

Check against delivery



**Statement by Mr. Juan E Méndez
SPECIAL RAPPORTEUR ON TORTURE AND OTHER
CRUEL, INHUMAN OR DEGRADING TREATMENT OR
PUNISHMENT**

16th session of the Human Rights Council
Agenda Item 3

7 March 2010
Geneva



Mr. President, Distinguished Representatives, Observers, Ladies and Gentlemen:

It is with great honor that I address this Council, for the first time, in my capacity as United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. In so doing, I wish to thank the distinguished Representatives of this august body for the confidence you have placed on me. I also would like to pay tribute to my predecessor, Manfred Nowak, for his outstanding work and dedication to the mandate. As this is my first statement to the Council, please allow me to use this opportunity to outline my vision and plans for my tenure.

Mr. President,

The ordeal of victims of torture endures even when the torture itself has ended. Victims experience many forms of long-term physical and psychological damage as a result of torture and ill treatment. In this regard, I am encouraged by the heroic efforts of various organizations whose work ensures that there are appropriate remedies and reparation for victims. The work of such organizations seeks to include and promote the perspectives of victims and survivors in the development of programmes and policies aimed at addressing torture. This is a goal that I wholeheartedly support and will pursue during my tenure.

Mr. President,

I believe that efforts to combat torture require a victim-centered perspective that seeks an integrated long-term approach to adequate redress and reparation, including compensation and rehabilitation for victims and their families. While international law and practice requires certain minimum standards and principles in relation to redress and reparations for victims of torture, I am concerned that some States only award formal rights which are often modest and peripheral to the justice systems. I am equally dissatisfied by the lack of progress in institutionalizing basic principles and guidelines which seek to provide minimum standards for victims. It is my conviction that victims

must have a central role in holding torturers accountable for their actions. Indeed, the criminal procedures of some States are more favorable than those of others to this engagement by victims; nevertheless, without undermining defendants' rights to all guarantees of a fair trial, victims should be allowed to participate actively in attempts to hold their torturers accountable through criminal prosecutions and trials.

With respect to the rehabilitation of victims and survivors of torture, efforts to provide assistance must seek to recognize and validate the traumatic experience of torture that victims have suffered, as well as to prevent their further isolation by reintegrating victims into society. They must address the main aim of torture which is generally to isolate and engender fear in victims in order to break their will.

Mr. President,

I will now turn to the main themes dealt with in my report:

Article 15 of the torture convention serves an important preventive function by requiring the exclusion of statements and confessions obtained through torture in criminal proceedings (except in proceedings against the torturer and for the purpose of showing that the statement was made). In this manner, the norm denies those who engage in torture the ability to use information wrongfully obtained against the defendant. The purpose of the exclusionary rule is to discourage torture, even though in addition it is a key feature of the right to a fair trial to which all criminal defendants are entitled. The torturer must know that his mistreatment of the person under interrogation jeopardizes the State's ability to bring charges and successfully punish offenders. I am concerned that attempts to restrict the applicability of the exclusionary rule represent a serious threat to international efforts to eradicate torture. In many jurisdictions the rule is made illusory by a tendency to admit the statement or confession unless the victim proves beyond a reasonable doubt that he has been tortured. This shift of the burden goes a long way in negating the very purpose of the rule, as it constitutes an incentive to interrogators to torture as long as no physical evidence is left behind. In contrast, many jurisdictions

require all evidence to be surrounded by procedural requirements (like notice to the person arrested about his rights, judicial warrants for search and seizures) that in practice reinforce the rule of exclusion of Art. 15 CAT.

Likewise, it is of deep concern to me that States that do not use wrongfully obtained evidence in criminal prosecutions nevertheless claim for themselves the right regularly to receive and rely on such information for other purposes – either as intelligence or for other administrative proceedings – even if the sources and methods present a real risk that the information has been acquired as a result of torture and ill-treatment. In other cases, States regularly use wrongfully obtained evidence that they receive from third party States, even if they know that it has been obtained through torture. Receiving or relying on information from third parties which may be compromised by the use of torture should not be deemed an acceptable tool to gain information, even if the information is considered valuable. The receiving State is under a general duty to cooperate with other States and the international community in the eradication of the practice of torture and, instead, the practice of receiving and using illegally obtained evidence, for any purpose, tends to recreate the conditions for the continued pervasiveness of these practices.

