

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

REFERENCE:
AL USA 17/2019

12 September 2019

Excellency,

I have the honour to address you in my capacity as Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolution 34/19.

In reference to my communication sent on 28 May (USA 14/2019) on the case of Mr. Julian Assange, I would like to thank your Excellency's Government for the response dated 16 July 2019. While I sincerely appreciate the explanations provided and views expressed by your Excellency's Government, they do not alleviate my serious concerns with regard to the implementation, in this case, of the United States' obligations in relation to the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. By way of the present letter, I therefore would like to provide the following additional observations and clarifications, and to reiterate my queries to the extent I deem them to have been left without satisfactory response.

1. Relevance of the present case for the mandate of the Special Rapporteur

At the outset, I would like to clarify that the present case gives rise to three distinct areas of grave concern for my mandate.

- a) First, from a retrospective viewpoint, I am gravely concerned at Mr. Assange's state of health as observed during my visit, which showed all the symptoms typical for a person having been exposed to psychological torture for a prolonged period of time. In this respect, my aim is to identify the factors which may have contributed to producing the current situation and to recommend measures of investigation, redress and rehabilitation to be taken by the responsible States.
- b) Second, from a prospective viewpoint, I am gravely concerned that, in the event of his extradition to the United States, Mr. Assange would face a real risk of serious violations of his human rights, including treatment and conditions of detention amounting to torture or other cruel, inhuman or degrading treatment or punishment. In this respect, my aim is to substantiate the seriousness of my concerns and to urge all States that either are currently exercising jurisdiction over Mr. Assange, or that potentially may be doing so in the future, to strictly abide by the principles of due process and the absolute prohibition of refoulement towards a real risk of torture or other cruel, inhuman or degrading treatment or punishment.

- c) Third, from a policy viewpoint, I am gravely concerned that Mr. Assange is being prosecuted and abused for having published evidence for serious misconduct of State officials, including international crimes involving torture and other cruel, inhuman or degrading treatment or punishment, whereas the incriminated officials themselves are being granted impunity in flagrant violation of the most basic principles of justice, human dignity and the rule of law. In this respect, my aim is to urge the involved States to live up to their international obligation to conduct a prompt and impartial investigation wherever there is reasonable ground to believe that torture or ill-treatment has been committed, instigated, consented to or acquiesced in, to prosecute any violations, including mere attempts, complicity and participation, and to provide full redress and rehabilitation to the victims.

2. Risks of torture or ill-treatment arising in US jurisdiction

I note that your Excellency's Government disagrees with my assessment that, in the event of an extradition to the United States, Mr. Assange would be exposed to a real risk of torture or other cruel, inhuman or degrading treatment or punishment. While US law may be formally consistent with the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment, in practice, successive US Governments have proven to be either unable or unwilling to ensure the full and effective implementation of this prohibition as required, inter alia, under the Convention against Torture of 1984, the Covenant of Civil and Political Rights of 1966, the Geneva Conventions of 1949, and customary international law.

As detailed in my letter of 28 May 2019, my mandate has received consistent and reliable information confirming the routine use by US detaining authorities of cruel, inhuman or degrading practices incompatible with the prohibition of torture and ill-treatment, particularly against national security defendants or convicts held under a maximum-security regime, such as would presumably be applied to Mr. Assange. Moreover, with the exception of a number of officials having acted *ultra vires*, the United States Government has shown a pervasive reluctance to prosecute US officials on any level of the civilian, military and political hierarchy for planning, instigating, perpetrating, consenting to, or acquiescing in acts of torture and other cruel, inhuman or degrading treatment or punishment, including prima facie war crimes, in contravention to its obligation to investigate and prosecute such abuse under, inter alia, the Convention against Torture of 1984, the Covenant of Civil and Political Rights of 1966, the Geneva Conventions of 1949, and customary international law.

