

# POLITIKEN

## Danske soldater deltog i irakisk anholdelse

Danske soldater støtter irakere, der har anlagt sag mod Forsvarsministeriet.

AF LARS HALSKOV

Danske militærpolitifolk deltog aktivt under anholdelsen af 36 civile irakere ved en omstridt fangeoperation i november 2004.

Det siger to danske soldater, der var med under aktionen. Det sår tvivl om forsvarsledelsens hidtidige forklaring om, at irakiske sikkerhedsstyrker foretog anholdelserne.

»De danske soldater gik ind i husene, og de irakiske sikkerhedsstyrker kom bagefter. Den irakiske hær var ustabil, fordi den først lige var ved at blive genopbygget. Så de irakiske soldater var ikke så modige«, fortæller

**LÆS OGSÅ** Irakisk dommer og fængselsinspektør overvågede danske fangetilsyn

Hans forklaring bekræftes af en anden dansk soldat, der også var med til operationen.

De to soldater var i den samme deling, som skulle sikre, at ingen kom ud af området i Az Zubayr i det sydlige Irak. Begge soldater kunne derfor overvåge operationens forløb.

»Militærpolitifolkene gik først ind i husene for at fange de her folk, og så kom de irakiske soldater bagefter«, siger

**Ny oplysninger støtter irakernes sag**

De nye oplysninger fra de to danske soldater kan få betydning for den erstatningssag, som seks af de anholdte irakere med hjælp fra advokat Christian Harlang har anlagt mod Forsvarsministeriet.

Soldaternes forklaring stemmer overens med de seks irakeres beretninger om anholdelsen.

To irakere fortæller, at danske soldater lagde første hånd på dem. De andre siger, at det var irakiske sikkerhedsstyrker, som fysisk pågreb dem, men at danske soldater havde kommandoen.

**LÆS OGSÅ** Over 162.000 blev dræbt i Irak-krigen

Irakerne vil have erstatning for den nedværdigende behandling, som de siger, at danske soldater udsatte dem for under anholdelsen og den senere afhøring.

De kræver også erstatning, fordi de siger, at det danske forsvar bagefter udleverede dem til irakiske sikkerhedsstyrker, som kørte dem til en frygtet irakisk politistation i Basra.

De fortæller, at de her blev slået, hængt op i kroge og fik elektriske stød. Hvis det reelt var danskerne, der foretog anholdelsen, ville Danmark have det juridiske ansvar for fangerne og skulle følge, hvordan de blev behandlet, mens de var fængslet.

**Bataljonchef ændrer forklaring**

Omkring 1.000 danske, britiske og irakiske soldater og politifolk deltog i aktionen. De irakiske sikkerhedsstyrker havde udpeget flere steder i Az Zubayr, som var mistænkt for at huse oprørere, våben og sprængstoffer, og det var danskerne, som ledede operationen.

Den daværende bataljonschef, John Dalby, har tidligere forklaret, at de irakiske styrker gik ind i husene og foretog arrestationerne – og først derefter kom de danske og britiske militærpolitifolk ind i husene for at ransage dem.

#### **FOTO Sådan ser en krig ud - på Indersiden**

Forelagt de nye oplysninger siger John Dalby, at han sad i en pansret mandskabsvogn ved indfaldsvejene til byen og styrede operationen, så han så ikke, hvem der gik ind i husene.

»Men det kan meget vel være, at militærpolitifolkene er gået først ind i husene og har haft de irakiske betjente i hælene. Men det forandrer ikke, at det var irakerne, der anholdt folk«, siger John Dalby.

#### **Mishandlet mens danskere så på**

Den danske soldat fortæller også, at han så en fange blive mishandlet af irakere under operationen.

»Han fik en hætte over hovedet, og en irakisk soldat nikkede ham en skalle, og så blev der rødt i sækken på hans hoved«, fortæller

ifølge så mange danske soldater hændelsen, men ingen påtalte det. John Dalby mener, at dem, der så det, burde være skredet ind:

»Det er beklageligt, at soldaten ikke greb ind, for han vidste godt, at det var en behandling, vi ikke accepterede«.

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BILAG 2
CHRISTIAN HARLANG

## Vidneudsagn: Fange overladt til sekterisk tortur

I nyt vidneudsagn fortæller irakisk fange, at irakisk politi mishandlede ham under en dansk støttet operation i Irak i 2004. Mishandlingen var sekterisk motiveret og skete, uden at danskerne greb ind, bekræfter dansk officer. Efter operationen blev fangen overleveret til et berygtet torturfængsel

Skrevet af: Anton Geist, Sebastian Gjerding, Charlotte Aagaard  
Oprettet 09/12/2010 - 21:20

Da kommer ud fra morgenbøn i den sunnimuslimske Al-Barrak-moské i byen Al-Zubayr syd for Basra, har danske soldater og irakiske politisoldater omringet moskeen.

Det er den 25. november 2004. Operation Green Desert er i gang. Op mod 1.000 danske, britiske og irakiske soldater og politifolk deltager. En irakisk politiinspektør stopper uden for moskeen og vil se hans ID-kort. Der står, at han er sunni. Da politiinspektøren ser det, tilbageholder han ham. ser det samme ske for 11 andre sunnier, der også kommer ud af moskeen.

De bliver ført til en plads nogle gader fra moskeen, hvor de bliver lagt i håndjern med hænderne på ryggen. De irakiske politibetjente råber sekteriske bandeord efter dem. Og så begynder de at tæske dem.

Betjentene videofilmer dem og tager billeder af dem. Imens kigger de danske soldater på. Så begynder også danskerne at tage billeder af fangerne.

### 'Chokerende'

Sådan fortæller den irakiske mand nu i et vidneudsagn, som Information er i besiddelse af. Her retter han en skarp anklage mod den danske stat for at have assisteret irakisk politi under Operation Green Desert, som efter den brutale anholdelse for vedkommende endte med, at han atter blev mishandlet over flere dage på den berygtede Al Jamiat-politistation i Basra, før han blev løsladt igen uden dom.

Det er den britiske menneskerettighedsaktivist Mazin Younis, der har nedskrevet G's vidneudsagn. Han har gennem flere år samarbejdet med det britiske advokatfirma Public Interest Lawyers om sager vedrørende britiske tilfangetagelser i Irak, som for øjeblikket bliver behandlet ved en domstol i London. Nu er han begyndt at indsamle vidneudsagn fra irakere, der er blevet taget til fange under operationer, som den danske bataljon har medvirket i, og i sidste uge var han i København for at mødes med danske advokater. I første omgang ønsker Mazin Younis at få de danske myndigheder til at reagere.

»De skal anerkende alvoren i sagen og igangsætte en uafhængig undersøgelse, der skal fastslå, om anklagerne er sande. Hvis de er sande, skal ofrene have en officiel undskyldning,« siger han til Information.

»Det er chokerende, at danske soldater har ydet støtte og dækning til en forbryderisk, sekterisk motiveret politistyrke, som ønskede at fordrive sunnier fra regionen. Det irakiske politi mishandlede alle de fanger fra operationen, som jeg indtil videre har talt med, og det ville de ikke have været i stand til, hvis det ikke havde været for den massive støtte fra danskerne,« tilføjer Mazin Younis.

Han henviser til, at den irakiske politistyrke i Basra-regionen, hvor danske og britiske soldater var indsat, blev infiltreret af shia-militser efter afsættelsen af Saddam Hussein. Det skete i særlig høj grad i den sydlige del af landet, hvor shiaer udgjorde den altovervejende majoritet, mens sunni-minoriteten holdt til i enklaver som Al-Zubayr, hvor Operation Green Desert fandt sted.

### Officer bekræfter

Information har talt med en dansk officer, der var med på *Operation Green Desert*. Vedkommende ønsker at være anonym.

Under operationen befandt officeren sig selv nogle hundrede meter fra Al-Barrak-moskeen, hvor altså blev taget til fange.

»Historien om selve anholdelsen lyder meget som det, der foregik. Mange af fangerne blev taget om morgenen, og mange af dem blev taget uden for deres moskeer. Jeg husker, at nogle af soldaterne bagefter talte om, at nogle af fangerne fik nogle ordentlige tæsk. At det irakiske politi og den irakiske hær slog dem foran danskerne,« siger officeren, som bekræfter, at danskerne ikke greb ind.

»Det var i hvert fald det, jeg hørte. Men i og med at det er irakerne, der tager fangerne, er det svært at gribe ind. Det er en svær situation at stå i. Hvis der er tre personer, der slår en fange, og du som fjerde person skal gribe fysisk ind, så kan det være meget svært,« siger officeren.

- Er det sandsynligt, at politiet gik efter sunnier?

»Det er ikke bare sandsynligt. Det var sådan, det foregik. Når politiet havde mulighed for at tage ned sydpå og træde på nogle sunnimuslimer, så gjorde de det, men det er mit indtryk, at de aldrig fik fat i de rigtige. Problemet med mange af vores operationer var, at de var baseret på kilder, som var irakiske shiamuslimer, der bekæmpede sunnimuslimerne i området.«

### For skamfuldt

I sit vidneudsagn fortæller endvidere, at han efter anholdelsen i Al Zubayr bliver kørt til en britisk lejr og derfra videre til den britiske militærbase Shaiba Logistics Base, hvor også den danske bataljon holder til. Han bliver ført over i et telt, hvor han bliver afhørt af en mandlig og en kvindelig soldat. En tredje soldat tager gummihandsker på, løfter op i traditionelle arabiske dragt og hiver hans underbukser ned. Soldaten kropsvisiterer ham og stikker en finger op i hans anus, mens de andre soldater griner. har aldrig fortalt familie og venner om kropsvisiteringen. Inden for hans kultur er det for skamfuldt. Under afhøringen spørger soldaterne ifølge vidneudsagnet, om han er medlem af en oprørsmilits. Det er han ikke, fortæller han dem. Bagefter bliver ført over i et andet telt, hvor de andre sunnier fra moskeen opholder sig. De må hverken få noget at drikke eller spise, og de får ikke lov til at gå på toilettet,

mener, at både soldaterne, der afhører ham, og soldaterne, der bevogter ham, er danskere. Han mener at kunne huske, at de har et dansk flag på deres uniform ligesom soldaterne, der havde omringet moskeen, da han blev anholdt.

Den danske officer, som Information har talt med, mener imidlertid ikke, det kan være rigtigt.

»Hvis det er sket sådan, som han siger, må han have byttet om på danskere og briter. Efter

Annemette Hommel-sagen var der så meget berøringsangst i forhold til fanger, at vi aldrig havde noget med dem at gøre, efter de var blevet taget til fange. Det tog briter sig altid af,« siger officeren, hvilket stemmer overens med, hvad Information tidligere har fået at vide fra andre danske soldater, der var udsendt til Irak.

### Tortur var velkendt

Om eftermiddagen kommer en gruppe irakiske polititbetjente ifølge i vidneudsagn til Shaiba Logistics Base for at afhente fangerne. De slår og sparker dem og kører dem så i politibiler til Al Jamiat-politistationen i Basra.

Forklaringen stemmer overens med, hvad der står i en indberetning om Operation Green Desert blandt de lækkede amerikanske Irak-logs, som Information har privilegeret adgang til. Her fremgår det, at 37 fanger efter operationen er blevet ført til Shaiba Logistics Base, hvorefter de er blevet overgivet til den irakiske elite-politistyrke Tactical Support Unit »og har forladt Shaiba Logistics Base«.

Information har tidligere beskrevet, hvordan koalitionsstyrkerne i løbet af foråret 2004 både har været vidne til, at irakisk politi har tortureret fanger, og er blevet advaret af Røde Kors om tortur af fanger i irakisk politis varetægt. Det er altså sket, før de 37 fanger, herunder bliver overleveret til irakisk politi.

Information har endvidere talt med den undersøgende journalist Stephen Grey, der dækkede Irak-krigen og især situationen i Basra for blandt andre tidsskriftet The New Statesman. Han besøgte i foråret 2004 Al Jamiat-politistationen, hvor altså ender, og bekræfter over for Information, at stationen var berygtet for fangemishandling.

»Det var velkendt blandt koalitionsstyrkerne og blandt menige irakere ihvertfald fra årsskiftet 2003-2004, men formentlig også tidligere. I en periode foregik torturen i en nedlagt natklub i nærheden af politistationen,« siger han. Som Information har beskrevet, var det da også netop på Al Jamiat-politistationen, at fangen Abbas Allawi, der var blevet taget under en dansk ledet operation i april 2005, altså godt et halvt år efter Operation Green Desert, blev tæsket til døde efter at være blevet overleveret til irakisk politi af britiske soldater.

### Ingen forklaring

fortæller i vidneudsagnet, at han bliver løsladt efter en uges fængsling. Forinden er han blevet tortureret, mens forhørslederen på Al Jamiat-politistationen har råbt »de værste sekteriske ord, jeg har hørt i mit liv«. Det er blandt andet sket ved, at polititbetjentene har placeret hans fingre på en metalplade og banket på dem med en knippel og sat ham på en kontorstol og drejet den rundt, mens de slår og sparker ham.

En uge efter anholdelsen bliver ifølge sin forklaring løsladt igen uden at få nogen forklaring på, hvorfor han blev anholdt.

der stadig bor i Irak, vil af sikkerhedshensyn kun benævnes ved forbogstavet i sit fornavn.

