

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

Ref.: AL NLD 4/2022
(Please use this reference in your reply)

29 March 2022

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 43/20.

I would like to thank your Excellency's Government for its response, dated 10 March 2022, to my communication sent on 10 January 2022 (AL NLD 1/2022) relating to reported cases of excessive use of force by law enforcement officers against protestors, during the course of several protests since January 2021, in apparent violation of the principles of legality, necessity, proportionality and precaution.

I would like to reiterate my appreciation for the ongoing constructive dialogue with your Excellency's Government on this matter and note with attention the elements of response presented. By way of this letter, I would like to emphasise areas that require further clarification and investigation in compliance with the Netherlands international legal obligations pertaining to the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

The concerns referenced in this letter respond directly to Human Rights Council resolution A/HRC/46/L.27, para. 28, inviting my mandate to take into account in its future work “the roles and responsibilities of the police and other law enforcement officials in the implementation of the obligations to prohibit and prevent torture and other cruel, inhuman or degrading treatment or punishment”, and is further informed by my long-standing thematic work on the topic, including my report to the General Assembly on “Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment” (A/72/178), as well as the recent joint public statement endorsed by 44 mandate holders calling for an end to police brutality worldwide.

1. *Observations on the Government's responses concerning individual cases raised:*

Case 1: Non-violent woman hit by high-pressure water jet from a water cannon mounted on a police vehicle, causing severe injury

According to your Excellency's Government, the Investigation Department, which is part of the Public Prosecution Service, is currently investigating this case after a criminal complaint for "attempted manslaughter, attempted serious assault and assault" has been lodged against the operator(s) of the water cannon and the driver of the vehicle. At the same time, the police did not start any disciplinary investigation, after the Police Chief accepted and adopted the finding of the internal Use of Force Review Committee that the use of force in this case had been "professional".

While I welcome the fact that a criminal investigation has been initiated in this case, I note that this seems to have happened only in response to a criminal complaint, and not proactively on the prosecutor's or the police service's own initiative (*ex officio*). I also note with concern that, despite the availability of compelling video evidence of a clear violation of the Convention against Torture resulting in serious and potentially life-threatening physical injury, more than 14 months after the incident, the Dutch authorities still have not publicly acknowledged any fault and no decision to prosecute has been taken.

This significant delay appears to be incompatible with the Netherland's international legal obligations to "promptly" investigate and prosecute alleged violations, and to "immediately" examine victims' right to redress and rehabilitation, as set out in articles 7, 12, 13 and 14 of the CAT. Moreover, any undue delay of criminal investigations or failure to take provisional disciplinary measures against alleged perpetrators, such as warnings and temporary suspension from service, also violate the Netherlands' duty to take "effective measures" with a view to preventing the re-occurrence of the alleged violations under article 2 of the CAT and risk to give the impression of *de facto* impunity for police brutality through procrastination ("justice delayed is justice denied").

This impression is further consolidated by the fact that both the Police Chief and the Use of Force Review Committee of the police found that the force used in this case had been "professional" and did not require a disciplinary investigation. This very disturbing finding stands in stark contrast to the assertion made by your Excellency's Government that "*police officers are therefore permitted to use force only when the objective justifies that use (proportionality) and cannot be achieved in any other way (subsidiarity). If possible, a warning must be given before force is used. In addition, the force used must be reasonable and measured in relation to the objective.*"

The available video footage leaves no doubt that the force used in this case cannot be reconciled with these standards. First, the victim was directly targeted with a mounted water cannon at a dangerously short distance, thus predictably turning a less-lethal device into a potentially lethal weapon. Second, this life-threatening assault does not appear to have been preceded by an effective warning or other precautionary measure. Third, in any event, the use of potentially lethal force against a non-violent person posing no threat at all cannot under any circumstances be considered necessary and proportionate for the achievement of whatever purpose the acting police officers may have pursued in this case. Moreover, despite the high likelihood of very serious, potentially lethal injuries, no law enforcement official present at the scene seemed to make any attempt at providing first aid to the woman, who was

bleeding profusely from her head, or at otherwise minimizing the harm resulting from this brutal assault. Gratuitous failure to provide medical assistance in a potentially life-threatening situation such as this one would appear to be a serious breach of duty, if not a criminal offence, on the part of any police officer present at the scene and, therefore, should be promptly and rigorously addressed as such by the Dutch authorities.

