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

## **Torture and other cruel, inhuman or degrading treatment or punishment**

### **Report of the Special Rapporteur\***

#### *Summary*

In the present report, the Special Rapporteur examines the relationship between corruption and torture or ill-treatment, outlines the predominant patterns of interaction between the two phenomena as well as their systemic root causes, and offers recommendations with a view to strengthening the protection against torture and ill-treatment in contexts affected by corruption.

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## I. Introduction

1. The present report has been prepared pursuant to Human Rights Council resolution 34/19.

## II. Activities relating to the mandate

2. Throughout 2018, the Special Rapporteur participated in a number of thematic consultations, workshops and events on various issues, including torture prevention and ill-treatment of migrants; strengthening national preventive mechanisms; procedural safeguards regarding the development of a universal protocol for investigation interviewing; and strengthening the protection mechanisms of gender-specific violence.

3. In 2018, the Special Rapporteur transmitted 136 communications, jointly with other mandates or individually, on behalf of individuals exposed to torture and other ill-treatment.

4. From 13 to 24 November 2017, the Special Rapporteur conducted a country visit to Serbia and Kosovo<sup>1</sup> (A/HRC/40/59/Add.1).

5. From 9 to 20 April 2018, the Special Rapporteur conducted a country visit to Argentina (A/HRC/40/59/Add.2).

6. From 28 May to 8 June 2018, the Special Rapporteur conducted a country visit to Ukraine (A/HRC/40/59/Add.3).

## III. Corruption-related torture and ill-treatment

7. In recent years, there has been a growing awareness of the pervasive, incapacitating impact of corruption on the effective, transparent and accountable functioning of public institutions (target 16.6 of the Sustainable Development Goals), including the protection of human rights. Corruption not only hinders the effective implementation of human rights obligation, but also creates an environment conducive to human rights abuses, including torture and ill-treatment.

8. The mandate of the Special Rapporteur has long recognized that “corrupt and malfunctioning criminal justice systems are a root cause of torture and ill-treatment of detainees”<sup>2</sup> and, in 2014, the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment produced a seminal report highlighting the correlation between corruption and torture or ill-treatment in places of detention, concluding that the fight against torture and ill-treatment demands appropriate measures to eradicate corruption, underpinned by robust democratic principles (CAT/C/52/2, paras. 72–100). In parallel, there has been a growing body of legal and policy analysis exploring the interrelations between corruption and human rights abuses more generally,<sup>3</sup> including by

<sup>1</sup> Throughout this document, the reference to Kosovo shall be understood in full compliance with United Nations Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

<sup>2</sup> Manfred Nowak, in his capacity as Special Rapporteur, addressing the Commission on Crime Prevention and Criminal Justice on 24 April 2009. See [www.unodc.org/unodc/en/frontpage/un-human-rights-rapporteur-denounces-torture.html](http://www.unodc.org/unodc/en/frontpage/un-human-rights-rapporteur-denounces-torture.html).

<sup>3</sup> See, inter alia, Anne Peters, *Corruption as a Violation of International Human Rights*, Research Paper No. 2016-18 (Heidelberg, Max Planck Institute for Comparative Public Law and International Law, 2016); International Council on Human Rights Policy, *Corruption and Human Rights: Making the Connection* (Geneva, 2009); Martine Boersma and Hans Nelen, eds., *Corruption and Human Rights: Interdisciplinary Perspectives* (Intersentia, 2010); Martine Boersma, *Corruption: A Violation of Human Rights and a Crime Under International Law?* (Intersentia, 2012); Kolawole Olaniyan, *Corruption and Human Rights Law in Africa* (Hart, 2014); and Office of the United Nations High

the Human Rights Council Advisory Committee which, in its 2015 report, recommended that the special procedures of the Council should consider paying attention to the linkage between corruption and human rights (A/HRC/28/73, para. 52).

9. More recently, in its resolution 37/19, the Human Rights Council recognized the importance of understanding the interrelation between corruption and torture or ill-treatment and invited the Special Rapporteur and other relevant special procedures to take this question into account in their future work. In response to this invitation, the Special Rapporteur submits the present report, in which he specifically examines the relationship between corruption and torture or ill-treatment, outlines the predominant patterns of interaction between the two phenomena and offers recommendations for States with a view to strengthening the protection against torture and ill-treatment in contexts where such abuse is linked to corruption.

10. Building on the work undertaken by his predecessors and other mechanisms, the Special Rapporteur conducted extensive research and broad stakeholder consultations with experts, government representatives, international organizations and civil society organizations, including through a general call for submissions in response to a thematic questionnaire posted on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR). The present report reflects the resulting observations, conclusions and recommendations of the Special Rapporteur.

## A. Basic characteristics of corruption, torture and ill-treatment

### 1. Corruption

11. The United Nations Convention against Corruption, which has been ratified by 185 States, provides the key normative framework for the prevention of corruption<sup>4</sup> and enumerates 10 specific offences which States parties shall, or shall consider to, criminalize within their jurisdiction. The offences set out in the Convention, some of which can also be committed by private actors, most notably include bribery, embezzlement, misappropriation or other diversion of property, trading in influence, abuse of function, illicit enrichment, concealment or laundering of the proceeds of crime and obstruction of justice. However, neither this treaty nor any other international instrument provides a generic and universally recognized definition of corruption.

12. A widely used understanding of corruption proposed by Transparency International refers to “the abuse of entrusted power for private gain”. While a good starting point, this conceptualization of corruption may be insufficiently specific for the purposes of the criminal law and, at the same time, warrants expansion to capture, for example, the abuse of power that is appropriated rather than “entrusted”, or the abuse of power for an undue advantage which may not result in “private” gain but may unduly benefit a public entity. The Subcommittee on Prevention of Torture in its report focusing on the context of

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Commissioner for Human Rights (OHCHR) and Geneva Academy, *Human Rights and Countering Corruption* (2016).

<sup>4</sup> See also United Nations Convention against Transnational Organized Crime; African Union Convention on Preventing and Combating Corruption (2003); Inter-American Convention against Corruption (1996); Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development (1997); Criminal Law Convention on Corruption (1999) and Additional Protocol thereto (2003), and Civil Law Convention on Corruption (1999) of the Council of Europe; Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities’ financial interests (1995); Convention drawn up on the basis of Article K.3 of the Treaty on European Union, relating to extradition between the Member States of the European Union (1996); Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (1997); and Southern African Development Community Protocol against Corruption (2001). See the analysis provided in Jan Wouters, Cedric Ryngaert and Ann Sofie Cloots, “The international legal framework against corruption: achievements and challenges”, *Melbourne Journal of International Law*, vol. 14, No. 1 (June 2013).

deprivation of liberty used a broader, more elaborate understanding of corruption as “dishonest misuse or abuse of a position of power to secure undue personal gain or advantage, or to secure undue gain or advantage for a third party” (CAT/C/52/2, para. 73).

13. Building on these proposals, and having in mind the existing body of treaty law, the present report will use the concept of corruption as referring to the “abuse of entrusted or appropriated power to secure an undue advantage for any person or entity”. In principle, it should be irrelevant for a finding of corruption whether the abuse of power occurs by act or by omission, whether the transfer of an undue advantage actually takes place or whether it is merely offered or requested, and whether the perpetrators are State officials or non-State actors placed in a comparable position of power. Furthermore, “undue advantages” should be interpreted to include not only money or tangible goods, but also “favours” such as sexual acts, labour, or acts or omissions aiming to secure favourable outcomes in administrative or judicial proceedings, or unduly preventing, suspending or terminating such proceedings.

