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**Human Rights Council****Forty-sixth session**

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Agenda item 3

**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 on torture and other cruel, inhuman  
or degrading treatment or punishment, Nils Melzer\****Summary*

In the present report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment evaluates the effectiveness of the cooperation shown by States in their responses and follow-up to official communications and country visit requests transmitted by the Special Rapporteur, and recommends appropriate measures with a view to strengthening the interaction of States with the mandate of the Special Rapporteur and improving the compliance of States with their obligations arising from the absolute and non-derogable prohibition of torture and ill-treatment.

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\* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitters' control.



## **I. Introduction**

1. The present report was prepared pursuant to Human Rights Council resolution [43/20](#).

## **II. Activities relating to the mandate**

2. In 2020, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment transmitted 207 communications, jointly with other mandate holders or individually, on behalf of individuals exposed to torture and other ill-treatment.
3. Owing to the travel restrictions imposed in connection with the coronavirus disease (COVID-19) pandemic, no country visits or other official travel could be carried out in 2020, and an already agreed follow-up visit to Maldives had to be cancelled.
4. Since his previous report to the Human Rights Council (A/HRC/43/49), the Special Rapporteur has participated in consultations, workshops and events on issues relating to his mandate, the most notable of which are listed below.
5. On 6 and 7 April 2020, the mandate holder participated in an expert consultation/webinar on the theme “Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards”, pursuant to General Assembly resolution 73/304.
6. On 26 June, on the occasion of the International Day in Support of Victims of Torture, the Special Rapporteur participated in a joint public webinar on “the impact of COVID-19 on torture and ill-treatment”, where he addressed the challenges created by the COVID-19 pandemic in the context of excessive use of force and acts of violence in enforcement of national emergency measures. The webinar was organized collaboratively by the United Nations torture mechanisms and the Association for the Prevention of Torture.
7. On 15 October, the Special Rapporteur presented his thematic report on “Biopsychosocial factors conducive to torture and ill-treatment” (A/75/179) to the Third Committee of the General Assembly.
8. On 26 November, the Special Rapporteur participated in an expert meeting, organized by the Geneva Academy in support of special procedure mandate holders on the theme “How to evaluate the impact of special procedures visits, recommendations and inquiries?”, in preparation for his thematic report.
9. On 8 December, the Special Rapporteur addressed British Members of Parliament during a hearing on the treatment of Julian Assange.

## **III. Effectiveness of the cooperation of States with the mandate holder on official communications and requests for country visits**

### **A. Background**

#### **1. Status of the prohibition of torture and ill-treatment**

10. The universal and absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is reflected not only in international human rights law but also in international humanitarian law, refugee law and international criminal law. No circumstances, including war, public emergency or terrorist threat, can justify the use of torture or ill-treatment. This prohibition is universally accepted as a fundamental principle of customary international law and, therefore, is binding upon all States, regardless of whether they have ratified any of the international instruments explicitly codifying the prohibition. In sum, torture and ill-treatment are prohibited for everyone, everywhere and in all circumstances. Despite this absolute and non-derogable prohibition and the multiple national, regional and international mechanisms monitoring States’ compliance with the relevant

obligations and standards, torture and ill-treatment are far from being eradicated, and are still practiced in all parts of the world (see A/73/207).

11. The prohibition of torture and ill-treatment requires States to adopt a holistic approach to eradicate, prevent, investigate and prosecute any such abuse, and to ensure adequate and effective reparation to victims and their families. This includes a duty to integrate all these elements into national legislation and policies; applying implementation procedures, such as procedural safeguards, training of law enforcement, and warranting humane conditions of detention; and creating mechanisms of accountability and oversight. The prohibition of torture and ill-treatment applies regardless whether the acts were committed by public officials or other persons acting on behalf of the State, or private persons, and whether by encouraging, ordering, tolerating or perpetrating prohibited acts.<sup>1</sup> The prohibition of ill-treatment therefore does not merely create a negative duty on State agents not to engage in such treatment; the State also has positive duties to protect persons under its jurisdiction from acts of private individuals.<sup>2</sup>

12. In this perspective, besides the obligation to make torture a specific crime under national criminal law, including the exclusion of statements obtained under torture and abiding by the principle of non-refoulement, States have a further duty to conduct prompt, impartial and effective investigations whenever there are reasonable grounds to believe that torture or ill-treatment may have been committed. Such investigations should be carried out by independent and qualified individuals with a view to determining the nature and circumstances of the alleged acts, establishing the identity of those responsible, ensuring their prosecution and, if proven guilty, imposing criminal penalties commensurate with the gravity of the crime without any possible statute of limitations.

13. Some States have tried to justify torture or ill-treatment based on the treaty exception of “lawful sanctions”.<sup>3</sup> Any such “lawful sanctions” should, however, be interpreted in terms of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the general principle of international law, expressed in the Vienna Convention on the Law of Treaties, that a State “may not invoke the provisions of its internal law as justification for its failure to perform a treaty”.<sup>4</sup> In this regard, the Special Rapporteur and previous mandate holders have established that certain practices, including prolonged solitary confinement and corporal punishment, could not be considered lawful sanctions (see A/66/268 and A/HRC/13/39/Add.5). Furthermore, some conditions and practices are often associated with or conducive to torture and ill-treatment, including, for example, criminal justice systems that are overreliant on confessions as the primary source of evidence, and therefore are at a higher risk of using coercive interrogation techniques with a view to extracting forced confessions or testimonies (A/71/298, para. 38). Also, in systems where corruption is widespread, torture and ill-treatment are likely to be prevalent (see A/HRC/40/59).

14. In evaluating the effectiveness of States’ cooperation with the Special Rapporteur, due consideration should be given to the fact that such effectiveness should be measured in terms of ensuring States’ compliance, in practice, with the prohibition of torture and ill-treatment and with the obligations of prevention, investigation, prosecution and redress derived from that prohibition.

## **2. Mandate of the Special Rapporteur**

15. Following the adoption of the Convention against Torture by the General Assembly in its resolution 39/46 of 9 December 1984, which represented the universal recognition of the destructive effect of torture and ill-treatment to humanity and the particular need to take collective action to eradicate and prevent such acts, the Commission on Human Rights adopted, at its forty-first session, resolution 1985/33, by which it appointed for the first time

<sup>1</sup> Human Rights Committee, general comment No. 20 (1992), para.13.

<sup>2</sup> Human Rights Committee, general comment No. 31 (2004), para. 8.

<sup>3</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1.

<sup>4</sup> Vienna Convention on the Law of Treaties, art. 27.

a Special Rapporteur to examine questions relating to torture.<sup>5</sup> In its resolution, the Commission provided for a mandate of one year, gave the Special Rapporteur a specific mandate to “seek and receive credible and reliable information from Governments, specialized agencies, intergovernmental organizations and non-governmental organizations”, and requested the “Secretary-General to appeal to all Governments to cooperate with and assist the Special Rapporteur in the performance of his tasks and to furnish all information requested”. Unlike treaty bodies, which are mandated to monitor compliance of States parties with their treaty obligations, the Special Rapporteur on torture is called upon to examine questions relating to the prohibition and prevention of torture in all current and aspiring States Members of the United Nations, and regardless of their treaty obligations.

