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**Report of the Special Rapporteur on torture and other cruel, inhuman
or degrading treatment or punishment, Manfred Nowak**

Summary

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment submits his first report to the Human Rights Council. Section II summarizes the activities of the Special Rapporteur undertaken between August and December 2006 (i.e. the period since the submission of his interim report to the General Assembly, document A/61/259), including updates on country visits to the Russian Federation and Paraguay, future visits and pending requests for invitations, and highlights of key presentations and meetings. In Section III, the Special Rapporteur discusses the obligation of States parties to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to establish universal jurisdiction. The Special Rapporteur notes that, with few exceptions, States remain reluctant to make use of their rights and obligations to exercise universal jurisdiction. The Special Rapporteur discusses recent practice and the developments related to the case of the ex-dictator of Chad, Hissène Habré. Given that impunity is one of the main reasons for the widespread practice of torture in all regions of the world, he calls upon States to exercise universal jurisdiction to fight impunity and deny torturers any safe haven in the world. Section IV contains a discussion on the importance of cooperation between the Special Rapporteur and regional mechanisms established to combat torture. Section V discusses the right of victims of torture to a remedy.

The summary of communications sent by the Special Rapporteur from 16 December 2005 to 15 December 2006 and the replies received thereto from Governments by 31 December 2006 are found in addendum 1 to the present report. Addendum 2 contains a summary of the information provided by Governments and non-governmental organizations on implementation of recommendations of the Special Rapporteur following country visits. Addendum 3 is the report of the country visit to Jordan, and addendums 4 and 5 contain preliminary notes on the missions to Paraguay and Sri Lanka, respectively.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION	1 - 3	4
II. ACTIVITIES OF THE SPECIAL RAPPORTEUR	4 - 40	4
III. THE OBLIGATION OF STATES PARTIES TO ESTABLISH UNIVERSAL JURISDICTION ACCORDING TO THE PRINCIPLE <i>AUT DEDERE AUT IUDICARE</i>	41 - 47	11
IV. COOPERATION WITH REGIONAL ORGANIZATIONS	48 - 60	15
V. THE RIGHT OF VICTIMS OF TORTURE TO A REMEDY AND REPARATION	61 - 68	20

I. INTRODUCTION

1. The Special Rapporteur on the question of torture, Manfred Nowak, hereby submits his first report to the Human Rights Council, in accordance with General Assembly resolution 60/251.
2. Section II summarizes the activities of the Special Rapporteur undertaken between August and December 2006 (i.e. the period since the submission of his interim report to the General Assembly, document A/61/259). In Section III, the Special Rapporteur discusses the obligation of States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention) to establish universal jurisdiction, and Section IV contains a discussion on regional cooperation. Section V discusses the right of victims of torture to a remedy. In particular, the Special Rapporteur points to the obligation of States under article 14 of the Convention against Torture to, among other things, pay the costs of rehabilitation. He calls for the development of mechanisms whereby States found to be systematic violators would contribute to funds such as the United Nations Voluntary Fund for Victims of Torture.
3. The summary of communications sent by the Special Rapporteur from 16 December 2005 to 15 December 2006 and the replies received thereto from Governments by 31 December 2006 are found in addendum 1 to the present report. Addendum 2 contains a summary of the information provided by Governments and non-governmental organizations (NGOs) on implementation of recommendations of the Special Rapporteur following country visits. Addendum 3 is the report of the country visit to Jordan, and addendums 4 and 5 contain preliminary notes on the missions to Paraguay and Sri Lanka, respectively.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

4. The Special Rapporteur draws the attention of the Council to his second interim report to the General Assembly (A/61/259, paras. 6-43), in which he described his activities for the period from January to July 2006 (i.e. the period since the submission of his report to the Commission on Human Rights, document E/CN.4/2006/6 and addenda). The Special Rapporteur would like to inform the Council about the key activities he has undertaken since the submission of his report to the General Assembly, i.e. during the period August to December 2006.

Communications concerning human rights violations

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

Country visits

Jordan

6. The Special Rapporteur undertook a visit to Jordan from 25 to 29 June 2006 and draws attention to the full report, including his findings and recommendations, contained in

addendum 3. He expresses his appreciation to the Government for the full cooperation it extended to him. Consistent and credible allegations of torture and ill-treatment were brought to the attention of the Special Rapporteur, particularly with respect to the General Intelligence Directorate (GID) for the purpose of obtaining confessions and intelligence in pursuit of counter-terrorism and national security objectives, and within the Criminal Investigations Department (CID) to extract confessions in the course of routine criminal investigations. On the basis of all the evidence gathered, including the consistency and credibility of the allegations, the denial of the possibility of assessing these allegations by means of private interviews with detainees in the GID, taking into account the deliberate attempts by the officials to obstruct his work in the CID and the forensic evidence obtained, the Special Rapporteur confirms that the practice of torture is routine in the GID and the CID. With respect to conditions of detention in prisons and pretrial 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 corporal punishment amounting to torture. The conditions in other Correction and Rehabilitation Centres were found to be more humane, although he continued to receive credible reports of regular beatings and other forms of corporal punishment by prison officials there. No allegations of ill-treatment were received in the Juweidah (Female) Correction and Rehabilitation Centre, though he remains critical of the policy of holding females in “protective” detention, under the provisions of the 1954 Crime Prevention Law, because they are at risk of becoming victims of honour crimes. The Special Rapporteur concludes that the practice of torture persists in Jordan because of a lack of awareness of the problem and because of institutionalized impunity. The heads of the security forces and of the detention facilities he visited denied any knowledge of torture, despite having been presented with substantiated allegations. Moreover, in practice the provisions and safeguards laid out in Jordanian law to combat torture and ill-treatment are meaningless because the security services are effectively shielded from independent and public criminal prosecution and judicial scrutiny. The fact that no official has ever been prosecuted for torture under article 208 of the Penal Code underlines this conclusion. In view of the commitment of the Government to human rights, the Special Rapporteur is confident that every effort will be made to implement the recommendations in his report. To this end, the Special Rapporteur welcomes the recent implementation of his recommendation to close the Al-Jafr Correction and Rehabilitation Centre.