## 2. Contextual prevalence and levels of corruption

14. Corruption is widely practised both in developed and in developing States, although its characteristics may vary from context to context. As the Subcommittee has observed, “while corruption in developed countries is often more sophisticated, subtle and less visible than in developing countries, and hence may be more difficult to detect, that does not mean that it is not present” (CAT/C/52/2, para. 83). Moreover, both States and business corporations belonging to the “developed” world often contribute to, or are even responsible for, corruption in “developing” countries (*ibid.*, paras. 74–75 and 83). Indeed, corruption in one country can be triggered, facilitated or fostered by political, corporate or other actors in other countries.

15. Corruption can manifest on all levels of local, national and international authority and is usually categorized as “petty” or “grand” corruption and, sometimes, as “political” corruption. “Petty” corruption occurs primarily where people directly interact with mid- or low-level officials when trying to access basic public goods and services and generally involves comparatively modest sums of money or other individualized benefits. Petty corruption is widespread and pervasive in many countries, contexts and situational “niches” throughout the world and has been frequently encountered by the Special Rapporteur and other anti-torture mechanisms, especially in environments where the risk of torture and ill-treatment is highest, such as in places of detention and other institutionalization, in extra-custodial police practices and across various stages of irregular migrants’ journeys (A/HRC/13/39/Add.5, paras. 64–66; A/HRC/37/50, paras. 8, 30–34; and CAT/C/52/2, para. 80).

16. By contrast, “grand” corruption involves high-level public officials and often large sums of money or other benefits, such as the misallocation of State resources and the sale or otherwise undue provision of political appointments or lucrative public procurement or licensing contracts. When grand corruption involves the manipulation of policies, institutions and procedures by political decision makers in order to sustain their power, status and wealth or to secure undue benefits for their relatives and political entourage, it is sometimes also referred to as “political” corruption. Typical examples of this variation of grand corruption include vote buying, illicit campaign funding and the silencing of political opposition. All forms of grand corruption betray good governance and the public interest, deplete or divert public resources, severely undermine the proper functioning of public services and institutions and are conducive to the spread of corruption throughout society. Thus, grand corruption can permeate government policy and law-making, the implementation of the law and the administration of justice in ways which undermine or even paralyse every aspect of the fight against torture and ill-treatment, from misappropriating or otherwise diverting or depleting resources that should have been used for the prevention and redress of torture and ill-treatment, to condoning or enabling torture and ill-treatment or ensuring impunity for such abuse.

### 3. Torture and ill-treatment

17. As this mandate has previously observed, the generic concept of “torture” denotes the intentional infliction of pain or suffering on a powerless person with the aim of achieving a particular purpose. Thus, while the unlawfulness of corruption is derived primarily from the pursuit of an inherently unlawful purpose (undue advantage), the unlawfulness of torture stems primarily from the employment of an inherently unlawful means (purposeful infliction of pain or suffering). Furthermore, for the purposes of the present report, any other cruel, inhuman or degrading treatment or punishment that lacks one or several elements constitutive of torture, such as the required intentionality or purposefulness, the required severity of the inflicted pain or suffering or the required powerlessness of the victim, will be referred to as “ill-treatment” (A/72/178, para. 31; A/73/207, para. 7; and E/CN.4/2006/6, paras. 34–41).

18. Torture and ill-treatment can take virtually unlimited forms, including physical violence or psychological abuse, sensory deprivation, stress positions, humiliation, coercive interrogation, instrumentalization of drug withdrawal symptoms, denial of family contacts or medical treatment, cruel, inhuman or degrading detention conditions or prolonged or otherwise abusive solitary confinement, just to name a few. While not all manifestations of torture and ill-treatment involve the same severity, intentionality and purposefulness, all involve violations of physical or mental integrity that are incompatible with human dignity and, therefore, cannot be justified under any circumstances.

### 4. Accountability for corruption and torture or ill-treatment

19. Apart from international responsibility of States, as regulated in the applicable treaties and in general international law,<sup>5</sup> acts of torture or ill-treatment, as well as corruption related to such abuse, can give rise to individual criminal responsibility for war crimes or crimes against humanity, including for commanders and other superiors.<sup>6</sup> Moreover, States have obligations with regard to the criminalization in their national law both of corruption and of torture and ill-treatment, including complicity and all other forms of culpable participation in such crimes. Where culpable involvement in corruption foreseeably results in acts of torture or ill-treatment, perpetrators should be held accountable for their participation not only in corruption, but also in torture or ill-treatment.

20. At the same time, in determining criminal culpability for acts of corruption, due account must be taken of mitigating circumstances of coercion, including through the threat, risk or infliction of torture and ill-treatment. In particular, in the view of the Special Rapporteur, persons who are coerced to offer money, sexual acts, forced labour or other undue advantages through the abuse of entrusted or appropriated power should be regarded not as perpetrators but as victims of corruption. Depending on the nature of such coercion, they also might have to be considered victims of acts or threats of torture or ill-treatment, for example where the cessation of – or protection against – torture and ill-treatment is made conditional on the transfer of an undue advantage.

### 5. Systemic nature of corruption, torture and ill-treatment

21. When examining the correlation between corruption and torture or ill-treatment, it is of utmost importance to understand the predominantly structural and systemic nature of both forms of abuse. Contrary to common misperceptions, both corruption and torture or ill-treatment are rarely isolated in a few “bad apples” but, figuratively speaking, tend to extend to “rotten branches” or even “rotten orchards”.<sup>7</sup> For example, in the context of policing, the practice of corruption and of torture or ill-treatment typically goes beyond individual officers and extends to their units or even entire police departments, often

<sup>5</sup> See International Law Commission, articles on responsibility of States for internationally wrongful acts.

<sup>6</sup> Rome Statute of the International Criminal Court, arts. 7, 8 and 28.

<sup>7</sup> Maurice Punch, “Rotten orchards: ‘pestilence’, police misconduct and system failure”, *Policing and Society*, vol. 13, Issue 2 (2003), pp. 171–196; and Maurice Punch, *Police Corruption: Deviance, Accountability and Reform in Policing* (Willan, 2009).

exacerbated by collusion at worst or acquiescence at best on the part of the judiciary and open or implicit complacency on the part of policymakers. Overall, the resort by individual officials to corruption or to torture and ill-treatment is more often the result of their professional environment than of their personal character.<sup>8</sup>

22. As a general rule, therefore, while individual accountability is an indispensable element of any serious fight against corruption or torture and ill-treatment, neither phenomenon can be eradicated through criminal prosecution alone, as individualized criminal justice cannot adequately address systemic and structural factors conducive to both corruption and torture or ill-treatment (A/HRC/28/73, para. 25), and more comprehensive, systemic measures are required in response. Recruitment practices, training, professional culture, remuneration and conditions of work can, for example, play an important role in increasing or mitigating the risk of both police brutality and corruption.<sup>9</sup>

## **B. General relationship between corruption and torture or ill-treatment**

23. When mapping out the interrelation between corruption and torture or ill-treatment, it must first be acknowledged that, from a conceptual perspective, not every act of torture and ill-treatment necessarily involves or relates to corruption, and not every act of corruption necessarily involves or relates to torture or ill-treatment. While the present report focuses exclusively on contexts, subcontexts and situational “niches” marked by some degree of interaction between corruption and torture or ill-treatment, the absence of such a link does not by any means diminish the inherent gravity of relevant infractions, nor does it absolve States of their legal obligations to promptly and effectively prevent and redress such abuse.