16. Since 1985, relevant resolutions have been regularly adopted by the Commission on Human Rights, then subsequently by the Human Rights Council,<sup>6</sup> extending the mandate of the Special Rapporteur and the term of the mandate from one year to two, and then to three years, while maintaining the annual cycle of reporting, underscoring the important contribution of the mandate in the fight against torture and other forms of ill-treatment. In all resolutions, Governments were requested to cooperate with the Special Rapporteur, progressively developing from a mere request to the Secretary-General “to appeal on all Governments to cooperate with and assist the Special Rapporteur in the performance of his tasks and to furnish all information requested” (in Commission resolution 1985/33) to urging States to “cooperate fully with and to assist the Special Rapporteur in the performance of his or her tasks, to supply all necessary information requested by him or her and to fully and expeditiously respond to his or her urgent appeals, and [urging] those Governments that have not yet responded to communications transmitted to them by the Special Rapporteur to answer without further delay”. Since its establishment, the Human Rights Council, in its resolutions to extend the mandate of the Special Rapporteur, has further reminded States of their obligations to eradicate torture and ill-treatment, including by taking preventive measures, to guarantee the rehabilitation of and redress to victims, and to ensure accountability for torture and ill-treatment.

17. The modus operandi of the mandate of the Special Rapporteur has evolved progressively over the past 35 years. In this connection, in his report submitted in 1994 to the Commission on Human Rights on the question of the human rights of all persons subjected to any form of detention or imprisonment, in particular, torture and other cruel, inhuman or degrading treatment or punishment (E/CN.4/1992/17), the mandate holder addressed a request by a Member State for clarification on the urgent appeal procedure and the criteria used by the Special Rapporteur to make such appeals to Governments. Referring to the humanitarian nature of the urgent appeal and the opportunity for Governments to look into the matter of urgent concern and to uphold their obligations under international law by instructing the detaining authorities to respect the individual’s right to physical and mental integrity, the Special Rapporteur indicated a number of factors that the mandate holder takes into account in assessing urgent appeals:

- (a) The known reliability of the source of the information;
- (b) The internal consistency of the information;
- (c) The consistency of the information with information on other cases from the State in question that has come to the Special Rapporteur’s attention;
- (d) The existence of authoritative reports on torture practices from national sources, such as official commissions of inquiry;
- (e) The findings of other international bodies, such as United Nations country rapporteurs and representatives, the Human Rights Committee, the Committee against Torture and regional human rights bodies, in particular, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment;

<sup>5</sup> The mandate was expanded to include “other cruel, inhuman or degrading treatment or punishment” in 1986.

<sup>6</sup> Pursuant to General Assembly resolution 60/251 of 15 March 2006.

(f) The existence of national legislation, such as laws permitting prolonged incommunicado detention, that can have the effect of facilitating torture;

(g) The threat of extradition or deportation, directly or indirectly, to a State or territory where one or more of the above elements are present.

18. The above-mentioned modus operandi of the mandate, notably with regard to actions taken by the Special Rapporteur in reaction to allegations of torture and ill-treatment and to urgent appeals brought to the attention of the mandate holder are described by the Human Rights Council in its resolution 43/20, by which it extended the mandate of the Special Rapporteur; in the Code of Conduct for Special Procedures Mandate Holders (Council resolution 5/2); and the Manual of Operations of the Special Procedures of the Human Rights Council, adopted in June 2008 (see below). These documents have the aim of strengthening cooperation between mandate holders and States, and the capacity of mandate holders to exercise their functions.

## **B. Purpose and scope of the report**

### **1. Purpose**

19. Since the creation of the mandate of the Special Rapporteur on torture in 1985, all mandate holders have consistently observed a stark contrast between the sophisticated international and domestic normative and institutional framework established by States for the prohibition, prevention, investigation and redress of torture and ill-treatment, and the continued practice of such abuse in all regions of the world (see A/73/207).

20. At the same time, mandate holders have submitted thousands of official communications transmitting individual allegations of torture and ill-treatment, visited dozens of States and drafted yearly thematic reports to draw the attention of the Commission on Human Rights, the Human Rights Council and the General Assembly to generic and transversal topics and challenges of general importance with a view to achieving the universal eradication of torture and ill-treatment. Several mandate holders have also compiled reports with systematic observations on the follow-up of States to their official communications and, in general, have concluded that only a small minority of the allegations transmitted have been effectively resolved or otherwise received a fully satisfactory response from the State concerned.<sup>7</sup> Moreover, some of the States most solicited by individual communications sent by the mandate holder, including numerous States that have issued a standing invitation to special procedures mandate holders, have consistently ignored, postponed or declined requests for country visits by mandate holders, thus preventing the Special Rapporteur from conducting an objective on-site assessment of their compliance with the prohibition of torture and ill-treatment. This observation raises serious concerns with regard to the effectiveness of States' cooperation with the mandate of the Special Rapporteur, and calls for an objective evaluation in this regard.

21. In accordance with this conclusion, 35 years since the establishment of the mandate, and mindful of the "need to be able to respond effectively to credible and reliable information that comes before [the mandate holder]",<sup>8</sup> the Special Rapporteur deems it timely to evaluate the effectiveness of States' cooperation with the mandate with a view to ensuring the prevention, investigation, prosecution and redress of torture and ill-treatment. More specifically, in the present report, he aims:

<sup>7</sup> See E/CN.4/1989/15, E/CN.4/1990/17, E/CN.4/1991/17, E/CN.4/1992/17, E/CN.4/1993/26, E/CN.4/1994/31, E/CN.4/1995/34, E/CN.4/1996/35 and Add.1 and Corr.1, E/CN.4/1997/7 and Add.1, E/CN.4/1998/38 and Add.1, E/CN.4/2000/9 and Add.5, E/CN.4/2003/68/Add.1, E/CN.4/2004/56/Add.1, E/CN.4/2005/62/Add.1, E/CN.4/2006/6/Add.1, A/HRC/4/33/Add.1, A/HRC/7/3/Add.1, A/HRC/10/44/Add.4 and Corr.1, A/HRC/13/39/Add.1 and Corr.1, A/HRC/16/52/Add.1, A/HRC/19/61/Add.4, A/HRC/22/53/Add.4 and A/HRC/25/60/Add.2.

<sup>8</sup> Commission on Human Rights resolution 1985/33, para. 6.

- To evaluate the effectiveness of cooperation shown by States in their responses and follow-up to official communications, and to country visit requests transmitted by the Special Rapporteur
- To make recommendations to both States and relevant United Nations mechanisms with a view to (a) achieving the standard of “full cooperation” set by the Human Rights Council concerning the cooperation between States and the mandate, and (b) ensuring full compliance of States with their legal obligations arising from the universal, absolute and non-derogable prohibition of torture and ill-treatment

## 2. Scope

22. The present report covers official communications and country visit requests transmitted by the Special Rapporteur during the first four years of his tenure, from 1 November 2016 to 31 October 2020. Where appropriate and specifically indicated, the Special Rapporteur may also consider systematized information made available by previous mandate holders through, for example, reports containing observations on communications.

23. The cooperation of States during official country visits conducted by the Special Rapporteur is subject to separate reporting and, therefore, is not covered in the present report, nor are issues arising in relation to the follow-up of States to specific recommendations made in country visit reports. In the view of the Special Rapporteur, such issues are more appropriately and constructively addressed through bilateral dialogue.

24. The follow-up of States to the general recommendations made in the thematic reports submitted by the Special Rapporteur to the Human Rights Council and the General Assembly will be subject to a separate State consultation to be conducted throughout 2021; depending on the outcome, they may warrant a separate evaluation and report to the Council at a later stage.