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Kilde: <http://www.information.dk/253370>



→ 8. kt.

Info. bet: PCA, JRE  
Kopi ✓/CM

TIL TJENESTEBRUG  
Afklassificeret 2007-07-28

BILAG 3  
CHRISTIAN HARLANG

Med 11  
kopi 49



FORSVARSKOMMANDOEN

04-022/141-1		DKK. Nr.	✓
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AHO	27 JULI 2004		
ER	B	HYMA	06/7-04

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2004-07-27

(Bedes anført ved henvendelser)

Til  
Forsvarsministeriet

Emne:  
Månedssrapport vedr. tilsyn med militære og civile fanger i DANBN AOR JUN 2004.

Ref.:  
HOK skr.0302368-292 af 2004-07-19.

- Blag:
1. Månedssrapport JUN 04.
  2. Statusoversigt JUN 04.

1. Hermed fremsender Forsvarskommandoen (FKO) månedssrapport for JUN 2004 vedr. emnet. FKO kan tilslutte sig det afrapporterede, idet de er i overensstemmelse med de løbende meldinger fra DANBN vedr. ændringer i status for tilbageholdte fanger i hhv. DTDF og Basra fængsel.

2: Sagsbehandler ved FKO er OK L. J. Jensen, lok. 3127.

E.b.

A. C. HOLMEN  
major  
Fg. chef for Den Internationale Operationssektion

Postadresse  
Postboks 202  
2950 Vedbæk

Bevægelsesadresse  
Henriksholms Allé  
2950 Vedbæk

Telefon  
45 67 45 67  
Gennemvalg: 45 67 31 27

Telefax  
45 89 07 48

Internet  
fko@mil.dk  
Forsvaret.dk

TIL TJENESTEBRUG  
Afklassificeret 2007-07-28



HÆRENS OPERATIVE KOMMANDO

O/IO  
096.292

0302368 - 292

2004-07-19

(bedes anført ved henvendelser)

Til  
Forsvarskommandoen

Emne:  
Månedssrapport vedr. tilsyn med militære og civile "danske" fanger i DANBN AOR  
JUN 04.

Ref.:  
DANBN skr. O.096.205-1506 af 2004-06-30

Bilag:  
1. Månedssrapport JUN 04  
2. Statusoversigt JUN 04

1. Hermed fremsender Hærens Operative Kommando (HOK) månedssrapport for JUN 2004  
vedr. emnet.

2. Måneden for DANBN har været præget af et intensivt arbejde med at implementere nye  
tiltag til sikring af, at det udvidede tilsyn med fanger kan gennemføres hensigtsmæssigt. I  
denne forbindelse har DANBN indarbejdet nye afsnit i DANBN SOP.  
DANBN angiver endvidere, at arbejdet med fangetilsyn og lign. har været hæmmet af den  
operative situation i Irak, signalproblemer, besøg, pålagte begrænsninger i  
bevægelsesfriheden, utilstrækkelig adgang til pålidelig information fra civile lokale  
myndigheder, problemer med pålidelig oversættelse af skriftlig materiale og tidsmæssig  
sammenfald med flytning af UK BDE ENH. Herudover har påbegyndelsen af  
nedlæggelsen af CPA, der hidtil var ansvarlig myndighed for fængsler, bidraget til  
friktionerne.

KVUDPOST UPEXIOFANGERAPPORRT JUN.DOC

Postadresse  
Postboks 69  
7470 Karup J.

Telefon  
99 62 49 70  
Indvalg: 97 10 15 50 / + lok.nr.

Telefax  
99 62 49 85

Internet  
hok@mil.dk  
www.hok.dk

ELDOK

RUTINE

**TIL TJENESTEBRUG**  
**Afklassificeret 2007-06-29**

Det er HOK vurdering at DANBN har arbejdet loyalt for at efterleve de meddelte bestemmelser vedr. tilsyn med indsatte.

3. Sagsbehandler ved HOK er MJ B. Andersen, lok. 7904.

E.b.

**E. REESE-PETERSEN**  
major  
Fg. chef for Den Internationale Operatonssektion



## GENERELT

1. Der har i JUN 04 været foretaget 5 tilsyn/identifikationsbesøg med tilbageholdte i h.h.v. Basra fængsler og DTDF (UK). I JUN er der tilbageholdt 5 personer og frigivet 4. Under et tilsyn og på baggrund af informationer fra den medfølgende dommer, blev det d. 25 JUN klarlagt at der var yderligere 3 tilbageholdte, der skulle henregnes under "danske" fanger. Fanger der ikke forud var opført i danske journaler. Der er således en "tilgang" på 4 fanger i JUN.

## TILSYN

2. Den 9. JUN aflagdes uanmeldt besøg i DTDF.

Deltagere var MJUR, OLG og 2 MSPG.

Formålet var at tilse de to fanger, som DANBN havde overbragt til DTDF lørdag, den 29 maj 2004. Delegationen blev vel modtaget af personalet. Der blev på opfordring fremskaffet lokal tolk.

Af hensyn til den igangværende efterforskning og afhøring af fangerne bad personalet om lov til at tre engelske afhøringsofficerer måtte overvære fangernes reaktion på vore spørgsmål. Der sås ikke umiddelbart nogen grund til at forhindre dette.

De to fanger blev bragt ind i besøgsrummet en af gangen. De var velsoignerede, iført rene klæder (dish-dash), de var ulænkede og havde ikke anlagt håndjern. Fangen tog plads på en stol overfor de 4 besøgende. Arrangementet besluttedes egenhændigt af delegationen. Der var herefter lejlighed til at interviewe fangerne.

MJUR forklarede, at årsagen til besøget var, at fangerne som hørende til det danske område skulle besøges for at sikre, at deres forhold var efter reglerne og at deres sager blev fremmet mest muligt. Det blev endvidere fremført, at sådanne besøg kunne blive gentaget senere.

Adspurgt af MJUR om fangerne var bekendt med, hvorfor de var anbragt i DTDF svarede begge benægtende. Efterfølgende foreholdtes englænderne disse svar, og det forklarede, at samtlige fanger udtrykte denne holdning på trods af, at der efter reglerne blev gjort meget ud af at forklare fangerne, at disse var tilbageholdt af sikkerhedsgrunde med oplysning om konkrete anklager. Dette blev endvidere skriftligt overgivet til såvel fangerne selv som disses pårørende. Det var en almindelig attitude, idet fangerne ved at tilkendegive uvidenhed mente at fremme deres egen sag.

Adspurgt om fangerne var klar over, at de havde ret til at få besøg af pårørende forklarede fangerne, at de godt vidste dette og at besøg ville blive tilladt efter de første to ugers tilbageholdelse. Der bliver givet skriftlig information herom til fangerne samt disses pårørende.

Adspurgt af OLG om forholdene i fængslet, herunder om kost, hygiejne, behandling i øvrigt erklærede begge fanger, at de intet havde at klage over.

OLG modtog på opfordring fangernes lægejournaler, som ikke gav anledning til yderligere spørgsmål. Adspurgt om fangerne havde været udsat for hårdhændet behandling eller vold i forbindelse med anholdelse eller senere svarede benægtende. Adspurgt om fangerne mente at lide af sygdomme, der ikke behandledes ordentligt erklærede begge, at dette ikke var tilfældet.

Afslutningsvis påpegede delegationen, at kontrolbesøg ville forekomme fremover såvel kollektivt som individuelt. Endvidere forberedtes personalet på, at der samme dag af DANBN var tilbageholdt personer, som efter udspørgen formodedes at blive oversendt til DTDF i løbet af natten.

Besøget varede sammenlagt ca. 40 minutter og gav ikke anledning til nogen bekymring.

## 2.1. Den 16 JUN aflagdes der besøg hos DTDF.

I besøget deltog MJUR, OLG samt ny OLG og MP. Der deltog fra engelsk side en observatør/fangeledsager samt DTDF tolk.

Formålet var at tilse [redacted], fra stammen [redacted], fødselsår [redacted], der var blevet overdraget den 9 JUN 2004. Den ønskede fange blev på opfordring bragt ind i besøgsværelset og delegationen anbragte sig på en stolerække med fangen frontalt siddende foran. Fangen var ikke lænket eller på anden måde hæmmet. Han var iført en blå bomuldskedeldragt med sandaler. Han virkede umiddelbart sund og rask uden synlige tegn på skader eller lignende.

MJUR forklarede, at delegationen var fra den danske hær og at formålet var at sikre sig, at fangens blev behandlet efter gældende forskrifter, konventioner m.v. Fangen spurgte, om det var tilladt at fremføre sine synspunkter om alt, hvilket MJUR bekræftede.

Adspurgt af MJUR hvorvidt han var klar over, hvorfor han var i varetægt svarede fangen, at han ikke var klar over, hvorfor han blev holdt indespærret. Han forklarede endvidere, at han havde siddet fredeligt på El Sadr kontor i Al Qurnah da Danskene havde angrebet (stormet) bygningen og fastholdt ham. Han var herefter blevet udspurgt og efterfølgende blevet overført til DTDF.

Han var meget fortørnet over det skete og erklærede, at han var helt uskyldig i alt når talen var om fjendtlighed overfor danskene eller CF. Han agtede at protestere og klage over, at han ikke var blevet sigtet eller anklaget inden 24 timer. Klagen agtede han senere at fremsætte overfor FN, CF og CPA. MJUR forklarede, at hans udsagn blev noteret og at han ikke ville blive forhindret i at klage.

MJUR spurgte herefter, om han var blevet foreholdt sine rettigheder, herunder, at hans sag ville blive taget op regelmæssigt og at han ville få mulighed for at få besøg efter de første to uger, hvis han ønskede dette. Fangen havde ingen kommentarer hertil ud over, at han var bekendt med, at besøgs mulighederne var begrænsede til et par gange om ugen.

Adspurgt af OLG om han havde følt sig forulempet fysisk under anholdelsen, under den første udspørgen, under transporten til DTDF svarede fangen benægtende. På eget initiativ fremførte fangen derimod, at han var blevet meget dårligt behandlet af "ham derinde", hvorefter han pegede ind mod modtagelsesværelset, hvor også DTDF administration har til huse. På OLG spørgsmål om, hvorvidt han mente at have lidt fysik overlast svarede fangen igen, at han ville klage over ikke at blive forelagt en sigtelse.

Adspurgt af OLG omkring mad og drikke, indlogeringsforhold, de sanitære forhold, blev der ikke anført noget at klage over. Adspurgt om fangen led af nogen sygdom, der ikke blev behandlet svarede benægtende.

Fangen blev herefter spurgt om der var mere han ville fremføre, hvorefter han igen ønskede at klage, hvilket igen blev besvaret med, at hans ønske var noteret. MJUR forsikrede, at han ville blive behandlet efter reglerne og såfremt han viste sig at være uskyldig, ville alt ordne sig. Viste det sig, at han var involveret i ulovligheder eller lignende,

ville han blive fortsat tilbageholdt og behandlet efter disse regler. MJUR afsluttede med at sige, at den danske delegation senere ville komme igen for at tilse fangen.  
Herefter blev fangen ført ud.

2.1.1. Efter besøget foreholdtes den engelske administration de klager, som fangen havde fremført og som observatøren selv havde overværet. Administrationen fremførte, at sådanne klager – herunder klage over at blive afhørt af englænderne var almindeligt forekomne. Han forsikrede at alt foregik "efter bogen" og henviste igen til f.eks. de i modtagelsesrummet mange opsatte plakater på arabisk og engelsk med forklaring af alle rettigheder etc. Herefter skønnede OLG og MJUR, at de fremførte klager ikke gav anledning til yderligere særlige tiltag.

2.1.2. MJUR informerede efterfølgende om, at nye uafhængige kilder havde oplyst, at netop tilfangetagelsen af den pågældende nu havde udløst trusler og planer om gengældelsesaktioner i form af morterbeskydning af Camp Eden. DANBN tog disse trusler alvorligt og havde indført skærpede foranstaltninger i den anledning. Englænderne bekræftede, at de allerede var bekendt med disse oplysninger. MJUR henviste til i givet fald at kontakte S2 for yderligere information.  
Mødet tog ca. 45 minutter.

2.2. Jf. ref. blev der d. 23 JUN gennemført fangetilsyn i Basra fængsel.

Den danske delegation bestod af MJUR, OLG og MP. Endvidere deltog den lokale dommer fra Al Quamah i besøget for at bistå med identifikation af 2 af 6 fanger, som ikke tidligere har kunnet identificeres.  
En britisk observatør overværede besøget.

2.2.1. Besøgets indledende formål var at tilse to fanger, som er DK ansvar, men som jf. tidligere meldinger ikke har kunnet identificeres med sikkerhed. Begge fanger blev tilset og identificeret. Den ene fange led af astma, men er under behandling.

Besøget ved disse to fanger giver ikke anledning til yderligere bemærkninger. I forbindelse med besøget har DANBN fået oplysninger om yderligere fanger, der angives at være pågrebet i det område, der er omfattet af det danske militære ansvarsområde. Den lokale dommer har med DANBN gennemgået en liste over fanger, som han vurderede kunne have DANBN interesse. Listen indeholdt 48 navne over personer, som tilhørte hans område, men som var overført til andre fængsler eller retskredse m.h.p. domfældelse, afsoning eller varetægt.

