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Promotion and protection of all human rights, civil political, economic, social and cultural rights, including the right to development

**Argentina, Armenia*, Australia*, Austria*, Belgium, Bosnia and Herzegovina*, Brazil,
Bulgaria*, Chile, Colombia*, Costa Rica*, Croatia*, Cyprus*, Czech Republic*,
Denmark*, Egypt*, Estonia*, France, Germany*, Greece*, Guatemala, Hungary,
Iceland*, Ireland*, Israel*, Italy*, Latvia*, Liechtenstein*, Lithuania*, Luxembourg*,
Maldives, Malta*, Mexico, Montenegro*, Netherlands*, Nicaragua*, Norway, Panama*,
Peru*, Poland, Portugal*, Republic of Moldova, Romania*, Slovakia, Slovenia*, Spain,
Sweden*, Switzerland, Turkey*, Ukraine, United Kingdom of Great Britain and
Northern Ireland, Uruguay: draft resolution**

16/... Torture and other cruel, inhuman or degrading treatment or punishment: mandate of the Special Rapporteur

The Human Rights Council,

Reaffirming that no one shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment,

Recalling that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law that must be respected and protected under all circumstances, including in times of international and internal armed conflict or internal disturbance or any other public emergency; that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in the relevant international instruments; and that legal and procedural safeguards against such acts must not be subject to measures that would circumvent this right,

Recalling also that the prohibition of torture is a peremptory norm of international law, and that international, regional and domestic courts have held the prohibition of cruel, inhuman or degrading treatment or punishment to be customary international law,

Recalling further the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, without prejudice to any international instrument or national legislation that contains or may contain provisions of wider application,

* Non-Member State of the Human Rights Council.

Noting that, under the Geneva Conventions of 1949, torture and inhuman treatment are a grave breach and that, under the Statute of the International Criminal Tribunal for the Former Yugoslavia, the Statute of the International Criminal Tribunal for Rwanda and the Rome Statute of the International Criminal Court, acts of torture can constitute crimes against humanity and, when committed in a situation of armed conflict, constitute war crimes,

Welcoming the entry into force of the International Convention for the Protection of All Persons from Enforced Disappearance, the implementation of which will make a significant contribution to the prevention and prohibition of torture, including by prohibiting places of secret detention and encouraging all States that have not ratified or acceded to the Convention to consider doing so,

Commending the persistent efforts by civil society, in particular non-governmental organizations, national human rights institutions and national preventive mechanisms, and the considerable network of centres for the rehabilitation of torture victims to prevent and combat torture and to alleviate the suffering of victims of torture,

Recalling its resolutions 5/1 on institution-building of the Human Rights Council and 5/2 on the code of conduct for special procedures mandate holders of the Council of 18 June 2007, and stressing that the mandate holder shall discharge his or her duties in accordance with those resolutions and the annexes thereto,

Recalling also all relevant resolutions of the General Assembly, the Economic and Social Council, the Human Rights Council and the Commission on Human Rights on the subject,

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. *Condemns in particular* any action or attempt by States or public officials to legalize, authorize or acquiesce to torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions, and urges States to ensure accountability for all such acts;

3. *Decides* to extend the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment for a further period of three years:

(a) To seek, receive, examine and act on information from Governments, intergovernmental organizations, civil society organizations, individuals and groups of individuals regarding issues and alleged cases concerning torture or other cruel, inhuman or degrading treatment or punishment;

(b) To conduct country visits with the consent or at the invitation of Governments;

(c) To study, in a comprehensive manner, trends, developments and challenges in relation to combating and preventing torture and other cruel, inhuman or degrading treatment or punishment, 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 other cruel, inhuman or degrading treatment or punishment;

(e) To integrate a gender perspective throughout the work of his or her mandate;

(f) To continue to cooperate with the Committee against Torture, the Subcommittee for the Prevention of Torture and relevant United Nations mechanisms and

bodies and, as appropriate, regional organizations and mechanisms, national human rights institutions, national preventive mechanisms and civil society, including non-governmental organizations;

(g) To report on all of his or her activities, observations, conclusions and recommendations to the Council, in accordance with its programme of work, and annually on the overall trends and developments with regard to his or her mandate to the General Assembly with a view to maximizing benefits of the reporting process;

4. *Takes note with appreciation* of the report of the Special Rapporteur¹ and his victim-oriented approach;

