

Migration-related torture: One of the greatest tragedies of our time.

Nils Melzer*

Without any doubt, the torture and abuse suffered by millions of migrants in all parts of the world is one of the greatest tragedies of our time. The undeniable links between irregular migration and torture are manifold and deeply troubling. Not only is the risk of torture and violence one of the most important “push-factors” causing countless people to flee their country of origin, it is also a frightening and pervasive reality of most irregular migration routes and, most shockingly, even of the treatment they receive by the very countries to which they turn for protection.

My mandate as the United Nations Special Rapporteur on Torture is to seek, receive, examine and act upon information regarding torture or other cruel, inhuman or degrading treatment or punishment. My sources of information are governments, international and civil society organizations, but also journalists, individual victims and their lawyers, doctors, relatives, and friends.

Since my appointment in 2016, one of my highest priorities has been to alert the international community as to causal connections between the policies and practices adopted by states in response to irregular migration and the staggering

numbers of victims of torture and ill-treatment among migrants. For a full year, I researched the matter, collected information and consulted with governments, international organizations, civil society groups and victims’ organizations worldwide. Although I have spent two decades working with victims of war and violence, I was left speechless by the sheer magnitude of pain and suffering arising in this context, and particularly by the widespread indifference, hostility and even deliberate cruelty with which irregular migrants are confronted in all corners of this world.

By the time I presented my report on migration-related torture to the UN Human Rights Council in March 2018, it had become evident to me that the primary cause for the massive abuse suffered by migrants worldwide—including torture, rape, enslavement, trafficking and murder—is neither migration itself, nor organized crime nor the corruption of individual officials, but the growing tendency of states to base their official migration policies and practices on deterrence, criminalization and discrimination rather than on protection and human rights.

This results in abusive practices including, for example, deliberately harsh reception conditions; forcible prevention of new arrivals; and prolonged or indefinite detention of irregular migrants, often in

*) The United Nations Special Rapporteur on Torture

Correspondence to: n.melzer@protonmail.com

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conjunction with the deliberate separation of family members. It must be particularly emphasized that migration-related detention, in and of itself, may well amount to cruel, inhuman or degrading treatment or punishment, or even torture, most notably where it is intentionally instrumentalized for the sole purpose of deterring new migrant arrivals, or where it is automatically imposed simply based on immigration status. Of course, the longer migration-related detention lasts, the worse the material conditions of detention are, and the less detained migrants can do to influence their situation, the more intense their suffering will become and, consequently, the greater the likelihood that their detention is not only arbitrary, but that it also amounts to torture or other ill-treatment.

The global scale, gravity and increasingly systematic nature of torture, ill-treatment and other serious human rights violations inflicted on irregular migrants is not only a question of state responsibility under human rights and refugee law, but also of individual accountability for crimes against humanity and, potentially, war crimes. Under international criminal law, culpable intent and complicity do not require that torture and ill-treatment be the desired outcome of a particular policy or practice. Moreover, criminal culpability is not limited to those personally committing torture and ill-treatment, but may also extend to state officials, corporate managers and other superiors and leaders responsible for policies, practices and even qualified omissions which, in the ordinary course of events, may be expected to result in the commission of such crimes.

Without any doubt, irregular migration is a complex issue influenced by numerous environmental, political, economic and social factors. But there are concrete and practical

steps that can be taken to prevent this global trend from becoming a more generalized global tragedy. In my report to the Council, I have made a number of recommendations to states with a view to preventing torture and ill-treatment in the context of irregular migration. Most importantly, states must stop basing their migration policies on deterrence, criminalization and discrimination and, instead, provide sustainable pathways for safe, orderly and regular migration based on protection and human rights.¹

Last but not least, while the legal duty to respect and ensure human rights undoubtedly rests with states, let us never forget that the ultimate responsibility for making human dignity an experiential reality for irregular migrants throughout the world lies with every single one of us: whether as professionals working with torture survivors, as activists influencing public opinion, as voters electing our political leadership, or simply as private citizens treating migrants with compassion, recognizing that they, like us, are members of the same human family.

¹ Nils Melzer (2018), UN Doc. A/HRC/37/50.