



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 862nd MEETING

Held at the Palais Wilson, Geneva,
on Thursday, 20 November 2008, at 10 a.m.

Chairperson: Mr. GROSSMAN

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.862/Add.1.

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The meeting was called to order at 10.15 a.m.

DIALOGUE WITH THE SPECIAL RAPPORTEUR ON TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

1. The CHAIRPERSON invited Mr. Manfred Nowak, Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, to address the Committee.
2. Mr. MANFRED NOWAK (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said that he welcomed the opportunity to engage in discussion with Committee members on matters of common interest. Four years after taking up office, he had not entirely abandoned his original idea of producing a global report on torture. The six years he had given himself to do so was undoubtedly ambitious, taking into account the need to examine each country situation. In any event, torture remained a widespread practice and detainees the world over were a particularly vulnerable group whose situation was troubling. Such had been the conclusion drawn from his visits to over a dozen countries. The aim of those visits was threefold: to assess the extent of torture and cruel, inhuman or degrading treatment in the country concerned; to conduct an in-depth study of conditions of detention; and to promote cooperation with the States concerned on the basis of the mission report. In that context, it was regrettable that the necessary follow-up activities could not be carried out owing to lack of resources.
3. During his visits, he had observed that the conditions of detention in various prison institutions across the globe were such as to constitute inhuman or degrading treatment. In some countries, the sanitation conditions were appalling and the authorities did nothing to ensure respect for the right to both food and drinking water. Detainees were sometimes even expected to be fed by their families, which caused serious problems for foreign detainees. Police custody was also a source of concern; people were often held in such custody for prolonged periods of time. Furthermore, in countries where the judiciary was not independent or where the principle of legality was not respected, it was the case that numerous detainees were innocent. An additional phenomenon was the corruption of actors in the justice system, including judges.
4. Concerning substantive issues, he had always been convinced that it was essential, in the context of the fight against terrorism waged by States after 11 September 2001, to emphasize respect for the principle of the absolute prohibition of torture in all - including exceptional - circumstances. Equally important was the need to ensure respect for the principle of non-refoulement, in which regard the Committee's recent jurisprudence was most welcome. Treaty bodies could certainly be expected to be firmer on the question of diplomatic assurances insofar as they were quite simply not an effective anti-torture mechanism and State parties should no longer be able to base their decisions on such assurances. Lastly, having undertaken to study the problem of corporal punishment, he would welcome any information on the Committee's jurisprudence on the subject. It would also be helpful to know whether the Committee believed that the death penalty ran counter to the Convention.
5. Within the framework of his activities, he was similarly committed to considering the question of protection against torture for specific groups; his earlier

report (A/HRC/7/3) thus contained conclusions and recommendations on the protection of women against torture. Female genital mutilation was a violation of the Convention and fell within his mandate. He had also broached the subject with representatives of the Ministry of Social Affairs and Women's Rights of Guinea-Bissau. During a joint mission to the Republic of Moldova with the Special Rapporteur on violence against women, its causes and consequences, the question of trafficking had also been raised. On the matter of disabled persons, those who had a physical or mental disability were particularly vulnerable to torture. In many cases, prison staff were not trained to deal with detainees of that type.

6. Other concerns were the practice of solitary confinement and the serious physical and psychological consequences associated with the imposition of such a regime for lengthy periods of time. It was a regime also used in countries where no cases of torture had been reported. In some countries of the former Soviet Union, persons sentenced to heavy penalties or to death were routinely placed in solitary confinement as an additional punishment. Any solitary confinement that was unjustified or unlimited in time was equivalent to cruel, inhuman or degrading treatment in the meaning of the Convention and of article 7 of the International Covenant on Civil and Political Rights. Lastly, he welcomed the Committee's work in the area of awareness-raising, as well as its efforts to interpret and apply the Convention in the light of current challenges, and said that he would like to hear its views concerning the distinction between torture and cruel, inhuman or degrading treatment.