Iraq

7. The Special Rapporteur recalls that on 1 and 2 July 2006, following his country visit to Jordan, he met in Amman with Iraqi torture victims and NGOs from different regions of Iraq, as well as representatives of the United Nations Assistance Mission in Iraq (UNAMI) in order to gather information about the situation of torture there. Meetings were also held by video-link with representatives of NGOs, the Iraqi Ministry of Human Rights and UNAMI staff in Baghdad. Despite widespread and continuing media coverage, the Iraqi NGOs expressed their frustration at the current situation and appealed for the United Nations and other international entities to pay greater attention to the human rights situation in Iraq, and for the urgent intervention that it deserved. The Special Rapporteur expresses his appreciation for the work being undertaken by UNAMI human rights officers and for the periodic reports of UNAMI, which have consistently documented the widespread use of torture in Iraq (e.g. UNAMI, *Human Rights Report, 1 July-31 August 2006*). He expresses his profound concern about the dire situation of human rights in Iraq in general and allegations of torture

in particular. The Special Rapporteur drew the attention of the Minister of Human Rights to his request for a visit and reaffirmed his wish to carry out a visit in the future.

Russian Federation

8. As he indicated in his presentation to the Council on 20 September 2006, as well as in his report to the General Assembly and in his presentation thereof on 23 October, the Special Rapporteur was scheduled to undertake a visit from 9 to 20 October to the Russian Federation, with a particular focus on the North Caucasus Republics of Chechnya, Ingushetia, North Ossetia and Kabardino-Balkaria. At a very late stage in the preparations, he was informed by the Government that certain elements of the terms of reference for the visit (as adopted at the 4th meeting of special procedures of the Commission on Human Rights in May 1997, see E/CN.4/1998/45, appendix V) would contravene Russian federal legislation, particularly for non-treaty-based international human rights monitors, with respect to carrying out unannounced visits to places of detention and holding private interviews with detainees. In particular, in a letter dated 26 September 2006, the Government argued that article 38 of Law No. 5473-1 of 21 July 1993 on “Institutions and Bodies that Implement Criminal Penalties in the Form of Imprisonment”, article 24 of the Code for the Execution of Sentences and article 18 of Law No. 103-FZ of 15 July 1995 on “Custody of Persons Suspected and Accused of Committing a Crime” prevented the Special Rapporteur from visiting places of detention unannounced or speaking privately to detainees.

9. Recalling that the terms of reference had been brought to the attention of the Government from the very outset of the request to visit the country, and are the same terms that have governed the visits of his predecessors, as well as every visit that he himself has carried out since he assumed the mandate, namely to Georgia, Mongolia, Nepal, China, Jordan and Paraguay, the Special Rapporteur finds it regrettable that they were cited by the Government as being problematic after the issuance of an invitation and at such a late stage in the preparations. The Special Rapporteur notes the strong expectations of a large number of stakeholders, including government officials, that the mission would proceed.

10. The Special Rapporteur recalls that in a letter dated 22 May 2006, the Government, in informing the Special Rapporteur that it accepted the October 2006 dates for the visit, stated that it “will endeavour to accommodate the Special Rapporteur’s wishes regarding the modalities of his visit, bearing in mind all the relevant recommendations, including the terms of reference for fact-finding missions by special rapporteurs of the Commission on Human Rights”. It was on the basis of these assurances that the Special Rapporteur, in close cooperation with the Government, prepared the mission and informed the public accordingly.

11. The Special Rapporteur observes that in the course of discussing the modalities of country visits, it has often been pointed out to him by Governments that national legislation restricts access to facilities except for a select number of enumerated individuals. Nevertheless, he notes that an official visit of the United Nations Special Rapporteur, undertaken at the express invitation of a Government, is clearly an exceptional event, and Governments recognize this and demonstrate good faith and cooperation by facilitating the work of the Special Rapporteur to the fullest extent possible. This has been the case with every country visit that the Special Rapporteur has undertaken since he assumed the mandate. In practical terms, Governments have

facilitated the work of the Special Rapporteur in this regard, by providing him with letters of authorization signed by relevant ministries to assure his unimpeded access to all places of detention.

12. In a letter dated 27 September 2006, the Special Rapporteur expressed to the Government that in his analysis the terms of reference would not contravene Russian federal legislation, and that the visit could be carried out as planned in full compliance therewith. In particular, he cited article 38 of the law on “Institutions and Bodies that Implement Criminal Penalties in the Form of Imprisonment” which provides that representatives of international (inter-State, intergovernmental) organizations authorized to monitor human rights have the right to visit penitentiary and pretrial facilities without permission. Under this article, he noted examples of international human rights monitors that have visited detention facilities unannounced and have held private interviews with detainees in pretrial facilities and in prisons, such as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Council of Europe Commissioner for Human Rights, and the United Nations Special Rapporteur on violence against women (see E/CN.4/2006/61/Add.2).

13. In a letter dated 28 September 2006, the Government argued that the terms of reference are of a non-binding nature, a question which has never been either discussed or agreed upon in an intergovernmental forum. The Special Rapporteur reiterates that the rights to carry out unannounced visits or hold private interviews with detainees are not only fundamental and necessary but common sense, especially for the investigation of torture and ill-treatment (see the discussion on country visit methodology in document E/CN.4/2006/6). As such, they cannot be subject to negotiation or selective approval by States. Any suggestion to the contrary would seriously call into question the intentions behind the Government’s invitation to the Special Rapporteur. Moreover, for a Special Rapporteur on the question of torture to agree to a fact-finding visit to a country under such restrictions would only undermine the credibility and objectivity of his findings, his impartiality and independence, and give legitimacy to claims that double standards were being applied with respect to different Governments. The Special Rapporteur recalls that this was precisely the reason for the cancellation of the visit to Guantánamo Bay.

