

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

REFERENCE:  
AL DEU 6/2021

26 August 2021

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 43/20.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **several instances of alleged excessive use of force by law enforcement officers against protesters, in apparent violation of the principles of necessity and proportionality, amid rallies denouncing COVID-19 State regulations in Berlin, on 1 August 2021, and in Dresden on 19 April 2021.**

I would also like to express my sincere appreciation for the prompt cooperation and ongoing constructive dialogue with your Excellency's Government on this matter with a view to investigating the reported instances of violence and to prosecuting and providing redress for any violations as required under international law.

According to the information received:

Since the outbreak of the COVID-19 pandemic and the governmental lockdown imposed on 22 March 2020, numerous protests were held in Germany against the measures and regulations imposed by the authorities. Throughout the past year, a group called "Querdenken" has been the main organizer of these protests, which started in Stuttgart and then expanded to other cities, including Dresden on 19 April 2021 and, most recently, Berlin on 1 August 2021. In both cities, the demonstrations had been prohibited by the authorities and these prohibitions had been confirmed by the judiciary, based on applicable COVID-19 pandemic legislation.

In the case of Berlin, a total of approximately 5000 protesters were reported to have gathered in various locations of the city, most of them without respecting the minimum rules on social distancing and the wearing of a facial masks. In the course of the day, some 600 protesters were allegedly arrested and another 350 stopped for identity checks. All protesters are believed to have been released shortly after their arrest. It has also been reported that 2000 police officers in riot gear were deployed to quell the protests, and that at least 60 officers were injured in the ensuing violence.

***Individual Allegations of Excessive Force Used by the Police***

*In view of the great number of allegations received, a number of particularly well documented and representative cases have been selected and included in*

*this communication in order to illustrate the relevant human rights concerns and encourage broader measures of prevention, investigation, correction and redress on the part of the authorities. All of the following cases are documented through video evidence, allow the reliable identification of at least one involved officer based on the visibility of ID numbers, and display an instance of the use of force or coercion, which appears to be clearly excessive. For the majority of these cases, I additionally have been able to speak to the alleged victims themselves and or to eyewitnesses of the reported incidents.*

- *Case 1 (Dresden, 19 April 2021)<sup>1</sup>:*

This case involved a non-violent man calmly walking in a public square while reading from the constitution. As he finished and tried to mount his bicycle, in slow, measured, and non-threatening movements, he was attacked by an officer (NRW-31233), who had been calmly standing nearby, watching the man together with several other officers, and who now suddenly ran up to him from behind and, without advance warning, violently hauled his arm around the man's neck and threw him to the ground in a way that could result in serious injuries. The man was subsequently being held down on the ground by several officers for a period of several minutes. Throughout the scene, the man was neither violent or threatening, nor did he violate the social distancing requirement or otherwise put himself or other people at risk.

- *Case 2 (Berlin, 1 August 2021, approx., 12:30 hrs)<sup>2</sup>:*

This case involved protesters marching peacefully near Theodor-Heuss-Platz. When police vehicles moving in the same direction were passing by the protesters, a 75 year-old man, without turning his head or changing direction, walked into the lane used by the police vehicles, thus forcing the next police vehicle approaching from behind to stop (licence plate number BA P 9525). A police officer (BY-4431) emerged from the co-driver's seat of the vehicle, rushed towards the old man from behind and, without any warning or attempt at avoiding the use of force, pushed him abruptly and violently out of the way, towards the other protesters marching next to him. Due to his inevitable fall, the elderly man broke his shoulder and sustained other bodily injuries, and caused injuries to a child, who was walking next to him. The officer did not stop to care for the persons injured by him but immediately returned to the police vehicle, which then drove past the scene. Throughout the incident, the elderly man may have represented an obstacle to the operating police officers, but he was neither violent or threatening, nor did he violate the social distancing requirement or otherwise put himself or other people at risk.

- *Case 3 (Berlin, 1 August 2021)<sup>3</sup>:*

This case involved a police officer (BE-34125) abruptly grabbing a non-violent and non-threatening male protester from behind and violently throwing him backwards to the ground, in a way that could result in serious injuries. The exact time and location of the incident could not be identified, but the motivation

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2 Video evidence on file.

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seemed to be to remove the man from the likely pathway of the accompanying police vehicles. Throughout the scene, the man did not appear to represent any threat, nor did he violate the social distancing requirement or otherwise put himself or other people at risk.