Ved nærmere gennemsyn af listen, blev denne opdelt efter, hvem der indledningsvis havde anholdt de pågældende. Det resulterede i, at listen kunne indsnævres til 13 personer, som muligvis kunne henhøre under dansk ansvar.

Ved ankomst til Al Makil fængslet blev det erkendt, at der tillige hensad 3 varetægtsfanger, som på listen var opført som siddende i Al Quamah og som muligvis kunne henhøre under dansk ansvar.

2.2.2. Efter gennemførelse af det planlagte tilsyn med de to fanger jf. pkt. 2.2., bad delegationen uvarslet om at måtte tilse ovennævnte 13 + 3 = 16 fanger. Dette ønske blev efterkommet. 15 fanger blev tilset, idet den 16. fange midlertidigt var indlagt på civilt sygehus med sygdom.

På grundlag af interview med de 15 fanger konstateres det, at 13 af fangerne enten var anholdt af UK- enheder eller af irakisk politi. De sidste 3 fanger var anholdt af DK enheder og efterfølgende overgivet til irakisk politi. Den ene af de tre, er den syge fange nævnt ovenfor, han er fængslet i samme sag som sin bror, som også er dansk fange. De to fanger giver ikke anledning til bemærkninger, den tredje fange (den syge) blev tilset d. 26 JUN (jf. pkt. 2.3.).

2.2.3. De resterende 13 fanger som blev tilset ved den uvarslede inspektion 23. juni 2004 kan henføres til engelsk eller irakisk ansvar f.s.v.a. tilsyn.

8 af de 13 fanger klagede over at være mishandlet af civilt politi under deres tilfangetagelse. Herudover led 3 af sygdomme. I pkt. 2.2.7. er de enkeltes klager og sygdomme listet.

Den britiske observatør spurgte, hvorledes han skulle forholde sig til disse klager, hvortil MJUR henviste ham til at melde via egen kommandovøj, da samtlige klager vedrørte fanger under britisk eller irakisk ansvar.

2.2.4. Den irakiske fængselsinspektør hidsede sig ved slutningen af besøget op. Interviewet strakte sig langt ud over normal besøgstid. Han betvivlede vor ret til at være i fængslet. Den britiske repræsentant beroligede ham. Fængselsinspektøren anklagede Danmark for ikke at gøre noget for ham og hans fængsel. Han mangler medicin, en bil til at transportere affald på og tilstrækkelige forsyninger af drikkevand. Han beroligedes med, at samtlige udsagn fra interviews indtil nu ikke har noget at udsætte på "hans" fængsel, men er koncentreret om dårlig behandling under afhøring på de lokale politistationer. Det positive indtryk af Al Meena fængslet falder i tråd med tidligere besøg.

På fængselsinspektørens skrivebord bemærker MP og OLG et visitkort fra en journalist ved det danske dagblad Politiken.

2.2.5. Som afslutning på besøget blev den britiske observatør spurgt om, hvordan situationen vil være efter 1. juli 2004. Han oplyste, at UK pr. denne dato stadig beholder et forhold til det civile fængselssystem, men i en mere tilbagetrukket mentorrolle. Det aftales, at fornyet kontakt fortsat sker gennem UK.BDE.

Det samlede besøg varede 2½ time.

2.2.6. Det totale antal fanger i civile fængsler, som kan betegnes som dansk ansvar er nu således 9.

2.2.7. Nummerliste over fanger, som ved det uanmeldte tilsyn (jf. pkt. 2.2.3.), hævdede at være udsat for overlast eller at lide af sygdomme under deres tilfangetagelse.

1. UK ansvar.

Hævder at have lidt overlast (slået) ved anholdelsen og forhør hos Ad Dayr Politi. 6 måneder siden. Ingen objektive tegn på vold. Dommeren kender sagen, men bedømmer det som løgn.

2. UK ansvar.

Hævder for 6 mdr. siden at være slået i hovedet med våben, at være brændt med cigaretter på fødderne, at være udsat for elektriske stød. Har ingen synlige ar efter vold. Dommeren bedømmer det som løgn.

3. UK ansvar.

Tidligere politimand. Har ar efter slag i hovedet, ar i venstre knæ. Hævder at have fået elektriske stød for 6 måneder siden. Det er på nuværende tidspunkt vanskeligt at afgøre alderen eller naturen af disse ar.

4. UK ansvar.

Meget ophidset yngre fange. Hævder at være slået, bl.a. med en gasflaske, at have fået armene vredet om for 8 mdr. siden hos Al Harithal politi.

5. UK ansvar.  
Brændt med cigaretter. Ødelagt højre langemand. Venstre fod beskadiget og dårlig behandlet. Arm har været brækket. Ad Dayr politi. Svarende til venstre underarm og venstre fod ses ældre ar, som kan skyldes brandsår eller infektion.
6. Irakisk ansvar.  
Lider af hjerteanfald. Er i medicinsk behandling. Højre arms albue beskadiget. Hævder at være misbrugt på kønsdele. Nashwa Politistation under afhøring.
7. Irakisk ansvar.  
Har de sidste 7 år faldet om med krampes. Har psykiske problemer. Hævder at fået flere kindtænder knust. Har "krasningsmærker" på ryggen. Nashwa Police Station. Dommeren bemærker: "Denne mand er en gammel kending. Han er idømt 100 års fængsel i Saddams tid. Han er fuld af løgn".
8. Irakisk ansvar.  
Får beroligende indsprøjtninger, nervemedicin, er blevet slået med kabellignende genstand. Tydelige ar som efter slag på ryggen. Udsat for elektriske stød. Hævder at politiet har taget billeder af hans sår for ikke at få mistanke kastet på sig. Billederne må findes i journalen. Journalen er ikke i dette annex-fængsel. Hovedfængsel er nu lukket.
9. UK ansvar.  
Lider af astma der behandles af fængslets læge.
10. Irakisk ansvar.  
Lider af astma. Er i behandling
11. Irakisk ansvar.  
Har ondt i hovedet. Får behandling.

### 2.3. Den 26 JUN gennemførtes tilsyn ved DTFD fange nr. [REDACTED]

I tilsynet deltog MJUR, MP og LG. Herudover medvirkede fængselstolken samt en fangevogter.

Fangen blev ført ind i besøgsværelset. Han var iført lange bukser, sandaler og T-shirt. Han virkede glad, sund og rask. Han var ikke iført håndjern eller lign. MJUR forklarede grunden til besøget, idet det var anden gang man tilså fangen. Direkte adspurgt, havde han intet at udsætte på behandlingen i fængslet, herunder hygiejne, besøgsmuligheder og forhørsomstændigheder.

Fangen var bekymret for om hans sag fremmes og bekymret for sin (store) familie. MJUR forklarede at hans sag løbende følges og at der er garanti for terminer, hvor sagen samlet evalueres.

Fangen beklager sig over svie i øjnene, som forværres af sved, der siver ind i øjnene. Fangens helbredsjournal forelægges. Fangen er sat i behandling for en øjeninfektion med kloramphenikol d. 23/6-04 efter at have klaget over sviende fornemmelse i øjnene. fangen angiver, at han får ondt i øjnene af behandlingen, hvorfor han ikke længere ønsker at behandles. fangen forklares, at dette er normalt og at han skal fortsætte behandlingen. Direkte adspurgt benægter fangen at have andre symptomer på sygdom. Han angiver, at han ikke tidligere har været indlagt på hospital eller taget fast medicin. Han angiver, at han får rigeligt at drikke og spise, samt at de sanitære forhold er tilfredsstillende. Han angiver, at han på intet tidspunkt siden overgivelsen til danskernes varetægt har lidt fysisk overlast.

Afslutningsvis kontaktes den britiske MEDIC, der er ansvarlig for udlevering af medicin til fangen. MEDIC forklare, at det er meget vigtigt, at fangen fortsætter sin behandling og at man skal blive ved med at opfordre fangen hertil. MEDIC og administrationen fastholder, at man har opfordret fangen til at tage medicinen "100 times", men at man ikke kan tvinge behandlingen igennem overfor fanger, som ikke selv ønsker at medvirke. delegationen opfordrede til fortsatte gentagne opfordringer.

2.3.1. På spørgsmålet til administrationen om status for DTDF efter 30 JUN svarede at DTDF fortsætter uændret. Hjemmelen angives at være den nye UN resolution. Antallet af hårde indsatte er dog for nærværende reduceret til ca. 60 indsatte., alle udgørende den "hårde kerne", idet alle "stone throwers" er løsladt.

2.3.2. Adspurgt om relationerne mellem familien og en fange forklares, at Røde Kors er i kontakt med de indsattes familie. Røde Kors arrangerer altid det første besøg hos en indsat og opretholder herefter kontakt på ugebasis med familien. Røde Kors inspicerer i øvrigt fængslet hver måned. Fængslet er af den overbevisning, at DK ikke bør tage yderligere kontakt til de indsattes familier.

#### MØDE- OG BESØGSOVERSIGT M.M.

3. Der har i perioden været flg. andre møder, besøg m.m.:

- 30 MAJ – 3 JUN: Koordinering med DIV og BDE omkring fanger i DTDF
- 12 JUN: Møde med dommer i A Qurna.
- 13 JUN: Afhentning af løsladt fange fra DTDF.
- 14 JUN: Møde med dommeren i Al Qurna.
- 17 JUN: Koordinering med BDE om kommende besøg ved DTDF.
- 18 JUN: Møde med dommeren i Al Qurna. Koordinering med BDE om tilladelse til besøg i DTDF.
- 19 JUN: Briefing af FM om status i fangesituationen. Drøftelse med rep. fra FMN om situationen, herunder om status på den lovede ressourceperson til koordinering med de lokale.
- 22 JUN: Koordinering med BDE om besøg i Basra fængsler.
- 23 JUN: Legal Conference hos DIV i Basra måtte aflyses. Inspektion af to fængsler i Basra med deltagelse af dommeren i Al Qurna.
- 24 JUN: Indsættelse af en fange i DTDF.
- 25 JUN: Af de 16 fanger der blev tilset d. 23, er tre jf. dommerens oplysninger identificeret som værende danske fanger, hvorfor de figurerer på statusrapporten (bilag 2). En af de 16 er omtalt efterfølgende vedr. hospitalbeh.
- 28 JUN: Planlægning og koordinering af løsladelse af fange fra DTDF. Planlægning af inspektion af 1 fange i DTDF til d. 1 JUL. Fortsat eftersøgning af fange, der er midlertidig er overført fra Basra fængsel til politiet m.h.p. hospitalsbehandling.

#### STATUS OVER ERKENDTE "DK" FANGER

4. Navne over fanger indsat i DTDF og Basra fængsler.

I DTDF, Al Shaibah:

A. 

B. [REDACTED]

C. [REDACTED]

I Basrah fængsel (Al Makil og Al Meena):

1. [REDACTED]

2. [REDACTED]

3. [REDACTED]

4. [REDACTED]

5. [REDACTED]

6. [REDACTED] -- Midlertidig syg i varetægt ved Politi i Al-Huweir)

7. [REDACTED]

8. [REDACTED]

9. [REDACTED]

### Status over tilbageholdte ved DANCON Irak

Lb nr	Dato	Tilsyn Ved:	Til og afgang	Polftl			DTDF			Basra fængsel		p.t. ind-sætte	Meldt til FKO Samt evt. bem.	
				Ind	ud	sum	Ind	ud	sum	Ind	ud			sum
1	01 JUN		Baseret på tal oplyst af FKO	114	114	0	45	43	2			6	8	FKO tal
2	09 JUN	DTDF i.a.b.	Tilsyn										8	FKO oplysning
3	10 JUN		4 pax. tilbageholdt	114	114	0	45	43	2			6	8	Ja
4	10 JUN		3 pax løstaget, 1 anholdt	114	114		46	43	3			6	9	Ja. Tvivl om antallet i Basra fængsel.
5	13 JUN		1 pax frigivet	114	114	0	46	44	2			4-6	6 - 8	Ja. Muligvis kun 4 i fængsel.
6	16 JUN	DTDF i.a.b.	Tilsyn	114	114	0	46	44	2			4-6	6 - 8	Muligvis kun 4 i fængsel. 2 fanger forsøges fundet d.d.
7	23 JUN	Basra	Tilsyn	114	114	0	46	44	2			6	8	Ja, 2 fanger ident. og tilset.
8	24 JUN	Ash Shirsh	1 anholdt	114	114	0	47	44	3			6	9	Derudover 16 yderligere tilset.
9	25 JUN	DTDF	Tilsyn/identifikation	114	114	0	47	44	3	"3"		9	12	Anholdt, bragt til CE og derefter overgivet til DTDF
10	26 JUN	DTDF		114	114	0	47	44	3	"3"		9	12	Af de 16 der blev tilset jf. lb.nr. 7, er 3 jf. dommerens oplysninger ident. som værende danske fanger. En er på sygehus og pt. endnu ikke tilset.
														Havde lidt øjenproblemer, var i behandling. Ellers i.a.b.





