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Promotion and protection of human rights: implementation of human rights instruments

Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, submitted in accordance with Assembly resolution [72/163](#).

* [A/75/150](#).



Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer

Biopsychosocial factors conducive to torture and ill-treatment

Summary

In the present report, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, explores the root causes of the current worldwide complacency with regard to torture and ill-treatment, based on well-documented biopsychosocial patterns of self-deception and denial, and recommends the urgent and proactive incorporation of his science-based conclusions into ongoing, policy-based global governance reform processes, including the 2030 Agenda for Sustainable Development.

I. Worldwide discrepancy between prohibition and prevalence of torture and ill-treatment

1. Today, 75 years after the end of the Second World War and the establishment of the United Nations, hardly any norm of international law commands as much consensus and authority as the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. It is universally recognized as absolute and non-derogable. It protects all human beings without discrimination and in all situations without exception, it cannot be restricted even in war and other situations of public emergency, and any contradicting legislative, administrative or judicial act is inherently unlawful. States must prevent torture and ill-treatment throughout their jurisdiction, they may not transfer anyone to another jurisdiction where they may be exposed to torture or ill-treatment and they may not use any information obtained through such abuse. In criminal law, violations of the prohibition of torture and ill-treatment invariably figure among the gravest offences, including war crimes and crimes against humanity, and must be investigated and prosecuted as a matter of universal jurisdiction.

2. In democratic societies governed by the rule of law and the separation of powers, any practice of torture or ill-treatment should be prevented or repressed through prompt and effective judicial or disciplinary oversight, under the critical scrutiny of an informed public empowered by a free and independent press. That expectation is based on the presumed presence, within government institutions, media organizations and the general public, of a large majority of “active bystanders”, who will ensure oversight and accountability through rational decision-making guided by law, morality and the public interest.

3. In practice, however, institutional, procedural and democratic safeguards tend to be far less effective than expected. Although torture and ill-treatment remain pervasive in all regions of the world (see [A/73/207](#)), the investigation and prosecution of such abuse remains comparatively rare. Even in the face of compelling evidence, disciplinary or judicial repression tends to be exceptional, media interest muted or short-lived and public complacency widespread, not only under authoritarian regimes, but also in liberal democracies. Depending on the context, there may be acquiescence to a range of such abuse, from alleged war crimes, police brutality, coercive interrogation and punitive ill-treatment to deterrent, discriminatory or persecutorial measures taken against dissidents, migrants and marginalized communities, or various forms of corruption, economic exploitation and domestic violence.

4. That assessment is consistent with the observations made by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Nils Melzer, in the exercise of his mandate. Throughout his thematic research, country visits and individual communications, the Special Rapporteur has consistently found that: (a) all States, to a greater or lesser extent, are plagued by insufficient governmental transparency and accountability; (b) those shortcomings undermine the effective prevention, investigation, prosecution and redress of torture and ill-treatment; and (c) in all regions of the world, there is widespread public and institutional complacency with regard to governmental secrecy and impunity and the resulting risks and prevalence of torture and ill-treatment.

5. In an attempt to better understand the root causes of the pervasive failure of current governance systems to eradicate torture and ill-treatment, the Special Rapporteur has conducted extensive multidisciplinary research and stakeholder consultations, including through an open call for contributions by questionnaire.¹ In

¹ See www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/CallGA75.aspx.

the present report, which reflects his conclusions and recommendations, the Special Rapporteur:

(a) Outlines the predominant biological, psychological and socio-environmental (“biopsychosocial”) factors governing human decision-making;

(b) Identifies well-documented patterns of individual and collective self-deception and denial that are conducive to the current worldwide complacency with regard to torture and ill-treatment;

(c) Demonstrates that any global governance system seeking to fully realize the Charter of the United Nations and the Universal Declaration of Human Rights must be based on an empirical, science-based conception of human behaviour, devoid of moral idealization or judgmentalism, and build normative and institutional frameworks specifically designed to overcome the increasingly existential risks arising from human self-sabotage;

(d) Recommends the urgent and proactive incorporation of those science-based conclusions into ongoing, policy-based national and international governance reform processes, including, most notably, the 2030 Agenda for Sustainable Development.

II. Science-based traits of human decision-making

A. Traditional presumptions

6. Throughout history, the question of human nature has been widely debated, including by philosophers, theologians, lawyers, anthropologists, psychologists, scientists and medical doctors. The discussion has been dominated by the moral question of whether human nature is inherently “good” or “bad”, as well as the empirical question of whether human decision-making is governed primarily by reason, morality, emotion or instinct. Inspired by the scientific and philosophical theories of the “Age of Enlightenment” in the eighteenth century, modern statehood, political theory and governance systems are based on three fundamental pillars, namely: (a) the rule of law and individual rights and freedoms; (b) the separation of powers into the legislative, executive and judicial branches; and (c) the presumption of rational decision-making based on an innate or learned moral framework.²

B. Contrasting empirical findings

7. In contrast to traditional presumptions of rationality and morality, however, modern science has demonstrated that, in reality, human decision-making is guided predominantly by unconscious emotional processes pursuing the fulfilment of basic human needs.

1. Rationality versus emotionality

8. Although humans are endowed with reason, most human decision-making remains de facto driven primarily by emotional impulses. That also applies to complex collective decision-making processes that are essential for the integrity and effectiveness of constitutional institutions and procedures, such as political elections

² Nayef Al-Rodhan, *Emotional Amoral Egoism: A Neurophilosophical Theory of Human Nature and its Universal Security Implications* (Berlin, LIT Verlag, 2008).

and appointments, judicial and administrative oversight, and independent media reporting.³

2. Consciousness versus unconsciousness

9. The majority of human cognition occurs outside of conscious awareness, and human information processing frequently serves to rationalize impulsive decisions *ex post facto*. Neurobiological research examining cognition by the millisecond has revealed that emotion enters the decision stream significantly prior to conscious thought, and subsequent logical reasoning tends to rationalize reflexive emotional decisions in line with the predominant social expectations, as determined by convention, law and morality.⁴

3. Morality versus self-interest

10. Under favourable circumstances, human behaviour can be guided by morality, empathy and trust. In situations of real or perceived danger, conflict or anxiety, however, individual and collective decision-making tends to be dominated by perceived short-term self-interest, and resulting moral dilemmas are suppressed through strategies of “moral disengagement” involving denial of fact, denial of responsibility or denial of wrongfulness.⁵

III. Objective components of “self-interest”

11. In order to understand how self-interested decision-making can be conducive to torture and ill-treatment, “self-interest” should be understood in a strictly objective, non-judgmental sense devoid of moral connotations. What is perceived as “self-interest” in a given situation is determined by a complex interaction of biopsychosocial factors that may be as generic as biological instincts, as dominant as national, religious or cultural identity and as diverse as individual upbringing and experience. Conceptually, self-interest always comprises an identificational component, which determines who or what is included in the perceived “self”, and a directional component, which determines the “interests” to be pursued on behalf of the self.

A. Individual and collective identity

12. The human sense of “self” is strongly determined by perceived identity. Identity is multifaceted because it consists of multiple layers of concurrent identification, which can relate to individual factors, such as personal experience and preference, but

³ Adam Lockyer and Peter Hatemi, “Genetics and politics: a review for the social scientist”, in *The Oxford Handbook of Evolution, Biology, and Society*, Rosemary Hopcroft, ed. (New York, Oxford University Press, 2018), pp. 281–304; Charles Taber and Milton Lodge, “Illusion of choice in democratic politics: unconscious impact of motivated political reasoning”, *Political Psychology*, vol. 37, No. 1 (February 2016), pp. 61–85; David Redlawsk, ed., *The Oxford Encyclopedia of Political Decision Making* (Oxford University Press, 2020).

⁴ Inna Burdein, Milton Lodge and Charles Taber, “Experiments on the automaticity of political beliefs and attitudes”, *Political Psychology*, vol. 27, No. 3 (June 2006), pp. 359–371; John Jost and others, “Political neuroscience: the beginning of a beautiful friendship”, *Political Psychology*, vol. 35, No. 1 (February 2014), pp. 3–42; Efrén Pérez and Isaac Riddle, “Automaticity in political decision making”, in *Oxford Research Encyclopedia of Politics*, William Thompson, ed. (Oxford University Press, 2020).

⁵ Dean Mobbs and others, “The ecology of human fear: survival optimization and the nervous system”, *Frontiers in Neuroscience*, vol. 9, No. 55 (2015), pp. 1–22; Carol Gordon and Arian Asher, “Threat and decision making”, *Journal of Conflict Resolution*, vol. 45, No. 2 (April 2001), pp. 196–215.

also to collective identities based on nationality, family, language, culture, religion, race, ethnicity, gender, sexual orientation, disability or any other group-based factor. Particularly in combination with subconscious instincts and impulses, perceived identity can be one of the most powerful motivators for decision-making. In effect, humans are prepared to work, live, suffer and often even die for persons, groups, values and objects they identify with, be it their own physical body, their political convictions, their status, reputation and possessions, or their family, community, nation or religion. Arguably, even empathy and altruistic acts can be conceived as being rooted in identification with another's needs and emotions. Group identity is particularly powerful as a unifying, but also as a potentially discriminatory, factor.⁶

13. Every person establishes and maintains numerous parallel and consecutive identifications defining their role, orientation, interests and predispositions in their natural and social environment. While some identifications can be fleeting and short-lived, others are deeply rooted and tend to be maintained for an entire lifetime. To the extent that it is mentally conceived, identity is not necessarily constant, but can be influenced or changed, expanded or narrowed, emphasized or suppressed, ignored or manipulated and experienced as more or less dominant and as socially honouring or devaluing, at different moments in time.

