

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

Ref.: AL DEU 2/2022  
(Please use this reference in your reply)

29 March 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.

I would like to thank your Excellency's Government for its response, dated 14 December 2021, to my communication sent on 25 August 2021 (AL DEU 6/2021) addressing several specific instances, as well as an alleged general pattern, of excessive use of force by law enforcement officers against protesters, in apparent violation of the principles of legality, necessity, proportionality and precaution. In this connection, I would like to reiterate my appreciation for the candid and constructive dialogue with the German authorities on this matter.

While I sincerely appreciate the valuable information provided and the views expressed by your Excellency's Government, I remain deeply concerned about the practical compliance, in this context, with Germany's obligations pertaining to the prohibition and prevention of 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 or further detail my queries to the extent I deem them to have been left without satisfactory response.

The concerns referenced in this letter respond directly to Human Rights Council resolution A/HRC/46/L.27, para. 28, inviting my mandate to take into account in its future work "the roles and responsibilities of the police and other law enforcement officials in the implementation of the obligations to prohibit and prevent torture and other cruel, inhuman or degrading treatment or punishment", and is further informed by my long-standing thematic work on the topic, including my report to the 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), as well as the recent joint public statement<sup>1</sup> endorsed by 44 mandate holders calling for an end to police brutality worldwide.

*1. Observations on the Government's responses concerning individual cases raised:*

*Case 1 (Dresden): Man reading from the basic law of Germany on a public square and getting violently assaulted by police officers while calmly mounting his bicycle*

In its response regarding this case, your Excellency's Government states: (a) that the police "provisionally arrested" the man in question "in order to establish

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<sup>1</sup> [OHCHR | UN experts call for an end to police brutality worldwide](#)

his identity” after he had “initiated a banned assembly” by “reading out the German Basic Law in a loud voice”; (b) that “it was necessary to carry out the arrest by means of direct force” because the man showed “resistance” in that he “attempted to evade the police measure and depart by bicycle”; (c) that “the arrest of the man was altogether proportionate, particularly in order to prevent any further mobilization of sympathisers”.

In this regard, I am concerned that this response seems to reflect a misinterpretation of both the factual circumstances and the applicable international legal principles governing the use of force by law enforcement officials.

First, from a factual perspective, the reason provided for this violent arrest, namely “to prevent any further mobilization of sympathisers”, cannot be regarded as substantiated. Despite the presence of numerous police officers and the apparently calm and controlled environment, the man in question was not prevented from reading from the German Basic Law in a loud voice, but was allowed to carry out this activity uninhibited, until he voluntarily concluded and decided to leave the scene without making any indications as to his further intentions. There are thus no reasonable grounds to justify a sudden, urgent necessity to prevent this man from possibly continuing an activity elsewhere, which had just been calmly observed and tolerated at length without any physical intervention by the same police officers.

Second, from the perspective of my mandate, the relevant question is not whether “the arrest of the man was altogether proportionate”, but whether the force used to do so complied with the principles of legality, necessity, proportionality, and precaution as detailed in the relevant international instruments governing the use of force by law enforcement officials. Regrettably, this question is not addressed at all in the response of your Excellency’s Government.

Third, from the perspective of these legal principles, it is obvious from the available video footage that the man’s attempt to mount his bicycle is neither hasty nor violent but occurs in slow and measured movements. Nothing in his previous behaviour suggests that he posed an immediate threat to the police officers or other bystanders. The police officers cannot be heard ordering him to stop or issuing any kind of warning, nor do they show the required graduated escalation in their employment of coercive measures. In particular, although the officers are located immediately next to the man and his bicycle, they do not attempt to block his path, to hold on to his arm or to the bicycle itself, all of which could have been easily accomplished. Instead, one of the officers suddenly attacks the victim from behind, targeting directly his unprotected neck and violently pushes him off his bicycle and onto the ground. Given that the man was moving at less than walking speed, it would have been easy for the involved officers to prevent him from leaving the scene without unexpectedly throwing their whole body-weight onto his neck and forcing him to the ground in a manner which quite evidently involved an unwarranted risk to his health and physical integrity, but also caused his inappropriate public humiliation by being needlessly thrown to the ground and kneeled on by several officers on a

public square. Thus, irrespective of whether the provisional arrest of the man for purposes of establishing his identity may have been lawful, the kind and degree of force used by the involved police officers, as objectively documented in the relevant video footage: (a) clearly was not necessary to achieve the stated purpose, (b) involved a serious risk of injury and public humiliation disproportionate to the stated purpose and, for both reasons separately, (c) infringed the man's physical integrity and human dignity in a manner that is unnecessary, disproportionate and incompatible with the level of precaution required in the use of coercive measures by law enforcement officials.

