

COUNCIL MONITOR

International Service for Human Rights



Human Rights Monitor Series

COUNCIL UPDATE – ITEM 3, SPECIAL RAPPORTEUR ON TORTURE HUMAN RIGHTS COUNCIL, 10TH SESSION 10 AND 12 MARCH 2009

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Overview

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr Manfred Nowak, presented his annual report, including reports on country visits to Denmark and Moldova, and a preliminary report on his visit to Equatorial Guinea. Whilst Denmark and Moldova welcomed Mr Nowak's observations, Equatorial Guinea reserved the right to comment on receipt of the final report. Mr Nowak also addressed two thematic issues: that of the death penalty as a form of cruel, inhuman or degrading treatment or punishment; and a human rights based approach to drug-policies. The question of the death penalty provoked a strong reaction from many States who accused Mr Nowak of overstepping his mandate. Other States encouraged further discussion of the issue. In contrast, his comments on drug policies were largely welcomed and the subject noted as needing further study and action.

Item 3 – Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

Presenting his annual report, the Special Rapporteur, Mr Manfred Nowak, summarised his country visits to Denmark (2 to 9 May 2008), Moldova (4 to 11 July 2008) and Equatorial Guinea (9 to 18 November 2008).¹ Regarding the visit to Denmark, the Special Rapporteur stated that he had not received any allegations of torture, and very few allegations of ill-treatment. He indicated concern that torture is not specified as a crime under Danish law and that solitary confinement and extraordinary renditions are practiced. The Special Rapporteur commended Moldova on its progress since independence in 1991 but drew attention to the widespread practice of ill-treatment in the initial phases of police custody and the poor conditions of policy custody. Based on a preliminary report, the Special Rapporteur noted that Equatorial Guinea had outlawed torture in 2006, however he described torture as 'systematic' in police and *gendarmierie* cells, and the cell conditions as 'inhumane'. He recommended that Equatorial Guinea completely overhaul its law enforcement and judicial bodies.

¹ A/HRC/10/44 14 January 2009, Add. 1, 23 January 2009 (mission to Equatorial Guinea), Add. 2, 18 February 2009 (mission to Denmark), Add. 3, 12 February 2009 (mission to the Republic of Moldova), Add. 4, 17 February 2009 (communications to and from governments), Add. 5, 17 February 2009 (follow-ups).

Mr Nowak reported that Denmark and Moldova had committed to examine the issues he had raised, and that Equatorial Guinea had rejected his findings and recommendations and accused him of bias. Mr Nowak reminded the Council that States should see him as a tool to assist them in achieving real change in the area of eliminating torture.

Mr Nowak drew attention to two joint reports on the detention facility at Guantanamo Bay² and on Darfur³ with other special procedures. He remarked that too little had been done to implement the recommendations in the report on Darfur. In contrast, the new US administration had already reacted to the report on Guantanamo Bay, whereas it had been rejected by the previous administration. Mr Nowak encouraged States to grant residence to Guantanamo detainees in their countries to facilitate the closure of the detention centre. He also announced that he is currently working on a report on places of secret detention with the Special Rapporteur on the promotion and protection of human rights while countering terrorism, Mr Manfred Scheinin. During a parallel event hosted by the Office of the High Commissioner for Human Rights on secret detention it was announced that the report is likely to be presented to the Council in March 2010. In terms of his future country visits, Mr Nowak informed the Council that that Uruguay, Cuba and Kazakhstan were preparing to receive him.

