

General Recommendations of the Special Rapporteur on torture¹

(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

¹ E/CN.4/2003/68, para. 26.

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.