Fourth, from the perspective of the prohibition of torture and ill-treatment, I would like to recall that any use of force by law enforcement officials that does not pursue a lawful purpose; or that is unnecessary for the achievement of a lawful purpose; or that inflicts excessive harm compared to the purpose pursued amounts to cruel, inhuman or degrading treatment or punishment and, in some circumstances, even to torture (A/72/178, para.62 (c)).

In conclusion, the violence used in this case, as documented in the relevant video footage, clearly violates the Convention against Torture (CAT) and, therefore, entails an ex-officio obligation of the German authorities to promptly and impartially investigate (article 12) and prosecute (article 13) the conduct of the involved officers and their superiors, to impose individual sanctions commensurate to the culpability of each involved individual, to ensure that adequate redress and rehabilitation be provided to the victim (article 14), and to prevent recurrence through effective measures including public acknowledgement of fault and a declared policy of "zero-tolerance" for police brutality.

The continued failure of the German authorities to do so may well amount to "acquiescence", if not implied "consent" or "instigation", regarding a documented act of torture or other cruel, inhuman or degrading treatment or punishment occurring on its territory (article 1, 2 and 16 CAT), thus not only giving rise to State responsibility but also triggering individual criminal responsibility for complicity or participation on the part of any official failing to investigate, prosecute and punish perpetrators as required by international law (CAT, article 4). To the extent relevant, these considerations also apply to other cases of police brutality that have been raised in my official communications, or that have otherwise come to the attention of your Excellency's Government, but that have not received the prompt, impartial and effective follow-up required under international human rights law.

*Case 2 (Berlin): Non-violent 75-year-old man brutally assaulted from behind, thrown to the ground and seriously injured for obstructing the passage of police vehicles*

According to the response of your Excellency's Government regarding this case, the police officer who committed the act of violence is currently being

investigated by the Land Criminal Police Office 342. While I appreciate the reported initiation of investigations in this case, I have the following concerns. First, the fact that the investigations are led by the police criminal office does not appear to meet the requirement of impartiality under Articles 12 and 13 of the CAT, according to which the investigating authority should be institutionally independent from the police service or the responsible Ministry. Second, the relevant video footage shows a police officer who may well be pursuing a lawful purpose (removing a person obstructing the passage of a police vehicle), but who does so by resorting to excessive violence incompatible with the principles of precaution (failure to use graduated escalation of force), necessity (failure to use the least harmful means available to achieve a lawful purpose) and proportionality (excessive physical and moral harm compared to real and imminent threat). In particular, the apparent default practice of the German police of physically forcing or throwing non-violent persons to the ground contravenes the requirement of graduated use of force, and entails unnecessary and disproportionate risks of physical injury, and needlessly degrades the assaulted person in violation of their human dignity. Such practice therefore amounts to cruel, inhuman or degrading treatment, and in some cases even torture, as absolutely prohibited under international human rights law.

Moreover, even after the unwarranted assault, neither the responsible officer nor any other law enforcement official present at the scene intervenes to provide the required medical assistance or otherwise shows any precaution or concern for the physical integrity and human dignity of the victim. Given that the kind and degree of force used was objectively likely to have caused serious injuries, and that there was no imminent threat to the acting officer or anyone else, leaving a person who has been deliberately or recklessly injured without first aid and medical assistance represents a grave violation of due diligence and precaution and should be prosecuted as an offence under national law.

In conclusion, despite well-documented video evidence of a clear violation of the Convention against Torture, more than 10 months after the incident, the German authorities still have not publicly acknowledged any fault and no decision to prosecute has been taken. This cannot be reconciled with Germany's obligations to "promptly" investigate and prosecute alleged violations, and to "immediately" examine victims' right to redress and rehabilitation, as set out in articles 7, 12, 13 and 14 of the CAT. Moreover, any undue delay of investigations or failure to take provisional disciplinary measures against alleged perpetrators, such as warnings and temporary suspension from service, also violate Germany's duty to take "effective measures" with a view to preventing the re-occurrence of the alleged violations under article 2 of the CAT and leaves the impression of *de facto* impunity for police brutality through procrastination ("justice delayed is justice denied").

