

**Statement of the Special Rapporteur on Torture, Manfred Nowak
to the 4th Session of the UN Human Rights Council, Geneva, 26 March 2007**

Mr Chairperson, Distinguished Members and Observers of the Council,

The obligation of states parties to establish universal jurisdiction according to the principle *aut dedere aut iudicare*

The major aim of the Convention against Torture is to end impunity for torture by requiring States to define torture as a specific crime in national legislation, which is subject to appropriate penalties given its gravity. Furthermore, with the aim of denying safe havens for perpetrators of torture, the Convention, for the first time in a human rights treaty, invokes the principle of universal jurisdiction as an international obligation. Sadly, almost 20 years after its entry into force, States remain extremely reluctant to exercise universal jurisdiction under article 5(2).

This was highlighted in the landmark 2006 decision of the Committee against Torture, concerning the former dictator of Chad, Hissène Habré. That torture was systematically practised under the Habré regime during the 1980s seems beyond doubt. The Committee found a violation of article 5 (2) on the ground that the Senegalese authorities failed to take the legislative measures necessary for Senegalese courts to exercise universal jurisdiction. The Committee also ruled that Senegal violated its obligations to prosecute or extradite (*aut dedere aut iudicare*), in accordance with article 7 of the Convention.

In an important development, which may prove to be a positive example to other States, President Abdoulaye Wade announced that the Senegalese Government has agreed to revise its laws to permit the trial, and to establish a governmental commission under the Minister of Justice to oversee the legal changes, make contact with Chad, create a witness protection programme and raise money to carry out the investigation and trial.

Impunity, after all, is one of the main reasons for the widespread practice of torture in all regions of the world, and universal jurisdiction is one of the most important methods of fighting impunity by ensuring that torturers find no safe haven. **I call on States parties to the Convention against Torture to make use of their rights and obligations under the Convention to exercise universal jurisdiction.**

Cooperation with regional organizations

Mr. Chairperson,

Global human rights problems can be addressed effectively only by concerted and well-coordinated cooperation among the whole array of actors involved in the realization of human rights. As one of the key mechanisms established by the United Nations to eradicate torture, with the limited means at my disposal and a mandate that covers the globe, I cannot realistically do this on my own. Governments, who are ultimately responsible for the implementation of human rights obligations, are my primary partners. I also rely upon civil society and regional organizations, which are the experts closest to the issues and can often address them with greater speed and on a more systematic basis. Indeed anti-torture instruments and mechanisms established by regional organizations are often much more significant, timely and responsive, for example by means of judicial decisions, or systems for periodic monitoring. I point to examples, such as the Special Rapporteur on the rights of persons deprived of their liberty of the Inter-American Commission on Human Rights; the Special Rapporteur on prisons and conditions of detention in Africa, and the Follow-up Committee of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines) of the African Commission on Human and Peoples' Rights;

and the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

Cooperation of the mandate with European regional organizations such as the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe is well established. I have also sought to strengthen ties with the Organization of American States. In June 2006, in Washington, D.C., I held meetings with the Secretariat of the Inter-American Commission on Human Rights and judges of the Inter-American Court of Human Rights. I intend to continue developing this partnership, and will meet in May with OAS officials, the OAS Committee on Political and Juridical Affairs, and the Inter-American Commission's Special Rapporteur on persons deprived of their liberty, among others.

In November 2006, at the invitation of the African Union, I participated for the first time in a session of the African Commission on Human and Peoples' Rights in Banjul. I held consultations with the commissioners, with the Special Rapporteur on prisons and conditions of detention in Africa, the Follow-up Committee of the Robben Island Guidelines, as well as representatives of civil society. I stated to the plenary of the Commission that the issue of torture in Africa and the plight of its victims deserved greater attention and prominence than they had received thus far. I commend the commissioners for their outstanding contributions to eradicating torture in Africa despite the extreme constraints in resources they face, namely financial, material and human resources. I pledge my full cooperation and assistance in their work, including through holding regular exchanges on substantive issues and methods of work, participation in training and seminars, regular exchange of documentation, and giving consideration to carrying out joint missions to African countries.