14. The more importance that is given to a certain aspect of identity, the stronger its association with the perceived "self" tends to be and the more aggressive the defence or pursuit of its perceived interests. For instance, historical exaggerations of ethnic, racial or cultural identity have produced structural racism, settler-colonial violence and discrimination of enormous proportions. Even where different ethnic groups peacefully coexist in a country for multiple generations without attaching virtually any importance to their ethnic identity in their daily interactions, political narratives emphasizing the differences and linking them to opposing group interests can trigger fear-based exaggerations of ethnic identification, eventually escalating into ethnic tension and violence or even genocide, such as, most infamously, the Holocaust during the Second World War and the genocides in Rwanda in 1994 and in the former Yugoslavia from 1992 to 1995.

15. Importantly for the dynamics enabling torture and ill-treatment worldwide, through conscious emphasis, any previously dormant or neglected aspect of identity can easily become a predominant criterion for determining who or what is included in or, just as importantly, excluded from the perceived individual or collective "self" whose interests are to be defended or pursued.

B. System justification

16. Beyond the physical body and psychological identity, human "self"-interest also relates to the systemic environment that is perceived as essential to personal survival, security and stability. Thus, the predominant human impulse in response to "system threats" endangering the existence, reliability or credibility of social, economic and political support systems is to adopt unconscious, emotionally charged strategies of defence and denial known as "system justification". In practice, the largely unconscious tendency of humans not to question the systems upon which they depend can be very compelling and render officials, journalists and ordinary citizens

⁶ Rupert Brown and Samuel Gaertner, eds., *Blackwell Handbook of Social Psychology: Intergroup Processes* (Blackwell, 2008).

vulnerable to ignoring, tolerating, protecting or colluding with clearly wrongful conduct, including torture and ill-treatment, or even mass atrocities.⁷

17. Despite its corrosiveness for human rights and the rule of law, system justification is not a deviation per se, but constitutes a well-documented, generic human tendency that is very common and widespread in all cultures and segments of society. Accordingly, as outlined in the present report, through the common processes of bureaucracy, indifference and self-deception, aptly described as the “banality of evil”, systemic complicity with torture, murder or even genocide can be, and often is, suppressed from conscious awareness, even despite compelling evidence, leaving constitutional checks and balances neutralized, the media complacent and the broader public in a state of wilful ignorance and motivated denial.⁸

C. Basic expressions of self-interest

18. Irrespective of the conscious intentionality and purposefulness of a particular act of torture or ill-treatment, the underlying emotional motivations for ordering, instigating or perpetrating such abuse, but also for the support, consent or acquiescence of bystanders, almost always reflect the pursuit of basic psychological needs through one or several of the following corresponding drives: (a) self-preservation (need for security and stability); (b) self-determination (need for control and autonomy); (c) self-affirmation (need for self-worth, dignity and identity); (d) self-justification (need for justice); and (e) self-gratification (need for reward and stimulation).

19. Under favourable circumstances, the natural expression of such basic human needs and drives helps to ensure positive social interactions based on mutual respect and empathy. When the individual or collective perception of reality is distorted by excessive fear, trauma, pathological dysfunction or emotional immaturity, however, those drives can trigger attitudes and conduct that are conducive to serious human rights violations, including torture and ill-treatment.

1. Self-preservation

20. The basic drive of self-preservation pursues the innate human need for security and stability. It emanates directly from biological survival instincts and triggers preventative or defensive responses to any real or perceived danger. Where distorted

⁷ John Jost and Orsolya Hunyady, “Antecedents and consequences of system-justifying ideologies”, *Current Directions in Psychological Science*, vol. 14, No. 5 (October 2005), pp. 260–265; John Jost, Chadly Stern and Joanna Sterling, “Ethos of conflict: a system justification perspective”, in *The Social Psychology of Intractable Conflict: Celebrating the Legacy of Daniel Bar-Tal, Vol. 1*, Peace Psychology Book Series, vol. 27, Eran Halperin and Keren Sharvit, eds. (Springer International Publishing, 2015), pp. 47–59; Ben Kiernan, “Cover-up and denial of genocide: Australia, the USA, East Timor, and the Aborigines”, *Critical Asian Studies*, vol. 34, No. 2 (2002), pp. 163–192; Claudia Koonz, *The Nazi Conscience* (Belknap Press, 2003); Hannah Nam et al., “Amygdala structure and the tendency to regard the social system as legitimate and desirable”, *Nature Human Behaviour*, vol. 2, No. 2 (February 2018), pp. 133–138.

⁸ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (Penguin Books, 1977); Gary Blasi and John Jost, “System justification theory and research: implications for law, legal advocacy, and social justice”, *California Law Review*, vol. 94, No. 4 (July 2006), pp. 1,119–1,168; Furnham, Adrian, “Belief in a just world: research progress over the past decade”, *Personality and Individual Differences*, vol. 34, No. 5 (April 2003), pp. 795–817; Salvador Vargas-Salfate and others, “System justification enhances well-being: a longitudinal analysis of the palliative function of system justification in 18 countries”, *British Journal of Social Psychology*, vol. 57, No. 3 (July 2018), pp. 567–590; Mikko Poutanen, “‘We do not torture’: American exceptionalism in the context of torture”, in *RePresenting Magic, UnDoing Evil: Of Human Inner Light and Darkness*, Alexandra Cheira, ed. (Brill, 2012), pp. 115–130.

through excessive fear, pathological dysfunction or traumatic experience of threat, hostility and insecurity, the basic drive of self-preservation can trigger aggressive, destructive or disproportionate action, including torture and ill-treatment, taken in speculative anticipation or erroneous perception of threats.⁹

2. Self-determination

21. The basic drive of self-determination pursues the innate need of humans for autonomy and control over the circumstances of their own lives. Real or perceived threats to that basic need tend to trigger the same survival instincts as threats to physical security. Generic examples of collective efforts motivated by that drive are struggles for national self-determination, political and economic independence or freedom from slavery and servitude. Where distorted through excessive fear, pathological dysfunction or traumatic experience of helplessness, dependency, exploitation and abuse, the basic drive of self-determination can trigger compensatory efforts to secure freedom and circumstantial control through the accumulation of power and the domination of others, including through subjugation, intimidation, coercion and discrimination.¹⁰

3. Self-affirmation

22. The basic drive of self-affirmation pursues the innate human need for self-worth, dignity and identity. Real or perceived violations of the human sense of dignity are experienced as targeting the innermost “self” and identity and, therefore, can trigger the same survival instincts as threats to physical security. Generic examples of efforts motivated by the drive of self-affirmation are those aimed at restoring individual, communal or national self-esteem after experiences of failure, defeat, guilt or humiliation. Where distorted through excessive pride, pathological dysfunction or traumatic experience of shame, humiliation, societal hardship and oppression, the basic drive of self-affirmation can trigger compensatory efforts to assert personal, communal or national esteem through the aggressive humiliation, devaluation and discrimination of others.¹¹

4. Self-justification

23. The basic drive of self-justification pursues the innate human need for justice. Real or perceived experiences of injustice are closely linked to perceptions of personal, communal or national dignity and can trigger the same survival-oriented defensive responses as threats to physical security. The primary societal tools aimed at restoring justice are, of course, judicial, administrative and arbitral decisions or

⁹ Daphna Canetti and others, “Collective trauma from the lab to the real world: the effects of the Holocaust on contemporary Israeli political cognitions”, *Political Psychology*, vol. 39, No. 1 (February 2018), pp. 3–21; Courtenay Conrad and others, “Threat perception and American support for torture”, *Political Behavior*, vol. 40, No. 4 (December 2018), pp. 989–1,009; Jeremy Rinker and Jerry Lawler, “Trauma as a collective disease and root cause of protracted social conflict”, *Peace and Conflict: Journal of Peace Psychology*, vol. 24, No. 2 (May 2018), pp. 150–164.

¹⁰ Melissa Dichter and others, “Coercive control in intimate partner violence: relationship with women’s experience of violence, use of violence, and danger”, *Psychology of Violence*, vol. 8, No. 5 (2018), pp. 596–604; Pau Pérez-Sales, *Psychological Torture: Definition, Evaluation and Measurement* (New York, Routledge, 2017); Emily Hencken Ritter, “Policy disputes, political survival, and the onset and severity of State repression”, *Journal of Conflict Resolution*, vol. 58, No. 1 (February 2014), pp. 143–168.