5. *Emphasises* that acts of torture are serious violations of international human rights law and humanitarian law and can constitute crimes against humanity and, when committed in a situation of armed conflict, war crimes, and that the perpetrators are liable to prosecution and punishment;

6. *Urges* States:

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

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

(c) To ensure, as an important element in the prevention and combat of torture and other cruel, inhuman and degrading treatment or punishment, that no authority or official orders, applies, permits or tolerates any sanction or other prejudice against any person or organization for having been in contact with the Special Rapporteur or any other international or national monitoring or preventive body active in the prevention and combat of torture and other cruel, inhuman or degrading treatment or punishment;

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

7. *Also urges* States:

(a) To implement effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment, particularly in places of detention and other places where persons are deprived of their liberty, including education and training for personnel, who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, and ensure that conditions of detention respect the dignity and human rights of detainees;

(b) To take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or

¹ A/HRC/16/52.

Degrading Treatment or Punishment and the updated set of principles for the protection of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture;

(c) To ensure that no statement established to have been made as a result of torture is invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made, and calls upon States to consider extending that prohibition to statements made as a result of cruel, inhuman or degrading treatment or punishment, recognizing that adequate corroboration of statements, including confessions, used as evidence in any proceedings constitutes one safeguard for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(d) Not to expel, return (“refouler”), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, stressing the importance of effective legal and procedural safeguards in this regard, and recognizing that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement;

(e) To ensure that victims of torture or other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation, and urges States to establish, maintain, facilitate or support rehabilitation centres or facilities where victims of torture can receive such treatment and where effective measures for ensuring the safety of their staff and patients are taken;

(f) To ensure that all acts of torture are offences under domestic criminal law and encourages States to prohibit under domestic law acts constituting cruel, inhuman or degrading treatment or punishment;

(g) To ensure that persons convicted of torture or other cruel, inhuman or degrading treatment or punishment have no subsequent involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty, and that persons charged with torture or cruel, inhuman or degrading treatment or punishment have no involvement in the custody, interrogation or treatment of any person under arrest, detention, imprisonment or other deprivation of liberty while such charges are pending;

(h) Not to punish personnel for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

(i) To protect medical and other personnel for their role in documenting torture or any other form of cruel, inhuman or degrading treatment or punishment and in treating victims of such acts;

(j) To ensure appropriate follow-up to conclusions, recommendations, request for further information and views on individual communications of the relevant treaty bodies, including the Committee against Torture and the Subcommittee on the Prevention of Torture;

(k) To adopt a gender-sensitive approach in the fight against torture and other cruel, inhuman or degrading treatment or punishment, paying special attention to gender-based violence that constitutes torture or other cruel, inhuman or degrading treatment or punishment;

(l) To become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as a matter of priority, and to give early consideration to signing and ratifying the Optional Protocol thereto and to designating or establishing truly independent and effective national preventive mechanisms for the

prevention of torture and other cruel, inhuman or degrading treatment or punishment in a timely manner;

8. *Reminds* States that:

(a) Intimidation and coercion, as described in article 1 of the Convention against Torture, including serious and credible threats, as well as death threats, to the physical integrity of the victim or of a third person can amount to cruel, inhuman or degrading treatment or to torture;

(b) Prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and the dignity of the person and to ensure that secret places of detention and interrogation are abolished;

9. *Welcomes* the reports of the Committee against Torture and the Subcommittee on the Prevention of Torture;

10. *Takes note* of the reports of the Secretary-General on the United Nations Voluntary Fund for Victims of Torture, and calls upon the Board of the Fund to report to the Council in accordance with the annual programme of work;

11. *Requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of an adequate and stable level of staffing and the necessary facilities and resources for the Special Rapporteur, commensurate with the strong support expressed by Member States for preventing and combating torture and assisting victims of torture;

12. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, and appeals to all Governments, organizations and individuals to contribute annually to the Fund, preferably with a substantial increase in the contributions, and encourages contributions to the Special Fund established by the Optional Protocol to the Convention to help finance the implementation of the recommendations made by the Subcommittee on Prevention, as well as education programmes of national preventive mechanisms;

13. *Calls upon* all Governments, the United Nations High Commissioner for Human Rights and United Nations bodies and agencies, as well as relevant intergovernmental and non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture, as proclaimed by the General Assembly in its resolution 52/149 of 12 December 1997;

14. *Decides* to continue to consider this matter in conformity with its annual programme of work.