*Case 3 (Berlin): Non-violent man brutally thrown backwards to the ground*

According to response of your Excellency's Government, following conclusion of internal police investigations, the video footage relating to this case has now been sent to the Berlin public prosecution office for further evaluation. While I appreciate the reported initiation of investigations in this case, no information

was provided as to the outcome of the police investigation and, many months after the event, still no fault has been acknowledged by the German authorities and no decision to prosecute has been taken. This significant delay appears to be incompatible with the obligation of “prompt” and “impartial” investigation and “immediate” examination of the victim’s right to redress and rehabilitation. In this case, again, the police officer involved may well be pursuing a lawful purpose, but the available video footage leaves no doubt that he does so by resorting to excessive violence incompatible with the principles of precaution, necessity, and proportionality, as elaborated in case 2. Here too, the apparent default practice of the German police of physically forcing or throwing non-violent persons to the ground contravenes the requirement of graduated use of force, entails unnecessary and disproportionate risks of physical injury, and needlessly humiliates the assaulted person in violation of their human dignity. Such practice invariably amounts to cruel, inhuman or degrading treatment and, when inflicted on powerless persons, may even constitute torture, as absolutely prohibited under international human rights law.

Finally, I wish to reiterate my concerns about the undue delay of investigation and the apparent failure to take provisional disciplinary or other effective measures against the alleged perpetrator, in order to prevent re-occurrence as provided for under article 2 of the CAT, which give rise to a real risk of *de facto* impunity through procrastination.

*Case 4 (Berlin): Defenceless woman secured on the ground by four police officers is being violently punched several times*

According to the response of your Excellency’s Government, this incident is registered with the Berlin public prosecution office under file reference number 231 UJs 2349/20, has been processed by Land Criminal Police Office 342 as specialist unit for police offences, and “the investigations are still ongoing”.

While I appreciate the reported initiation of investigations in this case, no information was provided as to the outcome of the police investigation, and I remain concerned that the investigating authority lack the level of independence required for an impartial investigation. Here too, more than a full year after the event, still no fault has been acknowledged by the German authorities and no decision to prosecute seems to have been taken. This significant delay appears to be incompatible with the obligation of “prompt” and “impartial” investigation and “immediate” examination of the victim’s right to redress and rehabilitation, as well as with the duty to take “effective measures” for the prevention of re-occurrence and, overall, consolidates the impression of *de facto* impunity through procrastination.

*Case 5 (Berlin): Non-violent man allegedly having insulted a police officer is brutally assaulted by the officer, who then receives support from other officers in throwing him to the ground followed by handcuffing and arrest.*

I deeply regret your Excellency’s Government response regarding this case, stating that the “responsible police station of the Land Criminal Police Office

has so far been unable to match this incident with any specific investigation proceedings on the basis of the case description.”

Given the video evidence provided in the previous communication, which documents an irrefutable case of excessive use of force by police officers whose ID numbers are clearly identifiable on their uniforms, this response cannot be regarded as convincing.

I would like to remind your Excellency’s Government of its absolute and non-derogable (ex officio) obligation to initiate a prompt and impartial investigation in order to identify the responsible officers, establish the facts, initiate criminal prosecution, and take measures of redress, compensation and prevention of re-occurrence, regardless of whether the victim has submitted a formal complaint. Any failure of the German authorities to do so would amount to “acquiescence” with a documented act of torture or other cruel, inhuman or degrading treatment or punishment occurring on its territory (Art. 1, 2 and 16 CAT), thus not only giving rise to State responsibility but also triggering individual criminal responsibility for complicity and participation on the part of any official failing to investigate, prosecute and punish perpetrators as required by international law (Art. 4 CAT).

On the substance of the case, it should be recognized that disrespectful remarks or insults directed by protesters at police officers may well violate domestic law and, in cases of sufficient seriousness, may even justify law enforcement action against the perpetrators. At the same time, police officers must be trained and instructed to show moderation, restraint and resilience in response to provocative behaviour. In no case can mere disrespectful or insulting conduct justify the use of force, as the significant risks associated with physical violence would almost invariably have to be regarded as disproportionate compared to the legitimate public interest in the discontinuation of the relevant misconduct. Many of the allegations received by the Special Rapporteur, including through video evidence, suggest that the German police tends to adopt or tolerate an excessively permissive approach regarding the use of violence by its officers in response to non-violent provocative behaviour. In this connection, I would like to underline that the resort to physical violence for vindicative purposes cannot be reconciled with universally accepted standards on the use of force by law enforcement officials and, thus, contravenes the absolute and non-derogable prohibition of torture and other ill-treatment.