The adoption by the Commission on Human Rights of a specific resolution (2005/73) on regional arrangements for the promotion and protection of human rights is recognition by States of the importance of such cooperation. I concur fully that regional arrangements play an important role in promoting and protecting human rights, and progress in this respect depends primarily on efforts made at the national and local levels. Only through the benefit of cooperation with regional human rights organizations can the mandate of the UN Special Rapporteur expect to make a real contribution to the elimination of torture and ill-treatment. **I encourage the Human Rights Council to invite the United Nations system to continue to provide concrete support (e.g. in terms of technical advice, capacity-building, or material support to carry out core activities) to regional arrangements to combat torture, such as the Special Rapporteur on prisons and conditions of detention in Africa and the Follow-up Committee of the Robben Island Guidelines of the African Commission on Human and Peoples' Rights.**

The right of victims of torture to a remedy and reparation

Mr. Chairperson,

Article 14 of the Convention against Torture specifically provides for the right of victims to a remedy and should be interpreted in light of the 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Reparation can include criminal prosecutions of perpetrators, guarantees of non-repetition, and monetary compensation.

Equally important, given that victims of torture often suffer from long-term physical injuries and post-traumatic stress disorders, is reparation in the form of long-term medical, psychological, and social rehabilitation. These services, which are often provided by specialized torture rehabilitation centres, are fairly cost intensive. I pay tribute to those civil society organizations promoting and supporting the rehabilitation of torture victims across the globe. I warmly welcome the support provided by Governments to such rehabilitation centres. The European Union is currently the biggest donor in this respect, with a contribution of US\$ 29 million. This is followed by the United Nations Voluntary Fund for Victims of Torture, which provided US\$ 17 million for the period of 2005-2006, the largest contributions coming from the United States of America, Denmark and the Netherlands.

While congratulating these Governments for their generous contributions, I would like to remind States that article 14 generates an obligation primarily for the State that has acted wrongfully. **I propose that consideration be given to devising mechanisms to hold accountable those States in which torture is systematic or widespread in order that they may live up to their obligation under article 14. For example, such States might be required to contribute adequate funds to the United Nations Voluntary Fund for Victims of Torture.**

Country visits

Mr. Chairperson,

Allow me to update the Council on my activities related to country visits.

Russian Federation

As I indicated in my previous presentations to the Council, as well as to the General Assembly, I was scheduled to undertake a visit in October 2006 to the Russian Federation, with a particular focus on the North Caucasus Republics of Chechnya, Ingushetia, North Ossetia and Kabardino-Balkaria. I was compelled to announce the postponement of the visit because the Government maintained that certain elements of the terms of reference for the visit would contravene Russian federal legislation, particularly with respect to carrying out unannounced visits to places of detention and holding private interviews with detainees.

I have expressed to the Government that in my analysis the terms of reference would not contravene Russian federal legislation, and that the visit could be carried out as planned in full compliance therewith, as was the case of similar visits by the CPT, the Council of Europe Commissioner for Human Rights, and the UN Special Rapporteur on violence against women. Moreover, the Government argued that the terms of reference are of a non-binding nature, and have never been either discussed or agreed upon in an intergovernmental forum. I must emphasise that the right to carry out unannounced visits or hold private interviews with detainees are not only fundamental and necessary but common sense, especially for the investigation of torture and ill-treatment. For a Special Rapporteur on the question of torture to agree to a fact-finding visit to a country under such restrictions would only undermine the credibility and objectivity of his findings, his impartiality and independence, and give legitimacy to claims that double standards were being applied with respect to different Governments. This was precisely the reason for the cancellation of the visit to Guantánamo Bay.

On 13 March, the CPT issued a rare public statement, where it expressed that it remains deeply concerned that in the Chechen Republic resort to torture and other forms of ill-treatment by members of law enforcement agencies and security forces continues, as does the related practice of unlawful detentions. The CPT stated that it is clear that investigations into cases involving allegations of ill-treatment or unlawful detention are still rarely carried out in an effective manner, which can only contribute to a climate of impunity. To quote the CPT, "Although displaying an open attitude on subsidiary matters related to conditions of detention, the Russian authorities consistently refuse to engage in a meaningful manner with the CPT on core issues. This can only be qualified as a failure to cooperate."

As a member of the United Nations Human Rights Council, and in view of the pledge it gave to cooperate with the special procedures, I call upon the Russian Federation to demonstrate, by example, its commitment to human rights. I appeal to the Government, in accordance with its invitation of 22 May 2006, to allow me to carry out an objective visit to the Russian Federation, and the North Caucasus in particular, to investigate the situation of torture and ill-treatment, in line with the standard terms of reference of UN special procedures, with a view to developing a long-term process of cooperation to eradicate these practices.