¹¹ Linda Hartling and others, “Humiliation: a nuclear bomb of emotions?”, *Psicologia Politica*, vol. 46 (2013), pp. 55–76; David Lacey, “The role of humiliation in the Palestinian/Israeli conflict in Gaza”, *Psychology and Society*, vol. 4, No. 1 (2011), pp. 76–92; Clark McCauley, “Toward a psychology of humiliation in asymmetric conflict”, *American Psychologist*, vol. 72, No. 3 (April 2017), pp. 255–265.

settlements imposing sanctions, compensation, restitution and other measures of redress. Where distorted through excessive victim mentality, pathological dysfunction or traumatic experience of victimization, the basic drive for self-justification can trigger compensatory efforts to restore justice through collective, disproportionate or otherwise cruel, inhuman or degrading punishment, or through escalatory self-help and revenge.¹²

5. Self-gratification

24. The basic drive of self-gratification pursues the innate human need for reward through activities promising physical, emotional and financial benefits, such as pleasure, profit and gratification. Depending on personal socialization, experience and maturity, access to gratification can be a strong or even addictive motivator, whereas the denial of gratification can be experienced as extremely frustrating, unjust or, in the case of addiction, even as a serious threat triggering survival instincts. Pathological or an otherwise extreme lack of empathy, self-restraint or emotional maturity, or traumatic experiences of lack and deprivation, can trigger compensatory, abusive or compulsive behavioural patterns prioritizing one's own desires and needs over the dignity and legitimate interests of others, in a wide variety of contexts ranging from financial and economic exploitation, human trafficking and greed, to sexual, voyeuristic and sadistic gratification.¹³

IV. Predominant patterns of moral disengagement

25. Where self-interested decisions contradict predominant moral values, for example when resorting to torture in an attempt to counter a perceived security threat, both perpetrators and bystanders tend to suppress the resulting moral dilemma through behavioural and perceptual strategies known as "moral disengagement". Given the universal, absolute and non-derogable prohibition of torture and ill-treatment, as well as the inability of the human psyche to sustain persistent moral dilemmas without harmful effects on mental health and emotional stability, it would be impossible for torture and ill-treatment to take place on any significant scale without the enabling effect of moral disengagement. Therefore, any governance system that is serious about eradicating torture and ill-treatment must find ways to mitigate moral disengagement strategies so as to prevent them from undermining, circumventing or paralysing the prevention, investigation, prosecution and redress of torture and ill-treatment.¹⁴

¹² Kevin Carlsmith and Avani Mehta Sood, "The fine line between interrogation and retribution", *Journal of Experimental Social Psychology*, vol. 45, No. 1 (January 2009), pp. 191–196; Caroline Drolet, Larry Heuer and Carolyn Hafer, "The role of perceived deservingness in the toleration of human rights violations", *Social Justice Research*, vol. 29, No. 4 (2016), pp. 429–455; Peter Liberman, "War and torture as 'just deserts'", *Public Opinion Quarterly*, vol. 78, No. 1 (2014), pp. 47–70.

¹³ Tobias Hecker and others, "Treating traumatized offenders and veterans by means of narrative exposure therapy" *Frontiers in Psychiatry*, vol. 6, No. 80 (June 2015); Ewa Stefanska and others, "Sadism among sexual homicide offenders: validation of the sexual sadism scale", *Psychological Assessment*, vol. 31, No. 1 (January 2019), pp. 132–137; Roland Weierstall and others, "The thrill of being violent as an antidote to posttraumatic stress disorder in Rwandese genocide perpetrators", *European Journal of Psychotraumatology*, vol. 2, No. 1 (2011).

¹⁴ Kathleen Malley-Morrison and others, "Engaging moral agency for human rights: outlooks from the global South", *Peace and Conflict: Journal of Peace Psychology*, vol. 21, No. 1 (February 2015), pp. 68–88.

A. Distinguishing moral disengagement from legal justification

26. From a psychological perspective, the function of moral disengagement is to leave the moral condemnation of torture and ill-treatment formally intact while at the same time creating “blind spots” where such abuse can be practised without blame. Moral disengagement always involves the self-deceptive denial of reality, which enables perpetrators and bystanders to engage in, participate in or acquiesce to morally wrongful conduct while at the same time denying either its occurrence (denial of fact), its wrongfulness (denial of wrongfulness) or personal or collective responsibility for its occurrence (denial of responsibility).

27. From a legal perspective, the same strategies of denial of fact, wrongfulness and responsibility may also aim to avoid legal accountability. By definition, however, moral disengagement is not a valid legal defence, but a psychological strategy of self-deception. Thus, while narratives of moral disengagement can never justify torture and ill-treatment as a matter of law, they can – and routinely do – severely affect the psychological capability and willingness of judges, officials and observers to correctly perceive and effectively act upon allegations of torture and ill-treatment, to the point of ensuring widespread complacency for such abuse. Depending on the circumstances, different strategies of denial can overlap or can be applied cumulatively or consecutively, both on an individual and on a collective scale.

B. Denial of fact

28. The most rudimentary manner of avoiding or suppressing moral dilemmas resulting from self-interested decision-making is denial of fact. Importantly, when used as a method of moral disengagement, the primary purpose of denial of fact is not the deception of others, but self-deception through wilful ignorance. It is not a conscious defence mounted by perpetrators to cover up their crimes, but an unconscious defence mechanism of institutional or public bystanders to suppress feelings of guilt and shame. Time and again, officials and private individuals flatly deny and ignore the occurrence of wrongful conduct, simply to avoid the distress of having to acknowledge the truth and, potentially, give up the comfort, certainty and security of passive conformity and complacency. Psychologically, wilful ignorance is motivated primarily by the basic drives of self-affirmation (against guilt and shame) and self-preservation (against a system threat).¹⁵

29. Best summarized in the slogan, “what must not be, cannot be”, denial of fact is a very common reaction of officials, journalists and citizens confronted with unexpected or unwelcome allegations of serious systemic misconduct. The psychological function of wilful ignorance is to avoid, through self-deception, a disillusionment that cannot be mentally or emotionally processed or coped with. In order to preserve a false sense of reality, powerful mental blind spots are unconsciously created, which enables the conscious mind to “pseudo-rationally” dismiss even compelling evidence for serious misconduct as mere “conspiracy

¹⁵ Stanley Cohen, *States of Denial: Knowing about Atrocities and Suffering* (Cambridge, Polity Press, 2001); Ronald Crelinsten, “World of torture: a constructed reality”, *Theoretical Criminology*, vol. 7, No. 3 (August 2003), pp. 293–318.

theories” and, instead, question the motivations and integrity of “moral advocates” making, transmitting or investigating the incriminating allegations.¹⁶

30. In practice, wilful ignorance enables officials and judges, but also journalists and ordinary citizens, to deny the occurrence of torture or ill-treatment at the hands of the Government, institution or group they identify or associate with, even when faced with compelling evidence.¹⁷ In his official dialogue with States relating to specific concerns or allegations of torture or ill-treatment, the following predominant reaction patterns encountered by the Special Rapporteur are indicative of that pattern:

- (a) Failing to acknowledge or respond to officially communicated allegations;
- (b) Evading a substantive dialogue on specific inquiries based on purported formal, procedural or institutional obstacles;
- (c) Rejecting allegations or concerns without any substantive dialogue;
- (d) Diverting attention by accusing the mandate holder of “political motivations”, “lack of impartiality”, “interference with internal affairs” or “violation of national sovereignty”;
- (e) Diverting attention through sweeping assurances of the Government’s commitment to human rights, sweeping accusations against other stakeholders or misguided expressions of protest, indignation and victim mentality;
- (f) Discrediting, demonizing or blaming victims, witnesses, critics and other moral advocates.

31. Within governmental and judicial authorities, as well as institutional oversight mechanisms, bystander complacency caused by wilful ignorance represents a significant obstacle to the effective investigation, prosecution and punishment of torture and ill-treatment, as well as to redress and rehabilitation. Distorted perceptions of reality resulting from wilful ignorance also routinely render media organizations incapable of objectively detecting and exposing government involvement in torture and ill-treatment, and prevent ordinary citizens from addressing and correcting systemic shortcomings through their democratic rights.

32. The systemic intermingling of public and private interests, such as through campaign funding, parliamentary lobbying and the large-scale privatization of essential public functions, including military, security, intelligence and correctional services, creates overarching systemic identities, in which moral dilemmas resulting from exploitative practices can no longer be resolved in line with the principles of democracy and the rule of law, but are suppressed through wilful ignorance. This is

¹⁶ Nadia Bashir, “Wielding a double-edged sword: public moral advocates are derogated yet influential”, PhD dissertation, University of Toronto, 2014; Aloysia Brooks, “The annihilation of memory and silent suffering: inhibiting outrage at the injustice of torture in the war on terror in Australia”, PhD dissertation, University of Wollongong, 2016; Jared Del Rosso, “Textual mediation of denial: congress, Abu Ghraib, and the construction of an isolated incident”, *Social Problems*, vol. 58, No. 2 (July 2011), pp. 165–188; Richard Jackson “Language, policy and the construction of a torture culture in the war on terrorism”, *Review of International Studies*, vol. 33, No. 3 (July 2007), pp. 353–371; Jean Lennane, “What happens to whistleblowers, and why?” *Social Medicine*, vol. 6, No. 4 (2012), pp. 249–258.