*Case 6 (Berlin): Defenceless man secured on the ground by several police officers continues to be brutally beaten during arrest, resulting in temporary loss of consciousness and serious injuries*

According to the response of your Excellency’s Government, this incident is registered with the Berlin public prosecution office under file reference number 231 UJs 1725/21, has been processed by Land Criminal Police Office 342 and “the case is approaching the conclusion of police investigations”.

The Government response further indicates that “the video sequence does not show the entire course of events but essentially only the police arrest” and that

“witness statements and other video recordings permitting a broader view of the overall situation including the actions of the aggrieved party have been secured and evaluated”.

While I appreciate the initiation of investigations in this case, I remain concerned that, by referring to the “actions of the aggrieved party”, the German authorities appear to try to justify or trivialize police conduct which is subject to an absolute and non-derogable prohibition under international law. In particular, whatever conduct the protestor in question may have engaged in prior to his arrest, the video footage at our disposal shows how several police officers, having overpowered and physically secured him on the ground, continue to beat him repeatedly on the back and on his head until he loses consciousness, with his face and arms covered in blood. Throughout the video sequence, the man shows no visible sign of violence, resistance or threatening conduct.

In conclusion, irrespective of any previous misconduct on the part of the victim, the force used by police officers is clearly unnecessary for the purpose of arrest, entail disproportionate injuries and humiliation, and demonstrate a lack of precaution as well as a serious disregard for physical integrity and human dignity. Further, once more, the investigation is conducted by an authority that seems to lack the required independence from the police force and, despite compelling video evidence of serious misconduct on the part of the arresting officers, several months after the incident, no decision to prosecute and no provisional disciplinary measures have been taken, nor has there been an acknowledgement of fault on the part of the authorities, or any other public commitment to a “zero-tolerance” policy for police brutality in line with Germany’s duty to take “effective measures” with a view to preventing the re-occurrence of the alleged violations. Last but not least, the Government response failed to address alarming allegations according to which police officers attempted to influence the medical report of the victim by claiming that the injuries sustained were a result of a fall and not due to severe beating. Here too, the authorities have an *ex officio* duty to investigate and, should these allegations prove to be accurate, prosecute and punish the perpetrators for trying to cover up an act of torture or other cruel, inhuman or degrading treatment.

*Case 7 (Berlin): Non-violent woman being thrown to the ground in a life-threatening manner while attempting to pass through a police cordon*

According to the response of your Excellency’s Government, this incident is registered with the Berlin public prosecution office under file reference number 271 UJs 1659/21, and is “currently still been processed” by Land Criminal Police Office 342. While the case “is approaching the conclusion of police investigations, it has not yet been possible to identify the aggrieved party”.

While I appreciate the reported initiation of investigations in this case, I reiterate my concern regarding the facts that the investigation is conducted by and authority that appears to lack the required independence from the police force and that, despite compelling evidence of serious misconduct on the part of the responsible police officer, several months after the event, no decision to prosecute and no provisional disciplinary measures have yet been taken, nor has

there been an acknowledgement of fault on the part of the authorities, or any other declared public commitment to a “zero-tolerance” policy for police brutality in line with Germany’s duty to take “effective measures” with a view to preventing the re-occurrence of the alleged violations.

In this case, again, the responsible police officer may well be pursuing a lawful purpose, but the available video footage leaves no doubt that he did so by resorting to excessive violence incompatible with the principles of precaution, necessity and proportionality as outlined in relation to other cases above.

Here too, I note with concern that the authorities have not been able to identify the aggrieved party, which suggests that, even after the use of excessive violence, neither the responsible officer nor any other law enforcement official present at the scene intervened to identify the victim, provide the required medical assistance or otherwise show any precaution or concern for her physical integrity and human dignity.

## *2. Apparent discrepancy between normative provisions and actual practice*

I thank your Excellency’s Government for the exhaustive information provided regarding the existing normative, procedural and institutional framework for the reporting and investigation of alleged misconduct by police officers, as well as for the conduct of disciplinary and criminal proceedings both at the Federal and State (Bundesland) level. According to the Government, disciplinary and criminal investigations are initiated *ex officio* - that is irrespective of the existence of a complaint - whenever there is credible suspicion or factual indication that a police officer has committed an offense or breach of duty. Investigations are said to rely on police reports, video and audio evidence, as well as complaints submitted by bystanders and other witnesses. Disciplinary investigations are said to be conducted by competent mechanisms within the police, whereas the criminal liability of police officers is investigated by the public prosecutor’s office. Furthermore, the Government confirms that all victims are entitled to compensation for the inflicted pain and suffering, as well as the damages sustained.