14. Since this matter could not be resolved, on 4 October, only five days before the scheduled start of the visit, the Special Rapporteur had to announce its postponement pending a timely solution, which the Government promised would be found in accordance with the terms of reference in order for this important mission to proceed. Despite repeated requests for information, no developments have been forthcoming to date.

15. As a member of the United Nations Human Rights Council, and in view of the pledge it gave to cooperate with the special procedures, the Special Rapporteur calls upon the Russian Federation to demonstrate, by example, its commitment to human rights. He appeals to the Government to quickly find a solution to the legal issues indicated above and, in accordance with its invitation of 22 May 2006, allow him to carry out an objective visit to the Russian Federation, and the North Caucasus in particular, to investigate the situation of torture and ill-treatment, in line with the standard terms of reference of special procedures, with a view to developing a long-term process of cooperation to eradicate these practices.

16. With respect to fact-finding missions undertaken, the Special Rapporteur carried out a visit to Paraguay from 22 to 29 November 2006, and draws attention to the preliminary note, including his preliminary findings and recommendations, contained in addendum 4. He expresses his gratitude to the Government for extending its full cooperation to him. Recognizing that Paraguay has come a long way in overcoming the legacy of the military dictatorship under General Stroessner, the Special Rapporteur 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. He also welcomes the fact that the Government is among the first countries to have ratified the Optional Protocol to the Convention against Torture.

17. 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, the Special Rapporteur concludes that torture is still widely practised in Paraguay, primarily during the first days of police custody as a means of obtaining confessions. 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 to the Special Rapporteur. With regard to the military, the Special Rapporteur received only a few allegations of beatings and degrading treatment of conscripts, such as a form of hazing known as *descuereo*, which involves forcing individuals to perform extreme types of exercise.

18. In most of the prisons he visited he found overcrowding, convicted and remand prisoners mixed together, and a high incidence of inter-prisoner violence owing to insufficient oversight related to the high prisoner-to-guard ratio. 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.

19. In the view of the Special Rapporteur, the practice of torture and ill-treatment continues in Paraguay because of impunity. Since the Criminal Code entered into force in 1999, there have apparently been no convictions for torture and few prosecutions, if any. In his report on the visit, the Special Rapporteur makes a number of recommendations to address these and other issues and is assured by the Government that every effort will be made to implement them.

Upcoming missions

20. The Special Rapporteur reports that his mission to Sri Lanka is expected to take place from 27 January to 2 February 2007, and to Nigeria from 4 to 11 March. Other missions for 2007 include Togo and Indonesia.

Pending requests

21. The Special Rapporteur reports that dates are yet to be finalized for a mission to Côte d'Ivoire, following the Government's invitation, first requested in 2005, and received on 27 June 2005. Regarding a request first made in 2005, the delegation of Zimbabwe to the fortieth session of the African Commission on Human and Peoples' Rights, held in Banjul,

indicated to the plenary that an invitation to the Special Rapporteur could be expected shortly. Moreover, on 17 November 2006, following a meeting with the Minister for Foreign Affairs of the Gambia, H.E. Mr. B. Jahumpa, the Government extended an invitation to the Special Rapporteur to visit the country. The Special Rapporteur expects to undertake these visits in 2008.

22. The Special Rapporteur reports that in his letter dated 4 October 2006 to the Government of the United States of America, the Chairperson of the Committee on Legal Affairs and Human Rights of the Council of Europe, Mr. D. Marty, included the Special Rapporteur in his request for an invitation to visit United States detention facilities at Guantánamo Bay, Cuba in order to meet a number of detainees who were recently transferred there from secret detention centres outside the United States.

23. The Special Rapporteur notes outstanding requests for invitations from the following States, some of which are of long standing: Afghanistan (request first made in 2005); Algeria (1997); Belarus (2005); Bolivia (2005); Egypt (1996); Equatorial Guinea (2005); Eritrea (2005); Ethiopia (2005); Fiji (2006); India (1993); Iran (Islamic Republic of) (2005); Iraq (2005); Israel (2002); Liberia (2006); Libyan Arab Jamahiriya (2005); Papua New Guinea (2006); Saudi Arabia (2005); Syrian Arab Republic (2005); Tunisia (1998); Turkmenistan (2003); Uzbekistan (2006); and Yemen (2005).

Highlights of key presentations and consultations

24. On 20 September 2006, the Special Rapporteur presented his report to the Council, including his missions to Georgia, Mongolia, Nepal and China, and engaged in an interactive dialogue with the members and concerned countries. On 21 September 2006, together with the Special Rapporteurs on the right of everyone to the highest attainable standard of physical and mental health, the independence of judges and lawyers, and freedom of religion or belief, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, he presented the joint report concerning the human rights situation of detainees held at the United States Naval Base at Guantánamo Bay, Cuba (E/CN.4/2006/120). A press conference followed.

25. On 20 September 2006, he held consultations with staff of the Office of the United Nations High Commissioner for Refugees in Geneva to discuss issues of common concern, such as non-refoulement.

26. On 25 September 2006, at the invitation of the Inter-Parliamentary Union, the Special Rapporteur gave a presentation on the challenges to the prohibition of torture and ill-treatment under international law, on the occasion of the seminar entitled, "Law and justice: the case for parliamentary scrutiny", held in Geneva.

27. On 25 September 2006, the Special Rapporteur participated in an expert meeting on the closure of the detention facilities at Guantánamo Bay, organized by the International Commission of Jurists.

28. On 26 September 2006, he delivered the keynote speech on "Torture. Does it make us safer? Is it ever OK?" at a reception organized by Human Rights Watch in Geneva.

29. On 27 September 2006, the Special Rapporteur held meetings in Strasbourg, France, with the Director and staff of the Office of the Council of Europe Commissioner for Human Rights on matters of mutual interest, including working methods and future areas of cooperation.

30. On 23 October 2006, the Special Rapporteur presented his report to the General Assembly in New York, followed by a press conference.

31. On 24 October 2006, at the invitation of the International Centre for Transitional Justice in New York, the Special Rapporteur participated in consultations to discuss the role of the Special Rapporteur and on ways and means of collaborating with the organization.