¹⁷ Lance Bennett, Regina Lawrence and Steven Livingston, “None dare call it torture: indexing and limits of press independence in the Abu Ghraib scandal”, *Journal of Communication*, vol. 56, No. 3 (September 2006), pp. 467–485; Ruth Blakeley and Sam Raphael, “Accountability, denial and the future-proofing of British torture”, *International Affairs*, vol. 96, No. 3 (May 2020), pp. 691–709; Cătălin Mamali, “Accuracy of basic knowledge of traumatic historical events: The Armenian genocide”, *Journal of Loss and Trauma*, vol. 22, No. 2 (June 2016), pp. 99–109; Irene Bruna Seu, “‘Doing denial’: audience reaction to human rights appeals”, *Discourse and Society*, vol. 21, No. 4 (July 2010), pp. 438–457.

as true for manifestations of grand corruption in developing countries as it is for the pervasive collusion between powerful industries and all branches of Government in the leading industrial countries. In both cases, the affected governance systems have lost their capacity to effectively correct serious dysfunctions and imbalances resulting from self-interested decision-making and, therefore, to realize the “peaceful, just and sustainable societies” and “effective, accountable and inclusive institutions” envisaged in the Sustainable Development Goals.

33. In sum, unless it is effectively mitigated through objective, independent and transparent oversight and accountability mechanisms external to the system in question, the unconscious human tendency towards system-justification through wilful ignorance severely undermines the self-healing capacity of any Government, institution or group and creates an environment of unchecked power that is strongly conducive to systemic corruption, exploitation and abuse, including torture and ill-treatment.

C. Denial of responsibility

34. Where the occurrence of torture or ill-treatment cannot be denied, both active participants and passive bystanders tend to experience strong emotions of guilt and shame. In order to avoid the ensuing moral dilemma, both perpetrators and bystanders tend to morally disengage through denial of responsibility, either by reference to their conformity with the predominant behaviour of the collective (diffusion of responsibility) or by blaming superiors, subordinates or external actors for the wrongful conduct (displacement of responsibility).

1. Diffusion of responsibility

35. Diffusion of responsibility does not deny the occurrence of torture or ill-treatment, but it denies individual responsibility by pointing to collective responsibilities instead. Diffusion of responsibility is motivated primarily by the basic drives of self-affirmation (against guilt and shame) and self-preservation (against the risk of personal liability) and always aims to “hide” in the collective.¹⁸

36. Diffusion of responsibility thrives on the unconscious tendency of humans towards group-based conformity, aligning their perception, reasoning and decisions with “their” social environment. Group-based conformity fosters a collective identity and consensus, by which individual responsibility for wrongdoing is seemingly transferred to, and subsumed by, the group as a whole. Fear and trauma may also foster extreme group-based conformity or “groupthink”, which has been implicated in the group-based normalization of torture.¹⁹

37. A very common and widespread pattern of moral disengagement, diffusion of responsibility is often adopted by active participants in collective acts of torture or ill-treatment, such as police brutality during assemblies, gang rapes, severe cases of mobbing, or persecution. Most typically, however, diffusion of responsibility is

¹⁸ Eran Halperin and Noa Schori-Eyal, “Moral emotions in political decision making”, in *Oxford Research Encyclopedia of Politics*, William Thompson, ed. (Oxford University Press, 2020); Monica Luci, *Torture, Psychoanalysis, and Human Rights* (Routledge, 2017).

¹⁹ Albert Bandura, “Moral disengagement in the perpetration of inhumanities”, *Personality and Social Psychology Review*, vol. 3, No. 3 (August 1999), pp. 193–209; Janice Gibson and Mika Haritos-Fatouros, “The education of a torturer”, *Psychology Today*, vol. 20, No. 11 (November 1986), pp. 50–52 and 56–58; John Jost, Alison Ledgerwood and Curtis Hardin, “Shared reality, system justification, and the relational basis of ideological beliefs”, *Social and Personality Psychology Compass*, vol. 2, No. 1 (January 2008), pp. 171–186; Jerrold Post and Lara Panis, “Crimes of obedience: ‘groupthink’ at Abu Ghraib”, *International Journal of Group Psychotherapy*, vol. 61, No. 1 (2011), pp. 48–66.

resorted to by passive bystanders failing to prevent, report or repress such abuse, whether as government officials (internal bystanders) or as journalists or members of the general public (external bystanders). In both cases, diffusion of responsibility aims to distribute responsibility for wrongful acts or omissions away from the individual and onto the wider group.

(a) Perpetrators, instigators and other active participants

38. In the case of active participants in torture and ill-treatment, diffusion of responsibility aims to make their individual involvement appear acceptable or excusable based on conformity with the behaviour of the collective. It is essentially a process of the normalization of conduct that would otherwise be perceived as wrongful and reprehensible. In the extreme, it may involve “authorizing” environments, in which political, religious, military or business leaders overtly or implicitly instigate, encourage or condone torture and ill-treatment as socially expected and accepted behaviour, for example by publicly stating that “torture works”. Similar “authorizing” effects can also be achieved through peer pressure, in particular when the likelihood of disciplinary or judicial sanctions is negligible.²⁰

39. Subtler than authorization is the “routinization” of torture and ill-treatment through fragmentation. By breaking the process of torture and ill-treatment down into many detached, specialized and seemingly harmless subfunctions to be carried out at various levels of the hierarchy, each participant tends to focus on the technicalities of their contribution rather than the abusive nature of the overall process. Routinization enables a broad diffusion of responsibility across various services, institutions, hierarchical levels and functions.²¹

40. The process of normalization also often takes place through continued exposure to increasingly abusive acts, entailing a gradual desensitization of perpetrators, bystanders, the media and the public. The process has been well documented for torture training practices among military police, but also on a societal scale, culminating in genocide.²²

(b) Internal and external bystanders

41. In order for torture and ill-treatment to be eradicated, witnessing bystanders, whether from within the authorities or from the media or the general public, must hold instigators and perpetrators to account through independent and impartial judicial and disciplinary mechanisms. In practice, however, both internal and external bystanders are highly susceptible to passivity (“bystander apathy”). The greater the number of witnesses, the less likely each of them is to take action. Physical crowds can be so paralyzing to bystanders that brain imaging studies have revealed reduced

²⁰ Shannon Houck and others, “When beliefs lead to (im)moral action: how believing in torture’s effectiveness shapes the endorsement of its use”, *Political Psychology*, vol. 40, No. 6 (2019), pp. 1,315–1,339; Herbert Kelman, “The policy context of torture: a social-psychological analysis”, *International Review of the Red Cross*, vol. 87, No. 857 (March 2005), pp. 123–134; Sophie Richardot, “‘You know what to do with them’: the formulation of orders and engagement in war crimes”, *Aggression and Violent Behavior*, vol. 19, No. 2 (March–April 2014), pp. 83–90; Mary Lowth, “Does torture work? Donald Trump and the CIA”, *British Journal of General Practice*, vol. 67, No. 656 (March 2017).

²¹ Albert Bandura, *Moral Disengagement: How People Do Harm and Live with Themselves* (Worth Publishers, 2016); Herbert Kelman, “Violence without moral restraint: reflections on the dehumanization of victims and victimizers”, *Journal of Social Issues*, vol. 29, No. 4 (1973), pp. 25–61.

²² Janice Gibson, “Training people to inflict pain: State terror and social learning”, *Journal of Humanistic Psychology*, vol. 31, No. 2 (1991), pp. 72–87; Ervin Staub, “Building a peaceful society: origins, prevention, and reconciliation after genocide and other group violence”, *American Psychologist*, vol. 68, No. 7 (October 2013), pp. 576–589.

brain activity in regions associated with helping behaviour when people witness emergencies among others.²³

42. Passive bystanders tend to feel strong emotions of guilt and shame for failing to intervene and prevent torture or ill-treatment. The ensuing moral dilemma is suppressed by reference to the passivity of “everybody else”. In practice, internal and external bystander apathy is absolutely central to enabling torture and ill-treatment worldwide.

43. Importantly, once bystander apathy becomes normalized, those who dissent from passivity by denouncing immoral activity as active bystanders, whether they are described as “whistle-blowers”, “moral advocates”, “traitors”, “spies” or “dissidents”, tend to be socially sanctioned.²⁴ In practice, such “moral advocates” are often isolated and excluded by the passive majority, treated with contempt and self-deceptively perceived as traitorous, selfish, arrogant or insulting.²⁵

2. Displacement of responsibility

44. Displacement of responsibility always aims to absolve individuals, institutions or even entire nations of culpability by blaming others for the wrongful conduct. It is a very common initial reaction pattern in the context of investigations that are aimed at clarifying questions of accountability. In essence, displacement of responsibility can take three fundamentally distinct forms, namely: (a) “upward” or (b) “downward” displacement within a chain of command, hierarchy or other power structure or (c) “external” displacement through outsourcing to external actors.