24. In the broad range of contexts in which corruption and torture or ill-treatment interact, the relationship between the two phenomena tends to be cyclical: each breeds and exacerbates the other. Not only is corruption often deliberately employed to enable, perpetuate and protect the practice of torture and ill-treatment, but torture and ill-treatment also are often deliberately employed to enable, perpetuate and protect the practice of corruption. For example, corruption within the judiciary has been found to gravely undermine accountability for human rights violations, including torture or ill-treatment (e.g. A/HRC/13/39, para. 71; and CCPR/C/TKM/CO/2, para. 31). At the same time, acts or threats of torture and ill-treatment are also used to interfere with the judiciary, including with regard to the investigation and adjudication of corruption. Although this mutually reinforcing interaction between corruption and torture or ill-treatment represents a generalized phenomenon, it is particularly prevalent and noxious in contexts of deprivation of liberty and in environments marked by discrimination, socioeconomic marginalization or other circumstances where individuals or communities are rendered vulnerable to abuse.

25. When designing measures to eradicate a specific pattern of interaction between corruption and torture or ill-treatment, it is key to understand the causal relations linking the two phenomena in that particular context. On the more general level of systemic governance, however, causal interactions between corruption and torture or ill-treatment tend to remain fluid, turning the identification of a precise and fixed causal chain into an exercise resembling the classic “chicken and egg” dilemma. From a systemic perspective, corruption and torture or ill-treatment are better understood as two concurrent effects of the same original cause, namely a failure of the surrounding governance system to prevent the abuse of power through effective checks and balances. Thus, while preventive and prosecutorial measures targeting corruption and torture or ill-treatment at the level of individual officials, institutions and processes remain indispensable, there generally is no realistic prospect for eradicating either phenomenon without effectively addressing the

<sup>8</sup> Sanja Kutnjak Ivković, “Rotten apples, rotten branches, and rotten orchards: a cautionary tale of police misconduct”, *Criminology & Public Policy*, vol. 8, No. 4 (November 2009), pp. 777–785, at p. 780.

<sup>9</sup> United Nations Office on Drugs and Crime (UNODC), *Handbook on Anti-Corruption Measures in Prisons* (Vienna, 2017), p. 11.

underlying governance failures conducive to both forms of abuse. In the same vein, blanket or selective crackdowns on petty corruption that are not accompanied by appropriate system-level reform, including relevant socioeconomic measures, tend to severely affect poor, marginalized and disadvantaged communities without adequately addressing the root causes of either corruption or torture and ill-treatment.

26. Finally, whereas the present report focuses specifically on the relation between torture or ill-treatment and acts of corruption, the Special Rapporteur is also seriously concerned at reports that, in some contexts, torture and ill-treatment have even been employed on the pretext of fighting corruption, most notably through coercive interrogation, incommunicado detention or prolonged solitary confinement of purported corruption suspects, who often also are political opponents, human rights defenders and other critical voices. It is therefore vital to ensure, through regulation, prevention and independent oversight, that anti-corruption narratives are not abused to pursue – and do not purport to legitimize – inherently unlawful policies and practices that are incompatible with the prohibition of torture and ill-treatment, and with human rights more generally.<sup>10</sup>

### C. Predominant patterns of causal interaction

27. Corruption and torture or ill-treatment can interact in a variety of different context-specific ways, each of which may require a tailored set of measures in terms of prevention, accountability and redress. Based on broad stakeholder consultations and on the observations made in the course of his own work, the Special Rapporteur proposes to distinguish six predominant patterns of interaction between corruption and torture or ill-treatment. This categorization does not aim to be comprehensive or free from overlaps, or indeed to exhaust the ways in which such interactions could or should be described for a variety of purposes. Rather, it aims to provide an analytical framework based on distinct degrees of causal proximity between corruption and torture or ill-treatment and, in doing so, to facilitate the identification of pattern-specific measures for the prevention and eradication of torture and ill-treatment in environments affected by corruption, in line with the corresponding obligations reflected in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Part I), as well as the United Nations Convention against Corruption (chap. II).

#### 1. Demanding “undue advantages” that per se amount to torture or ill-treatment

28. Without any doubt, the closest interaction between corruption and torture or ill-treatment occurs in circumstances in which the undue advantage constitutive of corruption amounts per se to torture or ill-treatment. For example, when a person is forced to engage in a sexual act in return for the performance of an official duty, such “undue advantage” would per se constitute cruel, inhuman or degrading treatment and, in some circumstances, may even amount to torture. The same applies when State agents render protection from other forms of torture or ill-treatment conditional on the provision of undue advantages in the form of sexual acts. In practice, this type of overlap between corruption and sexual violence most frequently, but not exclusively, affects socioeconomically marginalized women and children, who may be dependent on the people and systems that victimize them, including in contexts such as the sex industry, irregular migration, or any form of deprivation of liberty or institutionalization.<sup>11</sup> Apart from sexual acts, undue advantages which may per se amount to torture or ill-treatment can include the trafficking of persons, the provision of forced labour, or similar situations of cruel, inhuman or degrading exploitation.

<sup>10</sup> See International Council on Human Rights Policy and Transparency International, *Integrating Human Rights in the Anti-Corruption Agenda: Challenges, Possibilities and Opportunities* (Geneva, 2010).

<sup>11</sup> Naomi Hossain, Celestine Nyamu Musembi and Jessica Hughes, *Corruption, Accountability and Gender: Understanding the Connections* (United Nations Development Programme and United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), 2010), p. 5.



29. Where the undue advantage integral to a corrupt transaction per se amounts to torture or ill-treatment, any remedial efforts must be directed simultaneously at both components of the relevant interactive pattern between corruption and torture or ill-treatment. Of course, persons coerced to provide undue advantages that per se amount to torture or ill-treatment should not be regarded as perpetrators of corruption, but should be viewed as victims of both corruption and torture or ill-treatment and, accordingly, should receive support throughout any accountability process, and be provided with full redress and rehabilitation.

30. The risk of such profoundly abusive interactions is highest in, but by no means isolated to, contexts of armed conflict or other situations marked by a prevalence of unchecked power, generalized or systemic violence, structural discrimination and impunity. In such contexts, torture and ill-treatment are unlikely to be eradicated, or even significantly reduced, without comprehensive measures towards preventing the abuse of entrusted or appropriated power and ensuring good governance, non-discrimination and the rule of law, most notably through checks and balances, separation of powers and effective monitoring and oversight. In order for such remedial action to be effective, it is vital to stabilize the entire environment, to strengthen the institutions and procedures of good governance and to empower both civil society and (potential) victims, including by alleviating the legal, structural and socioeconomic conditions conducive to corruption, torture and ill-treatment (A/73/207, para. 77 (i)).