I would like to reiterate that I am particularly alarmed at the Government's assertion that both the internal oversight mechanisms and the leadership of the Dutch police considered the blatantly unlawful conduct documented in this case as "professional" and deemed it unnecessary to take any disciplinary measures. In my view, this raises serious concerns as to the ability, or willingness, of the Dutch police to effectively review and ensure the compliance of their own law enforcement officials with international standards governing the use of force, and to reliably identify and address violations through preventative and corrective measures.

More generally, this case seems to illustrate a point made in my 2017 thematic report to the General Assembly, namely that the availability of "less lethal" weapons such as water cannons, apart from their obvious benefits, can also give rise to risks of "overuse" in situations in which the desired purpose could reasonably have been achieved through less coercive, less dangerous and less harmful means (A/72/178, paras 53-55).

Case 2: Defenceless protester secured on the ground by three police officers continues to be relentlessly beaten with batons and gratuitously injured by a service dog

According to your Excellency's Government, the Public Prosecution Service has decided to press criminal charges for disproportionate use of force against two officers involved in this case, namely the dog handler and one riot police officer. No other officer present at the scene and no superior officer appear to have been charged.

While I welcome the fact that a criminal investigation has been initiated in this case, I note with serious concern that this did not happen in a timely and proactive manner on the prosecutor's or the police service's own initiative (*ex officio*), but only after 373 applications and 142 lodged criminal complaints had been received by the police, and more than nine months after the incident. Moreover, to date, no trial appears to have been scheduled. Given the availability of compelling video evidence documenting a clear violation of the Convention against Torture, this significant delay appears to be incompatible with the Netherland's international legal obligations to "promptly" investigate and prosecute alleged violations, and to "immediately" examine victims' right to redress and rehabilitation, as set out in articles 7, 12, 13 and 14 of the CAT.

Moreover, any undue delay of criminal investigations or failure to take provisional disciplinary measures against alleged perpetrators, such as warnings and temporary suspension from service, also violate the Netherlands' duty to take "effective measures" with a view to preventing the re-occurrence of the alleged violations under article 2 of the CAT and risk to give the impression of *de facto* impunity for police brutality through procrastination

(“justice delayed is justice denied”).

Not surprisingly, therefore, the very same inappropriate means and methods of violence and intimidation employed in this incident in The Hague on 14 March 2021 were documented again on video footage taken of several incidents that took place at a protest in Amsterdam on 2 January 2022.

Moreover, the impression of unwarranted leniency on the part of the Police Chief and the Use of Force Review Committee of the police described in Case 1 is further consolidated in the present case. In particular, according to your Excellency’s Government, the internal Use of Force Review Committee found, and the Police Chief accepted: that the initial the deployment of the police dog in order to arrest a reportedly violent man was “lawful and professional”; that the blow administered by the riot police officer in this initial phase was “unprofessional because it was unnecessary”; that the renewed deployment of the police dog in the second phase of the arrest was “no longer proportionate”; but that the remaining use of force was “lawful and professional”. So far, pending the conclusion of the ongoing criminal investigation, no disciplinary measures have been taken and the means and methods employed by the involved officers do not seem to have been revised or corrected.

This assessment by the internal oversight mechanism of the Dutch police does not reflect an adequate and objective analysis of the facts documented in the available video footage. Contrary to the description of events provided in the response of your Excellency’s Government, the video footage clearly shows that the protester “ceased to resist” not at the end of the sequence, but already before any of the documented acts of police violence happened. The fact that the protester grabbed the attacking dog by its ears in order to protect himself from getting bitten cannot be regarded as unlawful “resistance”, as no one can be legally obliged to allow a dog to physically injure him. Rather, in protecting himself from the dog’s attack without trying to escape or resist arrest, the protester merely exercised his inherent right to legitimate self-defence, and it was the duty of the dog handler to immediately withdraw the dog.

