

frameworks provide adequate protections for rights related to thought, conscience, religion and belief; urged states to ensure that no one within their jurisdiction is deprived of the rights to life, liberty and security of person because of religion or belief or is subjected to torture or arbitrary arrest or detention on that account; urged states to take all necessary steps to combat hatred, intolerance and violence, intimidation and coercion arising from religion intolerance, including practices which violate women's human rights and discriminate against women; urged states to ensure that members of law enforcement bodies and civil servants, educators and other public officials respect different religions and beliefs and do not discriminate on religious grounds; urged states to ensure that religious places, sites and shrines are fully respected and protected; emphasized the view of the Human Rights Committee that restrictions on freedom to manifest religion or belief are permitted only if limitations are prescribed by law, necessary to public safety, order, health or morals and are applied in a manner that does not vitiate the right to freedom of thought, conscience or belief; encouraged the SR to continue efforts to examine incidents and governmental actions that are incompatible with provisions of the Declaration and recommend remedial measures as appropriate; stressed the need for the SR to apply a gender perspective in the reporting process through identification of gender-specific abuses; called on governments to cooperate with the SR and consider extending invitations to him to conduct visits; and, considered it desirable to increase UN promotional and public information activities in areas related to freedom of religion or belief, including the widest dissemination possible of the text of the Declaration by UN information centres.

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## TORTURE

**Special Rapporteur on Torture (E/CN.4/1997/7;  
E/CN.4/1997/7/Add.1)**

The Commission established the mandate of the Special Rapporteur (SR) on the question of torture at its 1985 session and has renewed it as required since then. In 1997, the SR was Mr. Nigel Rodley (UK). At the 1998 session, the Commission will consider renewal of the mandate for a further three years.

The focus of the work of the SR is primarily torture, but there is scope within the mandate to consider cases within a "grey zone" related to other forms of cruel, inhuman and degrading treatment or punishment. In recent years, the use of corporal punishment has been considered to fall within this "grey zone" and the SR has taken up the issue of, and cases related to, such practices as: flagellation; stoning; amputation of ears, fingers, toes or limbs; and branding or tattooing. The report notes that, with respect to the practice in some countries, the authority for the imposition and execution of the punishment derives from legislation or executive decree having the force of legislation. The legal provisions in question envisage the infliction of corporal punishment as an ordinary criminal sanction, either as an alternative to or in combination with other sanctions such as a fine or imprisonment. In some countries the provisions are to be found in administrative regulations, such as that contained in prison manuals in respect of disciplinary offences. In other instances, informal

or quasi-official agencies, such as ad hoc village tribunals or religious courts, have pronounced sentences of corporal punishment which appear to be extrinsic to the state's constitutional criminal justice system. In respect of these latter cases, the state must be considered responsible for the consequences of these sentences if they are carried out with its authorization, consent or acquiescence.

The report notes that a small number of governments and some legal experts base their opinion that corporal punishment should not be considered to be torture or cruel, inhuman or degrading treatment or punishment on the provision in article 1 of the Convention against Torture. This article defines torture for the purposes of the Convention and excludes from the ambit of proscribed acts those resulting in "pain or suffering arising only from, inherent in or incidental to lawful sanctions." The report goes on to note the SR's disagreement with this interpretation of article 1, and states that lawful sanctions must necessarily refer to those sanctions that constitute practices widely accepted as legitimate by the international community.

The two reports provided to the Commission in 1997 do not include any additional recommendations to those made in previous years. Among other things, those recommendations called for:

- ▶ the definition and designation of torture as a specific crime in national legislation;
- ▶ inadmissibility to judicial proceedings of any evidence obtained through torture;
- ▶ abolition of secret places of detention;
- ▶ inadmissibility to judicial proceedings of any evidence obtained from a detainee in such a place;
- ▶ regular inspection by independent experts of places of detention, including police lock-ups, pre-trial detention centres, security services premises and administrative detention areas and prisons, and a public report of the findings of the experts;
- ▶ prohibition of incommunicado detention;
- ▶ access for detainees to legal counsel within 24 hours of detention;
- ▶ the same degree of protection for persons under administrative detention as that accorded to those under criminal detention;
- ▶ guarantee of habeas corpus and *amparo* to ensure the right of all persons to challenge the lawfulness of detention;
- ▶ investigation of all complaints of torture and, if considered valid, compensation for the victims or their relatives;
- ▶ abrogation of amnesties, indemnity laws and other means of exemption from criminal responsibility for torturers;
- ▶ implementation of strict measures against medical personnel who play a role in torture, be that role direct or indirect; and
- ▶ inclusion in national legislation of the principle of article 3 of the Convention against Torture, related to prohibition on expulsion, return or extradition of a person to another state where there exists substantial grounds to believe that torture will occur.