

*Note to the reader.* You may find words such as cybertorture, cyberbullying, neurotechnology, etc spelt with a hyphen (cyber-torture, cyber-bullying, etc) or even as two words. The report and other articles on which this briefing is based generally use the unhyphenated one-word form, which is therefore used in this briefing. The one general exception appears to be cyber technology (two words), so, again, we've gone with general usage on this.

## Psychological Torture and Cybertorture

When we think about torture, invariably our mind turns to physical cruelty. We all know the litany of torture methods, from the mediaeval rack to the present-day water-boarding. Deliberately inflicting pain on somebody for political ends is outlawed in most countries (although in practice, the injunction against torture is often ignored); but there is evidence that psychological torture is seriously on the increase.

The current *United Nations Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* is Nils Melzer, a Swiss human rights lawyer and professor at Glasgow University. In a recent report, he warns against the increased use of “cybertorture” – the use of the internet to target individuals remotely through “intimidation, harassment, surveillance, public shaming and defamation.”<sup>1</sup>

In his report<sup>2</sup>, he draws attention to the fact that numerous states are “investing significant resources towards developing methods of torture which can achieve purposes of coercion, intimidation, punishment, humiliation or discrimination **without causing readily identifiable physical harm or traces.**”

### What follows is a summary of his report.

For the purposes of human rights law, “psychological torture” should be interpreted to include all methods, techniques and circumstances which intend or are designed to purposefully inflict severe mental pain or suffering without relying on the effect of severe physical pain or suffering.

### The elements of psychological torture are:

- a) **Mental suffering** – this can arise because of the victim's own mental take on the stressful nature of their situation. In addition, as Melzer points out, “severe mental suffering” can be deliberately inflicted by others.
- b) **Severity of mental pain or suffering depends on a wide range of factors.** These need to be considered on a case-by-case basis. The reason for the treatment or punishment in question – for example, to extort a confession, or to extract information which may incriminate others - is also important.

c) **Powerlessness** – this refers to the victim’s inability to escape or resist the infliction of mental pain or suffering. This may, of course, be because of physical custody. It can also be brought about by enforced medication, or by denial of access to legal aid, or by serious and immediate threats, or coercion, control, mobbing, cyberbullying and persecution from which the victim cannot escape.

d) **Intentionality** – this means that the perpetrator knew that their acts or omissions would result in the infliction of severe mental pain or suffering, whether alone or in conjunction with other factors and circumstances.

e) **Purposefulness** – this is when mental pain or suffering is used to interrogate, punish, intimidate or coerce the victim. He or she may be deliberately discriminated against under such headings as “medical necessity”, “re-education”, “spiritual healing”, “conversion therapy”, or other such euphemisms.

**Psychological torture targets basic psychological needs.** The need to feel secure may be threatened by deliberately inducing fear, phobia and anxiety. The need for self-determination may be threatened by dominating the victim, or forcing them into submission. The need for dignity and identity may be attacked by, for example, humiliation, or breach of privacy, or attacks on the victim's sexual integrity. Sensory manipulation may be used to destroy the victim's ability to orientate themselves, both physically and mentally. Social and emotional rapport can be undermined by calculated isolation, exclusion and emotional manipulation. Institutional arbitrariness and persecution destroy the victim's need to feel trusted within the community.

**Torture victims are almost always exposed to both mental and physical pain or suffering.** People under such duress do not react to each act of brutality as if it were an isolated incident. Minds and bodies react over time to the summation of stresses imposed on them.

The report points out that **psychological torture occurs in a wide variety of contexts.** These include ordinary criminal investigations, police detention, “stop-and-search” operations, intelligence gathering, medical, psychiatric and social care, immigration, administrative and coercive detention; as well as in social contexts such as domestic violence, mobbing, cyberbullying and political or discriminatory persecution. *Psychological torture should be subject to the same scrutiny and guidelines as physical torture.*

An earlier report by Melzer describes in detail the psychological torture of Julian Assange, involving several states (the US, UK, Sweden and Ecuador) over an extended period. This even extended to the use of misinformation to bias members of the public against Assange - the much publicised claims of rape were entirely fabricated by the Swedish police, and the supposed victims have said so in text messages.

### **Melzer's main recommendations**

a) States should actively support the ongoing process towards developing international guidelines on investigative interviewing and associated safeguards.

b) States should adopt specific definitions, interpretations and understandings throughout their national frameworks, including in particular the training and instruction of medical, judicial, administrative, military and law enforcement personnel.

## **What's new about all this?**

Psychological torture is, of course, something we are all familiar with through films, novels, and historical documentation of victims of totalitarian regimes. (For a particular harrowing account, Vasily Grossman's "Life and Fate" describes in minute detail how a victim's mind is "changed".) The Former GDR spied on virtually the entire population, and, in addition to physical brutality and secret prisons, practised a pernicious form of psychological torture, known as *zersetzung* ("decomposition") against dissidents, which systematically destroyed people's whole lives and careers. So the concept is not new.

**What *is* new in Nils Melzer's report this time is his inclusion of a whole new category – cybertorture.** This area of concern, which he says does not seem to have received sufficient attention, covers the possible use of various forms of information and communication technology for the purposes of torture. There are aspects of cyberspace which make it highly conducive to abuse and exploitation, in particular a huge power asymmetry, virtually guaranteed anonymity, and almost complete impunity.