## FORSVARSMINISTERIET

Udenrigsministeriet

Bilag

Sagsbehandler  
Margit MalmsteenJournalfnummer  
S.L. 04-022/141-1 (369)Dato  
9. juli 2004**Situationen efter magtoverdragelsen til Irak - oplysninger om tilbageholdte personer i irakisk fængsel.**

Dette fremgik tillige af Forsvarsministeriets notat af 30. juni 2004 om "De danske styrkebidrag i Irak efter irakisk selvstyre", som Udenrigsministeriet udsendte i Regeringens Udenrigspolitiske Udvalg i almindelig procedure den 2. juli 2004.

Forsvarskommandoen har overfor Forsvarsministeriet oplyst, at der for tiden sidder otte personer i irakisk fængsel, som af danske styrker er tilbageholdt og overdraget til irakisk varetægt før magtoverdragelsen. I forbindelse med forlydender om genindførelse af dødsstraf i Irak, kan det til orientering oplyses, at der ikke ifølge Forsvarskommandoen er tale om dødsstraf for så vidt angår de seks personer, idet der er tale om mindre lovovertrædelser. De resterende to tilbageholdte er efter det oplyste sigtet for drab på en irakisk politimand under det tidligere irakiske styre.

På den baggrund skal Forsvarsministeriet anmode Udenrigsministeriet om at søge indhentet et irakisk tilsagn om, at de af danske styrker tilbageholdte og til irakisk fængsel overdragne personer før den 28. juni 2004 vil blive behandlet i overensstemmelse med den humanitære folkeret. Endvidere anmodes Udenrigsministeriet om at søge indhentet et irakisk tilsagn om, at



en eventuel idømt dødsstraf ikke eksekveres for så vidt angår de to tilbageholdte, som efter det oplyste er sigtet for drab på en irakisk politimand.

P.M.V.

R.B.

Birgitte Juul  
Kontorchef

Ekstern kopi:  
Forsvarskommandoen

Intern kopi:  
DC  
MNS  
ACS  
KCI  
8.kt.  
FMN-KGM



# FORSVARSMINISTERIET

Udenrigsministeriet  
(MELA og JTF)

BILAG 5

CHRISTIAN HARLANG

Bilag	Sagsbehandler	Journalnummer	Dato
	Kira Grønlykke Mondrup	8.1a. 04-022/141-1(381)	16. juli 2004

Forsvarsministeriet modtog den 8. juli 2004 vedlagte melding fra Forsvarskommandoen om påståede overgreb fra irakisk politisk side på tilbageholdte i Al Makil fængslet i Irak. Oplysninger om de påståede overgreb kom frem i forbindelse med et dansk tilsyn i Al Makil fængslet den 23. juni 2004. Forsvarskommandoen blev herefter anmodet om yderligere oplysninger i sagen.

Forsvarskommandoen har den 16. juli 2004 fremsendt vedlagte liste over påståede overgreb udført af irakisk politi mod civile irakere under deres varetægt. Listen fremgår af Hærens Operative Kommandos rapport for juni måned over gennemførte tilsyn med tilbageholdte irakere. Rapporten forventes modtaget i Forsvarsministeriet i den nærmeste fremtid.

Det skal understreges, at de på listen anførte personer, der hævder at have været udsat for overgreb, efter det oplyste oprindelig er tilbageholdt af enten britiske styrker eller af irakisk politi.

Forsvarsministeriet vil anmode den danske styrke i Irak om at tage kontakt til den britiske division for at sikre, at briterne er opmærksomme på sagen, idet 6 af personerne, efter det oplyste, oprindelig er tilbageholdt af britiske soldater.

Udenrigsministeriet er den 9. juni af Forsvarsministeriet anmodet om at søge indhentet et irakisk tilsagn om, at de af danske styrker tilbageholdte og til irakisk fængsel overdragne personer før den 28. juni 2004 vil blive behandlet i overensstemmelse med den humanitære folkeret. Den 13. juni blev Udenrigsministeriet supplerende anmodet om, at det irakiske tilsagn tillige kommer til at omfatte de civile irakere, som danske styrker måtte tilbageholde efter magtoverdragelsen den 28. juni 2004, fordi de udgør en sikkerhedsrisiko, og som efterfølgende overdrages til irakisk fængsel.



Forsvarsministeriet skal anmode Udenrigsministeriet om at tage oplysningerne om overgreb op overfor de irakiske myndigheder og i svingt foretage det fornødne i sagen. Forsvarsministeriet fremsender snarest muligt rapporten fra Hærens Operative Kommando.

P.M.V.

E.B.

*Agneth Kirkegaard*  
Agneth Kirkegaard  
Fg. kontorchef

Intern kopi MNS

AC3

KCS

KGM

1. kontor

Ekstern kopi

STM

FKO

Arkiv 7

Ja  
udleveret

BILAG 6
CHRISTIAN HARLANG

INDK. MEDD  
UDG. MEDD  
INTERN MEDD.

19-07-2004

**Nielsen, Dorthe Krarup (t)**

**Fra:** Udenrigsministeriet (t)  
**Sendt:** 19. juli 2004 12:48  
**Til:** Forsvarsministeriet; 'kgm@fmn.dk'; Frederiksen, Ulla Schiøtt; Hansen, Anders Bjørn; Jensen, Peter Bøgh; Køl, Henrik; Nordam, Jette  
**Cc:** Arkiv7 (t); Nordam, Jette  
**Emne:** VS: Ambassaden Bagdad, ammail 119: Situationen efter magtoverdragelsen

**AD ACTA:** Arkiv7  
**Formel E-post:** Nej  
**Klassifikation:** UKLASSIFICERET  
**Personale indlæs:** Nej

Til: Forsvarsministeriet; kgm@fmn.dk; Frederiksen, Ulla Schiøtt; Hansen, Anders Bjørn; Jensen, Peter Bøgh; Køl, Henrik; Nordam, Jette

Udenrigsministeriet, den 19-07-2004 12:47 / 154670

Journalnummer: 179.D.3.a

I besvarelse af Forsvarsministeriets anmodning af 9. juli (8.kt.04-022/L41-1(369)) om situationen efter magtoverdragelsen til Irak - ophør af opsyn med tilbageholdte personer i Irakisk fængsel, følger nedenfor ambassaden i Bagdads indberetning om den irakiske holdning til de stillede spørgsmål. Endvidere vedlægges som ønsket instruktionen til ambassaden.

MELA/ Jette Nordam

-----Oprindelig meddelelse-----

**Fra:** Royal Danish Embassy Bagdad [mailto:ambbag@yahoo.com]  
**Sendt:** 18. juli 2004 16:07  
**Til:** Udenrigsministeriet  
**Cc:** Nordam, Jette; SP  
**Emne:** Ambassaden Bagdad, ammail 119: Situationen efter magtoverdragelsen

Ambassaden Bagdad

Ammail 119 af 18. juli 2004

19-07-2004

Desk by kt.bg. den 19. juli 2004



BAGDAD 142 VS:  
FMN brev af 9...

For MELA

Info SP

Situationen efter magtoverdragelsen

Ummail 142 af 13. juli 2004

Amb.j.nr. 27.Irak.1

Jeg havde gd. en samtale med indenrigsminister Palah Al-Nakib på baggrund af den i ovenciterede umtel indeholdte anmodning vedrørende personer, der af de danske styrker i Irak var blevet overgivet til de irakiske myndigheder i forbindelse med suverænitetsoverdragelsen ultimo juni.

Ministeren erklærede, at det var den irakiske regerings hensigt at leve op til sine forpligtelser med hensyn til overholdelsen af menneskerettighederne. Dette gjaldt personer tilbageholdt såvel før som efter suverænitetsoverdragelsen.

Særligt med hensyn til de to tilbageholdte, der stod tiltalt for mord, oplyste ministeren på min direkte forespørgsel, at dødsstraffen endnu ikke var genindført i Irak. Såfremt det blev besluttet at genindføre den, ville det være meget usandsynligt, at de pågældende ville blive idømt dødsstraf. Hvis det, de stod tiltalt for, skulle føre til dødsstraf, ville tusindvis af irakere skulle dødsdømmes. Noget sådant udelukkede ministeren som urealistisk. Evt. inddømmelse af dødsstraf ville formentlig blive begrænset til personer kendt skyldige i terrorhandlinger eller masseråd.

Jeg overgav ministeren et kortfattet P.M. indeholdende de danske anmodninger.

Det bemærkes, at præsident Al-Yawar igår under en pressekonference offentligt udtalte sig på linie med ovenstående bemærkninger fra indenrigsministeren.

Gettermann/119



UKLASSIFICERET

BILAG 7

CHRISTIAN HARLANG

UDENRIGSMINISTERIET

MODTAGET: 26-07-2004

KONTOR: MELA

UM J.NR: 179.D.3.a.

KOPI TIL/FRA:

ARKIV: 2

10

E-MEDDELELSE

AKTTYPE: I, Indgående

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**Frå:** Royal Danish Embassy Baghdad [ambbag@dkembbaghdad.net]

**Sendt:** 24. juli 2004 17:26

**Til:** Udenrigsministeriet

**Cc:** Nordam, Jette; Frederiksen, Ulla Schiøtt; Lidegaard, Bo;  
sophie.kisling@consilium.eu.int; Jensen, Peter Bøgh; Kiil, Henrik

**Emne:** Ambassaden Bagdad, nr. 122: Samtale med den irakiske justitsminister Malik Dohan Al-Hassan

Ambassaden Bagdad

Ammail 122 af 23. juli 2004

Desk by kt. beg. 26. juli

For MBLA

**Samtale med den irakiske justitsminister Malik Dohan Al-Hassan**

Amb j.nr. 28.Irak.5

#### **Hovedpunkter**

- Indførelse af dødsstraf en nødvendighed, men den skal underlægges tidsmæssige og omfangsmæssige begrænsninger. Forståelse for bl.a. Danmarks holdning hertil.
- Forsikring om, at fanger overgivet af den danske styrke vil blive behandlet korrekt, samt at idømmelse af dødsstraf for simple mord ikke vil kunne komme på tale.
- Børn og unge i irakiske fængsler prioriteredes og der var etableret et interministerielt samarbejde også herom. Særligt inddragelsen af Arbejds- og Socialministeriet var væsentlig i dette arbejde.
- Interesse for det danske bidrag på retsområdet og forespørgsel om evt. yderligere bistand bl.a. til dommerakademiet i Bagdad.

Jeg havde den 21. juli en samtale med Malik Dohan Al-Hassan, der er justitsminister i den midlertidige regering, om bl.a. behandlingen af fanger overgivet til de irakiske myndigheder af de danske styrker, samt om børn i irakiske fængsler.

Justitsministeren indledte med at bemærke, at han godt var klar over, at lande som Danmark og UK var modstandere af anvendelsen af dødsstraf. Det var han i øvrigt også selv. Stillet over for de uhyrligheder, som skete i Irak, hvor så mange uskyldige mennesker havde mistet livet var det af flere grunde meget svært at undgå at tage dødsstraffen med i betragtning, når man skulle vurdere de midler, man havde til rådighed fra regeringsmagtens side.

Der måtte ikke herske tvivl om at regeringen stod ved sit løfte om at overholde menneskerettighederne. Dødsstraffen var derfor ikke noget man ønskede, men under de nuværende forhold var der ikke mange valgmuligheder. Der skulle være en sanktionsmulighed som kunne sikre, at ingen hverken befolkningen eller dem, der i risikerede at blive idømt dødsstraf, kunne være i tvivl om, at regeringen agtede at sætte hårdt mod hårdt, når det drejede sig om de virkelig alvorlige forbrydelser.

Når for der ville ikke blive tale om et hvis dødsstraffen blev genindført, så ville det ske med klare begrænsninger såvel tidsmæssigt som omfang. Straffen skulle således kun kunne anvendes i en kortere periode, og kun i forbindelse med forbrydelser, der involverede tab af mange menneskeliv.

Jeg nævnte i denne forbindelse spørgsmålet om de personer, der af de danske styrker var blevet overgivet til de irakiske myndigheder og herunder særligt de to, der var anklaget for mord. Ministeren svarede her til, at man gjorde, hvad man kunne for at sikre en korrekt behandling af alle fanger. Hvad angik de sidstnævnte, mente ministeren, at det ville være helt usandsynligt, at de ville blive idømt dødsstraf, hvis deres forbrydelse alene vedrørte mord på en enkelt person. Dødsstraffen var rettet mod terrorister og hårde kriminelle elementer.

Jeg bragte herefter spørgsmålet om behandlingen af børn i irakiske fængsler op. Ministeren bemærkede her til, at man allerede for nogen tid siden havde sikret adskillelse mellem børn (af ministeren karakteriseret som teenagere, da der ham bekendt ikke var børn under 13 år i irakiske fængsler). Justitsministeriet arbejdede tæt sammen med Ministeriet for Menneskerettigheder bl.a. i Abu Ghraib-fængslet for at sikre, at der ikke fandt overgreb af nogen art sted. Der lavedes en ugentlig intern rapport om forholdene. Såfremt der konstateredes overtrædelser af reglerne herunder af menneskerettighederne, ville disse blive indberettet direkte til Premierministeren.

Derudover var der etableret et snævert samarbejde mellem disse to ministerier og Indenrigsministeriet i form af en undersøgelseskomite, som skulle efterforske evt. overtrædelser.

