mental pain or suffering. The definition in Paraguay makes torture very difficult to prove, as it requires the intent to destroy or seriously damage the personality of the victim, hence excluding many acts that would be considered as torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

46. The second element of the definition in the Convention (intention) is lacking from the definition of torture in the legislation of both Georgia and Togo. With regard to the element of the involvement of a public official or other person acting in an official capacity, the legislation in neither Togo nor Jordan differentiates between private actors and public officials. Kazakhstan limits criminal responsibility to public officials and does not criminalize torture committed by others acting in an official capacity or at the instigation of or with the consent or acquiescence of public officials.

47. The criminal codes in many countries contain provisions outlawing certain acts which may fall within the scope of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, such as the infliction of bodily injuries or the use of duress. Nevertheless, while some of those acts may be part of an act of torture, the criminal codes fall short of providing comprehensive protection to the physical and psychological integrity of the victims. Some of the most sophisticated torture methods do not cause any physical injuries, but cause extreme pain and suffering.

48. The Special Rapporteur found legislation where the definition was in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in some countries, such as the Republic of Moldova. The definition in the Sri Lankan legislation is in accordance with the Convention; however, it does not include “suffering”. Moreover, since the implementation of the Emergency Regulations, most of the safeguards against torture either do not apply or are simply disregarded. In Equatorial Guinea, the definition was mainly in line with the Convention, with a catch-all clause broad enough to comply with it.

2. Adequacy of penalties

49. The fact that torture is either not codified or not properly defined in national criminal laws facilitates too lenient penalties, not commensurate with the gravity of the crime. This is another factor that can contribute to a climate of impunity by

sending a non-deterrent message to potential perpetrators and by nurturing a lack of awareness among judges and lawyers.

50. While the Convention does not indicate a specific penalty for torture, it is generally accepted that the punishment should be similar to the penalties established for the most serious offences in each national legal framework. This would ensure that sentences are commensurate with the gravity of the offence and that no statutes of limitations apply.

51. However, during his fact-finding missions, the Special Rapporteur found that torture is often treated as a misdemeanour, such as in Mongolia, and penalties are too lenient, sometimes ranging from a few months to two years' imprisonment. In the Republic of Moldova and Equatorial Guinea, the sanctions could be for up to five and six years' imprisonment, respectively. The sentences in other countries, such as Jordan, were simply administrative sanctions ranging from six months to three years. In Togo, where a proper crime of torture is lacking, the provision of the Criminal Code relating to "wilful violence" is sometimes applied, but subject to statutes of limitations.

52. In Georgia, the Special Rapporteur received allegations that victims were encouraged by the prosecution to agree to plea-bargaining agreements without acknowledging their ill-treatment by the police.

3. Impartial investigations

53. Throughout his fact-finding missions, the Special Rapporteur found that another factor contributing to impunity is the lack of investigation and prosecution following acts of torture and ill-treatment. Although prompt and impartial investigations should be carried out without delay whenever there is a suspicion of torture or an explicit allegation, this is too often not the case.

54. Despite the fact that, in many cases, detainees have visible signs of ill-treatment, the authorities generally fail to initiate investigations. Medical examinations are often not conducted, nor are detainees provided with medical treatment. In Paraguay, the Special Rapporteur was concerned to see that officials completely disregarded their duty to initiate ex officio investigations. In Georgia, judges or procurators have an obligation to make inquiries or investigate allegations ex officio; however, no action is taken in the vast majority of cases. The same applies in the Republic of Moldova, where the legal provision calling for ex officio investigations is not applied in practice.

55. Ex officio investigations, as required by article 12 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, are one of the strongest tools for preventing torture and combating impunity. As victims are often unaware of existing complaints mechanisms, they lack confidence that their complaints will be effectively addressed or they are afraid to file them. This problem is worse in countries where the obligation to initiate ex officio investigations is not enshrined in the law, as was observed by the Special Rapporteur in some of his missions, including those to Jamaica and Sri Lanka. Whenever there are reasonable grounds, including credible evidence, that an act of torture has been committed, States should conduct an investigation, irrespective of whether a complaint has been filed. In Jordan, the Special Rapporteur found that even though the Court of Cassation had overturned a number of convictions on the grounds that security

officials had obtained confessions under torture, this did not trigger official criminal investigations against the perpetrators. The same holds true for Sri Lanka.