While I appreciate the formal existence of a sophisticated normative, procedural and institutional framework for the reporting and investigation of the use of force by the police, I am seriously concerned that, in practice, they do not seem to produce a realistic pattern of disciplinary and criminal sanctions corresponding either to the number of complaints that were actually submitted, or to the number and frequency of sanctions that would statistically be expected to arise even with a well-trained and commanded law enforcement service actively engaged in the policing of assemblies in a country with more than 80 million inhabitants.

According to official data provided by the Government, with the exception of one single case of criminal conviction sanctioned with a fine (Bavaria), all other disciplinary and criminal investigations relating to the use of force during the policing of assemblies throughout Germany during a period of almost two years (since January 2020) have been either dismissed for lack of evidence or are still

ongoing, often more than one year after the alleged offense. Three additional cases were dismissed upon payment of a fine (one in Bavaria and two in Lower Saxony). Apart from these four cases, throughout all of Germany, no disciplinary measures or criminal sanctions whatsoever appear to have been imposed on any police officer for excessive use of force during the policing of assemblies, nor did the Government publicly acknowledge any fault or reassure the population by declaring a “zero tolerance” policy for police brutality.

Based on long-standing experience in the regulation, instruction and evaluation of police and military operations, I would like to remind your Excellency’s Government of the fact that even the most professional police force consists of human beings called to work in extremely difficult circumstances. While culpable misconduct on the part of police officers must never be condoned, it is unrealistic to think that it could ever be avoided completely. Therefore, the almost complete absence of disciplinary and criminal sanctions against law enforcement officials after almost two years of heightened tensions and frequent clashes with protesters in a country the size of Germany is unlikely to reflect a reliable assessment of operational reality but, rather, suggests dysfunctional command and control structures, which may well meet all normative and institutional requirements on paper, but which are incapable of effectively responding to official misconduct in practice.

Similarly, the fact that, often more than one year after the respective incidents, even well-documented cases of police brutality are still “pending”, with no criminal conviction, no decision to prosecute, and no disciplinary sanction being imposed, raises important concerns regarding the effectiveness and efficacy of the measures taken by the German authorities with a view to ensuring prevention, deterrence, and the administration of justice in cases of alleged police brutality. Overall, significant delays seem to be a frequent - if not generalized - feature of investigations into alleged disciplinary and criminal misconduct by law enforcement officials, thus producing what seems to be a structural pattern of *de facto* impunity and acquiescence through procrastination.

The systematic delay of disciplinary and criminal investigations against German police officers stands in particularly stark contrast to the “accelerated judicial proceedings” applied by the authorities in adjudicating, convicting and sentencing protesters for their participation in unauthorized assemblies, including acts of violence. For example, I am alarmed at the reported sentencing of eight protesters following the so-called “accelerated judicial proceedings” within as little as 24 hours from the moment of their arrest in connection with an unauthorized assembly in Schweinfurt on 26 December 2021.<sup>2</sup> On this background, the fact that virtually all allegations of violent misconduct against police officers in the same type of situation either have been dismissed for lack of evidence or are maintained “pending” *ad infinitum* further consolidate the impression of a generalized pattern of *de facto* impunity and acquiescence through procrastination.

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<sup>2</sup> <https://www.polizei.bayern.de/aktuelles/pressemitteilungen/022003/index.html>

I therefore urge your Excellency's Government to take immediate measures with a view to ensuring that investigations into alleged disciplinary and criminal misconduct on the part of law enforcement officials be conducted in a "prompt" and "impartial" manner and that victims' right to redress and rehabilitation be "immediately" examined, so as to serve as an "effective" measure of prevention in line with the obligations codified in the Convention against Torture. Any undue leniency, tolerance or acquiescence with alleged acts of torture and other ill-treatment must be prevented through the implementation, on all levels of the investigative and judicial process, of a strict "zero tolerance" policy with regard to police brutality. The prompt and transparent investigation and prosecution of allegations of torture and ill-treatment by the competent authorities are indispensable to maintain public confidence in the State's adherence to the rule of law and to prevent any perception of official acquiescence, consent or complicity in relation to unlawful practices.