As stated by the Committee against Torture, it "is a matter of urgency that each State party should closely monitor its officials and those acting on its behalf and should identify and report to the Committee any incidents of torture or ill-treatment as a consequence of anti-terrorism measures, among others, and the measures taken to investigate, punish, and prevent further torture or ill-treatment in the future, with particular attention to the legal responsibility of both the direct perpetrators and officials in the chain of command, whether by acts of instigation, consent or acquiescence"(CAT/C/GC/2, para 7). In this context, it should be recalled that no

exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, nor an order from a superior officer or a public authority may be invoked as a justification of torture (art. 2(2) and (3) CAT; CAT/C/GC/2, para 26). Further, under universally recognized customary international law, individual criminal responsibility also arises where military commanders or other superiors, including political leaders, fail to prevent, suppress or prosecute international crimes, although they know or should have known that such crimes have been, are being or are about to be committed by subordinates under their effective control.

Despite compelling evidence provided by the 2014 Senate Committee Report and numerous other reliable sources, the United States Government reportedly has not only failed to hold its officials to account for acts of torture and ill-treatment, but has also threatened other States, as well as officials of the International Criminal Court with criminal, financial and other sanctions in the event of any investigation being initiated into war crimes and crimes against humanity involving US officials. Moreover, the US Government has consistently prosecuted and imposed harsh sanctions on whistleblowers exposing serious international crimes committed by its officials, including torture and ill-treatment, in stark contradiction to basic rule of law principles such as justice and equality before the law. In sum, except for isolated cases of officials having acted *ultra vires*, the US Government today has an established track record of granting and systematically enforcing impunity for serious international crimes perpetrated by its officials, including torture and other cruel, inhuman or degrading treatment or punishment. As a result, assurances given by your Excellency's Government as to the effectiveness of due process guarantees and human rights protections afforded by the US legal and justice system lack the credibility and reliability that would be required to render Mr. Assange's extradition to the United States permissible under international law.

As this mandate has consistently observed, where there are substantial grounds for believing that a person would be in danger of being subjected to treatment, procedures, conditions or sanctions amounting to torture or other cruel, inhuman or degrading treatment or punishment, diplomatic assurances have proven to be incapable of providing the protection required under the peremptory principle of non-refoulement (A/HRC/37/50, para. 48; A/70/303, para. 69). The prohibition of refoulement towards the risk of torture or ill-treatment under Art. 3 CAT and Art. 7 CCPR is absolute and non-derogable and, therefore, applies irrespective of "the nature of the activities in which the person engaged" (CAT/C/18/D/34/1995, para 9.8) and even "irrespective of whether the individual concerned has committed crimes and the seriousness of those crimes" (CAT/C/22/D/104/1998, para 6.4).

3. WGAD finding of arbitrary detention

I also note that your Excellency's Government disagrees with the finding of the United Nations Working Group on Arbitrary Detention (WGAD) of 4 December 2015 that Mr. Assange's confinement at the Ecuadorian Embassy amounted to arbitrary deprivation of liberty, and that the US Government is of the view, instead, that

Mr. Assange “voluntarily stayed in the Embassy to avoid facing lawful criminal charges pending against him”.

First, I would point out that, for the entire duration of Mr. Assange’s confinement in the Ecuadorian Embassy, there have been no serious “criminal charges pending against him”, except that, by seeking - and receiving - political asylum at the Ecuadorian Embassy, Mr. Assange was unable to comply with the bail conditions imposed by a British Court. As far as the alleged sexual offences in Sweden are concerned, I would observe that the Swedish prosecution has now been conducting its “preliminary” investigation into this matter for more than 9 years, has questioned Mr. Assange twice, has collected numerous statements from complainants and witnesses, and has carried out several DNA-analyses, but so far has been unable to produce evidence sufficient to press formal charges against Mr. Assange. Between 2010 and 2019, this preliminary investigation has been opened by one prosecutor, closed by another, re-opened and then again closed by a third, only to be re-opened by a fourth prosecutor, without any decisive procedural progress being achieved for almost a decade. On the contrary, the evidence produced, the surrounding circumstances, and the manner in which the investigation was conducted have proven to be highly controversial, if not exculpatory. Overall, it is difficult to escape the impression that, in this case, the Swedish prosecution has been deliberately misusing the “rape-suspect” narrative as a pretext to undermine Mr. Assange’s credibility and reputation and, possibly, to facilitate his indirect refoulement from the United Kingdom to the United States. Finally, as far as the lawfulness of the US charges against Mr. Assange is concerned, I note that seventeen of the eighteen currently known charges relate to “obtaining”, “receiving” and “disclosure” of national defense information by a non-US publisher without any duty of allegiance or contractual obligation towards the United States, all of which presumably would be protected under the human right to freedom of opinion and expression. The only remaining charge against Mr. Assange relates to a minor and completely inconsequential offence involving his alleged – unsuccessful - attempt to help breaking a computer password, which did not aim at gaining access to unauthorized information or cause any damage or harm but, if successful, might have helped his source to cover her tracks. In sum, I would reiterate that, for the entire duration of Mr. Assange’s confinement at the Ecuadorian Embassy, no serious criminal charges were pending against him, and that the only conceivable reason for him to refuse to leave the Embassy was that he had a credible fear of being exposed to serious violations of his human rights in case of his extradition to the United States.