56. A further concern is the fact that the authorities entrusted with investigating allegations of torture and ill-treatment are frequently the same authorities who are accused of committing such acts (i.e. the police), as is the case in Denmark, Georgia, Jordan and Nepal. Additionally, in Georgia, Mongolia and Paraguay, the investigation may also be carried out by the Office of the Prosecutor, the same authority responsible for prosecuting the case against the victim. The lack of independent investigating bodies with no connection to the authority investigating or prosecuting the case (a proper "police-police") prevents victims from obtaining justice and is one of the main impediments to combating impunity.

4. Prosecutions

57. In terms of prosecutions, the Special Rapporteur was sadly surprised at the low number of people prosecuted for torture in the countries he visited. He came across cases of officials being subject to disciplinary or administrative procedures for offences such as abuse of power and, in some cases, convictions for offences such as causing physical injuries, as in Jordan and Paraguay. These types of convictions not only result from the lack of a specific criminal offence of torture, but are in some instances used to treat the act of torture as a minor offence.

58. In most countries visited by the Special Rapporteur, he was not presented with a single case of a law enforcement official being suspended, investigated and prosecuted, let alone convicted, for torture. This was the case in Mongolia, Indonesia, Nepal, Nigeria and Togo, among other countries. Three countries where the Special Rapporteur did receive information that law enforcement officials had been convicted of torture were China, the Republic of Moldova and Sri Lanka. In Sri Lanka, 34 officials had been indicted and three convicted of torture. In Uruguay, there were several ongoing trials for crimes committed in the past. Although several people had been convicted, none had yet been convicted of torture. In Equatorial Guinea, only one official had been tried, but had not been convicted, despite the fact that torture is systematically practised there.

59. In cases where there are convictions, the Special Rapporteur witnessed that the perpetrators are often given minor sentences or are only obliged to pay fines. This lack of appropriate sanctioning, including lack of convictions, convictions based on other offences, and the use of disciplinary sanctions or minor sentences, translates into a lack of any deterrent and is an affront to the victims.

60. In addition, one of the practices observed by the Special Rapporteur was that in some countries, such as Sri Lanka, reparations are used as a substitute for prosecution. That is, if the victim received compensation or another form of reparation, the case was closed and no further criminal proceedings were pursued. Although, in many instances, victims may be in need of money to pay for medical treatment or legal fees, compensation should not be used as a substitute for prosecution.

IV. Role of rehabilitation centres for victims of torture

61. Following the obligations of States to prevent torture and to hold perpetrators accountable, article 14 of the Convention against Torture stipulates that each State

party shall ensure in its legal system that victims of torture obtain redress and have an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. That obligation includes the establishment and support of torture rehabilitation centres. That duty was further emphasized by the Commission on Human Rights in its resolution 2004/41, in which it stressed that "national legal systems should ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate socio-medical rehabilitation". In that regard the Commission encouraged "the development of rehabilitation centres for victims of torture".

62. Most existing torture rehabilitation centres are private, founded by physicians, psychologists, family members of victims and other concerned individuals or groups in response to the failure of Governments to ensure that victims of torture receive the necessary treatment. Torture rehabilitation centres fill a gap and provide highly specialized medical and psychosocial care to those in need. Member organizations of the International Rehabilitation Council for Torture Victims, the umbrella organization of 146 rehabilitation centres worldwide, provided treatment to more than 100,000 survivors of torture and trauma in 2009 alone. In the same year, the United Nations Voluntary Fund for Victims of Torture provided grants to 195 projects in 65 countries, for a total amount of 10 million United States dollars to support victims of torture.

Healing bodies, minds and social ties

63. In order to fully appreciate the importance of the work of torture rehabilitation centres, one has to recall the devastating impact of torture on human beings. For most victims, the experience of their ordeal will remain present for the rest of their lives, if not physically then at least mentally. Often, the psychological impact of torture amounts to what has been described as a "disintegration of the personality". The harm inflicted may be so profound that it shatters the very identity of a person, the ability to feel any joy or hope, to engage with his or her environment, or to find any meaning in life. Depression, anxiety disorders including flash-backs, loss of self-respect, cognitive impairment and suicidal tendencies are only some of the consequences of torture. The impact of the abuse is rarely limited to the person directly targeted but also victimizes their families and even their communities. The victims' inability to resume their work further adds to their social seclusion and financial strain. In general, experiences of torture cannot be entirely "left behind", let alone forgotten.