- *Case 4 (Berlin, 1 August 2021)*<sup>4</sup>:

This case involved a defence-less woman, overpowered and secured on the ground by four police officers, one of them punching her violently between the shoulder blades twice, while she screams. One of the police officers holding her is identifiable (BE 15220). At no point did the woman or anyone else visible in the surroundings pose a threat to the officers.

- *Case 5 (Berlin, 1 August 2021)*<sup>5</sup>:

This case involved a non-violent man walking calmly with his bicycle next to a police officer. According to the comments of the person filming the incident, the man verbally insulted the officer (BE-15129), who then suddenly physically attacked him, punched him and tried to wrestle him to the ground. Within seconds, three additional officers (incl. BE-30010) rushed to the scene and violently forced the man to the ground, handcuffed and arrested him. At no point did the man use any violence or pose any other threat to the officers or bystanders.

- *Case 6 (Berlin, 1 August 2021, Suarezstrasse, approx. 12:00 hrs)*<sup>6</sup>:

This case involved a male protester, who reportedly had tried to deter a police officer from hitting another protester, was overpowered and secured on the ground by several police officers. Although the man did not, at this point, show any visible violence or otherwise threatening conduct, the police officers (incl. BE-14301) continued to beat him repeatedly on the back and on his head until he lost consciousness, his face and arms are covered in blood. The officers then put a bandage on his head, handcuffed him and took him to a police vehicle. Approximately fifteen minutes later, the ambulance arrived and transported the man to the hospital under police escort. At the hospital, he was accompanied by two police officers who allegedly falsely informed the doctor that his injuries were caused by a fall and not due to beating. Nevertheless, the medical record correctly stated that the man's injuries were caused by severe beating. In fact, the man suffered head and face injuries that needed suturing, and he continued to suffer from severe headaches, dizziness and trauma thereafter.

- *Case 7 (Berlin, 1 August 2021)*<sup>7</sup>:

This case involved a non-violent elderly woman walking towards a police cordon, seemingly intending to pass to the other side. Without any warning, the nearest police officer (BE-32005) immediately clenched his two hands around her neck and violently threw her to the ground. Although there did not appear to be any immediate time pressure or threat to the officer or his colleagues, he made no

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[REDACTED] (from approximately 00:43 – 02:20)  
[REDACTED]

effort to prevent or secure her fall, or to care for her after her fall, thus potentially exposing her to serious injuries.

Without making any judgment at this point as to the accuracy and comprehensiveness of the information made available to me, including the context in which the referenced video evidence, supporting witness statements, and victim accounts are presented, I am seriously concerned that these and other incidents appear to have clearly involved excessive resort to force by police officers. More specifically, the force appears to be excessive: (a) because it did not pursue a perceptible lawful purpose; or (b) because it did not appear to be necessary to achieve a lawful purpose; or (c) because it appeared likely to inflict pain, suffering or other harm disproportionate to whatever lawful purpose was being pursued; or (d) because the officers involved did not appear to display the requisite level of precaution in avoiding or minimizing the use of force or caring for those affected by the use of force.

**Lawful purpose:** Depending on the factual and legal circumstances prevailing in a particular situation, legitimate law enforcement action may well include purposes such as self-defence or defence of others, preventing demonstrators from breaking police cordons, clearing the passage for police vehicles, enforcing obligations on social distancing and the wearing of facial masks, or dissolving unlawful assemblies. While it may further be legitimate to employ force in defence of self or others against unlawful attacks and other wrongful conduct, and to enforce the legal order more generally, individual law enforcement officials cannot under any circumstances lawfully use force or coercion merely for punitive or retributive purposes, even in response disrespectful, provocative, or even wrongful conduct. Law enforcement officials must at all-time display a professional attitude and conduct commensurate with the public power and confidence vested in them. In my preliminary assessment, the requirement of a lawful purpose appears to have been violated in the following cases listed above: 1; 4; 5; 6.

**Necessity:** Even when law enforcement officials pursue a lawful purpose, they may resort to force and coercion only if, and for as long as, and to the extent to which, this purpose cannot be achieved through less harmful means. Even when the use of force is necessary, the kind and degree of force used may not lawfully exceed what is necessary in order to achieve a lawful purpose and may not continue temporally beyond the moment of its achievement. For example, a demonstrator whose suspected or real misconduct can be effectively addressed through an advance warning, verbal order, or graduated use of force, may not be violently pushed, thrown to the ground, beaten, or sprayed with irritants; and a defenseless demonstrator who has been restrained or otherwise clearly overpowered may no longer be beaten or held in a stranglehold, even if he has previously engaged in violence, unlawful or disrespectful conduct. In my preliminary assessment, the requirement of necessity appears to have been violated in all seven cases listed above.