## C. Methodology

25. In order to evaluate the effectiveness of cooperation by States with the mandate holder, the Special Rapporteur analyses below all available information, including the responses received from States to official communications and country visit requests, in addition to the responses received to the State consultation questionnaire aiming to systematize the data requested.

26. In the present report, the Special Rapporteur describes three substantive levels of cooperation between States and the mandate, namely full, partial and no cooperation. This distinction is based primarily on the standards set by the Human Rights Council in its resolution 43/20, complemented by the Manual of Operations of the Special Procedures and the Code of Conduct for Special Procedures Mandate Holders, and other relevant instruments.

27. While Human Rights Council resolutions are politically authoritative but not legally binding, most of the measures of prevention, investigation, prosecution and redress recommended by the mandate holder reflect international legal obligations derived directly from the absolute and non-derogable prohibition of torture and ill-treatment.

28. Where official communications and country visit requests were submitted jointly by several mandate holders, the evaluation in the present report should be taken to reflect only the perspective of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, without prejudice to concurring, differing or complementary assessments that could be or may have been reached by other independent mandate holders on some or all of these cases.

29. Communications and requests on which the dialogue between the State concerned and the mandate holder is ongoing and being actively pursued are not evaluated in the present report but are marked “pending”. Likewise, the cooperation of States that have not received any communications or visit requests by the Special Rapporteur during the period under review will not be assessed in the present report.

## D. Standards of reference

### 1. Responsibilities of the mandate

30. In terms of thematic scope, the mandate of the Special Rapporteur covers any act or omission amounting to torture or other cruel, inhuman or degrading treatment or punishment under applicable international customary and treaty law. The Special Rapporteur is mandated to examine questions relating to the prohibition and prevention of and redress for such abuse in all current and aspiring States Members of the United Nations, regardless of their treaty obligations and of whether the perpetrators are State agents or non-State actors.

31. In its resolution 43/20, the Human Rights Council stressed that the mandate holder should discharge his or her duties in accordance with Council resolutions 5/1 and 5/2 and the annexes thereto. In particular, the Council mandated the Special Rapporteur to seek, receive, examine and act on information regarding issues and alleged cases concerning torture or ill-treatment; to conduct country visits with the consent or at the invitation of Governments and to enhance further dialogue with them, and to follow up on recommendations made in visit reports; to comprehensively study trends, developments and challenges in relation to combating and preventing torture and ill-treatment, and to make recommendations and observations concerning appropriate measures to prevent and eradicate such practices; to identify, exchange and promote best practices on measures to prevent, punish and eradicate torture and ill-treatment; to integrate a gender perspective and a victim-centred approach; to cooperate with, and promote the cooperation between, universal, regional and national mechanisms, as well as civil society, on matters pertaining to the mandate; and to report on all of the mandate's activities, observations, conclusions and recommendations to the Human Rights Council, and annually on relevant overall trends and developments to the General Assembly, with a view to maximizing the benefits of the reporting process.

32. The Special Rapporteur is mandated to receive information from different sources and to act on credible information by sending a communication to the relevant Governments. Such communications are sent through diplomatic channels, unless agreed otherwise, in relation to any actual or anticipated human rights violations which fall within the scope of their mandate. Communications may deal with (a) cases concerning individuals, groups or communities; (b) general trends and patterns of human rights violations in a particular country or more generally; or (c) the content of existing or draft legislation considered to be a matter of concern.<sup>9</sup>

33. Official communications do not imply a value judgment on the part of the special procedure concerned and are thus not per se accusatory. They are not intended as a substitute for judicial or other proceedings at the national level. Their main purpose is to obtain clarification in response to allegations of violations and to promote measures designed to protect human rights.<sup>10</sup>

34. In the light of the information provided by the Government in response to a communication, the mandate holder may initiate further inquiries or make recommendations or observations to be published in the relevant report.<sup>11</sup>

35. The text of allegation letters and urgent appeals remains confidential for 60 days to allow for States to provide a response and, thereafter, are published on the special procedures communications website, together with any responses received.

36. The Manual of Operations further determines the criteria based on which the mandate holders take action and the different types of communications to States.<sup>12</sup>

### 2. Responsibilities of States

37. Recognizing the importance of the work of the Special Rapporteur in the prevention and fight against torture and ill-treatment, the Human Rights Council urges States to, most

<sup>9</sup> Manual of Operations of the Special Procedures of the Human Rights Council, paras. 28–29.

<sup>10</sup> *Ibid.*, para. 30.

<sup>11</sup> *Ibid.*, paras. 28–30 and 36.

<sup>12</sup> *Ibid.*, paras. 38–51.

notably, cooperate fully with and assist the Special Rapporteur in the performance of his or her tasks, supply all necessary information requested by him or her and fully and expeditiously respond to his or her urgent appeals, and urges those Governments that have not yet responded to communications transmitted to them by the Special Rapporteur to answer without further delay; respond favourably to the Special Rapporteur's requests to visit their countries, and enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries; prevent any sanction, reprisal, intimidation or other prejudice against any person, group or association, including persons deprived of their liberty, for contacting, seeking to contact or having been in contact with the Special Rapporteur; ensure proper follow-up to the Special Rapporteur's recommendations and conclusions; and adopt a victim-centred and gender-sensitive approach in the fight against torture and ill-treatment.

### 3. Responsibilities of the United Nations

38. Lastly, the Human Rights Council requests the Secretary-General to ensure, from within the overall budget of the United Nations, that the Special Rapporteur is provided with an adequate and stable level of staffing and the facilities and resources necessary, bearing in mind the strong support expressed by Member States for preventing and combating torture and assisting victims of torture.

39. Like all other special procedures of the Human Rights Council, the mandate of the Special Rapporteur is supported by the Office of the United Nations High Commissioner for Human Rights (OHCHR) through thematic fact-finding, policy and legal expertise, research and analytical work, and administrative and logistical services.<sup>13</sup>

## E. State consultation

### 1. Questionnaire

40. On 12 August 2020, the Special Rapporteur launched a round of State consultations by questionnaire, inviting all States Members of the United Nations:

- To outline their current procedures for the processing of official communications and country visit requests transmitted by the Special Rapporteur
- To evaluate the effectiveness of their current cooperation with the mandate regarding official communications and country visit requests
- To make recommendations and requests with a view to improving their current cooperation and dialogue with the mandate holder

41. The questionnaire was an opportunity for States to share their perspective on the issues raised and, thereby, to contribute to and inform the present report. The initial deadline for the submission of State responses to the questionnaire was set for 15 October 2020; following a written reminder transmitted to all States, the deadline was subsequently extended to 31 October.

42. Of the 195 Governments solicited by the mandate, 31 (16 per cent) provided a response; 164 (84 per cent) did not.<sup>14</sup> Of the 31 Governments that responded to the questionnaire, 20 had received one or more official communications from the Special Rapporteur, while 11 Governments had never received such a communication. Of the 195 Governments solicited, only 20 responses were received from those that had actually received communications from the Special Rapporteur. Furthermore, almost all Governments described their interactions with the Special Rapporteur as "fully cooperative" or otherwise indicated that they were open to constructive dialogue and cooperation.

43. The Special Rapporteur expresses his gratitude to those States that responded to the questionnaire. At the same time, he sincerely regrets that the large majority of States most

<sup>13</sup> Ibid., para. 21.

<sup>14</sup> Responses submitted are available at [https://ohchr.org/EN/Issues/Torture/SRTorture/Pages/CFI\\_Effectiveness\\_of\\_States.aspx](https://ohchr.org/EN/Issues/Torture/SRTorture/Pages/CFI_Effectiveness_of_States.aspx).



frequently seized by the mandate failed to respond and, thus, declined to provide their views with regard to potential challenges arising in their cooperation with the mandate holder.

