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**Promotion and protection of all human rights,
civil, political, economic, social and cultural rights,
including the right to development**

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

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Addendum

**Study on the phenomena of torture, cruel, inhuman or degrading
treatment or punishment in the world, including an assessment of
conditions of detention**

* The present document is being circulated as received in the language of submission only as it greatly exceeds the page limitations currently imposed by the relevant General Assembly resolutions.

** Late submission.

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threatened when I tried to obtain access to the military barracks in Malabo and when I attempted to visit the police headquarters in Bata a second time, in order to assess whether detainees had been subjected to reprisals after my first visit. All my movements throughout the country were constantly monitored, which was even openly admitted by the Government during my debriefing. The Minister of Interior frankly told me that intelligence sources had informed him about my meetings with the human rights officer of the (only legal) opposition party. The fact of having met members of the legal opposition was even used as the main argument why my report was rejected by the Government as biased.⁷

16. Various Governments obstructed my efforts of independent and objective fact-finding by extensively *preparing detention facilities and instructing detainees* about my visit. In order to better prepare my visits, Governments often demanded that I tell them in advance which facilities I wished to inspect. It was only after long and difficult negotiations that certain Governments such as China, Sri Lanka, Indonesia and Equatorial Guinea, accepted that my visits are, in principle, unannounced. Nevertheless, through extensive monitoring of my movements throughout the respective countries, these Governments could, at least to some extent, predict which detention facilities I intended to visit. This might even have been well-intended, i.e. the authorities responsible for the detention facilities wished to make as good an impression as possible. It also had the positive side-effect that prisons were renovated, cleaned and freshly painted, that the food, health services and recreation possibilities were improved during my missions, and that detainees were released from solitary confinement. Two examples of such well-intended preparations were Indonesia and Kazakhstan, where the prison directors were already waiting outside their facilities to warmly welcome me. In *Indonesia*, where I had to fly from island to island, I even met military intelligence officers who told me that their task was to inform their superiors whether and when all members of my team had left the respective island. In *Kazakhstan*, a police car was sent to escort me to the next city I intended to visit. All prisoners in areas that I could possibly visit were told about my mission and instructed to stage prison bands and parties in order to impress me. The paint on cell doors was so fresh that it had not even dried and we had to be careful not to touch it. Detainees told us exactly how they were instructed to interact with us, and we were later informed that prisoners in other facilities, which we could not visit for lack of time, were disappointed because their extensive preparations were in vain. In *China*, officials of the Ministry of Foreign Affairs had insisted to escort me throughout the mission. In some countries, notably China, Kazakhstan, Sri Lanka, Indonesia and Equatorial Guinea, these efforts of constantly putting me under surveillance and control were so persistent that I considered interrupting or terminating the mission.

17. Even if well-intended, i.e. to assist and protect me, these activities obstruct any efforts of objective fact-finding. My task is to independently assess, to the best of my abilities, conditions of detention and instances of torture as they are in reality. All efforts of the authorities aimed at creating a situation which is not genuine make my task of objective fact-finding much more difficult and may even be counter-productive as they naturally raise suspicions that the Government has something to hide. There is no country in the world without the risk of torture and ill-treatment and where prison conditions could not be improved. If Governments wish to use my findings and reports as a solid basis for a comprehensive needs assessment aimed at improving the situation, it is in their own interest to let me carry out my work as smoothly and effectively as possible. In practice, only relatively few countries enabled me to conduct my fact-finding without any notable interference or obstruction. I wish to particularly mention in this context the Governments of *Georgia, Paraguay, Togo, Denmark, Moldova and Uruguay*. In Uruguay, I was even

⁷ A/HRC/10/44/Add.1, A/HRC/13/39/Add.4.