## 2. Instrumentalizing torture or ill-treatment for “undue advantages”

31. The next closest interaction between corruption and torture or ill-treatment is marked by a direct and intended causal connection, namely where acts or threats of torture or ill-treatment are deliberately employed as a tool for obtaining an undue advantage, enforcing a corruption scheme or preventing accountability for corruption. This pattern of abuse is widespread in all regions of the world. It thrives in all contexts, systems or situational “niches” where officials or those acting on their behalf or with their consent or acquiescence are effectively free to exercise coercion arbitrarily and with near-total impunity, whether as a consequence of a complete breakdown of law and order (e.g. armed conflicts and natural disasters), of discriminatory policies and practices (e.g. marginalized communities and irregular migrants) or of corruption schemes exploiting situational vulnerabilities (e.g. prisoners and other institutionalized persons).

32. In many contexts, it is a widespread practice, for example, for corrupt prison staff, soldiers, police officers, border officials or armed non-State actors to deliberately employ acts or threats of torture or ill-treatment as a tool to extort money and other valuables from victims, their families or friends (A/HRC/13/39/Add.5, para. 64). Similarly, detainees or their families may be forced to pay bribes to State officials in order to get them to abstain from torture or ill-treatment or to alleviate cruel, inhuman or degrading prison conditions (e.g. A/HRC/13/39/Add.5, paras. 64–66; and CAT/C/52/2, paras. 80 and 84).<sup>12</sup> Another, increasingly widespread, practice is corruption schemes operated in the context of irregular migration, where border officials give access to regular procedures or turn a blind eye on clandestine entries in return for money, valuables or other undue advantages, and enforce this “business model” through the deliberate infliction of violent abuse on any migrant caught crossing the border without complying with their demands (A/HRC/37/50, para. 30). Acts or threats of violence and abuse amounting to torture or ill-treatment are also deliberately employed as a tool for obstructing the prevention, investigation, prosecution and adjudication of corruption, most commonly by: (a) coercing victims or witnesses not to report corruption; (b) coercing false confessions, testimonies or denunciations in order to conceal or evade accountability for corruption; (c) coercing judicial or law enforcement officials into disregarding their duties in the fight against corruption; or (d) intimidating or

<sup>12</sup> See also “Report to the Armenian Government on the visit to Armenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 21 May 2010”, document CPT/Inf (2011) 24; and Association for the Prevention of Torture and Prison Reform International, *Institutional Culture in Detention: A Framework for Preventive Monitoring*, 2nd ed. (London, 2015), p. 9.

even “disappearing” or otherwise suppressing anti-corruption activists (e.g. A/70/217, paras. 69–70; and CAT/C/THA/CO/1, para. (14) (b)).

33. In all of these examples, acts or threats of torture or ill-treatment supply the coercive element compelling victims or their relatives to offer or contribute to the requested undue advantage and, therefore, constitute an instrumental part of the related act or scheme of corruption. Given that a primary driver for this pattern of torture and ill-treatment is the pursuit of an undue advantage, such abuse cannot be addressed only through improvements in regulation, training or equipment, or through the investigation and prosecution of individual acts of torture and ill-treatment, all of which presuppose a functioning governance system based on the rule of law. Rather, the deliberate instrumentalization of torture and ill-treatment for corrupt purposes can only be eradicated through decisive and simultaneous action towards purging the overarching corrupt environment as a whole, including widespread root causes of corruption such as inadequate remuneration of public sector employees (CAT/C/52/2, paras. 84, 89–90 and 94) and the inadequate resourcing of public bodies more generally, the perceived normalization of corruption within State institutions, and the absence of accessible, independent and sufficiently staffed and funded monitoring, oversight and complaints mechanisms capable of detecting, investigating, prosecuting and compelling reform towards the non-recurrence of both corruption and torture or ill-treatment.

### **3. Instrumentalizing “undue advantages” for torture or ill-treatment**

34. The direct causal link between corruption and torture or ill-treatment can also be inverse, that is where undue advantages are deliberately offered or sought for the purpose of inducing acts or threats of torture or ill-treatment, or to protect such abuses from investigation and adjudication. For example, in practice, police officers may be offered money, drugs and other undue advantages in return for intimidating, punishing or coercing persons on behalf of criminal networks or, conversely, criminals may be offered such advantages in order to intimidate, punish or coerce victims, witnesses, political opponents or human rights defenders on behalf of corrupt officials (e.g. A/70/217, para. 70). Similarly, in the migration context, smuggling networks often bribe border officials in order for them to intimidate and ill-treat migrants caught crossing the border without having solicited smuggling services (A/HRC/37/50, para. 30). In the prison context, dominant inmates may be offered undue advantages in return for agreeing to intimidate, punish or coerce other inmates on behalf of the prison guards (CAT/OP/MLI/1, para. 82).

35. An important dimension of this interactive pattern is corruption whose purpose is to “protect” the practice of torture or ill-treatment, most notably by obstructing or interfering with oversight mechanisms or the judicial system. This may include a variety of actions, including: (a) bribery of witnesses or public officials as a means of preventing or obstructing an investigation, prosecution or other aspect of the justice process in relation to torture and ill-treatment; (b) State officials trading in influence in order to obstruct investigations, prosecutions and other aspects of the justice process in relation to torture and ill-treatment; (c) State officials condoning, through inaction or inadequate measures, abuse inflicted by private individuals, corporations and other non-State actors in return for financial, political or other undue advantages being granted to them or any other person or entity, including their own Government. The Special Rapporteur has received numerous and consistent allegations according to which police and other security forces were, in various contexts, reluctant to protect indigenous and other socioeconomically marginalized communities against violence at the hands of corporate actors and other private individuals aiming to take possession of their lands for purposes such as extraction of natural resources, deforestation, or the construction of settlements, dams or other infrastructure projects (A/73/207, paras. 64–65). Similarly, in custodial contexts, officials are frequently reported to turn a blind eye to violence inflicted by dominant inmates in return for bribes and other undue advantages. It must be emphasized that any such conduct of State officials amounts to consent or acquiescence to torture or ill-treatment perpetrated by non-State actors and, at the very least, violates the due diligence obligation of States to prevent, investigate and prosecute such abuse.

36. In all of these examples, undue advantages are offered or requested in return for conduct violating obligations derived from the prohibition of torture and ill-treatment. This pattern of torture and ill-treatment involves corruption as a mere “facilitator” and, therefore, cannot be effectively addressed through anti-corruption efforts alone, but requires a broad understanding of the key factors contributing to a particular environment conducive to torture and ill-treatment such as confessions-based investigative methodologies, misconceived and discriminatory policies in areas such as counter-terrorism, law enforcement, minority protection and immigration, systemic failings in providing humane conditions of detention and a general failure of the justice system to prevent impunity, including for corruption and torture or ill-treatment.

#### **4. Exploiting exposure to torture or ill-treatment for “undue advantages”**

37. Another frequent pattern of interaction between corruption and torture or ill-treatment is where State officials demand the transfer of undue advantages by deliberately exploiting a pre-existing exposure of persons to acts, threats or risks of torture or ill-treatment on the part of other perpetrators. This variation of interaction between corruption and torture or ill-treatment can be particularly pervasive in armed conflicts and other situations of systemic violence marked by widespread torture and ill-treatment. The heightened risk of torture and ill-treatment prevailing in such situations, whether it is of a general or personalized nature, is deliberately exploited to extort undue advantages in exchange for offering to prevent or reduce the exposure to such risk. For example, in urban policing, violent areas or hotspots may be exploited for profit by law enforcement officials demanding bribes and other undue advantages from inhabitants and shopkeepers in return for protection from abuse at the hands of criminal gangs. Similarly, in the context of irregular migration, corrupt State agents, smugglers and other criminal elements often demand the payment of bribes and other undue advantages from migrants or their relatives in return for allowing them to apply for asylum or subsidiary protection or for refraining from extraditing, returning or otherwise deporting them to a country or territory where they would face a real risk of torture or ill-treatment (A/HRC/37/50).