7. The CHAIRPERSON said that, in the interest of efficiency, the activities of the Special Rapporteur and treaty bodies should be better coordinated and more interdependent. Where necessary, the Committee used the Special Rapporteur's conclusions as a basis for considering the situation in various countries under article 20 of the Convention. As for cooperation with States, it could be valuable where they demonstrated goodwill. It would also be extremely useful to strengthen cooperation with the Special Rapporteur for follow-up to concluding observations. Concerning the principle of non-refoulement, diplomatic assurances should have no place; the very fact that they were requested was already a signal that the person in question should not be returned.

8. Mr. GALLEGOS CHIRIBOGA welcomed the fact that the report submitted by the Special Rapporteur under General Assembly resolution 62/148 (A/63/175) was devoted to the protection of disabled persons against torture, as it afforded a much higher visibility to problems that were still largely unrecognized. In December 2007, the Office of the High Commissioner for Human Rights had organized a seminar on that subject, in which himself, the Special Rapporteur, Ms. Sveass and several non-governmental organizations (NGOs) had participated. Such experiences should be repeated, as it was by increasing cooperation between United Nations bodies and mechanisms and NGOs working to promote the rights of disabled persons that progress would be achieved in combating the torture and ill-treatment inflicted on disabled persons.

9. Ms. BELMIR said that she welcomed the Special Rapporteur's close interest in the relationship between the Convention and women, which was borne out by his report to the Human Rights Council (A/HRC/7/3), and his study of domestic violence in that context. Such violence generally occurred in a setting that was closed to all outside interference and moreover protected under laws guaranteeing

the right to privacy. That being so, to what extent did the Special Rapporteur believe that the obligation to respect privacy was compatible with the obligation to protect women and children against domestic violence?

10. Mr. MARINO MENÉNDEZ said that the Committee had not adopted a principled position on the death penalty but that it had already characterized circumstances associated with the penalty as inhuman treatment, notably in the case of convicts on death row, which was for them a cause of considerable psychological suffering.

11. With regard to physical punishment, the Committee had emphasized in its concluding observations concerning the report of a Middle Eastern country that sentences such as flogging, stoning and amputation constituted violations of the Convention, but it had not mentioned any particular article. Given that stoning was carried out on women only, however, the discriminatory nature of the penalty could be used to argue that it was a form of torture under article 1 of the Convention, as discrimination was mentioned as one of the reasons for which a person could be tortured.

12. Since the time when it had first focused on the issue of diplomatic assurances, namely in *Agiza v. Sweden* (CAT/C/34/D/233/2003), the Committee had advanced its thinking and soon be in a position to adopt a firm position on the subject. The Special Rapporteur should furthermore be thanked for having favourably welcomed the Committee's interpretation of systematic torture following its confidential inquiry in Turkey (A/48/44/Add.1, para. 39), an interpretation according to which torture could be of a systematic character without resulting from the direct intention of a State and which had subsequently been used as a basis for the work of Committee members during a confidential inquiry in Brazil in 2005 (CAT/C/39/2).

13. Lastly, recalling the decision of the European Court of Human Rights in *Al-Adsani v. United Kingdom*, in which State immunity had been invoked as grounds for dismissal of the case brought by the complainant, a male of British and Kuwaiti nationality who had been tortured in Kuwait. Was it the Special Rapporteur's view that persons who claimed to have been subjected to torture abroad could instigate civil proceedings against the State concerned or was the principle of State immunity an insurmountable obstacle to doing so?

14. Ms. SVEAASS noted with satisfaction that, in his most recent reports, the Special Rapporteur's interest had included not only the protection of disabled persons and women against ill-treatment and torture, but also the question of compensation for victims. She thus strongly encouraged him to continue to focus on that aspect of the Convention in his work and to remind States caring for torture survivors that, under article 14 of the Convention, they were required to ensure the means for their rehabilitation, in particular long-term treatment, even if they were in no way responsible for the torture suffered by those persons.