(a) “Upward” displacement

45. An almost standard reaction of officials accused of wrongdoing, whether by act or by omission, is to claim that they were “only following orders”. Bystander passivity and, in extreme cases, even active participation in torture and ill-treatment can indeed be the result of insurmountable personal distress and pure survival instincts, most notably in situations in which disobedient officials or intervening bystanders would be exposed to serious risks of reprisal or where victims are forced to torture each other. While such extreme circumstances may mitigate personal culpability, they can never legally justify (i.e., render lawful) any participation in or acquiescence to torture or ill-treatment.²⁶

46. Even outside such oppressive situations, however, humans tend to experience a significantly diminished sense of personal responsibility for harm and suffering inflicted upon instruction from authority figures. From a psychological perspective, when acting in obedience, the sense of duty, loyalty and allegiance of the perpetrators tends to take precedence over their sense of responsibility and empathy towards the

²³ Ruud Hortensius and Beatrice de Gelder, “From empathy to apathy: the bystander effect revisited”, *Current Directions in Psychological Science*, vol. 27, No. 4 (August 2018), pp. 249–256; Bibb Latané and Steve Nida, “Ten years of research on group size and helping”, *Psychological Bulletin*, vol. 89, No. 2 (1981), pp. 308–324.

²⁴ Brian Martin, “Strategy for public interest leaking”, in *Secrecy, Law, and Society*, Martin Bray, Rebecca Scott Bray and Miiko Kumar, eds. (Oxford, Routledge, 2015), pp. 219–233; Nadia Bashir, “Wielding a double-edged sword”; Lissa Johnson, “The psychology of getting Julian Assange: what’s torture got to do with it?”, *New Matilda*, 23 February 2019.

²⁵ See, in particular, Office of the United Nations High Commissioner for Human Rights, “UN expert says ‘collective persecution’ of Julian Assange must end now”, 31 May 2019 and the Special Rapporteur’s findings of 27 May 2019 in the case of Julian Assange (UA GBR 3/2019).

²⁶ Art. 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Arts. 4 and 7 of the International Covenant on Civil and Political Rights; Mika Haritos-Fatouros, “The official torturer: a learning model for obedience to the authority of violence”, *Journal of Applied Social Psychology*, vol. 18, No. 13 (October 1988), pp. 1,107–1,120.

victim. The tendency to prioritize obedience over moral concerns has been observed, inter alia, in executioners carrying out the death penalty and in perpetrators of torture, as well as in genocidal events.²⁷ While destructive obedience to authority is an extremely dangerous human tendency, its effects can be superseded very effectively through the presence of an overriding superior authority, such as an effective system of external oversight and accountability that reliably prosecutes and punishes wrongful conduct even when it has been authorized by superiors.

(b) “Downward” displacement

47. Displacement of responsibility also works in the opposite direction, namely when superior officials delegate torture and ill-treatment “down” the chain of command to their subordinates and suppress their own moral dilemma by “washing their hands of the dirty work”. In practice, superior officials may express implicit expectations towards their subordinates – such as “find out what they know!” or “you know what to do with them!” – which, in the circumstances, may be predictably conducive to torture or ill-treatment, without, however, giving explicit instructions to that effect.

48. As a matter of law, such “downward” delegation of torture and ill-treatment cannot absolve the delegating superior, who remains criminally liable either as an instigator or under command and superior responsibility, nor does it diminish State responsibility for the wrongful conduct. From an evidentiary, moral and psychosocial perspective, however, “downward” displacement of responsibility confers a self-deceptive sense of plausible deniability, which is often gratefully adopted by the political leadership, the media and the public, such that abuses are conveniently blamed on “bad apples” or “rogue actors”, whereas broader investigations concerning superior responsibilities are avoided. To enable “downward” displacement, strategies of denial of knowledge regarding the infliction of harm have been identified among authorities, including “concerted and deliberate ignorance” of the details of abusive acts.²⁸

(c) “External” displacement

49. Plausible deniability is further strengthened by displacing the blame onto external “proxy perpetrators”, such as private contractors, mercenaries, organized criminals, insurgents and even other States. The deliberate outsourcing of torture and ill-treatment to non-State actors or other States can be a conscious policy of disguising the legal responsibility of States. As a strategy of moral disengagement, however, “external” displacement of responsibility does not necessarily imply that the wrongful conduct is deliberately planned or encouraged, but that the moral dilemma arising from its occurrence is suppressed by blaming external actors and, thus, rendering it “out of sight, out of mind”.²⁹

50. Contexts in which plausible deniability is routinely used to deny State responsibility for torture and ill-treatment include civil wars in which States train

²⁷ Laurent Bègue and others, “Personality predicts obedience in a Milgram paradigm”, *Journal of Personality*, vol. 83, No. 3 (June 2015), pp. 299–306; Herbert Kelman and Lee Hamilton, *Crimes of Obedience: Toward a Social Psychology of Authority and Responsibility* (Yale University Press, 1989); Michael Osofsky, Albert Bandura and Philip Zimbardo, “The role of moral disengagement in the execution process”, *Law and Human Behavior*, vol. 29, No. 4 (September 2005), pp. 371–393; Ervin Staub, “Obeying, joining, following, resisting, and other processes in the Milgram studies, and in the Holocaust and other genocides: situations, personality, and bystanders”, *Journal of Social Issues*, vol. 70, No. 3 (September 2014), pp. 501–514.

²⁸ Ruth Jamieson and Kieran McEvoy, “State crime by proxy and juridical othering”, *The British Journal of Criminology*, vol. 45, No. 4 (July 2005), pp. 504–527.

²⁹ *Ibid.*

insurgent forces implicated in such abuse,³⁰ but also the irregular rendition of detainees to other countries for purposes of coercive interrogation³¹ and migration policies by which destination countries collude with the “pullback operations” of unsafe countries, thus deliberately preventing the arrival of migrants in their own jurisdiction and knowingly exposing them to torture, rape and murder (see [A/HRC/37/50](#), paras. 54–57).

D. Denial of wrongfulness

51. Where responsibility for acts of torture or ill-treatment cannot be denied, the resulting moral dilemma tends to be suppressed through denial of wrongfulness. Most commonly, this involves claims that the conduct in question does not meet the definition of torture or ill-treatment in the first place (trivialization) or that it is exceptionally justified based on utilitarian considerations (necessary evil) or discrimination (group-based exclusion).

1. Trivialization

52. Moral disengagement through trivialization begins with the use of euphemistic language aimed at “sanitizing” torture and ill-treatment and creating a perception of acceptability.³² Thus, measures involving torture or ill-treatment have been euphemistically described as, inter alia, “enhanced interrogation”,³³ “deep interrogation”,³⁴ “moderate physical pressure”,³⁵ “pressure techniques”,³⁶ “special measures”,³⁷ “human resource exploitation”,³⁸ “vocational training”,³⁹ “conversion therapy”,⁴⁰ “deterrence”⁴¹ and “special administrative measures”.⁴²

53. Trivialization also manifests in efforts to exclude certain practices from the legal definition of torture and ill-treatment, most commonly through objectively unsustainable assertions that the resulting pain or suffering, although intentionally

³⁰ See, for example, *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, I.C.J. Reports 1986, p. 14, para. 110; International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Appeals Chamber, *The Prosecutor v. Duško Tadić*, Case No. IT-94-1-A, Judgment, 15 July 1999, para. 117; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 43, para. 430.

³¹ Sam Raphael, Crofton Black and Ruth Blakely, *CIA Torture Unredacted* (The Rendition Project and The Bureau of Investigative Journalism, July 2019).

³² Kimberly Rios and Dominik Mischkowski, “Shaping responses to torture: what you call it matters”, *Personality and Social Psychology Bulletin*, vol. 45, No. 6 (June 2019), pp. 934–946; James Waller, *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing* (Oxford University Press, 2002).

³³ See Office of the United Nations High Commissioner for Human Rights, “Torture is torture, and waterboarding is not an exception – UN expert urges the US not to reinstate it”, 30 January 2017.

³⁴ European Court of Human Rights, *Ireland v. the United Kingdom*, Case No. 5310/71, Judgment, 18 January 1978.

³⁵ Committee against Torture, concluding observations on Israel of 12 June 1994 ([A/49/44](#), paras. 159–171).

³⁶ Communication AL ISR 7/2018 of 31 January 2018.

³⁷ Human Rights Watch, ““Special measures”: detention and torture in the Chinese Communist Party’s Shuanggui system”, 6 December 2016.

³⁸ United States of America, Central Intelligence Agency, *Human Resource Exploitation Training Manual* (1983).

³⁹ [CAT/C/CHN/CO/5](#), para. 42; Communications: OL/CHN18/2019 of 1 November 2019; OL/CHN15/2018 of 24 August 2018.

⁴⁰ [A/74/148](#), para. 48–50.

⁴¹ [A/HRC/37/50](#), para. 7, 19, 28 and 34.

⁴² [A/HRC/22/53/Add.4](#), para. 179.

and purposefully inflicted, fail to meet the required threshold of “severity” (see [A/73/207](#), para. 45). A strong trivializing effect is also achieved by States avoiding or preventing the prosecution and punishment of torture and ill-treatment or introducing justifications or statutes of limitations for such crimes or granting amnesties and pardons to perpetrators.⁴³

54. In practice, States have adopted policies, underinclusive definitions or interpretations, legislation and judgments trivializing a broad range of conduct involving torture and ill-treatment, including coercive interrogation, police brutality, excessive use of force, violent deterrence of migrants, gender-based violence, psychological torture, cyberharassment and domestic violence. By granting impunity for such abuse, States overtly discredit the universal, absolute and non-derogable prohibition of torture and ill-treatment, violate their legal obligations, belittle the gravity of the crimes and actively suppress the moral dilemma arising from such practices. In practice, the resulting expectation of impunity consolidates public and institutional complacency and encourages the continued proliferation of torture and ill-treatment.