From that moment on, the protester was effectively in the power of the police and could easily have been handcuffed. At this point, irrespective of any previous misconduct on the part of the protester, his prompt and safe arrest was the only lawful purpose that could be pursued by the police officers. The Government’s assertion that the “officer could not get the suspect under control as the latter had grabbed the dog by the ears” clearly contradicts the available video evidence. On the contrary, any and all violence used against this protester during the entire video sequence, including every blow with a police baton, every boot-kick and every dog bite, not only caused needless physical injury and gratuitous humiliation, but also involved the intentional infliction of severe suffering on a powerless person for purposes such as coercion, punishment, or intimidation and, therefore, fulfilled all defining elements of torture within the meaning of Art. 1 CAT.

In this connection, I would like to remind your Excellency’s Government that the duty to criminally prosecute acts of torture is not limited to the direct perpetrators, but also to superiors and other officers who are complicit or

otherwise participating in acts of torture including not only through instigation and consent, but also through mere acquiescence (Art. 1 and 4 CAT). I therefore note with concern that your Excellency's Government has not responded to my query, which is hereby renewed, as to reasons why no investigation has been initiated against the responsible superiors, as well as against other officers, who were present at the scene but failed to intervene.

Case 3: Non-violent protester attacked and seriously injured by service dog

According to your Excellency's Government, this case is still pending with the internal review procedure of the police. I note with concern that, despite compelling video evidence of a police service dog inflicting serious bodily injury and severe pain and public humiliation on a non-violent protester, with the dog handler evidently unable to bring his animal under control, this case does not appear to have been transmitted to the Investigation Department of the Public Prosecutor. Given the questionable performance of the internal review procedure of the Dutch police in the other cases raised in my communication, I remain seriously concerned that this case, too, might eventually conclude in an excessively lenient finding, without any penal, disciplinary and compensatory consequences and without any lessons learnt by the Dutch police as to the predictably disproportionate risks of injury and dehumanization that come with the routine employment of service dogs in complex and fast evolving environments such the policing of assemblies.

Case 4: Non-violent protester brutally beaten by police officers for civil disobedience

According to your Excellency's Government, this incident occurred in the context of an unauthorized assembly involving around 10'000 participants which occurred on 2 January 2022 in Amsterdam. The Government asserts that "the police were ultimately forced to take action, partly because the demonstrators refused to comply with the order to leave the area and were ignoring coronavirus restrictions. In addition, some demonstrators committed acts of violence towards the police, as a result of which several police officers sustained injuries".

In this connection, I would like to remind your Excellency's Government that the case at hand did not involve a protester engaging in acts of violence against the police, but a peaceful protester sitting alone on the ground with his legs crossed. The man is surrounded by riot police officers in full gear and, when he declines to get up and leave, two police officers repeatedly beat him with full force on the back with their batons. Throughout the incident, the man did not appear to represent any threat, nor did he otherwise put the officers or other people at risk. Whatever legitimate purpose the involved police officers may have pursued, therefore, the kind and degree of physical violence used against this protester, and the risks of injury and humiliation that come along with it, clearly cannot be regarded as necessary and proportionate.

Despite compelling video evidence documenting this clear case of excessive use of force, the allegation officially transmitted in my previous communication does not appear to have triggered any disciplinary or criminal investigations whatsoever, nor did the Government provide any legitimate

explanation for this failure to act in line with its obligations under the Conventions against Torture.

I therefore would like to remind your Excellency's Government of its absolute and non-derogable obligation to initiate a prompt and impartial investigation in order to identify the responsible officers, establish the facts, initiate criminal prosecution, and take measures of redress, compensation and prevention of re-occurrence, regardless of whether the victim has submitted a formal complaint (*ex officio*). Any failure of the Dutch authorities to do so would amount to "acquiescence" with a documented act of torture or other cruel, inhuman or degrading treatment or punishment occurring on its territory (Art. 1, 2 and 16 CAT), thus not only giving rise to State responsibility but potentially also triggering individual criminal responsibility for complicity and participation on the part of any official failing to investigate, prosecute and punish perpetrators as required under international law (Art. 4 CAT).

