

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

Ref.: AL NLD 1/2022
(Please use this reference in your reply)

10 January 2022

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 urgent attention of your Excellency's Government information I have received concerning **excessive use of force by law enforcement officers against protesters, since January 2021, primarily in The Hague and Amsterdam, but also in Rotterdam, where police allegedly used live ammunition against protesters, in apparent violation of the principles of necessity, proportionality and precaution and, thus, of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment.**

This communication is submitted in line with Human Rights Council Resolution [46/15](#) of 1 April 2021, by which the Council expressly invited the Special Rapporteur on torture to consider in his work the "roles and responsibilities of police and other law enforcement officials" in relation to torture and other cruel, inhuman or degrading treatment or punishment, and follows a joint statement on 13 August 2021¹ supported by 40 UN human rights experts calling for an immediate end to police brutality against peaceful protesters worldwide. It also reflects the findings and recommendations detailed in the Special Rapporteur's thematic report to the UN General Assembly on "Extra-custodial use of force and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment" ([A/72/178](#)).

In the course of the past year, a growing number of allegations have been received, including video footages that have appeared on social media platforms, regarding incidents of police brutality in the Netherlands between January 2021 and January 2022.

According to the information received:

General context

According to official statistics published by the Dutch police², police officers used force in 14507 incidents in the Netherlands in 2019. The police unit Den Haag recorded the highest incidents of use of force (3352), followed by Amsterdam (3203), the Oost-Nederland unit (3121), and the Rotterdam unit (3032).

The Committee on the Use of Force internal to the National Police reviewed around 1800 incidents and concluded that in 88 percent of these cases, force

I [REDACTED]

had been used “professionally”, whereas “shortcomings” were found in the 159 remaining cases. The committee further ordered disciplinary action against police officers, in what is described as “a number of” recorded incidents, albeit without providing concrete numbers or descriptions of the disciplinary action taken. None of these cases seem to have resulted in criminal sanctions. Unfortunately, no comparable official data has been found for the years of 2020 and 2021.

Since the outbreak of the COVID-19 pandemic, the government of the Netherlands, like many other governments around the world, has introduced measures to curb the spread of the virus, which since January 2021 repeatedly triggered countrywide demonstrations resulting in violent clashes, some of which lasted several days, notably in Amsterdam, Rotterdam, The Hague, Amersfoort, IJmuiden and Stein. These demonstrations generally occur in total or partial disobedience to the prohibition or restrictions imposed by the authorities on public assemblies in view of the Covid-19 pandemic.

For example, in The Hague, on 14 March 2021, hundreds of demonstrators rallied in the Maliveld field to protest against the anti-Covid measures. On the mayor’s orders, hundreds of riot police, some on horseback, were sent to the scene where the rally quickly turned violent. Footage appeared showing riot police indiscriminately hitting protesters with their batons, shooting in the air and throwing tear gas at the crowd. The riot police used powerful water cannons and police dogs to disperse the crowds, and in the course of the protest, at least 20 people were arrested, with at least two demonstrators sustaining injuries from police dogs. Most of the protesters did not respect the minimum rules on social distancing. No allegations have been received regarding any injuries that may have been sustained by police officers themselves.

More recently in Amsterdam, on 2 January 2022, reportedly over 2000 protesters defied a ban on assemblies and demonstrated against the recent governmental Covid-19 vaccine measures and a renewed nationwide lockdown, introduced on 18 December 2021. The protesters gathered on Museum Square before marching towards western Amsterdam Park for a rally. In the course of the day, at least 30 protesters were arrested after altercations with the police, with at least one demonstrator sustaining injuries from a police dog bite. Most of the protesters allegedly did not respect the minimum rules on social distancing.

Police violence against peaceful protesters does not appear to be unique to demonstrations against Covid-19 measures. On 17 October 2021, the police has reportedly used excessive force to disperse a demonstration in Rotterdam against the housing crisis, where approximately 7000 participants crossed the river to end at the Markthal after a march through the city. Police action was widely criticized, including by human rights organizations, in particular after two protesters were shot and seriously injured.