55. Furthermore, States routinely trivialize the seriousness of the concerns raised by international human rights mechanisms, either by failing to respond or by adopting an inappropriately formalistic, dismissive or aggressive response. Paradoxically, some States have bilaterally suggested that the Special Rapporteur “trivialized” the legal definitions of torture and ill-treatment by including within their scope such widespread practices as the deterrence of migrants, domestic violence and public mobbing. Most alarmingly, however, three permanent members of the Security Council, which should be expected to honour their privileges through leadership by example, have adopted an overtly hostile stance towards international human rights mechanisms. Thus, the United States of America has not only officially withdrawn from the Human Rights Council, but also threatened staff of the International Criminal Court with sanctions for any criminal investigation against personnel of the United States,⁴⁴ China has called for special procedures mandate holders to be held “accountable” for “misconduct”, condemning their official communication of human rights concerns as “nonsense” that “severely infringed upon China’s sovereignty, interfered in its internal affairs and flagrantly violated the Charter of the United Nations”⁴⁵ and the United Kingdom of Great Britain and Northern Ireland has repeatedly dismissed official communications and reports by Special Rapporteurs as “inflammatory”, “political”, “biased” and “interfering” with the British judiciary.⁴⁶

2. Utilitarian justification

56. Although international law leaves no doubt as to the fact that the prohibition of torture and ill-treatment is absolute and non-derogable, recent history is replete with attempts at justifying such abuse based on utilitarian “exceptions” (art. 2 (2) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or

⁴³ Office of the United Nations High Commissioner for Human Rights, “Torture is torture, and waterboarding is not an exception – UN expert urges the US not to reinstate it”, 30 January 2017; Communications: AL ISR 7/2018 of 31 January 2018; OL GBR 6/2020 of 15 June 2020; AL GBR 4/2019 of 19 August 2019.

⁴⁴ United States of America, Executive Order No. 13928 of 11 June 2020.

⁴⁵ Response by China of 26 June 2020 to Office of the United Nations High Commissioner for Human Rights, “UN experts call for decisive measures to protect fundamental freedoms in China”, 26 June 2020, available at www.china-un.ch/eng/hom/t1792660.htm.

⁴⁶ See [A/HRC/41/39/Add.3](#); Official complaint to the Secretary-General of the United Nations by Grant Shapps, Minister and Member of Parliament of the United Kingdom of Great Britain and Northern Ireland (11 September 2013); Foreign Secretary of the United Kingdom, reacting on Twitter on 31 May 2019 to Office of the United Nations High Commissioner for Human Rights, “UN expert says ‘collective persecution’ of Julian Assange must end now”, 31 May 2019, available at https://twitter.com/Jeremy_Hunt/status/1134373848290353152?s=20.

Punishment). Like all other methods of moral disengagement, utilitarian justification is not a valid legal defence, but a strategy of self-deception aimed at avoiding or suppressing the moral dilemma arising from the inherent wrongfulness of any practice of or acquiescence to torture or ill-treatment.⁴⁷

57. Reflecting a rationale of “the end justifies the means”, utilitarian justifications seek to morally legitimize torture or ill-treatment as a “necessary evil” to achieve a purportedly more important purpose. Utilitarian justification denies neither the occurrence of torture or ill-treatment, nor individual, institutional or national responsibility for its occurrence, but suppresses the resulting moral dilemma by denying the wrongfulness of such practices owing to specific circumstances. The utilitarian purposes that are claimed to justify torture and ill-treatment depend on the context, but generally involve one or several of the basic aspects of self-interest.

(a) Security, self-defence and self-preservation

58. The need to defend against threats to individual or public security is the predominant utilitarian basis upon which torture and ill-treatment are justified. The infamous legal memorandums of the Department of Justice of the United States defining detainees in the “war on terror” as “unlawful combatants” to whom the protections of the Geneva Conventions did not apply are a well-known example of a Government trying to remove legal barriers to a utilitarian justification of torture.⁴⁸ In that case, the objective of defending against terrorist threats by extracting information aimed to justify the use of “enhanced interrogation” methods. Although the unlawfulness of that interpretation has been subsequently acknowledged by the Government of the United States, polls conducted 10 years after the attacks of 11 September 2001 indicate that the official narrative of utilitarian justification appears to have persisted in the public mind, with more than 70 per cent of respondents from the United States viewing the torture of terrorism suspects as warranted in 2011.⁴⁹ Similarly, the Supreme Court of Israel has invoked the “necessity defence” to exempt interrogators from prosecution, noting that the use of so-called “pressure techniques” was warranted by grave suspicions suggesting that the victim was involved in terror activities.⁵⁰

59. Utilitarian justifications based on security and defence are particularly effective in achieving self-deceptive moral disengagement because they instrumentalize powerful emotions of fear arising from basic survival instincts. Examples of publicly disseminated narratives aimed at justifying torture as a necessary means include slogans such as “waterboarding works”,⁵¹ the so-called “ticking bomb scenario” and sanitized depictions of life-saving torture in mainstream entertainment, but also political narratives demonizing certain minorities, migrants and other marginalized groups as “thugs”, “criminals”, “terrorists”, “traitors” and “parasites”, among other things. In practice,

⁴⁷ Monica Luci, *Torture, Psychoanalysis, and Human Rights*; Susan Opatow, “Moral exclusion and torture: the ticking bomb scenario and the slippery ethical slope”, *Peace and Conflict: Journal of Peace Psychology*, vol. 13, No. 4 (2007), pp. 457–461.

⁴⁸ Karen Goldberg and Anthony Lewis, eds., *The Torture Papers: The Road to Abu Ghraib* (Cambridge University Press, 2005); Manfred Nowak, “What practices constitute torture? US and UN standards”, *Human Rights Quarterly*, vol. 28, No. 4 (November 2006), pp. 809–841; Milan Markovic, “Can lawyers be war criminals?”, *Georgetown Journal of Legal Ethics*, vol. 20, No. 347 (2007), pp. 346–369.

⁴⁹ Andrew Pilecki and others, “Moral exclusion and the justification of U.S. counterterrorism strategy: Bush, Obama, and the terrorist enemy figure”, *Peace and Conflict: Journal of Peace Psychology*, vol. 20, No. 3 (August 2014), pp. 285–299.

⁵⁰ Communication AL ISR 7/2018 of 31 January 2018 and the response by the Government of Israel of 4 May 2018.

⁵¹ See Office of the United Nations High Commissioner for Human Rights, “Torture is torture, and waterboarding is not an exception – UN expert urges the US not to reinstate it”, 30 January 2017.

security-based justifications of torture and ill-treatment tend to be reinforced with policies of secrecy,⁵² which remove any realistic likelihood of perpetrators being held to account, thus strongly facilitating the moral disengagement not only of the perpetrators, but also of internal bystanders, the media and the general public.⁵³

(b) Freedom, independence and self-determination

60. The purposes of freedom and self-determination have often been used to legitimize torture and ill-treatment, for example during struggles for national self-determination, political and economic independence, and freedom from exploitation and discrimination of any kind. In the extreme, the achievement of freedom and self-determination, which may well be a legitimate aim in itself, is claimed to justify all means, including torture and ill-treatment. Struggles for freedom and self-determination usually go along with group-based identifications and the desire for justice, so that related moral dilemmas tend to be additionally suppressed through narratives of self-justification and of “us” against “them”, which may exclude individuals associated with the opposing group from the protection of moral considerations. Thus, utilitarian justifications based on claims of freedom and self-determination can trigger revenge and atrocity crimes, including sexual violence, mass murder, ethnic cleansing and even genocide.⁵⁴

(c) Honour, dignity and self-affirmation

61. Especially after traumatic experiences of military defeat or national, religious, ethnic or racial humiliation, but also those of political or social embarrassment, the restoration of collective honour, dignity and patriotism is frequently invoked to suppress the moral dilemma resulting from the degradation of others.⁵⁵ Utilitarian moral disengagement for the purpose of self-affirmation often involves the self-aggrandizement of the political leadership and the promotion of an idealized society devoid of any fault or wrongdoing. The process is facilitated by invoking struggles between “civilization and barbarism” and “good and evil”, “democracy and tyranny” or even the “will of God and satanic forces”. Similar dynamics play out at the level of families in the context of “honour killings”. In order to maintain the fragile sense of collective honour and dignity, any views or criticism deviating from self-affirming and idealizing narratives are suppressed at all costs, including through the use of group-based violence and abuse.⁵⁶

⁵² Greg Martin, Rebecca Scott Bray and Miiko Kumar, eds., *Secrecy, Law, and Society* (Routledge, 2015).

⁵³ Courtenay Conrad and others, “Threat perception”; Krista De Castella, Craig McGarty and Luke Musgrove, “Fear appeals in political rhetoric about terrorism: an analysis of speeches by Australian Prime Minister Howard”, *Political Psychology*, vol. 30, No. 1 (February 2009), pp. 1–26; Joseph Spino and Denise Dellarosa Cummins, “The ticking time bomb: when the use of torture is and is not endorsed”, *Review of Philosophy and Psychology*, vol. 5, No. 4 (August 2014), pp. 543–563.

