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Statement by Mr. Nils Melzer

**SPECIAL RAPPORTEUR ON TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT**

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**Mr. President, Distinguished Representatives, Observers,
Ladies and Gentlemen,**

It is with great honor that I address this Assembly, for the first time, in my capacity as United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. I am aware of the great responsibility of my mandate and I am fully committed to carrying it out to the best of my ability and for the benefit of humanity as a whole.

Before presenting the findings of my latest report, please allow me to inform you on some of my activities since my last report to the Human Rights Council in March this year.

Country visits:

Since January 2017, I have made no less than 29 requests for country visits. I wish to thank the Governments of Argentina, Serbia, Spain and Ukraine for responding positively to my requests. In doing so, these Governments have expressed their continued commitment to the absolute prohibition of torture and other ill-treatment.

At the same time, I urge those 25 States that have not yet responded to my requests, or that have not responded favourably, to consider receiving my mandate for an official country visit in 2018 or 2019, in full compliance with the applicable terms of reference.

Urgent Appeals:

Transmitting urgent appeals and other communications to States on behalf of individuals at risk of torture and other ill-treatment continues to be an absolute priority of my mandate. This protection tool is unique in that it provides victims and their relatives with a prompt and effective means of communication and intervention with the concerned State authorities, irrespective of any formal judicial proceedings. Since taking over the mandate, I have been able to transmit approximately 100 of these communications, some of which have yielded positive results for the individuals involved and, thus, have helped to protect the concerned individuals from being exposed to the risk of torture.

Means allocated to the Mandate:

However, as I have already pointed out in my report to the Human Rights Council (A/HRC/34/54) earlier this year, I reiterate my serious concern that the resources allocated to this mandate from the regular budget do not allow me to carry out my tasks effectively.

Today, this mandate depends on extra-budgetary funding from individual member States even for the most basic activities, such as responding to urgent appeals, organizing country visits, and conducting basic thematic consultations.

I would like to take this opportunity to sincerely thank the Governments of Switzerland and of Norway for their extra-budgetary support, which has finally permitted to hire a second staff member, to plan new country visits, and to fund urgently needed thematic research and consultations required for the reporting of my mandate.

Even with this extra-budgetary support, however, my mandate still does not have sufficient means to respond to the ever-growing number of individual urgent appeals, or to respond favourably to this Assembly's express request made in Resolution 70/146 for the Special Rapporteur:

"to continue to consider including in his reports information on the follow-up by States to his recommendations, visits and communications, including progress made and problems encountered".

Due to the lack of human resources, this expressly requested activity is currently suspended and cannot be carried out.

Therefore, I herewith appeal to the General Assembly, as well as to its members individually, to take every possible measure to allow me to carry out my mandate effectively. In particular, I call for the funding of a third staff member, as would be the normal state of affairs for this mandate, in order to allow me to process, and respond to, the urgent appeals addressed to this mandate every day by the most vulnerable men, women and

children on this planet, and to carry out the activities that have been expressly requested of this mandate by the General Assembly.

Mr. President,

Let me now turn to the report I am presenting today.

- The mandate of the Special Rapporteur on Torture has consistently maintained that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is not confined to acts carried out against persons deprived of their liberty, but also covers excessive police violence and other ill-treatment occurring in extra-custodial settings, that is to say, against persons who have not, or not yet, been deprived of their liberty or otherwise taken into the custody of the State.
- This question is particularly relevant where State agents resort to unnecessary, excessive or otherwise arbitrary force in situations such as arrest, stop and search, or crowd control operations. Experience shows that the use of force in insufficiently controlled environments carries a significant risk of arbitrariness and abuse.
- Therefore, building on the work undertaken by my predecessors and other mechanisms, I have conducted extensive research and broad stakeholder consultations

with academic experts and representatives of governments, international organizations and civil society organizations to assess whether and in which circumstances the extra-custodial use of force by State agents can amount to torture or other cruel, inhuman or degrading treatment or punishment, particularly in view of potential justifications such as law enforcement, public security, crowd control, or self-defense and defense of others.

- I have also examined the extent to which the use of certain types of weapons, riot control devices or other means and methods of law enforcement would have to be considered intrinsically cruel, inhuman or degrading. In doing so, I looked into the significance this would have for the development, acquisition, trade, and use of weapons in law enforcement.

Mr. President,

Please allow me to summarise the main conclusions of my report:

- First, the extra-custodial use of force by State agents amounts to cruel, inhuman or degrading treatment or punishment under the following conditions: (a) if it does not pursue a lawful purpose, or (b) if it is unnecessary for the achievement of a lawful purpose, or (c) if it inflicts excessive

harm compared to a lawful purpose. Moreover, failure to take all practically possible precautions in the planning, preparation and conduct of law enforcement operations with a view to avoiding the unnecessary, excessive or otherwise unlawful use of force violates the positive obligation of States to prevent acts of cruel, inhuman or degrading treatment within their jurisdiction.

- Second, where the extra-custodial use of force by State agents intentionally and purposefully inflicts pain and suffering on "powerless" individuals (that is: persons who are under direct control and unable to escape or resist) it always amounts to cruel, inhuman or degrading treatment or punishment and, therefore, is conclusively unlawful irrespective of considerations of lawful purpose, necessity or proportionality, and irrespective of its qualification as torture under the respective treaty definitions.
- Third, States must regulate the extra-custodial use of force, and must ensure that all their agents are trained, equipped and instructed so as to prevent any act of torture and other ill-treatment 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 and other means of law enforcement, including so-called "less lethal weapons".

- Fourth: A weapon must be considered as inherently cruel, inhuman or degrading and, therefore, as absolutely prohibited, if it is either specifically designed, or has 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. Some 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 ill-treatment, thus placing particular emphasis on the requirement of precautions.
- Fifth: Wherever there is reasonable ground to believe that extra-custodial force amounting to torture or 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.

Overall, the most important conclusion of my current report is that excessive, unnecessary or otherwise arbitrary use of force by State officials, even outside prison walls, is not just bad policy, but violates one of the most fundamental norms of international law, namely

the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

In clarifying the relationship between that prohibition and the permissibility of extra-custodial use of force, and by developing concrete recommendations in this respect, I hope to strengthen the capacity of States to ensure effective prevention of, and accountability for, torture and other cruel, inhuman or degrading treatment or punishment also in extra-custodial settings.

Moreover, my report aims to contribute to the development of guidance on the entire spectrum of the use of force, from non-lethal to deliberately lethal, and from custodial to extra-custodial and, thereby, to support States in complying with their relevant human rights obligations.

Lastly, my report also aims at facilitating synergies, both on the national and the international level, between mechanisms tasked with the protection against torture and other ill-treatment and those involved in overseeing and regulating the use of force more generally.

Mr. President,

As I have said before, the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment may

well constitute the most fundamental achievement in the history of mankind.

I am humbled by the noble task and heavy responsibility bestowed upon me as the Special Rapporteur, and I am aware that expectations are high. However, the worldwide battle against torture cannot be won by this mandate alone. Particularly in these troubled times of global destabilization and increasingly violent political narratives, all of us - Governments, civil society as well as national, regional and international anti-torture mechanisms - must join forces and apply all our strength and determination in reaffirming and enforcing the absolute prohibition of torture and any other forms ill-treatment. All of us gathered here today bear the historical responsibility for making this endeavour a success - because failure, truly, is not an option.

I thank you for your attention and look forward to a fruitful dialogue.