38. Here too, the coercive element compelling victims or their relatives to offer the requested undue advantage is the alternative prospect of torture and ill-treatment, albeit this time at the hands of perpetrators unrelated to the corrupt official exploiting this risk, who may even be located in a different jurisdiction. In addition to broader efforts towards restoring the rule of law and remedying the surrounding risks of torture and ill-treatment, eradicating the exploitation of such risks by corrupt officials generally requires robust anti-corruption measures, including accessible, independent and sufficiently staffed and funded monitoring, oversight and complaints mechanisms capable of detecting, investigating and prosecuting violations.

#### **5. Torture or ill-treatment as foreseeable “side effect” of corruption**

39. Even when not deliberately and purposefully interlinked with acts, threats or risks of torture or ill-treatment, corruption can cause or contribute to the exposure of persons to torture or ill-treatment or pose an obstacle to its prevention, investigation, or redress and rehabilitation. Corrupt practices of this kind may include, for example, high-level officials taking bribes or other undue advantages from extractive companies or other corporate actors in return for contracts involving resource exploitation or similar activity, such as mining, deforestation or construction contracts which, in the circumstances, pose a real risk of coercive practices against persons such as local residents, indigenous populations, activists and workers, including threats, harassment, violence and forced evictions, or living or working conditions amounting to cruel, inhuman, or degrading treatment or even torture.<sup>13</sup>

<sup>13</sup> Committee on Economic, Social and Cultural Rights, general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 15; European Parliament, *Workshop on Corruption and Human Rights in Third Countries* (2013), p. 13; United Nations Human Settlements Programme (UN-Habitat) and

40. Furthermore, corruption may foreseeably cause or contribute to the exposure of persons to torture and cruel, inhuman or degrading treatment through misallocation, misappropriation, diversion or depletion of financial or other resources allocated to key public services. For example, in his daily work for the mandate, the Special Rapporteur has observed a widespread practice of embezzling resources allocated to safeguarding humane detention conditions, including adequate infrastructure and staffing of detention facilities; appropriate training, equipment and remuneration of staff; and the provision of basic commodities and services to inmates such as food, water, heating, repair, laundry, hygiene, health care and educational and recreational opportunities.

41. Even where such corrupt practice does not deliberately aim to cause pain or suffering, it foreseeably downgrades conditions of detention to levels that may be cruel, inhuman or degrading. Moreover, the resulting shortage of prison staff and equipment almost inevitably triggers situations or practices conducive to violence and abuse, such as the inability of the remaining staff to ensure a safe and orderly management of facilities in line with the legitimate needs of the inmates and the de facto delegation of internal discipline to dominant inmates and heads of cells. Although these causal effects may not be purposefully intended or desired by the perpetrators, they are reasonably foreseeable by them as part of the ordinary course of events and, therefore, must be regarded as intentional for the purposes of State and individual accountability.

42. The negative impact of corruption on the effective implementation of the prohibition of torture and ill-treatment applies both to “grand” and to “petty” corruption but, as a general rule, disproportionately affects persons in vulnerable situations such as persons deprived of their liberty; members of social minorities and indigenous groups; irregular migrants or other non-nationals; persons with physical or mental disabilities, illnesses or substance dependence; lesbian, gay, bisexual, transgender and intersex persons; and, depending on the context, children, women and older persons and similar groups exposed to marginalization and discrimination. For example, the Committee on the Elimination of Discrimination against Women has highlighted that a prevalence of corruption in police stations acts as a systemic barrier to effectively addressing violence against women (CEDAW/C/UGA/CO/7, para. 23), also affirming the broad and diffuse capacity of corruption to obstruct the prevention of torture and ill-treatment.

43. In this pattern, corruption is the primary driver for torture and ill-treatment, particularly in conjunction with a permissive environment conducive to abuse and impunity. The manifestation of torture and ill-treatment as a “side effect” of corruption cannot effectively be addressed through anti-torture measures alone. Accordingly, the obligation to take effective measures for the prevention of torture and ill-treatment can be said to include a duty to take comprehensive and decisive action for the eradication of the corrupt practices and corrupt environments conducive to such abuse.

## **6. Torture or ill-treatment and corruption as foreseeable “side effects” of other policies and practices**

44. Even policies, laws and practices which do not, in themselves, constitute or involve acts of corruption or of torture and ill-treatment can be instrumental in exposing persons to various combinations of corruption and torture or ill-treatment. Indeed, States’ failure to prevent corruption or torture and ill-treatment can often be traced to high-level policies and decisions that do not deliberately aim to facilitate corruption or torture and ill-treatment but may concern a wide range of issues, such as the conclusion or denunciation of international agreements, memorandums of understanding or soft-law instruments; the criminalization or decriminalization of certain conduct and the systematic incarceration of certain persons; the allocation of resources and the introduction of budget cuts; the organization of institutions and the delivery of public services; the structure and practice of law enforcement and criminal justice systems; and, more generally, the policies and practices adopted in contexts

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OHCHR, *Forced Evictions*, Fact Sheet No. 25/Rev.1 (2014), p. 4; and David Hess, “Business, corruption, and human rights: towards a new responsibility for corporations to combat corruption”, *Wisconsin Law Review*, vol. 2017, No. 4, pp. 641–693, at pp. 667–669.

such as public security, migration, the protection of minorities and social and economic welfare.

45. For example, excessively punitive policies on small-scale, non-violent criminality generally entail an overuse of incarceration that, in turn, leads to prolonged pretrial detention in overcrowded and understaffed places of detention marked by cruel, inhuman or degrading conditions and high levels of violence by staff and between inmates (A/73/207, para. 40). In practice, this trend is very likely to go hand in hand with high levels of corruption among police officers, prison staff and within the judicial system, involving all kinds of extortion in exchange for alleviating cruel, inhuman or degrading prison conditions, protection against abuse, access to legal counsel, timely court hearings and favourable verdicts or sentences.

46. Moreover, political decisions depriving migrants of safe and regular migration pathways and thereby in practice eroding the meaningful implementation of the principle of non-refoulement, including through the criminalization of humanitarian assistance to migrants (A/73/314), push migrants towards irregular pathways controlled by smugglers, traffickers and corrupt officials and expose them to very significant risks of abuse and exploitation, including torture and ill-treatment for ransom, organ removal, forced labour, slavery or servitude, sexual abuse, forced adoption, child soldiering, begging and coerced criminal activities (A/HRC/37/50, paras. 31–35). As the Special Rapporteur concluded in his report to the Human Rights Council, “the primary cause for the massive abuse suffered by migrants in all regions of the world, including torture, rape, enslavement, trafficking and murder, is neither migration itself, nor organized crime, nor the corruption of individual officials, but the growing tendency of States to base their official migration policies and practices on deterrence, criminalization and discrimination rather than protection, human rights and non-discrimination” (A/HRC/37/50, para. 66).