⁵⁴ On Nazi propaganda “justifying” their genocidal policies with a purported struggle for liberation from an allegedly looming Jewish World Government, see, for example Brendan Fay, “The Nazi conspiracy theory: German fantasies and Jewish power in the Third Reich”, *Library and Information History*, vol. 35, No. 2 (2019), pp. 75–97. See also Aida Arosoaic, “In the name of honour and freedom: the sacred as a justifying tool for ISIS’ and secular violence”, *Culture and Religion*, vol. 18, No. 3 (2017), pp. 278–295; Joyce Dalsheim, “Settler nationalism, collective memories of violence and the ‘uncanny other’”, *Social Identities*, vol. 10, No. 2 (2004), pp. 151–170; Fatma Ulgen, “Reading Mustafa Kemal Atatürk on the Armenian genocide of 1915”, *Patterns of Prejudice*, vol. 44, No. 4 (2010), pp. 369–391.

⁵⁵ Thus, the need to reverse the “shame of Versailles” was used by Nazi Germany to suppress moral concerns over its aggressive stance leading up to the Second World War.

⁵⁶ Caroline Kennedy, “The Manichean temptation: moralising rhetoric and the invocation of evil in US foreign policy”, *International Politics*, vol. 50, No. 5 (September 2013), pp. 623–638.

(d) Revenge, retribution and self-justification

62. Driven by the need for self-justification in response to perceived injustice, narratives of historical injustice can fuel ethnic, racial and national hatred and violence, unpunished crimes can provoke desperate acts of revenge and war crimes can trigger cruel acts of reprisal against peaceful civilians. Political “tough on crime” narratives advocating degrading treatment, dehumanizing detention conditions and harsh sanctions based on widespread perceptions that terrorists, drug dealers, sex offenders and other “bad guys” should “get what they deserve” are also very predominant. From a moral perspective, such reaction patterns reframe torture and ill-treatment as deserved compensatory punishment for perceived injustice.⁵⁷

(e) Exploitation and self-gratification

63. The most primitive and least publicly appealing strategy of utilitarian moral disengagement is to “justify” the harm caused by wrongful conduct by the direct benefit or gratification it offers. In general, the absolute prioritization of personal profit over the interests of others is perceived as a profoundly self-centred, psychosocially immature rationale that is more readily associated with criminality or pathology than morality. Therefore, while self-gratification may motivate perpetrators and voyeuristic witnesses of torture and ill-treatment, including commercialized or ritualized sadism, sexual violence and murder, it generally is not overtly advanced as a justification for the infliction of harm and suffering on others.

64. Disguised in economic narratives of “profitability”, “cost-effectiveness”, “competitiveness”, “outsourcing”, “austerity”, “customer preference” and “cost externalization”, however, the very same rationale of self-gratification serves to rationalize a wide range of exploitative settings, including modern slavery, sexual exploitation, human trafficking, inhumane working conditions and the externalization of health and environmental hazards. In conjunction with the strategies of denial of fact and denial of responsibility, the utilitarian prioritization of self-gratification can give rise to significant societal and systemic blind spots, in which intimidation, coercion, punishment and discrimination are routinely employed in order to establish, impose or maintain exploitative settings.⁵⁸

3. Discriminatory justification

65. The tendency to organize into groups is among the most ubiquitous and well-documented of human tendencies. As a social species, human beings draw heavily upon group memberships to fulfil individual psychological needs, including self-worth, dignity, identity, safety, certainty and belonging. Accordingly, group-based psychological processes powerfully influence personal reasoning, perceptions, emotions and behaviours, including in ways that are conducive to group-based harm.⁵⁹

66. Moral dilemmas arising from intergroup violence and abuse tend to be suppressed based on narratives of discriminatory justification, which encourage moral disengagement at the “tribal” level of social groupings. In essence, discriminatory justification minimizes, legitimizes or excuses abuse perpetrated by one’s own social group (“in-group”) against another social group (“out-group”) along a wide range of group-based dimensions, including racial, ethnic, geographical, socioeconomic,

⁵⁷ Hannah Cooper, “War on drugs policing and police brutality”, *Substance Use and Misuse*, vol. 50, No. 8–9 (2015), pp. 1,188–1,194.

⁵⁸ Brian Jarvis, “Monsters Inc.: serial killers and consumer culture”, *Crime, Media, Culture: An International Journal*, vol. 3, No. 3 (December 2007), pp. 326–344.

⁵⁹ Bernhard Leidner, Linda Tropp and Brian Lickel, “Bringing science to bear – on peace, not war: elaborating on psychology’s potential to promote peace”, *American Psychologist*, vol. 68, No. 7 (2013), pp. 514–526.

disability-, age-, gender- or sexual orientation-related, religious or any other grounds related to discrimination of any kind.

67. Group-based psychological processes can lead in-group members to consciously or unconsciously exclude out-group members from the boundaries of their usual moral conduct (“circle of moral regard”). That process of dis-identification enables individuals to inflict suffering on out-group members without experiencing the moral dilemma associated with the same conduct directed against in-group members. Group-based discrimination and related moral disengagement can manifest on the micro level, with individuals being isolated, bullied or mobbed within tribes, families, professional teams, school classes and military units, and can extend up to the macro level of mass atrocities, such as race-based slavery, ethnic cleansing and genocide.⁶⁰

(a) Out-group dehumanization, denigration and indifference

68. One unconscious psychological mechanism of discriminatory infliction of harm is reduced empathy, such that the empathy-related brain activity of observers has been found to be reduced or even absent when witnessing the infliction of pain on members of other social groups. That neuro-emotional phenomenon is known as the “empathy gap” and has been demonstrated across a variety of social groupings, including race and nationality, and different varieties of pain, including electric shocks, facial expressions of pain, needles to the face or hands, being cut by broken glass or having genitals slashed by razor blades.⁶¹

69. Reduced empathy for out-groups is associated with group-based dehumanization, involving a perception of the “other” as subhuman and less capable of human suffering. Group-based dehumanization has been linked to supporting torture of prisoners of war, perceiving torture as less morally wrong when perpetrated by one’s own versus another nation’s security forces and supporting impunity for the torture and killing of out-group civilians during war. Among men, sexual aggression and a proclivity for rape has been linked to associating women with animals and with dehumanizing women as spoils of war.⁶²

70. Out-group dehumanization is also employed as a defensive strategy, along with out-group victim-blaming, against the acknowledgement of collective wrongdoing. Citizens in settler-colonial nations, for example, have been found to dehumanize indigenous people after reading reminders of historical mass killings, and readers have been found to blame out-group torture victims and victims of hate crimes for their suffering. Victim-blaming appears to be particularly pronounced when crimes against minority groups go unpunished, driven partly by system-justifying motives to rationalize group-based injustices.⁶³

⁶⁰ Susan Opatow, “Moral exclusion and injustice: an introduction”, *Journal of Social Issues*, vol. 46, No. 1 (1990), pp. 1–20; Susan Opatow, “How this was possible: interpreting the Holocaust”, *Journal of Social Issues*, vol. 67, No. 1 (March 2011), pp. 205–224.

⁶¹ Matt Richins and others, “Empathic responses are reduced to competitive but not non-competitive outgroups”, *Social Neuroscience*, vol. 14, No. 3 (2019), pp. 345–358; Mark Tarrant and others, “Social identity and perceptions of torture: it’s moral when we do it”, *Journal of Experimental Social Psychology*, vol. 48, No. 2 (March 2012), pp. 513–518.

⁶² Nick Haslam, “Dehumanization: an integrative review”, *Personality and Social Psychology Review*, vol. 10, No. 3 (August 2006), pp. 252–264; G. Tendayi Viki, Daniel Osgood and Sabine Phillips, “Dehumanization and self-reported proclivity to torture prisoners of war”, *Journal of Experimental Social Psychology*, vol. 49, No. 3 (May 2013), pp. 325–328; Adam Waytz and Juliana Schroeder, “Overlooking others: dehumanization by commission and omission”, *Testing, Psychometrics, Methodology in Applied Psychology*, vol. 21, No. 3 (September 2014), pp. 251–266.

⁶³ Emanuele Castano and Roger Giner-Sorolla, “Not quite human: infrahumanization in response to collective responsibility for intergroup killing”, *Journal of Personality and Social Psychology*, vol. 90, No. 5 (June 2006), pp. 804–818; Alison Sullivan and others, “The impact of unpunished hate crimes: when derogating the victim extends into derogating the group”, *Social Justice Research*, vol. 29, No. 3 (September 2016), pp. 310–330.