Individual Allegations of Excessive Force Used by the Police

As it would not be possible to provide a comprehensive account of all allegations received, five representative cases have been selected for this

communication in order to illustrate the human rights concerns relevant to the mandate of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and press for urgently needed remedial measures of prevention, investigation, prosecution and redress on the part of the authorities. All of the following cases are documented through video evidence which has been made available to the mandate, and display instances where the force used appears to be clearly excessive, and, therefore, incompatible with the prohibition on torture or other cruel, inhuman or degrading treatment or punishment. It must be emphasized that, in all cases, this conclusion was reached regardless of whether the demonstration was authorized or not, or whether the affected persons had previously engaged in violent or threatening conduct.

Besides the questionable permissibility of the means and methods of force used by the police and the harm inflicted on individual protesters, I am also gravely concerned about the potential escalatory and polarizing impact of grossly disproportionate official responses to unauthorized assemblies and civil disobedience, and the risk of legitimizing counter-violence that may degenerate into riots and possibly worse violent social polarization.

- *Case 1 (Eindhoven, 24 January 2021)*³:

This case involves a non-violent woman and her companion calmly walking by a parked police vehicle at a distance of approximately 5 meters. Only one additional person can be seen calmly standing in the otherwise completely clear passage, posing not threat whatsoever to the vehicle or its crew. Without any visible warning, the mounted water cannon on the police vehicle is suddenly activated, directing its high-pressure water jet directly at the defenseless woman and violently propelling her against an adjacent concrete wall. The woman immediately collapses onto the ground, in what appears to be a semi-unconscious state. When she gets up, she has a gaping head wound and is bleeding profusely. The woman reportedly had to be hospitalized with a fractured skull and received 18 stitches for her wound. Throughout the incident, the woman did not display any violent, threatening or unpredictable behavior, thus rendering the attack on her grossly disproportionate and a clear violation of the prohibition of torture and other ill-treatment and, arguably, even her right to life. Despite the very high likelihood of serious, potentially life-threatening injuries, and despite the presence of several officers on the scene, none of them can be seen taking any measures of first aid or other medical care for the woman as legally required under the human right to life and provides an example of non-assistance to a person in danger.

- *Case 2 (The Hague, 14 March 2021)*⁴:

This case documents what appears to be an arrest operation taking place in the vicinity of an ongoing demonstration. The footage shows an unarmed protester lying overpowered on the ground, surrounded by three police officers, who relentlessly keep hitting him with batons, striking his unprotected head, neck, and extremities with full force, and who can also be seen kicking him in the stomach and back. The man can be seen lying on the ground, with a bleeding

I [REDACTED]

wound to the head, desperately trying to protect himself from the blows. Without any perceptible cause or need, one of the officers then deliberately pushes a visibly excited and aggressive service dog onto the defenseless man forcing it to maul him. Throughout the scene, the police officers are in complete control of the situation and the man does not, or no longer, show any violent or threatening behaviour and does not try to resist or escape arrest. Thus, irrespective of what may have happened prior to the scene captured on video, the conduct of the involved officers, as seen on the video, is grossly disproportionate and amounts to a clear violation of the prohibition of torture and other ill-treatment. Despite the presence of numerous other officers in the vicinity, none of them intervenes in order to stop the potentially life-threatening abuse unfolding in front of their eyes. The man reportedly had to be hospitalized after suffering multiple injuries, including bite wounds and head injuries.

- *Case 3 (Amsterdam, 2 January 2022)*⁵:

This case involved a protester who in the video is seen engaging in what appears to be a non-violent attempt to slip through a police cordon. A service dog handler is then seen running towards the crowd and, when their paths cross, the service dog suddenly grabs and mauls the man's forearm, violently throwing him to the ground in a way likely to result in serious injuries. The police officer is evidently unable to control his service dog and cannot get the animal to release the defenseless man for an extended period of time. Bystanders who try to help are being scared away by other police officers with service dogs. The man had to be hospitalized after suffering from a bite wound. Throughout the incident, the man did not appear to show any violent or threatening behaviour or otherwise put the police or bystanders at risk. This case demonstrates the gross inappropriateness of using service dogs to police assemblies. The deliberate insertion of aggressive, overstimulated animals in such unpredictable, crowded and fast evolving environments creates unwarranted risks for peaceful protesters and displays an attitude of intimidation and brutality towards civil disobedience that cannot be regarded as compatible with professional policing in a democratic society.