64. Centres for the rehabilitation of victims of torture support survivors in their efforts to learn to live with their experiences and assist them in regaining the strength to lead self-determined lives. Reflecting the far-reaching consequences of torture, rehabilitation centres provide a holistic treatment for survivors, aimed at healing their "bodies, minds and social ties". Rehabilitation centres possess specialized medical know-how and experience in dealing with torture injuries, and provide primary care and sometimes longer in-patient stays focusing on pain relief and the avoidance of any long-term physical impairment. Their specialization in torture traumata facilitates the provision of high-quality care, and provides expertise from which other members of the health community, for example local hospitals, can learn. In terms of psychological treatment, rehabilitation centres constitute first and foremost a safe haven where survivors have their suffering acknowledged and

can develop trust towards those around them. The specific treatment that is eventually provided depends on their specific situation and personality and the type of abuse they have suffered, and also reflects the relevant cultural context. Patients may initially stay for some time at the rehabilitation centres, where intensive psychological counselling and, if needed, adequate psychotropic medication is provided. Overwhelmingly, the experience of torture requires long-term psychological support, which may include individual or group counselling, occupational therapy, social rehabilitation and other forms of support. Rehabilitation centres assist their clients for years on their long journey back into their lives.

Rehabilitation, awareness and justice

65. It is important to note that the services provided by rehabilitation centres for the victims of torture go beyond the medical aspects of rehabilitation. They also contribute to raising awareness of the issue of torture and the establishment of justice. Alerting and informing society of the prevalence of torture and States' involvement in it can trigger public pressure and eventually bring about policy changes. During his visit to the Republic of Moldova, the Special Rapporteur was impressed with the work of the Medical Centre for Rehabilitation of Torture Victims in Chisinau, which had managed to inform, train and mobilize lawyers, journalists and other professionals in order to support victims and disseminate information about cases of torture, both within the country and abroad. In the United Kingdom of Great Britain and Northern Ireland, the Medical Foundation for the Care of Victims of Torture initiates programmes of survivor activism, encouraging victims to share with the public their stories, images and communications about survival, and works to make their voices heard. Similarly, centres in Argentina, Brazil and Chile are at the forefront when it comes to dealing with the legacy of the national security regimes and the continuing impunity for the crimes committed during those periods. In many countries, rehabilitation centres engage in campaigns advocating for legal reform and the passing of laws that comply with the Convention against Torture and its Optional Protocol. In Pakistan, Struggle for Change, aside from providing multidisciplinary services to survivors, played a leading role in national advocacy efforts that eventually contributed to the ratification of the Convention.

66. Rehabilitation centres also assume a decisive role in holding perpetrators accountable. With their forensic expertise they ensure that torture traumas, whether visible or invisible, are scrupulously documented before they disappear. Even if, at the time of the examination, it may seem unlikely that proceedings will be held, adequate records can eventually constitute crucial evidence in later criminal or civil cases. In this regard, the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) provides an important standard for the documentation of abuse, which goes beyond the therapeutic purpose in a narrow sense. Medical records can be instrumental in overcoming the otherwise lack of objective evidence with which survivors of torture are so commonly confronted, given that torture mostly takes place without witnesses. They provide evidence which can corroborate the victim's account of the ordeal. Establishing the facts of torture before a court and holding perpetrators accountable can give torture survivors a sense of justice and facilitate both a coming to terms with their past suffering and a comprehensive process of healing. Additionally, monetary compensation as a result of civil proceedings may provide the necessary funds for additional medical treatment. Acknowledging the

importance of the Istanbul Protocol, the International Rehabilitation Council for Torture Victims and the Turkish Medical Association, together with the Government of Turkey, concluded last year the training of 4,000 medical doctors, 1,000 prosecutors and 500 judges.

