

Panel 1:

The Committee against Torture and the Special Rapporteur on Torture- different mechanisms but complementary in their respective work to combat torture and ill-treatment

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Introduction

It is a great honour for me to participate in this panel and to be part of the commemoration of the 25th anniversary of the Committee against Torture. In my capacity as the Special Rapporteur on torture, I would like to express my appreciation and support for the CAT's dedicated work on the prohibition of torture and cruel, inhuman or degrading treatment or punishment (CIDT).

In the three main areas of activities of my mandate: communications on individual cases, country visits and thematic reports, I do, as a general rule, always consult the material provided by the CAT in the form of general comments, country reports, and decisions on case complaints. The complementarity of the work of my mandate and the CAT is not theoretical but part of my daily practical work. In this regard, it is important to understand that while we have different working methods there is a common goal of trying to eradicate torture and CIDT.

Main differences between the Special Rapporteur on torture and CAT

My Rapporteurship is *not* a judicial or quasi-judicial complaint mechanism, since the main purpose of my mandate is to promote measures by which States can better protect human rights in their domestic jurisdiction.

Nor does my mandate depend on a State's ratification of an international human rights treaty. I apply human rights treaties related to the prohibition of torture if ratified (e.g., CAT, ICCPR) but can also address cases where a Government is not a party to CAT because the prohibition on torture and CIDT are *jus cogens* norms. Other State obligations derived from this prohibition are generally recognized as binding as a matter of customary international law. My mandate also applies various instruments considered "soft law" (e.g. SMRs, GA and HRC resolutions) that are widely considered authoritative. My mandate, therefore, applies to all member States of the United Nations.

Unlike the treaty bodies, my mandate does not require the exhaustion of domestic remedies. Also unlike the CAT, my competence to review an individual complaint does not have to be expressly recognized by the State concerned nor do I have to abstain if the case has been examined by another procedure of international investigation.

Communications: urgent appeals and allegation letters¹:

As the Special Rapporteur, I consider cases concerning individuals, groups or communities at risk of torture or other ill-treatment, and acts of torture or other ill-treatment which have already taken place.

In addition to trying to prevent or stop a violation from taking place, I also request Governments to implement the State's obligation to investigate, prosecute and punish the perpetrators. Torture is unique in international law in the sense that even a single episode of torture gives rise to this solemn obligation. States are also obliged to provide redress to the victims. This includes the obligation to provide compensation, reparation and rehabilitation but also the obligation to change or amend national legislation if needed, and to adopt measures of non-repetition.

The communication is sent to the concerned State through the Permanent Mission of the United Nations. In cases where alleged violations are time-sensitive in terms of life-threatening situations or if an individual is at imminent risk of torture or ill-treatment, or in cases of imminent enactment of legislation that will allegedly undermine the prohibition of torture or CIDT, I send an urgent appeal.

On matters that are less *time sensitive* issues, such as cases where allegations of torture or ill-treatment do not require immediate action or have allegedly already taken place or if a systematic pattern of torture has been detected, I raise these allegations with the concerned State via an allegation letter in a process that is confidential at the early stages. The State is asked to respond within 60 days.

Method of work/assessment of the allegations:

To evaluate whether a victim or representative of the victim has adequately presented an allegation, my colleagues and I make an initial examination to determine if there are "reasonable grounds" to assess that there exists an identifiable risk of torture or other ill-treatment or it is likely that torture or other ill-treatment have taken place. In other words, contrary to national and international courts, I do not need hard evidence but can act and request the Government to provide further information, related court decisions, forensic documentation and information related to national investigations.

With regard to the reliability of the source and the allegations made, I do however consider a number of factors, such as the consistency of the information received with the general situation in the concerned country or information received on other cases from the same region; findings of other national (e.g. NHRIs) or international bodies (e.g. CAT, UPR); reliability of the source and the consistency of the information itself. Where applicable, I

¹My methods of work are stipulated in Human Rights Council Resolution 16/23 adopted by the Human Rights Council on 12 April 2011.

consult the CAT's Concluding Observations on a specific country and regularly incorporate them into my own findings and conclusions.

More specifically, I take into consideration factors such as accounts by witnesses of the person's physical condition while in detention; the fact that a person is kept in conditions conducive to torture and CIDT such as incommunicado detention, solitary confinement or prolonged death row detention; cases of overreliance on confession by the prosecution and the judiciary in the absence of corroborative evidence, in particular those confessions obtained without the presence of a lawyer.

Both mechanisms face constraints and challenges to prove cases of torture

Both CAT and the SRT uphold the principle that the burden of proof of allegations of torture should never be shifted to the alleged victim. Thus, whenever there are "reasonable grounds", impartial and in-depth investigations have to be launched *ex officio* into all allegations of torture by the prosecutor, the investigative judge or the respective court.