Man havde i øvrigt ændret en beslutning fra Bremers CPA-tid om behandlingen af unge fængslede. Det skete, fordi man mente, at der var et stort behov for, at Arbejds- og Socialministeriet blev involveret, netop når det drejede sig om unge mennesker. Justitsministeriet havde ikke denne ekspertise. Derfor var det langt mere hensigtsmæssigt at give denne opgave tilbage til Arbejds- og Socialministeriet.

Afslutningsvist nævnte jeg den danske indsat på Good governance og retsområdet med fremhævelse af den danske indsat i Basra i form af en udsendt rådgiver. Ministeren var stærkt interesseret i at høre mere herom, og jeg stillede ham en kort redegørelse herfor i udsigt. I denne forbindelse forespurgte han om en eventuel dansk interesse for at støtte dommerakademiet i Bagdad. Jeg nævnte, at der sidste år fra dansk side havde været konkrete planer på dette område, men at de var blevet skrinlagt på grund af sikkerhedssituationen. Han bad mig i lyset heraf undersøge om der ville være muligheder på et senere tidspunkt. I tilslutning hertil nævnte han en kommende konference i Amman (26.-27. juli) om retsområdet i Irak.

Gettermann/122

**UDENRIGSMINISTERIET**  
**MINISTRY OF FOREIGN AFFAIRS OF DENMARK**

BILAG 8  
CHRISTIAN HARLANG

Abonner Send

## FN'S GENERALFORSAMLING VEDTAGER DANSK RESOLUTION MOD TORTUR

FN's Generalforsamlings 3. udvalg vedtog i går tirsdag den 18. november 2008 enstemmigt en omfattende resolution mod tortur, som Danmark har fremlagt. Resolutionen har 86 medforslagsstillere og skal senere i år bekræftes i plenarforsamlingen.

Igennem de sidste 10 år har Danmark stået i spidsen for forhandlingerne om resolutionen mod tortur i FN's Generalforsamling. Det er, trods vanskeligheder, lykkedes at fastholde de forbedringer, der er opnået de senere år og at styrke teksten på en række punkter.

Resolutionen understreger, at frihed for tortur og anden grusom, umenneskelig eller nedværdigende behandling eller straf er en ufravigelig rettighed, som skal beskyttes uden undtagelse. Den fremhæver, at enhver påstand om tortur skal efterforskes uvildigt og at enhver, som udfører, beordrer, tolererer eller ansporer til tortur skal holdes ansvarlig herfor og straffes.

Resolutionen tager stilling til en række grundlæggende forhold af betydning for at modvirke tortur, herunder at

- staterne bør være særligt opmærksomme på risikoen for at frihedsberøvede personer udsættes for tortur eller mishandling;
- Ingen må udvises til et land, hvor der er vægtige grunde til at antage, at den pågældende vil blive udsat for tortur;
- Ingen, som er dømt for tortur eller anden mishandling, må efterfølgende have med frihedsberøvede personer at gøre, og
- udsagn, der er opnået ved tortur må ikke lægges til grund ved retssager eller i andre processer.

Det vigtige arbejde for bekæmpelsen af tortur, som FN's Torturkomité, FN's Specialrapportør om tortur og de private organisationer (NGO'er) udfører, hilses velkommen i resolutionen. Betydningen af FN's Torturkonvention og dens valgfrie protokol samt nationale mekanismer til forebyggelse af tortur fremhæves. Resolutionen hilser det også velkommen, at FN-konventionen om rettigheder for personer med handicap er trådt i kraft og påpeger nødvendigheden af at integrere disse rettigheder i arbejdet med at forebygge og bekæmpe tortur.

Læs resolutionen i sin helhed under [DOWNLOAD](#) til højre på siden.

Udenrigsministeriet, den 19. november 2008



## General Assembly

Distr.: General  
21 February 2006Sixtieth session  
Agenda item 71 (a)

## Resolution adopted by the General Assembly

*[on the report of the Third Committee (A/60/509/Add.1)]***60/148. Torture and other cruel, inhuman or degrading treatment or punishment***The General Assembly,**Reaffirming* that no one shall be subjected to torture or to other cruel, inhuman or degrading treatment or punishment,*Recalling* that freedom from torture and other cruel, inhuman or degrading treatment or punishment is a non-derogable right that must be protected under all circumstances, including in times of international or internal armed conflict or disturbance, and that the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment is affirmed in relevant international instruments,*Recalling also* that a number of international, regional and domestic courts, including the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, have recognized that the prohibition of torture is a peremptory norm of international law and have held that the prohibition of cruel, inhuman or degrading treatment or punishment is customary international law,*Recalling further* the definition of torture contained in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>1</sup>*Noting* that under the Geneva Conventions of 1949<sup>2</sup> torture and inhuman treatment are a grave breach and that under the statutes of the International Tribunal for the Former Yugoslavia and of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994,<sup>1</sup> United Nations, *Treaty Series*, vol. 1465, No. 24841.<sup>2</sup> *Ibid.*, vol. 75, Nos. 970-973.

and the Rome Statute of the International Criminal Court<sup>3</sup> acts of torture constitute war crimes and can constitute crimes against humanity,

*Commending* the persistent efforts by non-governmental organizations, including the considerable network of centres for the rehabilitation of victims of torture, to combat torture and to alleviate the suffering of victims of torture,

1. *Condemns* all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment;

2. *Emphasizes* that States must take persistent, determined and effective measures to prevent and combat torture and other cruel, inhuman or degrading treatment or punishment, including their gender-based manifestations, and also emphasizes the importance of taking fully into account the recommendations and conclusions of the relevant treaty bodies and mechanisms, including the Committee against Torture and the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment;

3. *Condemns* any action or attempt by States or public officials to legalize, authorize or acquiesce in torture and other cruel, inhuman or degrading treatment or punishment under any circumstances, including on grounds of national security or through judicial decisions;

4. *Stresses* that all allegations of torture or other cruel, inhuman or degrading treatment or punishment must be promptly and impartially examined by the competent national authority, that those who encourage, order, tolerate or perpetrate acts of torture must be held responsible and severely punished, including the officials in charge of the place of detention where the prohibited act is found to have been committed, and takes note in this respect of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Principles)<sup>4</sup> as a useful tool in efforts to combat torture;

5. *Stresses also* that all acts of torture must be made offences under domestic criminal law, and emphasizes that acts of torture are serious violations of international humanitarian law and in this regard constitute war crimes and can constitute crimes against humanity, and that the perpetrators of all acts of torture must be prosecuted and punished;

6. *Urges* States to ensure that any statement that is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made;

7. *Stresses* that States must not punish personnel who are involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment for not obeying orders to commit or conceal acts amounting to torture or other cruel, inhuman or degrading treatment or punishment;

<sup>3</sup> *Official Records of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June-17 July 1998, vol. I: Final documents (United Nations publication, Sales No. E.02.1.5), sect. A.*

<sup>4</sup> Resolution 55/89, annex.

8. *Urges* States not to expel, return ("refouler"), extradite or in any other way transfer a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture, and recognizes that diplomatic assurances, where used, do not release States from their obligations under international human rights, humanitarian and refugee law, in particular the principle of non-refoulement;

9. *Stresses* that national legal systems must ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress, are awarded fair and adequate compensation and receive appropriate social and medical rehabilitation, urges States to take effective measures to this end, and in this regard encourages the development of rehabilitation centres;

10. *Recalls* its resolution 43/173 of 9 December 1988 on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and in this context stresses that ensuring that any individual arrested or detained is promptly brought before a judge or other independent judicial officer in person and permitting prompt and regular medical care and legal counsel as well as visits by family members and independent monitoring mechanisms can be effective measures for the prevention of torture and other cruel, inhuman or degrading treatment and punishment;

11. *Reminds* all States that prolonged incommunicado detention or detention in secret places may facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and can in itself constitute a form of such treatment, and urges all States to respect the safeguards concerning the liberty, security and dignity of the person;

12. *Calls upon* all States to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment;

13. *Urges* all States that have not yet done so to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment<sup>1</sup> as a matter of priority;

14. *Invites* all States parties to the Convention that have not yet done so to make the declarations provided for in articles 21 and 22 of the Convention concerning inter-State and individual communications, to consider the possibility of withdrawing their reservations to article 20 of the Convention and to notify the Secretary-General of their acceptance of the amendments to articles 17 and 18 of the Convention as soon as possible;

15. *Urges* States parties to comply strictly with their obligations under the Convention, including, in view of the high number of reports not submitted in time, their obligation to submit reports in accordance with article 19 of the Convention, and invites States parties to incorporate a gender perspective and information concerning children and juveniles when submitting reports to the Committee against Torture;

16. *Calls upon* States parties to give early consideration to signing and ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>2</sup> which provides further measures

<sup>1</sup> Resolution 57/199, annex.

for use in the fight against and prevention of torture and other cruel, inhuman or degrading treatment or punishment;

17. *Welcomes* the work of the Committee against Torture and the report of the Committee, submitted in accordance with article 24 of the Convention;<sup>6</sup>

18. *Calls upon* the United Nations High Commissioner for Human Rights, in conformity with her mandate established by the General Assembly in its resolution 48/141 of 20 December 1993, to continue to provide, at the request of States, advisory services for the prevention of torture and other cruel, inhuman or degrading treatment or punishment, including for the preparation of national reports to the Committee against Torture and for the establishment and operation of national preventive mechanisms, as well as technical assistance for the development, production and distribution of teaching material for this purpose;

19. *Notes with appreciation* the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment,<sup>7</sup> and encourages the Special Rapporteur to continue to include in his recommendations proposals on the prevention and investigation of torture and other cruel, inhuman or degrading treatment or punishment, including its gender-based manifestations;

20. *Requests* the Special Rapporteur to continue to consider including in his report information on the follow-up by States to his recommendations, visits and communications, including progress made and problems encountered, and on other official contacts;

21. *Calls upon* all States to cooperate with and assist the Special Rapporteur in the performance of his task, to supply all necessary information requested by the Special Rapporteur, to fully and expeditiously respond to and follow up his urgent appeals, to give serious consideration to responding favourably to requests by the Special Rapporteur to visit their countries and to enter into a constructive dialogue with the Special Rapporteur on requested visits to their countries as well as with respect to the follow-up to his recommendations;

22. *Stresses* the need for the continued regular exchange of views among the Committee against Torture, the Special Rapporteur and other relevant United Nations mechanisms and bodies, as well as for the pursuance of cooperation with relevant United Nations programmes, notably the United Nations Crime Prevention and Criminal Justice Programme, with a view to enhancing further their effectiveness and cooperation on issues relating to torture, inter alia, by improving their coordination;

23. *Recognizes* the global need for international assistance to victims of torture, stresses the importance of the work of the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture, and appeals to all States and organizations to contribute annually to the Fund, preferably with a substantial increase in the level of contributions;

24. *Requests* the Secretary-General to continue to transmit to all States the appeals of the General Assembly for contributions to the Fund and to include the

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<sup>6</sup> *Official Records of the General Assembly, Sixtieth Session, Supplement No. 44 (A/60/44).*

<sup>7</sup> See A/60/316.



Fund on an annual basis among the programmes for which funds are pledged at the United Nations Pledging Conference for Development Activities;

25. *Also requests* the Secretary-General to ensure, within the overall budgetary framework of the United Nations, the provision of adequate staff and facilities for the bodies and mechanisms involved in combating torture and assisting victims of torture commensurate with the strong support expressed by Member States for combating torture and assisting victims of torture, noting the upcoming entry into force of the Optional Protocol to the Convention;

26. *Further requests* the Secretary-General to submit to the Commission on Human Rights at its sixty-second session and to the General Assembly at its sixty-first session a report on the status of the Convention and a report on the operations of the Fund;

27. *Calls upon* all States, the Office of the United Nations High Commissioner for Human Rights and other United Nations bodies and agencies, as well as relevant intergovernmental and non-governmental organizations, to commemorate, on 26 June, the United Nations International Day in Support of Victims of Torture;

28. *Decides* to consider at its sixty-first session the reports of the Secretary-General, including the report on the United Nations Voluntary Fund for Victims of Torture, the report of the Committee against Torture and the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment.

*64th plenary meeting  
16 December 2005*

BILAG 10

CHRISTIAN HARLANG

UNITED  
NATIONS

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**Economic and Social  
Council**

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COMMISSION ON HUMAN RIGHTS  
Sixty-first session  
Item 17 of the provisional agenda

**PROMOTION AND PROTECTION OF HUMAN RIGHTS**

**Protection of human rights and fundamental  
freedoms while countering terrorism**

**Note by the United Nations High Commissioner for Human Rights**

The High Commissioner for Human Rights has the honour to submit to the members of the Commission on Human Rights the report of the independent expert on the protection of human rights and fundamental freedoms while countering terrorism, Robert K. Goldman, appointed pursuant to Commission resolution 2004/87.

GE.05-10694 (E) 150205

**REPORT OF THE INDEPENDENT EXPERT ON THE PROTECTION  
OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS WHILE  
COUNTERING TERRORISM, ROBERT K. GOLDMAN**

**Summary**

The Commission on Human Rights, in resolution 2004/87, decided to designate, from within existing resources, for a period of one year, an independent expert to assist the High Commissioner for Human Rights in the fulfilment of the mandate described in the resolution and, "taking fully into account the study requested in General Assembly resolution 58/187, as well as the discussions in the Assembly and the views of States thereon, to submit a report, through the High Commissioner, to the Commission at its sixty-first session on ways and means of strengthening the promotion and protection of human rights and fundamental freedoms while countering terrorism".