32. On 7 November 2006, he was invited to participate in the Journalists Forum on Human Rights, organized by United Nations Information Centre in Vienna.

33. On 8 November 2006, the Special Rapporteur was the keynote speaker at an event organized by the *Hamburger Gesellschaft zur Foerderung der Demokratie und des Voelkerrechts* (Hamburg Society for the Promotion of Democracy and International Law) entitled, "How much torture can democracy bear?"

34. On 9 November 2006, he introduced a film, *Outlawed: Extraordinary Rendition, Torture and Disappearances in the "War on Terror"*, organized by the Young Democrats Abroad and the Ludwig Boltzmann Institute of Human Rights in Vienna.

35. From 13 to 17 November 2006, the Special Rapporteur participated in the fortieth ordinary session of the African Commission on Human and Peoples' Rights in Banjul, including in the NGO Forum, which preceded it. Further details are described in the section below on regional cooperation.

36. On 22 and 23 November, the Special Rapporteur participated in a National Consultative Forum on the implementation of the Optional Protocol to the Convention in Paraguay. The Forum was held in Asunción and was jointly organized by the Ministry for Foreign Affairs, the NGO network CODEHUPY and the Geneva-based NGO, the Association for the Prevention of Torture. The objective of the Forum was to debate the nature of the national preventive mechanism, which the Government is obliged to designate under the Optional Protocol, and to make relevant recommendations. The Forum brought together the most relevant national actors working in the areas of torture prevention and detention, and participants included representatives of the Ministry for Foreign Affairs, the Ministry of Justice and Labour, the Ministry of the Interior, the Supreme Court of Justice, the Office of the Attorney-General, the Office of the Ombudsman, parliamentarians, representatives of NGOs and international experts.

37. On 7 December 2006, to mark Human Rights Day (10 December), the Special Rapporteur was invited by the London School of Economics to deliver a public lecture entitled "Human rights: Some old truths and necessary new directions".

38. On 10 December 2006, the Special Rapporteur delivered the keynote speech at the IX International Rehabilitation Council for Torture Victims (IRCT) International Symposium on Torture, "Providing Reparation and Treatment, Preventing Impunity", held in Berlin.

39. On 15 December 2006, the Special Rapporteur was invited by the University of Nottingham, United Kingdom, to deliver a lecture entitled, “Challenges to the absolute prohibition of torture.”

40. On 19 and 20 December 2006, the Special Rapporteur was invited by the Office of the United Nations High Commissioner for Human Rights to participate in an expert consultation on “Indicators for monitoring compliance with international human rights instruments”, in Geneva.

III. THE OBLIGATION OF STATES PARTIES TO ESTABLISH UNIVERSAL JURISDICTION ACCORDING TO THE PRINCIPLE *AUT DEDERE AUT IUDICARE*

41. One of the major aims of the Convention against Torture is the criminalization of torture and the enforcement under criminal law of the ban on torture. To this end the Convention obliges States parties to designate and define torture as a specific crime in national legislation. Furthermore, in order for such crimes to be adequately prosecuted, the Convention provides for extensive jurisdictional powers and obligations. With the purpose of avoiding safe havens for perpetrators of torture, the Convention goes beyond the traditional principles of territorial and national jurisdiction (listed in articles 5 (1) (a)-(c)) and applies, for the first time in a human rights treaty, the principle of universal jurisdiction (art. 5 (2))¹ as an international obligation of all States parties without any precondition other than the presence of the alleged torturer.

42. However, despite this impressive machinery, the Special Rapporteur notes that, with few exceptions, States remain extremely reluctant to make use of their rights and obligations under the Convention to exercise universal jurisdiction. Almost 20 years after the entry into force of the Convention, very few States have actually exercised universal jurisdiction over torture offences in practice.² One explanation for this phenomenon is that States have tended to interpret their obligations under article 5 (2) in a very restrictive manner. Some States have argued, for instance, that the exercise of universal jurisdiction is dependent upon the prior existence of a request for extradition (e.g. the Al-Duri case in Austria).³ In fact, both the

¹ According to article 5 (2) of the Convention, “Each State Party shall ... take such measures as may be necessary to establish its jurisdiction over [torture] offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him ...”.

² The proceedings against the late dictator of Chile, General Augusto Pinochet Ugarte, constitute probably the best known case relating to universal jurisdiction under the Convention against Torture. On 23 March 1999 the highest court in the United Kingdom, the House of Lords, decided that the former Chilean Head of State was not immune from being extradited to Spain to stand trial for certain human rights crimes committed in Chile. *Re Pinochet* [1999] 2 WLR 272; 38 ILM 432 (1999).

³ Izzat Ibrahim Khalil Al-Duri was the deputy of Iraqi dictator Saddam Hussein, held responsible for alleged systematic torture practices. He went to Vienna in August 1999 for medical treatment. Austrian NGOs and members of the Green Party requested the Austrian authorities to detain him and exercise universal jurisdiction in accordance with article 5 (2). However, the Austrian authorities argued that universal jurisdiction was not an obligation, but

wording of article 5 (2) and the *travaux préparatoires* clearly indicate that States parties have a legal obligation to take the necessary legislative, executive and judicial measures to establish universal jurisdiction over the offence of torture, as defined in article 1 of the Convention. This means, in particular, that States are not permitted to make the exercise of universal jurisdiction dependent on any legal act of another State. All attempts by States during the drafting of the Convention to establish an order of priority among the different grounds of jurisdiction mentioned in article 5 or to make universal jurisdiction dependent upon a request for extradition by another State were rejected by well-informed decisions arrived at after extensive discussions.⁴ That “the obligation to prosecute the alleged perpetrator of acts of torture does not depend on the prior existence of a request for his extradition” was also explicitly confirmed by the landmark decision of the Committee against Torture in the Habré case in 2006.⁵

