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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS
OF TORTURE AND DETENTION**

Torture and other cruel, inhuman or degrading treatment

**Report of the Special Rapporteur on the question of torture submitted
in accordance with Commission resolution 2002/38**

Executive summary

The Special Rapporteur, Theo van Boven, submits his second report to the Commission. Chapter I deals with aspects of the mandate and methods of work. With a view to enhancing cooperation with all parties concerned, the methods of work are briefly described in this chapter. Chapter II summarizes the Special Rapporteur's activities in 2002 and chapter III contains his general conclusions and recommendations. A revised version of the recommendations made by his predecessor (A/56/156, para. 39) are presented in this chapter. The Special Rapporteur would like again to encourage States to reflect upon them as a useful tool in efforts to combat torture. The summary of communications sent by the Special Rapporteur and the replies thereto from Governments from 1 December 2001 to 15 December 2002, as well as country-specific observations, may be found in addendum 1 to this report.

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Introduction

1. The mandate of the Special Rapporteur on torture, exercised since November 2001 by Theo van Boven (the Netherlands), was renewed for three more years by the Commission on Human Rights in its resolution 2001/62. In conformity with resolution 2002/38, the Special Rapporteur hereby submits his second report to the Commission. Chapter I deals with aspects of the mandate and methods of work. Chapter II summarizes his activities in 2002 and chapter III contains the Special Rapporteur's general conclusions and recommendations. The summary of communications sent by the Special Rapporteur and the replies thereto from Governments from 1 December 2001 to 1 December 2002, as well as country-specific observations, may be found in addendum 1 to this report. The study of the situation of trade and production in equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment, its origin, destination and forms, with a view to finding the best ways of prohibiting such trade and production and to combat its proliferation, as requested by the Commission in paragraph 13 of resolution 2002/38, may be found in document E/CN.4/2003/69. That report is of a preliminary nature.

I. MANDATE AND METHODS OF WORK

2. As indicated in his first report to the Commission (E/CN.4/2002/137, para. 3), the Special Rapporteur adheres to the principle of continuity in the discharge of the mandate conferred upon him pursuant to the relevant Commission resolution. Thus, he continues to be guided by the methods of work described in the annex to document E/CN.4/1997/7 and would like to take the opportunity to describe these methods briefly with a view to enhancing cooperation with all parties concerned.

3. The work of the Special Rapporteur is characterized by the following main types of activity:

(a) Seeking and receiving credible and reliable information from Governments, specialized agencies and intergovernmental and non-governmental organizations as well as private individuals;

(b) Sending urgent appeals to Governments to clarify the situation of individuals whose circumstances give grounds to fear that treatment falling within the Special Rapporteur's mandate might occur or be occurring;

(c) Transmitting to Governments information of the sort mentioned in (a) above indicating that acts falling within his mandate may have occurred or that legal or other measures are needed to prevent the occurrence of such acts;

(d) Exploring the possibility of undertaking fact-finding visits to States where information suggests that torture may involve more than isolated and sporadic incidents, with a view to gaining more direct knowledge of the situation and practice relating to matters falling within his mandate and identifying measures to prevent the recurrence of such cases and to improve the situation; and

(e) Submitting annual reports on his activities and mandate, as well as his conclusions and recommendations, to the Commission on Human Rights and the General Assembly.

4. The Special Rapporteur would like to provide details concerning these activities with a view to facilitating cooperation and an exchange of views on issues falling within his mandate with all interested parties.