This report is submitted in accordance with resolution 2004/87. It builds and elaborates on the study of the High Commissioner (A/59/428) submitted to the fifty-ninth session of the General Assembly pursuant to Assembly resolution 58/187. The report identifies some key issues affecting the enjoyment of human rights in the struggle against terrorism that either have not been addressed or extensively developed by other mandate holders. The report then goes on to address how to strengthen the United Nations human rights mechanisms in protecting human rights and fundamental freedoms while countering terrorism. It acknowledges that significant steps have already been taken by the United Nations human rights system to address the protection and promotion of human rights in the struggle against terrorism. Nevertheless, the independent expert concludes that, given the gaps in coverage of the monitoring systems of the special procedures and treaty bodies and the pressing need to strengthen human rights protections while countering terrorism, the Commission should consider the creation of a special procedure with a multidimensional mandate to monitor States' counter-terrorism measures and their compatibility with international human rights law.

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that there is a real risk of irreparable harm, such as that contemplated by articles 6 and 7 of the Covenant, either in the country to which removal is to be effected or in any other country to which the person may subsequently be removed" (para. 12). The Committee against Torture (CAT) has stated the following concerning article 3 of the Torture Convention: "Whenever substantial grounds exist for believing that an individual would be in danger of being subjected to torture upon expulsion to another State, the State party is under an obligation not to return the person concerned to that State. The nature of the activities in which the person concerned engaged cannot be a material consideration when making a determination under article 3 of the Convention."<sup>77</sup> Several regional human rights bodies<sup>78</sup> have expressed similar views concerning the prohibition of torture in the context of expulsions in their case law and/or reports.

#### **L. Transfer, including "rendition", of terrorist suspects**

54. States unquestionably have a duty to take effective measures to confront terrorist threats and to seek closer cooperation with other States for that purpose. However, as stressed in Security Council resolution 1456 (2003), they must do this in conformity with their international legal obligations, including human rights law. Accordingly, serious concerns have been expressed about the transfer, including the so-called "rendition", of foreigners by certain States to other countries without utilizing legally recognized extradition, expulsion or deportation procedures.

55. In most of the transfers reportedly carried out after 11 September, the persons concerned were terrorist suspects who, often being held extraterritorially, had not been charged criminally and instead were transferred to third States, apparently for the purposes of interrogation. Many of these receiving States are alleged to systematically or routinely practise torture, often as part of interrogations. In certain situations, persons reportedly have been transferred to unknown locations and have been detained incommunicado for prolonged or indefinite periods. These practices apparently take place without judicial oversight or any other legal safeguards. In this regard, the Human Rights Committee, in concluding observations on a particular State's report, expressed "... its concern about cases of expulsion of foreigners suspected of terrorism without an opportunity for them to legally challenge such measures (CCPR/CO/75/YEM, para. 18)". Transfers which ignore or do not take into account the risk to the physical integrity of the person in the receiving State and/or do not afford the person concerned any legal redress are incompatible with States' obligations under human rights law and, thus, should not be undertaken.

#### **M. Diplomatic assurances**

56. Also troubling is the increased reliance on diplomatic assurances sought by the sending State from the receiving State that transferred terrorist suspects will not face torture or other ill-treatment following their arrival. Such transfers are only sometimes accompanied by a rudimentary monitoring mechanism, most often in the form of sporadic visits to the person from the sending State's diplomatic representatives. Some States have argued that by securing such assurances they are complying with the principle of non-refoulement, but critics have taken issue with this assertion. Unlike assurances on the use of the death penalty or trial by a military court, which are readily verifiable, assurances against torture and other abuse require constant vigilance

by competent and independent personnel. Moreover, the mere fact that such assurances are sought is arguably a tacit admission by the sending State that the transferred person is indeed at risk of being tortured or ill-treated.

57. The Special Rapporteur on the question of torture, in his report to the General Assembly, mentioned "a number of instances where there were strong indications that diplomatic assurances were not respected" and questioned whether States' resort to assurances is not becoming a politically inspired substitute for the principle of non-refoulement (A/59/324, para. 31). His concern is buttressed by the fact that diplomatic assurances are not legally binding and thus have no sanctions for their violation. Even when post-return monitoring accompanies assurances, States that reportedly practise torture have generally restricted access to outside persons, particularly independent doctors and lawyers who are often best able to determine whether abuse has taken place. Moreover, such monitoring is further frustrated by the fact that persons subjected to torture are often reluctant to speak about the abuse out of fear of further torture as retribution for complaining.

58. The Human Rights Committee has expressed concern about the expulsion of asylum-seekers suspected of terrorism to their countries of origin on the basis of such assurances. In recent concluding observations, it stated: "when a State party expels a person to another State on the basis of assurances as to that person's treatment by the receiving State, it must institute credible mechanisms for ensuring compliance by the receiving State with these assurances from the moment of expulsion" (CCPR/C/SWE, para. 12).<sup>79</sup>

59. In his report (A/59/324), the Special Rapporteur on the question of torture suggested some factors to consider in determining whether a risk of torture or ill-treatment exists. The factors can generally be described as the prevailing political conditions in the receiving State<sup>80</sup> and the personal circumstances of the individual that render him/her particularly vulnerable to this risk in the receiving State.<sup>81</sup> These factors alone or, in combination, would determine whether the principle of non-refoulement precludes reliance on assurances. However, the Special Rapporteur has indicated that, as a baseline, in circumstances where a person would be returned to a place where torture is systematic, "the principle of non-refoulement must be strictly observed and diplomatic assurances should not be resorted to" (ibid., para. 37).

60. The Special Rapporteur on the question of torture has also elaborated minimum safeguards that should be included in any assurance. These include provisions granting prompt access to a lawyer; recording of interrogations and of the identities of those persons present; allowing independent and timely medical examinations; prohibiting incommunicado detention or detention in undisclosed locations; and monitoring by independent persons or groups conducting prompt, regular visits that include private interviews. Those conducting such visits should be qualified in identifying possible signs of torture or ill-treatment (ibid., paras. 41, 42).

61. Given the absolute obligation of States not to expose any person to the danger of torture by way of extradition, expulsion, deportation, or other transfer, diplomatic assurances should not be used to circumvent that non-refoulement obligation.

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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE  
QUESTIONS OF TORTURE AND DETENTION**

**Torture and other cruel, inhuman or degrading treatment**

**Report of the Special Rapporteur on the question  
of torture, Manfred Nowak**

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### Summary

The Special Rapporteur on torture, Manfred Nowak, submits his first report to the Commission. Section I summarizes the activities of the Special Rapporteur in 2005, with a particular focus on the period since the submission of his interim report to the General Assembly. In section II, the Special Rapporteur discusses the methods of work related to country visits, particularly the terms of reference for fact-finding missions. He examines the implications of these conditions, specifically with respect to visiting places of detention. According to the Special Rapporteur, the terms of reference are fundamental, common-sense considerations that are essential to ensure an objective, impartial and independent assessment of torture and ill-treatment during country visits. Section III contains a report on recent activities and developments related to diplomatic assurances. The Special Rapporteur draws attention to the importance of maintaining the focus and remaining vigilant on practices such as the use of diplomatic assurances, which attempt to erode the absolute prohibition on torture in the context of counter-terrorism measures. He reiterates that diplomatic assurances are not legally binding and undermine existing obligations of States to prohibit torture, are ineffective and unreliable in ensuring the protection of returned persons, and therefore shall not be resorted to by States. Section IV examines the distinction between torture and cruel, inhuman or degrading treatment or punishment. He concludes that the distinction relates primarily to the question of personal liberty. Outside a situation where one person is under the total control of another - i.e. where a person is rendered powerless - the proportionality principle is a precondition for assessing the scope of application of the prohibition of cruel, inhuman or degrading treatment or punishment. In all other cases, and in particular in situations of interrogation, no proportionality test may be applied and the prohibition of torture and cruel, inhuman or degrading treatment or punishment is equally as absolute as the prohibition of torture.

The summary of communications sent by the Special Rapporteur from 1 December 2004 to 15 December 2005 and the replies received thereto from Governments by 31 December 2005, as well as a number of country-specific observations, are found in addendum 1 to the report. The summary of the information provided by Governments and non-governmental organizations on the implementation of the Special Rapporteur's recommendations following country visits is found in addendum 2. Addendums 3 to 6 are the reports on the country visits to Georgia, Mongolia, Nepal and China, respectively. Document E/CN.4/2006/120 contains the joint report prepared with the Special Rapporteurs on the right of everyone to the highest attainable standard of physical and mental health, the independence of judges and lawyers, and freedom of religion or belief, and the Chairperson of the Working Group on Arbitrary Detention concerning the human rights situation of detainees held at the United States of America Naval Base at Guantánamo Bay, Cuba.



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## Introduction

1. The Special Rapporteur on the question of torture, Manfred Nowak, who was appointed on 1 December 2004, hereby submits his first report to the Commission on Human Rights, in accordance with resolution 2005/39.
2. Section I summarizes the activities of the Special Rapporteur in 2005, with a particular focus on the period since the submission of his interim report to the General Assembly (A/60/316). In section II, the Special Rapporteur discusses the methods of work related to country visits, and section III contains a report on recent developments related to diplomatic assurances. Section IV examines the distinction between torture and cruel, inhuman or degrading treatment or punishment.
3. The summary of communications sent by the Special Rapporteur from 1 December 2004 to 15 December 2005, and the replies received thereto from Governments by 31 December 2005, as well as a number of country-specific observations, are found in addendum 1 to the report. Addendum 2 contains a summary of the information provided by Governments and non-governmental organizations on implementation of the Special Rapporteur's recommendations following country visits. Addendums 3 to 6 are the reports on the country visits to Georgia, Mongolia, Nepal and China, respectively. Document E/CN.4/2006/120 contains the joint report prepared with the Special Rapporteurs on the right of everyone to the highest attainable standard of physical and mental health, the independence of judges and lawyers, and freedom of religion or belief, and the Chairperson of the Working Group on Arbitrary Detention concerning the human rights situation of detainees held at the United States of America Naval Base at Guantánamo Bay, Cuba.

### I. ACTIVITIES OF THE SPECIAL RAPPORTEUR

4. The Special Rapporteur draws the attention of the Commission to his first report to the General Assembly (*ibid.*, paras. 12-17), in which he described his activities in 2005 since the submission of the report of his predecessor to the sixty-first session of the Commission on Human Rights.
5. The Special Rapporteur would like to inform the Commission about the activities he has undertaken since his appointment on 1 December 2004. Regarding country visits, the Special Rapporteur recalls that in the first half of 2005, he undertook visits to Georgia, including the territories of Abkhazia and South Ossetia, in February and to Mongolia in June. In Georgia, he concluded that torture and ill-treatment by law enforcement officials still exists, and that conditions of detention are, in general, poor. At the same time, he welcomed a series of positive developments since the Rose Revolution of November 2003 aimed at eradicating torture, and expressed his appreciation to the Government for having complied with many of his recommendations, including ratifying the Optional Protocol to the Convention against Torture in June 2005. In Mongolia, the Special Rapporteur concluded that torture persists, particularly in police stations and pretrial detention facilities. He expressed concern at the secrecy surrounding the application of the death penalty and the cruel treatment of prisoners on death row. Similarly, the conditions of prisoners serving 30-year terms in isolation amounted to inhuman treatment. At the same time, he was encouraged by the activities of the National Human Rights Commission, in particular its critical public inquiry into torture allegations.

From 10 to 16 September 2005 the Special Rapporteur visited Nepal, where he found the practice of torture to be systematic and practised by the police, the armed police, and the Royal Nepalese Army. These conclusions are based, *inter alia*, on the large number of serious allegations received, on convincing medical evidence and on surprisingly frank admissions by high police and military commanders that torture is indeed practised systematically against suspected Maoists. At the same time, he also found shocking cases of particularly cruel treatment and punishment committed by Maoist forces. From 21 November to 2 December, the Special Rapporteur visited China where he concluded that the practice of torture, though on the decline, still remains widespread in the country. He was particularly concerned about the continuing practice of forced re-education of persons with dissident or non-conformist opinions, aimed at changing their personality and breaking their will, both in special re-education through labour camps, regular prisons, and even in pretrial detention facilities. Such practices, in the opinion of the Special Rapporteur, constitute a systematic form of inhuman and degrading treatment and are incompatible with a modern society based on a culture of human rights, democracy and the rule of law. The findings, conclusions and recommendations of these visits can be found in the addenda to this report.

6. Concerning the joint request made in June 2004 for an invitation to visit the United States Naval Base at Guantánamo Bay, on 27 October 2005, the Government finally responded with an invitation to only three of the five experts of the Commission on Human Rights entrusted with a joint investigation, namely the Special Rapporteur on the question of torture, the Special Rapporteur on freedom of religion or belief, and the Chairperson-Rapporteur of the Working Group on Arbitrary Detention. Moreover, the Government limited the visit to one day and explicitly excluded private interviews or visits with detainees. On 31 October, the experts agreed to the short duration of the visit and the limitation on the number of mandate-holders invited, and decided to visit the base on 6 December 2005. However, they could not accept the exclusion of private interviews with detainees, which, in the view of the experts, would not only contravene the terms of reference for fact-finding missions by special procedures, but would also undermine the purpose of making an objective and fair assessment of the situation of the detainees. On 18 November 2005, the experts reported that the Government did not accept this precondition for a visit, and therefore the mission envisaged for 6 December, unfortunately had to be cancelled. As indicated above, a joint report on the applicability of international human rights law to detention in Guantánamo, as well as the situation of human rights of the detainees, based on factual information gathered by various means, including from interviews with former detainees, is before the Commission.