**Proportionality:** Even where the use of force by law enforcement officials is necessary for the achievement of a lawful purpose, it cannot justify the infliction of pain, suffering or other harm that must be regarded as clearly disproportionate compared to the importance of the lawful purpose to be achieved. For example, the enforcement of rules designed to prevent possible virus infections may justify the use of moderate physical force, such as physical restrictions of the freedom of movement, but cannot legitimize the use of excessive violence likely to generate risks, or inflict

pain, suffering and injuries that are incompatible with the prohibition of torture and other cruel, inhuman or degrading treatment, or with the protection of the right to life. In some circumstances, this may mean that law enforcement officials may have to decline to enforce the lawful purpose of their mission based on considerations of proportionality. In my preliminary assessment, the requirement of proportionality appears to have been violated in all seven cases listed above.

**Precaution:** Law enforcement officials must always plan, prepare and conduct their operations so as to avoid or minimize, to the maximum extent possible, the resort to unnecessary, disproportionate or otherwise unlawful force or coercion. This includes the implementation by law enforcement officials of a graduated approach to the use of force, the use of de-escalatory measures, and the duty to provide protection and medical care to persons and bystanders who may have been injured or otherwise negatively affected by coercive measures. In my preliminary assessment, the requirement of precaution appears to have been violated in all seven cases listed above.

In this connection, I would like to remind your Excellency's Government that the above-mentioned allegations, if proven to be accurate, would contravene the internationally recognized rights of every individual to life, liberty and security of person, to be free of torture and other cruel, inhuman or degrading treatment or punishment, and to physical integrity, protected under articles 3 and 5 of the Universal Declaration of Human Rights (UDHR), articles 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR), and articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Germany ratified on 17 December 1973 and 1 October 1990, respectively.

I wish to further draw your Excellency's Government's attention that even in cases where an assembly is no longer lawful or peaceful, participants retain their human rights as protected under these and other applicable instruments. Thus, no assembly can ever be considered to fall outside the protection of the law (A/ HRC/31/66, para. 8-9).

I would like to take the opportunity to express my sincere appreciation for the cooperation shown by your Excellency's Government, notably the prompt facilitation by the Permanent Mission of Germany to the United Nations in Geneva of a meeting with the local authorities of the Bundesland Berlin, in particular with Senator Andreas Geisel, with Vice President of the Police, Mr. Marco Langner, and with Spokesperson of the police, Mr. Thilo Cablitz, as well as the information and documentation shared after my meeting with them, and the designation of a contact person within the police service in order to ensure a direct line of communication with my mandate. The meeting, conducted in Berlin on 11 August 2021, took place in a spirit of mutual cooperation, respect and constructive dialogue. Notably, I had the opportunity to detail my concerns regarding the reported excessive use of force from the perspective of the absolute and non-derogable prohibition of torture or other cruel, inhuman or degrading treatment or punishment. The information provided to me by the authorities allowed me to better understand the current challenges facing German police in the management of assemblies, particularly in the context of recent "anti-COVID" demonstrations, where more than 60 police officers had been injured in a single day due to the aggressive violence displayed by a small number of demonstrators. I note with appreciation the recognition expressed by the German authorities of the seriousness of the reported police brutality as well as their unequivocal commitment to comprehensively

investigating the alleged violations and, where appropriate, initiating the necessary disciplinary or criminal procedures.

Furthermore, having analysed the applicable normative framework governing the use of force by the police in the Land of Berlin, notably the «Gesetz über die Anwendung unmittelbaren Zwanges bei der Ausübung öffentlicher Gewalt durch Vollzugsbeamte des Landes Berlin» of 22 Juni 1970, as well as the generic training curriculum, and the operational engagement concept for the use of force and coercion by law enforcement officials, I commend the exemplary manner in which these materials incorporate and reflect relevant international human rights standards.