## **2. National procedures**

44. In response to the first question of the questionnaire, some States provided general information on training and legislative, institutional and other measures taken at the national level for the prevention and investigation of torture and ill-treatment, including for the ratification and implementation of the Convention against Torture and other cruel, inhuman or degrading treatment or punishment, the Optional Protocol to the Convention and the creation of a national preventive mechanism.

45. Only 17 States provided information specifically on the national procedures put in place to process and respond to allegations of torture and ill-treatment transmitted by the Special Rapporteur. Those procedures included the good practice of establishing a specialized national mechanism (or division within the concerned ministry), which assumes the responsibility of coordinating responses to mandate holders and following up on recommendations made by all United Nations human rights mechanisms, which facilitates cooperation with mandate holders, could assist the State in analysing and detecting systematic violations of human rights, and recommends reforms at the national level.

46. Furthermore, 10 States provided brief information on the procedures followed to assess and respond to country visit requests by the Special Rapporteur. Overall, 14 States indicated having extended standing invitation to all special procedure mandate holders. Fourteen States did not provide any information on the processing of country visit requests by the Special Rapporteur.

47. Given the small number of responses, it was unfortunately not possible to establish a representative overview of the procedures used by States to process official communications and country visit requests transmitted by the mandate holder.

## **3. Self-evaluation**

48. The second and third questions of the questionnaire invited States to self-evaluate their cooperation with the mandate holder in response to official communications and country visit requests transmitted over the past four years. In response, 13 States considered their interaction with the mandate to be “fully cooperative” or otherwise indicated that they were open to constructive dialogue and cooperation. Three of these States had not received any communication from the Special Rapporteur. Only one State described interaction as partially cooperative due to the Government’s inability to respond to one of the communications received. Furthermore, six States indicated that they had not received any communications from the Special Rapporteur although, according to official records, one or several communications had been transmitted to them during the period under review.

49. Given the small number of responses, it was unfortunately not possible to obtain a representative understanding of how and based on which criteria States Members of the United Nations self-evaluate their cooperation with the mandate holder in response to official communications and requests for a country visit.

## **4. State recommendations and requests**

50. The fourth question of the questionnaire invited States to submit recommendations and requests with a view to improving their current cooperation and dialogue with the mandate holder. In response, five States provided recommendations or reported challenges to cooperation with the mandate holder.

51. The challenges posed reported included the restricted timeline of 60 days within which Governments are expected to respond to official communications, which in some cases was not sufficient to allow for the national consultations and investigations that would be required to provide a detailed and satisfactory response. Other challenges reported included lack of resources to investigate all allegations, in particular given the number of communications received by some Governments and the perceived overlap of the mandate of the Special

Rapporteur and that of the treaty bodies, such as the Committee against Torture and the Subcommittee on Prevention of Torture.

52. Some States also made specific requests to the mandate holder, such as (a) that the mandate holder, after receiving responses to official communications, confirm whether the case had been closed or required further information; (b) the need for more flexibility in setting dates for country visits, taking into account national agendas; and (c) the importance of dialogue and cooperation with the mandate holder also outside the framework of official communications and country visits.

53. Despite the small number of responses received, the Special Rapporteur takes due note of the observations made and the challenges reported by States and, to the extent possible and appropriate, will try to address them within the framework of the resources made available to the mandate.

## **F. Cooperation of States in response to official communications**

### **1. Statistical evaluation**

54. Between 1 November 2016 and 31 October 2020, the Special Rapporteur transmitted 514 official communications relating to allegations of torture and ill-treatment to Member States, both individually and jointly with other mandate holders. During the same period, the mandate holder also sent 16 communications to non-State actors (not included in the present report). As at 31 December 2020, one of the 514 communications transmitted to States did not require a reply (one reply received was awaiting translation and, therefore, could not be evaluated). The statistical assessment made below is therefore based on a total of 512 communications.

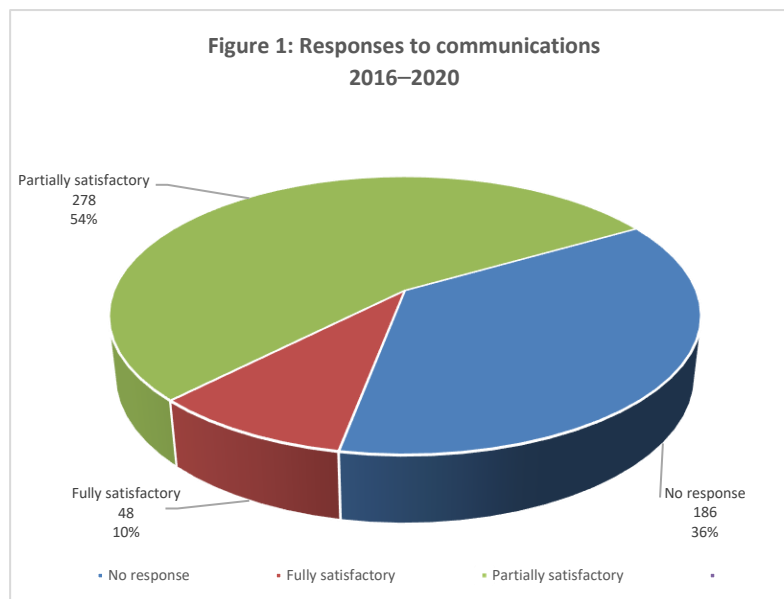
55. On the basis of a substantive analysis of cooperation shown by States for each of the official communications transmitted during the period under review (including “urgent appeals”, “allegation letters” and “other letters”), and by reference to the relevant standards set by the Human Rights Council as outlined above, the Special Rapporteur divides cooperation into four categories:

- Full cooperation
- Partial cooperation
- No response
- Pending (see relevant section below)

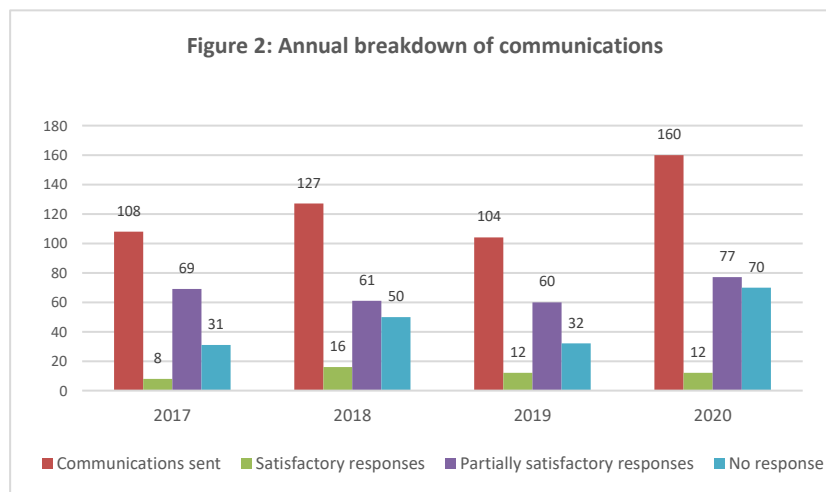
56. A global statistical analysis of the period under review (see figure 1 below) revealed that, in response to the 512 communications transmitted by the Special Rapporteur:

- 186 responses (36 per cent) did not solicit any response (no cooperation)
- 278 responses (54 per cent) were otherwise deemed unsatisfactory (partial cooperation)
- 48 responses (10 per cent) were satisfactory (full cooperation)

57. The low degree of responsiveness and cooperation reflected in the statistics is by no means a recent phenomenon, but has rather been a constant pattern since the establishment of the mandate by the Commission on Human Rights in 1985. In the very first report of the mandate submitted to the Commission (E/CN.4/1986/15), the Special Rapporteur stressed that, while he had transmitted allegations of torture to 33 Governments, only 11 had responded to his requests for information. The comprehensive observation reports prepared by other previous mandate holders reflect similar proportions in terms of both responsiveness and cooperation.