Against all odds

67. Throughout his tenure of the mandate, the Special Rapporteur has been impressed by the courageous, dedicated and professional work undertaken by rehabilitation centres around the world. In all the centres he visited during his fact-finding missions, he was impressed that staff members had been working extremely hard and often at considerable personal sacrifice. Confronted with the continuous arrival of new victims, aware of the large number of those who cannot be reached and knowing how quickly a person's life can be broken and how long it takes to heal, their work may at times appear frustrating. Working with survivors of torture involves listening to their experiences of abuse and its consequences, and may place a considerable psychological burden on those treating torture victims. Nevertheless, the staff of rehabilitation centres work relentlessly, often on a voluntary basis, in order to provide treatment and shelter.

A. Hostile environment

68. Rehabilitation centres for the victims of torture often operate in an environment characterized by insecurity and violence. Their engagement with victims of torture, the provision of medical services and particularly the documentation of torture cases make them frequent targets of those who inflicted the suffering. As a consequence, physicians, forensic experts, psychologists, administrative staff and volunteers all work under considerable personal risk and are often confronted with harassment, threats, assault or even killings.

69. More subtle, but similarly obstructive, has been the introduction of new, sweepingly restrictive regulations for civil society organizations in many countries. While it has to be recognized that it is within the discretion of each State to adopt domestic legislation concerning non-governmental organizations, such provisions sometimes appear to be more the expression of a general suspicion or even hostility towards the work of civil society organizations working in the field of human rights, rather than serving any reasonable administrative purpose. In Egypt, the El Nadeem Centre for Rehabilitation of Victims of Violence, which provides holistic support to victims of torture through medical rehabilitation, family support and legal aid, is threatened by a proposed law on non-governmental organizations. If approved, the law will lead to the centre's closure, along with that of many independent non-governmental organizations. A similar situation already exists in Algeria, where the political situation presents extreme challenges for the establishment of non-governmental organizations. As a result, despite efforts by the International Rehabilitation Council for Torture Victims, there is as yet no rehabilitation centre in the country. Likewise, in the Sudan, the Amel Centre for Treatment and Rehabilitation of Victims of Torture was recently closed in a crackdown on independent non-governmental organizations. Yet, in other areas work continues. In Zimbabwe, the Counselling Services Unit, which the Special Rapporteur visited in 2008, is a heartening example of how courageous individuals manage to provide crucial rehabilitation services and documentation in sometimes extreme

circumstances. There are other examples of rehabilitation centres providing unmatched services, yet many prefer to keep a low profile because of the dangers of public exposure resulting from the nature of their work.

70. Rehabilitation centres deserve appreciation and full support for their courage and for the determination with which they continue against the odds to accept patients and care for them in an uncompromising manner. While some medical institutions, such as State hospitals, may succumb to pressure exerted by the police or the military and turn a blind eye when it comes to documenting torture, the rehabilitation centres rigorously and consistently uphold professional and ethical medical standards. Ultimately, to attack a torture rehabilitation centre is to attack the victims of torture who have already suffered abuse and are in need of treatment.

B. Lack of financial resources

71. As earlier emphasized, international human rights law places States under the obligation to ensure that victims of torture are provided with the means for as full physical and psychological rehabilitation as possible, implying the establishment or support of torture rehabilitation centres. At the same time, one has to realize that the majority of torture survivors do not have access to adequate treatment. Most centres, where they do exist, are overburdened by the number of victims, and their staff members constantly operate on the verge of exhaustion. This distressing situation is largely attributable to the limited financial support for rehabilitation centres. Reflecting this impasse, the United Nations Voluntary Fund for Victims of Torture, as one of the main sources of funding for rehabilitation centres worldwide, receives grant requests every year for more than double the resources it is provided with by a relatively small number of donor States. In its 2009 report, the Board of Trustees of the Fund held out the prospect of a financial gap of 3 million United States dollars, which would equate to a reduction of its grants by 20 per cent unless State contributions increase. Furthermore, the recent global financial crisis has had a tangible impact on many centres, forcing them to cut back existing services because funding from private foundations has decreased. The Kosovo Rehabilitation Centre for Torture Victims, in Pristina, which has carried out excellent work, is facing closure in December 2010 because of a lack of funding. In Greece, the Medical Rehabilitation Centre for Torture Victims, in Athens, closed in 2009 for lack of funding, resulting in a complete lack of rehabilitation centres for torture victims.