Addressing thematic issues, the Special Rapporteur presented his initial research into whether the death penalty could be considered a form of torture or other inhuman or degrading treatment or punishment. He explained that whereas capital punishment is permitted in international law, and is not regarded as a violation of the right to life, nor is it *per se* cruel and inhumane, the past 60 years have seen an increasing international trend towards the abolition of the death penalty⁴ and a shift in understanding of what constitutes cruel, inhuman or degrading treatment. Mr Nowak proposed the dynamic interpretation of cruel, inhuman or degrading treatment in relation to corporal punishment which is no longer considered permissible under international law could be applied to the question of the death penalty. He concluded that the distinction between corporal and capital punishment is ‘increasingly challenged by this dynamic method of interpretation’. The Special Rapporteur recommended that the Council conduct an in-depth legal study on the compatibility of the death penalty with the right not to be subjected to cruel, inhuman or degrading treatment or punishment.

Highlighting the divisions between international drug policies and human rights law, Mr Nowak provided examples of instances where drug policies may entail violations of human rights and the right not to be subjected to cruel, inhuman or degrading treatment. Refusing access to medical treatment or pain relief for drug addicts suffering withdrawal symptoms, forceful testing and treatment, or restrictions on access to prevention could be regarded as torture in his view. The Special Rapporteur recommended that the Council further study this matter.

The concerned countries then responded. Equatorial Guinea described the various mechanisms it has in place to combat torture, such as a Special Commission created in November 2007 to deal with torture related crimes. Although it reserved its comments for the final report from the Special Rapporteur, it accused him of violating the Code of Conduct for special procedures mandate-holders by reporting to the Council when the State had only seen a preliminary report. Moldova acknowledged the existing drawbacks in its legal system regarding human rights and stated its readiness to implement the recommendations of the Special Rapporteur. It specified that human rights concerns relating to the Transnistria region would only be addressed when the conflict there is resolved.

Interactive Dialogue

The majority of States focused on the Special Rapporteur’s observations on the death penalty. Mr Nowak’s analysis was strongly criticised and even rejected by a large number of States⁵ who reminded the Special Rapporteur that capital punishment is a ‘question of sovereignty’ subject to regulation in domestic criminal law and

² Situation of detainees at Guantanamo Bay, E/CN.4/2006/120.

³ Final report on the situation of human rights in Darfur prepared by the group of experts on Darfur, A/HRC/6/19.

⁴ United Nations General Assembly *Resolution 62/149*.

⁵ Egypt, Pakistan (on behalf of the Organisation of the Islamic Conference), Saudi Arabia, China, Bangladesh, Yemen (on behalf of the Arab Group), Algeria, Iran, Sudan, Botswana, Singapore and Malaysia.

not prohibited by international law. Some of these States accused him of violating his mandate and the Code of Conduct for special procedures.⁶ Egypt warned that it would call for a vote if any part of the report was referenced in any future resolution, and announced that it could no longer co-sponsor the resolution on torture given its disagreement with Mr Nowak's work. Some States expressed their regret that the Special Rapporteur had dedicated so much of his report to such a controversial issue when there were so many other important subjects for him to cover.⁷ A minority of States welcomed Mr Nowak's comments and supported his recommendation to study the issue further.⁸ New Zealand and Norway requested that the Special Rapporteur further elaborate on the links between torture and other cruel, inhumane and degrading treatment and the situation of detainees on death row. Notably, neither the European Union (EU) nor France commented on this issue although the Special Rapporteur had studied it in response to a question raised by France at the General Assembly in October 2008.

On the issue of drug policies, several States commented on the tensions and possible discrepancies between international drug policies and human rights law and requested further information on how to deal with these challenges.⁹ Several States expressed some reservations about the examination of this issue and any 'liberal treatment' of drug abusers¹⁰ or spread of drug abuse.¹¹ Malaysia argued that this topic is outside the Special Rapporteur's mandate.