58. A more detailed longitudinal overview of communications transmitted to States by calendar year (1 January 2017 – 31 October 2020) shows fluctuations in the number of official communications in parallel with fluctuations in available resources and the variable frequency of official travel, most prominently during the coronavirus disease (COVID-19) pandemic in 2020. Significantly, however, the relative proportions between the main levels of cooperation remained constant throughout the period under review, thus suggesting a stable pattern (see figure 2 below).



59. In conclusion over the long term, more than one third (36 per cent) of official communications transmitted to States by the mandate holder do not receive any response whatsoever (“no cooperation”); 54 per cent receive responses that are otherwise unsatisfactory (“partial cooperation”); while only 10 per cent receive a fully satisfactory response that adequately addresses the allegations transmitted of torture or ill-treatment as requested or recommended by the mandate holder (“full cooperation”).

## 2. Substantive explanation

60. In accordance with the standards set by the Human Rights Council, the categories of cooperation identified and applied in the present report are distinguished on the basis of the following criteria:

(a) Full cooperation: Full and expeditious responses that (b) supply all information requested and ensure proper follow-up to the recommendations and conclusions of the Special Rapporteur, including, as a minimum, evidence for the initiation of all measures of prevention, investigation, prosecution and redress required under applicable international law;

(b) Partial cooperation: Responses that fail to meet any of the criteria described in subparagraph (a) above but that have included at least an acknowledgement of receipt or other form of dialogue between the Government and the Special Rapporteur;

(c) No cooperation: Failure or refusal to respond to the official communications transmitted by the Special Rapporteur.

(d) Pending: The Government has either provided a timely and constructive response to the communication, which has not yet been translated and, therefore, still has not been evaluated; or has expressed genuine intent to provide the requested information or take the measures recommended and, to that end, has requested additional information or further clarification from the mandate holder.

61. While the categories of “full cooperation”, “no cooperation” and “pending” are self-explanatory and unlikely to give rise to significant questions, controversy or other disagreements, the distinction between “full cooperation” and “partial cooperation” warrants further discussion. In particular, there seems to be a significant discrepancy between the standards set by the Human Rights Council for “full cooperation” with the mandate and the self-assessment of States, as reflected not only in their responses to the questionnaire but, more importantly, also in their responses to the official communications transmitted by the mandate holder.

### 3. Distinction between “full” and “partial” cooperation

62. As has been shown, the Human Rights Council has identified cumulative criteria for “full cooperation” with the mandate, namely, full and expeditious responses that supply all information requested and ensure proper follow-up to the recommendations and conclusions made by the mandate holder, including as a minimum, evidence for the initiation of all measures of prevention, investigation, prosecution and redress required under applicable international law.

63. In practice, only responses meeting the criteria for “full cooperation” can ensure that the allegations transmitted by the Special Rapporteur are duly investigated and that all necessary and appropriate measures of prevention, prosecution and redress are taken in full compliance with the absolute and non-derogable prohibition of torture and ill-treatment.

64. Regretfully, more than 90 per cent of States’ responses to official communications of the Special Rapporteur fall short of this standard. While 36 per cent do not receive any response whatsoever (“no cooperation”), 54 per cent otherwise fail to adequately address the allegations transmitted (“partial cooperation”). Clearly, the failure of Governments to respond to the official communications of the Special Rapporteur always raises serious questions about the credibility of their commitment to the prohibition of torture and ill-treatment. A more nuanced approach is required for responses amounting to “partial cooperation”. In this category, not all shortcomings are of equal seriousness; they may range from slight and inadvertent oversight all the way to serious and deliberate contraventions. Importantly, however, all of them are sufficiently serious to undermine both the effectiveness of the mandate and the faithful implementation of the prohibition of torture and ill-treatment.

65. In the overview below, the Special Rapporteur aims to describe the predominant ways in which the responses of States to official communications fall short of the standard of “full cooperation”, starting from the most serious shortcomings:

#### (a) Aggressive rejection

66. Most alarmingly, some official statements or communications transmitted or attached by the Special Rapporteur have received aggressive responses. The States concerned not only rejected the allegations of human rights violations, but also accused the relevant mandate holders of “bias”, “inflammatory remarks”, “political motivation”, “violations of the Charter

of the United Nations” or “interference with national sovereignty”. Instead of addressing the allegations, they accuse or denigrate mandate holders as “so-called” experts; there have even been calls for them to be “held to account” simply for exercising their mandate in good faith and in often very difficult circumstances.

67. Should States have any concerns with the conduct of a mandate holder, such issues should be addressed directly with the mandate holder in the spirit of constructive dialogue. Otherwise, any direct or implied accusations or threats against their integrity and independence are incompatible with both human rights law and the purposes and principles of the Charter of the United Nations.

**(b) Unsubstantiated denial**

68. A very widespread pattern of “partial cooperation” with the mandate holder involves unsubstantiated denial, whereby Governments reject or dismiss allegations relating to an act or risk of torture or ill-treatment without providing credible evidence, explanations or counterarguments. At first sight, these Governments appear to be fully cooperating with the mandate holder, stressing their appreciation for the work of the Special Rapporteur and reaffirming their unwavering commitment to the prohibition of torture and ill-treatment, often by reference to detailed explanations of their national normative and institutional framework. At the same time, allegations relating to an act or risk of torture or ill-treatment are rejected or dismissed as baseless, erroneous, malicious or politically motivated. While these responses may differ greatly in terms of form, tone and style, all of them ultimately fail to respond to the questions asked by the Special Rapporteur or to take effective measures of prevention, investigation, prosecution or redress as recommended by the mandate holder and required under international law.

69. International law unequivocally demands that States conduct a prompt and impartial investigation whenever there are “reasonable grounds to believe” that an act of torture or ill-treatment has been committed, or is likely, within their jurisdiction. Without any doubt, allegations transmitted by the Special Rapporteur amount to such “reasonable grounds”, thus depriving Governments of any political discretion as to whether to investigate these allegations. Governments failing to investigate allegations transmitted by the Special Rapporteur, and, if confirmed, to take protective or corrective measures not only fall short of the standard of “full cooperation” set by the Human Rights Council, but also breach their duties of prevention, investigation, prosecution and redress under the absolute and non-derogable prohibition of torture and ill-treatment under international law.

**(c) Obstructive formalism**

70. Another very common pattern of “partial cooperation” with the mandate holder involves obstructive formalism, whereby Governments decline to provide the requested information or to take the recommended protective or corrective measures on the basis of claims of national security, secrecy, policy or constitutional order, or on other excessively formalistic arguments. Most commonly, Governments may claim that they cannot interfere with or comment on an ongoing judicial or administrative proceeding involving the alleged victim, or that, as a matter of national legislation or policy, they cannot disclose the requested information. Other excuses may be that evidence provided by the Special Rapporteur is not sufficient to initiate an investigation. Here too, Governments generally try to reassure the Special Rapporteur through sweeping reaffirmations of their unwavering commitment to the prohibition of torture and ill-treatment, including by reference to sophisticated national normative and institutional frameworks. Ultimately, however, they fail to respond to the questions asked by the Special Rapporteur or to take effective measures of prevention, investigation, prosecution or redress as recommended by the Special Rapporteur and required under international law.