Cyber technology already enables both physical and psychological forms of torture, notably through the collection and transmission of surveillance information and instructions to interrogators, through the dissemination of audio or video recordings of torture and murder for the purposes of intimidation, or even through the live streaming of child sexual abuse, and increasingly also through the remote control or manipulation of stun-belts and medical implants and possibly neuro-technological devices. <sup>3</sup>

Cyber technology can also be used to inflict or contribute to severe mental suffering, for example intimidation, harassment, surveillance, public shaming and defamation, as well as appropriation, deletion or manipulation of information. The delivery of serious threats through anonymous phone calls is nothing new. But with the coming of the internet, particularly State security services have been reported to use cyber technology, both in their own territory and abroad, for the systematic surveillance of a wide range of individuals and/or for the direct interference with their unhindered access to cyber technology (cf. the disclosures in 2013 by Edward Snowden). We are also all becoming increasingly aware of the use of social media platforms and search engines for the anonymous delivery of mass-dissemination of intimidating, defamatory, and deceptive misinformation.

Individuals or groups systematically targeted by cybersurveillance and cyberharassment are generally left without any effective means of defence, escape or self-protection, thus finding themselves in a position of "powerlessness" comparable to physical custody. The victim's emotions of helplessness and vulnerability can be exacerbated by the physical absence and anonymity of the perpetrator – comparable to the effect of blind-folding or hooding during physical torture. General shame inflicted by public exposure, defamation and degradation can also be just as traumatic as physical humiliation.

Systematic, government-sponsored threats and harassment which are delivered through cyber technologies may well inflict levels of anxiety, stress, shame and guilt amounting to "severe mental suffering" as required for a finding of torture.

## Psychological torture and cybertorture are difficult issues to tackle

One reason, clearly, relates to the very reason why non-physical torture exists – ***it leaves no visible injury, so is very difficult to prove.*** Because of this, the recognition that torture can be non-physical has had the perverse consequence that “many countries deny, neglect, misinterpret or trivialise psychological torture and some have even adopted national definitions of torture which exclude mental pain or suffering.” (Melzer)

Another is that ***its existence and severity is often belittled*** - as Melzer points out, “As a general matter, psychological torture/cruel and inhuman or degrading treatment or punishment (CIDTP) tend to be trivialised as “torture light” or excluded from the definition altogether, whereas “real torture” is still predominantly understood to include the infliction of physical pain and suffering.” *This is a false distinction.* Melzer continues “the psychological and physical aspects of torture/CIDTP are strongly, and often inextricably, interconnected in various ways.”

Another problem is ***lack of definition.*** *In Brief*<sup>4</sup> points out that there is no legal definition of cyberbullying. It cites the (mis)use of mobile phones and other devices, email, networks, the use of social networking sites and the deliberate sending of viruses as forms of cyberbullying. As there is no definition of cyberbullying, it follows that there's no definition of when and how it morphs into cybertorture - when it is perpetrated by a state agency or pretended state agency, perhaps? But, then, as Melzer also points out, *many countries deny, neglect, misinterpret or trivialise psychological torture and some have even adopted national definitions of torture which exclude mental pain or suffering.*

Most major powers in the world are developing cyberwarfare capacity. Again, there is no definition of what counts as an act of war – so it's impossible to apply even the limited protection afforded by the Geneva Conventions. In an article in *The Guardian* back in May 2019<sup>5</sup>, James O'Malley pointed out that when NSO software was used to hack WhatsApp users, all signs indicated that the perpetrator was a government (no fewer than 45 governments are clients of NSO) – but it was effectively impossible to prove. Lack of definition leaves essentially a free for all - when Israeli defence forces bombed a building containing hackers they claimed to be responding to a Hamas cyberoffensive – and a very murky line indeed between cyberwarfare and cyberbullying.

## What can we do?

The report that prompted this briefing was published just before the Covid19 lockdown. For too long there has been little else in the news. So, as we begin to move back to more normal times, we need to return to the issue of non-physical torture, and to move it up the political agenda as quickly as possible.

To this end, the first important thing to do is to inform ourselves and others, and to stress that these things are real, and need to be taken seriously. Study the article in the Guardian of 21 February 2020. The documentary *Eminent Monsters* mentioned in the article and reviewed in the Guardian on 13 February, is available on Youtube, as is a short introduction by Nils Melzer. The film is not easy to watch.

By now, MPs and others will probably need reminding of the publication of Nils Melzer's report.

Having done that, urge particularly that, in order to ensure the adequate implementation of the prohibition of torture, *its interpretation needs to evolve in line with new challenges and capabilities* arising in relation to emerging technologies not only in cyberspace, but also in artificial intelligence, robotics, nano- and neurotechnology or pharmaceutical and biomedical sciences including so-called “human enhancement” and that *psychological torture should be subject to the same scrutiny and guidelines as physical torture*.

Finally, continue to be alert to the development of non-physical torture around the world - we may need to return to this and related issues in the future.

1 <https://www.theguardian.com/law/2020/feb/21/un-rapporteur-warns-of-rise-of-cybertorture-to-bypass-physical-ban>

2 <https://ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>

3 <https://www.darpa.mil/program/next-generation-nonsurgical-neurotechnology>

4 <https://www.inbrief.co.uk/offences/cyberbullying>

5 <https://www.theguardian.com/commentisfree/2019/may/15/whatsapp-cyberwarfare-geneva-conventions>

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The next Newsletter is planned for September  
The next Briefing is planned for mid-October

website:[www.q-cat.org.uk](http://www.q-cat.org.uk)