More generally, while I appreciate the authorities' frustration with the repeated experience of civil disobedience and democratic dissent on the part of a significant number of predominantly peaceful protesters, I would like to reiterate the futility of trying to suppress such large-scale protests through violence, coercion, and intimidation. When national laws and regulations can only be enforced through the widespread and routine use of violence clearly excessive and disproportionate to the immediate threat posed by individual dissenters, then the absolute and overriding prohibition of torture and other cruel, inhuman or degrading treatment requires, as a matter of international law, that the authorities pursue law and order through alternative means including, most notably, de-escalation, dialogue and cooperation.

Case 5: Non-violent protester complying with a police order to leave the area pursued by a police officer repeatedly beating him with a baton

According to your Excellency's Government, this incident, too, occurred in the context of an unauthorized assembly involving around 10'000 participants on 2 January 2022 in Amsterdam. Here, too, the Government asserts that "the police were ultimately forced to take action, partly because the demonstrators refused to comply with the order to leave the area and were ignoring coronavirus restrictions. In addition, some demonstrators committed acts of violence towards the police, as a result of which several police officers sustained injuries".

This case again does not involve a protester engaging in acts of violence against the police, but a peaceful protester who was persistently pursued and repeatedly beaten with a baton by a police officer in full riot gear, even though the protester complied with the order to leave the area and did not pose any threat to anyone.

I note with concern that, here too, despite compelling video evidence documenting a clear case of excessive use of force, the allegation transmitted in my previous communication does not appear to have triggered any disciplinary or criminal investigations whatsoever, nor did the Government provide any legitimate explanation for this failure to act in line with its obligations under the Convention against Torture.

In order to avoid the repetition, I refer your Excellency's Government to my observations made in relation to Case 4 above, which – *mutatis mutandis* - are equally applicable also to the present case, both in terms of the absolute and non-derogable legal obligation to prevent, investigate, prosecute and redress acts of torture and other ill-treatment, and in terms of the implications of any failure to do so for State responsibility and, potentially, even individual criminal responsibility.

2. Apparent discrepancy between normative provisions and actual practice

According to the statistical data provided by your Excellency's Government in response to my request, throughout the year 2020, there were 17'005 incidents in which the police used force, totalling 27'271 individual acts involving the use of force. Of these, only 3'262 (1,19 %) led to the use of force being registered and to review by the Police Chief concerned; only 236 (0.86%) were deemed "unprofessional", and a mere 6 (0,022 %) gave rise to disciplinary proceedings.

I very much regret the Government's response that statistical figures on the number of criminal prosecutions and disciplinary measures relating specifically to the policing of demonstrations cannot be generated, apparently because the data contained in the registration systems of both the police and the Public Prosecution Service cannot be filtered accordingly. Given that it was possible for the Government to provide the overall number of acts involving the use of force by the police throughout the year 2020 (27'271), as well as the numbers of those considered "unprofessional" (236) and those triggering a disciplinary proceeding (6), it is difficult to understand why it should have been impossible for the Government to verify individually how many of those 6 and, respectively, 236 cases were related to the policing of assemblies.

While I appreciate the formal existence in the Netherlands of a sophisticated normative, procedural and institutional framework for the reporting and investigation of the use of force by the police, I am seriously concerned that, in practice, it does not seem to produce a realistic pattern of disciplinary and criminal sanctions corresponding either to the number of complaints that were actually submitted, or to the number and frequency of sanctions that would statistically be expected to arise, even with a well-trained and commanded law enforcement service, in a country the size of the Netherlands.

According to official data provided by the Government, of 27'271 individual acts involving the use of force, only 236 (0.86%) were deemed "unprofessional", and a mere 6 (0,022 %) gave rise to (ongoing) disciplinary proceedings, whereas no criminal prosecutions at all appear to have been initiated in 2020. Also, throughout 2020, no disciplinary or criminal sanctions whatsoever appear to have been imposed on any police officer for excessive use of force, nor did the Government publicly acknowledge any fault or reassure the population by declaring a "zero tolerance" policy for police brutality.