47. In sum, even in the absence of any deliberate aim to do so, high-level political decisions may give rise to policies and practices conducive to corruption and torture or ill-treatment. In order to fulfil their mutually reinforcing obligations under the absolute and non-derogable prohibition of torture and ill-treatment, therefore, Governments and political leaders should carefully evaluate the foreseeable implications and consequences of their decisions, as well as the policies and practices likely to arise from them, and ensure that they will not, in the ordinary course of events, create, maintain or contribute to any environment conducive to corruption and torture or ill-treatment (see, too, A/73/207).

## **D. Systemic governance failures conducive to corruption and torture or ill-treatment**

48. On the level of systemic governance, corruption and torture or ill-treatment are best understood as two concurrent effects of the same original cause, namely a failure of the surrounding governance system to prevent the rise and exercise of unchecked power. Apart from extreme circumstances marked by a near complete suppression or collapse of the rule of law, such as in dictatorial regimes, failed States, armed conflicts or natural disasters, unchecked power tends to result from systemic governance failures that may not necessarily, or not at first sight, be perceived as conducive to corruption and torture or ill-treatment. Nevertheless, wherever there is a causal connection between systemic governance failures and corruption, torture and ill-treatment, regardless of the intentionality or purposefulness of that connection, an international legal obligation to take systemic remedial measures can be derived directly from the duty of States to take effective measures for the prevention of torture and ill-treatment and of corruption.<sup>14</sup>

### **1. Systemic tolerance for unchecked power**

49. One of the most fundamental root causes of corruption and torture or ill-treatment committed, facilitated or tolerated at all levels of State authority is the absence of effective

<sup>14</sup> Convention against Torture, Part I and United Nations Convention against Corruption, chap. II.

checks and balances and the strict separation of powers between the executive, judicial and legislative branches of Government. While systemic governance failures are fairly obvious in States with autocratic regimes or weak democratic institutions, they nonetheless also permeate States with strong democratic institutions and formal guarantees of institutional independence, albeit less visibly.

50. For example, throughout the world, judges, prosecutors, parliamentarians and political leaders are often reluctant to impartially investigate or adjudicate accusations of corruption, torture or ill-treatment against lower courts, military and civilian security services or administrative authorities and, instead, tend to display an attitude ranging from complacency to complicity that is irreconcilable with their democratically mandated role. Similarly, in virtually all States, legislative or regulatory projects aiming to subject corporate actors or other influential stakeholders to adequate taxes or to legal liability for adverse human rights and environmental impacts at home and abroad are routinely hindered or significantly watered down by powerful lobbying machineries in ways that are irreconcilable both with the human rights obligations of the State and with legislators' duty to serve the public interest.

51. Analogous failures of good governance, impartiality and oversight can also be observed at the level of international organizations and other entities created by States, including those tasked with the protection of human rights and the investigation or adjudication of violations. In short, lack of transparency, trading in influence, arbitrariness and denial of justice are common practices across national and international governance systems, albeit at varying levels of sophistication and subtlety, ranging from open violence and abuse to corrupt practices almost completely removed from public awareness. As a direct consequence of this sobering reality, in all regions of the world the vast majority of abuse involving corruption and torture or ill-treatment is not, or not adequately, investigated, adjudicated and remedied, thus resulting in a worldwide prevalence of structural impunity for such abuse.

52. Overall, the most fundamentally destructive effect of these systemic governance failures is the creeping establishment of systems, environments and situational "niches" where power can be abused with impunity, thus providing a fertile environment for the spread of corruption and, through the relevant patterns of interaction, also for the unchecked practice of torture and ill-treatment. Therefore, while measures targeting corruption and torture or ill-treatment at the level of individual officials, institutions and processes remain indispensable, the only realistic prospect for eradicating either phenomenon is to effectively address the underlying systemic governance failures conducive to both forms of abuse.

## 2. Normative and institutional shortcomings

53. Beyond the need for checks and balances, the fight against corruption, torture and ill-treatment requires an effective international and national normative and institutional framework and its rigorous implementation, including by means of fostering best practice, such as forensic investigations and non-coercive interviewing. As the mandate has highlighted repeatedly, and most recently in the latest thematic report to the General Assembly, some States have yet to ratify key international legal instruments against torture and ill-treatment, and all too many States fall short in establishing and ensuring the effective national operation of key safeguards and mechanisms oriented and tailored towards preventing torture and ill-treatment (A/73/207, paras. 19–21 and 26–27). Similarly, some States have yet to ratify key international legal instruments against corruption and many fall short in establishing and ensuring the effective national operation of key safeguards and mechanisms aimed at preventing and redressing corruption.<sup>15</sup> The absence

<sup>15</sup> It is worth noting that, as of 7 November 2018, the United Nations Convention against Corruption had reached near-universal ratification, with 186 ratifications. On lessons learned regarding the implementation of the Convention, see CAC/COSP/2017/5. On national implementation strategies, see UNODC, *National Anti-Corruption Strategies: A Practical Guide for Development and Implementation* (Vienna, 2015).

of the requisite normative and institutional framework against both corruption and torture or ill-treatment, and/or of the political will and systemic capacity to make it effective, is a fundamental impediment to the eradication of such abuses and their mutually reinforcing manifestations.

### 3. Insufficient accountability of corporate actors

54. The past 30 years have witnessed a dramatic increase in the number and influence of transnational corporations, growing investment and trade flows between countries and the emergence of global supply chains. In addition, major development projects have increasingly involved corporate actors and private investments, often in the form of public-private partnerships between State agencies and foreign private investors. This trend has given rise to various standard-setting processes aiming to address the increasing human rights impacts of business activities including, most notably, the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. While the Guiding Principles do not focus on the interrelations between business, human rights and corruption, States clearly have a positive duty to protect against human rights abuses related to corporate practices, including those involving corruption.

55. The interrelation between corruption and torture or ill-treatment in such contexts can include a wide range of practices, from acts or threats of violence on the part of State officials or private security personnel against protesters, journalists and human rights defenders to the harassment and forced eviction of local inhabitants, indigenous peoples and others perceived as an obstacle to corporate interests and expropriation of their property, and can even extend to manipulating the administration of justice in favour of unchecked corporate power. In practice, acts or threats of violence, forced labour, modern slavery, inhuman working conditions and human trafficking at the hands of corporate actors are often facilitated and enabled by corruption and lack of transparency in complex corporate supply chains, in contexts such as agricultural farming of raw materials like sugar, cotton, cocoa and tobacco, but also in construction, mining and quarrying, as well as garments and textiles (A/HRC/30/35). In view of the often very substantial sums of money and other benefits involved in corporate investment projects, this is an area particularly prone to grand corruption involving the top level of Government and corporate leadership in both developing and developed States.