Sources of information

5. With respect to the credibility and reliability of the information that comes before him, the Special Rapporteur takes into account a number of factors, any one of which may be sufficient, though generally more than one will be present. These factors include: (a) the established previous reliability of the source of information; (b) the internal consistency of the information; (c) the precision of the factual details included in the information; (d) the consistency of the information as compared with information on other cases from the country in question that has previously come to his attention; (e) the existence of authoritative reports of torture practices from national sources, such as official commissions of inquiry and national commissions on human rights/ombudsperson's offices; and (f) the findings of other international bodies, such as United Nations country rapporteurs and representatives, human rights treaty-monitoring bodies and regional human rights bodies. The Special Rapporteur may also rely on assessments made by professionals of the Office of the High Commissioner for Human Rights (OHCHR) as well as of other United Nations agencies. With respect to information pertaining to individual cases, it should be noted that a number of basic requirements must be contained in the information submitted to him, such as the identity of the alleged victims, the date and place of the incident, a description of the alleged perpetrators and of the situation, and the identity of the source of information. It should be stressed that the last element will remain confidential.

Urgent appeals

6. With respect to the "urgent appeal" procedure, the Special Rapporteur would like to acknowledge that his work has now been considerably facilitated by the creation within OHCHR of a Quick Response Desk which allows information to be processed in a more timely and consistent manner and also facilitates the sending of joint appeals with other special procedures of the Commission.

7. These appeals serve urgent humanitarian purposes in their request for clarification and relief. The urgent appeal procedure is not per se accusatory, but rather essentially preventive in nature and purpose. The Government concerned is requested to look into the matter and to take steps aimed at protecting the right to physical and mental integrity of the person concerned, in accordance with the international human rights standards.

8. The circumstances that lead to urgent appeals are diverse, but they have in common that they indicate, on the basis of information of the sort mentioned in paragraph 3 (a) above, that an identifiable risk of torture or other cruel, inhuman or degrading treatment or punishment exists. Such circumstances include incommunicado detention, prolonged solitary confinement, use of

physical constraints in circumstances contrary to international standards, lack of essential medical care and treatment, imminent corporal punishment, and serious risk of extradition or deportation to a State or territory where the person in question would reportedly be in danger of being subjected to torture. The Special Rapporteur may also address the enactment of legislation or other measures that may undermine the prohibition of torture. Owing to the time-sensitive nature of such an appeal, the Special Rapporteur transmits it directly to the Minister for Foreign Affairs of the country concerned, urging the Government in question to take the necessary measures to ensure the physical and mental integrity of the person(s) concerned but without drawing any conclusions as to the facts.

9. Because urgent appeals serve immediate humanitarian purposes, the Special Rapporteur may exceptionally decide to send such appeals to entities other than official *de jure* authorities in cases where the entities in question, as well as a channel of communication for reaching them, have been clearly identified. In the past, situations of armed conflicts have provoked such action. The Special Rapporteur would like to recall that all parties to an armed conflict, be it of an international or an internal character, are bound by the minimum standards of humanitarian law that prohibit violence to life and person, in particular cruel treatment and torture, as well as outrages upon personal dignity, by any party to the conflict at any time and in any place whatsoever.¹ The Special Rapporteur would like to stress that such urgent humanitarian appeals do not in any way determine the international legal status of such entities.

Allegation letters

10. Information alleging torture received by the Special Rapporteur which does not require him to take immediate action is transmitted to Governments in the form of "allegation letters". These letters contain summaries of individual cases of torture and, where applicable, include general references to the phenomenon of torture, such as alleged systematic patterns of the practice of torture, patterns relating to a specific group of victims or of perpetrators, or specific legislation deemed not sufficient to guarantee the right to physical and mental integrity. In these letters, the Special Rapporteur would request the Government concerned to clarify the substance of the allegations and urge it to take steps to investigate them, to prosecute and impose appropriate sanctions on any persons guilty of torture regardless of any rank, office or position they may hold, to take effective measures to prevent the recurrence of such acts, and to compensate the victims or their relatives in accordance with the relevant international standards.

11. Because of the limited staff resources, such communications were usually sent once a year - at the end of the summer - to Governments which were given some two months to respond. The Special Rapporteur hopes that he will be in a position to send such communications more regularly during the course of the year and will do his utmost to facilitate the processing of these communications by Governments concerned. He notes that it is desirable for Governments to receive relevant information as expeditiously as possible and to have their replies thereto reflected in the same report that contains the summary of the original information transmitted by the Special Rapporteur. Thus, reports of the Special Rapporteur would provide the reader with a balanced perspective on the matter.