Second, whether a particular situation of confinement qualifies as “deprivation of liberty” for the purposes of human rights law depends not only on whether the concerned person has a *de jure* “right” to leave, but also on whether they are *de facto* able to exercise this right without exposing themselves to serious harm. As detailed previously, I am convinced that, in the event of an extradition to the United States, Mr. Assange would face a real risk of serious violations of his human rights, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Moreover, as demonstrated by the events of 11 April 2019, Mr. Assange was right to assume that, if ever he were to leave the Ecuadorian Embassy, the United States would immediately

request his extradition, either directly from the United Kingdom or indirectly via Sweden. Given that both the United Kingdom and Sweden have had a history of cooperating with US-sponsored arbitrary detention and torture, given also the arbitrary manner in which the Swedish criminal investigation against Mr. Assange has been conducted and, moreover, given Sweden's express refusal to provide assurances against his onward extradition to the United States, Mr. Assange had no reason to be confident that Sweden or the United Kingdom would afford him a fair and impartial judicial proceeding in relation to a US extradition request and, in particular, that either country would respect the peremptory prohibition of refoulement (Art. 3 CAT and Art. 7 CCPR). Mr. Assange's concerns have been proven right by the fact that the British criminal and extradition proceedings conducted against him since his arrest on 11 April 2019 have been marked by numerous serious violations of his right to a fair trial including, most notably, documented conflicts of interest and overt bias on the part of involved judicial magistrates, a disturbingly disproportionate sanction for his bail violation and, most importantly, the consistent obstruction of Mr. Assange's access to legal counsel and legal documents commensurate with the complexity of the relevant proceedings, thus effectively rendering him unable to prepare his defence. Under these circumstances, Mr. Assange was justified in assuming that he could not leave the Ecuadorian Embassy without simultaneously exposing himself to a real risk of serious and irreparable harm through refoulement to the United States. Therefore, Mr. Assange's confinement in the Ecuadorian Embassy was neither "voluntary", nor necessary and proportionate for a lawful purpose but, as accurately stated by the WGAD, amounted to a situation of arbitrary deprivation of liberty in violation of Art. 9 CCPR.

Third, while arbitrary deprivation of liberty does not necessarily amount to torture or other cruel, inhuman or degrading treatment or punishment, there is an undeniable link between both prohibitions. In conjunction, the arbitrary character of detention, its protracted and/or indefinite duration, the refusal to provide information, the denial of basic procedural rights and the increasingly intrusive, invasive and oppressive conditions of detention due to constant surveillance and harassment, can cumulatively inflict serious psychological harm which may well amount to torture or other ill-treatment (CCPR/C/116/D/2233/2013). Thus, even factors that may not necessarily amount to torture or ill-treatment when applied as an isolated measure and for a very limited period of time, such as unjustified detention, delayed access to procedural rights or moderate physical discomfort, can cross the relevant threshold if applied cumulatively and/or for a prolonged or open-ended period of time. The longer a situation of arbitrary deprivation of liberty and inadequate conditions of detention lasts, and the less the affected person can do to influence their own situation, the more intense their mental and emotional suffering will become - and the higher the likelihood that the prohibition of torture and ill-treatment has been breached (A/HRC/37/50, §§25-27). In the present case, a thorough medical examination according to the Istanbul Protocol showed that this threshold has clearly been reached and that, after a prolonged exposure to a combination of arbitrary confinement and unrestrained public mobbing, Mr. Assange showed all the symptoms typical for psychological torture.

