



General Assembly

Distr.: General
28 July 2008

Original: English

Sixty third session

Item 67 (a) of the provisional agenda*

Promotion and protection of human rights: implementation of human rights instruments

Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with Assembly resolution 62/148.

* A/63/150.

Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, submitted pursuant to General Assembly resolution 62/148, the Special Rapporteur addresses issues of special concern to him, in particular overall trends and developments with respect to questions falling within his mandate.

The Special Rapporteur draws the attention of the General Assembly to the situation of persons with disabilities, who are frequently subjected to neglect, severe forms of restraint and seclusion, as well as physical, mental and sexual violence. He is concerned that such practices, perpetrated in public institutions, as well as in the private sphere, remain invisible and are not recognized as torture or other cruel, inhuman or degrading treatment or punishment. The recent entry into force of the Convention on the Rights of Persons with Disabilities and its Optional Protocol provides a timely opportunity to review the anti-torture framework in relation to persons with disabilities. By reframing violence and abuse perpetrated against persons with disabilities as torture or a form of ill-treatment, victims and advocates can be afforded stronger legal protection and redress for violations of human rights.

In section IV, the Special Rapporteur examines the use of solitary confinement. The practice has a clearly documented negative impact on mental health, and therefore should be used only in exceptional circumstances or when absolutely necessary for criminal investigation purposes. In all cases, solitary confinement should be used for the shortest period of time. The Special Rapporteur draws attention to the Istanbul Statement on the Use and Effects of Solitary Confinement, annexed to the report, as a useful tool to promote the respect and protection of the rights of detainees.

Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Introduction	1–4	4
II. Activities related to the mandate	5–36	4
III. Protecting persons with disabilities from torture	37–76	8
A. Legal framework for the protection of persons with disabilities from torture	42–44	9
B. Applying the torture and ill-treatment protection framework to persons with disabilities	45–69	10
C. Conclusions and recommendations	70–76	18
IV. Solitary confinement	77–85	18
Annex		
Istanbul Statement on the Use and Effects of Solitary Confinement		22

I. Introduction

1. The present report is the tenth submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It is submitted pursuant to General Assembly resolution 62/148 (para. 32). It is the fourth report submitted by the present mandate holder, Manfred Nowak. The report includes issues of special concern to the Special Rapporteur, in particular overall trends and developments with respect to issues falling within his mandate.

2. The Special Rapporteur draws attention to document A/HRC/7/3, his main report to the Human Rights Council, in which he explored the influence of international norms relating to violence against women on the definition of torture and the extent to which the definition itself can embrace gender sensitivity and discussed the specific obligations upon States which follow from this approach. According to the Special Rapporteur, the global campaign to end violence against women when viewed through the prism of the anti-torture framework can be strengthened and afforded a broader scope of prevention, protection, justice and reparation for women than currently exists.

3. Document A/HRC/7/3/Add.1 covered the period 16 December 2006 to 14 December 2007 and contained allegations of individual cases of torture or general references to the phenomenon of torture, urgent appeals on behalf of individuals who might be at risk of torture or other forms of ill-treatment, as well as responses by Governments. The Special Rapporteur continues to observe that the majority of communications are not responded to by Governments.

4. Document A/HRC/7/3/Add.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. The Government of Mongolia has not provided any follow-up information since the visit was carried out in June 2005. Documents A/HRC/7/3/Add.3 to 7 are reports of country visits to Paraguay, Nigeria, Togo, Sri Lanka and Indonesia, respectively.

II. Activities related to the mandate

5. The Special Rapporteur draws the attention of the General Assembly to the activities he has carried out pursuant to his mandate since the submission of his report to the Human Rights Council (A/HRC/7/3 and Add.1-7).

Communications concerning human rights violations

6. During the period from 15 December 2007 to 25 July 2008, the Special Rapporteur sent 42 letters of allegations of torture to 34 Governments, and 107 urgent appeals on behalf of persons who might be at risk of torture or other forms of ill-treatment to 42 Governments. In the same period 39 responses were received.

disabilities, and primarily upon persons with mental or intellectual disabilities, warrants greater attention.

63. Inside institutions, as well as in the context of forced outpatient treatment, psychiatric medication, including neuroleptics and other mind-altering drugs, may be administered to persons with mental disabilities without their free and informed consent or against their will, under coercion, or as a form of punishment. The administration in detention and psychiatric institutions of drugs, including neuroleptics that cause trembling, shivering and contractions and make the subject apathetic and dull his or her intelligence, has been recognized as a form of torture.³⁵ In *Viana Acosta v. Uruguay*, the Human Rights Committee concluded that the treatment of the complainant, which included psychiatric experiments and forced injection of tranquilizers against his will, constituted inhuman treatment.³⁶ The Special Rapporteur notes that forced and non-consensual administration of psychiatric drugs, and in particular of neuroleptics, for the treatment of a mental condition needs to be closely scrutinized. Depending on the circumstances of the case, the suffering inflicted and the effects upon the individual's health may constitute a form of torture or ill-treatment.

d. Involuntary commitment to psychiatric institutions

64. Many States, with or without a legal basis, allow for the detention of persons with mental disabilities in institutions without their free and informed consent, on the basis of the existence of a diagnosed mental disability often together with additional criteria such as being a “danger to oneself and others” or in “need of treatment”.³⁷ The Special Rapporteur recalls that article 14 of CRPD prohibits unlawful or arbitrary deprivation of liberty and the existence of a disability as a justification for deprivation of liberty.³⁸

65. In certain cases, arbitrary or unlawful deprivation of liberty based on the existence of a disability might also inflict severe pain or suffering on the individual, thus falling under the scope of the Convention against Torture. When assessing the pain inflicted by deprivation of liberty, the length of institutionalization, the conditions of detention and the treatment inflicted must be taken into account.

³⁵ E/CN.4/1986/15, para. 119.

³⁶ Human Rights Committee, views on communication No. 110/1981, *Viana Acosta v. Uruguay*, adopted on 29 March 1984 (CCPR/C/21/D/110/1981), paras. 2.7, 14 and 15.

³⁷ See HRI/GEN/1/Rev.8, sect. II, Human Rights Committee, general comment No. 8 (1982) on the right to liberty and security of the person, para. 1, where the Committee clarifies that article 9 applies “whether in criminal cases or in other cases such as, for example, mental illness ...”. See also the report of the Working Group on Arbitrary Detention (E/CN.4/2005/6), para. 58. See further the discussion by the European Court of Human Rights in *Shukkaturov v. Russia*, application No. 44009/05, judgement of 27 March 2008.

³⁸ During the convention-making process, some States (Canada, Uganda, Australia, China, New Zealand, South Africa and the European Union) supported deprivation of liberty based on disability being permitted when coupled with other grounds. Finally, at the seventh session of the Ad Hoc Committee on a Comprehensive and Integral International Convention on Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Japan, with the support of China, sought to amend the text of article 14 to read “in no case shall the existence of a disability ‘solely or exclusively’ justify a deprivation of liberty”. However, the proposal was rejected. See daily summary of discussion at the seventh session, on 18 and 19 January 2006, available at www.un.org/esa/socdev/enable/rights/ahc7summary.htm.