



International Service for Human Rights

The Reports in Short

ISHR's summaries of documents for 4th session
of the Human Rights Council

Reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment¹

Mandate Holder

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Mandate

The mandate requires communication with States with regard to allegations of torture and to undertake fact-finding missions to see first-hand the true practice and situation of torture and ill treatment. The mandate covers all countries, irrespective of whether they have ratified the *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (the Convention). Apart from investigations of torture, the mandate relates to issues such as legislative, administrative or judicial measures relating to torture; practices of extradition; jurisdiction on questions of torture; education and training of law enforcement personnel, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment; and the protection of victims and witnesses of torture.

Activities

- Annual report;
- Communications with Governments;
- Mission to Georgia;
- Mission to Jordan;
- Mission to Paraguay;
- Mission to Sri Lanka.

Annual Report²

Summary and Key Conclusions:

Activities of the Special Rapporteur

- The report focuses on activities between August and December 2006 as the activities of January to July 2006 are covered in document A/61/259.
- During the period of 16 December 2005 – 15 December 2006, the Special Rapporteur sent 79 letters of allegations of torture to 35 Governments and 157 urgent appeals to 60

¹ Summary prepared by Hannah Klein, Intern, ISHR, supervised and edited by

² A/HRC/4/33, 15 January 2007

Governments on behalf of persons who might be at risk of torture or other forms of ill-treatment.

- In addition to the country missions, the Special Rapporteur also met with Iraqi torture victims, NGOs from different regions of Iraq and representatives of the United Nations Assistance Mission in Iraq (UNAMI). The Special Rapporteur expressed his concern about the dire situation of human rights in Iraq, particularly concerning allegations of torture. He has reaffirmed his wish to carry out a visit to Iraq in the future.
- The Special Rapporteur was due to visit the Russian Federation from 9 to 20 October. However, at a very late stage in preparations, the Government informed him that certain terms of reference for the visit would contravene Russian Federal legislation. After extended negotiations between the Special Rapporteur and the Government, the visit was cancelled only five days before it was due to begin.

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

- The Special Rapporteur devotes a substantial part of his annual report to this discussion. He notes that the Convention goes beyond traditional principles of territorial and national jurisdiction, and is the first human rights treaty to apply a principle of universal jurisdiction. However, he observes that most States remain extremely reluctant to meet these obligations.
- The Special Rapporteur emphasises that States have a legal obligation to take the necessary legislative, executive and judicial measures to establish universal jurisdiction over torture, without depending on the prior existence of a request for extradition.³
- To illustrate this point, the Special Rapporteur looks at the case of Hissène Habré, the former dictator of Chad. In this case, Senegalese authorities were found to have violated Article 5 (2) of the Convention by failing to take the legislative measures necessary to establish the legal possibility for Senegalese courts to exercise universal jurisdiction.⁴

Cooperation with Regional Organisations

- The Special Rapporteur discusses how the eradication of torture depends on the work of civil society and regional organisations, which are often closest to the issues and can address them with greater speed and on a more systematic basis.
- He notes particularly the importance of cooperation with organisations such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

The right of victims of torture to a remedy and reparation

- The Special Rapporteur highlights Article 14 of the Convention, which obliges States to secure the right of victims to a remedy. He notes it should be interpreted in light of the 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. To illustrate this, he notes the example of *Guridi v. Spain*.⁵
- He goes on to explore the meaning of remedy and notes that victims of torture are not primarily interested in monetary compensation, but that a full and impartial investigation of the truth and the recognition of the facts, together with an apology, often provide more satisfaction to the victim than payment of money. He also supports work by governmental and non-governmental organisations to establish rehabilitation centres for victims of torture.

³ See H.J. Burgers and H. Danelius, *United Nations Convention Against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* (Kluwer, 1988), pp. 57-65, 72-73 and 78-80.

⁴ See e.g. Reed Brody, "The Prosecution of Hissène Habré – An 'African Pinochet'", *new England Law Review*, vol. 35 (2001), p. 321.

⁵ Communication No. 212/2002 (CAT/C/D/212/2002).