Based on long-standing experience in the regulation, instruction and evaluation of police and military operations, I would like to remind your

Excellency's Government of the fact that even the most professional police force consists of human beings called to work in extremely difficult circumstances. While culpable misconduct on the part of police officers must never be condoned, it is unrealistic to think that it could ever be avoided completely or reduced to ratios as low as 0.022%. Therefore, the almost complete absence of disciplinary and criminal proceedings and sanctions related to the use of force by law enforcement officials, in a densely populated country like the Netherlands, is unlikely to reflect a reliable assessment of operational reality. Rather, it consolidates the general impression of dysfunctional command and control structures, which may well meet all normative and institutional requirements on paper, but which are unable, or unwilling, to effectively respond to official misconduct in practice, thus resulting in a strongly distorted self-perception on the part of the authorities.

For these reasons, I urge your Excellency's Government to take immediate measures to ensuring that investigations into alleged disciplinary and criminal misconduct on the part of law enforcement officials be conducted in a "prompt" and "impartial" manner and that victims' right to redress and rehabilitation be "immediately" examined, so as to serve as an "effective" measure of prevention in line with the obligations codified in the Convention against Torture. Any undue leniency, tolerance or acquiescence with alleged acts of torture and other ill-treatment must be prevented through the implementation, on all levels of the investigative and judicial process, of a strict "zero tolerance" policy with regard to police brutality. The prompt and transparent investigation and prosecution of allegations of torture and ill-treatment by the competent authorities are indispensable to maintain public confidence in the Government's adherence to the rule of law and to prevent any perception of official acquiescence, consent or complicity in relation to unlawful practices.

3. Observations regarding specific means and methods of law enforcement

a) Police ID-number:

In my previous communication I asked your Excellency's Government to explain "*what steps have been taken, or are still foreseen, to ensure that all operating police officers are easily identifiable to the public through the display of ID-number or similar means*". In response, your Excellency's Government details the duty of police officers to identify themselves by means of their police ID, in the case of uniformed officers only when asked, and in the case of plain-clothes also without being asked, as soon as they are acting in their official capacity. The Government also explains that "*operating as an arrest team, or as part of the riot police, when swift action is required, may mean that identification is not always expedient*".

While I appreciate these explanations they do not contribute to resolving the serious and seemingly near complete lack of identification and accountability arising in relation to Dutch riot police officers. It goes without saying that, during the policing of assemblies, particularly when force is being used by officers in full riot gear, it is completely unrealistic to expect protesters to ask officers to show their police ID in order to be able to identify them. Contrary to officers in other countries, Dutch police officers do not appear to wear any

large and well-contrasted ID-numbers on their uniform that are immediately visible from a distance. This makes it virtually impossible to hold them to account for police brutality and other serious misconduct committed in the context of violent clashes with protesters. Without such ID-numbers, victims and other witnesses of unlawful police violence will hardly ever be able to identify the perpetrators with a certainty sufficient for allowing their criminal conviction in court.

I therefore respectfully urge your Excellency's Government to take immediate measures towards ensuring that all operating police officers, including plain-clothes officers authorized to use force during riots and assemblies, are easily identifiable to the public through the open display on their uniforms of large ID-numbers that are recognizable at a distance.

b) Use of service dogs and police horses:

In my previous communication I asked your Excellency's Government to explain *"what steps have been taken, or are still foreseen, to discontinue the use of service dogs, horses and unnecessary, disproportionate or otherwise unlawful force and coercion in response to unauthorized assemblies and other forms of civil disobedience"*.

In response, your Excellency's Government explains the regulatory framework applicable to the use of dogs and horses by the police and points out that *"police horses – unlike police dogs – are not deployed as a weapon. Police horses are deployed to maintain public order as they are eminently suitable for dispersing a crowd and therefore help de-escalate the situation"*. The Government further asserts that both horses and dogs *"have been demonstrated in practice to de-escalate the situation during operations to restore public order. (...) Without their deployment, the police would be obliged to use force against a larger group of rioters with the risk of escalating the situation and increasing the force used by police against rioters and vice-versa."*