### *3. Reported lack of capacity to produce relevant statistical data*

According to the response provided by your Excellency's Government, the statistical data requested in my communication is "not available" for four of the largest States (Bundesländer), that belong to the most relevant in terms of the policing of protests and assemblies (namely Berlin, North Rhine-Westphalia, Bavaria and Hesse), and which together account for approximately 40 million inhabitants or half of Germany's population.

While I appreciate that the requested data compilation may require some research and effort, I would have expected, at the very least, a statistical overview of the number of cases in which officers of the concerned police forces have been subjected to disciplinary or criminal proceedings and sanctions for alleged use of excessive force in the policing of assemblies since January 2020. The reported inability of the public authorities to produce this kind of statistical data would seem to deprive them of their capacity to realistically evaluate and ascertain the compliance of their own law enforcement officials with international standards governing the use of force and, therefore, adversely affects the ability to reliably identify and address shortcomings through preventative and corrective measures. The absence of relevant statistical data also undermines the reliability of generalized assertions made in the response of your Excellency's Government, such as that, in Hesse, "conduct by police officers relevant under criminal or disciplinary law is therefore reviewed in all cases and systematically followed up under criminal and disciplinary law." Without reliable statistical data, there is no way to ascertain whether these provisions are applied effectively in practice. On the contrary, in my view, the statistics provided by other States (Bundesländer), as well as the responses provided to the individual cases raised in my initial communication suggest a significant discrepancy between normative provisions and practical reality.

I therefore urge your Excellency's Government to take immediate measures with a view to ensuring the capacity of all authorities throughout Germany to systematically and transparently collect, evaluate and process data related to the use of force by law enforcement officials in line with their international obligation to effectively prevent, investigate, prosecute and redress acts of

torture and ill-treatment, as well as to systematically review rules, instructions, methods and practices related to law enforcement, in accordance with articles 10 and 11 of the CAT.

#### *4. Concerns with regard to mechanisms of redress*

Furthermore, I would like to raise concern about the mechanisms of redress as described in the Government's response, which seem to limit the right to redress to aspects of compensation of victims and the possibility to lodge a legal complaint with the competent authorities to receive compensation for material or immaterial damage such as pain and suffering. In this context, I would like to remind your Excellency's Government that the right to redress as set out in Article 14 of the CAT incorporates the concepts of effective remedy and reparation. "The comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition and refers to the full scope of measures required to redress violations under the Convention" (Committee against Torture, General comment No. 3 (2012), para. 2). Based on this definition, I would like to emphasise that individual and institutional accountability for acts amounting to torture and ill-treatment, prosecution of perpetrators, as well as guarantees of non-repetition are fundamental components of the right to redress, which should be unequivocally granted to all victims.

Accordingly, I would like to remind your Excellency's Government of its duty to provide procedural and substantive redress to victims. On the procedural level, this includes the duty to establish effective and accessible complaints mechanisms, and investigation bodies, able to determine and grant redress for victims of torture and ill-treatment. On the substantive level, "States parties shall ensure that victims of torture or ill-treatment obtain full and effective redress and reparation, including compensation and the means for as full rehabilitation as possible" (Committee against Torture, General comment No. 3 (2012), para. 5).

Especially in a situation such as the one prevailing in Germany since January 2020, where there have been numerous allegations of serious misconduct on the part of officers tasked with policing assemblies, the right to redress and rehabilitation also includes unequivocal guarantees of non-repetition, such as public acknowledgments of fault, declared policies of "zero tolerance" for police brutality, and unambiguous commitments to the human dignity of all inhabitants, including those engaging in protests, civil disobedience or even criminal offences.

#### *5. Misinterpretation of the principles governing the use of force*

Your Excellency's Government response asserts that, in managing public protests in line with national legislation, the German police are required to apply measures of de-escalation and an assembly-friendly conduct. However, the individual cases submitted in my communication, as well as other cases brought to the attention of my mandate, document numerous instances where law enforcement officials appear to have acted in a manner incompatible with these

requirements, most notably by resorting to physical violence that was neither necessary nor proportionate in the circumstances, but also by failing to intervene and protect defenceless protesters from the risk or consequences of excessive or otherwise abusive violence on the part of their fellow police officers.