We should be mindful of the real possibility that a policy of using such information for purposes other than trials, could provide an incentive to State agents to forego prosecutions altogether, and instead engage in disappearances, extra-judicial executions, and other illegal repressive measures that could lead to a total breakdown of the rule of law. It is my considered opinion that, in order for the exclusionary rule to work as a preventive measure and create a disincentive for would-be abusers to extract confessions or corroborating information, States should seriously consider extending the applicability of article 15 of the Convention Against Torture to cover intelligence and executive decisions. In other words, Article 15 can only remain effective if it is applicable to all and any information which may form the basis of a judicial or administrative process or decisions by the executive and its agencies. Naturally, I am mindful of the need of States to prevent acts of terrorism and to combat organized crime with usable intelligence and in real time. My views on the exclusionary rule should not unduly limit the States' abilities to gather intelligence in legal and ethical ways, but only to forbid the use of torture. In

my considered opinion, an enhanced respect for and adherence to the principle set out in article 15 of the Convention requires policies that do not allow for illegally obtained evidence to enter through the back door while the front door of criminal prosecutions is closed.

Mr. President,

My role as Special Rapporteur does not only give me an opportunity to assess the situation with regard to torture, but also to provide credible and human rights-friendly forensic and other scientific alternatives which have been proven to achieve better results than the use of torture. During my tenure, I intend to identify and further develop the linkages between forensic and other sciences, not only with a view to eradicating torture but also to offer States credible alternatives to employ in law enforcement, counter-terrorism and effective criminal prosecution. Successful prosecutions and safe convictions of verifiably guilty parties go a long way in restoring and enhancing the public's confidence in the institutions of the rule of law. In turn, that public confidence is the best guarantee of success in fighting crime of all sorts.

In the context of immigration laws, of fighting organized crime, or in countering terrorism, States must adhere to the long-established principle of *non-refoulement* as an effective legal and procedural safeguard against torture. The rule that States must not deport or extradite a person to a jurisdiction where he or she runs the risk of persecution is now part of customary international law. In addition, and more specifically with respect to the risk of being tortured, it is contemplated in the Convention Against Torture (Article 3). I share the view, espoused by my predecessors, that the practice of seeking diplomatic assurances from the receiving State does not relieve the sending State of its obligations, particularly when it is clearly used as “an attempt to circumvent the absolute prohibition of torture and *non-refoulement*.” I look forward to engaging with Member States on this issue.

Pre-trial detention, conditions in detention and torture in secret places of detention, will also be important aspects of my engagement with States. To prevent the perpetration of torture and ill treatment, I will insist on the need to monitor places of detention particularly in the first few hours or days after a person's arrest. Places of detention and interrogation should be under the supervision and control of clearly identifiable judicial authorities empowered to recognize and enforce the rights of detainees. It is crucial to reinforce legislative norms through protocols, instruments and methodological guidelines targeted at ensuring effective guarantees for persons deprived of their liberty. I am especially concerned that prolonged *incommunicado* detention as well as detention in secret places facilitates the perpetration of torture and ill treatment, and could in themselves constitute a form of such treatment. I urge States to desist from such practices and proceed to close down all secret detention facilities.

Lastly, the question as to whether the death penalty, as well as some health and drug policies, prolonged solitary confinement, some treatments for mental disability, and domestic violence constitute *per se* cruel, inhuman or degrading treatment or punishment has given rise to much debate and discussion in this Council. I believe that the international community as a whole would greatly benefit from a dispassionate and rational discussion of these issues. Consequently, I will be addressing them in my tenure and, within the resources available to me, to promote thoughtful and rigorous research on these important issues through the prism of the progressive development of human rights standards. In due course, I aspire to have the findings so reached to generate a fruitful discussion and consideration by the Human Rights Council and its mechanisms.

Mr. President,

Country visits allow for a proper assessment of the prevalence of torture globally and the formulation of recommendations to address it through a process of dialogue and open discourse. It is therefore an important component of the work of the mandate. Since my appointment, I have received an invitation from the Government of Iraq to undertake a country visit in the last trimester of 2011. I am currently in preparation to visit the

Kyrgyz Republic, in response to an invitation from the Government. The Governments of the Maldives and Cote d'Ivoire have also extended me invitations to visit. I take advantage of this opportunity to express my appreciation to these Governments.

In the past year, the mandate undertook three country visits and a follow-up country visit, all of them conducted by my predecessor, Prof Manfred Nowak. I would like to thank the Governments of Jamaica, Papua New Guinea, Greece and Kazakhstan for those invitations and for their cooperation with the mandate during the conduct of the respective missions.