Jordan

I undertook a visit to Jordan from 25 to 29 June 2006 and draw your attention to the full report, including the findings and recommendations, contained in addendum 3. I express my appreciation to the Government for the full cooperation it extended to me.

Consistent and credible allegations of torture and ill-treatment were brought to my attention, particularly with respect to the General Intelligence Directorate (GID), and within the Criminal Investigations Department (CID). On the basis of all the evidence gathered, including the consistency and credibility of the allegations, the denial of the possibility of assessing these allegations by means of private interviews with detainees in the GID, taking into account the deliberate attempts by the officials to obstruct my work in the CID and the forensic evidence obtained, I confirm that the practice of torture is routine in the GID and the CID. With respect to conditions of detention in prisons and pretrial detention centres, I found that the Al-Jafr Correction and Rehabilitation Centre was in fact a punishment centre, where detainees were routinely beaten and subjected to corporal punishment amounting to torture. The conditions in other Correction and Rehabilitation Centres were found to be more humane, although I received credible reports of regular beatings and other forms of corporal punishment by prison officials there. No allegations of ill-treatment were received in the Juweidah (Female) Correction and Rehabilitation Centre, although I am critical of the policy of depriving females of their liberty by holding them in "protective" detention, under the provisions of the 1954 Crime Prevention Law, because they are at risk of becoming victims of honour crimes.

The practice of torture persists in Jordan because of a lack of awareness of the problem and because of institutionalized impunity. The heads of the security forces and of the detention facilities visited denied any knowledge of torture, despite having been presented with substantiated allegations. Moreover, in practice the provisions and safeguards laid out in Jordanian law to combat torture and ill-treatment are meaningless because the security services are effectively shielded from independent and public criminal prosecution and judicial scrutiny. The fact that no official has ever been prosecuted for torture under article 208 of the Penal Code underlines this conclusion.

In view of the stated commitment of the Government to human rights at the highest levels, I am confident that every effort will be made to implement the recommendations in my report. To this end, I welcome the recent closure of the Al-Jafr Correction and Rehabilitation Centre in December of last year.

Paraguay

I carried out a visit to Paraguay from 22 to 29 November 2006, and the final report should be available to a future Council session. I express my gratitude to the Government for extending its full cooperation to me. Recognizing that Paraguay has come a long way in overcoming the legacy of the military dictatorship under General Stroessner, I was especially impressed by the efforts of the Truth and Justice Commission to guarantee victims' right to know about the gross and systematic violations committed by the former regime, as well as its attempts to bring those responsible to justice. I welcome the fact that the Government is among the first countries to have ratified the Optional Protocol to the Convention against Torture.

On the basis of a wide array of information, including meetings with government officials and representatives of non-governmental organizations, on-site inspections of detention facilities and interviews with detainees, I concluded that torture is still widely practised in Paraguay, primarily during the first days of police custody as a means of obtaining confessions; and facilitated by impunity. The situation of torture and ill-treatment in prisons, however, has improved greatly in recent years, but the excessive use of isolation cells to punish detainees and continuing allegations of beatings by prison guards were of concern.

In most of the prisons visited I found overcrowding, convicted and remand prisoners mixed together, and a high incidence of inter-prisoner violence. The provision of adequate food and health care was

poor, as were opportunities for education, leisure and rehabilitation activities. Low salaries of prison staff were found to be a contributing factor in the endemic corruption in the prison system. The older facilities are especially deplorable as regards the conditions of cells, hygiene and the provision of essential items, such as adequate clothing, food and bedding.

I am very much assured by the spirit of cooperation extended to me by the Government that every effort will be made to implement my recommendations.

Nigeria

I was invited by the Government of Nigeria to undertake a visit in March 2007. The visit included stops in Abuja, Lagos, Port Harcourt and Kaduna. I express my appreciation to the Government for the cooperation it extended to me. I welcome Nigeria's commitment to promoting respect for human rights, as demonstrated by, among other things, its record of cooperation with international human rights mechanisms and organizations. I appreciate the challenges the State faces given the sheer size and diversity of the population, including ethno-linguistic and religious groups, the plurality of legal systems, the nature of the federal structure, the high level of crime, widespread poverty (despite the potential enormous wealth from oil revenues), and the conflict in the Niger Delta.

On the basis of my analysis of the legal system, visits to detention facilities, interviews with detainees, the support of forensic medical evidence, and interviews with Government officials, lawyers and representatives of NGOs, I concluded that torture and ill-treatment is widespread in police custody; particularly systemic in the Criminal Investigation Departments.