Key recommendations:

- The Special Rapporteur calls on States Parties to the Convention against Torture to make use of their rights and obligations under the Convention to exercise universal jurisdiction.
- The Special Rapporteur encourages the Human Rights Council to specify recognition of the importance of regional cooperation with the mandate on torture in its future resolutions on torture and other cruel, inhuman or degrading treatment or punishment. He also encourages the Human Rights Council to invite the United Nations system to continue to provide support to regional arrangements to combat torture.
- Consideration should be given to devising mechanisms to hold accountable those States in which torture is systematic and widespread in order that they may live up to their obligation under Article 14.

Mission to Jordan

Scope

The mission took place from 25–29 June 2006. The Special Rapporteur undertook a thorough analysis of the legal system; visited detention facilities; interviewed detainees; examined forensic medical evidence; and undertook interviews with Government officials, lawyers, the diplomatic corps in Jordan, representatives of the International Committee of the Red Cross and representatives of national NGOs.

Summary and key conclusions:

- Although in general the Special Rapporteur was pleased with the cooperation of the Jordanian authorities, he noted two regrettable exceptions to this. During his visit to the General Intelligence Directorate (GID), he was denied the right to speak to detainees in private, and during his visit to the Public Security Directorate Criminal Investigation Department (CID), the authorities attempted to obstruct his work and hide evidence. These incidents constituted clear breaches of the Terms of Reference for the visit that were accepted by the Government.
- In his analysis of the Jordanian legal system, the Special Rapporteur notes domestic and international provisions that outlaw torture and ill-treatment in Jordan.⁶
- Although the Special Rapporteur has received few allegations of torture and ill-treatment in Jordan, he believes this may reflect lack of awareness that it is prohibited and an implicit societal tolerance for violence against alleged criminal suspects and convicts.
- However, the Special Rapporteur became aware of consistent and credible allegations of torture and ill treatment, with respect to both counter-terrorism investigations conducted by the GID and routine criminal investigations conducted by the CID.
- With respect to conditions of detention in prisons and pre-trial detention centres, the Special Rapporteur found that the Al-Jafr Correction and Rehabilitation Centre was in fact a punishment centre, where detainees were routinely beaten and subjected to humiliation and corporal punishment amounting to torture. Although conditions in other Correction and Rehabilitation Centres were found to be more humane, the Special Rapporteur continued to receive credible reports of regular beatings and other forms of corporal punishment by prison officials there. Although there were no allegations of ill-treatment in the Juwiedah (Female) Correction and Rehabilitation Centre, the Special Rapporteur remained critical of the policy of holding women in “protective” detention for as long as 14 years because they are at risk of becoming victims of honour crimes.

⁶ Jordan acceded to CAT in 1991 and it became a binding part of the domestic law on 15 June 2006. Also, see art. 208 of the Jordanian Penal Code, art. 8 of the Constitution, art. 159 of the Code of Criminal Procedure.

- The Special Rapporteur concludes that the practice of torture persists in Jordan because of a lack of awareness of the problem and because of institutionalised impunity. The heads of security forces and of all the detention facilities visited by the Special Rapporteur denied any knowledge of torture. The security forces are shielded from independent and public criminal prosecution and judicial scrutiny. No official has ever been prosecuted for torture under Article 208 of the Jordanian Penal Code.

Key recommendations:

- The Special Rapporteur made a number of recommendations aimed at eliminating the **culture of impunity**. These included incorporating the absolute prohibition of torture into the constitution; creating an effective and independent complaints system for torture and abuse; and guaranteeing the right to legal counsel from the moment of arrest.
- In order to improve the **conditions of detention**, the Special Rapporteur recommended measures including the separation of pre-trial and convicted prisoners, and the transfer to victim shelters of females detained for being at risk of becoming victims of honour crimes. The Special Rapporteur also specifically recommended the closure of the Al-Jafr Correction and Rehabilitation Centre, and his annual report indicates that this recommendation has already been implemented.
- With the aim of **preventing torture**, the Special Rapporteur made recommendations including the ratification of the Optional Protocol to the Convention against Torture.
- The Special Rapporteur recommended that the relevant **international organisations** be requested to provide assistance in the follow-up to these recommendations.

[The reports of the Special Rapporteur's visits to Georgia, Paraguay and Sri Lanka were not available at the time of publication]