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Reports of the Special Rapporteur on the independence of judges and lawyers[1]

Mandate holder

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Mandate

The mandate was established in 1994[2] to inquire into any substantial allegations transmitted; to identify and record not only attacks on the independence of the judiciary, lawyers and court officials but also progress achieved in protecting and enhancing their independence. The Special Rapporteur makes concrete recommendations; studies, for the purpose of making proposals, important and topical questions of principle with a view to protecting and enhancing the independence of the judiciary and lawyers; and provides advisory services or technical assistance when they are requested by the State concerned. The Special Rapporteur acts on information submitted to his attention regarding alleged violations regarding the independence and impartiality of the judiciary and the independence of the legal profession by sending allegation letters and urgent appeals to concerned Governments to clarify and/or bring to their attention these cases. The Special Rapporteur also conducts country visits upon the invitation of the Government. The terms of reference of the mandate include the structural and functional aspects of the judiciary and cover both civil and military justice, ordinary and exceptional jurisdictions and developments related to the International Criminal Court. The terms of reference have also been extended to other issues such as the right to truth, transitional justice and the problems posed by terrorism in relation to the administration of justice.

Activities

- Annual report;
- The Special Rapporteur sent 69 urgent appeals, 16 letters of allegation, to which 40 answers were received. The Special Rapporteur also issued 13 press releases;
- Missions to Ecuador from 13 to 17 March 2005, from 11 to 15 July 2005 and on 30 November;
- Missions to Kyrgyzstan from 18 to 22 September 2005 and on 1 October 2005;
- Joint preliminary report on the applicability of international human rights law to the persons held at the detention facilities in Guantánamo Bay, Cuba;
- Mission to Tajikistan from 23 to 30 September 2005.

Annual Report[3]

Scope

The report describes the activities of the Special Rapporteur in 2005 and reviews thematic areas such as administration to justice and the right to truth, justice in transitional situations and the Iraqi Special Tribunal.

Summary and key conclusions

[1] Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.
[2] Commission on Human Rights *Resolution 1994/41.*
[3] E/CN.4/2006/52, 23 January 2006.

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The Special Rapporteur emphasised the broadness of the mandate, encompassing the structural and functional aspects of the judiciary, the broader institutional context and various factors impacting the functioning of the judiciary.

The right to truth:

- The right to truth has been identified both in international humanitarian and human rights law and this evolving jurisprudence recognises the right to truth as an international norm of ***jus cogens***;
- The right to truth is approached both as an independent right as well as a **means of achieving the right to justice**. Indeed, the right to justice plays an important part in the implementation of the right to truth by ensuring knowledge of the facts through the action of the judicial authorities. The right to justice in turn implies the right to an effective remedy. Truth is therefore both a requisite for determining responsibilities and the first step in the process of reparation. As a result, the independent and impartial administration of justice is an extremely valuable tool for achieving the right to truth;
- The right to truth implies more than the right to justice, since it includes a duty of memory on the part of the State, confirming the social and collective dimension of the right to truth;
- The right to truth is not the same as **the right to be informed** as these freedoms may be subjected to restrictions, while the right to truth is **non-derogable**;
- **Both victims and their relatives can exercise the right to truth**. At both the national and international level, actors who in the past were not entitled to lodge complaint can now do so based on the increasing recognition that gross human rights violations are breaches of the public order that affect society as a whole;
- Specific judicial mechanisms relating to the right to truth, such as truth commissions should **complement the justice system** and in no way substitute States' obligations to bring those responsible for human rights violations to trial.

Justice in periods of transition:

- The notion of transitional justice is very broad, but three main non-exhaustive categories can be identified:
  - States that have or have had an institutional system based on the division of powers, which has been seriously affected through various circumstances;
  - States that have emerged from a situation of authoritarian government but in whose traditional institutional model the division of powers was never clearly practiced;
  - Countries where the State is practically non-existent or has been largely destroyed.
- These transition processes have in common the **central** and **leading role of justice** as the keystone of the construction and reconstruction of a country's institutions and as a precondition for lasting peace;
- Another common feature is the need to **restore public trust in the justice system**. This can be done through three steps: removing the magistrates and judicial staff who were involved in the former system; protecting magistrates from arbitrary interference; and ensuring that the magistracy is made up a homogenous body of proven integrity and irreproachable conduct;
- The task of **judicial renewal** should be approached with due regard for the *Basic Principles on the independence of the judiciary*. Among the two major measures available, review or reassignment, the Special Rapporteur privileges **review**, as it implies a case by case analysis.