### 4. Inadequately resourced public services and institutions

56. It is widely recognized that inadequate funding of public services, including poor infrastructure and equipment, and insufficient number, remuneration and training of staff significantly increase the risk of corruption and abuse. The risks of torture and ill-treatment arising in conjunction with corruption are particularly high where insufficiently resourced public services and institutions are authorized to use force and coercion, such as military and police forces, border guards, prison staff and, in some contexts, publicly mandated private security contractors. In detention facilities, inadequate staffing, infrastructure and supplies often significantly downgrade the general conditions of detention and create fertile ground for cycles of corruption, discrimination and torture or ill-treatment. In such facilities, prison staff tend to delegate part of internal discipline to dominant inmates and to establish systems of corrupt exchanges in which money or favours are exchanged for “privileges” such as protection from violence, alleviating cruel, inhuman or degrading detention conditions or providing access to sufficient food, water, hygienic articles and medical care, or visits by lawyers and family members. Conversely, rigorous recruitment and training processes and appropriate remuneration of prison staff have been found to contribute towards reducing or eradicating endemic corruption and torture or ill-treatment.<sup>16</sup>

<sup>16</sup> See, further, UNODC, *Handbook on Anti-Corruption Measures in Prisons*, chap. 4.

## 5. Socioeconomic marginalization and discrimination

57. As the Subcommittee on Prevention of Torture has observed, corruption violates the rights of all those affected by it, but it has a disproportionate impact on people belonging to groups exposed to particular risks such as minorities, indigenous peoples, migrant workers, people with disabilities, those with HIV/AIDS, refugees, prisoners, women, children and those living in poverty (CAT/C/52/2, para. 80). Indeed, wherever certain communities, groups or individuals are marginalized by prejudice, social exclusion and economic disempowerment, their situation tends to be exacerbated by an increased exposure to both corruption and torture or ill-treatment, including widespread or systematic practices of extortion, gender-based violence, arbitrary arrests and forced confessions or denunciations. At the same time, “tough on crime” policies expose the most marginalized to an almost inescapable downward spiral of brutalization.

58. In practice, such abuse is almost never investigated, prosecuted and adjudicated, thus giving rise to societal “niches” of near complete impunity and denial of justice. Practices of corruption and torture or ill-treatment that exploit and consolidate significant imbalances of power based on social, political or socioeconomic exclusion and marginalization can only be eradicated by measures that comprehensively address and effectively remove the underlying social injustice in line with the universal principles of non-discrimination and of effective separation of powers.<sup>17</sup> While growing awareness of these issues has resulted in multiple national and international normative and policy initiatives, including in the framework of the 2030 Agenda for Sustainable Development, significant efforts remain necessary to remedy the negative consequences of discrimination and marginalization worldwide (A/73/207, paras. 63–74 and 77).

## 6. Excessive incarceration and involuntary institutionalization

59. So-called “tough on crime” policies, which excessively penalize non-violent offences, are not only counterproductive in terms of failing to reduce long-term crime rates but also create environments conducive to corruption and torture or ill-treatment. For example, criminalizing and imposing mandatory investigative and punitive detention for irregular border crossings, minor drug offences or other frequent but non-violent transgressions inevitably leads to excessive incarceration, prolonged pretrial detention and overcrowded, under-resourced detention facilities, with all the above-mentioned manifestations of corruption and abuse to be expected in such situations.

60. Moreover, the case-by-case handling of petty offences is often left to police discretion, which encourages extortion or the use of torture to obtain forced confessions. Similar “niches” of corruption, abuse and impunity also result from widespread practices of prolonged or indefinite administrative detention of irregular migrants, or of involuntary institutionalization of older people or persons affected by actual or perceived psychosocial disabilities. In order to avoid corruption and torture or ill-treatment in the context of excessive deprivation of liberty and forced institutionalization, States should develop policies and practices comprehensively addressing the challenges arising in areas as diverse as crime prevention, migration management and social care, and should avoid any deprivation of liberty or involuntary institutionalization that is not lawful, strictly required and proportionate in the circumstances.

## IV. Conclusions

61. On the basis of the observations and considerations expressed above, and informed by broad stakeholder consultations, the Special Rapporteur, to the best of his personal judgment and conviction, comes to the conclusions set out below.

<sup>17</sup> Kristian Lasslett, “Countering grand corruption and kleptocracy through transformative justice: a victims of corruption approach”, draft paper, on file with the Special Rapporteur.



### **General relationship between corruption and torture or ill-treatment**

62. Despite the general consensus that both corruption and torture or ill-treatment are inherently unlawful and fundamentally destructive for any society tolerating such abuse, both practices continue to be widespread and deeply entrenched in national and international governance systems throughout the world. From a conceptual perspective, not every act of torture and ill-treatment necessarily involves or relates to corruption, and not every act of corruption necessarily involves or relates to torture and ill-treatment. In practice, however, there is a wide range of contexts, subcontexts and situational “niches” that are marked by some degree of interaction between corruption and torture or ill-treatment.

63. Both corruption and torture or ill-treatment are rarely isolated in a few “bad apples” but, figuratively speaking, almost always extend to “rotten branches”, or even “rotten orchards”, and therefore are predominantly structural and systemic phenomena. Wherever corruption and torture or ill-treatment coexist, their relationship tends to be cyclical and mutually reinforcing, making it important to understand the predominant patterns of causal interaction. Nevertheless, from a systemic perspective, corruption and torture or ill-treatment are best understood as concurrent effects of the same original cause, namely a failure of the relevant governance system to prevent the abuse of unchecked power. Thus, while measures targeting corruption and torture or ill-treatment on the level of individual officials, institutions and processes remain indispensable, there is no realistic prospect for eradicating either phenomenon without effectively addressing the underlying systemic governance failures conducive to both forms of abuse.

### **Predominant patterns of causal interaction**

64. In terms of causal proximity, the Special Rapporteur proposes to distinguish the following predominant patterns of interaction between corruption and torture or ill-treatment:

- (a) Demanding “undue advantages” that per se amount to torture or ill-treatment;
- (b) Instrumentalizing torture or ill-treatment for “undue advantages”;
- (c) Instrumentalizing “undue advantages” for torture or ill-treatment;
- (d) Exploiting exposure to torture or ill-treatment for “undue advantages”;
- (e) Torture or ill-treatment as a foreseeable “side effect” of corruption;
- (f) Torture or ill-treatment and corruption as foreseeable “side effects” of other policies and practices.

65. Given the cyclical and mutually reinforcing relationship between torture or ill-treatment, and regardless of the intentionality or purposefulness of that interaction, an international legal obligation to take anti-corruption measures can be derived directly from the duty of States to take effective legislative, administrative, judicial and other measures to prevent acts of torture and ill-treatment,<sup>18</sup> and a legal obligation to take anti-torture measures can be derived directly from their duty to develop and implement or maintain effective, coordinated anti-corruption policies and practices.<sup>19</sup>

### **Systemic governance failures conducive to corruption and torture or ill-treatment**

66. The most important systemic governance failures conducive to corruption and torture or ill-treatment include:

- (a) Systemic tolerance for unchecked power;
- (b) Normative and institutional shortcomings;
- (c) Unchecked power of corporate actors;

<sup>18</sup> Convention against Torture, Part I.

<sup>19</sup> United Nations Convention against Corruption, chap. II.

- (d) Inadequately resourced public services and institutions;
- (e) Socioeconomic marginalization and discrimination;
- (f) Excessive incarceration and involuntary institutionalization.