7. The Special Rapporteur reports that in view of the previous invitations extended by the Governments of Paraguay and Bolivia, in addition to the positive indications received from the Governments of the Russian Federation (an invitation was first requested in 2000), Côte d'Ivoire (2005) and Togo (2005), he hopes to realize the visits to those countries in the near future. He regrets that despite long-standing requests, invitations have not been received from the Governments of Algeria (1997), Egypt (1996), India (1993), Indonesia (1993), Israel (2002), Tunisia (1998) and Turkmenistan (2003). In May 2005, the Special Rapporteur requested invitations from the Governments of Belarus, Equatorial Guinea, Eritrea, Ethiopia, the Islamic Republic of Iran, Nigeria, Sri Lanka, the Syrian Arab Republic and Zimbabwe. In December 2005, the Special Rapporteur requested invitations from Afghanistan, Iraq, Jordan, the Libyan Arab Jamahiriya, Saudi Arabia and Yemen.

8. During his first year in office, the Special Rapporteur issued press statements concerning: the situation of Guantánamo Bay detainees following the fourth anniversary of the establishment of the detention centres (4 February 2005); the situation following the declaration of a state of emergency in Nepal (8 February 2005); allegations of human rights violations by the authorities of Uzbekistan in connection with the violent events in Andijan (23 June 2005); the lack of an invitation by the Government of the United States of America to visit Guantánamo Bay on the first anniversary of the request by the independent experts of the Commission on Human Rights (23 June 2005); the campaign by the Government of Zimbabwe of forced evictions of informal traders and persons living in informal settlements (24 June 2005); the reported denial of medical treatment to an imprisoned journalist in the Islamic Republic of Iran (18 July 2005); diplomatic assurances not being an adequate safeguard for deportees (23 August 2005); questions about the trial of terrorism suspects in Andijan, Uzbekistan, jointly with the Special Rapporteurs on extrajudicial, summary or arbitrary executions, the independence of judges and lawyers, and the promotion and protection of human rights and fundamental freedoms while countering terrorism (26 October 2005); the detention of the former President of Chad, Hisssein Habré, and calling upon the Government of Senegal to extradite him expeditiously to Belgium (18 November 2005); an appeal to the German authorities to initiate a criminal investigation and prosecute for crimes of torture Mr. Zokirjon Almatov, Minister of Internal Affairs of Uzbekistan, who was in Germany receiving medical treatment (16 December 2005).
9. On 13 October 2005, the Special Rapporteur participated in an inter-agency meeting on the follow-up to the Andijan trials organized by the Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights to brief other international organizations on the ongoing trials and to brainstorm on a common response and follow-up.
10. On 24 October 2005, he was invited to London to meet with the Home Secretary of the United Kingdom, concerning the issue of diplomatic assurances (see paragraph 27 below).
11. On 26 October 2005, the Special Rapporteur presented his first report to the General Assembly. In his statement, he addressed continuing occurrences of the practice of corporal punishment, such as amputation, stoning, flogging and beating, surveyed the jurisprudence of international and regional human rights mechanisms, and concluded that any form of corporal punishment is contrary to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. Maintaining the focus on the absolute prohibition of torture in the context of counter-terrorism measures, the Special Rapporteur discussed the principle of non-refoulement and the use of diplomatic assurances in light of recent decisions of courts and international human rights mechanisms. In the opinion of the Special Rapporteur, diplomatic assurances are unreliable and ineffective in the protection against torture and ill-treatment, and shall not be resorted to by States.
12. On 5 November 2005, on the occasion of the twentieth anniversary of the International Rehabilitation Council for Torture Victims (IRCT), the Special Rapporteur participated in a panel discussion organized by IRCT in Copenhagen, entitled, "Torture in the Twenty-First Century", where he addressed the threats posed to the prohibition of torture by practices such as diplomatic assurances and secret places of detention.

13. On 7 November 2005, the Special Rapporteur attended a meeting of the Terrorist Prevention Branch, Division of Treaty Affairs, United Nations Office on Drugs and Crime, Vienna. He presented an overview of the mandate, and the participants discussed issues of common interest and explored possible areas for future cooperation.
14. On 10 November 2005, the Special Rapporteur was received by the European Committee for the Prevention of Torture (CPT) in Strasbourg, France. Views were exchanged in relation to the prohibition of torture in the context of counter-terrorism measures, particularly with respect to diplomatic assurances and secret places of detention. Promoting ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), and exploring mutual cooperation and coordination, such as in relation to preparation and follow-up to country visits, was also discussed. On the same day, the Special Rapporteur met with the European Commissioner for Human Rights. The Special Rapporteur also met with the Secretariat of the Parliamentary Assembly's Committee of Human Rights and Legal Affairs, Council of Europe. He was informed that in reaction to his request for a Council of Europe investigation into alleged secret places of detention in Europe of the United States' Central Intelligence Agency, the Committee called upon the Council's Secretary-General to investigate these allegations. The Special Rapporteur welcomes the appointment of an investigator and the launch of an investigation on 21 November 2005; he also welcomes the fact that the Secretary-General of the Council of Europe made use of his powers under article 52 of the European Convention on Human Rights (ECHR) to request all Council of Europe member States to report on the question of alleged secret CIA places of detention in Europe.
15. On 18 November 2005, in London, the Special Rapporteur, together with the Special Rapporteur on the right to health, conducted interviews with a number of former detainees in order to gather information for the joint report of the experts of the Commission on Human Rights concerning the human rights situation of detainees held at the United States Naval Base at Guantánamo Bay.
16. On 7 December 2005, the Special Rapporteur participated in a discussion on the development of guidelines for diplomatic assurances in the Group of Specialists on Human Rights and the Fight against Terrorism, Steering Committee for Human Rights, Council of Europe (see paragraph 30 below).
17. On 9 December 2005, on the eve of Human Rights Day, the Special Rapporteur, together with 32 human rights experts of the United Nations, issued a statement on the absolute prohibition against torture. The experts expressed:

“... alarm at attempts by many States to circumvent provisions of international human rights law by giving new names to old practices. Whereas international instruments stress that human rights are at the foundation of any democratic society, more and more frequently they are portrayed as an obstacle to government efforts to guarantee security. This trend is illustrated by debates on the absolute prohibition of torture: a ban that recently had seemed an undisputed cornerstone of human rights law, anchored in numerous international legal instruments, but also accepted as a principle of *jus cogens*. For this reason we would like to reaffirm that the very rationale of human rights is that they provide minimum standards that have to be respected by States at all times, in particular when new challenges arise.”

18. On 14 December 2005, the Special Rapporteur was invited by the German Institute of Human Rights, Berlin, to a meeting to discuss the Optional Protocol to the Convention against Torture, including aspects of its implementation. In attendance were representatives of the Government of Germany and the Länder.

19. On 22 December 2005, the Special Rapporteur is expected to address the OSCE Permanent Council in Vienna on cooperation among international and regional human rights mechanisms in the prevention of torture.

## II. COUNTRY VISIT METHODOLOGY

20. Based on his recent experiences in carrying out country visits, the Special Rapporteur considers it important to draw the attention of the Commission to his methods of work in this regard. Successive resolutions of the Commission have approved and recognized the long-standing methods of work of the Special Rapporteur (e.g. 2001/62, para. 30; 2004/41, para. 29; 2005/39, para. 26). The Special Rapporteur recalls that a country visit can only be undertaken upon the invitation of the Government, which by itself is a statement of a country's willingness to open up to independent and objective scrutiny and a testament to its cooperation with the international community in the area of human rights. Those States that have answered requests and have extended invitations should therefore be commended.

21. However, an invitation alone is not sufficient, and acceptance by the Special Rapporteur is contingent upon an express agreement by the Government of its commitment and cooperation by assuring full compliance with his terms of reference. The aim of carrying out country visits is to see first-hand what the true practice and situation of torture and ill-treatment is: to identify gaps as well as acknowledge positive measures, to recommend ways to improve the situation, and to initiate a process of sustained constructive cooperation with the Government together with the international community and civil society in order to eradicate torture and ill-treatment. Such visits necessarily entail meetings with authorities most directly concerned with the issues, alleged victims or their families, as well as NGOs and relevant international actors.

22. To ensure that any assessment of the situation of torture and ill-treatment will be honest, credible and objective, a number of basic preconditions must be guaranteed by the Government to ensure that the Special Rapporteur can carry out his work effectively. The Special Rapporteur recalls that these conditions, or terms of reference for fact-finding missions, were adopted at the fourth meeting of independent experts of the Commission on Human Rights in May 1997 (E/CN.4/1998/45, appendix V). In particular, they include freedom of movement within the country; access to all prisons, detention centres and places of interrogation; confidential and unsupervised interviews; assurance by the Government that no persons who have been in contact with the Special Rapporteur will be subject to reprisals; and assurances that the same guarantees and facilities extended to the Special Rapporteur will be extended to his United Nations staff. These terms of reference are integral to his methods of work. The Special Rapporteur notes that similar standards for conducting visits to detention facilities have been recognized in international instruments, such as in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, article 8, and the Optional Protocol to the Convention against Torture, articles 14 and 15.

23. For the Special Rapporteur on the question of torture, it is axiomatic that freedom of inquiry in places of detention implies: unimpeded access, with or without prior notice, to any place where persons may be deprived of their liberty (e.g. police lock-up, pretrial, prison, juvenile, administrative, psychiatric or other facilities, as well as detention facilities within military installations); not being subject to arbitrary time limits for carrying out his work (e.g. visiting hours, working hours of daytime prison staff, etc.); free movement within the facility and access to any room in order to gather information, including by use of electronic means, such as photography; having access to any detainee or staff, and the possibility of conducting confidential and private interviews, unsupervised by government officials, in places either chosen by the Special Rapporteur or in cooperation with the detainee; being assisted by independent medical specialists who are qualified to document and assess injuries, in accordance with the Istanbul Protocol, as well as being assisted by independent interpreters; and being provided with copies of relevant information and documentation as requested.
24. The Special Rapporteur observes that in recent years much concern has been raised by Governments with respect to the above-mentioned terms of reference, particularly with regard to unannounced visits to places of detention. While in some cases he may indicate to the authorities in advance which facilities he intends to visit, access to all places implies that he will also conduct visits with little or no prior notice. Unannounced visits aim to ensure, to the greatest extent possible, that the Special Rapporteur can formulate a distortion-free picture of the conditions in a facility. Were he to announce in advance, in every instance, which facilities he wished to see and whom he wished to meet, there might be a risk that existing circumstances could be concealed or changed, or persons might be moved, threatened or prevented from meeting with him. This is an unfortunate reality that the Special Rapporteur faces. In fact, such incidents have even occurred where he has been delayed in entering a facility by as little as 30 minutes.
25. On occasion, in order to deny the Special Rapporteur the unimpeded access described above, it has been argued that national legislation restricts access to facilities except for a select number of enumerated individuals. However, it must be pointed out that an official visit of the United Nations Special Rapporteur, undertaken at the express invitation of a Government, is clearly an exceptional event. Therefore, one would expect that the Government would demonstrate its good faith and cooperation by facilitating the work of the Special Rapporteur to the fullest extent possible. In practical terms, this has been achieved by providing the Special Rapporteur with letters of authorization signed by the relevant ministries, as was done recently in Georgia, Mongolia and Nepal. In China, such letters of authorization could not be issued, which meant that officials of the Ministry for Foreign Affairs accompanied the Special Rapporteur throughout his mission in order to assure his unimpeded access to all places of detention.
26. In the view of the Special Rapporteur, these terms of reference are fundamental, necessary and common sense considerations. Moreover, by their nature, "common sense" methods for fact-finding cannot be subject to negotiation or selective approval by States. This was one of the reasons for the cancellation of the visit to Guantánamo Bay. Any suggestion to the contrary can only be considered as an attempt to compromise later findings. Likewise, subsequent violations of these conditions would seriously call into question the intentions behind inviting the Special Rapporteur.

27. The Special Rapporteur reiterates that the conclusion of a visit marks the beginning of a long-term process of cooperation with the Government with the common aim of eradicating torture and ill-treatment, and he reiterates his commitment to support government efforts to this end.

### III. RECENT DEVELOPMENTS RELATED TO DIPLOMATIC ASSURANCES

28. In his first report to the Commission on Human Rights, the Special Rapporteur draws attention to the importance of maintaining the focus on and remaining vigilant against continuing practices that erode the absolute prohibition of torture in the context of counter-terrorism measures. In particular, he refers to his interim report to the General Assembly, in which he examined the use by States of diplomatic assurances (or otherwise referred to as promises, agreements, guarantees, contacts, memorandums of understanding, etc.) to transfer or propose to return alleged terrorist suspects to countries where they may be at risk of torture or ill-treatment. In this section, the Special Rapporteur wishes to highlight some recent activities and developments in this area.