12. Individual cases regarding which no reply has been received are re-sent the following year until a reply is received. The Special Rapporteur notes with concern that a number of Governments have failed to provide any replies on cases originally sent in 1997 and 1998. The Special Rapporteur analyses responses from Governments and transmits the contents to the sources of the allegations, as appropriate, for comment. This practice will mainly concern cases where the facts appear to be contradicted. If required, dialogue with the Government is then pursued further.

13. The Special Rapporteur wishes to make it clear communications regarding individual cases - urgent appeals and allegations - do not constitute any judgement on his part concerning the merits of the cases. In transmitting those communications, the Special Rapporteur does not associate himself with or condone in any way acts or activities of the persons on whose behalf he intervenes. No matter how wrongly, dangerously, or even criminally a person may act, every human being is legally and morally entitled to protection on the basis of internationally recognized human rights and fundamental freedoms. This applies a fortiori where a non-derogable right, such as the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, is involved.

Fact-finding missions

14. The Special Rapporteur carries out visits to countries on invitation, but also takes the initiative of approaching Governments with a view to carrying out visits to countries concerning which he has received information indicating the existence of a significant incidence of torture. Such visits should allow the Special Rapporteur to gain more direct knowledge of situations falling within his mandate, and are intended to enhance the dialogue between the Special Rapporteur and the authorities most directly concerned, as well as with the alleged victims, their families and legal representatives and non-governmental organizations, with a view to making detailed recommendations. When contemplating whether to request an invitation, the Special Rapporteur takes into account, first and foremost, the number, quality and gravity/nature of the allegations received and the potential impact that a mission to the country concerned may have on the overall human rights situation. The Special Rapporteur welcomes the decision by an increasing number of States to extend a standing invitation to all thematic special procedures of the Commission on Human Rights and would urge others to seriously consider extending such an invitation.

15. The Special Rapporteur does not, as a rule, seek to visit a country in respect of which the United Nations has established a country-specific mechanism such as a special rapporteur/representative on the country, unless a joint visit seems to both to be indicated. For countries where the mandates of other thematic mechanisms may also be affected, the Special Rapporteur would consult with the latter with a view to exploring with the Government in question, either jointly or in parallel, the possibility of a joint visit. Where the Committee against Torture is considering the situation in a country under article 20 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, especially if that consideration involves a visit or possible visit by the Committee to the country in question, the Special Rapporteur does not seek a visit.

16. In accordance with the terms of reference for fact-finding missions by special rapporteurs/representatives of the Commission on Human Rights adopted by the fourth meeting of special rapporteurs/representatives, independent experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the Advisory Services Programme (E/CN.4/1998/45, annex V), before a fact-finding mission takes place, the Government concerned is asked to guarantee the following to the Special Rapporteur and accompanying United Nations staff: freedom of movement throughout the country; freedom of inquiry, especially in terms of access to all detention centres and places of interrogation; free contact with central and local authorities of all branches of Government; free contact with representatives of non-governmental organizations, other private institutions and the media; confidential and unsupervised contacts with witnesses and other private individuals, including persons deprived of their liberty; and full access to all documentary material relevant to the mandate. The Government is also asked for assurances that no persons, be they officials or private individuals, who have been in contact with the Special Rapporteur in connection with the mandate will suffer threats, harassment or punishment on that account or be subjected to judicial proceedings. As stated by the meeting, these terms of reference “are the minimum necessary to ensure the independence, impartiality and safety of visits by the Special Rapporteurs to the field. These terms of reference do not exclude additional safeguards, depending on the mandates or circumstances” (ibid., para. 71).