(iii) Suppression of political dissent

71. Perhaps most dangerously, some Governments seek to intimidate their population through the use of torture against persons who have or who are perceived of having convictions contrary to those held by the Government, or who criticise their policies or practices. The victims are often activists with different agendas, including members of the political opposition, religious or ethnic groups, or human rights defenders. Torture, often in combination with abduction and unaccounted detention, is used to silence their voices of dissent. Perpetrators originate from the ranks of the police, the military or affiliated non-state units. Following widely-reported demonstrations, credible allegations of such politically-motivated torture have been received over the last two years in a number of different countries, including, China, Iran and Zimbabwe. During my missions as Special Rapporteur, I have frequently found evidence of violent abuse or particularly harsh conditions applied to suspects of political crimes. In Equatorial Guinea, I found political prisoners held in solitary confinement for periods of up to four years, most of them in leg irons practically all the time. Furthermore, I have received very serious allegations of severe and prolonged torture of Equatoguinean citizens accused of involvement in attempts to overthrow the political system at unofficial places of detention. According to credible testimonies, this treatment was directly ordered by high-level officials of the Government.⁴⁰ China maintains the most institutionalised method of opposing political dissent that I have encountered. Political dissidents and human rights defenders, ethnic groups that are often suspected of separatism (particularly Tibetans and Uyghurs), as well as spiritual groups such as Falun Gong are often accused of political crimes such as endangering national security through undermining the unity of the country, subversion or unlawfully supplying State secrets to individuals outside the country. Such individuals are not only at a high risk of torture when arrested, but the Re-education Through Labour (RTL) regime that is often used as a sentence for political crimes employs measures of coercion, humiliation and punishment aimed at altering the personality of detainees up to the point of breaking their will,⁴¹ and can itself be considered as inhuman and degrading treatment or punishment, if not mental torture.⁴²

2. Context which allows torture to happen

72. In the course of the last decades an international framework of hard and soft law emerged with a considerable range of norms aimed at protecting the physical and mental integrity as well as the dignity of all human beings. In principle, these standards would be sufficient to prevent and to eradicate torture. However, their effective application is missing.

(a) Deficient legal framework

(i) Lack of a specific crime of torture in accordance with the definition in article 1 CAT

73. The vast majority of States visited during my fact-finding missions did not have a crime of torture in their criminal codes which reflects the definition of torture with article 1 of the UN Convention against Torture, although they are almost all States parties to the treaty. This finding, as surprising as it may appear, is most certainly not only valid for those 15 States I visited, but also holds true for a significant number of other States. I do not believe that this shortcoming indicates bad faith in any way, but it highlights the prevalence of fundamental misconceptions about the elements and the nature of torture and a lack of

⁴⁰ A/HRC/13/39/Add.4.

⁴¹ E/CN.4/2006/6/Add.6, para.62.

⁴² E/CN.4/2006/6/Add.6, para.64.

standard practice, including on ordinary suspects. Attempts to find an explanation for this development concern the wider functioning of the criminal justice cycle and the absence of an effective system of checks and balances. Prosecutors and judges often rubberstamp applications for extended police custody, without looking into the merits of the individual request. The motives may vary, but individual prosecutors often seem to lack the “professional distance” from police authorities and rather engage in a joint effort to fight crime, while neglecting their fundamental rights obligations.

90. This leads to suspects being exposed to their interrogators for weeks and months and finding themselves in a situation which is generally dominated by a feeling of vulnerability and fear. In many of the police stations I visited, there was a palpable level of fear which manifested itself *inter alia* by the strong reluctance of detainees to speak with me. Once detainees were transferred from the police station to a remand facility, I received numerous credible allegations from detainees who did not dare to raise them earlier due to fear of reprisals.

91. Prolonged detention in police cells raises further serious concern regarding the conditions of detentions. Police cells are by design not suitable for extended periods of custody and lack the necessary space and other facilities needed in order to ensure adequate conditions of detention. Often, detainees in police custody are not even provided food or water. Furthermore, the practice of excessive length of police custody contributes to overcrowding which in turn sets the ground for numerous other problems including hygiene, health, bedding and privacy.

92. Another consequence of long periods of police custody is that torture traces may have already disappeared once a detainee is transferred to a remand prison. Against this background, an investigative officer may be more tempted to coerce a confession since no external authority will be able to see any traces. The possibility of securing any medical evidence is more difficult, and the establishment of accountability further unlikely.

(iii) Inadmissibility of evidence obtained under torture

93. The inadmissibility of evidence obtained under torture is one of the most crucial safeguards against abuse in the criminal justice system. Its purpose is twofold: first, given that the vast majority of torture is inflicted in the course of criminal investigations with the purpose to extract a confession, the safeguard intends to remove a prime incentive for torture. Second, evidence obtained under torture is highly unreliable concerning the veracity of the statements obtained. Declaring the evidence inadmissible helps ensure that no innocent person is convicted.