A preliminary note on the mission to Jamaica was presented to the Council last March. Let me also acknowledge receipt of Jamaica's response to the country report of Special Rapporteur on torture. I regret that the Jamaican Government has rejected many of the recommendations made by the mandate. I hope that, in the spirit of dialogue and openness, we are able to discuss these concerns with a view to addressing the issues raised in our report. In that context, let me reiterate my disposition to continue to engage with the Honorable Government of Jamaica on all matters related to our mutual interest in preventing and eradicating torture.

The report on the Special Rapporteur's visit to Jamaica raises concerns about a general atmosphere of violence and aggression in almost all police stations, as well as discriminatory practices against detainees. The report suggests that the overall conditions of police detention disregard the dignity of detainees. Additionally, the report expresses the view that conditions at remand and correctional facilities are generally better than in police stations; many prisons were found to be overcrowded, lacking sanitary facilities and any meaningful opportunities for education, work and recreation. The mandate also received consistent allegations that corporal punishment was routinely applied in remand and correctional centres. The conditions for women were generally better, and there was a strict separation between male and female detainees. Children in conflict with the law, those deemed uncontrollable and those in need of care and protection from the State were held together in detention facilities without distinction. Similarly, concerns were

expressed that torture is not defined in criminal legislation in Jamaica, nor is Jamaica a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In light of these concerns, the mandate urged the Government to ratify the Convention against Torture and the Optional Protocol thereto. Other recommended steps include ensuring prompt and thorough *ex officio* investigations for all allegations of ill-treatment or excessive use of force; reducing the time limits for police custody to 48 hours; establishing accessible and effective complaints mechanisms; and the rapid bringing into force of an Independent Commission of Investigation. Children in conflict with the law should also be removed from adult detention facilities.

The mandate conducted a mission to Papua New Guinea in May of 2010. The report of the visit highlights isolated cases of torture in the classical sense of deliberately inflicting severe pain or suffering as a means of extracting a confession or information. The mandate also found a considerable number of cases where persons were subjected to different degrees of beatings by the police during arrest and as a form of punishment, which in some cases also amount to torture and are otherwise cruel, inhuman or degrading treatment or punishment. Further, impunity for torture and ill-treatment is fuelled by the lack of effective complaint mechanisms, independent investigations, monitoring or other similar safeguards. The Special Rapporteur found a general atmosphere of violence and neglect in places of detention. In police stations, detainees were locked up for long periods in overcrowded and filthy cells, without proper ventilation or natural light for periods of up to one year. The conditions in correctional institutions were better, but generally overcrowded. There was also an overall lack of medical attention, even for those who were severely beaten by the authorities, and the poor sanitary conditions facilitated the spread of contagious diseases. With regard to juveniles, the Police Juvenile Policy and Protocol, an excellent tool in dealing with juveniles in conflict with the law, is for the most part not being applied. Juveniles were held with adults in all police stations visited by the Special Rapporteur. Concerns were also expressed about the wide prevalence of gender-based violence and the lack of an

effective State mechanism to address it. In detention, women are extremely vulnerable to sexual abuse from police officers or from other detainees.

The findings of the visit lead to a call for the Government to issue an unambiguous declaration by the highest authorities that it will not tolerate torture or similar ill-treatment by public officials. The Government is also urged to ratify the Convention against Torture and its Optional Protocol. Other recommended steps include amending domestic legislation to include the crime of torture with adequate penalties; ensuring prompt and thorough *ex officio* investigations for all allegations and suspicions of ill-treatment or excessive use of force; reducing the time limits for police custody to 48 hours; establishing accessible and effective complaint mechanisms; and ensuring a comprehensive and structural reform of the Royal Papua New Guinea Constabulary.

The mandate also undertook a mission to Greece last October. A major increase in the number of irregular migrants and refugees coming mostly via the land border with Turkey has overwhelmed law enforcement institutions in Greece. Confronted by the large number of aliens entering the country irregularly every day, the government has instituted a policy calling for their systematic detention. As a result, the border guard stations, police stations, and migration detention centres are in crisis.