72. While the United Nations Voluntary Fund for Victims of Torture and international donors such as the European Union (EU), as well as private foundations, are the most important sources of support for rehabilitation centres, it has to be noted that Governments fall overwhelmingly short of their obligation and leave domestic centres and torture survivors struggling. The Special Rapporteur interprets this shortcoming as a further example of the prevalent reluctance on the part of States to deal with the issue of torture in a rigorous manner and to acknowledge the scope of the problem. The unwillingness to ensure adequate funding of domestic rehabilitation centres is a manifestation of the same attitude of taking torture prevention lightly that results in failure to investigate crimes perpetrated by State agents and to eventually hold them accountable.

73. The lack of funding for rehabilitation centres is by no means limited to poor States or States where torture may be rife, but also holds true for States which are

generally considered to be relatively safe and affluent, for example EU member States. In this regard, the Special Rapporteur notes with concern the upcoming phasing-out of EU support for centres located within its area and the simultaneous failure of European Governments to step up their support for their own domestic institutions. Rehabilitation centres within the EU assume a crucial role in providing services to thousands of individuals who have had to flee their home countries and seek refuge after experiencing war, persecution and torture. While these survivors may have succeeded in escaping from imminent persecution and from their torturers, their experiences are still very much present and continue to haunt them. Often alone in a foreign country, confronted with xenophobic resentment, general suspicion that there is abuse of the asylum system, and concerns about the outcome of protracted and increasingly restrictive asylum procedures, survivors of torture find themselves in an environment which is far from conducive to a process of healing. The availability in those States of well-functioning rehabilitation centres where many refugees can open up and receive medical treatment for the first time is essential and their value cannot be overestimated. The Special Rapporteur calls for a change of the perception prevalent in many Western countries that torture is a distant issue. Many Europeans would be surprised to learn that their immigrant neighbour is in fact one of many survivors of torture who have found refuge in their country.

74. In addition to their therapeutic role, rehabilitation centres in third countries provide medical records which may also be important when it comes to holding foreign perpetrators accountable, for example through universal jurisdiction proceedings. Furthermore, they fulfil an important role in the development of capacity and the dissemination of state of the art methods of treatment, for example through the training of domestic health professionals or other staff from centres in less affluent countries.

V. Role of national preventive mechanisms

75. The ultimate aim must be to prevent acts of torture and ill-treatment before they occur. There are numerous methods of prevention that have been developed in the past, which, if adequately implemented by States, could easily eradicate torture: abolition of secret and incommunicado detention; proper registration of every detainee from the moment of arrest or apprehension; prompt access to legal counsel within 24 hours; access to relatives; prompt access to an independent judge; presumption of innocence; prompt and independent medical examination of all detainees; video/audio recording of all interrogations; no detention under the control of the interrogators or investigators for more than 48 hours; prompt, impartial and effective investigation of all allegations or suspicions of torture; inadmissibility of evidence obtained under torture; and effective training of all officials involved in the custody, interrogation and medical care of detainees. As previously emphasized by the Special Rapporteur and his predecessors, the most effective preventive measure against torture and ill-treatment is the regular inspection of places of detention. Regular inspections can ensure the adequate implementation of the above-mentioned safeguards against torture, create a strong deterrent effect and provide a means to generate timely and adequate responses to allegations of torture and ill-treatment by law enforcement officials.

76. Many countries already have national mechanisms in place for the inspection of places of detention, such as visiting judges and prosecutors, inspection boards

subordinate to relevant ministries, and national human rights institutions, or they allow non-governmental organizations to carry out monitoring visits. In addition, there are independent regional mechanisms such as the European Committee for the Prevention of Torture and international mechanisms such as the Working Group on Arbitrary Detention and the Special Rapporteur on torture that can inspect places of detention.

