

Proposed text to be considered for the upcoming draft resolution on torture and other cruel, inhuman and degrading treatment or punishment and corruption, to be presented at the UN Human Rights Council at its 37th session (26 February – 23 March 2018)

Note for the reader on the substance:

- Historically, torture and corruption have been addressed in separate normative, policy and research domains. Corruption has been dealt with in the context of governance, whereas torture and other forms of ill-treatment have been addressed as human rights violations. Both phenomena are the subject of an international treaty (Convention against Corruption, 2003, and Convention against Torture, 1984), which seek to prevent and eradicate corruption and torture, respectively, by placing obligations on State parties to take a series of legislative, administrative, judicial and other measures.
- In recognition of the relation between corruption and human rights violations, and the negative impact of corruption on the enjoyment of human rights, the former Sub-Commission on Promotion and Protection of Human appointed a Special Rapporteur on corruption and its impact on the full enjoyment of human rights in 2003. After having prepared a comprehensive study on corruption and its impact on the full enjoyment of human rights, the mandate ended in 2006, when the Sub-Commission was replaced by the Advisory Committee of the Human Rights Council. Since then, a number of HRC resolutions have been adopted, urging states – in general terms – to address the negative impact of corruption on the enjoyment of human rights.
- The proposed text is based on the recognition that torture/ill-treatment and corruption are inextricably linked; where there are higher levels of corruption, more instances of torture and ill-treatment are usually found. Corruption prevails in non-custodial settings and in the context of deprivation of liberty, as documented in scientific literature and by international monitoring bodies, such as the CPT and SPT. Corruption and torture/ill-treatment *inter alia* co-exist in these contexts:
 - o In non-custodial settings, while policing poor urban neighbourhoods, the police may use force and threats thereof to extort money – or services, such as sexual services – from vulnerable groups living on the margins of society and on the fringes of the law, incl. juveniles in conflict with the law, sex workers, slum dwellers and street vendors.¹
 - o During police custody and the early phases of pre-trial detention suspects may be forced to pay the investigating officer(s) money so as to avoid being subjected to torture or other forms of ill-treatment, such as extraction of confessions or information;²
 - o During imprisonment, prison officials may resort to extortion of money from prisoners in return for granting them access to basic necessities (such as access to medical care, family visits) and to certain privileges, services of benefits (e.g. being placed in a cell instead of a dormitory, liberty to move around more freely within the prison).³

¹ Jensen and Andersen (2017), p. 26-27.

² CAT/C/52/2, para. 84.

³ Ibid.

Note for the reader on the draft text:

- Given the short deadline, the text below is not a consolidated draft, as delivered by DIGNITY in previous years, but instead a rough draft containing proposed text to be considered further for the preamble and the operational part of the draft HRC37 resolution on torture and corruption. For instance, the preamble is rather comprehensive, amongst others because it draws on text from resolutions in both the anti-corruption domain and the anti-torture field. Consequently, it might be considered to slim down the preamble, while ensuring that some of the new paragraphs on the inter-relation between torture and corruption are maintained. Similarly, the section on prevention is quite extensive and could be narrowed down.
- The proposed text (preamble and operational section) is based on the following *sources*: It is primarily based on UN treaties and resolutions adopted by the General Assembly and Human Rights Council in the ‘anti-torture’ and ‘anti-corruption’ domain, respectively. Secondly, the text draws on reports of relevant UN treaty bodies and special procedures, notably the Sub-Committee on Prevention of Torture (SPT), the Advisory Committee of the Human Rights Council and the former Special Rapporteur on corruption and its impact on the full enjoyment of human rights. Thirdly, the text is informed by regional treaties and ‘soft law’, and, finally, the proposed text is influenced by scientific research on the inter-relation between torture and corruption, amongst others from DIGNITY – Danish Institute against Torture.
- In order to facilitate the negotiation process, the *proposed text* is largely based on ‘*agreed text*’, i.e. text drawn from UN treaties as well as UNGA and HRC resolutions. ‘Agreed text’ features in black, while text based on other sources – or ‘*tweaked text*’ - features in red. In order to guide the reviewer, interim hearings are inserted and the theme of each paragraph is underlined.
- The paper also contains a list of bibliography and a list of proposed further readings.

**Human Rights Council
Thirty-seventh session**

37/...