- *Case 4 (Amsterdam, 2 January 2022)*⁶:

This case involved a peaceful protester sitting alone on the ground with his legs crossed. The man is surrounded by riot police officers in full gear and, when he declines to get up and leave, one officer approaches him from behind and violently hits him on the back with his baton. The demonstrator does not move but starts filming the assault on his mobile phone; subsequently a second officer takes a step towards him and hits him on the back twice with his baton. Throughout the incident, the man did not appear to represent any threat, nor did he otherwise put the officers or other people at risk. This case illustrates the futility of trying to suppress civil disobedience and democratic dissent through violence, coercion, and intimidation, rendering any such strategy incompatible with human rights law. When national laws and regulations can only be enforced through the widespread and routine use of violence clearly

excessive to the immediate threat posed by individual dissenters, then the absolute and overriding prohibition of torture and other cruel, inhuman or degrading treatment requires, as a matter of international law, that the authorities pursue law and order through alternative means including, most notably, de-escalation, dialogue and cooperation.

- *Case 5 (Amsterdam, 2 January 2022)*⁷:

This case involved a protester who is seen calmly walking away from the riot police. A police officer in full gear follows the man and keeps violently striking him multiple times on the legs with his baton, even though the protester is walking away and posing no immediate threat to the officer or anyone else. The man is heard saying “yes, I am walking away, aren’t I?”. This case further illustrates the same point made already in Case 4 above regarding the inherent incompatibility with human rights law of trying to suppress civil disobedience and democratic dissent through violence, coercion, and intimidation.

I do not ignore, condone or excuse any violence or other unlawful conduct that may have been used by participants in the various episodes of civil protest against government policies - be they related to housing rights, COVID restrictions or any other grounds, and I fully recognize the right and duty of the police to take appropriate measures, including the use of necessary and proportionate force in line with recognized international standards, in order to enforce the law and ensure public safety and order. However, the monopoly of force afforded to the public authorities must always be exercised with the highest possible level of restraint and consideration for the human dignity and the civil and political rights of everyone affected by official policies and practices.

Prosecution of law enforcement officers and setting of precedent

In the days following the 14 March 2021 protests, some 120 complaints over police violence were reportedly filed by citizens having participated in the demonstrations. A further six cases were brought forward for individual criminal cases against police officers. The submission of complaints and the identification of perpetrators appears to be unduly impeded by the lack of visible identification numbers on the uniforms of police officers, which allegedly routinely results in complaints being dismissed without any investigation or redress.

According to an official statement by the Dutch Public Prosecution, the two police officers seen assaulting a defenseless demonstrator during the Maliveld rally on 14 March 2021 (case 2 above), were charged with excessive use of force. Despite the immediate availability of compelling video evidence, however, the prosecution service announced the institution of charges only in December 2021, nine months after the incident, and only after repeated complaints, as well as public protests on the part of human rights organisations. No date appears to have been set for the court proceedings and, on 5 January 2021, the prosecution service announced that it will also prosecute the victim himself for attempted aggravated assault, threats, insults

and prohibited possession of weapons.

Considering the recent surge in allegations of police brutality in the Netherlands and the seemingly unhurried response of the judiciary, a few isolated and reluctant steps taken by the authorities are insufficient to restore public confidence in their willingness to respect and ensure respect for human rights and the rule of law, fail to act as a necessary deterrent to further abuse, and contribute to a consolidating perception of impunity for police brutality in the Netherlands. The fact that the same means and methods that have enabled the blatant abuse documented in Case 2 above - namely the arbitrary use of dog mauling and clearly excessive force against overpowered or otherwise defenseless protesters - still appear to be routinely employed today suggests that the necessary lessons from past transgressions have not been learnt.

While acknowledging that the information made available to me may not be complete or comprehensive, I am seriously concerned that the means and methods of law enforcement currently employed by the Dutch authorities in response to civil disobedience and unauthorized assemblies have repeatedly involved police brutality clearly incompatible with the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment. I am further concerned that, despite the reported prosecution of a few isolated individuals for excessive use of force, no effective measures appear to have been taken to correct systemic shortcomings, deter violations and ensure a culture of restraint and accountability throughout the chain of command.

While further reiterating my acknowledgement that physical force may be a permissible means of last resort in law enforcement, I would like to once more underline that, in a democratic society governed by the rule of law, police may never inflict harm and suffering exceeding what is strictly necessary and proportionate in the circumstances.