(b) In-group loyalty, identification and glorification

71. Even processes that foster constructive outcomes within groups, such as cooperation, loyalty, cohesion and devotion, can foster destructive outcomes between groups. Thus, alongside out-group denigration, in-group loyalty and patriotism, for instance, have been associated both with the willingness to torture terror suspects and with positive psychological outcomes following the perpetration of violent acts during war.⁶⁴ In-group glorification has also been linked to support for violent jihadism, denial of wrongdoing by the in-group and the demonization of out-group victims. When the superiority of one group is culturally, religiously or economically entrenched, societies frequently adopt widely held “hierarchy-legitimizing myths” to rationalize the mistreatment and neglect of the subordinated group.⁶⁵

(c) Discriminatory justification under fear, threat and trauma

72. Like other psychosocial dynamics, group-based discrimination is exacerbated by survival instincts that are aroused by perceived threat, trauma and fear, such that groups may become psychologically primed to fight rival groups for physical or cultural survival, potentially to the death. Accordingly, populations in a state of fear, trauma, apprehension or collective angst are particularly prone to discriminatory abuse, including through torture and ill-treatment.⁶⁶

V. Conclusions

73. In his report to the General Assembly in 2018 (A/73/207), the Special Rapporteur noted with alarm that torture and ill-treatment continued to be practised with impunity throughout the world. The stark discrepancy between the absolute and non-derogable prohibition of torture and ill-treatment and the worldwide complacency with regard to such abuse is not a singular phenomenon, but highlights a more generalized gap between normative ambition and governmental practice in the protection of human rights.

74. Seventy-five years after the establishment of the United Nations, that sobering observation exposes the systemic incapacity of contemporary governance systems to eradicate torture and ill-treatment, fulfil the promises of the Charter of the United Nations and the Universal Declaration of Human Rights, and achieve the ambitions of the 2030 Agenda for Sustainable Development.

75. The root cause of the systemic governance failure is not a lack of expertise, resources or normative consensus, nor generalized malicious intent, but lies in

⁶⁴ Winnifred Louis, Catherine Amiot and Emma Thomas, “Collective harmdoing: developing the perspective of the perpetrator”, *Peace and Conflict: Journal of Peace Psychology*, vol. 21, No. 3 (August 2015), pp. 306–312; Robert Kraft, “The good intentions of violent perpetrators: a qualitative analysis of testimony from South Africa’s truth and reconciliation commission”, *Peace and Conflict: Journal of Peace Psychology*, vol. 21, No. 3 (2015), pp. 359–377.

⁶⁵ Bertjan Doosje Doosje, Annemarie Loseman and Kees van den Bos, “Determinants of radicalization of Islamic youth in the Netherlands: personal uncertainty, perceived injustice, and perceived group threat”, *Journal of Social Issues*, vol. 69, No. 3 (September 2013), pp. 586–604; Herbert Kelman, 2005; Bernhard Leidner and others, “Ingroup-glorification, moral-disengagement, and justice in the context of collective violence”, *Personality and Social Psychology Bulletin*, vol. 36, No. 8 (August 2010), pp. 1,115–1,129.

⁶⁶ Eva Jonas and Immo Fritsche, “Destined to die but not to wage war: how existential threat can contribute to escalation or de-escalation of violent intergroup conflict”, *American Psychologist*, vol. 68, No. 7 (October 2013), pp. 543–558; Omar Shahabudin McDoom, “The psychology of threat in intergroup conflict: emotions, rationality, and opportunity in the Rwanda genocide”, *International security*, vol. 37, No. 2 (2012), pp. 119–155.

generic biopsychosocial factors that have shaped human decision-making throughout history, irrespective of national, cultural, religious or other distinctive influences.

76. Contrary to the presumptions of rationality and morality underlying modern statehood, most individual or collective decision-making: (a) remains guided by largely unconscious emotional impulses; (b) pursues perceived short-term self-interest; and (c) is rationalized in line with predominant social expectations only *ex post facto*.

77. That also applies to complex collective decision-making processes that are essential for the integrity and effectiveness of constitutional institutions and procedures, such as political elections and appointments, judicial and administrative oversight and independent media reporting.

78. Human self-interest has various distinct aspects, each of which is aimed at fulfilling basic biopsychosocial needs: (a) self-preservation (need for safety and security); (b) self-determination (need for autonomy and control); (c) self-affirmation (need for worth and dignity); (d) self-justification (need for justice); and (e) self-gratification (need for reward and stimulation).

79. When it is distorted by excessive fear, pathological dysfunction or experiences of trauma, perceived self-interest can trigger attitudes and conduct that are conducive to serious human rights violations, including torture and ill-treatment.

80. When self-interested decision-making leads to torture and ill-treatment, both perpetrators and bystanders tend to suppress the resulting moral dilemma through largely unconscious, self-deceptive patterns of “moral disengagement”, namely: (a) denial of fact (wilful ignorance); (b) denial of responsibility (diffusion or displacement of responsibility); and (c) denial of wrongfulness (trivialization, or utilitarian or discriminatory justification).

81. Narratives of moral disengagement can never justify torture or ill-treatment as a matter of law. As psychosocial patterns of self-deception, however, they severely impair the ability and willingness of political leaders, judges, officials, the media and the general public to accurately perceive and act upon allegations of torture or ill-treatment. By subtly or severely distorting perceptions of reality, moral disengagement narratives can neutralize even sophisticated normative and institutional frameworks for the prevention and prosecution of torture and ill-treatment, thus producing the current worldwide prevalence of complacency and impunity, often additionally reinforced through intimidation and reprisals.

82. In his official dialogue with States relating to specific concerns or allegations of torture or ill-treatment, the Special Rapporteur routinely encounters all of the moral disengagement patterns described in the present report. In practice, the predominant reaction pattern of States to official communications transmitted by the Special Rapporteur is denial of fact, even in the face of compelling evidence. Where the occurrence of torture or ill-treatment cannot be denied, States tend to deny either their responsibility or the wrongfulness of the alleged conduct. It is regrettable that genuine engagement in a constructive, substantive and transparent dialogue aimed at ensuring full and effective compliance with the prohibition of torture and ill-treatment remains exceptional.

83. The innate human predisposition to adopt self-deceptive patterns of denial is not a deviation, but a generic, biopsychosocial fact devoid of moral connotations. As such, it cannot be changed, but must be fully acknowledged and appropriately managed. Unless contemporary governance systems learn to effectively mitigate the corrosive effects of such patterns, there is no realistic

prospect for the worldwide eradication of torture and ill-treatment, as proclaimed in the Universal Declaration of Human Rights, or for the full realization of the Charter of the United Nations and the 2030 Agenda for Sustainable Development.

VI. Recommendations

84. With a view to achieving the ambitions of the Universal Declaration of Human Rights, including the eradication of torture and ill-treatment, the Special Rapporteur recommends that the preceding, science-based conclusions of the present report be incorporated into ongoing, policy-based global governance reform processes, including the 2030 Agenda for Sustainable Development and, most notably, its Goal 16, aiming to build “peaceful and inclusive societies” that “provide access to justice for all” and “effective, accountable and inclusive institutions at all levels”.

85. In line with contemporary scientific findings, States should acknowledge that all human beings, whether government officials, media representatives or the general public, have an innate tendency towards suppressing moral dilemmas and other unwelcome information through the largely unconscious processes of self-deception and denial.

86. Owing to the unconscious and compelling nature of such processes and their reinforcement through powerful group-based and system-justifying dynamics, which are prevalent in all cultures and all segments of society, those tendencies cannot be effectively mitigated through institutional self-control, but require systematic external oversight, both nationally and internationally, through independent monitoring mechanisms.

87. At the national level, all States should take rigorous measures towards mitigating generic patterns of denial throughout political, administrative, judicial and legislative processes of decision-making. In particular:

(a) Regarding transparency, States should abolish, in principle, any secrecy or classification of executive, administrative, judicial, or legislative proceedings, negotiations and decisions. The confidentiality of public interest information for reasons of national security, law enforcement, data protection and personal privacy should be exceptional, should be applied restrictively, should exclude any form of immunity or impunity and, in each case, should require positive justification and independent, external verification (e.g., through ombudspersons);

(b) Regarding accountability, States should guarantee prompt, independent, impartial and transparent investigations of alleged misconduct implicating any person acting on behalf of public authorities. Any misconduct of officials, including culpable failure to prevent, investigate or punish misconduct within their sphere of authority, should entail commensurate sanctions and full redress for injured parties;

(c) Regarding the media, States should ensure that the media can freely and effectively act as the “fourth estate”, empowering the public by subjecting authorities to systematic scrutiny, independent from political, economic or corporate influence;

(d) Regarding civil society, States should foster a proactive and diverse civil society and provide platforms and procedures through which the concerns voiced by human rights defenders can be effectively received and considered by State authorities;

(e) Regarding protection, States should encourage investigative journalism, whistle-blowing and independent human rights advocacy as an essential societal function aimed at preventing abuse of power and corruption, and should protect such activities from any form of reprisal, intimidation or criminalization;

(f) Regarding systemic integrity, States should abolish the currently ubiquitous intermingling of private and public interests and other conflicts of interest undermining democracy and the rule of law, including private campaign funding, parliamentary lobbying, and the large-scale privatization of essential public functions.

88. At the international level, States should fully cooperate with international mechanisms for the protection of human rights. In their dialogues with such mechanisms, States should hold themselves to the highest standards of self-scrutiny and respond to all inquiries made in the requested detail, consciously avoiding the predominant patterns of denial described in the present report and refraining from any threatening, aggressive or dismissive reactions or other actions or omissions sabotaging the integrity, independence and effectiveness of the mechanisms.