4. “Public mobbing” as torture or other cruel, inhuman or degrading treatment

I further note that your Excellency’s Government disagrees with my finding that, in the United States, there has been an ongoing campaign of “sustained and unrestrained public mobbing, intimidation and defamation” of Mr. Assange, that “the types of public statements listed in (my) letter constitute cruel, inhuman or degrading treatment or punishment, much less torture” and “that the United States was obligated to publicly disapprove or prevent such statements”, a proposition which is considered to have “dangerous implications for freedom of expression, democracy and the rule of law”.

While I fully agree that freedom of expression is an essential human right that should not be unduly restricted, it cannot be “interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms” recognized in the CCPR, including the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (articles 5(1) and 7 CCPR). According to Article 19 CCPR, the exercise of the right to freedom of expression carries with it special duties and responsibilities and may therefore be subjected to certain restrictions, most notably when necessary for the “respect of the rights or reputations of others”. Clearly therefore, it cannot be permissible to refer to the right to freedom of expression in order to justify extreme forms of public expression that deliberately inflict pain, suffering or humiliation amounting to psychological torture or other cruel, inhuman or degrading treatment, a risk which is particularly relevant where the targeted person or group is isolated, vulnerable and defenseless. Indeed, even in the extreme circumstances of armed conflict, the duty of “humane treatment” under international humanitarian law requires that both civilians and combatants in the power of the enemy be protected against “intimidation and against insults and public curiosity” (Articles 13(2) of the Third Geneva Convention and article 27 of the Fourth Geneva Convention of 1949).

I presume that your Excellency’s Government bases its own understanding of psychological torture on 18 U.S. Code §2340, which defines “severe mental pain or suffering” as the “prolonged mental harm caused by or resulting from”, *inter alia*, “the intentional infliction or threatened infliction of severe physical pain or suffering” or “the threat of imminent death”, and requires that victim be in the “custody or physical control” of the perpetrator. I would point out, however, that this definition is under-inclusive compared to the requirements of Art. 1 CAT. In particular, the definition of torture in Art. 1 CAT requires neither custody or physical control, nor the threat or infliction of physical pain or suffering, or the threat of imminent death. In these decisive aspects, US national law clearly falls short of the definitional requirements of the CAT, thus excluding widespread methods of torture, such as sensory deprivation, mental manipulation and destabilization, isolation, humiliation, and threats relating to the infliction of severe mental and emotional suffering.

From the perspective of human rights law, public insults, ridicule and humiliation may be tolerated as mere “mudslinging” in the context of a political debate, but can easily

turn into “mobbing” or “bullying” when deliberately targeting an isolated, vulnerable and defenseless person or group, and may even amount to “persecution”, particularly when State officials get involved. Especially when combined with serious threats and intimidation, the prolonged exposure to mobbing or persecution can have grave, irreversible and even life-threatening psychological and physical consequences. Even though the methods used may often seem insignificant when considered in isolation, their relentless repetition and accumulation against an isolated and powerless person or group can inflict severe mental and emotional suffering and, ultimately, lead to medical crises including total exhaustion, disorientation, and even nervous collapse or cardiovascular failure. Therefore, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment requires States not only to abstain from exposing powerless individuals to unjustified intimidation, insults and humiliation, including threats of unlawful violence, but also to take effective preventative measures with a view to protecting their privacy and human dignity (Articles 2 and 16 CAT and Articles 2 and 7 CCPR; CAT/C/GC/2, §18).

5. International responsibility of the United States

Last but not least, I note that your Excellency’s Government further disagrees with my assessment as to the United States’ international responsibility for the observed patterns of psychological torture and other cruel, inhuman or degrading treatment or punishment, notably because “Mr. Assange is not, and never has been, in the custody of the United States, nor has the United States instigated, consented to, or acquiesced in the alleged torture or cruel, inhuman or degrading treatment or punishment of Mr. Assange”.