The Iraqi Special Tribunal:

- The Special Rapporteur has already expressed his **reservations** regarding the legitimacy of the tribunal, its limited competence in terms of people and time and the breach of international human rights principles and standards to which it gives rise. Further objections include the possibility that the death penalty may be applied and the **terrible conditions** in which the trial has been taking place. The level of violence is such that one of the judges, five candidates for the post, as well as two defence lawyers have been assassinated;
- These events coupled with protests of non-Iraqi lawyers and pressure for the trial to be removed from Iraq led to the temporary suspension of the trial and the possibility that it might be continued behind closed doors.

<u>Key recommendations</u>

- The Human Rights Council should **deal with the right to truth separately**, study it in more detail and develop its potential as a tool for combating impunity;
- On a national level, official **cooperation mechanisms** should be established **between truth commissions** and **tribunals**;
- States and international organisations should **extend procedural legitimacy,** in cases involving the right to truth, to all persons and organisations that have a legitimate interest;

- International organisations should facilitate the contribution of **international associations of judges and magistrates** when dealing with the specific problems of magistrates and judicial staff;
- The special rapporteurs, the OHCHR, and interested international actors should **coordinate to promote the consolidation of institutions and governance** in individual countries;
- The **trial of Saddam Hussein** and his main collaborators should be transferred to an international tribunal with UN cooperation.

Mission to Kyrgyzstan[4]

Scope

The Special Rapporteur visited Kyrgyzstan from 18 to 22 September 2005 and on 1 October 2005. The Special Rapporteur consulted with government officials and met with members of the legal community, representatives of non-governmental organisations, the UN Resident Coordinator, a number of UN specialised agencies, representatives from international organisations and national cooperation agencies. The report aims to provide an overview of the judicial system and the challenges facing the main actors in the administration of justice.

Summary and key conclusions

Kyrgyzstan is going through an important period of political transition following the ousting of the President during the "Tulip Revolution" in March 2005 and the consequent establishment of the Constitutional Assembly. In that context, Kyrgyzstan has undertaken a **process of important legislative reform** concerning the Constitution, the criminal code and the criminal procedure code, including the possibility of transferring the power to issue warrants to the judiciary; allowing for independent budgetary control by the judiciary; a moratorium on the death penalty; and the introduction of system of juries or lay assessors to participate in trials. It has also ratified major international human rights treaties.

While there have been a number of efforts to improve the justice sector, there is a continuing **lack of trust** in the judicial system, and the **judiciary still does not operate as a fully independent institution**. The **right to defence** for example is compromised by a shortage of qualified lawyers and the fact that some lawyers are vulnerable to influences because they depend on investigators to take on cases. The functioning of **the bar** is also weakened by the continuing control by the executive branch over admissions and disciplinary procedures. The procedures relating to appointment, length of tenure, reappointment and dismissal also prevent the judiciary from operating in a fully independent manner and there is widespread corruption amongst judges, fostered to some degree by the low level of salaries.

The principle of **equality of arms** is also undermined by the extremely dominant role played by prosecutors in the administration of justice through their supervisory powers and disproportionate influence over pre-trial and trial stages of judicial proceedings.