17. During the mission, the Special Rapporteur meets with representatives of the Government, non-governmental organizations and the legal profession, alleged victims of torture and relatives of victims. He visits places of detention and of interrogation to obtain first-hand knowledge of how the criminal legal process operates, from arrest to enforcement of the sentence. Confidential and unsupervised interviews are conducted with victims of torture, witnesses and other private persons, including those deprived of their liberty. In the mission report, the Special Rapporteur may give an account of individual allegations received. Although the monitoring of conditions of detention are not specifically mentioned in the mandate, they may well be pertinent, especially when they constitute a grave risk to the life or health of detainees.

18. With regard to countries in which visits have been carried out, the Special Rapporteur periodically reminds the Governments concerned of the observations and recommendations formulated in the respective reports, requesting information on the consideration given to them and the steps taken to implement them, or the constraints which may prevent their implementation. The Special Rapporteur would also welcome information from non-governmental organizations and other interested parties regarding measures taken in follow-up to his recommendations. Thus, a dialogue on measures that might be undertaken by the concerned authorities may be established.

Reports

19. The Special Rapporteur is mandated by the Commission and the General Assembly to report on an annual basis to both organs. Reports to the Commission contain summaries of all communications (urgent appeals and allegation letters) transmitted to Governments and the

latter's replies thereto. The Special Rapporteur may also include general observations on specific countries. Nevertheless, it should be noted that no conclusions as to individual cases are drawn. He may also address specific issues of concern and developments that have an impact on the fight against torture and usually draws general conclusions and makes recommendations. Because of financial constraints and limitations on the length and time of submission of documentation, summaries of communications sent to Governments and replies received by the Special Rapporteur have in recent years not been translated; they appear in addendum 1 to the main report to the Commission in the original working language of the United Nations Secretariat used to communicate with the respective Governments. Interim reports to the General Assembly outline overall trends and recent developments of relevance to the Special Rapporteur's mandate.

20. In the mission reports, which are addenda to the main Commission report, the Special Rapporteur outlines legislation of relevance to the prohibition of torture such as provisions making torture a crime and provisions governing arrest and detention. Special attention is paid to periods of incommunicado detention, disciplinary sanctions, access to qualified legal representation and legal aid, access to family members and medical care, bail provisions, witness protection, the admissibility of confessions, the status and independence of medical experts and forensic services, and access of members of civil society to places of detention.

21. As indicated in his first report to the Commission (E/CN.4/2002/137, para. 6), the Special Rapporteur attaches great importance to follow-up activities and considers them to be an essential requirement of his mandate. He therefore intends to seek ways to enhance the quality of such activities, in particular in cooperation with the Quick Response Desk. He also pays particular attention to cooperation with other mechanisms, especially other special procedures mandate-holders, with a view to taking concerted actions and avoiding duplication of work. In that respect, he seeks the cooperation of other special rapporteurs/representatives when sending communications, be they urgent appeals or allegation letters, regarding information that falls within other special procedures mandates.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

22. The Commission, in its resolution 2002/38 (para. 31), requested the Special Rapporteur to present an interim report to the fifty-seventh session of the General Assembly on overall trends and developments with regard to his mandate. In his report (A/57/173), the Special Rapporteur addressed the following issues: the prohibition of torture in the context of anti-terrorism measures (arrest, pre-trial detention, access to a lawyer and the right to habeas corpus, places of pre-trial detention, length of pre-trial detention, confessions and evidence, immunity from prosecution of law enforcement officials; the right to seek asylum, the principle of non-refoulement and extradition), international and national mechanisms for visits of places of deprivation of liberty and corporal punishment of children.

23. On 22 January 2002, the Special Rapporteur addressed the Open-ended working group to elaborate a draft optional protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. On 21 March, he met with the Deputy Executive Secretary of the European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe in Strasbourg, France. On 15 May, the

Special Rapporteur met with the Committee against Torture in a public meeting of the Committee and discussed with the Committee means and methods of enhancing cooperation and coordination. On 14 July 2002, the Special Rapporteur addressed the third Summer Course on International Humanitarian Law organized by the International Institute of Humanitarian Law in San Remo, Italy ("Prevention and Prohibition of Torture"). On 25 and 26 October 2002, he attended an international expert meeting on security equipment and the prevention of torture organized by the international secretariat of Amnesty International in London.