Based on the available video footage, the German police seems to adhere to an excessively permissive and heavy-handed approach, using overwhelming physical violence at a very low threshold of engagement. This also includes frequent resort to violence in response to verbal provocations or disagreements with non-compliant but otherwise non-violent protesters. Particularly the apparent default practice of the German police of physically forcing or throwing disobedient but non-violent protesters to the ground contravenes the requirement of graduated use of force, and entails unnecessary and disproportionate risks of physical injury as well as needless humiliation.

Although such practice amounts to cruel, inhuman or degrading treatment, and in some cases even torture, the response of your Excellency's Government to Case 1 raised in my communication, as well as the personal discussions held with Senior Police Officials regarding the video footage of another case (see discussion on Case 8 below), suggest a consistent misinterpretation of the requirements of necessity, proportionality and precaution.

More specifically, many video sequences, but also explanations given by my direct interlocutors at the police, demonstrate rules of engagement which discount serious risks to physical integrity and human dignity, and give almost unrestrained priority to often exaggerated or speculative security concerns, as well as formalistic demands of absolute obedience, including in cases where the purpose or justification of police instructions may be questionable.

I therefore would like to take this opportunity to recall the substantive principles governing the use of force by law enforcement officials:

**Lawful purpose:** Depending on the legal and factual circumstances prevailing in a particular situation, legitimate law enforcement action may well include purposes such as 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 to 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.

**Necessity:** Even when law enforcement officials pursue a lawful purpose, they may resort to force and coercion only if, 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 in principle, 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.

**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 disproportionate compared to the importance of the lawful purpose to be achieved. Arguably, in some circumstances, the enforcement of rules designed to prevent potentially life-threatening infections may justify the use of moderate and graduated 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 disproportionate to the immediate risk posed by the concerned individual, are violate the prohibition of torture and other cruel, inhuman or degrading treatment, or are incompatible 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.

**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. Law enforcement operations must give due consideration to the risks generated by the use of force against persons in situations of vulnerability, such as children, women, the elderly, or persons with disabilities.

**Non-discrimination:** in performing their functions, including the policing of assemblies, law enforcement officials must not discriminate against any person on the basis of race, ethnicity, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, disability, property or birth, or other similar criteria. This includes critical opinions concerning Government policies in response to the COVID-19 pandemic, to environmental issues, to housing crises, or to any other public controversy.

#### *6. New allegations of excessive use of force*

Following my communication dated 25 August 2021 (AL DEU 6/2021), my mandate continues to receive testimonies from victims and video evidence documenting new cases of police brutality following the same pattern as the selected cases submitted in my initial communication. By way of example, two particularly revelatory cases shall be described as Cases 8 and 9, which

complement and further illustrate Cases 1 to 7 submitted in my initial communication and refined in this letter.

*Case 8: Non-violent woman and men brutally assaulted during an identity check<sup>3</sup> (Berlin)*

According to information confirmed directly by the Berlin police, one alleged incident of excessive force is reported to have occurred in the margins of an unauthorised protest in Berlin on 29 August 2021, where during a routine vehicle documentation-check the passenger of the vehicle, a non-violent woman who had verbally complained to the police officers was needlessly subjected to deliberately painful methods of physical coercion (forced lifting through “nose-hold” by three male officers) without any reasonable justification, while her husband and a friend trying to intervene and protect the woman in an effort of legitimate self-defence were brutally beaten to the ground. According to the video footage, the ID numbers of five of the six involved police officers are: BE 15310; BE 15314; BE 15315; BE 15316; BE 15317. I had the opportunity to personally discuss the video evidence of this case with senior officials of the Berlin Police on the occasion of an extended phone conversation. Despite compelling video footage and a detailed discussion of the applicable international standards governing the use of force, my interlocutors demonstrated strong bias when trying to trivialize this obvious instance of excessive police violence by reference to entirely speculative scenarios, claiming in particular that the woman, who had been completely non-violent and who was neither under arrest nor suspected of any crime, could possibly have become a “threat” at a later stage, or could possibly have tried to “escape” the scene and, therefore, had to be physically secured through “any means necessary”, including the deliberately painful “nose-hold” applied to her by three male officers simultaneously in order to needlessly force her to her feet rather than letting her voluntarily sit on the ground next to her car. It is my considered opinion that this deliberate infliction of severe pain and humiliation on a defenceless person for the purposes of entirely unjustified coercion (i.e. unnecessary, disproportionate and not serving a lawful purpose), albeit at the lower end of the spectrum of intensity, already meets all the defining elements of Art. 1 CAT and, therefore, amounts to torture or, at the very least, to other cruel, inhuman or degrading treatment.