94. The inadmissibility of evidence obtained under torture finds its strongest expression in article 15 CAT which stipulates that each State party shall “ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings”. Similarly, article 14 (3) (g) ICCPR provides that everyone has the right “not to be compelled to testify against himself or to confess guilt” and includes also testimonies obtained by the infliction of CIDT as inadmissible. The Human Rights Committee expands on the resulting obligations for States and holds that “It is important for the discouragement of violations under article 7 that the law must prohibit the use of admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment”.⁵⁵

95. On the legal level, most States I visited seemed to have complied with this provision by and large. However there were significant deviations which tended to undermine the

⁵⁵ CAT/C/CR/33/3, 2004, para. 5 (d).

essence of the prohibition. In China, for example, in which the admission of guilt receives particularly high attention, the Criminal Procedure Law explicitly prohibits the extortion of confessions by torture and the collection of evidence by threat, enticement, deceit or other unlawful means.⁵⁶ However, this provision has not been matched with a prohibition of using illegally obtained confessions during court proceedings. The Supreme Court in this regard held that confessions under torture cannot become the basis for a criminal charge or conviction, but it did not exclude their overall admissibility. Prohibiting the extraction of a confession by torture but allowing it to form part of the proceedings falls short of the protection the safeguard is meant to have.

96. Another example of a deficient incorporation of the prohibition is Sri Lanka. During my mission, Sri Lanka's ordinary laws provided that confessions made in police custody were inadmissible before the court and any confessions extracted through torture were excluded.⁵⁷ However, while these provisions appeared to go relatively far, there was no such safeguard under the Emergency Regulations. Against this background, it appears particularly worrying but again not that surprising that I found a routine practice of torture in the context of counter-terrorism operations which were conducted under the Emergency Regulations and thus not subjected to the safeguard.

97. In terms of the actual implementation of the safeguard I have to conclude that confessions and other evidence obtained under torture are more frequently admitted at court than not. In most of the countries I have visited I received a very high number of related allegations which were convincingly corroborated by representatives of the civil society, lawyers, local human rights experts and others. While I was evidently not in the position to verify each individual case, it was without doubt that the competent courts which are under the obligation to take up any allegation of torture and at least enquire into their veracity overwhelmingly failed to do so and sweepingly rejected any allegations of torture.

98. There are several elements which seem to explain this structural malfunctioning of the judiciary. In most countries, suspects are confronted with an almost insurmountable credibility deficit. In sharp contrast to the presumption of innocence, they are *a priori* believed to be guilty and to raise torture allegations only in order to evade justice. There is a predominant societal perception that anybody who has been arrested and accused must be in some way criminal. The almost customary dismissal of torture allegations without any investigations suggests that also the judiciary is not immune from this mentality. A second element is that there is no shift in the burden of proof. It is not enough for suspects to indicate that their confession was obtained under torture; they have to establish the ill-treatment. Since torture almost always takes place behind closed doors, lacks any witnesses except its perpetrators, and any independent forensic expertise to document traces of abuse is beyond the survivor's reach, this requirement is the most difficult to satisfy and appears almost taunting. In order for the safeguard against the admissibility of evidence obtained under torture to have any realistic prospect of unfolding, a shift of the burden of proof regarding torture allegations has to take place. This is also reflected in the jurisprudence of domestic courts and international monitoring bodies. As Lord Bingham so eloquently stated in a well-known dissenting opinion, "it is inconsistent with the most rudimentary notions of fairness to blindfold a man and then impose a standard which only the sighted could hope to meet".⁵⁸ A third element concerns many judges and the judiciary in general, who are confronted with an overburdening caseload, chronic understaffing and an overall lack of resources. In such a context, the follow-up of torture allegations from a perceived criminal

⁵⁶ Article 43 CPL; E/CN.4/2006/6/Add. 6, para 37.

⁵⁷ Articles 24–27 Evidence Ordinance.

⁵⁸ *A and others v Secretary of State for the Home Department* [2005] UKHL 71. See also Gary Slapper and David Kelly, *The English Legal System*, 10th edition, Routledge-Cavendish, 2009.

114. The Human Rights Desks in Nigeria are only one example of numerous complaints mechanisms which are utterly ineffective and remind one of Potemkin villages. Whenever I received information from officials that torture is not an issue in the country because no complaint has ever been filed, in practice it has been a clear signal that the opposite is the case; that torture is routine practice and that detainees are actually too afraid to complain. This was also confirmed during my visit to the CID Lagos where I received, in the course of one afternoon, more highly credible complaints than the National Human Rights Commission had received during an entire year.

115. The effectiveness of complaints bodies is severely undermined by the de facto inaccessibility and the lack of prompt, independent and effective examinations of the allegations. I have ample grounds to believe that the vast majority of violations are never brought forward by detainees. One explanation is that detainees are simply not aware of their right to complain and that a complaints mechanism tasked with receiving allegations might exist. In a context of detention characterized by violence and other abuse, it seems beyond imagination for many detainees that they may have a right to complain and that somebody can seriously be tasked to listen to their allegations. In Indonesia, when I asked a death row detainee who reported that he was tortured during his interrogation, and whose confession was admissible during trial, if he had lodged a complaint answered “complain, to whom shall I complain, to the animals?”.