This mandate has consistently taken the position that the prohibition of torture and other ill-treatment is not territorially limited (A/70/303, para 65-66) and in line with the plain text of Art. 1 and 16 of the CAT, that its applicability does not depend on custody or physical control, but on the ability of a State to inflict pain, suffering or humiliation meeting the definitional requirements of these provisions (A/72/178, para 33-36). In practice, a finding of torture requires the “powerlessness” of the victim (i.e. inability to resist or escape the infliction of severe pain or suffering), whereas a finding of other cruel, inhuman or degrading treatment or punishment does not. Given that Mr. Assange was demonstrably unable to resist or escape his arbitrary, progressively severe isolation, surveillance and harassment inside the Ecuadorian Embassy, and his relentless exposure to public mobbing, insults and intimidation from the outside world, I am of the view that, at least from March 2018, he was in a continuous state of “powerlessness” and that his exposure to the combination of these factors, cumulatively and over a prolonged period of time, produced the observed medical symptoms typical for psychological torture.

Moreover, the obligation to take effective preventative measures under articles 2 and 16 CAT is not limited to potential victims within the State’s jurisdiction, but “clearly encompasses action taken by States in their own jurisdictions to prevent torture or other ill-treatment extraterritorially” (A/70/303, §33). Thus, irrespective of the geographical location of Mr. Assange, the United States has a legal obligation to prevent, prosecute and punish any contribution to acts of torture and ill-treatment against him

emanating from persons under US jurisdiction, including mere “attempts”, “complicity” and “participation” (Art. 4(1) CAT). Further, where a State knows or has reasonable grounds to believe that private actors perpetrate or contribute to acts of torture or other cruel, inhuman or degrading treatment, but fails to exercise due diligence to prevent such abuse, it incurs international legal responsibility through consent, acquiescence (CAT/C/GC/2, para. 7 and 18; A/70/303, para 70).

Accordingly, there are three different possibilities for the United States to acquire international responsibility for acts of torture or other cruel, inhuman or degrading treatment or punishment against Mr. Assange, namely: (a) through the direct legal attribution to the United States of torture and ill-treatment that has been perpetrated, or contributed to, by its officials or agents, including through mere attempt, complicity, or participation; (b) through failure of US authorities to comply with their related positive obligations, most notably to prevent, prosecute and redress torture and ill-treatment perpetrated by officials and private persons under US jurisdiction or control; and (c) through the indirect involvement of the United States in torture and ill-treatment attributable to other States of non-state actors, most notably through aid and assistance, direction and control, or coercion (ILC Arts 16-18 ARSIWA).

I am seriously concerned at the apparent failure of US authorities to take any measure for the protection of Mr. Assange’s integrity, to discourage the escalating campaign of public mobbing, and to prevent at least the most extreme forms of “hate speech” incompatible with human dignity, including incitement to violence, and repeated calls for Mr. Assange’s assassination or murder, all of which have decisively contributed to produce the observed medical symptoms of psychological torture.

6. Duty to investigate, prosecute and punish

Under Arts. 4 and 12 of the CAT, States are obliged to criminalize acts of torture, including any form of attempt, complicity or participation, and to conduct a prompt and impartial investigation, wherever there is reasonable ground to believe that such an act has been committed within or from their jurisdiction. In addition, the responsibility of superior officials, whether for direct instigation or encouragement of torture or ill-treatment or for consent or acquiescence therein, must be fully investigated through competent, independent and impartial judicial authorities (CAT/GC2, para 26).

Depending on the outcome of such investigation, States are obliged to prosecute and punish violations and to provide redress and rehabilitation (Arts. 5-9 and 13-14 CAT). These obligations, which can also be derived from Arts 2 and 7 CCPR, must be exercised and interpreted in line with the universally recognized principles of *pacta sunt servanda* and of good faith, in accordance with the ordinary meaning to be given to the terms of the Convention in their context and in the light of its object and purpose, namely to “make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world” (Preamble CAT; Art. 26 and 31 VCLT).