71. While the Special Rapporteur appreciates the importance and sanctity of the national normative and institutional order, he would like to recall that, as a matter of universally binding international law, the prohibition of torture and ill-treatment, and the international legal obligations derived from it, are not limited to the executive branch of Government but apply to the State as a whole, and to all its public authorities and institutions, including the courts, prosecution and intelligence services, regardless of their institutional or operational

independence from the Government. The fact that, as a matter of diplomatic protocol, official communications of the Special Rapporteur are to be addressed to the serving Minister of Foreign Affairs does not prevent the ministry from transmitting the mandate holder's observations, queries and recommendations to other relevant branches of government, including the judiciary, the prosecution and intelligence services, and from transmitting their responses back to the Special Rapporteur. Any other interpretation would effectively prevent the Special Rapporteur from examining torture and ill-treatment resulting from judgments, decisions and other acts or omissions by the judiciary, by the prosecution or by intelligence services operating outside the purview of the executive branch, all of which represent a significant proportion of the allegations received by the Special Rapporteur on a global scale. As a peremptory norm of international law, the prohibition of torture takes precedence over any contradicting policy or norm of national or international law. Therefore, claims of national security, secrecy, policy or constitutional order cannot justify any failure to conduct a prompt and impartial investigation into allegations of torture or ill-treatment transmitted or to take the protective or corrective measures recommended by the Special Rapporteur that are required under international law.

**(d) Sophisticated pretence**

72. Some States that are frequently solicited by the Special Rapporteur through official communications make significant efforts to give the impression of exemplary cooperation while at the same time de facto maintaining a system of institutionalized torture and ill-treatment. Thus, while these Governments acknowledge the allegations brought to their attention and provide a detailed account of the investigative measures taken, the allegations are consistently deemed to be erroneous, false or otherwise unsubstantiated. While at first sight the normative and institutional framework appears to be exemplary, and investigations by trained forensic experts are conducted, these investigative mechanisms are often employed or otherwise effectively controlled by the Government, no genuinely independent national monitoring bodies exist, and country visits by the Special Rapporteur or other international monitoring bodies are not permitted. At the same time, independent civil society reports and witness accounts relating to the States in question confirm that, in actual fact, torture and ill-treatment continues to be used with impunity and, in some cases, on a widespread or systematic basis.

73. The Special Rapporteur takes this opportunity to recall that the formal commitment of States to the prohibition of torture and ill-treatment, as well as the normative and institutional frameworks, mechanisms and procedures established in compliance with these formal commitments, remain meaningless if, in actual practice, torture and ill-treatment continue to be employed with impunity. Like any other treaty obligation, the prohibition of torture and ill-treatment and associated legal duties must be interpreted and implemented in good faith and in line with the object and purpose of protecting the inherent dignity of every human being.<sup>15</sup> Most notably, it is not possible to comply with the prohibition of torture and ill-treatment while at the same time maintaining governance and judicial systems based on intimidation, discrimination, violence and coercion. Without independent and impartial monitoring and oversight, and without the political will to ensure accountability for any act of torture and ill-treatment, no system of pretence, however sophisticated it may be, can count as "full cooperation" with the mandate of the Special Rapporteur and, indeed, as compliance with the absolute and non-derogable prohibition of torture and ill-treatment.

**4. Historical perspective and root causes**

74. Already in 1986, the previous mandate holder observed that the universal condemnation of torture has, however, a remarkable side effect: Governments may feel hesitant to admit that torture has indeed occurred and therefore may be inclined either flatly to deny the allegation or to reply that alleged victims of torture may lodge a complaint with the competent authorities and that, since they have not done so, obviously the allegation is false. The fact that no complaint was lodged may, however, be due to other circumstances

<sup>15</sup> Vienna Convention on the Law of Treaties, arts. 26 and 31.

(fear or a desire to leave the country) and is not evidence that no torture took place (E/CN.4/1986/15, para. 16).

75. Still today, the attitude shown by Governments towards allegations of torture and ill-treatment transmitted by the Special Rapporteur, although not accusatory by nature, remains primarily defensive, dismissive or evasive. Accordingly, only 10 per cent of the allegations receive fully cooperative response, while 54 per cent of the responses received remain unsatisfactory and 36 per cent of the communications do not obtain any response whatsoever.

76. As the Special Rapporteur observed in his most recent report to the General Assembly (A/75/179), the root cause for the continued worldwide complacency with torture and ill-treatment is not a lack of expertise, resources or normative consensus, nor generalized malicious intent, but lies in generic neurobiological and psychosocial factors that have shaped human decision-making throughout history, irrespective of national, cultural, religious or other distinctive influences. Most notably, as demonstrated by contemporary scientific findings, all human beings, whether government officials, media representatives or the general public, have an innate tendency towards suppressing moral dilemmas and other unwelcome information through the largely unconscious processes of self-deception and denial.

77. In his official dialogue with States relating to specific concerns or allegations of torture or ill-treatment, the Special Rapporteur routinely encounters various forms of such self-deception and denial. In practice, the predominant reaction pattern of States to his official communications is denial of fact, even in the face of compelling evidence. Where the occurrence of torture or ill-treatment cannot be denied, States tend to deny either their responsibility or the wrongfulness of the alleged conduct. It is regrettable that genuine engagement in a constructive, substantive and transparent dialogue aimed at ensuring full and effective compliance with the prohibition of torture and ill-treatment remains exceptional.

## **G. Cooperation of States with requests for country visits**

### **1. Modus operandi for official country visits**

78. As part of the working methods of the special procedures, the Human Rights Council has mandated the Special Rapporteur to conduct country visits with the consent or at the invitation of Governments and to enhance further dialogue with them, and to follow up on recommendations made in reports after visits in their countries.<sup>16</sup> The Manual of Operations and the Code of Conduct provide guidance for mandate holders and facilitate a better understanding of their work for other stakeholders.

79. The main purpose of a country visit is to allow the Special Rapporteur to assess the situation of torture and ill-treatment in the State, including through an examination of legal, judicial and administrative aspects. They also allow for contact with and the gathering of information from victims, relatives of victims, witnesses, national human rights institutions, international and local non-governmental and other members of civil society, the academic community, and officials of international agencies present in the State concerned.

80. Country visits are carried out in a spirit of constructive cooperation, aimed at formulating relevant and practical recommendations with the ultimate objective of strengthening the protection and promotion of human rights. The outcome of the visit is a report that the Special Rapporteur submits to the Human Rights Council, in which the mandate holder analyses the discussions held during the visit, summarizes his observations and makes recommendations to assist the Government concerned in identifying and remedying any normative, institutional or procedural factors which may be conducive to torture and ill-treatment. Governments have the possibility to make comments on the substance of the report of the Special Rapporteur, in accordance with applicable United Nations documentation rules.

<sup>16</sup> Human Rights Council resolutions 34/19 and 43/20, para. 1 (b).