24. With respect to country visits, the Special Rapporteur would like to inform the Commission on Human Rights that since the last session of the Commission consultations have been held with the Governments of Bolivia, Georgia and Uzbekistan with a view to finalizing arrangements. At the time of writing, a mission to Uzbekistan had been scheduled for December 2002. A mission to Bolivia is planned for early 2003 while a mission to Georgia may take place in early summer 2003. Mission reports available before the fifty-ninth session of the Commission will appear as addenda to the present report.

25. The Special Rapporteur notes with regret that his requests for invitations to carry out visits to Algeria, Egypt, India, Indonesia, Israel, the Russian Federation with respect to the Republic of Chechnya, and Tunisia have not been complied with so far. He hopes that ongoing consultations with the Governments of China and Nepal will lead to concrete results shortly.

III. CONCLUSIONS AND RECOMMENDATIONS

26. A revised version of the recommendations made by his predecessor (A/56/156, para. 39) is presented below. The Special Rapporteur would like again to encourage States to reflect upon them as a useful tool in efforts to combat torture. Since these recommendations are presented in the language of recommendations, the word "should" is consistently used. It must, however, be understood that whenever these recommendations are directly based on obligations contained in legal instruments, the wording of these recommendations in no way detracts from these obligations. The recommendations are:

(a) Countries that are not party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol or the International Covenant on Civil and Political Rights and its two Optional Protocols should sign and ratify or accede to these legal instruments. Torture should be designated and defined as a specific crime of the utmost gravity in national legislation. In countries where the law does not give the authorities jurisdiction to prosecute and punish torture, wherever the crime has been committed and whatever the nationality of the perpetrator or victim (universal jurisdiction), the enactment of such legislation should be made a priority;

(b) Countries should sign and ratify or accede to the Rome Statute of the International Criminal Court with a view to bringing to justice perpetrators of torture in the context of genocide, crimes against humanity and war crimes;

(c) Legislation providing for corporal punishment, including excessive chastisement ordered as a punishment for a crime or disciplinary punishment, should be abolished. In particular, countries should take adequate legal and other measures, including educational ones,

to ensure that the right to physical and mental integrity of children is well protected in the public and private spheres. Effective legal, preventive and protective measures should be put in place to protect women against all kinds of violence, including violence and abuse in the domestic sphere and in employment;

(d) The highest authorities should publicly condemn torture in all its forms whenever it occurs. The highest authorities, in particular those responsible for law enforcement activities, should make public the fact that those in command of arresting officers or in charge of places of detention at the time abuses are perpetrated will be held personally responsible for the abuses. In order to give effect to these recommendations, the authorities should, in particular, make unannounced visits to police stations, pre-trial detention facilities and penitentiaries known for the prevalence of such treatment. Public campaigns aimed at informing the population at large, in particular marginalized and vulnerable segments of society, of their rights with respect to arrest and detention, notably to lodge complaints regarding treatment received at the hands of law enforcement officials, should be undertaken;

(e) Interrogation should take place only at official centres and the maintenance of secret places of detention should be abolished under law. It should be a punishable offence for any official to hold a person in a secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court. No statement of confession made by a person deprived of liberty, other than one made in presence of a judge or a lawyer, should have a probative value in court, except as evidence against those who are accused of having obtained the confession by unlawful means;