While I acknowledge that there is scope for the legitimate use of both horses and dogs in law enforcement, their use in the policing of assemblies entails significant risks of excessive force and indiscriminate effects. The Government asserts that the effect of the employment of dogs and horses is *"to encourage some of those causing the disturbance to leave the location of their own volition"*. In practice, however, the use of horses and dogs in the policing of assemblies is much more likely to cause panic and disarray among peaceful participants, who may be there in the thousands with their families and children, than to convince violent troublemakers *"to leave the location of their own volition"*. In the complex and fast-evolving environment of large-scale protests, where thousands of participants and law enforcement personnel act simultaneously and in often unpredictable ways, the employment of police horses and dogs is inherently dangerous and serves primarily the purpose of intimidation. Both tend to create a distinctly hostile environment of aggressive confrontation and dominance rather than dialogue and de-escalation. Given that the Government acknowledges its employment of service dogs *"as weapons"* during crowd control operations, such use would seem to fall in the category of *"weapons that might not be inherently cruel, inhuman or degrading"*

[but that] may nonetheless carry significant risks of being used in a manner contrary to the prohibition of torture and cruel, inhuman or degrading treatment or punishment, thus placing emphasis on the requirement of precautions.” (A/71/178 para 52).

In my view, when the Government asserts that *“To date, no suitable alternative has been found for crowd control, crowd management and riot control. In such situations the deployment of these animals has a greater de-escalating effect than any other method”*, it dangerously equates intimidation with de-escalation and strongly underestimates the direct and indirect risk of employing animals in the policing of assemblies. Indeed, in two of the five individual cases submitted in my communication, rather than de-escalating the situation, the inappropriate use of service dogs has needlessly caused the violence to spiral out of control and has resulted in serious injuries and gratuitous humiliation in clear violation of the Convention against Torture.

I thus welcome the Government’s assurance that the Dutch police are currently examining the role of service dogs in the performance of their duties and that the impending amendments to the Code of Conduct, which are expected to enter into force on 1 July 2022, will also include extra deployment criteria for the use of police dogs. I strongly encourage your Excellency’s Government to use this opportunity to carefully and critically review the risks and benefits of routinely employing dogs and horses in the policing of assemblies, as well as the likely long-term societal effects of the underlying assumption that large-scale civil disobedience can effectively be suppressed through intimidation and violence rather than tolerance and dialogue.

In connection with the above alleged facts and concerns, please also refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations, observations, and concerns.
2. In the light of the observations made in the present letter, please provide further information on the current state of investigations into each of the five incidents of police violence documented through video evidence, as described above and in my previous communication (Cases 1 -5). In cases where no investigations have been initiated, where credible allegations of misconduct have been dismissed, where proceedings have been pending without significant progress for many months, or where no preliminary disciplinary measures have been taken, please explain in detail how this is compatible with the human rights obligations of the Netherlands as set out in this communication.
3. Please explain what steps have been taken, or are still foreseen, both in general and in relation to each of the five individual cases raised in my

communication (Cases 1-5), to ensure that criminal and disciplinary investigations and sanctions for police brutality are not limited to the direct perpetrators only, but are also extended to the responsible superiors, as well as to other officers, who were present at the scene but failed to intervene.

4. In view of the unrealistically low number of criminal or disciplinary proceedings initiated compared to the reported statistical frequency of the use of force by the Dutch police (0,022 % in 2020), please explain what steps have been taken, or are still foreseen, in order to ensure that, in the future, internal oversight mechanisms of the police, but also the Public Prosecution Service refrain from unwarranted leniency with regard to police violence and, instead, effectively review and rigorously enforce compliance with international standards governing the use of force through preventative and corrective measures.
5. In the light of the observations made in the present letter, please further explain what steps have been taken, or are still foreseen, to ensure that all operating police officers, especially members of the riot police, are easily identifiable to the public, at a distance, through the display of ID-numbers or similar means.
6. In the light of the observations made in the present letter, please further explain what steps have been taken, or are still foreseen, to discontinue the use of service dogs, horses and other unnecessary, disproportionate, or otherwise unlawful force and coercion in response to unauthorized assemblies and other forms of civil disobedience.
7. Please explain what steps have been taken, or are still foreseen, to publicly declare and implement, on all levels of the operational, investigative and judicial process, of a strict and transparent “zero tolerance” policy with regard to police brutality. If no such steps have been taken, please explain how this is compatible with the international legal obligation of the Netherlands to take effective measures with a view to preventing the occurrence and re-occurrence of acts of torture and other cruel, inhuman or degrading treatment or punishment.
8. Please provide detailed information on the existing mechanisms, if any, to ensure victims are granted prompt and adequate redress, reparation and rehabilitation, in compliance with article 14 of the CAT, including the measures taken to ensure non-recurrence.
9. Please provide your assessment of the likely long-term societal effects of policies aiming to suppress large-scale civil disobedience and political dissent through intimidation and violence rather than tolerance and dialogue.