Key recommendations

- The legislative process must be complemented by the **political will** to ensure that legislation relevant to the independence of judges and lawyers is fully implemented. The new leadership should therefore firmly pursue and consolidate the ongoing reform process and ensure its inclusive impact, allowing for broad and adequate consultation;
- **Constitutional amendments endangering the independence of the judiciary** should be corrected;
- The constitutional reform process should urgently address the **lack of trust** of the population in the judicial system through a **thorough judicial reform process**;
- The conduct of judicial proceedings should conform to the **principle of equality of arms**, notably by improving the legal aid system; ensuring that evidence obtained by torture is not relied upon; and reducing the dominant role of the prosecutor;
- **The judiciary must be significantly strengthened** by requiring that judicial candidates have a high level of relevant professional experience; using a transparent and objective selection procedure; and rationalising the current provisions on judicial ethics;
- **The bar should be strengthened** notably by ensuring the quality and consistency of legal education; establishing a competent body responsible for issuing licenses; and introducing a unified code of professional ethics;

[4] E/CN.4/2006/52/Add.3, 30 December 2005.

- **The court system** and **other relevant institutions**, such as the Ombudsman, **should be strengthened** and provided with appropriate material resources;
- The international community should support the Government in the reform efforts and in that respect the Special Rapporteur supports the UN Country Team's effort to hire a human rights adviser.

Mission to Tajikistan[5]

Scope

The Special Rapporteur visited Tajikistan from 23 to 30 September 2005. He held in-depth discussions with government officials and met with judicial and other officers, representatives of local non-governmental organisations, the Representative of the Secretary-General to Tajikistan, the Resident Coordinator and representatives from international organisations and national cooperation agencies.

Summary and key conclusions

Two transitions have recently taken place in Tajikistan, from an authoritarian system to an independent State, and another from civil war to stability. In this context, Tajikistan has undertaken a series of **significant reforms affecting the judiciary**, including the introduction of a moratorium on the death penalty; the adoption of new civil and criminal codes; the extensions of judges' tenures; the development of an administrative codex; and the ratification of all the core international human rights treaties. Despite these developments, there are still some **issues of concerns**, such as the right to and access to independent legal aid, which is obstructed by the lack of constitutional provision guaranteeing free legal assistance, the fact that evidence obtained in violation of the law, including by torture and ill-treatment, is still used as evidence, and the lack of a separate juvenile justice system.

The most concerning issue is the "backwards reform" increasing the **role** and **powers of the prosecutor**, manifested particularly in the recently adopted Constitutional Law on the Prosecutor's Office[6]. The overarching role of the prosecutor threatens the separation of powers, the equality of arms, and the right to defence. In a country struggling with high levels of poverty and corruption, it also represents a major risk for democracy and impedes reform endeavours towards an effective and independently functioning judiciary.

Judges are often prevented from formulating truly independent judgements, not only because of the prosecutor's overarching role in judicial proceedings, but also because of the biased use of the charge of corruption, facilitated by the dominant role of the prosecutor in the fight against corruption. The independence of the judiciary is also undermined by the executive branch's influence on the selection process for judges, its control of the judiciary's budget and rampant corruption. The weakness in the judiciary are further aggravated by the lack of appropriate training on international standards governing the judiciary's independence. **Lawyers** are rendered vulnerable by the lack of a single, self-governed and independent body administering all issues related to the bar.

Key recommendations

- Legislation should be brought in compliance with international standards governing the independence of the judiciary, notably the procedural code and the administrative codex;
- Adequate legal amendments should be introduced to ensure that **evidence obtained through torture** or cruel, inhuman or degrading treatment or duress is never admissible in trials;
- The Constitutional Law on the Prosecutor's Office and the Criminal Procedural Code should be urgently amended to bring the power of the **Prosecutor's Office** into compliance with international standards;
- The **institutional structures** and **mechanisms guaranteeing the independence of the judiciary should be strengthened**, notably by entrusting the judiciary with the administration of its own budget; progressively extending the tenure of judges; and providing better material support to judges;
- A **single**, **self-governed** and **independent body** administering all issues related to **the bar** should be established to address the problem of the weak role of lawyers;
- **National institutions** and **mechanisms should be strengthened** notably by establishing an Ombudsman's office; empowering the Constitutional Court to consider individual complaints on the Constitution; and elaborating an effective structure for the provision of free legal assistance;

[5] E/CN.4/2006/52/Add.4, 30 December 2005.
[6] Pp.16-17.