Torture and other cruel, inhuman or degrading treatment or punishment: **Corruption (title to be decided upon)**

The Human Rights Council,

PP1 Recalling all resolutions on torture and other cruel, inhuman or degrading treatment or punishment adopted by the General Assembly, the Commission on Human Rights and the Council,⁴

PP2 Recalling also all relevant resolutions of the Commission on Human Rights and the Human Rights Council on the role of good governance in the promotion and protection of human rights and on the negative impact of corruption on human rights and,⁵ (slightly amended wording),

PP3 Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardising sustainable development and the rule of law,⁶

PP4 Recognizing the increasing awareness in the international community of the detrimental impact of widespread corruption on human rights through both the weakening of institutions and the erosion of public trust in government, and through the impairment of the ability of Governments to fulfil all their human rights obligations;⁷

PP5 Emphasising that there is a recognized correlation between the levels of corruption within a State and the prevalence of torture and other cruel, inhuman or degrading treatment or punishment: corruption breeds ill-treatment, and disregard for human rights contributes to the prevalence of corruption,⁸ (NEW)

PP6 Recognizing that corruption has a disproportionate impact on persons belonging to groups exposed to particular risks, such as vulnerable groups in non-custodial settings⁹ as well as persons held in police custody or pre-trial detention, notably minorities, indigenous peoples, refugees, migrant workers, persons with disabilities, prisoners, women, children and those living in poverty,¹⁰ (NEW)

PP7 Recognizing that the international legal frameworks for protecting human rights and combating corruption are complementary and mutually reinforcing,¹¹

⁴ A/HRC/RES/13/19 (2016), preamble (para. 1); and A/HRC/RES/31/31, preamble (para. 1).

⁵ A/HRC/RES/23/9 (2017), preamble (based on para. 2)

⁶ A/58/422 (2003), Convention Against Corruption, preamble (para 1). Please note that PP3 and PP4 cover somewhat the same aspects, and one may choose to leave one of these paragraphs out.

⁷ A/HRC/31/L.19 (2016), preamble (para. 8). Please note an addition in preamble (para 11) of A/HRC/35/L.34 (2017): [... and to realize, within the maximum available resources, the Sustainable Development Goals]

⁸ CAT/C/52/2 (2014), para. 72.

⁹ Jensen and Andersen (2017), p. 26-27.

¹⁰ CAT/C/52/2 (2014), para. 80. Scientific research has also revealed that juveniles in conflict with the law, sex workers, slum dwellers and street vendors are particularly at risk of becoming victims of torture and corruption, Jensen and Andersen (2017), p. 26-27.

¹¹ A/HRC/35/L.34 (2017), preamble (para. 7).

PP8 Realizing that the fight against corruption at all levels plays an important role in the promotion and protection of human rights and in the process of creating an environment conducive to their full enjoyment,¹² and that improvements in the promotion and protection of human rights at the domestic level has a central role to play in the prevention of and the fight against corruption at all levels,¹³ (merging of two sets of agreed text)

PP9 Recognizing further that good governance and rule of law, and the promotion and protection of human rights and fundamental freedoms, including the right to seek, receive and impart information, the right to take part in the conduct of public affairs and the right to a fair trial before a competent, independent and impartial court, established by law, are essential in domestic efforts to prevent and fight against corruption,¹⁴

PP10 Recognizing also the role of law enforcement officials in serving the community and protecting all persons against acts of torture and other cruel, inhuman or degrading treatment or punishment, consistent with the important role of their profession, and that, in the performance of their duty, law enforcement officials are obligated to respect and protect the human rights of all persons,¹⁵

PP11 Underlining the importance of an independent and impartial judiciary, an independent legal profession, an objective and impartial prosecution and the integrity of the judicial system to prevent and combat corruption and to address its negative impact on human rights, in line with rule of law and the right to a fair trial, to access to justice and to an effective remedy, without discrimination,¹⁶

PP12 Emphasising that eradicating corruption and preventing torture and ill-treatment are interdependent processes, and to prevent torture and ill-treatment it is also critical to prevent and eradicate corruption,¹⁷ (NEW)

¹² A/HRC/31/L.19 (2016), preamble (para. 10); and A/HRC/19/L.26 (2012), preamble (para. 10)

¹³ A/HRC/35/L.34 (2017), preamble (para. 8).

¹⁴ A/HRC/35/L.34 (2017), preamble (para. 9).