The Hissène Habré case

43. The case of *Guengueng et al. v. Senegal*, which concerns the lack of proper legislative, executive and judicial measures taken by Senegalese authorities in relation to the former dictator of Chad, Hissène Habré, is the first case in which the Committee has found a violation of article 5 (2). The Habré case is a perfect example of a Government’s resistance to implement its obligation under the Convention to establish universal jurisdiction.⁶ That torture was systematically practised under the Habré regime during the 1980s seems to be beyond doubt and has been established, inter alia, by the Chadian Truth and Reconciliation Commission in 1992. In the wake of the Pinochet case, the Chadian Association for the Promotion and defence of Human Rights, with the assistance of Human Rights Watch - above all, Reed Brody⁷ - and the Dakar-based African Assembly for the Defence of Human Rights, carefully gathered evidence and in January 2000 filed a criminal complaint in Dakar where

rather only an authorization under the Convention and that such an obligation would only come into play in case of an extradition request. See Manfred Nowak commenting on this case in Falter, *Ministerielle Verwirrungen*, 27 August 1999. For press reports of this case, see A.P. Worldstream, *Green Party official files criminal complaint against ailing Iraqi official*, 16 August 1999; *Schlögel verteidigt Visum aus ‘humanitären Gründen - Grüne zeigen Saddam Husseins Stellvertreter an*, *Der Standard*, 17 August 1999; *Washington Post*, “U.S. steps up efforts to prosecute top Iraqis”, 28 October 1999.

⁴ 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.

⁵ *Suleymane Guengueng et al. v. Senegal*, communication No. 181/2001, (CAT/C/36/D/181/2001) para. 9.7.

⁶ See e.g. Stephen P. Marks, “The Hissène Habré Case: The Law and Politics of Universal Jurisdiction”, in S. Macedo (ed.), *Universal Jurisdiction*, p. 131.

⁷ See e.g. Reed Brody, “The Prosecution of Hissène Habré - An ‘African Pinochet’”, *New England Law Review*, vol. 35 (2001), p. 321.

Hissène Habré resided since he was overthrown by Idris Deby in 1990. Only one week later, the Senegalese judge Demby Kandji indicted the former dictator as an accomplice to torture and placed him under house arrest. In July 2000, the Appeals Court quashed the indictment, and in March 2001, the Court of Cassation confirmed that Senegalese courts were not competent to establish universal jurisdiction. In April 2001, seven victims of torture lodged a complaint against Senegal before the United Nations Committee against Torture (CAT), and in the meantime legal proceedings were also initiated by victims in Belgium. After a long delay caused by developments in Belgium which led to an amendment of its liberal universal jurisdiction provisions, an international arrest warrant was finally issued by the Belgian judge Daniel Franssen in September 2005, and Belgium made an extradition request to Senegal. In November 2005, Hissène Habré was arrested by Senegalese authorities, but the Court of Appeal again released him, this time on the ground that it had no jurisdiction to rule on the extradition request. Instead, the Government of Senegal placed him at the disposal of the President of the African Union. In January 2006, the Assembly of Heads of State and Government of the African Union decided to set up a Committee of Eminent African Jurists to consider all aspects and implications of the Habré case and to submit a report to its next session in June 2006. Before the Committee of Eminent African Jurists prepared its report, CAT, which had been requested by the parties to delay its proceedings because of the judicial proceedings pending in Belgium, on 17 May 2006 issued a landmark decision on the complaint submitted by seven Chadian torture victims more than five years before. It found a violation of article 5 (2) on the ground that the Senegalese authorities had failed to take the legislative measures necessary to establish the legal possibility for Senegalese courts to exercise universal jurisdiction.⁸ The Committee also ruled that Senegal had violated its obligations to prosecute or extradite (*aut dedere aut iudicare*) in accordance with article 7.⁹ In addition, by refusing to comply with the extradition request from Belgium, “the State party has again failed to perform its obligations under article 7 of the Convention”.¹⁰ Most importantly, the Committee noted that “the obligation to prosecute the alleged perpetrator of acts of torture does not depend on the prior existence of a request for his extradition”.¹¹ Therefore, “the State party was obliged to prosecute Hissène Habré for alleged acts of torture unless it could show that there was not sufficient evidence to prosecute, at least at the time when the complainants submitted their complaint in January 2000”.¹²

44. Indeed, the only alternative to prosecuting an alleged torturer present in its territory is for a State to extradite him or her, in accordance with the principle *aut dedere aut iudicare* provided for in article 7, to the State where the act of torture allegedly was committed (the territorial

⁸ Op. cit. at note 7, paras. 9.5 and 9.6.

⁹ Ibid., paras. 9.7-9.9.

¹⁰ Ibid., para. 9.11.

¹¹ Ibid., para. 9.7.

¹² Ibid., para. 9.8.

State), or to the flag State,¹³ or to a State exercising jurisdiction on the basis of the active or passive nationality principle.¹⁴ But extradition is only possible on the basis of an extradition request from any of the States mentioned in article 5 (1). If none of these States requests an extradition, the State where the alleged torturer is present (the forum State) has no legal alternative than to thoroughly investigate the allegations of torture and, if the evidence found seems to be sufficient, to prosecute the person concerned before its criminal courts. If the State where the act of torture allegedly was committed or another State requests extradition, the State where the alleged torturer is present has the choice of freely deciding whether to prosecute or to extradite in accordance with bilateral or multilateral extradition treaties. Since no order of priority had been established among the various grounds of jurisdiction in article 5, there is no legal obligation to extradite the alleged torturer to his or her State of nationality or to the State where the act of torture was committed. On the contrary, in deciding whether or not to extradite, the Government must comply with the principle of non-refoulement as laid down in article 3 and with the purpose of article 5, namely to avoid safe havens for torturers. In other words, if there are any indications that the home State or the State where the act of torture was committed requested extradition for the purpose of shielding the alleged torturer against effective prosecution, such extradition request shall not be granted and the alleged torturer shall be prosecuted under the universal jurisdiction principle. The same holds true if the alleged torturer would be at risk of torture in a State requesting his or her extradition, in particular if he or she belonged to a regime that has later been overthrown, or if a State wishes to exercise jurisdiction on the ground that its nationals had been subjected to torture.