- More efforts have to be made in the area of **training**, **continuing legal education** and the **availability of legal information material**, notably by making training on international standards mandatory prior to assuming duties as a judge;
- The overall responsibility for the **fight against corruption** should be entrusted to an independent body.
- Tajikistan urgently needs to develop a **juvenile justice system** conforming to international norms;
- The international community should continue and strengthen its support to the major reforms needed.

Follow-up mission to Ecuador[7]

Scope

The report traces developments in Ecuador from the institutional crisis caused by the unconstitutional dismissal of the members of the Constitutional Court, the Supreme Electoral Court and the Supreme Court up to the establishment of a new Supreme Court on 30 November 2005. It describes the action taken by the Special Rapporteur and by other national and international actors in connection with the judicial and institutional crisis experienced by Ecuador. It covers the period from November 2004 to November 2005, during which the Special Rapporteur undertook two missions to Ecuador, one in March 2005[8] and another from 11 to 15 July 2005.

Summary and key conclusions

In November and December 2004, members of the Constitutional Court, the Supreme Electoral Court and the Supreme Court were unconstitutionally dismissed. The new Supreme Court declared that proceedings against two former Presidents and a former Vice-President were null and void, aggravating the social and political tensions in the country. In December 2004, the National Congress reversed the resolution by which it had illegally appointed the members of the new Supreme Court, but did not order the reinstatement of the members of the previous Court. In May 2005, the National Congress adopted a draft reform of the Law on the Organisation of the Judiciary in order to pave the way for the restructuring of the Supreme Court.

- In accordance with the Special Rapporteur's recommendations, a **Qualifications Committee** was created under the Law on the Organisation of the Judiciary. The committee selected new judges of the Supreme Court in a transparent manner, with public oversight, under the supervision of international and national bodies (the UN, the Andean Community and the European Union were invited to send teams) and with the participation of judges from other countries in the region.
- The **role played by the UN** in the evaluation conducted by the Qualifications Committee and in the appointment of the judges of the Court constitutes a real innovation in UN activities in this field and reflects the determination of the highest authorities in the country to ensure transparency.
- International observers issued recommendations and comments, including on the need to ensure the supremacy of the Constitution and international treaties ratified by Ecuador; the need to adopt affirmative action fostering gender equality in accordance with the principles contained in the Constitution and international treaties; and the permissibility of affirmative action to promote the participation of Afro-Ecuadorians in the Court.
- The newly constituted Court is faced with the challenge of efficiently handling a **sizable backlog of cases**. The rapid, consensual and clear manner in which it has proceeded to choose its President, appoint judges to the specialised chambers and draw lots to determine the new random distribution of the criminal caseload send outs a positive signal.
- **Pending reforms** and **challenges** include the amendment of the provisions in the Constitution that lead to a corporatist method of selecting members of the Constitutional Court; the reform of methods of appointing the Supreme Electoral Court and its transformation into a genuine, juridical and impartial court for dealing with electoral offences; and discussion of the Law on the Organisation of the Judiciary.
- There were **valuable lessons** to be learned from the process of appointing members to the Supreme Court, especially with regard to coordination of the various components of the UN system and the international community in general and the Special Rapporteur will therefore produce a report on this process.
- The Special Rapporteur will monitor the activities of the new Supreme Court and the implementation of urgently required reforms in the sphere of justice.

Key recommendations

[7] E/CN.4/2006/52/Add.2, 31 January 2006.
[8] E/CN.4/2005/60/Add.4.

