

## Council holds dialogue with Special Rapporteur on torture

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The Special Rapporteur on torture, Mr Manfred Nowak, presented his final annual report to the Human Rights Council (the Council) on Monday 8 March 2010.<sup>1</sup> Mr Nowak also presented a 'global study on torture, other forms of ill-treatment and conditions of detention' that drew on his five years of experience as Special Rapporteur.



The Special Rapporteur on torture, Mr Manfred Nowak, presented his final annual report to the Human Rights Council (the Council) on Monday 8 March 2010.<sup>1</sup> Mr Nowak also presented a 'global study on torture, other forms of ill-treatment and conditions of detention' that drew on his five years of experience as Special Rapporteur. This global study revealed the disturbing reality that torture has been eradicated in very few States and in the majority of States torture occurs on a regular or even systematic basis. Mr Nowak attributed widespread torture to the malfunctioning of criminal justice systems and corruption, and in some cases the 'global fight against terrorism'. He expressed particular concern about the conditions in detention centres, which permits the erosion of basic rights of detainees and allows for torture and other cruel, inhuman and degrading treatment or punishment, and noted that victims are often already marginalised members of society who face double discrimination when they are detained.



Mr Nowak made several recommendations, including the establishment of a 'Global Fund for National Human Rights Protection Systems', the drafting of a new international convention on the rights of detainees (a proposal he first made at the General Assembly in 2009), and the setting up of a 'world court of human rights'.

Mr Nowak congratulated States that invited him to carry out fact-finding missions and facilitated his visit in a cooperative manner,<sup>2</sup> but expressed concern about the 'growing disrespect of Special Procedures mandate holders by certain governments.' He criticised the Council's 'antagonistic' treatment of its special procedures and the many accusations by States against the special procedures for breaching the Code of Conduct.

He emphasised the need to overcome the 'current attitude of confrontation and mistrust' and for greater common political will to promote and protect human rights. He suggested that a code of conduct for States would be useful in this regard. He expressed disagreement regarding accusations by States that corporal and capital punishment are beyond his mandate. He also regretted the Council's decision to postpone consideration of the joint study on secret detention by four special procedures arguing that it was outside of the authors' mandates.<sup>3</sup>

The countries recently visited by Mr Nowak responded to his mission reports but their comments ranged from full cooperation to rejection of his findings. Uruguay focused on efforts to implement the Special Rapporteur's

recommendations. Kazakhstan thanked the Special Rapporteur, maintained that it has a zero tolerance policy with respect to torture, and acknowledged some reservations to Mr Nowak's findings. Both Uruguay and Kazakhstan expressed a desire for follow up missions. Finally, Equatorial Guinea accused Mr Nowak of making false allegations, and commented on the Government's serious concerns about 'illegal immigration' and its consequences such as organised crime, seemingly to justify maltreatment in detention. In response to Mr Nowak's passing comments about his visit to Jamaica, the country replied that his remarks were premature and 'of grave concern' as the report on the visit would only be presented in 2011.

Many States congratulated Mr Nowak on his important contributions over the past years and welcomed the global report on torture. European Union States were very supportive of the special procedures' work, expressed grave concern at the findings of the global study and focussed questions on how the Council could strengthen the Special Rapporteur's mandate. For instance, Denmark raised questions on the possibility of a follow up mechanism. While Malaysia expressed appreciation for the candid and frank approach taken by the Special Rapporteur in his global study on torture, China expressed concerns about the comments about China in that report.

France and Moldova asked Mr Nowak to elaborate on the drafting of a new convention on the rights of detainees. France also asked what the Council could do to support the creation and strengthening of independent national mechanisms to investigate incidents of torture. Pakistan, the Russian Federation and Algeria stated that they saw no need for a new convention on the rights of detainees.

A number of States including the Republic of Korea, China, Kazakhstan, New Zealand and Equatorial Guinea asked Mr Nowak to elaborate on his proposal of a "Global Fund for National Human Rights Protection Systems," and emphasised the responsibility of the international community to provide technical and financial support to states struggling to reform their criminal justice systems. The Russian Federation argued that the existing fund for victims of torture is adequate.

Sweden, Norway and Finland, and the United States welcomed the joint study on secret detention, although the US noted substantive disagreements with the content of the report. On the other hand, Nigeria (on behalf of the African Group) commented that the joint study on secret detention is not part of Mr Nowak's mandate, held that his work should be guided by the Council, and accused him of speaking like 'a politician'. Zimbabwe accused Mr Nowak of making 'undesirable and unbecoming' political statements in reference to the Government in a 'total breach of the Code of Conduct.'

Pakistan (on behalf of the OIC) objected to Mr Nowak's comments on the Code of Conduct and insisted that the special procedures must conform to the Code of Conduct and cannot be the judges of their own behaviour. It further suggested that this should be 'concretised' during the review of the Council, likely a reference to the idea of an ethics committee to oversee implementation of the Code of Conduct. The Philippines argued that the Council does take account of the view of independent experts and NGOs. It stated that further divide between States and the special procedures should not be created and insisted that the Code of Conduct must be respected. The Russian Federation reiterated accusations against Mr Nowak that he violated the Code of Conduct and worked outside his mandate by investigating issues such as the death penalty, drug policies and excessive use of force by the police.

In his concluding remarks, Mr Nowak emphasised that his mandate is powerless without the cooperation of States. He stated that he expects the Council to address situations of continuous non-cooperation with special procedures. In response to comments regarding a convention on the rights of detainees, Mr Nowak held that the Convention against Torture does not cover specific rights of detainees who are 'as vulnerable as children and persons with disabilities', and thus deserve particular protection. He also reemphasised his concerns about the death penalty. He noted that he expects to visit Cuba this summer. In conclusion, Mr Nowak stated that criticism of certain governments' attitudes toward special procedures was made in a constructive spirit and that members of the Council should view the special procedures as their allies.