(f) Regular inspection of places of detention, especially when carried out as part of a system of periodic visits, constitutes one of the most effective preventive measures against torture. Independent non-governmental organizations should be authorized to have full access to all places of detention, including police lock-ups, pre-trial detention centres, security service premises, administrative detention areas, detention units of medical and psychiatric institutions and prisons, with a view to monitoring the treatment of persons and their conditions of detention. When inspection occurs, members of the inspection team should be afforded an opportunity to speak privately with detainees. The team should also report publicly on its findings. In addition, official bodies should be set up to carry out inspections, such teams being composed of members of the judiciary, law enforcement officials, defence lawyers and physicians, as well as independent experts and other representatives of civil society. Ombudsmen and national or human rights institutions should be granted access to all places of detention with a view to monitoring the conditions of detention. When it so requests, the International Committee of the Red Cross should be granted access to places of detention. Non-governmental organizations and other monitoring bodies should also be granted access to non-penal State-owned institutions caring for the elderly, the mentally disabled and orphans as well as to holding centres for aliens, including asylum-seekers and migrants;

(g) Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal, and persons held incommunicado should be released without delay. Information regarding the time and place of arrest as well as the identity of the law enforcement officials having carried out the arrest should be scrupulously recorded;

similar information should also be recorded regarding the actual detention, the state of health upon arrival at the detention centre, as well as the time the next of kin and lawyer were contacted and visited the detainee. Legal provisions should ensure that detainees are given access to legal counsel within 24 hours of detention. In accordance with the Basic Principles on the Role of Lawyers, all persons arrested or detained should be informed of their right to be assisted by a lawyer of their choice or a State-appointed lawyer able to provide effective legal assistance. The right of foreign nationals to have their consular or other diplomatic representatives notified must be respected. Security personnel who do not honour such provisions should be disciplined. In exceptional circumstances, under which it is contended that prompt contact with a detainee's lawyer might raise genuine security concerns and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association. In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours. At the time of arrest, a person should undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention. Each interrogation should be initiated with the identification of all persons present. All interrogation sessions should be recorded and preferably video-recorded, and the identity of all persons present should be included in the records. Evidence from non-recorded interrogations should be excluded from court proceedings. The practice of blindfolding and hooding often makes the prosecution of torture virtually impossible, as victims are rendered incapable of identifying their torturers. That practice should be forbidden. Those legally arrested should not be held in facilities under the control of their interrogators or investigators for more than the time required by law to obtain a judicial warrant of pre-trial detention which, in any case, should not exceed a period of 48 hours. They should accordingly be transferred to a pre-trial facility under a different authority at once, after which no further unsupervised contact with the interrogators or investigators should be permitted. Specific preventive measures should be taken to ensure that the right to physical and mental integrity is fully guaranteed during all transfers, especially from the place of arrest to the initial detention facility;

(h) Administrative detention often puts detainees beyond judicial control. Persons under administrative detention should be entitled to the same degree of protection as persons under criminal detention. At the same time, countries should consider abolishing, in accordance with relevant international standards, all forms of administrative detention;

(i) Provisions should give all detained persons the ability to challenge the lawfulness of the detention, e.g. through habeas corpus or amparo. Such procedures should function expeditiously;

(j) Countries should take effective measures to prevent prisoner-on-prisoner violence by investigating reports of such violence, prosecuting and punishing those responsible, and offering protective custody to vulnerable individuals, without marginalizing them from the prison population more than is required by the need for protection and without putting them at further risk of ill-treatment. Training programmes should be envisaged to sensitize prison officials to the importance of taking effective steps to prevent and remedy prisoner-on-prisoner abuse and to provide them with the means to do so. In accordance with the Body of Principles

for the Protection of All Persons under Any Form of Detention or Imprisonment, prisoners should be segregated according to gender, age and seriousness of the crime, alleged/committed; first-time prisoners should be segregated from repeat offenders and pre-trial detainees from convicted prisoners;