77. In view of the great importance of systematic, independent external monitoring for the prevention of torture, and in response to the shortcomings of the existing mechanisms, the General Assembly adopted the Optional Protocol to the Convention against Torture in 2002. The rationale behind the Optional Protocol is based on the experience that torture mainly happens in places of detention, owing to their opaqueness to the outside world and lack of external scrutiny. The Optional Protocol is intended to introduce a shift from a paradigm of opacity, in which detainees are locked away from the outside world and the outside world is kept away from the detainees, to one of transparency. Through the opening up of places of detention, the entire system of detention can be exposed to public scrutiny, made more transparent, and its officials deterred from abusive treatment by being held accountable for their actions.

78. The Optional Protocol takes a two-pillar approach, with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on the one hand, and national preventive mechanisms in each State party on the other. As the Subcommittee can only sporadically conduct monitoring visits to the increasing number of States parties to the Optional Protocol, the main responsibility for systematic monitoring rests with the national preventive mechanisms.

79. As of July 2010, a total of 54 States, including 8 States visited by the Special Rapporteur, were parties to the Optional Protocol. Of those, 32 States have designated national preventive mechanisms. Given that all the existing national preventive mechanisms are still at an initial stage and have yet to develop their practices, the current phase is absolutely crucial in terms of paving the way for the Optional Protocol to exert its full potential for the prevention of torture. Against this background, a first stocktaking would appear to be instructive in order to identify lessons learned and potential pitfalls in the process of setting up national preventive mechanisms.

80. The Optional Protocol does not prescribe a specific form for national preventive mechanisms but leaves it to States parties how to “maintain, designate or establish … one or several independent national preventive mechanisms”. However, the Optional Protocol and the related Principles relating to the Status of National Institutions (The Paris Principles) prescribe clear minimum criteria for national preventive mechanisms. Any national preventive mechanism is to be provided with a broad mandate to regularly visit all places of detention with a view to examining the treatment of detainees, to make recommendations to the relevant authorities and to submit draft legislative proposals and observations. It must have unrestricted access, without prior notification, to all places of detention and enjoy the right to hold private interviews with detainees. It must be granted full institutional, functional, personal and financial independence from the State authorities, be pluralistically composed to have the “required capabilities and professional knowledge” and provide for a balanced gender and adequate minority representation.

81. States parties have taken different approaches to establishing a national preventive mechanism in compliance with the Optional Protocol, either designating existing institutions or establishing an entirely new body, both of which have

advantages and disadvantages. By designating an existing institution such as the national human rights institution, the national preventive mechanism may benefit from that institution's previous experience and positive and visible public profile. On the other hand, it may take over potential problems and shortcomings of the existing institution in terms of public perception, a narrow mandate and a lack of resources. The establishment of an entirely new body may require additional efforts and resources but enables States parties to model the mechanism precisely according to the requirements of the Optional Protocol, instead of making amendments to existing legislation. The ideal model depends on the specific circumstances of each State.

82. Most fundamentally, States should provide their national preventive mechanism with a clear legal basis specifying its powers and ensuring its complete independence from the State authorities. Regrettably, some States fail to provide their national preventive mechanism with the necessary security and stability. This is the case, for example, in Mali, where no express guarantees or powers foreseen by the Optional Protocol are provided, or in Maldives and Mauritius, where the mandate of the national preventive mechanism is only based on a governmental decree. In order to provide the national preventive mechanism with the stability and authority needed for the execution of its difficult tasks, States parties should enact a specific national law establishing the mechanism, as in France and Luxembourg. That law must be in strict compliance with the Optional Protocol. This includes ensuring its complete functional independence and the complete independence of its staff, which implies that members of the national preventive mechanism must not be representatives of the Government, as is the case in Mali, and must maintain no close personal ties to the authorities to be inspected, as is the case in the Republic of Moldova.

83. Even the most independent national preventive mechanism with the strongest mandate cannot function without sufficient resources. Therefore, article 18, paragraph 3, of the Optional Protocol expressly requires States to provide "the necessary resources for the functioning of the national preventive mechanisms". However, lack of resources remains one of the main problems of existing national preventive mechanisms, as the task of regularly monitoring all places of detention is very complex and costly. It is by the allocation of adequate resources that States parties demonstrate their genuine commitment to the prevention of torture. France set a positive example by assigning extensive human and financial (2.5 million euros) resources to its national preventive mechanism. Similarly, New Zealand has considerably increased the resources of its national preventive mechanism after the first year of functioning. The Special Rapporteur and the Subcommittee on Prevention of Torture previously raised the concern that some States that had designated existing institutions as national preventive mechanisms had not allocated sufficient additional resources, for example Denmark, Maldives and Sweden. A particularly worrying example is Germany, where the national preventive mechanism has an alarming lack of human and financial resources. As the country with the largest population in Europe, it is merely assigning four part-time unpaid staff members to the regional national preventive mechanism body and one unpaid person to the federal national preventive mechanism body, with a budget of only 300,000 euros. The Special Rapporteur has previously criticized these resources as being insufficient to allow the national preventive mechanism to fulfil the task of regular, systematic monitoring of all places of detention.