¹⁵ A/HRC/31/L.26/Rev.1 (2016); preamble (para. 3)

¹⁶ A/HRC/35/L.34 (2017), preamble (PP17).

¹⁷ CAT/C/52/2 (2014), para. 82.

Introductory paragraphs on ratification, implementation and responsibility

1. *Urges* all States that have not yet done so to become parties to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,¹⁸ **and calls upon States parties to the Convention to effectively implement it, (note: agreed text and new text)**
2. *Urges* states that have not yet done so to consider ratifying the Convention against Corruption, and calls upon States parties to the Convention to effectively implement it;¹⁹
3. *Underlines* that the primary responsibility lies with States at the national level, including through their constitutional provisions and other enabling legislation, consistent with their international obligations, to ensure that professional public services uphold the highest standards of efficiency, competence and integrity, and are predicated on good governance principles, including impartiality, rule of law, transparency, accountability and combating corruption, and stresses the importance of human rights training and education in this regard;²⁰
4. *Stresses* that no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment,²¹ or commit any act of corruption, and they shall vigorously oppose and combat all such acts.²² **(note: merged extracts of text from two articles in the UN Code of Conduct for Law Enforcement Officials)**

Prevention

5. *Stresses* that preventive measures are one of the most effective means of countering corruption and avoiding its negative impact on the enjoyment of human rights;²³ **(excerpt)**
6. *Calls for* the strengthening of preventive measures at all levels, and underlines that one key aspect of preventive measures is to address the needs of those in vulnerable situations who may be the first victims of corruption;²⁴ **(excerpt) and of torture and other cruel, inhuman or degrading treatment of punishment,²⁵**
7. *Urges* States to adopt, implement and comply fully with legal and procedural safeguards against torture and other cruel, inhuman or degrading treatment or punishment **and against corruption**, as well as to ensure that the judiciary, and where relevant the prosecution, can effectively ensure compliance with such safeguards;²⁶ **(agreed text - with the addition of ‘as well as corruption’)**
8. *Stresses* that effective legal and procedural safeguards for the prevention of torture and other cruel, inhuman or degrading treatment or punishment **as well as corruption²⁷** include ensuring that any individual arrested or detained on a criminal charge is brought promptly before a judge or other independent judicial officer, and permitting prompt and regular medical care and legal counsel at any stage of detention as well as visits by family members;²⁸ **(agreed text - with the addition of ‘as well as corruption’, based on the report of the SPT)**

¹⁸ A/HRC/31/L.26/Rev.1 (2016), para. 2.

¹⁹ A/HRC/35/L.34 (2017), para. 1.

²⁰ A/HRC/31/L.19 (2016), para 5.

²¹ A/RES/34/169 (1979), Article 5.

²² A/RES/34/169 (1979), Article 7.

²³ A/HRC/35/L.34, para. 4; and A/HRC/29/L.19 (2015), para 4 **(excerpt)**

²⁴ A/HRC/35/L.34; para. 6; and A/HRC/29/L.19 (2015), para 4 **(excerpt)**

²⁵ Jensen and Andersen (2017), p. 26-27.

²⁶ A/HRC/31/L.26/Rev.1 (2016); para. 4.

²⁷ CAT/C/52/2 (2014), para. 91.

²⁸ A/HRC/31/L.26/Rev.1 (2016); para. 5.

Prevention (continued)

9. *Calls upon* States in the context of criminal proceedings to ensure access to lawyers from the outset of custody and during all interrogations and judicial proceedings, as well as timely access of lawyers to appropriate information to enable them to provide effective legal assistance to their clients;²⁹
10. *Emphasizes* that it is important, for the ability of law enforcement officials to play their role in safeguarding the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, that States ensure the proper functioning of the criminal justice system, particularly by taking effective measures for combating corruption, establishing proper legal aid programmes and providing adequate selection, training and remuneration of law enforcement officials,³⁰
11. *Emphasizes further* the essential role of judges, prosecutors and lawyers in safeguarding the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment and that in this regard States should ensure the effective administration of justice, particularly by taking effective measures for combating corruption in the administration of justice, establishing proper legal aid programmes and having judges, prosecutors and lawyers adequately and in sufficient numbers selected, trained and remunerated,³¹ (excerpt)
12. *Calls* on States to ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel,³² amongst others to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.³³ (merged excerpts of text from UNCAT and UNCAC)

