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**Statement by Manfred Nowak
Special Rapporteur on Torture**

62nd session of the General Assembly
Third Committee
Item # 70(b)

29 October 2007
New York



STATEMENT BY THE SPECIAL RAPPORTEUR ON TORTURE

Manfred Nowak

TO THE 62nd SESSION OF THE GENERAL ASSEMBLY

Monday, 29 October 2007

President, Distinguished Representatives and Observers,

I. The role of forensic medical expertise in combating impunity for torture

I have carried out fact-finding missions to nine countries since assuming the mandate, and I have repeatedly stated that a common finding is the lack of accountability of perpetrators of torture. One of the major challenges in fighting impunity for torture is for the authorities to carry out effective investigations; investigations that are independent, thorough and comprehensive.

A general observation from missions that I have carried out is that victims invariably are caught between requirements of the law to adduce evidence to support allegations of torture and the lack of practical possibilities to produce such evidence, especially on the part of those persons who are still being detained. The end result is that many of the alleged victims, who are found by me to have credible allegations of torture, are left with no recourse to having their complaints effectively investigated.

The purpose of a medical evaluation is to provide expert opinion on the degree to which medical findings correlate with an alleged victim's allegations. But records of medical examinations upon arrest or transfer are often non-existent. Recourse to doctors (not least forensic medical expertise) is at the discretion of the police, prison guard, prosecutor or judge, and is usually denied or simply unavailable for detainees because of lack of money or lack of independent specialists or facilities. Even more common are delays (deliberate or otherwise), to provide medical examinations which due to the passage of time serve to conceal physical evidence. In this respect we must all be clear that the absence of physical evidence of torture is not evidence of the absence of torture.

Clinical forensic medicine is aptly described as "a science which seeks to disclose the truth in as much as it exposes the facts concerning the circumstances of injury and death. In so doing it provides a foundation on which to build preventative policies and justice".

With this in mind, forensic medical expertise is an indispensable element of credible fact-finding. On country missions I am regularly assisted by independent medical experts qualified to document and assess injuries, in accordance with the Istanbul Protocol. The findings contained in the reports of these experts assist me to draw my conclusions on the practice of torture in the respective countries.

Effective documentation aims to bring evidence of torture and ill-treatment to light so that perpetrators may be held accountable. In my view, in the face of allegations of torture, the absence of effective investigations constitutes the major reason for the continuing practice of torture and ill-treatment.

If States are serious about combating impunity for torture, they will improve the quality of their criminal investigations through effective documentation of evidence of torture.

IV. Avoiding the deprivation of liberty as a means of preventing torture

President,

Drawing upon my experiences from country visits, one of the most commonly observed obstacles to the respect of human dignity and to the prohibition of torture and other forms of ill-treatment is overcrowding in places of detention. Overcrowding strains existing infrastructure, staffing, services and resources, and this leads in turn to a decline in standards of detention.

One sees this in the failure to separate vulnerable groups, such as children, women, and ill prisoners; insufficient beds, food, water, medicines; poor ventilation and sanitary conditions; insufficient recreational, educational or vocational opportunities; and insufficient staffing to ensure discipline and security of the detainees, etc.

The jurisprudence of several international and regional human rights mechanisms, has found that poor conditions of detention can amount to inhuman and degrading treatment.

In general, the key factor to overcrowding is the almost automatic recourse to pretrial detention of suspects, even for non-violent offenders or for minor offences. Moreover, in many countries criminal laws focus on lengthy prison terms as the only form of punishment, even for relatively minor crimes.

It is crucial that minor cases, which otherwise use up many of the resources needed to process cases of grave crimes, are dealt with outside the criminal law system. In this context decriminalization and diversion can significantly contribute to relieving the criminal justice system. Moreover, with regard to those cases which need to be dealt with under criminal law, measures not involving detention at the pretrial stage and non-custodial sentences after trial should be used as much as possible.

The need for comprehensive reform of the criminal justice system in order to offer a wide range of measures to avoid the deprivation of liberty is a common conclusion arrived at in my country reports. In my opinion, avoiding depriving a person of his/her liberty is one of the most effective safeguards against torture and ill-treatment.

Criminal justice reform should therefore strive to avoid the deprivation of liberty at all stages. In order for such reform to be effective, each institution involved needs to make its contribution, including the police, the judiciary, the legal profession, the prosecution

services and the penitentiary system. A complex undertaking as this should be guided by applicable international standards and norms.

In this regard, I welcome several recent publications of the United Nations Office on Drugs and Crime (UNODC), which set out alternatives to detention that are available at the various stages of the criminal process (i.e. pretrial, trial, or execution of sentence), and provide guidance and information on best practices with regard to many of the related recommendations contained in my country visit reports.

In accordance with these handbooks, and relevant norms and standards of the United Nations, including the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules), I encourage States to make the broadest possible use of the wide range of non-custodial measures available.

Personal liberty is among the most precious and defining features of human beings. The deprivation of liberty should be resorted to only if it is absolutely necessary for the purpose of crime prevention or other important public interests. At the same time, avoiding deprivation of liberty as far as possible is also one of the most effective means of preventing torture and ill-treatment.

III. Country visits

President,

Turning to my activities, the country visits I have undertaken have provided me with a rich picture behind the theory and practice of the prohibition of torture, and the real challenges that Governments face. I would like to take the opportunity to thank Governments for the invitations and the cooperation they have extended to me, and to the constructive dialogue that we continue to hold in the follow-up to my recommendations. Countries should be commended for their willingness to open themselves up to objective international scrutiny for the aim of combating torture.