- **Affirmative action** measures should be adopted while filling vacant posts in the Supreme Court and selecting judges for high courts in Ecuador, to promote gender equality and promote the participation of Afro-Ecuadorians or persons from indigenous groups.
- Congress should prioritise the debate on the new draft **Law on the Organisation of the Judiciary** and the discussion should be conducted in an open manner to obtain a broad range of opinions.
- **International cooperation projects** in the field of justice that have been suspended should be resumed quickly. This should be done in a coordinated fashion, with the UN playing a coordinating or facilitating role in this regard, and with greater attention being paid to stakeholders within and outside the system for the administration of justice.
- A mechanism should be put in place to guarantee **broad public participation** in the process of reforming the administration of justice.
- The Supreme Court should proceed with rigour when it compiles the two shortlists for the appointment of the members of the **Constitutional Court**.
- The general elections scheduled for 2006 should be taken as an opportunity to make headway towards an institutional framework guaranteeing the impartiality and professionalism of the **Supreme Electoral Court**.
- There is an urgent need to **reform the whole judicial system**. Priority areas include enacting the new Law on the Organisation of the Judiciary and a law laying down standards and safeguards for the judiciary; giving practical effect to the principle that only judicial bodies may perform judicial functions; establishing an effective system of legal aid; and promptly appointing a Comptroller General and an Attorney-General.

Communications to and from Governments[9]

Scope

The report provides summaries of the urgent appeals and allegations letters transmitted by the Special Rapporteur to governmental authorities between 1 January and 31 December 2005. It also covers press releases issued during the same reporting period together with references to communications sent in 2004, which have so far remained unanswered. The report summarises the replies received from some of the States concerned and outlines the observations or specific comments by the Special Rapporteur with regard to these communications.

The report also provides five tables of statistical data, which provide an overview of developments in 2005 and the past three years.

Summary and key conclusions

Please note that countries marked with an asterix have replied to current or previous communications by the Special Rapporteur.

- The Special Rapporteur sent communications to Algeria*, Argentina*, Bangladesh*, Belarus*, Bolivia*, Brazil*, Cambodia, China*, Colombia, Côte d'Ivoire, Cuba, Democratic People's Republic of Korea, Democratic Republic of Congo, Ecuador*, El Salvador*, Eritrea*, France*, Guatemala*, Haiti, Indonesia*, Iran*, Iraq*, Israel*, Kazakhstan*, Kuwait*, Kyrgyzstan*, Lebanon, Mauritania*, Mexico*, Morocco*, Myanmar*, Nepal*, Peru, Philippines, Republic of Moldova*, Russian Federation*, Saudi Arabia*, Spain*, South Africa, the Sudan*, Swaziland, Syrian Arab Republic*, Tajikistan, Trinidad and Tobago, Tunisia*, Turkey*, United Kingdom of Great Britain and Northern Ireland*, United States of America, Uzbekistan*, Venezuela*, and Yemen*.
- The tables indicate the type of communications sent to Government by the Special Rapporteur in 2005; the number of communications sent and Government replies received in 2005; the thematic issues addressed in allegations in 2005; the number of communications sent and the government replies received in the past three years; and the type of communications sent over the past three years.
- Action has mainly been taken in the form of urgent actions and in conjunction with other Special Rapporteurs. This reflects a personal choice of the Special Rapporteur aimed at strengthening the functioning and impact of Special Procedures, but also the fact that situations affecting the judiciary usually occur in contexts in which other democratic institutions are also at risk or where a wide range of human rights are being violated.
- No less than a quarter of all existing countries in all parts of the world are concerned by these communications and the type of allegations received cover a wide range of subjects.

[9] E/CN.4/2006/52/Add.1, 27 March 2006.

- The Special Rapporteur notes an increase in the number of allegations and attributes this to the fact that more people are aware of the procedure.
- The Special Rapporteur also noted increased cooperation on the part of many Governments, with only 15 out of the 52 States referred to in the report not having sent any form of reply. The proportion of specific allegations that are still unanswered however remains a concern.
- The number of allegations received indicates the relevance and impact of this special procedure, and of technical assistance in the field.

Key recommendations

- States that have not already done so should provide **detailed answers** at the earliest possible date and preferably before the end of the 62nd session of the Commission.
- The **mandate of the Special Rapporteur should be continued** and **strengthened** in the Human Rights Council.
- The role and work of **international associations of jurists** and **judges** should be promoted.
- **UN guidelines regarding the judiciary** should be better promoted at the national level, notably in the context of legal education.