The conditions of detention in police cells visited were appalling. All the prisons visited were characterized by severe overcrowding, consisting of an inmate population which is typically double or triple the actual capacity of the facility. The vast majority of the prison population is held awaiting-trial (in pre-trial detention) or held without charge for lengthy periods, as long as ten years. However, female prisoners are provided with considerably better facilities.

My findings are hardly a revelation as many credible human rights organizations, as well as United Nations human rights mechanisms have documented and concluded that torture is widespread in the country and that the conditions in detention are unacceptable. Indeed, in August 2005, President Obasanjo acknowledged the severity of the problem of torture in the country, and he reiterated this in my meeting with him. The invitation of the Government to the Special Rapporteur is yet another example of the willingness of Nigeria to open itself up to independent and objective scrutiny of its human rights situation, and a reaffirmation of its commitment to cooperate with the international community in the area of human rights. From the highest levels, from the openness and frank discussions I held, and the level of cooperation that was extended to me, I am assured that the Government is committed to take decisive steps, with the assistance of the international community, to implement my recommendations aimed at the eradication of torture and ill-treatment. I stand ready to assist in any way I can.

Upcoming visits

I have the pleasure of reporting to the Council on my upcoming country visits. My mission to Togo is expected to take place from 11 to 17 April 2007. My mission to Sri Lanka, previously scheduled for the beginning of this year, is now expected to take place in the first week of October. My visit to Indonesia is expected to take place from 10 to 25 November 2007. I commend those States that have invited me.

As I have stated since I assumed the mandate, the aim of carrying out country visits is to see first-hand what the true practice and situation of torture and ill-treatment is; to describe the situation in a frank, objective and transparent way. Often this makes Governments defensive because the topic is understandably sensitive and emotive. However, Governments need to step up and be courageous in embracing efforts to eradicate torture. In simple terms, one could characterize country visits as needs

assessment missions; to identify gaps as well as acknowledge positive measures, to recommend ways to improve the situation, and to initiate a process of sustained constructive cooperation with the Government together with the international community and civil society in order to eradicate torture and ill-treatment. I appeal to those countries that I have requested to visit to extend me invitations.

Follow-up to country reports

Mr. Chairperson,

More challenging than carrying out a visit itself, is what happens after a report is published. The challenge is to seize upon and maintain the interest generated by the visit, and to ensure that the recommendations remain on the Government agenda. In this regard, I regularly request Governments of countries to which visits have been carried out to share information on the steps taken to implement the recommendations, and any constraints that may prevent their implementation. Information from NGOs and other interested parties regarding measures taken in follow up to his recommendations is also requested. I regret that no information on follow-up has been received from the Governments of Kenya, Mongolia, and Pakistan.

Moreover, I regret that no developments have been forthcoming since the joint report on the situation of detainees in Guantanamo Bay was presented by the five mandates of the Human Rights Council, particularly with respect to the call for the closure of the detention facilities there.

I am grateful for Governments, such as Georgia, Nepal and China for the detailed information on steps they are taking to implement my recommendations. With respect to the allegations of organ-harvesting in China, I appreciate the responses to the questions I have raised in my letters of August 2006 and January 2007. As the latest reply was received only last week and is still in the process of being translated, I have not yet had the opportunity to consider it.

OPCAT

Mr. Chairperson,

I cannot conclude my presentation without a mention of the Optional Protocol to the Convention against Torture and its Sub-Committee. In February, I had the honour to participate in the Sub-Committee's inaugural session, where the members and I discussed working methodologies, among other things. I look forward to regular exchanges with this important body. At the start of my mission to Paraguay, I had participated in a highly constructive workshop on OPCAT organized by the Government of Paraguay together with the Association for the Prevention of Torture and a Paraguay-based NGO coalition, CODEHUPY. I consider this exercise to be a best-practice and look forward to including similar activities in future missions.

As the Sub-Committee is expected to grow from ten to 25 members as the number of ratifications reaches 50, I appeal to States to ensure the Sub-Committee is adequately resourced to carry out its work effectively. As one of the most exciting and important mechanisms established to prevent torture and ill-treatment world-wide, I again appeal to States to ratify the Optional Protocol and establish independent and effective national preventive mechanisms.

Mr Chairperson, Distinguished Members and Observers of the Council, I thank you for your attention, and look forward to a fruitful interactive dialogue.