I would appreciate receiving a response within 60 days. Past this delay, this communication and any response received from your Excellency’s Government will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Please accept, Excellency, the assurances of my highest consideration.

Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with the above allegations and concerns, I would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

I would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The 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.

This absolute and non-derogable prohibition also applies to extra-custodial settings, when the use of force does not pursue a lawful purpose (legality) or is unnecessary for the achievement of a lawful purpose (necessity), or inflicts excessive harm compared to the purpose pursued (proportionality). Moreover, failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoiding the unnecessary, excessive or otherwise unlawful use of force contravenes the State's positive obligation to prevent acts of cruel, inhuman or degrading treatment or punishment within its jurisdiction. In this connection, States must regulate and control the extra-custodial use of force and must ensure that all of their agents are trained, equipped and instructed so as to prevent any act of torture and other cruel, inhuman or degrading treatment or punishment within their jurisdiction.¹

Lawful purpose: Depending on the factual and legal circumstances prevailing in a particular situation, legitimate law enforcement action may well include purposes such as self-defence or defence of others, preventing demonstrators from breaking police cordons, clearing the passage for police vehicles, enforcing obligations on social distancing and the wearing of facial masks, or dissolving unlawful assemblies. While it may further be legitimate to employ force in defence of self or others against unlawful attacks and other wrongful conduct, and to enforce the legal order more generally, individual law enforcement officials cannot under any circumstances lawfully use force or coercion merely for punitive or retributive purposes, even in response disrespectful, provocative, or even wrongful conduct. Law enforcement officials must at all times display a professional attitude and conduct commensurate with the public power and confidence vested in them.

Necessity: Even when law enforcement officials pursue a lawful purpose, they may resort to force and coercion only if, and for as long as, and to the extent to which, this purpose cannot be achieved through less harmful means. Even when the use of force is necessary, the kind and degree of force used may not lawfully exceed what is necessary in order to achieve a lawful purpose and may not continue temporally beyond the moment of its achievement. For example, a demonstrator whose suspected or real misconduct can be effectively addressed through an advance warning, verbal

The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
<https://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>
and the Code of Conduct for Law Enforcement Officials
<https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>

order, or gradated use of force, may not be violently pushed, thrown to the ground, beaten, or sprayed with irritants; and a defenseless demonstrator who has been restrained or otherwise clearly overpowered may no longer be beaten or held in a stranglehold, even if he has previously engaged in violence, unlawful or disrespectful conduct.

Proportionality: Even where the use of force by law enforcement officials is necessary for the achievement of a lawful purpose, it cannot justify the infliction of pain, suffering or other harm that must be regarded as clearly disproportionate compared to the importance of the lawful purpose to be achieved. For example, the enforcement of rules designed to prevent possible virus infections may justify the use of moderate physical force, such as physical restrictions of the freedom of movement, but cannot legitimize the use of excessive violence likely to generate risks, or inflict pain, suffering and injuries that are incompatible with the prohibition of torture and other cruel, inhuman or degrading treatment, or with the protection of the right to life. In some circumstances, this may mean that law enforcement officials may have to decline to enforce the lawful purpose of their mission based on considerations of proportionality.