Several other issues were also raised. Egypt disagreed with the Special Rapporteur's use of his United Nations title when associating himself with non-UN documents. Cuba requested Mr Nowak to comment on torture in relation to security services. The Czech Republic (on behalf of the EU) expressed concern that so many countries were not responding to Mr Nowak's requests to visit, and requested further information on his work regarding secret detention. Nigeria and the USA reported on their countries' progress on combating torture. Uruguay clarified that the Special Rapporteur would visit before the end of March 2009. Indonesia proposed that the Special Rapporteur conduct thematic studies to assist States in implementing the *Convention against Torture*.¹² Denmark requested Mr Nowak's views on the status of diplomatic assurances in international law, and the role of groups of professionals such as medical staff in torture. Austria pronounced as unacceptable the lack of response from countries to the Special Rapporteur's requests to visit and asked the Council to reflect on how to convince uncooperative States to cooperate with the special procedures. Austria also emphasised the importance of continuing follow-up to countries previously visited.

The national human rights institutions and NGOs drew attention to specific country situations including Georgia,¹³ Colombia¹⁴ and Iraq.¹⁵ The Commission on Human Rights of the Philippines requested that the Special Rapporteur communicate with the Government as well as civil society in carrying out his mandate, and efforts should be made to synergise work undertaken by the various special procedures with the Philippines.

In conclusion, Mr Nowak returned to the question of the death penalty as a form of torture or cruel, inhuman or degrading treatment or punishment and strongly reasserted that as a form of cruel, inhuman or degrading treatment it did fall within his mandate and the discussion in the Council confirmed the need for further study of the subject. He also noted that the General Assembly, the Council's parent body, had found the death penalty to undermine human dignity and expressed surprise that the some Council members seemed to take a different view. Responding to a question from the International Association for Harm Reduction (joint with Human Rights Watch) regarding the possibilities to mainstream human rights in international drug policies, the Special Rapporteur advocated that

⁶ Council *Resolution 5/2*.

⁷ Egypt, Cuba, Jamaica, Botswana.

⁸ Brazil, Spain, Switzerland, Luxembourg, Thailand, Slovenia and New Zealand.

⁹ Brazil, Mexico, Czech Republic (on behalf of the European Union), Russian Federation, Malaysia and Venezuela.

¹⁰ Singapore,

¹¹ Russian Federation.

¹² General Assembly *Resolution 39/46*.

¹³ Georgian Office of the Ombudsman.

¹⁴ Colombian Commission of Jurists.

¹⁵ The General Federation for Iraqi Women.

his recommendations should be brought before the current meeting of the Commission on Narcotics and Drugs, being held in Vienna from 11 to 20 March 2009. Mr Nowak also replied to specific comments and questions from a number of States, advising Denmark that whilst diplomatic assurances were permitted in international law they should not be relied on, and reassuring Egypt that he would follow-up and study the issue of deprivation of food in detention as a form torture.

Further information

For further information on the Council, please consult the following resources:

- Web site of the International Service for Human Rights, providing up-to-date information before, during and after sessions of the Council: <http://www.ishr.ch/council>. During the session, ISHR will provide information about the Council's proceedings on a regular but not daily basis. You can subscribe to receive alerts of our publications by sending an email to information@ishr.ch.
- Web site of the Office of the High Commissioner for Human Rights (OHCHR) on the 10th session of the Human Rights Council: <http://www2.ohchr.org/english/bodies/hrcouncil/10session>. For direct access to reports considered, check <http://www2.ohchr.org/english/bodies/hrcouncil/10session/reports.htm>.
- More informal documents and draft resolutions are available on the 'OHCHR extranet' at <http://portal.ohchr.org/portal/page/portal/HRCExtranet>. Username: 'hrc extranet' Password: '1session'.

NGOs and human rights defenders seeking more specific information or individual advice on the Council session, please contact the ISHR secretariat by email or phone at +41 (0) 22 919 71 00.

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The Council Monitor forms part of the Human Rights Monitor Series produced by ISHR. It provides you with information about all the key developments at the Human Rights Council, including Daily Updates during the session of the Council, an Overview of the session, briefings and updates on the major issues of concern in the transition from the Commission on Human Rights to the Council and other key reports. It is currently an online publication that can be found at www.ishr.ch.

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