84. The provision of inadequate resources has an effect on the capabilities and professional knowledge required by article 18, paragraph 2, of the Optional Protocol. A pluralistic composition cannot be ensured by a national preventive mechanism body that consists of only one member, as is the case in Germany. In contrast, the French national preventive mechanism has 14 full-time inspectors and can call on an additional 14 inspectors to take part in specific missions, thereby facilitating the participation of persons from various educational and professional backgrounds. Small national preventive mechanisms with only a few members have to largely rely on the expertise of ad hoc members or external experts for the effective performance of monitoring visits. In practice, this can create difficulties, including in regard to their availability. Therefore, some States, for example the Czech Republic, Denmark, Luxembourg and Slovenia, have entered into cooperation agreements with relevant civil society organizations in order to ensure external support for their national preventive mechanisms.

85. In order for national preventive mechanisms to carry out their functions effectively, they must have a clear understanding of their tasks and roles. Particular problems can arise for a national preventive mechanism that functions within a previously existing institution such as a national human rights institution, for a national preventive mechanism composed of several bodies and for a national preventive mechanism that cooperates institutionally with civil society organizations. Those models all require a particular effort of planning and coordination and a clarification of the exact roles and tasks within the institution. In national human rights institutions designated as national preventive mechanisms, the roles of the members of the national preventive mechanism and the staff of the national human rights institution may not always be clear and the different tasks of the national human rights institution may impede the effective and autonomous functioning of the national preventive mechanism. Therefore, it is recommended that national human rights institutions designated as national preventive mechanisms create separate units or departments where employees are explicitly and fully assigned for the performance of the tasks of the national preventive mechanism, as in Costa Rica, Luxembourg, Maldives, Mexico and Spain. The units should have an autonomous agenda and programme of action, and their own staff and budget. Concerning the designation of several existing institutions as national preventive mechanisms, as in the United Kingdom and New Zealand, adequate coordination of the work of the bodies is necessary in order for them to function effectively and coherently. An equal need for coordination and coherence arises in cases where national preventive mechanisms cooperate institutionally with non-governmental organizations, as in the Republic of Moldova and Slovenia. In the Republic of Moldova, their institutional involvement has led to a serious internal conflict over the competences and roles of the different members. Additionally, there is a risk of the dilution of their mandates for non-governmental organizations and of a loss of independence and credibility for the national preventive mechanism if the division of tasks is unclear.

86. The setting up of a national preventive mechanism requires a careful preparatory process that is to be “public, inclusive and transparent”, including civil society and all other actors involved in the prevention of torture, as in Honduras and Paraguay. A transparent and inclusive preparatory process creates greater public attention for the future national preventive mechanism, ensuring its credibility, and may prevent problems after its designation. Many States seek assistance from

various specialized institutions in the field of torture prevention and from the Subcommittee on Prevention of Torture and OHCHR for the process of setting up national preventive mechanisms. The Special Rapporteur has continuously offered his assistance in this regard and encourages States to further avail themselves of the mandate. As the Subcommittee on Prevention of Torture has indicated, the development of a national preventive mechanism "should be considered an ongoing obligation, with reinforcement of formal aspects and working methods refined and improved incrementally".[1] In that regard, the adoption, as in Costa Rica and Maldives, of clear and ambitious action plans defining the goals and strategies of the national preventive mechanism is useful.