*Case 9: Arrested, non-violent and defenceless protester is deliberately “knee-kicked” in his unprotected face by an accompanying officer.<sup>4</sup>(Berlin)*

During unauthorized protests in Berlin on 29 August 2021, a non-violent and defenceless man was brutally “knee-kicked” by an accompanying officer (ID: BE 11100) in his face, while he was being securely transported and held by his arms by two other officers. None of the other officers tried to prevent this act of brutality or to protect the victim. As is very clear from the video footage, this act of violence is carried out with deliberate intent against a defenceless person and has absolutely no legitimate purpose. It therefore clearly amounts to an act of torture as defined in Art. 1 CAT, and any failure to promptly investigate and

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<sup>3</sup> Video evidence: [REDACTED]

<sup>4</sup> Video evidence: [REDACTED]

prosecute those responsible would give rise to serious concerns of acquiescence, consent, and complicity.

#### *7. New allegations relating to surveillance*

According to information received, the President of the German domestic intelligence service (BfV) has announced<sup>5</sup>, on 15 June 2021, a nationwide observation against “Anti-democratic and/or security-endangering delegitimization of the state” by what he called “violent right-wing extremists”, in reference to the “Querdenken” group who reportedly has been the main organizer of protests against COVID-19 measures and regulations imposed by the authorities.

I am concerned that the announced surveillance program would appear to expose anti-COVID protesters to a higher risk of reprisal or preventive security measures and, therefore, may intimidate and deter victims of police brutality from lodging a criminal complaint with the competent authorities.

I am particularly alarmed by the announcement of such measures with no distinction being made between violent extremist groups and non-violent protesters who are simply exercising their right to freedom of expression and opinion. Such indiscriminate public exposure, defamation and stigmatisation may give rise to unjustified anxiety, stress, shame and guilt, and may lead to the denial of justice, redress and rehabilitation for victims due to intimidation, fear of surveillance and other forms of reprisal incompatible with human rights law.

In connection with the above alleged facts and concerns, please also 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, observations, and concerns.
2. Please provide information on the current state of investigations on each of the seven original (Cases 1 -7) and two new (Cases 8 and 9) incidents of police brutality documented through video evidence, as described above and in my previous communication. In cases where no investigations have been initiated or where these are still pending, please explain how this is compatible with the human rights obligations of Germany, particularly in contrast to the “accelerated proceedings” applied for the rapid adjudication and sentencing of protesters often within less than 24 hours.

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<sup>5</sup> <https://www.verfassungsschutz.de/SharedDocs/reden/DE/2021/statement-haldenwang-vorstellung-des-verfassungsschutzberichts-2020.html>

3. Please provide detailed information procedures followed by the Land Criminal Police Office 342 in order to investigate cases of police misconduct and violations committed by law enforcement officials. Please also explain on which grounds all police officers accused of excessive use of force (with one exception) either have been acquitted from all charges or are still subject to long-lasting investigations, without any conviction, decision to prosecute or disciplinary measure imposed despite the availability of compelling video evidence of serious misconduct.
4. Please provide more detailed information on the various mechanisms of “follow-up” which, according to the Government, systematically follow-up on alleged incidents of the use of force and review the conduct of the police officers involved. Also please explain what precise measures of follow-up are applied or foreseen as part of these procedures in order to ensure their objectivity, impartiality, timeliness, and effectiveness.
5. Please provide detailed information on the existing mechanisms, if any, to ensure victims are granted adequate redress, reparation and rehabilitation, in compliance with article 14 of the CAT, including the measures taken to ensure non-recurrence.
6. Please provide information on the announced surveillance programme against anti-vaccination and anti-COVID measures protesters, what does it entail and how does it make the distinction between potential violent protesters and other persons exercising their right to freedom of expression and freedom of assembly.
7. Please explain the “accelerated judicial proceedings” against protesters accused of violence against police officers, and how are these defendants granted their fundamental legal and procedural safeguards to ensure their fair trial, particularly as compared to the systematic procrastination observed with regard to criminal and disciplinary investigations against police officers.

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.

I may publicly express my concerns in the near future as, in my view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press

release will indicate that I have been in contact with your Excellency's Government's to clarify the issue/s in question.

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>6</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.

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<sup>6</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>

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.