45. The Committee of Eminent African Jurists met, less than a week after the CAT decision, in Addis Ababa and submitted its report in June to the Assembly of Heads of State and Government of the African Union.¹⁵ It recommended the adoption of an “African option”, i.e. that the former dictator of Chad should be tried by an African State - Senegal or Chad in the first instance, or by any other African country. Senegal was considered to be the “country best suited to try Habré as it is bound by international law to perform its obligations”, but “Chad has the primary responsibility to try and punish Hissène Habré. It should therefore cooperate with

¹³ States parties are also required to extend their criminal jurisdiction regarding torture to conduct on board ships or aircraft flying its flag (the flag State) regardless of the precise location where the crime is committed.

¹⁴ According to the active nationality principle States parties are under a legal obligation to include a provision in their criminal codes which establishes criminal jurisdiction in relation to any act of torture committed by their own nationals abroad. The passive nationality principle authorizes, but does not oblige States parties to establish jurisdiction regarding the crime of torture when the victim is a national of the State party.

¹⁵ Cf. the report of the Committee of Eminent African Jurists on the case of Hissène Habré, www.africa-union.org.

Senegal".¹⁶ On 2 July 2006, the Assembly of Heads of State and Government, by explicitly referring to the obligations of Senegal under the Convention against Torture, requested Senegal to prosecute Habré.

Conclusion

46. The Special Rapporteur welcomes the announcement of President Abdoulaye Wade that his Government has agreed to this request and anticipates the speedy implementation of the 2 November 2006 decision of the Government of Senegal to revise its laws to permit the trial and further to establish a governmental commission under the Minister of Justice to oversee the legal changes, make contact with Chad, create a witness protection programme and raise money to carry out the investigation and trial.

47. The Habré case may provide a positive example to other States which so far have been reluctant to exercise universal jurisdiction over alleged perpetrators of torture present on their territory. After all, impunity is one of the main reasons for the widespread practice of torture in all regions of the world, and universal jurisdiction is one of the most important methods of fighting impunity by ensuring that torturers find no safe haven in our global world. **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.**

IV. COOPERATION WITH REGIONAL ORGANIZATIONS

48. Global human rights problems can be addressed effectively only by concerted and well-coordinated cooperation among the whole array of actors involved in the realization of human rights, including Governments, international and regional intergovernmental organizations, parliamentarians, legal professionals, academics, non-governmental organizations, other civil society representatives and rights holders themselves. In this section, the Special Rapporteur will give special attention to the importance of cooperation between his mandate and regional human rights organizations to address the practice of torture and ill-treatment.

49. The Special Rapporteur on the question of torture is one of the key mechanisms established by the United Nations to eradicate torture. As an independent human rights expert, among the main responsibilities of the Special Rapporteur are to: raise awareness of the international standards relating to the prohibition of torture and ill-treatment; examine in-depth issues impacting on the practice; address to Governments individual and general allegations of torture and ill-treatment; and by visits in situ, objectively assess the situation of torture and ill-treatment in countries and make recommendations on measures needed to prevent their occurrence.

50. With the limited means at his disposal and a mandate that covers the globe, he readily acknowledges that he cannot realistically do this on his own. Governments ultimately are responsible for the implementation of human rights obligations, and therefore are the Special Rapporteur's primary partners. And apart from intergovernmental organizations, he

¹⁶ Ibid., paras. 29, 30.

relies upon civil society and regional organizations, which are the experts closest to the issues and can often address them with greater speed and on a more systematic basis. Indeed anti-torture instruments and mechanisms adopted and established by regional organizations - namely, the Organization of American States, the African Union and the Council of Europe - are often much more significant, timely and responsive, for example by means of judicial decisions, or systems for periodic monitoring. The Special Rapporteur points to the examples of regional mechanisms to monitor torture and ill-treatment, such as the Special Rapporteur on the rights of persons deprived of their liberty of the Inter-American Commission on Human Rights;¹⁷ the Special Rapporteur on prisons and conditions of detention in Africa;¹⁸ and the Follow-up Committee of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (The Robben Island Guidelines) of the African Commission on Human and Peoples' Rights;¹⁹ and the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).²⁰

51. In formal terms, the Special Rapporteur notes that in the early 1990s, particularly upon the establishment of CPT,²¹ the mandate of the Special Rapporteur was encouraged to make contacts with the Committee, initially "in the belief that the work of this Committee will make it possible to gain useful experience which may make it easier to determine whether such a system of periodic visits can also be envisaged in other regions or on a worldwide scale".²² Then subsequently, the Commission regularly welcomed the exchange of views between the Special Rapporteur and the Committee.²³ This language disappeared in subsequent resolutions from the mid-1990s, and no further express language related to cooperation with regional organizations has since been inserted.

¹⁷ Established in March 2004, pursuant to article 15 of the rules of procedure of the Inter-American Commission on Human Rights.

¹⁸ Established pursuant to a resolution adopted at the 20th Ordinary Session of the African Commission on Human and Peoples' Rights, 31 October 1996.

¹⁹ The Robben Island Guidelines and the Follow-up Committee were established pursuant to the Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa, adopted at the Thirty-second Ordinary Session of the African Commission on Human and Peoples' Rights, 23 October 2002.

²⁰ Established under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, adopted in 1987.

²¹ CPT began its work on 13 November 1989.

²² Commission on Human Rights resolution 1990/34, para. 3.

²³ Commission on Human Rights resolutions 1991/38, 1992/32, 1993/40 and 1994/37.

52. Nevertheless, experience and practical necessity demand that the Special Rapporteur make efforts to hold regular exchanges with his regional counterparts on thematic issues, as well as country situations. Thus, a significant part of his activities has been devoted to strengthening existing cooperation and building new partnerships with regional organizations.