During the visit, the mandate received numerous reports of ill-treatment by police officers, in particular in premises of Criminal Investigation Departments (CID), some amounting to torture in the sense of the Convention Against Torture (CAT) but with relatively little forensic evidence corroborating the allegations. The lack of evidence may be explained by the non-functioning system of police investigation and complaint mechanisms. This creates an environment of powerlessness for victims of physical abuse and may perpetuate a system of impunity for police violence. For the most part, Prof Nowak found that foreign nationals were being held in the police stations which, it seems, operate as facilities for detention awaiting deportation, contrary to their normal function. In all but one facility under the authority of the Ministry of Citizens' Protection (police stations, border guard stations and migration detention centres) he found foreign nationals

detained in overcrowded, dirty cells with inadequate sanitary facilities, no or insufficient access to outdoor exercise and inadequate medical attention. He found such conditions to amount to inhuman and degrading treatment in violation of Articles 7 and 10 of the International Covenant on Civil and Political Rights (ICCPR).

Further, grave concerns are expressed about the situation of unaccompanied minors who are often not properly registered and are systematically detained, often together with adults. Similarly, concerns are expressed about severely overcrowded prisons. The rate of pre-trial detention is very high in comparison to all criminal investigations; the problem is made worse by the fact that pre-trial detainees are not separated from those convicted of crimes, in violation of Article 10 of the ICCPR.

Let me also acknowledge that the Government has taken several positive measures since the visit. These measures include several legislative and other practical initiatives to address some of the concerns raised. I am encouraged by the goodwill of the Greek Government and look forward to further engagement with it on the issues identified.

In September 2010, at the invitation of the Government, the special rapporteurship had the rare opportunity to conduct a follow-up country visit to Kazakhstan. Let me emphasize the importance of follow-up country visits as an important way to continue the process of reform and other measures aimed at eradicating torture and ill-treatment. I would like to encourage States that have been visited by previous mandate holders to conduct follow-up activities – including repeat visits -- with the involvement of the Special Rapporteur. Similarly, let me draw your attention to Addendum 2 of my report which contains information supplied by States, as well as by other stakeholders, including National Human Rights Institutions and non-governmental organizations (NGOs), relating to follow-up measures adopted in response to the recommendations of the mandate following country visits.

Lastly, let me draw your attention to the report on the communications sent and responses received from States. It includes communications sent between 21 December 2009 and 1 December 2010. The mandate sent a total of 203 communications, consisting

of 66 letters of allegations of torture to 34 Governments and 137 urgent appeals to 53 Governments on behalf of persons who might be at risk of torture or other forms of ill-treatment. As you know, Excellencies, this is one of the measures which the mandate takes to protect persons who have been tortured or have experienced ill treatment or who at serious risk. To this effect, I can't overemphasize the importance of Government taking substantive steps in addressing the concerns that I raise with you. I want to thank those States that have responded to our inquiries; but more importantly, I will like to urge a better rate of responsiveness to our communications.

Mr. President,

Experience shows that the mandate is often the subject of difficult discussions. Likewise, the implementation of my mandate will inevitably raise differences of opinion with regard to substance, interpretation and approach, all of which may cause some discomfort for some States. The brutal nature of torture requires that all parties work quickly and constructively to ensure its eradication and when perpetrated that there is no impunity – the right to be free from torture is non-derogable in all circumstances – there can be no exception. It is a non-derogable right during states of emergency and it cannot be derogated *ex post facto* by a policy or a practice to ignore it and allows violations to go unpunished. In responding to allegations of torture or ill-treatment and the need to eradicate them, we will all need to re-double our efforts in approaching this difficult subject in a spirit of openness and good faith. In the course of my tenure, I will try to point out challenges fairly and objectively, and acknowledge progress where it exists while working diligently with stakeholders to achieve a world without torture. I am a strong believer in constructive and open dialogue in furthering our universally shared interest in eradicating torture and ill-treatment worldwide and addressing its root causes. In this connection, I intend to place much emphasis on identifying areas of cooperation in this common quest and engaging proactively with States to prevent torture, and to join efforts to look for the most effective ways to achieve compliance with the absolute prohibition of torture as provided for under international law.

Let me conclude by drawing attention to the fact that the work of the mandate has been enriched by the activities and contributions of other mandates, by the work of treaty bodies dedicated to our same issue: the Committee Against Torture (CAT) and the Subcommittee on Prevention of the Optional Protocol to that Convention (OPCAT), and by the invaluable assistance of civil society organizations. I would like to recognize the importance of this cooperation and thank those partners for their assistance upon which I hope to rely and indeed contribute to their own work. Naturally, I also wish to thank those States and their representatives who have made the eradication of torture in our time a central tenet of their efforts to promote and protect human rights.

Thank you Mr. President.