At the same time, I am concerned that none of the specific police engagement orders subsequently shared with me (excerpts of engagement orders for the management of individual assemblies taking place on 9 October 2020, on 1 May 2021, on 24 July 2021 and on 1 August 2021) include any express reminder that, even if a “low engagement threshold” applies, this does not justify any use of excessive force in contravention to the requirements of lawful purpose, necessity, proportionality, and precaution. I am further concerned that these engagement orders require that “misdemeanours”, “criminal offences” and “violence” all be addressed in a “targeted, fast, offensive, consistent, focused and low-threshold manner”. Thus, these orders do not differentiate between responses to violent attacks or other serious crimes on the one hand, and mere misdemeanours or civil disobedience on the other. Instead, they apply a single set of engagement instructions in response to all forms of misconduct by demonstrators. More generally, once the low engagement threshold has been reached, operational orders do not appear to define any express differentiation or limitation to the use of force and coercion.

In my assessment, it is reasonable to assume that this lack of express differentiation and limitation, in conjunction with the “low engagement threshold” and the requirement of a “targeted, fast, offensive, consistent and focused” response opens the door to being misinterpreted by operational police officers as implying a more permissive policy with regard to the use of force, as well as an unqualified priority for the enforcement of the anti-Covid pandemic rules, without due consideration for other risks and values that may have to be considered when deciding on the scope, extent and modalities of coercive measures. This apparent misperception among parts of the operational police force may additionally have been reinforced by unwarranted hostile narratives disseminated by certain media outlets explicitly or implicitly portraying peaceful critics or sceptics of governmental anti-COVID measures as deranged “public enemies”.

Overall, the number of allegations and the type of evidence I have received suggests that the phenomenon of police brutality is not just a personalized matter of a “few bad apples”, and is not limited to the Land of Berlin, but reflects an emerging trend that does not appear to have been countered with sufficient rigor and clarity by the federal and local police and political authorities. The available evidence, incomplete as it may be, is sufficiently alarming to warrant a prompt and impartial investigation of each allegation in accordance with Art. 12 of the Convention against Torture, Art. 7 ICCPR, Art. 3 ECHR and relevant national disciplinary, criminal, and administrative legislation.

More generally, as the Human Rights Council has recently acknowledged, “public confidence in police and other law enforcement officials is paramount for their ability to perform their functions effectively and depends on, inter alia, their respect for the human rights, fundamental freedoms and human dignity of all persons” (A/HRC/46/L.27). In this context, beyond the individual persons involved in these incidents, the violence documented in these widely disseminated video clips are likely to affect, traumatize and antagonize thousands if not millions of uninvolved spectators. This risks to seriously undermine the confidence of the general public in the reliability and integrity of the public authorities and their law enforcement personnel, as well as in their willingness to respect, protect and uphold human dignity. While it is important to train, equip and instruct police forces so as to enable them to operate safely and effectively in extremely difficult situations, the authorities must avoid being perceived as expressing an attitude of indifference, acquiescence, or even consent - let alone of deliberate brutality - with any form of excessive use of force or other abuse of power by the police and other security forces and personnel. Thus, when faced with civil disobedience among significant segments of the ordinary population, political leaders and authorities both on the federal and the local level should avoid divisive and antagonising narratives and prioritize and promote dialogue, tolerance and diversity in the common public interest of all.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to our attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations, preliminary observations, and concerns.
2. Please provide information on any investigations which may have been undertaken, or which are foreseen, with regard to each of the alleged acts of torture or cruel, inhuman or degrading treatment or punishment detailed above and, more generally, on the reported broader pattern of excessive use of force by law enforcement officials against peaceful protesters throughout Germany. If no such investigations have been initiated, please explain how this is compatible with the human rights obligations of Germany.
3. Please explain what steps have been taken, or are still foreseen, to hold to account perpetrators and their superiors, to provide victims and their families with adequate redress and rehabilitation, and to prevent recurrence in the future.
4. Please provide information on existing mechanisms, if any, enabling alleged victims of excessive use of force and other abuse of power by police officers to complain in a safe and effective manner that leads to a

prompt, impartial, independent and transparent review of the conduct of the police officers involved;

5. Please provide detailed information about the number of police officers whose conduct during the management of assemblies has been the subject of disciplinary or judicial review since January 2020 and, in case of misconduct, about the corresponding sanctions imposed;
6. Please comment, in particular, what steps have been taken, or are envisaged, in order to improve operational orders so as to better reflect the limitations applicable to any use of force or coercion by law enforcement officials even once the threshold of engagement has been reached. If no such steps have been taken, please explain how this is compatible with the human rights obligations of Germany.