15. The Committee often had great difficulty in obtaining information on the situation in psychiatric institutions, as reports by NGOs specializing in torture often said nothing on the subject. She urged the Special Rapporteur to encourage NGOs to collect more information on the subject.

16. Mr. WANG Xuexian wished to know how many field visits the Special Rapporteur had made to European countries, how many countries in that region had been implicated in illegal rendition flights carrying alleged terrorists and how many

States had refused to participate in such operations. Further noting the view of the Special Rapporteur that solitary confinement was warranted in only two instances, namely if it was utterly unavoidable and if it was not prolonged, he requested a more detailed explanation of those two criteria.

17. Ms. GAER enquired about the Special Rapporteur's standpoint concerning the relationship between the physical and the psychological violence inflicted on women. Generally speaking, the victim's psychological state and the resulting feeling of powerlessness were not taken into sufficient consideration, particularly in the context of marital violence and trafficking in women. In that regard, she asked the Special Rapporteur to share his thoughts on the feeling of powerlessness experienced by victims.

18. Ms. KLEOPAS said that she fully believed that a death sentence was in itself a cruel, inhuman and degrading punishment and would like to hear the Special Rapporteur's views on the subject. She commended him for having addressed as part of his mandate the problem of violence against women, particularly domestic violence, and expressed regret that States the world over continued to deny its reality.

19. The CHAIRPERSON invited the Special Rapporteur to comment on the Committee's interpretation of systematic torture and asked whether he had published any official documents on the subject of illegal renditions. He also asked for his opinion of that practice.

20. Mr. NOWAK (Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) said with regard to violations of the Convention of which women were the victims that, while the States to which he made field visits often did their utmost to conceal the existence of torture in prisons and police stations, they were conversely much less inclined to deny such phenomena as domestic violence and female genital mutilation, as they felt only indirectly responsible for them and did not regard the activities of special rapporteurs in that area as interference in their domestic affairs. To talk to a victim of torture following his release often proved to be extremely delicate, whereas to meet a victim of domestic violence at a centre for battered women was no problem. That said, as he was unable to make impromptu visits to the homes of persons affected by domestic violence, he had no option but to turn to statistics produced by public authorities and to NGO reports in order to assess the extent of the phenomenon in the countries that he visited. He recognized that it was a shortcoming and that he must give further thought to ways of gathering information on that type of violation in order to have a proper idea of the situation.

21. The principle of State immunity impeded the right to compensation under article 14 of the Convention. The obligation of compensation was traditionally interpreted as incumbent on the State held responsible for acts of torture against the victim. The wording of article 14 did not, however, actually preclude it from being more broadly interpreted and regarded as a general obligation on all States, including those receiving victims of torture from other countries. The principle of State immunity took precedence in civil proceedings relating to acts of torture in which a third State was implicated, but insofar as immunity was applicable to States but not to State officials, a compensation case brought against the officials of a third State for deliberate acts of torture should be admissible. A ruling to that effect had been handed down in the United Kingdom by the Court of Appeal in *Jones v.*

Ministry of the Interior of Saudi Arabia, but it had unfortunately been quashed by the House of Lords. Just as the Convention against Torture established universal jurisdiction in criminal matters with regard to acts of torture, it should be possible to establish universal jurisdiction in civil matters. Governments were naturally reticent in view of the financial implications involved. The compensation of torture victims and their access to the fullest possible rehabilitation should, however, be regarded as the shared responsibility of all States and not as the sole responsibility of torturing States. Regrettably, it was the latter concept that prevailed, as evidenced by the fall in State contributions to the United Nations Voluntary Fund for Victims of Torture.

22. He had thus far visited three European countries - Georgia, the Republic of Moldova and Denmark. He had also been to three African countries, several countries in Asia and one in Latin America. He planned field visits in the Caribbean and the Pacific but had not yet received the requisite invitation from the Governments concerned.