Precaution: Law enforcement officials must always plan, prepare and conduct their operations so as to avoid or minimize, to the maximum extent possible, the resort to unnecessary, disproportionate or otherwise unlawful force or coercion. This includes the implementation by law enforcement officials of a gradated approach to the use of force, the use of de-escalatory measures, and the duty to provide protection and medical care to persons and bystanders who may have been injured or otherwise negatively affected by coercive measures.

Police brutality and other excessive use of force in light of the prohibition of cruel, inhuman or degrading treatment or punishment and, in situations of powerlessness, of torture, has been illustrated in the jurisprudence of international and regional human rights mechanisms, such as the Committee against Torture, the Human Rights Committee, the Inter-American Court of Human Rights and Inter-American Commission on Human Rights, and the European Court of Human Rights. Furthermore, certain weapons and other means of law enforcement have been widely recognised to be inherently cruel, inhuman or degrading by nature or design.

Furthermore, wherever there are reasonable grounds to believe that extra-custodial force amounting to torture or other cruel, inhuman or degrading treatment or punishment has been used, States have a duty to conduct a prompt and impartial investigation in order to ensure full accountability for any such act, including, as appropriate, administrative, civil and criminal accountability, and to ensure that victims receive adequate redress and rehabilitation.

In his report to the General Assembly, the Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment reiterated States' obligations in the context of policing protests, indicating that "no restrictions may be placed on the exercise of [the right to peaceful assembly] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others"; "individuals cannot lose their protection against torture and other cruel, inhuman or degrading treatment or punishment under any circumstances whatsoever,

including in the context of violent riots or unlawful protests”, and “failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoiding the unnecessary, excessive or otherwise unlawful use of force contravenes the State’s positive obligation to prevent acts of cruel, inhuman or degrading treatment or punishment within its jurisdiction.” (A/72/178, paras 15 and 62 (c)).

In this report, the Special Rapporteur on Torture examined whether and in which circumstances the extra-custodial use of force by State agents amounts to torture or other cruel, inhuman or degrading treatment or punishment, and concluded that:

- (a) Today, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is universally recognized as a core principle of international law that is binding upon all States, irrespective of their treaty obligations. The prohibition of torture is also one of the few norms of customary international law that is universally recognized as having attained peremptory status (*jus cogens*);
- (b) The prohibition of torture and other cruel, inhuman or degrading treatment or punishment not only protects persons deprived of their liberty, but also applies in extra-custodial settings;
- (c) Any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts established international legal principles governing the use of force by law enforcement officials and amounts to cruel, inhuman or degrading treatment or punishment. Moreover, failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoiding the unnecessary, excessive or otherwise unlawful use of force contravenes the State’s positive obligation to prevent acts of cruel, inhuman or degrading treatment or punishment within its jurisdiction;
- (d) Any extra-custodial use of force that is intended to inflict pain or suffering on a “powerless” person (that is, a person who is under direct physical or equivalent control and is unable to escape or resist) as a vehicle for achieving a particular purpose amounts to torture, irrespective of considerations of lawful purpose, necessity and proportionality;
- (e) States must regulate the extra-custodial use of force and must ensure that all of their agents are trained, equipped and instructed so as to prevent any act of torture and cruel, inhuman or degrading treatment or punishment within their jurisdiction. This includes not only the development of sufficiently clear guidance on the use of force and weapons, but also the systematic legal review of weapons, including other means of deploying force and “less lethal” weapons;
- (f) A weapon must be considered as inherently cruel, inhuman or degrading and, therefore, as absolutely prohibited if it is either specifically designed or of a nature (that is, of no other practical use than): (a) to employ

unnecessary, excessive or otherwise unlawful force against persons; or (b) to intentionally and purposefully inflict pain and suffering on powerless individuals. Weapons that might not be inherently cruel, inhuman or degrading may nonetheless carry significant risks of being used in a manner contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, thus placing particular emphasis on the requirement of precautions;

- (g) Wherever there is reasonable ground to believe that extra-custodial force amounting to torture or other cruel, inhuman or degrading treatment or punishment has been used, States have a duty to conduct a prompt and impartial investigation in order to ensure full accountability for any such act, including, as appropriate, administrative, civil and criminal accountability, and to ensure that victims receive adequate redress and rehabilitation.