(k) When a detainee or relative or lawyer lodges a torture complaint, an inquiry should always take place and, unless the allegation is manifestly ill-founded, the public officials involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary proceedings. Where allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture and similar ill-treatment. Serious consideration should also be given to the creation of witness protection programmes for witnesses to incidents of torture and similar ill-treatment which ought to extend fully to cover persons with a previous criminal record. In cases where current inmates are at risk, they ought to be transferred to another detention facility where special measures for their security should be taken. A complaint that is determined to be well founded should result in compensation being paid to the victim or relatives. In all cases of death occurring in custody or shortly after release, an inquiry should be held by judicial or other impartial authorities. A person in respect of whom there is credible evidence of responsibility for torture or severe maltreatment should be tried and, if found guilty, punished. Legal provisions granting exemptions from criminal responsibility for torturers, such as amnesty laws (including laws in the name of national reconciliation or the consolidation of democracy and peace), indemnity laws, etc. should be abrogated. If torture has occurred in an official place of detention, the official in charge of that place should be disciplined or punished. Military tribunals should not be used to try persons accused of torture. Independent national authorities, such as a national commission or ombudsman with investigatory and/or prosecutorial powers, should be established to receive and to investigate complaints. Complaints about torture should be dealt with immediately and should be investigated by an independent authority with no connection to that which is investigating or prosecuting the case against the alleged victim. Furthermore, the forensic medical services should be under judicial or another independent authority, not under the same governmental authority as the police and the penitentiary system. Public forensic medical services should not have a monopoly on expert forensic evidence for judicial purposes. In that context, countries should be guided by the Principles on the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (the Istanbul Principles) as a useful tool in the effort to combat torture;

(l) Legislation should be enacted to ensure that the victim of an act of torture obtains redress and fair and adequate compensation, including the means for the fullest rehabilitation possible. Adequate, effective and prompt reparation proportionate to the gravity of the violation and the physical and mental harm suffered should include the following elements: restitution, compensation, rehabilitation (including medical and psychological care as well as legal and social services), and satisfaction and guarantees of non-repetition. Such legislation should also provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her retraumatization in the course of legal and administrative procedures designed to provide justice and reparation;

(m) Training courses and training manuals should be provided for police and security personnel and, when requested, assistance should be provided by the United Nations programme of advisory services and technical cooperation in the field of human rights. Security and law enforcement personnel should be instructed on the pertinent provisions of the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Basic Principles on the Treatment of Prisoners, and these instruments should be translated into the relevant national languages. In the course of training, particular stress should be placed upon the principle that the prohibition of torture is absolute and non-derogable and that there exists a duty to disobey orders from a superior to commit torture. Governments should scrupulously translate into national guarantees the international standards they have approved and should familiarize law enforcement personnel with the rules they are expected to apply. In particular, due attention should be paid to the Standard Minimum Rules for the Treatment of Prisoners and other international standards in resorting to methods and equipment of restraints, as well as to punishment measures. In that respect, prolonged solitary confinement, which may amount to torture, should be abolished;

(n) Health-sector personnel should be instructed on the Principles of Medical Ethics relevant to the Role of Health Personnel, Particularly Physicians, in the Protection of Detainees and Prisoners against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Governments and professional medical associations should take strict measures against medical personnel that play a role, direct or indirect, in torture. Such prohibition should extend to such practices as examining detainees to determine their "fitness for interrogation" and procedures involving ill-treatment or torture, as well as providing medical treatment to ill-treated detainees so as to enable them to withstand further abuse. In other cases, the withholding of appropriate medical treatment by medical personnel should be subject to sanction;

(o) National legislation and practice should reflect the principle enunciated in article 3 of the Convention against Torture, namely the prohibition on the return (refoulement), expulsion or extradition of a person to another State "where there are substantial grounds for believing that he would be in danger of being subjected to torture". The principle of non-refoulement must be upheld in all circumstances irrespective of whether the individual concerned has committed crimes and the seriousness and nature of those crimes. Asylum determination procedures should pay particular attention to avoiding the retraumatization of applicants.

Note

¹ See common article 3 of the Geneva Conventions of 12 August 1949 on the protection of victims of war.