23. All European countries had been involved in illegal extraordinary renditions, some of them actively so, such as Sweden in the *Agiza* case, others passively so by authorizing aircraft chartered by the Central Intelligence Agency (CIA) to rendition prisoners through their airspace or to refuel at their airports. The Council of Europe had tasked a special rapporteur - Mr. Dick Marty - with investigating the exact nature of the cooperation of European Governments with the United States and he had submitted two reports establishing beyond all reasonable doubt that there were secret CIA-run places of detention in the territory of various European countries, in particular Poland and Romania, conclusions that had been subsequently confirmed by the report of the Temporary Committee on the alleged use of European countries by the CIA for the transport and illegal detention of prisoners. In accordance with article 52 of the European Convention on Human Rights, the Secretary-General of the Council of Europe had requested all member States to report on the subject. Most had refused to disclose the information sought on the grounds that State secrets were involved and that they had concluded an agreement with the United States guaranteeing that the confidentiality of such information would be maintained. Other investigations were nevertheless under way and it was to be hoped that the new United States Administration would cooperate in establishing the truth concerning the cooperation between the United States secret services and European countries in the context of the war on terror launched by the United States.

24. The point at which certain conduct became an act of torture or cruel, inhuman or degrading treatment was often difficult to determine and should be analysed on a case-by-case basis. In that regard, solitary confinement was an excellent example. According to medical studies on the subject, a few weeks of such confinement was enough to produce lasting psychological damage, although it was true that its effects could vary considerably from one individual to another. The jurisprudence of international human rights courts was, however, relatively tolerant towards the practice. In some cases it could be necessary, such as during the pretrial detention of a detainee in order to prevent him from destroying or removing evidence, on condition that it ceased when the reasons for imposing it no longer obtained. Proportionality was another criterion to be added to that of necessity. In various prisons, solitary confinement was used as a disciplinary measure to punish minor breaches of the prison regulations, which was excessive.

25. The death penalty had always been analysed from the perspective of the right to life, to which it was an exception permitted by various international human rights instruments. As a result, it had long ago been concluded that the death penalty was permitted under international law and that it could not consequently be regarded as cruel, inhuman or degrading treatment. It was important not to forget that when those instruments were drafted, most States and peoples had been in favour of the death penalty. Times had changed, however, and in an era where all forms of corporal punishment were regarded as cruel, inhuman or degrading treatment and were categorically prohibited as such, it was no longer possible to maintain that the death penalty, which was in a sense the supreme corporal punishment, did not constitute cruel, inhuman or degrading treatment. In 1995, the Constitutional Court of South Africa had handed down an exemplary ruling on the subject by concluding that, however applied, the death penalty constituted cruel, inhuman or degrading treatment. It was to be hoped that such an approach, which the international community was now apparently starting to take on board, would ultimately become the norm.

26. Physical and psychological violence were often closely connected and it was sometimes difficult to determine what amounted specifically to one or the other. To hang a person by the arms and tie his ankles so that he could no longer move in itself constituted a cruel and degrading punishment that could be akin to torture from the moment where the victim suffered not only physically but also mentally from the knowledge that he was totally defenceless. The wish to make the victim feel totally powerless was undeniably a distinctive criterion for defining what amounted to torture and what gave rise to other forms of cruel, inhuman or degrading treatment or punishment. The same mechanism of oppression was at play in most cases of domestic violence or trafficking in persons, the victims having been kept in a state of terror compounded by total dependence on their oppressors.

27. The idea of institutionalizing cooperation between the Committee and the Special Rapporteur on torture was appealing and more thought should be given to ways of bringing it about. The Committee's jurisprudence served as a reference; indeed, he had already derived inspiration from it on several occasions. In formulating his conclusions on Brazil, Nepal, Ecuador and Guinea, for example, he had drawn on the Committee's position in the case of Turkey (A/48/44/Add.1, para. 39) that torture could be of a systematic character without resulting from the direct intention of a Government.

28. The CHAIRPERSON thanked the Special Rapporteur, whose presence signalled an interest much appreciated by the Committee. He expressed the hope that the dialogue between them would continue with a view to improved coordination and effective follow-up to their respective activities.

The first part (public) of the meeting rose at 11.55 a.m.