I would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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**

In connection with the above allegations and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We would like to remind your Excellency's Government of the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right under international law that must be respected and protected under all circumstances.

This absolute and non-derogable prohibition also applies to extra-custodial settings, when the use of force does not pursue a lawful purpose (legality), or is unnecessary for the achievement of a lawful purpose (necessity), or inflicts excessive harm compared to the purpose pursued (proportionality). Moreover, failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoiding the unnecessary, excessive or otherwise unlawful use of force contravenes the State's positive obligation to prevent acts of cruel, inhuman or degrading treatment or punishment within its jurisdiction. In this connection, States must regulate and control the extra-custodial use of force and must ensure that all of their agents are trained, equipped and instructed so as to prevent any act of torture and cruel, inhuman or degrading treatment or punishment within their jurisdiction.<sup>8</sup>

Police brutality and other excessive use of force in light of the prohibition of cruel, inhuman or degrading treatment or punishment and, in situations of powerlessness, of torture, has been illustrated in the jurisprudence of international and regional human rights mechanisms, such as the Committee against Torture, the Human Rights Committee, the Inter-American Court of Human Rights and Inter-American Commission on Human Rights, and the European Court of Human Rights. Furthermore, certain weapons and other means of law enforcement have been widely recognised to be inherently cruel, inhuman or degrading by nature or design.

Furthermore, wherever there is reasonable grounds to believe that extra-custodial force amounting to torture or other 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.

In his report to the General Assembly, the Special Rapporteur on Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment reiterated States'

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<sup>8</sup> The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials <https://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx> and the Code of Conduct for Law Enforcement Officials <https://www.ohchr.org/en/professionalinterest/pages/lawenforcementofficials.aspx>

obligations in the context of policing protests, indicating that “no restrictions may be placed on the exercise of [the right to peaceful assembly] other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others”; “individuals cannot lose their protection against torture and other cruel, inhuman or degrading treatment or punishment under any circumstances whatsoever, including in the context of violent riots or unlawful protests”, and “failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoiding the unnecessary, excessive or otherwise unlawful use of force contravenes the State’s positive obligation to prevent acts of cruel, inhuman or degrading treatment or punishment within its jurisdiction.” (A/72/178, paras 15 and 62 (c)).

In this report, the Special Rapporteur on Torture examined whether and in which circumstances the extra-custodial use of force by State agents amounts to torture or other cruel, inhuman or degrading treatment or punishment, and concluded that:

- (a) Today, the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment is universally recognized as a core principle of international law that is binding upon all States, irrespective of their treaty obligations. The prohibition of torture is also one of the few norms of customary international law that is universally recognized as having attained peremptory status (*jus cogens*);
- (b) The prohibition of torture and other cruel, inhuman or degrading treatment or punishment not only protects persons deprived of their liberty, but also applies in extra-custodial settings;
- (c) Any extra-custodial use of force that does not pursue a lawful purpose (legality), or that is unnecessary for the achievement of a lawful purpose (necessity), or that inflicts excessive harm compared to the purpose pursued (proportionality) contradicts established international legal principles governing the use of force by law enforcement officials and amounts to cruel, inhuman or degrading treatment or punishment. Moreover, failure to take all precautions practically possible in the planning, preparation and conduct of law enforcement operations with a view to avoiding the unnecessary, excessive or otherwise unlawful use of force contravenes the State’s positive obligation to prevent acts of cruel, inhuman or degrading treatment or punishment within its jurisdiction;
- (d) Any extra-custodial use of force that is intended to inflict pain or suffering on a “powerless” person (that is, a person who is under direct physical or equivalent control and is unable to escape or resist) as a vehicle for achieving a particular purpose amounts to torture, irrespective of considerations of lawful purpose, necessity and proportionality;
- (e) States must regulate the extra-custodial use of force and must ensure that all of their agents are trained, equipped and instructed so as to prevent any act of torture and cruel, inhuman or degrading treatment or punishment 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, including other means of deploying force and “less lethal” weapons;

- (f) A weapon must be considered as inherently cruel, inhuman or degrading and, therefore, as absolutely prohibited if it is either specifically designed or of a nature (that is, of 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. 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 cruel, inhuman or degrading treatment or punishment, thus placing particular emphasis on the requirement of precautions;
- (g) Wherever there is reasonable ground to believe that extra-custodial force amounting to torture or other 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.