During my country visits, I have encountered national legislation which is not in accordance with this international standard. I have seen Criminal Procedure Codes for certain crimes which state the Court is to deem a statement prepared by the judicial police as trustworthy unless the defendant can demonstrate that it is not. This presumption places an unfair burden on the defendant to disprove the truthfulness of a statement that he recants and alleges that it was the product of coercion. It also gives the court a basis for not going beyond a perfunctory inquiry into the defendant's claim of torture or ill-treatment, unless he or she has clear signs of torture on his body.

In addition, I have observed that even if the legislation is in accordance with international standards, *national judiciaries* often do not comply with their obligation to launch investigations and to order medical examinations of alleged victims in order to secure evidence of torture or ill-treatment.

In many countries there is no systematic forensic assessment at the time of detention and release. Thus, there is an urgent need to establish mechanisms that can guarantee qualified, impartial and independent forensic examination of detainees that do not only depend on a request made by a legal authority.

In addition, the medical reports produced after allegations of torture and ill-treatment are often of very poor quality, not in accordance with the minimum international standards and not acceptable as forensic evidence. Many medical practitioners do not have specific training in assessing, interpreting and documenting torture and ill-treatment. For example, a forensic examination might identify bruises, but fail to establish the time of mistreatment or its cause.

Scope of issues within torture and ill-treatment

If there are reasonable grounds to believe that the allegations of torture or ill-treatment are well-founded, there are a range of issues that fall within the scope of my mandate and that have been examined by CAT. Besides acts of torture and the State's obligation to prevent such acts, those other issues include:

- Extradition, removal or deportation of a person to a country where he or she is at risk of being tortured (non-refoulement)
- Refusal to conduct an effective investigation of torture or other ill-treatment and impunity
- Inadequacy of forensic expertise and its role in combating impunity
- Non-enforcement of the prohibition to admit statements or confessions obtained by torture or other ill-treatment in court
- Conditions of detention that amount to cruel, inhuman or degrading treatment or punishment (overcrowding, denial of family visits, medical care, nutrition etc.)
- Refusal to offer reparation or rehabilitation to the victim of torture or other ill-treatment
- Corporal punishment
- Methods of execution of the death penalty and circumstances like the death row phenomenon that may by themselves constitute cruel, inhuman or degrading treatment
- Excessive use of force by law enforcement officials during demonstrations when they cause pain and suffering severe enough to violate the prohibition of torture and CIDT
- Torture or CIDT in health-care settings

Thematic reports to promote the development of evolving standards regarding the prohibition of torture and CIDT:

While both the CAT and my mandate address individual cases of torture and CIDT and assess the situation in specific countries under review or visited by the SRT, I also address thematic issues through my annual reports to the General Assembly and the Human Rights Council.

In my thematic reports I address current concerns in the context of torture and CIDT but also identify, elaborate and press for further development of international standards and practices, to include new scientific evidence and to investigate new areas of concern. I have examined the abusive practice of solitary confinement, the use of commissions of inquiry, the death penalty and most recently I focused on undetected forms of abusive practices that occur in health-care settings and how certain treatments run afoul of the prohibition on torture and ill-treatment.

I highly appreciate and use the valuable work of the CAT, in particular through its General Comments. CAT's recent General Comment No. 3 on the implementation of Article 14- the right of redress for victims of torture and cruel, inhuman or degrading treatment is particularly valuable for my work. I hope it will contribute to a better understanding of States' fundamental obligations in this area, particularly as regards to the wide-ranging legislative, institutional, judicial, and policy measures that can help ensure that redress is available, adequate, and effective.

The right of redress for victims of torture and ill-treatment has always been a fundamental issue of my mandate and a theme that runs through my reporting. This General Comment is an important tool for the different universal, regional and national mechanisms working on strengthening the prohibition of torture.

The complementary work of both mechanisms

The **Universal Periodic Review** process can highlight the similar positions held by CAT in its Concluding Observations and my recommendations. This hopefully encourages the State to adopt a recommendation made by the UPR and help strengthen international human rights standards among the various mechanisms.

Both the CAT and my mandate are interested in pursuing projects to enhance **follow-up procedures** at a systemic level. For example, we are part of a joint follow-up project, undertaken by the Office of the High Commissioner for Human Rights, to create a database which compiles all recommendations for Latin American States from the Inter-American Commission on Human Rights, the Committee against Torture, the Subcommittee on Prevention of torture and the Special Rapporteur on torture. This follow-up tool is the first of a broader joint project to increase the cooperation and effectiveness of the different mechanisms and ensure systematic cross-referencing of each other's work.

Conclusion

I would like to conclude by highlighting two areas of future work on thematic issues that are of common interest to our respective mandates: the important and necessary work that needs to be done on **reprisals** and the current review process regarding the **Standard Minimum Rules for the Treatment of Prisoners** and the need to further strengthen and broaden the scope of applicable standards to all places of detention.

In this sense, I would like to express my deep conviction that my mandate, together with the CAT and the SPT will continue our important contribution to our common goal to finally eradicate torture and ill-treatment around the world, by raising individual cases with Governments, by further developing the scope and interpretation of the Convention against Torture, by strengthening the national preventive mechanisms and by raising awareness of new and sometimes hidden areas where torture and ill- treatment may take place.