81. The Code of Conduct for Special Procedures Mandate Holders, developed to strengthen the effectiveness of the system, urges all States to cooperate with, and assist, the special procedures in the performance of their tasks.<sup>17</sup> According to the Code of Conduct, the objective of a visit is to establish a dialogue with the relevant government authorities and with all other stakeholders, and to promote cooperation; most importantly, it is a shared obligation of the mandate holders, the States concerned and stakeholders.<sup>18</sup>

82. In the review of the work and functioning of the Human Rights Council, emphasis was placed on the importance of strengthening the cooperation between States and the special procedures. While the decision of receiving mandate holders for country visits remains voluntary, States were urged by the Council to respond in a timely manner to requests for information and visits.<sup>19</sup> In 2016 and 2020, the Council further urged States to respond favourably to the Special Rapporteur's requests to visit their countries, and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries.<sup>20</sup>

83. Official country visits are conducted in compliance with the terms of reference of the mandate, with the consent or at the invitation of the State concerned, and are prepared in close collaboration with its Permanent Mission of the State to the United Nations.<sup>21</sup> The terms of reference for country visits<sup>22</sup> provide guidance for the conduct of visits and outline the guarantees and facilities to be provided by the Government to the mandate holder and accompanying staff. These include the freedom of movement, freedom on inquiry, in particular contact with central and local authorities of all branches of government, confidential and unsupervised contacts with non-governmental organizations, private institutions and the media, and full access to all places of detention and interrogation, assurances by the Government that no persons who have been in contact with mandate holders will suffer threats, harassment or punishment for doing so, and appropriate security arrangements without restricting the above-mentioned freedom of movement and inquiry. In the updated terms of reference,<sup>23</sup> the language was strengthened to include assurances that reprisals and any measures that could deter cooperation or be perceived as such by private actors or groups would be avoided.

84. States seeking election to the Human Rights Council and presenting their candidatures are encouraged to make concrete commitments in the form of voluntary pledges and commitments to invite and cooperate with the special procedures as part of their campaigns.<sup>24</sup> Furthermore, to demonstrate their support for the Council, States are also called upon to make standing invitations.

## 2. Standing invitations

85. In its resolution 2004/76, the Commission on Human Rights strongly encouraged all States to extend a "standing invitation" to all thematic special procedures.

86. A standing invitation is defined as an open invitation to all thematic special procedures extended by a Government, signalling that it welcomes visits from mandate holders. It also indicates the State's readiness to cooperate with mandate holders and, by extension, with the Human Rights Council, as a core pillar for the protection and promotion of human rights. As at 15 December 2020, 126 Member States and one observer State had extended a standing invitation to thematic special procedures.<sup>25</sup>

87. Although standing invitations are intended to facilitate the planning and conduct of country visits, in practice not all States honour their commitment, some extending an invitation only to certain mandate holders.

<sup>17</sup> Human Rights Council resolution 5/2, para. 1.

<sup>18</sup> *Ibid.*, annex, art. 11 (e).

<sup>19</sup> Human Rights Council resolution 16/21, para. 26.

<sup>20</sup> Human Rights Council resolution 43/20, para 2 (b).

<sup>21</sup> Human Rights Council resolution 5/2, art. 11.

<sup>22</sup> E/EN.4/1998/45, annex, appendix V.

<sup>23</sup> Available from [www.ohchr.org/Documents/HRBodies/SP/ToRs2016.pdf](http://www.ohchr.org/Documents/HRBodies/SP/ToRs2016.pdf).

<sup>24</sup> General Assembly resolution 60/251, para. 8.

<sup>25</sup> See <https://spinternet.ohchr.org/StandingInvitations.aspx?lang=En>.



### 3. Statistical and substantive evaluation

88. A historical analysis of cooperation by States with mandate holders confirms a long-standing hesitancy or reluctance to invite or allow official visits by the Special Rapporteur. Previous mandate holders regularly reported on pending requests for a country visit they had submitted to States without obtaining any response, or voiced concern about the failure of States to agree to the terms of reference of the mandate for official country visits, which resulted in the cancellation or indefinite postponement of the envisaged visits.<sup>26</sup> By the end of the tenure of the previous mandate holder, 31 requests for a country visit were pending.<sup>27</sup>

89. During the first four years of his tenure, the Special Rapporteur has transmitted requests for country visits to 58 Governments, of which 32 have issued a standing invitation.<sup>28</sup> During the same period, the mandate has been proactively invited (i.e., without a request by the mandate holder) by only one State (Burkina Faso).

#### (a) No cooperation

90. Of the 58 Governments that received requests for a country visit, 33 (57 per cent) never provided any response whatsoever (not even acknowledgement of receipt), including 15 States that had issued a standing invitation to the special procedures (Burundi, Ecuador, Honduras, India, Kenya, Lesotho, Madagascar, Malawi, Mozambique, Nicaragua, Nigeria, Romania, Rwanda, South Africa and Turkmenistan). One or several follow-up letters were sent to 26 of the said States (seven of which had issued standing invitations: Guatemala, India, Kenya, Malawi, Malaysia, South Africa and Thailand), but failed to elicit any reaction from the Government concerned.

#### (b) Partial cooperation

91. Of the 58 Governments that received visit requests, 13 (23 per cent) showed “partial cooperation” with the mandate holder, including five States that had issued a standing invitation to the special procedures (Guatemala, Iran (Islamic Republic of), Lebanon, Malaysia and Thailand). In other words, the Government responded to a request for a visit transmitted by the mandate holder but, for reasons beyond the control of the Special Rapporteur, did not issue a firm invitation to conduct an official visit, owing to scheduling difficulties for the Government or the Government’s disagreement with the official terms of reference for country visits. Some Governments proactively maintain a dialogue with the Special Rapporteur, particularly through yearly meetings on the margins of Human Rights Council sessions; despite repeated requests for a country visit and numerous allegations of torture and ill-treatment, however, they consistently fail to allow the Special Rapporteur to conduct an official visit to their country.

#### (c) Full cooperation

92. Of the 58 Governments that received a request for a country visit during the period under review, only 12 (20 per cent), including 11 that had issued a standing invitation, showed “full cooperation” with the mandate holder in that they hosted an official country visit (Argentina, Maldives, Serbia and Kosovo,<sup>29</sup> Turkey, Ukraine and the United Kingdom of Great Britain and Northern Ireland) or extended a firm invitation (Libya, Mongolia, Paraguay and Spain) to the Special Rapporteur, which but the Special Rapporteur declined or postponed the envisaged country visit for reasons relating to regional distribution or

<sup>26</sup> See for example A/HRC/13/39, para. 6 and A/HRC/19/61, para. 6.

<sup>27</sup> See <http://antitorture.org/recent-country-visits/>.

<sup>28</sup> Standing invitations have been extended by Argentina, Burundi, Ecuador, Guatemala, Honduras, India, Iran (Islamic Republic of), Kenya, Lebanon, Lesotho, Libya, Madagascar, Malawi, Malaysia, Maldives, Mongolia, Mozambique, Nicaragua, Nigeria, Paraguay, Romania, Rwanda, Serbia / Kosovo, South Africa, Spain, Thailand, Turkey, Turkmenistan, Ukraine, United Kingdom of Great Britain and Northern Ireland, Uzbekistan. Other: Angola, Bahrain, Bangladesh, Brunei Darussalam, China, Comoros, Côte d’Ivoire, Cuba, Democratic Republic of the Congo, Dominican Republic, Eritrea, Ethiopia, Haiti, Indonesia, Israel, Mali, Namibia, Philippines, Russian Federation, Saudi Arabia, Senegal, Uganda, United Arab Emirates, Venezuela (Bolivarian Republic of), Viet Nam, Zimbabwe.

