

UNITED NATIONS



**OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS**



HUMAN RIGHTS DAY STATEMENT

By

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ON TERRORISTS AND TORTURERS

United Nations, New York

7 December 2005, 11:00 am

The absolute ban on torture, a cornerstone of the international human rights edifice, is under attack. The principle once believed to be unassailable – the inherent right to physical integrity and dignity of the person -- is becoming a casualty of the so-called “war on terror”.

No one disputes that Governments have not only the right but also the duty to protect their citizens from attacks. The threat of international terrorism calls for increased coordination by law enforcement authorities within and across borders. And imminent or clear dangers at times permit limitations on certain rights.

However, the right to be free from torture and cruel, inhuman or degrading treatment is not one of these. This right may not be subject to any limitation, anywhere, under any condition.

Many United Nations member States disregard this prohibition and continue to subject their citizens and others to torture and ill-treatment, often in a widespread and systematic manner. Although a broad range of safeguards is available now to prevent torture, many states have either not incorporated them in their legislation or, if they have, do not respect them in practice. OHCHR continues to receive numerous reports of state agents resorting to torture in the prosecution of ordinary criminals and, increasingly, in the name of the “war on terror”.

Particularly insidious are moves to water down or question the absolute ban on torture, as well as on cruel, inhuman or degrading treatment. Governments in a number of countries are claiming that established rules do not apply anymore: that we live in a changed world and that there is a “new normal”. They argue that this justifies a lowering of the bar as to what constitutes permissible treatment of detainees. An illegal interrogation technique, however, remains illegal whatever new description a government might wish to give it.

The intensity of international terrorism may be unprecedented, but its fundamental nature has not changed. Effective and intelligent law enforcement responses are called for. But no credible case has been made for throwing away the progress achieved in extending the protection of the rule of law and human rights around the world. On the contrary, the fight against terrorism can only be won if international human rights norms are fully respected. Torture is not simply immoral and illegal: it is ineffective. The emergence of a particularly vicious form of terrorist action has not changed that. And neither has using a very restrictive definition of torture in order to be able to justify other violent interrogation techniques.

Two phenomena today are having an acutely corrosive effect on the global ban on torture and cruel, inhuman or degrading treatment. The first is the practice of having recourse to so-called diplomatic assurances to justify the return and “rendering” of suspects to countries where they face a risk of torture; the second is the holding of prisoners in secret detention. The former may make countries complicit with torture carried out by others, while the latter creates the conditions for torture by one’s own.

The trend of seeking “diplomatic assurances” allegedly to overcome the risk of torture is very troubling. The international legal ban on torture prohibits transferring persons -- no matter what their crime or suspected activity -- to a place where they would be at risk of torture and other ill-treatment (the *non-refoulement* obligation). Faced with the option of deporting terrorism suspects and others to countries where the risk of torture is well documented, some governments, in particular in Europe and in North America, purport to overcome that risk by seeking diplomatic assurances that torture and cruel, degrading or inhuman treatment will not be inflicted.

There are many reasons to be sceptical about the value of those assurances. If there is no risk of torture in a particular case, they are unnecessary and redundant. If there is a risk, how effective are these assurances likely to be? Assurances that the death penalty will not be sought or imposed are easy to monitor. Not so, I suggest, in the case of torture and ill-treatment. Short of very intrusive and sophisticated monitoring measures, such as around-the-clock video surveillance of the deportee, there is little oversight that could guarantee that the risk of torture will be obliterated in any particular case. While detainees as a group may denounce their torturers if interviewed privately and anonymously, a single individual is unlikely to reveal his ill-treatment if he is to remain under the control of his tormentors after the departure of the “monitors”.

But the problem runs deeper: even if some post-return monitoring were functioning, the fact that some Governments conclude legally non-binding agreements with other Governments on a matter that is at the core of several legally-binding UN instruments threatens to empty international human rights law of its content. Diplomatic assurances basically create a two-class system among detainees, attempting to provide for a special bilateral protection and monitoring regime for a selected few and ignoring the systematic torture of other detainees, even though all are entitled to the equal protection of existing UN instruments.

Rather than extending this protection of convenience to a few, efforts should be directed at eliminating the risk of torture faced by many. Instead of attempting to monitor an individual case, with limited chances of effectiveness, efforts should be directed at creating a genuine system for monitoring all detainees in all places of detention. The tools to do this already exist, including the Optional Protocol to the UN Convention against Torture, which foresees the creation of mechanisms to access places of detention and interview detainees.

Let me turn to my second concern. Secret detention is not a new phenomenon, but it appears to have gained renewed currency in the so-called war on terror. An unknown number of "war on terror" detainees are alleged to be held in secret custody in unknown locations. Holding people in secret detention, with the detainee's fate or whereabouts, or the very fact of their detention, undisclosed, amounts to "disappearance", which in and of itself has been found to amount to torture or ill-treatment of the disappeared person or of the families and communities deprived of any information about the missing person. Furthermore, prolonged incommunicado or secret detention facilitates the perpetration of torture and other cruel, inhuman or degrading treatment. Whatever the value of the information obtained in secret facilities -- and there is reason to doubt the reliability of intelligence gained through prolonged incommunicado or secret detention -- some standards on the treatment of prisoners cannot be set aside. Recourse to torture and cruel, inhuman or degrading treatment exposes those who commit it to civil and criminal responsibility and, arguably, renders them vulnerable to retaliation.

Like many, I believe firmly in the role of law to guide us through difficult challenges. The law provides the proper balancing between the legitimate security interests of the State with the individual's own legitimate interests in liberty and personal security. It must do so rationally and dispassionately even in the face of terror. For even though it may be painted as an obstacle to efficient law enforcement, support for human rights and the rule of law actually improves human security. Ultimately, respect for the rule of law lessens the likelihood of social upheaval, creating greater stability both for a given society and for its neighbours. Pursuing security objectives at all costs may create a world in which we are neither safe nor free. This will certainly be the case if the only choice is between the terrorists and the torturers.

On the occasion of Human Rights Day, I therefore call on all Governments to reaffirm their commitment to the total prohibition of torture by:

- Condemning torture and cruel, inhuman or degrading treatment and prohibiting it in national law;
- Abiding by the principle of non-refoulement and refraining from returning persons to countries where they may face torture.
- Ensuring access to prisoners and abolishing secret detention
- Prosecuting those responsible for torture and ill-treatment
- Prohibiting the use of statements extracted under torture and cruel, inhuman or degrading treatment, whether the interrogation has taken place at home or abroad
- Ratifying the Convention against Torture and its Optional Protocol, as well as other international treaties banning torture.

ABOUT OHCHR

The Office of the United Nations High Commissioner for Human Rights (OHCHR) helps protect and promote all human rights around the world. Headquartered in Geneva, the Office is also present in over 40 countries. OHCHR works to ensure the enforcement of universally recognized human rights norms, including through promoting both the universal ratification and implementation of human rights treaties and respect for the rule of law. It also aims to remove obstacles to the full realization of all human rights and to prevent or stop human rights abuses. For more information please visit www.ohchr.org

About the High Commissioner

The High Commissioner is the principal UN official with responsibility for human rights and is accountable to the Secretary-General. The post of High Commissioner was created in 1993. Louise Arbour of Canada has been the High Commissioner for Human Rights since July 2004.

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