Joint Report on the situation of detainees at Guantánamo Bay[10]

By the Chairperson-Rapporteur of the Working Group on Arbitrary Detention; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on freedom of religion or belief; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Scope

Since January 2002, the five mandate holders have been following the situation of detainees held at the United States Naval Base at Guantánamo Bay. In June 2004, they decided to continue this task as a group because the situation falls under the scope of each of the mandates. In studying the situation, they have continuously sought the cooperation of the United States authorities and on 25 June 2004, they sent a letter, followed by several reminders, requesting the Government of the United States of America to allow them to visit Guantánamo Bay in order to gather first-hand information from the prisoners themselves. By letter dated 28 October 2005, the Government of the United States extended an invitation for a one-day visit to three of the five mandate holders, inviting them "to visit the Department of Defense's detention facilities [of Guantánamo Bay]". The invitation stipulated that "the visit will not include private interviews or visits with detainees". In their response to the Government dated 31 October 2005, the mandate holders accepted the invitation, including the short duration of the visit and the fact that only three of them were permitted access, and informed the United States Government that the visit was to be carried out on 6 December 2005. However, they did not accept the exclusion of private interviews with detainees, as that would contravene the terms of reference for fact-findings missions by special procedures and undermine the purpose of an objective and fair assessment of the situation of detainees held in Guantánamo Bay. In the absence of assurances from the Government that it would comply with the terms of reference, the mandate holders decided on 18 November 2005 to cancel the visit[11].

The report is therefore based on the replies of the Government to a questionnaire concerning detention at Guantánamo Bay; interviews with former detainees; responses from lawyers acting on behalf of some Guantánamo Bay detainees; and information available in the public domain, including reports prepared by NGOs, information contained in declassified official US documents and media reports. A number of revisions were made in the light of the Government's reply of 31 January 2006. The report should be seen as a preliminary survey of international human rights law relating to the detainees in Guantánamo Bay.

Summary and Key Conclusions

- As of 21 October 2005, approximately **520 detainees** are being held in Guantánamo Bay. From the establishment of the detention centre in January 2002 until September 2005, 264 persons were transferred from Guantánamo, 68 of whom were transferred to the custody of other Governments. As of the end of December 2005, a total of **nine detainees** had been **referred to a military commission**;

[10] E/CN.4/2006/120, 27 February 2006.
[11] P. 4 of the Report.