As detailed in my letter of 28 May 2019, during my visit to Mr. Assange on 9 May 2019, a thorough forensic and psychiatric examination conducted in line with the “Istanbul Protocol” showed a clear pattern of symptoms typical for persons having been exposed to psychological torture for a prolonged period of time. Moreover, due to the specific circumstances of Mr. Assange’s case, the primary causes for these symptoms could be identified and assigned with a high degree of certainty and included, inter alia, Mr. Assange’s prolonged exposure to sustained and unrestrained public mobbing, intimidation and defamation, including by persons and institutions acting from within the jurisdiction of the United States.

These findings by the undersigned mandate holder and two independent medical experts experienced and specialized in the examination of torture victims unquestionably provide “reasonable ground to believe” that officials and private persons under US jurisdiction have proactively contributed to Mr. Assange’s psychological torture. US authorities therefore do not have the discretion to simply refute these findings, but have a clear and unequivocal treaty obligation to conduct a prompt and impartial investigation into these allegations and, in case of violations, to prosecute and punish the perpetrators, and to provide redress and rehabilitation to Mr. Assange.

In conclusion, therefore, I call on your Excellency’s Government, in line with its treaty obligations under the CAT and the CCPR, to conduct a prompt and impartial investigation with a view to providing a detailed and conclusive response to the queries detailed in my letter of 28 May 2019:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please provide the details and, where available, the results of any investigation, and judicial or other inquiries which may have been carried out, or which are foreseen, in relation to my mandate’s assessment of the psychological torture and other cruel, inhuman or degrading treatment or punishment inflicted upon Mr. Assange, which resulted from acts or omissions occurring in or from the jurisdiction of the United States. If no such measures have been taken, please explain how this is compatible with the human rights obligations of the United States.
3. Please provide the details of any measures which have been taken, or which are foreseen, for the purpose of protecting Mr. Assange from further infliction of torture and other cruel, inhuman or degrading treatment or punishment through acts or omissions occurring in or from the jurisdiction of the United States. If no such measures have been taken, please explain how this is compatible with the human rights obligations of the United States of America.
4. Please provide the details of any measures which have been taken, or which are foreseen, for the purpose of ensuring that Mr. Assange obtains

redress for the harm inflicted on him by acts or omissions occurring in or from the jurisdiction of the United States, including fair and adequate compensation and the means for full physical, psychological and reputational rehabilitation. If no such measures have been taken, please explain how this is compatible with the human rights obligations of the United States.

Should Mr. Assange come under the jurisdiction of the United States for any reason, I urge your Excellency's Government to ensure that he would not be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment, including prolonged solitary confinement and other excessively harsh or degrading conditions of detention, or grossly disproportionate sanctions such as the death penalty or a life sentence without parole. Moreover, I urge the United States Government to ensure that any proceedings conducted against Mr. Assange meet the highest human rights standards in terms of judicial and procedural guarantees, considering in particular his fragile state of health, as well as the fact that he is not a US citizen and has no duty of allegiance or contractual obligation towards the United States, but benefits from the full protection of the fundamental right to freedom of expression.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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

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

Annex

Reference to international human rights law

While I do not wish to prejudge the accuracy of the information received, I would like to draw the attention of your Excellency's Government to the relevant international norm and standards that are applicable to the issues brought forth by the situation described above.

The absolute and non derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment has been codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), as well as in article 7 of the International Covenant on Civil and Political Rights (ICCPR), which the government of your Excellency has ratified on 21 October 1994 and 8 June 1992 respectively.

Article 3 of the CAT provides that, “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture”; and that, “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”.

This absolute prohibition against refoulement in the CAT is stronger and strengthens the same prohibition in **refugee law**, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under Article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylee status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

I would also like to refer to **paragraph 9 of the General Comment No. 20 of the Human Rights Committee** in which it states that State parties “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of extradition, expulsion or refoulement.”

I would also like to draw the attention of your Excellency's Government to **paragraph 7 of the Resolution A/RES/70/146 of the UN General Assembly** which urges States “not to expel, return (“refouler”), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, stresses the importance of effective legal and procedural safeguards in this regard, and recognizes that **diplomatic assurances**, where given, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement.”

Furthermore, **paragraph 7d of Human Rights Council Resolution 16/23** (2011) urges States “(n)ot to expel, return (refouler), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, [...]”