116. If detainees know about their right to complain and the existence of a complaints mechanism, the fear of reprisals and lack of confidence in the overall function of the system silences them. There is no independent complaints body which would be sufficiently detached from the authority that is holding the detainee. Most often detainees only have the option to complain to the colleagues or superiors of those who ill-treated them. Without any possibility to submit a confidential, let alone anonymous complaint, they have every reason to believe that those responsible for the abuse will hear about their complaint and may turn against them.

117. I was able to observe during the numerous visits to places of detention how strong the level of fear can be. In China, many detainees were simply too scared to engage in any conversation with me, even if it was of a rather general nature and did not refer to any compromising issues. The mere fact that they could possibly be perceived to have complained to the UN Special Rapporteur was a risk which many legitimately did not want to take on them. Other, more daring detainees agreed to talk to me only after I assured them confidentiality and not to include their accounts in the appendix on individual cases in my report. The possibility of reprisals against those who I interviewed strongly influenced the conduct of my fact-finding. Irrespective of a Government’s invitation and its acceptance of the terms of reference, which include private interviews with detainees, I could never entirely rule out that those officials who were incriminated would turn against my interlocutors once I would have left the place of detention. My work was therefore shaped both by the need to obtain a first hand account of detainees in order to assess the situation, and the paramount “do no harm” principle.

118. The fear of reprisals and the feeling of vulnerability sometimes go so far that detainees presented stories which were in sharp contrast with their physical or mental state, and which were intended to avoid to be perceived as having denounced their tormentors. During my mission to Paraguay, I encountered a man who had severe bruises all over his body in the punishment cell of a military barrack, which according to the officer in charge was not used. When inquiring into the origins of his injuries, he claimed that he just recently had an accident with his motorbike. The forensic medical examination could not

deliberately inflicts severe pain or suffering on a powerless victim for a specific purpose, such as extracting a confession or information. Cruel and inhuman treatment, on the other hand, means the infliction of severe pain or suffering without purpose or intention and outside a situation where a person is under the de facto control of another. It follows that one may distinguish between justifiable and non-justifiable treatment causing severe suffering. Examples where the causing of severe suffering may be justifiable are the lawful use of force by the police in the exercise of law enforcement policies (e.g. arrest of a criminal suspect, dissolution of a violent demonstration) and by the military in an armed conflict. In such situations, the principle of proportionality has to be strictly observed. If the use of force is not necessary and, in the particular circumstances of the case, disproportional to the purpose achieved, it amounts to cruel or inhuman treatment. In a situation where a person is under the de facto control of another and thus powerless, the test of proportionality is no longer applicable. Other situations which may amount to CIDT are particularly severe conditions of detention, domestic violence, female genital mutilation and trafficking in human beings.

B. Excessive use of force by law enforcement bodies

189. Upon my fact-finding missions I have received numerous worrying allegations of excessive use of force by police authorities outside of the context of detention. As stated above, this may amount to CIDT if it does not meet the test of proportionality.¹²⁸

190. In many countries it is unfortunately not uncommon for police officers to resort to excessively brutal force when apprehending a criminal suspect. Effective methods of recording and monitoring the arrest are often absent, allowing the police to handle suspects at will and giving them a high chance to escape accountability for official misconduct. Particularly disturbing examples have been witnessed in Nigeria where persons suspected of armed robbery were often shot in the legs or feet, a practice that often even amounted to torture. Excessive police force is especially prevalent during large-scale police operations such as raids. In such situations innocent persons also run a risk of becoming victims of cruel and inhuman treatment. During my fact-finding mission to Indonesia, I received consistent and credible allegations about the use of excessive force by mobile paramilitary units in West Papua that routinely conducted largely indiscriminate village “sweeping” operations, while searching for alleged independence activists or raids on university boarding houses.¹²⁹

191. Most cases of excessive police violence occur during demonstrations or public turmoil. Over the past years I received a large number of consistent and credible allegations of excessive force used by police, security and military officers from countries such as Azerbaijan, Bahrain, Cambodia, China, Egypt, Georgia, India, Indonesia, Iran, Kenya, Moldova, Myanmar, Nepal, Pakistan, Paraguay, the Philippines, the Russian Federation, Uzbekistan, Sudan, Turkey and Zimbabwe.¹³⁰ In many of those cases, people were peacefully exercising their right to assembly when police or security officers violently dispersed the demonstration by beatings, the use of pepper and tear gas, sound bombs, water cannons, rubber bullets or firearms indiscriminately fired on the masses. This has all too often led to persons getting severely injured or killed. A particularly concerning example of excessive and indiscriminate violence against protesters occurred in Andijan,

¹²⁸ This was confirmed by the Committee against Torture that has considered cases of excessive use of force in dissolving riots or demonstrations as a violation of article 16 CAT, A/52/44, para. 182; A/54/44, para 76 (g); A/56/44, paras. 58 (a), 95(i), 113(c).