53. The Special Rapporteur draws attention to some recent examples of cooperation with regional organizations:

- The Organization for Security and Cooperation in Europe (OSCE) provided collaboration and support during his visit to Georgia in February 2005, and particularly for facilitating his visit to South Ossetia.
- On 13 October 2005, he participated in an inter-agency meeting on the follow-up to the Andijan trials organized by the OSCE Office for Democratic Institutions and Human Rights to brief other international organizations on the ongoing trials and to brainstorm on a common response and follow-up.
- On 10 November 2005, he was received by CPT in Strasbourg, France. Views were exchanged in relation to the prohibition of torture in the context of counter-terrorism measures, particularly with respect to diplomatic assurances and secret places of detention. Promoting ratification of the Optional Protocol to the Convention and exploring mutual cooperation and coordination, such as in relation to preparation for and follow-up to country visits, were also discussed. On the same day, the Special Rapporteur met with the Secretary-General of the Council of Europe, Mr. T. Davis, the European Commissioner for Human Rights, Mr. A. Gil-Robles, and the Secretariat of the Parliamentary Assembly's Committee of Human Rights and Legal Affairs of the Council of Europe. He was informed that in response to his request for a Council of Europe investigation into alleged secret places of detention in Europe of the United States Central Intelligence Agency (CIA), the Committee called upon the Council's Secretary-General to investigate the allegations. The Special Rapporteur welcomes the appointment of an investigator and the launching of an investigation on 21 November 2005; he also welcomes the fact that the Secretary-General of the Council of Europe made use of his powers under article 52 of the European Convention on Human Rights to request all Council of Europe member States to report on the question of alleged secret CIA places of detention in Europe.
- On 7 December 2005, he participated in a discussion on the development of guidelines for diplomatic assurances in the Group of Specialists on Human Rights and the Fight against Terrorism of the Council of Europe Steering Committee for Human Rights.
- On 22 December 2005, he addressed the OSCE Permanent Council in Vienna on cooperation among international and regional human rights mechanisms in the prevention of torture.
- On 18 January 2006, he participated with a member of CPT in an expert talk in Graz, Austria, entitled, "The prohibition of torture. Old problems and new challenges."

- On 24 January 2006, he met with several Council of Europe institutions in Strasbourg. He gave a presentation to the Council of Europe Parliamentary Assembly Committee on Legal Affairs and Human Rights, and exchanged views on alleged secret detentions in Council of Europe member States. He also discussed issues related to the detention centre in Guantánamo Bay with the Secretary-General of the Council of Europe.
- On 4 May 2006, he met with the European Parliament Temporary Committee on the alleged use of European countries by the Central Intelligence Agency of the United States of America for the transport and illegal detention of prisoners in Brussels. On the same day, he had consultations with the European Union Working Party on Human Rights and the European Parliament Subcommittee on Human Rights.
- On 27 September 2006, he held meetings in Strasbourg with the Director and staff of the Office of the Council of Europe Commissioner for Human Rights on matters of mutual interest, including working methods and future areas of cooperation.

54. The substance of these activities has included support for country visits; an exchange of views on substantive issues; collaborative action on country situations; mutual advocacy of anti-torture measures; participation in expert workshops and training; and exchange of information on activities, experiences and working methods, as well as the coordination of future activities.

55. Although cooperation with European regional organizations such as the European Union, the Council of Europe and the Organization for Security and Cooperation in Europe has featured large, the Special Rapporteur has also sought to strengthen ties with the Organization of American States. From 9 to 14 June 2006, in Washington, DC, the Special Rapporteur held meetings with the Assistant Secretary for Political Affairs, the Secretary of the Inter-American Commission on Human Rights and judges of the Inter-American Court of Human Rights. In these meetings, issues of common concern, as well as strategies for collaboration between the two mechanisms, such as through the exchange of information and possible joint actions, were discussed.

56. Moreover, between 13 and 17 November 2006, for the first time, at the invitation of the African Union, the Special Rapporteur participated in the fortieth ordinary session of the African Commission on Human and Peoples' Rights in Banjul. He held consultations with the commissioners, with the Special Rapporteur on prisons and conditions of detention in Africa and the Follow-up Committee of the Robben Island Guidelines and the Commission secretariat, among others. He was invited to address the NGO Forum, which preceded the session of the Commission, and delivered a speech on "The fight against impunity in Africa: The responsibility to protect", as well as the closing remarks of the Forum. During the Commission the Special Rapporteur also participated in a parallel expert consultation on "The challenges to the United Nations Human Rights Council", organized by the International Federation of Human Rights Leagues.

57. The Special Rapporteur stated to the plenary of the Commission that the issue of torture in Africa and the plight of its victims deserved greater attention and prominence than

they had received thus far. In that respect, he noted with satisfaction recent efforts by the African Commission, above all the creation of the mandate of Special Rapporteur on prisons and conditions of detention in Africa, the adoption of the Robben Island Guidelines and the establishment of the Follow-Up Committee. Despite the extreme constraints in resources they faced - including financial, material and human resources - he commended the commissioners for their outstanding contributions to eradicating torture in Africa. He pledged his full cooperation and assistance in their work, including through holding regular exchanges on substantive issues and methods of work, participation in training and seminars, regular exchange of documentation, and giving consideration to carrying out joint missions to African countries.

Conclusion

58. From a simple survey, the Special Rapporteur notes that in 2005 no fewer than 17 resolutions were adopted by the Commission on Human Rights that referred to cooperation with regional organizations on diverse human rights issues,²⁴ including with respect to the activities of some special procedures mandate holders. The adoption of a specific resolution - 2005/73 - by the Commission on regional arrangements for the promotion and protection of human rights provides ample evidence that States recognize the importance of such cooperation.

59. The Special Rapporteur concurs fully with that resolution: regional arrangements play an important role in promoting and protecting human rights, and progress in promoting and protecting all human rights depends primarily on efforts made at the national and local levels. Only through the benefit of cooperation with regional human rights organizations can the mandate of the United Nations Special Rapporteur expect to make a real contribution to the elimination of torture and ill-treatment.