- **International human rights law** is applicable to the analysis of the situation of detainees in Guantánamo Bay and the war on terror, as such, does not constitute an armed conflict for the purposes of the applicability of **international humanitarian law**. The USA has not notified the Secretary-General of any official derogation from the *International Covenant on Civil and Political Rights* (ICCPR). Nevertheless, some rights can never be derogated from, such as the right to life; the prohibition of torture or cruel, inhuman or degrading treatment or punishment; and freedom of thought, conscience and religion;
- The position of the USA is that the laws of war allow it to hold enemy combatants without charges or access to counsel for the duration of hostilities, not as a measure of punishment, but of security and military security. It is particularly important to distinguish between the detainees captured by the United States in the course of an armed conflict and those captured under circumstances that did not involve an armed conflict. Many of the detainees held at Guantánamo Bay were captured in places where there was - at the time of their arrest - no armed conflict involving the United States. In this context, it is to be noted that the global struggle against international terrorism does not, as such, constitute an armed conflict for the purposes of the applicability of international humanitarian law. The legal provision allowing the United States to hold belligerents without charges or access to counsel for the duration of hostilities can therefore not be invoked to justify their detention. The interviews conducted by the mandate holders with detainees corroborated allegations that the purpose of the detention of most of the detainees is not to bring criminal charges against them but to extract information from them on other terrorism suspects.. The persons held at Guantánamo Bay are entitled to challenge the legality of their detention before a judicial body in accordance with article 9 of ICCPR, and to obtain release if detention is found to lack a proper legal basis. This right is currently being violated, as the Combatant Status Review Tribunal (CSRT) created to consider challenges to the legality of detention does not provide detainees with a fair opportunity to do so; and the continuing detention of all persons held at Guantánamo Bay amounts to arbitrary detention in violation of Article 9 of ICCPR.
- The executive branch of the United States Government operates as judge, prosecutor and defence counsel of the Guantánamo Bay detainees: this constitutes serious violations of various guarantees of the right to a fair trial before an independent tribunal as provided for by Article 14 of the ICCPR. The right to a fair trial is also limited by restrictions on the right to be tried in one's presence, the right to adequately prepare one's defence, the manner in which information is obtained from detainees, and the right to be tried without undue delay;
- Attempts by the US Administration to redefine "torture" in the context of the war on terror, as well as confusion with regard to authorised and unauthorised interrogation techniques raise extremely serious human rights concerns;
- The interrogation techniques authorized by the Department of Defense, particularly if used simultaneously, amount to degrading treatment in violation of Article 7 of ICCPR and Article 16 of the *Convention against Torture*. If in individual cases, which were described in interviews, the victim experienced severe pain or suffering, these acts amounted to torture as defined in Article 1 of the *Convention Against Torture*.
- The general conditions of detention, such as the uncertainty about the length of detention, prolonged solitary confinement amount to **inhuman treatment**, to a violation of the **right to health** and to a violation of the right of detainees under Article 10 (1) of ICCPR to be treated with humanity and with respect for the inherent dignity of the human person;
- The **excessive violence** used during transportation, operations by the Initial Reaction Forces, and force feeding of detainees on hunger strike amount to torture;
- The practice of **rendition** of persons to countries where there is a substantial risk of torture amounts to a violation of the principle of non-*refoulement* and is contrary to Article 3 of the *Convention Against Torture*;
- The lack of any impartial **investigation into allegations of torture** and ill-treatment and the resulting impunity of the perpetrators amount to a violation of Articles 12 and 13 of the *Convention Against Torture*;
- There are reliable indications of violations of the right to **freedom of religion or belief**, such as interrogation techniques based on religious discrimination or aimed at offending the religious feelings of detainees. There were also reports of possible mishandling of religious objects such as the Holy Koran, which were confirmed by the Government;
- The totality of the conditions of the confinement of detainees at Guantánamo Bay constitute a violation of the **right to health** because they derive from a breach of duty and have resulted in profound deterioration of the mental health of many detainees reflected in the 350 of acts of self-harm recorded in 2003 alone;
- The American Medical Association has adopted the *Declaration of Tokyo*, which prohibits doctors from participating in, or being present during, any form of torture or other cruel, inhuman or degrading treatment and providing any knowledge to facilitate such acts. In light of this commitment, there are

serious concerns about **alleged violations of ethical standards by health professionals**, such as breaches of confidentiality; participation in, advice for or presence during interrogations; and presence or participation in non-consensual treatment, especially the force-feeding of competent detainees.

Key Recommendations

- Persons suspected of being terrorists should be detained in accordance with a criminal procedure that respects safeguards enshrined in international law. The Government should therefore either expeditiously bring all Guantánamo Bay detainees to trial, or release them without further delay. The USA should consider trying suspected terrorists before a **competent international tribunal**;
- The USA should **close the Guantánamo Bay detention facilities** without further delay. Until then, it should refrain from any practice amounting to torture or cruel, inhuman or degrading treatment or punishment; discrimination on the basis of religion; and violations of the rights to health and freedom of religion. In this respect, all special interrogation techniques authorised by the Department of Defence should immediately be revoked;
- The Government should refrain from **expelling, returning, extraditing or rendering** Guantánamo Bay **detainees** to States where there may be at serious risk of being tortured;
- The Government should ensure that every detainee has the right to make a complaint regarding his treatment and that all allegations of torture or cruel, inhuman or degrading treatment or punishment are thoroughly investigated by an independent authority, and all those who have perpetrated, ordered, tolerated or condoned such practices are brought to justice;
- The Government should ensure that all victims of torture or cruel, inhuman or degrading treatment or punishment are provided with **fair** and **adequate compensation**;
- The Government should provide personnel of detention facilities with **adequate training** on international human rights standards for the treatment of persons in detention, and to enhance their **sensitivity of cultural issues**;
- All five mandate holders should be granted **full** and **unrestricted access** to the Guantánamo Bay facilities, **including private interviews with detainees**.