In view of the urgent need of de-escalation and reconciliation, and without prejudice to further communications that may follow based on new information, I respectfully urge the Government of the Netherlands to take the following preliminary measures:

- **to adopt, declare and implement an official “zero tolerance” policy on police brutality in all the State’s public and internal communication;**
- **to ensure that all operating police officers are easily identifiable to the public through the display of ID-numbers or similar means and that credible allegations of police brutality are independently and promptly investigated, prosecuted and punished with sanctions commensurate to the gravity of the offence, and that victims receive adequate redress and compensation;**
- **to review and, where appropriate, reform its police training and leadership management programs regarding accountability, de-escalation, coercion and the use of force, particularly in connection with the policing of unauthorized assemblies and civil disobedience in line with applicable international standards.**

In this connection, I would like to reiterate that the above-mentioned allegations, as documented in the referenced video footage, and as far as relevant to

my mandate, suggest repeated violations of 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 the Netherlands ratified on 11 December 1978 and 21 December 1988, respectively.

I wish to further recall 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 and, in particular, that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is universally recognized as having attained absolute and non-derogable character. Thus, no assembly can ever be considered to fall outside the protection of the law (A/ HRC/31/66, para. 8-9) and no exceptional circumstances whatsoever, including internal political instability or any other public emergency, may be invoked as a justification of torture or other cruel, inhuman or degrading treatment.

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 detailed information on the ongoing prosecution of the two law enforcement officials charged with excessive use of force during the Maliveld rally (case 2 above), in addition to the precise outcome of the judicial process and what steps, if any, have been taken against the responsible superiors, as well as against other officers, who were present at the scene but failed to intervene.
3. Please provide detailed information on whether any of the other cases of police brutality discussed above have given rise to disciplinary or criminal sanction against the involved officers and their superiors, as well as redress and compensation of the victims and, if not, how this is compatible with the international human rights obligations of the Netherlands.
4. Please provide detailed country-wide statistical and other relevant 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, including the outcome of each review and, in case of misconduct, the exact sanctions imposed.

5. Please explain what steps have been taken, or are still foreseen, to ensure that all operating police officers are easily identifiable to the public through the display of ID-numbers or similar means, and to hold to account perpetrators of police brutality and their superiors, to provide victims and their families with adequate redress and rehabilitation, and to prevent recurrence in the future.
6. In particular, please explain what steps have been taken, or are still foreseen, to discontinue the use of service dogs, horses and unnecessary, disproportionate or otherwise unlawful force and coercion in response to unauthorized assemblies and other forms of civil disobedience.
7. Please provide information on any investigations which may have been undertaken, including their results and any remedial measures planned or taken, regarding systemic shortcomings and other factors that may be conducive to the reported broader pattern of police brutality and the alleged prevalence of impunity in the Netherlands.
8. Please provide detailed information on the procedures according to which incidents of use of force are reported by police officers and standards and modalities used by the Review Committee to determine the necessity, proportionality and legality of the force used. Please also explain what type of disciplinary or other remedial action has been taken, by which authority, and in how many cases since January 2021, whenever the Committee has found that a particular case displayed “shortcomings” in the use of force. Please further explain how the institutional and personal independence of the internal oversight mechanisms are ensured in practice.
9. Please provide detailed information on the measures taken to ensure that police officers found to have used excessive force are held to account and subjected to sanctions commensurate with the gravity of their offence. In particular, please explain how the currently ongoing revision of the Dutch penal code, through the creation of a separate offence for police officers ‘contravening the rules governing the use of force’ (*schenden van de geweldsinstructie*) will affect the criminalization and potentially applicable disciplinary and criminal sanctions for police brutality, and how the extremely short envisaged maximum sentence of three years is compatible with the potential gravity of the crime of torture or other cruel, inhuman or degrading treatment or punishment.

While awaiting a reply, I reiterate my recommendation that serious attention be given to the concerns expressed in this letter, and that urgent steps be taken to de-escalate social tensions, prevent the recurrence of the alleged violations and, if proven accurate, to ensure the accountability of those responsible.

Given the importance and urgency of the matter addressed in this communication, I may also consider to publicly express the concerns of my mandate about in the near future.

Any public expression of concern on our part will indicate that I have been in contact with your Excellency's Government's to clarify the matter.

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.

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, I 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.

I 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.⁸

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

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>

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.

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 are 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' 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.