²⁴ For example, see resolutions on combating defamation of religions (2005/3); adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights (2005/15); the right to freedom of opinion and expression (2005/38); elimination of all forms of intolerance and of discrimination based on religion or belief (2005/40); elimination of violence against women (2005/41); rights of the child (2005/44); internally displaced persons (2005/46); human rights and mass exoduses (2005/48); development of public information activities in the field of human rights, including the World Public Information Campaign on Human Rights (2005/58); Convention on the Prevention and Punishment of the Crime of Genocide (2005/62); World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action (2005/64); human rights and transnational corporations and other business enterprises (2005/69); human rights and transitional justice (2005/70); regional arrangements for the promotion and protection of human rights (2005/73); national institutions for the promotion and protection of human rights (2005/74); rights of persons belonging to national or ethnic, religious and linguistic minorities (2005/79); and protection of human rights and fundamental freedoms while countering terrorism (2005/80).

60. **In recognition of the importance of regional cooperation with the mandate on torture, the Special Rapporteur encourages the Human Rights Council to so specify in its future resolutions on torture and other cruel, inhuman or degrading treatment or punishment and to invite the United Nations system to continue to provide support (e.g. in terms of technical advice, capacity-building, or material support to carry out core activities) to regional arrangements to combat torture, such as the Special Rapporteur on prisons and conditions of detention in Africa and the Follow-up Committee of the Robben Island Guidelines of the African Commission on Human and Peoples' Rights.**

V. THE RIGHT OF VICTIMS OF TORTURE TO A REMEDY AND REPARATION

61. The Convention against Torture contains obligations aimed at punishing perpetrators, preventing torture and assisting victims of torture. Article 14 provides specifically for the right of victims to a remedy and 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.²⁵

62. In the leading case on article 14, *Guridi v. Spain*,²⁶ the Committee against Torture, without explicit reference to the Guidelines, followed the terminology developed therein in its decision. In that case, a Spanish court found three members of the Spanish Civil Guard guilty of torture, sentenced them to more than four years of imprisonment and ordered them to pay compensation of 500,000 pesetas to the victim. The perpetrators were subsequently pardoned after they had paid compensation. Despite the payment of compensation, the Committee found a violation of article 14. It held that reparation should cover all the damages suffered by the victim, which included, among other things, restitution, compensation and rehabilitation of the victim, as well as measures to guarantee the non-repetition of the violations, always bearing in mind the circumstances of each case.²⁷

63. Procedurally, States commit themselves to establishing suitable institutions (i.e. primarily judicial institutions, such as criminal, civil, constitutional and special human rights courts, or also national human rights institutions and torture rehabilitation bodies) to enable victims of torture to obtain redress. It is important that the victims of torture themselves be entitled to initiate such procedures.

64. Substantively, the right to a remedy shall provide redress to the torture victim, which means fair and adequate reparation for pain and suffering. What victims perceive as adequate reparation may differ from case to case and depends on the particular suffering, and on the

²⁵ Adopted by General Assembly resolution 60/147 of 16 December 2005. Hereinafter Guidelines. <http://www.ohchr.org/english/law/remedy.htm>.

²⁶ Communication No. 212/2002 (CAT/C/D/212/2002).

²⁷ *Ibid.*, para. 6.8.

individual sense of justice.²⁸ Victims of torture are not primarily interested in monetary compensation, but in the means of reparation that are best suited to restore their dignity and humanity. A full and impartial investigation of the truth and the recognition of the facts, together with an apology by those individuals and authorities responsible, often provide more satisfaction to the victim than payment of money.

65. The Guidelines provide for different categories of reparation. Since torture constitutes a particularly serious violation of human rights, criminal prosecution and appropriate punishment meted out to the perpetrator is perceived by the victim as the most effective means of satisfaction and justice. In addition, criminal investigations serve the purpose of establishing truth and pave the way for other forms of reparation. Guarantees of non-repetition, such as amending relevant laws, fighting impunity and taking effective preventive or deterrent measures, constitute a form of reparation if torture is practised in a widespread or systematic manner. Restitution does not apply to torture victims as the suffering inflicted cannot be taken away. Monetary compensation for the immaterial damage (pain and suffering) or material damage (rehabilitation costs, etc.) may provide satisfaction as an additional form of reparation.

66. Since victims of torture often suffer from long-term physical injuries and post-traumatic stress disorders, various types of medical, psychological, social and legal rehabilitation usually are best suited to provide relief. Long-term rehabilitation measures, which are often provided by special torture rehabilitation centres, are fairly cost intensive.

67. The Special Rapporteur congratulates civil society organizations such as the International Rehabilitation Council for Torture Victims, which works in collaboration with a global network of nearly 200 rehabilitation centres and programmes worldwide in promoting and supporting the rehabilitation of torture victims across the globe. The Special Rapporteur warmly welcomes the support provided by Governments to such rehabilitation centres. The European Union (EU) is currently the biggest donor in this respect (inside and outside the EU) with a total budget of US\$ 29 million. This is followed by the United Nations Voluntary Fund for Victims of Torture, which provided US\$ 17 million for the period 2005-2006, the largest contributions coming from the United States of America, Denmark and the Netherlands.

68. While congratulating these Governments for their generous contributions, the Special Rapporteur would like to remind States that article 14 generates an obligation primarily for the State that has acted wrongfully. **The Special Rapporteur proposes that consideration be given to devising mechanisms to hold accountable those States in which torture is systematic or widespread in order that they may live up to their obligation under article 14. For example, such States might be required to contribute adequate funds to the United Nations Voluntary Fund for Victims of Torture. In addition, the respective costs for treatment should ideally be borne by the individual perpetrators, their superiors and the authorities directly responsible. If States provided effective remedies ensuring that the individual perpetrators are held accountable to pay all the costs of long-term rehabilitation for torture victims, that may have a stronger deterrent effect than criminal punishments.**

²⁸ For a discussion by the Special Rapporteur on the impact of torture on victims, see the report to the General Assembly at its fifty-ninth session (A/59/324), paras. 43-60.