¹²⁹ A/HRC/7/3/Add.7, para. 39.

¹³⁰ E/CN.4/2006/6/Add.1; A/HRC/4/33/Add.1; A/HRC/7/3/Add.1; A/HRC/10/44/Add.4.

Uzbekistan in May 2005, where military and security forces indiscriminately shot at crowds of protesters leading to hundreds of deaths.¹³¹ I criticized the lack of investigation, prosecution and punishment of the perpetrators and other persons responsible. More recently, I received reports of excessive violence during demonstrations in the Tibet Autonomous Region and surrounding areas in China, including the killings of an unconfirmed number of people. I am further concerned with the use of excessive force against Uyghur protesters in the autonomous province of Xinjiang.

192. Violent attacks on protesters have been particularly prevalent in times of post-election turmoil. The elections in Kenya in December 2007 were followed by heavy protests, resulting in ethnic clashes and the widespread disproportionate use of force by the police, which led to many deaths.¹³² In Zimbabwe, following the election victory of the MDC in March 2008, police officers, soldiers and members of the ruling party Zanu PF attacked MDC supporters and journalists as a part of a reprisal campaign. I received a large number of allegations where such attacks have led to broken bones typical of “defence injuries” or even deaths.¹³³ Similarly in Moldova, the elections of April 2009 were met with widespread and often violent protests. I received several allegations of beatings and other cruel, inhuman and degrading treatment upon detention during and after the protests, which were confirmed during my follow-up visit in September 2009. In Iran, where the June 2009 elections were followed by widespread protests of opposition supporters, they were met with excessive violence by the police and Government militias. I received credible allegations on the killing of at least 12 students participating in opposition protests. While the post-election protests have been largely peaceful, agents of the Revolutionary Guards, paramilitary Bassij, and State Security Force (SSF) have reportedly employed extreme force to suppress protesters by opening fire during demonstrations and using pepper spray and batons to disperse demonstrations.

193. Of particular concern are the reports of police brutality against vulnerable, disadvantaged groups and minorities. In Paraguay, I have received numerous allegations of excessive force by the police against members of indigenous communities and the military in dispersing demonstrations of campesino movements. The Committee against Torture has equally expressed its concern about reports of police brutality against vulnerable groups such as racial minorities, migrants and persons of different sexual orientation, which have not been adequately investigated.¹³⁴ Furthermore, journalists covering protests often risk being targeted by police and security officers. I am particularly concerned about the harassment and targeted killings of journalists and human rights defenders in the Russian Federation, including the killings of Anna Politkovskaya¹³⁵ and Natalya Estemirova,¹³⁶ which occurred in relation to their denunciation of human rights abuses in Chechnya.

194. I have repeatedly stated that the use of force must be exercised with restraint and only once non-violent means have been exhausted. Law enforcement bodies shall refrain from the use of firearms, except in self-defence or defence of others from an imminent

¹³¹ OHCHR, Report of the Mission to Kyrgyzstan concerning the killings in Andijan, Uzbekistan of 13–14 May 2005, 12 July 2005.

¹³² ‘Waki report’ of the Commission of Inquiry into Post-Election Violence (CIPEV), pp. 416 et seq. speaking of “a heavy-handed Police response whereby large numbers of citizens were shot — 405 fatally — by Police”, p. 417; Report from OHCHR Fact-finding Mission to Kenya, 6–28 February 2008, <http://www.ohchr.org/Documents/Press/OHCHRKenya-report.pdf>.

¹³³ /HRC/10/44/Add.4, pp. 404 et seq.

¹³⁴ CAT/CUSA/CO/2, para. 37; CAT/C/FRAU/CO/3, para. 5.

¹³⁵ A/HRC/4/33/Add.1, para 229.

¹³⁶ United Nations, “UN experts ready to assist Russia in investigating series of killings of human rights defenders”, Press release, 21 July 2009.