67. Wherever there is a causal connection between systemic governance failures and corruption, torture or ill-treatment, regardless of the intentionality or purposefulness of that connection, an international legal obligation to take systemic remedial measures can be derived directly from the duty of States to take effective legislative, administrative, judicial and other measures to prevent acts of torture and ill-treatment,<sup>20</sup> as well as from their duty to develop and implement or maintain effective, coordinated anti-corruption policies and practices.<sup>21</sup>

## V. Recommendations

68. On the basis of his observations and conclusions, the Special Rapporteur endorses and reinforces the recommendations of the Human Rights Council (resolution 35/25) and its Advisory Committee (A/HRC/28/73, paras. 47–55) in respect of the negative impact of corruption on the enjoyment of human rights and, in response to Council resolution 37/19, offers the following recommendations to States with a view to strengthening their capacity to ensure the effective prevention of and accountability for torture and other cruel, inhuman or degrading treatment or punishment in settings affected by corruption.

### Ratification and implementation of international instruments

69. States should adopt and/or ratify, without reservations, the United Nations Convention Against Corruption, the Convention against Torture and its Optional Protocol and all other universal and regional treaties and soft law instruments relevant to the prevention of corruption and torture and ill-treatment respectively, and should ensure their comprehensive and effective implementation across national legal and institutional frameworks.

### Zero-tolerance policies on corruption and on torture or ill-treatment

70. States should adopt and implement strict policies of zero tolerance for both corruption and torture or ill-treatment throughout all branches and levels of public authority, not only through strict enforcement at the level of individual officials, services and processes, but also through decisive corrective action that may be required at the systemic level. In doing so, States should duly consider the predominant patterns of causal interaction between corruption and torture or ill-treatment. In determining criminal culpability for involvement in corruption, they should duly consider mitigating circumstances of coercion, including through risks, threats or acts of torture and ill-treatment. Furthermore, States should complement repressive and corrective action with proactive efforts to ensure adequate funding, training and equipping of public services and institutions, and fostering a general culture of personal and professional integrity throughout all public services.

### Integration and mutual mainstreaming

71. States should proactively integrate their anti-torture and anti-corruption policies and practices, including through mutual mainstreaming. Thus, the prevention of torture and ill-treatment should be systematically incorporated into anti-corruption policies and practices and the prevention of corruption should be systematically incorporated into anti-torture policies and practices. At the most basic level, this also means that any anti-corruption measure must fully comply with the absolute and non-

<sup>20</sup> Convention against Torture, Part I.

<sup>21</sup> United Nations Convention against Corruption, chap. II.

derogable prohibition of torture and ill-treatment, and vice versa. Moreover, States should ensure that their decisions, policies and practices in other areas of governance will not, in the ordinary course of events, create, maintain or contribute to any environment conducive to corruption and torture or ill-treatment.

#### **Independent monitoring and reporting**

72. States should establish and maintain accessible, well-resourced and fully independent monitoring, oversight and accountability mechanisms for the prevention of corruption and of torture or ill-treatment including, but not limited to, those foreseen in articles 6 and 36 of the United Nations Convention against Corruption and articles 2 and 16 of the Convention against Torture in conjunction with article 3 of its Optional Protocol. Beyond what is already foreseen in treaty law, such mechanisms should be formally empowered to carry out comprehensive monitoring and proactive investigations and to publicly report their findings; to initiate, oversee and contribute to national and international judicial proceedings and other accountability processes; and to exchange information and cooperate with each other with a view to exposing context-specific acts or patterns of corruption and torture or ill-treatment, where appropriate in coordination with the national human rights institution. In addition to officially mandated mechanisms, States should provide a transparent and safe environment enabling and protecting the monitoring, reporting and advocacy activities of civil society organizations, human rights defenders and whistle-blowers and ensure their unhindered access to individual witnesses, victims or their relatives.

#### **Contexts particularly exposed to corruption and torture or ill-treatment**

73. While maintaining comprehensive anti-corruption and anti-torture policies and practices, States, monitoring mechanisms and civil society stakeholders should focus their efforts specifically on contexts particularly prone to corruption and torture or ill-treatment, including:

(a) The extra-custodial use of force and other coercive powers by State officials or private security contractors, for example in relation to arrests, house searches, crowd management, checkpoints and immigration control;

(b) Persons who are deprived of their liberty or institutionalized without their free and informed consent, for example in prisons, police stations, military barracks, closed camps or shelters, migration centres, orphanages, psychiatric hospitals, social care centres or any other similar place;

(c) Policies, procedures and practices relating to asylum, migration and border control, including the treatment and living conditions of irregular migrants and the application of the principle of non-refoulement with regard to the risk of torture and ill-treatment;

(d) The administration of justice, including decisions about deprivation of liberty and forced institutionalization; the initiation, suspension and dismissal of investigations into allegations of torture or ill-treatment and related corruption; the investigative questioning of persons; and the provision of redress and rehabilitation to survivors of torture and ill-treatment;

(e) The protection of persons against corruption, violence, intimidation and abuse committed, instigated or facilitated by corporate actors, security contractors, criminal organizations or other non-State actors;

(f) The protection of civil society representatives, human rights defenders, political opponents, whistle-blowers and witnesses and victims of corruption or human right violations against violence, intimidation and reprisals;

(g) Policies, procedures and practices influencing the treatment, living conditions, rights and duties of minorities and other persons, groups or communities exposed to social exclusion, socioeconomic marginalization and discrimination due to factors such as their ethnic, religious or indigenous background, social or migration status, gender, sexual orientation, age or disability;

(h) The formulation, adoption, implementation and interpretation of law pertaining to any of the above, including any lobbying activities undertaken in this respect.

#### Transnational efforts

74. Given the increasingly transnational character, reach and consequences of the activities and transactions undertaken by States and international organizations and by multinational corporations and other non-State actors, States should cooperate internationally in order to ensure effective policies and practices for the prevention and eradication of corruption and torture or ill-treatment. Any international exchange of information or extradition undertaken in this context remains subject to the exclusionary clause prohibiting the use as evidence of any information obtained through torture or ill-treatment<sup>22</sup> as well as the prohibition of refoulement towards a real risk of torture or ill-treatment,<sup>23</sup> which may be substantiated with evidence of systemic governance failures and corruption.<sup>24</sup>

#### Synergies within the United Nations

75. United Nations agencies and mechanisms such as, most notably, UNODC, OHCHR, the Committee against Torture, the Subcommittee on Prevention of Torture and the United Nations Voluntary Fund for Victims of Torture, as well as the special procedures of the Human Rights Council, including the mandate of the Special Rapporteur, should systematically examine the interaction between corruption and human rights violations, including torture and ill-treatment, in their respective reporting and should strengthen their exchanges, coordination and cooperation with a view to fostering, throughout the United Nations, a holistic understanding of the shared root causes and the causal interactions between corruption and human rights violations, and of the most effective measures for the prevention and eradication of such abuse (A/HRC/28/73, paras. 51–55).

#### Human Rights Council

76. The Special Rapporteur specifically endorses the recommendations of the Advisory Committee that the Human Rights Council establish a thematic special procedure mandate (i.e. a special rapporteur, independent expert or working group) tasked with examining the causal connections between corruption and human rights violations and that the examination of this question be expressly integrated both into the universal periodic review and into the Council's complaints procedure (A/HRC/28/73, paras. 52–54).

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<sup>22</sup> Convention against Torture, art. 15.

<sup>23</sup> Ibid., art. 3.

<sup>24</sup> Center for the Advancement of Public Integrity, Columbia Law School, *The Corruption and Human Rights Connection: Government Acquiescence in Torture* (2018).