VI. Conclusions and recommendations

87. **Although torture constitutes one of the most brutal human rights violations and a direct attack on the core of human dignity, it continues to be widely practised in the majority of States in all parts of the world. This alarming conclusion of the Special Rapporteur on torture is based on his experience after carrying out the mandate for almost six years, and after conducting 17 fact-finding missions to countries in all regions of the world and preparing three joint studies together with other special procedures mandate holders.**

88. **While the appalling conditions of detention in most countries of the world could be effectively addressed by adopting a special United Nations convention on the rights of detainees, no further standard setting is required to combat torture. Its prohibition is one of the few absolute and non-derogable human rights and part of ius cogens, and the Convention against Torture and its Optional Protocol contain a broad range of very specific positive State obligations aimed at preventing and combating torture. If States parties to the Convention and the Optional Protocol would abide by their legally binding obligations, torture could easily be eradicated.**

89. **In order to combat increasing levels of crime, terrorism and other forms of organized crime effectively, Governments in too many countries seem willing to restrict certain human rights by granting their law enforcement, intelligence and security forces very extensive powers. This leads to an environment conducive to undermining the absolute prohibition of torture. The brutalization of many societies has reached a level where torture is simply regarded by Governments and the population at large as the "lesser evil". This trend is alarming. There is a need for a new global awareness-raising campaign to change this climate of tolerance towards excessive use of force by law enforcement officials. Governments need to be reminded that torture is not an effective means of combating crime. On the contrary, it contributes to the further brutalization of societies and the spiral of violence which many societies suffer from. Torture is nothing other than an act of barbarism.**

90. **Impunity is one of the root causes of the widespread practice of torture. This was recognized by the international community in the 1980s when adopting the Convention against Torture as the first human rights treaty with detailed obligations to criminalize torture, to establish broad jurisdictional**

[1] CAT/C/40/2, para. 28 (n).

competences, to investigate all allegations or suspicions of torture, and to arrest suspected perpetrators of torture and bring them to justice. In most of the 147 States parties to the Convention against Torture, those legal obligations, deriving from articles 4 to 9, 12 and 13 of the Convention, have not been implemented. States should, first of all, ensure through legislative measures that torture, as defined in article 1 of the Convention, is made a crime with appropriate penalties, which must be applicable on the basis of the principles of territoriality, nationality and universal jurisdiction. Secondly, States shall establish professional authorities to promptly and impartially investigate all allegations and suspicions of torture, with the aim of identifying the perpetrators, including superior officers who ordered or condoned torture, and bringing them to justice.

91. **Victims of torture have a right to complain to a professional authority which is independent from the authority accused of torture and which has the obligation to promptly and impartially examine all allegations or suspicions of torture. Victims and witnesses should be protected against all ill-treatment or intimidation as a consequence of their complaints or any evidence given. If torture is established by a competent authority, victims should enjoy the right to fair and adequate reparation, including the means for as full medical, psychological, social and other rehabilitation as possible. States, therefore, have a legal obligation to establish or at least support a sufficient number of rehabilitation centres for victims of torture and to ensure the safety of their staff and patients. The Special Rapporteur also urges States to ensure that survivors of torture who seek refuge in their countries have access to adequate medical and psychosocial treatment. Screening procedures allowing for the early identification of torture victims can be instrumental in that regard. Asylum authorities should be required to consider seriously the medical expertise of domestic rehabilitation centres and take account of their assessments when deciding upon asylum requests. Health professionals should be provided with training on how to apply the Istanbul Protocol. The Special Rapporteur also calls upon Governments, not least those responsible for the practice of torture, to contribute generously to the United Nations Voluntary Fund for Victims of Torture.**

92. **Finally, all States have an international legal obligation to take effective legislative, administrative, judicial and other measures to prevent torture. In this respect, the Special Rapporteur calls upon all States to promptly ratify the Optional Protocol to the Convention against Torture and to establish, through legislative action on the basis of an inclusive and transparent process, independent and professional national preventive mechanisms tasked with conducting regular and unannounced visits to all places of detention. Such national preventive mechanisms should be granted unrestricted access to all places of detention and the opportunity to have private interviews with detainees. The Special Rapporteur urges all States parties to the Optional Protocol to the Convention against Torture to provide national preventive mechanisms with the necessary financial and human resources to enable them to regularly inspect all places of detention, to examine the treatment of detainees and to prevent acts of torture or ill-treatment in detention.**