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Statement by
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INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

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Madam/Mr Chair, Distinguished Delegates,

As this is my first time addressing the Council since taking up the position as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, in August of 2022, I wish to extend my thanks to the Council for the confidence placed in my appointment.

My interim report, delivered to the General Assembly in October last year, set out my vision, approach and goals for the mandate. In that report, I explained my approach as constructive and collaborative and I called on Governments to lead by example.

While my current report does not provide a global progress update, I can report that my first half-year in the position has been characterised, regrettably, by escalating incidents of torture and inhuman treatment in many countries. I have been inundated with requests to intervene on behalf of alleged victims to an extent that is impossible to process at current staffing levels of only one Human Rights Officer, and I am particularly concerned about the ability of the mandate to carry out well prepared and impactful country visits and to deliver reports in a timely manner. I thank Switzerland for funding a JPO which ended in December and hope they will renew that engagement. I appeal to this Council to match your commitment to torture prevention with the resources needed for my mandate to be effective.

Report

Turning now to the thematic report I am presenting today. My report examines what I see as major gaps in our collective resolve to tackle the terror of torture on our communities: that is, the obligations of every State to: legislate and investigate crimes of torture, prosecute or extradite the accused, and sentence offenders in line with the gravity of the offence.

I thank those States, civil society organisations and experts who sent in submissions. Your insights have been hugely valuable.

Mr Chair, this report has its origins long before I became Special Rapporteur on Torture. In 1999, I was attending a town hall meeting in Tuzla, central Bosnia and Herzegovina, in the long shadow of the aftermath of the terrible conflict and genocide that had gripped the country. One speaker, a local woman in her mid-40s, a wife, a mother, an activist, - and a survivor of rape, was bravely sharing her story. Her voice cracked and trembled, but she continued, despite her anguish. In the Question and Answer session, the woman was asked about her views on the creation of the ICTY, the International Criminal Tribunal for the former Yugoslavia, which had only recently started operating. She was asked whether she thought it would make a difference.

Her response was blunt and clear. She said: *“Of course I am pleased that there will be international accountability for those who caused this war and instructed their soldiers to violate us in the most vile of ways.”* She paused, took a deep breath, then continued: *“But I really need **the one who raped me** to face justice. Only then will I be able to rest and restart my life in peace.”*

Her powerful testimony speaks to the fact that while international forums remain laudable and important endeavours and we must continue to use all channels to end impunity, they are never going to be enough in light of the scale and scope of torture crimes being perpetrated every devastating day. Her plea – for local accountability and for all crimes to be investigated and prosecuted, were a key driver and motivation for this report.

Madam/Mr Chair, when a State fails to defend truth and justice, it becomes an accomplice in torture. Some States wrongly perceive criminal investigations into torture as a direct attack on their legitimacy. On the contrary, what threatens governmental legitimacy is impunity.

In nearly three decades of human rights work, I have seen how the failure to investigate and prosecute torture and ill-treatment incentivizes and institutionalizes violent cultures, stalls

reconciliation and peace-building efforts, undermines trust in authorities, triggers political unrest, and can even topple Governments.

Obstacles

The impediments hindering prompt and impartial investigations range from the structural and institutional to the legal, cultural and practical, which are set out in the report. But what lies behind many of these obstacles is most usually a lack of political will.

Whilst almost all States speak of their commitment to prohibiting and preventing torture, the national duty to investigate is alarmingly, universally, under-implemented.

Madam/Mr Chair, I have also given considerable space in the report to presenting pockets of promising practice, which are to be commended and encouraged. These examples show innovation, creativity and resolve, and we must grow that momentum.

Legal architecture

In our bid to build torture free societies, we must get the legal foundations right. I am pleased to report that at least 105 States worldwide have adopted an autonomous crime of torture under national law; and many more are working towards that goal. The overall direction of travel is encouraging.

That said, there remain many deficient laws. In some countries, forms of torture are still lawfully on the statute books, including legislation allowing indefinite solitary confinement or corporal punishment, or which approve the perpetration of torture or other ill-treatment to extract information or a confession. These laws must be repealed immediately.

I offer my expertise to any State undergoing legislative reform.

Complaints and investigations

Madam/Mr Chair,

Whenever there is a complaint or other grounds to believe that torture has been committed, authorities must act with the utmost speed, rigor and urgency to investigate those potential crimes. There are no ‘opt out’ clauses even in difficult security conditions, although there is much more we could learn about how to efficiently carry out investigations in those contexts.

As is clear, the crime of torture is an unlawful exercise of power. That power asymmetry places the complainant in a situation of acute precarity, which can only be rebalanced by hierarchically, administratively and financially independent and impartial investigative bodies and/or officials. Nothing short of impartiality will bring about the confidence in the proceedings as well as the outcome, for victims, families and society-at-large.

I urge States to open investigations promptly and without delay, which means within hours of an allegation being made, and at latest 24-48 hours; any delays must be explained in writing and open to judicial oversight. That includes opening investigations into allegations transmitted by my mandate through the communications procedure.

Similarly, complaints mechanisms must be safe, accessible, impartial and confidential. For people deprived of their liberty (be it in prisons, police stations or other places of detention) and are, by their very location, vulnerable and ‘at risk’, safe ways to register complaints to impartial bodies is vital.

Victims and survivors

Madam/Mr Chair, I would like to return to the survivor from Tuzla. We owe her and all other survivors an important duty of care. An element of the healing process is to ensure that survivors are ‘given voice’, fully empowered and treated respectfully. And those cannot

just be words – what those words require is that victims can play an active role in proceedings, should they wish to do so.

My report provides a catalogue of effective ways in which victims have been empowered to participate. Additionally, investigators, prosecutors and judges must be attuned to and be trained in the particularities of torture victims, especially the effect of trauma on testimony. I am requesting States to adopt officially – if they have not yet done so - the Istanbul and Minnesota Protocols, as well as the Mendez Principles on investigative interviewing.

Sentencing

Committing torture is hugely egregious and penalties should be duly commensurate with the gravity of the offence. I found little global consistency in the range of penalties being applied. In my view, it is time to revisit national penalties vis-a-vis crimes of torture to bring practice in line with international benchmarks.

Other activities

Madam/Mr Chair,

In addition to the thematic focus of the report, the report contains a list of my main activities, communications transmitted to States, and my schedule of upcoming country visits.

On the latter, I am pleased to confirm that I will be visiting Chile in October and thank the Government for their swift approval. Regrettably my visit to Ukraine at their invitation has been twice postponed and I very much hope to reinstate it as soon as security conditions allow.

Additionally, I am delighted that my requests to visit South Africa and Uzbekistan have been accepted, and I have also had positive acknowledgment from Kenya. I am in touch with these Governments to discuss future dates including into 2024.

Future reports

Finally, Madam/Mr Chair, I wish to announce that my next report to the 78th session of the General Assembly will study the regulation, production and trade in law enforcement equipment and weapons and the relationship with torture and ill-treatment, as a contribution to the New York-led discussions. A call for contributions will be shortly circulated. My subsequent report to this Council in March 2024 will study the relationship between community oriented and representative law enforcement.

Madam/Mr Chair, I will close here and look forward to the Q&A session.

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