Criminalization

13. *Stresses* that all acts of torture must be made offences under domestic criminal law punishable by appropriate penalties that take into account their grave nature, and calls upon States to prohibit under domestic law acts constituting cruel, inhuman or degrading treatment or punishment;³⁴ (excerpt)
14. *Invites* States to consider adopting legislative measures to establish as a criminal offence, the intentional abuse of functions or position, that it, the performance of or failure to perform an act, in violation with laws, by a public official in the discharge of his or her function, for the purpose of obtaining an undue advantage,³⁵ (excerpt)

²⁹ A/HRC/31/L.26/Rev.1 (2016), para. 7; and A/HRC/RES/13/19 (2010), para. 6

³⁰ A/HRC/31/L.26/Rev.1 (2016), para. 15. See also A/RES/58/4 (2003), Convention against Corruption, Article 7(1)(a-c), which addresses these issues further.

³¹ A/HRC/RES/13/19 (2010), para. 12 (excerpt)

³² A/RES/39/46, Convention against Torture, Article 10 (excerpt).

³³ A/RES/58/4 (2003), Convention against Corruption, Article 7(1)(d). See also UNCAC, Article 60 on training programmes on effective measures to prevent, detect, investigate, punish and control corruption.

³⁴ A/HRC/31/L.26/Rev.1 (2016), para. 1 (excerpt).

³⁵ A/RES/58/4 (2003), Convention against Corruption, Article 19. A number of other provisions in the Convention against Corrupting are relevant to consider in the context of criminalisation, e.g. Article 15.

Reporting, investigation, prosecution, adjudication and sanctions

15. *Urges* States to ensure that rules are in place to obligate law enforcement officials to report instances of torture or other cruel, inhuman or degrading treatment or punishment **as well as corruption** to their superior authorities, with appropriate sanctions for non-reporting, and, where necessary, that independent organs are vested with reviewing or remedial power;³⁶ **(agreed text - with the addition of ‘as well as corruption’)**
16. *Calls upon* States to ensure accountability for acts of torture and other cruel, inhuman or degrading treatment or punishment **as well as corruption**,³⁷ and in this regard stresses that the competent domestic authority must promptly, effectively, independently and impartially investigate all allegations of such acts and wherever there is reasonable ground to believe that such acts have been committed and that those who encourage, order, tolerate or perpetrate such acts must be held responsible, brought to justice and punished in a manner commensurate with the severity of the offence;³⁸ **(agreed text - with the addition of ‘as well as corruption’ based on the Convention against Corruption)**
17. *Invites* States to consider establishing procedures through which a public official accused of **torture**³⁹ or an offence established in accordance with the Convention against Corruption may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence,⁴⁰ **(excerpt of UNCAC – with the addition of ‘torture’ based on the jurisprudence of CAT)**

Recommendations vis-à-vis the United Nations

18. *Invites* the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and other relevant special procedures, within their respective mandates, to take the present resolution into account in their future work;⁴¹
19. *Welcomes* the request to the Office of the High Commissioner to organize, before the thirty-ninth session of the Human Rights Council, in September 2018, in coordination with the United Nations Office on Drugs and Crime and with the participation of relevant United Nations entities, an intersessional, half-day open-ended expert workshop, with the objective of exchanging best practices on how the United Nations system supports States in preventing and fighting against corruption, with a focus on human rights;⁴²

³⁶ A/HRC/31/L.26/Rev.1 (2016), para. 12 (**excerpt**). See also the Convention against Corruption, Article 10 (Public reporting).

³⁷ A/RES/58/4, Article 30(2) of the Convention against Corruption stipulates that states shall take such measures [...] effectively investigating, prosecuting and adjudicating offences established in accordance with the Convention.

³⁸ A/HRC/RES/13/19 (2010), para. 10. A similar formulation can be found in A/HRC/31/L.26/Rev.1, para. 18.

³⁹ CAT concluding observations, e.g. CAT/C/TUR/CO/4, para. 10(b), Concluding observations on the fourth periodic report of Turkey, 2 June 2016.

⁴⁰ A/RES/58/4 (2003), Convention against Corruption, Article 30(6) (**excerpt**).

⁴¹ A/HRC/31/L.26/Rev.1 (2016), para. 19.

⁴² A/HRC/35/L.34 (2017), para. 12.

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