<sup>29</sup> Reference to Kosovo should be understood in full compliance with Security Council resolution 1244 (1999) and without prejudice to the status of Kosovo.

operational priorities. The regional distribution of States visited was Africa (1), Asia-Pacific (1), Eastern Europe (3), Latin America and the Caribbean (1) and Western Europe and others (2). The average time elapsed between a request for a country visit by the mandate holder and the conduct of the within the mandate is one year and two months; the shortest time was four months (Sri Lanka),<sup>30</sup> while the longest was two years and eight months (Argentina).<sup>31</sup>

93. Of the States visited by the mandate holder, one was conducted jointly with the Special Rapporteur on the independence of judges and lawyers (to Sri Lanka in 2016). Even though separate reports on the visit were submitted to the Human Rights Council (A/HRC/34/54/Add.2 and A/HRC/35/31/Add.1), they should be read together.

94. It should in addition be recalled that the mandate holder may also decide to carry out a follow-up visit in order to assess progress in the implementation of the recommendations made by the Special Rapporteur during his initial country visit and in his report. According to the Manual of Operations for Special Procedures, follow-up initiatives are a means to “enhance the effectiveness” of country visits.<sup>32</sup> The Special Rapporteur was unable to conduct any follow-up visits during the period under review.<sup>33</sup>

95. In order to reach an independent and objective assessment of compliance with the prohibition of torture and ill-treatment in a highly politicized individual case (Julian Assange), the Special Rapporteur, together with two specialized medical experts, conducted in May 2019 a special visit to the United Kingdom of Great Britain and Northern Ireland; the mission was not categorized as a full country visit, and resulted in an exchange of letters rather than a country visit report.

96. Lastly, four States (Libya, Mongolia, Paraguay and Spain) showed “full cooperation” by extending a firm invitation to the mandate holder; the Special Rapporteur, however, either declined or postponed the country visit for reasons relating to regional distribution or operational priorities.

**(d) Pending**

97. As at October 2020, 46 requests for a country visit were pending. A total of 33 of the States concerned (59 per cent) had not given any response whatsoever concerning the requests. According to the Manual of Operations for Special Procedures, in cases where a State does not respond to a request for an invitation to visit, it is appropriate for the mandate holder to remind the Government concerned, to draw the attention of the Human Rights Council to the outstanding request, and to take other appropriate measures designed to promote respect for human rights.<sup>34</sup>

## IV. Conclusions

**98. The vast majority of States’ responses to official communications transmitted by the Special Rapporteur on specific allegations of torture or ill-treatment fall short of the standard of “full cooperation” set by the Human Rights Council, and fail to include the measures of prevention, investigation, prosecution and redress recommended by the Special Rapporteur and legally required under the absolute and non-derogable prohibition of torture and ill-treatment.**

**99. More specifically, in the course of the first four years of his tenure, more than one third (36 per cent) of official communications transmitted by the Special Rapporteur did not receive any response (“no cooperation”); 54 per cent received responses that remained otherwise unsatisfactory (“partial cooperation”); and only 10 per cent received a fully satisfactory response, namely, fully addressing the alleged acts**

<sup>30</sup> See A/HRC/34/54/Add.2.

<sup>31</sup> See A/HRC/40/59/Add.2.

<sup>32</sup> Manual of Operations, para. 97.

<sup>33</sup> A follow-up visit proposed by the Government of Maldives and planned for November 2020 had to be cancelled owing to travel restrictions related to the coronavirus disease (COVID-19) pandemic.

<sup>34</sup> Manual of Operations, para. 56.

or risks of torture or ill-treatment, as requested or recommended by the Special Rapporteur (“full cooperation”).

100. Likewise, the vast majority of requests for a country visit submitted by the Special Rapporteur during the first four years of his tenure, including to States having issued a standing invitation to all special procedures, received either no response or responses declining or indefinitely delaying the requested visit, thus effectively preventing the Special Rapporteur from carrying out an independent monitoring visit based on the priorities and needs that he had identified.

101. More specifically, in the course of the past four years, the Special Rapporteur has transmitted requests for a country visit to 58 States, of which 30 had issued a standing invitation to the special procedures. Of the said 58 States, 33 (57 per cent) did not provide any response (“no cooperation”), whereas 13 (23 per cent) engaged in some form of dialogue, though falling short of granting an official visit by the Special Rapporteur (“partial cooperation”); only 12 (20 per cent) showed “full cooperation” either by hosting an official country visit or by extending a firm invitation, which the Special Rapporteur declined or postponed for reasons relating to regional or operational priorities.

102. The above observations raise serious concerns with regard to the effectiveness of the cooperation of States with the Special Rapporteur with a view to achieve the very object and purpose of the mandate. In order to reverse such a dysfunctional situation, which has been stable and consistent for 35 years, nothing less than a groundbreaking change of attitude and very serious efforts are required from all States Members of the United Nations.

## V. Recommendations

103. States should acknowledge that the predominant patterns of their interaction with the mandate of the Special Rapporteur clearly fall short of the standard of “full cooperation” set by the Human Rights Council; prevent the establishment of an effective system of monitoring through official country visits; and fail to effectively address 90 per cent of the allegations of torture and ill-treatment transmitted.

104. In order to reverse this trend, the Special Rapporteur recommends that States unequivocally acknowledge and reaffirm that:

(a) Effective prevention, investigation and prosecution of and redress for torture and ill-treatment are not a matter of policy, but an absolute and non-derogable obligation binding upon all States, regardless of their treaty obligations;

(b) No exceptional circumstances whatsoever can justify any practice of or complacency with torture or ill-treatment;

(c) Not only active participation but also culpable acquiescence of State officials to torture may give rise to individual criminal responsibility under universal jurisdiction;

(d) Without strict transparency and accountability, complacency with torture and ill-treatment will remain deeply ingrained in any society and governance system worldwide.

105. In evaluating their interaction with the mandate of the Special Rapporteur, States should consider whether:

(a) Requests for a country visit submitted by the Special Rapporteur have been effectively processed and answered in a prompt and favourable manner, and in full compliance with the official terms of reference of the mandate;

(b) Allegations of torture or ill-treatment transmitted by the Special Rapporteur have been answered and effectively addressed through appropriate measures of prevention, investigation, prosecution and redress. Where this is not the

case, the State's interaction with the mandate holder falls short of the standard of "full cooperation" set by the Human Rights Council.

106. In order to ensure that their interaction with the mandate of the Special Rapporteur meets the standard of "full cooperation" set by the Human Rights Council, States should in particular:

- (a) Cooperate fully with and assist the Special Rapporteur in the performance of his tasks;
- (b) Provide the mandate holder with all information requested by him, and fully and expeditiously respond to his communications;
- (c) Respond favourably to, and enter into a constructive dialogue on, his requests for a country visit;
- (d) Ensure proper follow-up to his recommendations and conclusions.

107. Lastly, given that the challenges described in the present report are not limited to the mandate of the Special Rapporteur but, with some variations and nuances, are likely to arise in the interaction of States with all special procedures, the Special Rapporteur recommends that:

- (a) Other mandate holders engage in a similar process of evaluating the effectiveness of the interaction of States with their mandates with a view to both addressing allegations of human rights violations transmitted through official communications and allowing the monitoring of the situation of human rights in their countries through official country visits;
  - (b) The Office of the High Commissioner lead a broader multi-stakeholder process aiming to identify agreed generic standards for evaluating and improving the effectiveness of the interaction of States with the special procedures in all areas of their work, including, in particular, official communications, country visits and thematic reporting.
-