Paraguay

Since my previous report to the General Assembly, I have carried out a visit to Paraguay from 22 to 29 November 2006. 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 undertook a mission to Nigeria from 4 to 10 March 2007, which included visits to 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 ethnolinguistic 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 an 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 non-governmental organizations (NGOs), I concluded that torture and ill-treatment is widespread in police custody and is 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, housing an inmate population that is typically double or triple the actual capacity of the facility. The vast majority of the prison population is awaiting trial (i.e. in pretrial detention), or held without charge for lengthy periods of as long as 10 years. However, female prisoners are provided with considerably better facilities. The findings are not new as many credible human rights organizations, as well as United Nations human rights mechanisms, have documented the use of torture and concluded that it is widespread in the country, and that the conditions of detention are unacceptable. Nigerians themselves have exhaustively identified the nature and scale of these problems. Indeed, in August 2005, President Obasanjo acknowledged the severity of the problem of torture in the country. Accordingly, I recommended a number of measures to be adopted by the Government in order to comply with its commitment to prevent and suppress acts of torture and other forms of ill-treatment.

Togo

I undertook a visit to Togo from 11 to 17 April 2007. I express my appreciation to the Government for the full cooperation it extended to me. Noting the overall commitment by the Government to combat torture and the considerable improvements since 2005 in this regard in most of the police commissariats and gendarmerie posts that I visited, I found evidence of ill-treatment by law enforcement officials, most of which was inflicted during interrogation for the purpose of obtaining a confession. I also heard allegations by detainees and found evidence of beatings by prison guards and other prisoners as a means of punishment. I am very concerned that children are at high risk of corporal punishment and ill-treatment in situations where they are deprived of their liberty. It is my opinion that conditions in police and gendarmerie custody, as well as in most prisons, amount to inhuman treatment. In particular, I am concerned about the severe overcrowding in most prisons, the deplorable sanitary situation, the quantity and quality of food, as well as the restricted access to medical services. I identified the following underlying causes: almost total impunity, resulting, inter alia, from the absence in Togolese law of an explicit prohibition of torture; deficiencies of the criminal justice system; lack of safeguards against torture; an absence of independent monitoring mechanisms; the involvement of the military in law enforcement activities; the lack of sufficient resources; and corruption. Accordingly, I recommended to the Government a number of measures to prevent and combat torture and ill-treatment.

Sri Lanka

Recently, I undertook a visit to Sri Lanka from 1 to 8 October 2007. I express my appreciation to the Government for the full cooperation it extended to me. In addition to detention facilities in Colombo, and the south east of the country, including in Galle, I also visited police stations and prison facilities between Trincomalee and Kandy, in the eastern and central parts of the country, respectively. I have full appreciation for the challenges the Government faces from the violent and long-lasting conflict with the Liberation Tigers of Tamil Eelam (LTTE). Notwithstanding the difficult security situation the Government is faced with, Sri Lanka in principle is still able to uphold its democratic principles, ensure activities of civil society organizations and media, and maintain an independent judiciary. The primary focus of my visit related to torture, ill-treatment and conditions of detention in the ordinary context of the criminal justice system. The high number of indictments for torture filed by the Attorney General's Office, the number of successful fundamental rights cases decided by the Supreme Court of Sri Lanka, as well as the high number of complaints that the National Human Rights Commission continues to receive on an almost daily basis indicates that torture is widely practiced in Sri Lanka. Moreover, I observe that this practice is prone to become routine in the context of counter-terrorism operations, in particular by the Terrorist Investigation Department. Over the course of my visits to police stations and prisons, I received numerous consistent and credible allegations from detainees who reported that they were ill-treated by the police during inquiries in order to extract confessions, or to obtain information in relation to other criminal offences. Similar allegations were received with respect to the army. I note that Sri Lanka already has many of the elements in place

necessary to both prevent torture and combat impunity. The 1994 Torture Act criminalizes torture and the Attorney General has filed a significant number of indictments under it, though only three convictions have resulted within last 13 years. A number of shortcomings remain, inter alia: despite the high standards of proof applied by the Supreme Court in torture-related fundamental rights cases, the facts established therein do not trigger more convictions by criminal courts; reportedly because of the Torture Act's high mandatory minimum sentence of seven years, it is effectively a disincentive to apply against perpetrators; the absence of effective *ex-officio* investigation mechanisms in accordance with Art 12 CAT; and the various obstacles detainees face in filing complaints and gaining access to independent medical examinations while still detained. As far as conditions of detention are concerned, the combination of severe overcrowding with antiquated infrastructure of certain prison facilities places unbearable strains on services and resources, which for detainees in certain prisons, such as the Colombo Remand Prison, amount to degrading treatment. Although the conditions are definitely better in prisons with more modern facilities, the prison system as a whole is in need of structural reform. Conditions become inhuman for suspects held in police lock-ups under detention orders pursuant to the Emergency Regulations for periods of several months up to one year, such as in CID or TID detention facilities. I appreciate the recent abolition of corporal punishment in Sri Lanka, however, I still received disturbing complaints of cases of corporal punishment in prisons, which were corroborated by medical evidence. Accordingly, on the basis of my findings I recommended to the Government a number of measures to prevent and combat torture and ill-treatment.

My final reports on these visits will be presented to the Human Rights Council in March 2008.

Concerning upcoming visits, my visit to Indonesia will take place next month, from 10 to 25 November 2007. The Government of Equatorial Guinea has invited me to carry out a visit to the country in early 2008. I am also pleased to report that I have accepted an invitation from the Government of Iraq to visit the country in 2008.

V. Closing

President, Distinguished Representatives and Observers,

I thank you for your attention, and look forward to a fruitful dialogue.