29. During the year, the Special Rapporteur held direct discussions with Governments on the issue. On 12 May 2005, he was invited to informal consultations with officials of the Swedish Ministry for Foreign Affairs in Stockholm, concerning diplomatic assurances, particularly in relation to the *Agiza* case before the United Nations Committee against Torture. On 24 October 2005, he was invited to meet with the Home Secretary of the United Kingdom of Great Britain and Northern Ireland in response to concerns raised in relation to memorandums of understanding concluded by the Government with Jordan and the Libyan Arab Jamahiriya in the aftermath of the bombings in London on 7 July. The Special Rapporteur and the Government exchanged views and agreed to continue to maintain a dialogue on the issue. On the same day, he met informally with several members of the Joint Committee on Human Rights of the United Kingdom Parliament to discuss the practice of diplomatic assurances, the use of evidence obtained under torture, and other issues related to his mandate.

30. On 7 December 2005, under the auspices of the Council of Europe, the Special Rapporteur participated in a discussion on the development of guidelines for diplomatic assurances with the Group of Specialists on Human Rights and the Fight against Terrorism of the Steering Committee for Human Rights.

31. In his presentation the Special Rapporteur outlined his main concerns on the issue:

(a) The principle of non-refoulement (CAT, art. 3; ECHR, art. 3; International Covenant on Civil and Political Rights (ICCPR), art. 7) is an absolute obligation deriving from the absolute and non-derogable nature of the prohibition of torture;

(b) Diplomatic assurances are sought from countries with a proven record of systematic torture, i.e. the very fact that such diplomatic assurances are sought is an acknowledgement that the requested State, in the opinion of the requesting State, is practising torture. In most cases, those individuals in relation to whom diplomatic assurances are being sought belong to a high-risk group ("Islamic fundamentalists");



(c) It is often the case that the requesting and the requested States are parties to CAT, ICCPR and other treaties absolutely prohibiting torture. Rather than using all their diplomatic and legal powers as States parties to hold other States parties accountable for their violations, requesting States, by means of diplomatic assurances, seek only an exception from the practice of torture for a few individuals, which leads to double standards vis-à-vis other detainees in those countries;

(d) Diplomatic assurances are not legally binding. It is therefore unclear why States that violate binding obligations under treaty and customary international law should comply with non-binding assurances. Another important question in this regard is whether the authority providing such diplomatic assurances has the power to enforce them vis-à-vis its own security forces;

(e) Post-return monitoring mechanisms are no guarantee against torture - even the best monitoring mechanisms (e.g. ICRC and CPT) are not "watertight" safeguards against torture;

(f) The individual concerned has no recourse if assurances are violated;

(g) In most cases, diplomatic assurances do not contain any sanctions in case they are violated, i.e. there is no accountability of the requested or requesting State, and therefore the perpetrators of torture are not brought to justice;

(h) Both States have a common interest in denying that returned persons were subjected to torture. Therefore, where States have identified independent organizations to undertake monitoring functions under the agreement, these interests may translate into undue political pressure upon these monitoring bodies, particularly where one is funded by the sending and/or receiving State.

32. In conclusion, the Special Rapporteur stated that diplomatic assurances with regard to torture are nothing but attempts to circumvent the absolute prohibition of torture and refoulement, and that rather than elaborating a legal instrument on minimum standards for the use of diplomatic assurances, the Council of Europe should call on its member States to refrain from seeking and adopting such assurances with States with a proven record of torture.

33. On the occasion of Human Rights Day, 10 December 2005, the Special Rapporteur expressed his appreciation to the High Commissioner for Human Rights for designating as this year's theme "On terrorists and torturers", and for her efforts on drawing international attention to the absolute prohibition of torture. He fully supports the statement of the High Commissioner, in which she expressed her concerns about the erosion of the prohibition of torture in the context of counter-terrorism, particularly the trend of seeking diplomatic assurances and the use of secret places of detention. The Special Rapporteur also expresses his appreciation for the statement of the Secretary-General on the occasion of Human Rights Day, in which he called upon the international community to speak out forcefully against torture in all its forms and stated, "torture can never be an instrument to fight terror, for torture is an instrument of terror".

#### **IV. THE DISTINCTION BETWEEN TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

34. The Special Rapporteur observes that an increasing number of Governments, in the aftermath of 11 September 2001 and other terrorist attacks, have adopted a legal position which, while acknowledging the absolute nature of the prohibition on torture, brings the absolute nature of the prohibition of cruel, inhuman or degrading treatment or punishment (CIDT) into question. In particular, it is argued that certain harsh interrogation methods falling short of torture might be justified for the purpose of extracting information aimed at preventing future terrorist acts that might kill many innocent people.

##### **Definitions**

35. Torture is defined in CAT, article 1, as acts which consist of the intentional infliction of severe pain or suffering (physical or mental), involving a public official (directly or at the instigation or consent or with the acquiescence of a public official, or another person acting in an official capacity), and for a specific purpose (i.e. extracting a confession, obtaining information, punishment, intimidation, discrimination). Acts which fall short of this definition, particularly acts without the elements of intent or acts not carried out for the specific purposes outlined, may comprise CIDT under article 16 of the Convention. Acts aimed at humiliating the victim constitute degrading treatment or punishment even where severe pain has not been inflicted.

36. The prohibitions against torture and CIDT are non-derogable under both ICCPR (article 7 concerning torture and CIDT and article 4 (2) on derogation during states of emergency), and CAT does not permit derogation from its provisions.

37. Certain obligations under CAT apply to torture only (above all, the obligation to criminalize acts of torture in and to apply the principle of universal jurisdiction in this regard), whereas other obligations aimed at prevention, in particular by means of education and training, by systematically reviewing interrogation rules and practices, by ensuring a prompt and impartial ex officio investigation, and by ensuring an effective complaints mechanism, as laid down in articles 10 to 13, must be equally applied to other forms of ill-treatment as well (i.e. art. 16 (1)).

##### **Disproportionate exercise of police powers**

38. Inherent in the concept of CIDT is the disproportionate exercise of police powers. The beating of a detainee with a truncheon for the purpose of extracting a confession must be considered torture if it inflicts severe pain or suffering; the beating of a detainee with a truncheon walking to and from a cell might amount to CIDT, but the beating of demonstrators in the street with the same truncheon for the purpose of dispersing an illegal demonstration or prison riot, for example, might be justified as lawful use of force by law enforcement officials.<sup>1</sup> In other words, since the enforcement of the law against suspected criminals, rioters or terrorists may legitimately require the use of force, and even of lethal weapons, by the police and other security forces, only if such use of force is disproportionate in relation to the purpose to be achieved and results in pain or suffering meeting a certain threshold, will it amount to cruel or inhuman treatment or punishment. Whether the use of force is to be qualified as lawful, in terms of article 16 of CAT or article 7 of ICCPR, or excessive depends on the proportionality of

the force applied in a particular situation.<sup>2</sup> Disproportionate or excessive exercise of police powers amounts to CIDT and is always prohibited. But the principle of proportionality, which assesses the lawful use of force to fall outside the scope of CIDT, only applies in situations in which the person concerned is still in a position to use force in turn against a law enforcement official or a third person. As soon as that person ceases to be in a position to resist the use of police force, i.e. is under the control of a law enforcement official and becomes powerless, the principle of proportionality ceases to apply.

#### **Powerlessness of the victim**

39. It is the powerlessness of the victim in a given situation that makes him or her particularly vulnerable to any type of physical or mental pressure. Torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation where the victim is powerless i.e. is under the total control of another person. This is usually the case with deprivation of personal liberty.<sup>3</sup> Indeed, a thorough analysis of the *travaux préparatoires* of articles 1 and 16 of CAT as well as a systematic interpretation of both provisions in light of the practice of the Committee against Torture leads one to conclude that the decisive criteria for distinguishing torture from CIDT may best be understood to be the purpose of the conduct and the powerlessness of the victim, rather than the intensity of the pain or suffering inflicted, as argued by the European Court of Human Rights and many scholars.

40. Similarly, notwithstanding the principle of proportionality of the use of force as a determinant of CIDT, the overriding factor at the core of the prohibition of CIDT is the concept of powerlessness of the victim. In other words, as long as a person is able to resist the use by law enforcement officials of the degree of force legitimately required by the exigencies of the situation, the use of force falls outside the scope of the prohibition of CIDT. But from the moment the person concerned is under the *de facto* control of the police officer (e.g. *hors de combat*, otherwise unable to resist or flee a premises, is arrested and handcuffed, detained in a police van or cell, etc.), the proportionality test ceases to be applicable and the use of physical or mental coercion is no longer permitted. If such coercion results in severe pain or suffering inflicted to achieve a certain purpose, it must even be considered as torture. If interrogation methods do not reach the level of severe pain or suffering but are intended to humiliate the detainee, they are still to be considered as degrading treatment or punishment in violation of article 16 of CAT and/or article 7 of ICCPR. In addition, article 10 of ICCPR establishes a particular right to be treated in a humane and dignified manner which only applies to persons deprived of their personal liberty.

#### **Conclusion**

41. The distinction between torture and CIDT is an important one and relates primarily to the question of personal liberty. Outside a situation where one person is under the *de facto* control of another, the prohibition of CIDT is subject to the proportionality principle, which is a precondition for assessing its scope of application. However, if a person is detained or otherwise under the *de facto* control of another person, i.e. powerless, the proportionality test is no longer

applicable and the prohibition of torture and CIDT is absolute. This absolute prohibition of the use of any form of physical force or mental coercion applies, first of all, to situations of interrogation by any public official, whether working for the police forces, the military or the intelligence services.

#### Notes

<sup>1</sup> Some authors, including Herman Burgers, who chaired the working group drafting CAT in the 1980s, have argued that victims of the prohibition of torture and CIDT in the sense of articles 1 and 16 “must be understood as consisting of persons who are deprived of their liberty or who are otherwise under the factual power or control of the person responsible for the treatment or punishment”: J.H. Burgers and H. Danelius, *The United Nations Convention against Torture. A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1988), p. 149. The European Court of Human Rights, the Committee against Torture and the Inter-American Commission on Human Rights have not followed this approach. There are cases in which the excessive use of police force outside detention, by applying the proportionality test has been found to constitute CIDT: e.g. the cases of *R.L. and M.-J.D. v. France* (application No. 44568/98) concerning ill-treatment during police intervention in a dispute at a restaurant which resulted in a violation of article 3 of ECHR; see also the *Ozemajl et al.* case (CAT/C/29/D/161/2000), where the Committee against Torture found the demolition by a mob of a Roma settlement with the knowledge of the local police and without the police preventing its occurrence to be a violation of article 16 of CAT, and the *Corumbiara* case, Inter-American Commission on Human Rights No. 11556 of 11 March 2004, Report No. 32/04.

<sup>2</sup> The principle of proportionality requires first of all the legality of the use of force under domestic law, which is usually regulated in police codes. Secondly, the use of force must aim at a lawful purpose, such as effecting the lawful arrest of a person suspected of having committed an offence, preventing the escape of a person lawfully detained, defending a person from unlawful violence, self-defence, or an action lawfully taken for the purpose of dispersing a demonstration or quelling a riot or insurrection. Most of these purposes can be found explicitly in article 2 (2) of ECHR relating to the non-absolute nature of the right to life, but no similar exceptions have been adopted in relation to the right to personal integrity and dignity in article 3 of ECHR. This was perhaps a mistake. It would have been better to define the right to personal integrity and dignity in a positive manner, to provide an absolute prohibition of any form of torture (similar to the absolute prohibition of slavery and servitude in article 4 (1) of ECHR and article 8 (1) of ICCPR as opposed to the relative prohibition of forced labour) and to establish a limitation clause for the use of lawful force by law enforcement officers. Thirdly, the type of the weapons used and the intensity of the force applied must not be excessive but necessary in the particular circumstances of the case in order to achieve any of the lawful purposes outlined above. This means that the law enforcement officers must strike a fair balance between the purpose of the measure and the interference with the right to personal integrity of the persons affected. If a thief, for example, has been observed stealing a toothbrush in a supermarket, the use of firearms for the purpose of effecting his or her arrest must be considered as

disproportionate. But for the purpose of arresting a person suspected of having committed murder or a terrorist attack, the police may, of course, use firearms if other less intrusive methods prove ineffective. Nevertheless, the use of firearms causes serious physical injuries and severe pain and suffering. While it would definitely constitute an interference with the human right to physical integrity, as a proportional measure it would not constitute CIDT. If the police use non-excessive force for a lawful purpose, then even the deliberate infliction of severe pain or suffering simply does not reach the threshold of CIDT.

<sup>3</sup> See, e.g., Burgers and Danelius, *op. cit.*, p. 120; C. Ingelse, *The UN Committee Against Torture: an assessment*, London, 2001, p. 211; article 7 (2) (e) of the Rome Statute of the International Criminal Court.

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(10)

Report Beirut-6-2012,

Prof. Jørgen Lange Thomsen

BILAG

12

CHRISTIAN HARLANG

## MEDICAL REPORT

### I. CASE INFORMATION

**Date of exam:** 14 May 2012

**Place of exam:**  
Lebanon

Beirut,

**Exam requested by, reason for exam:** International Rehabilitation Council for Torture Victims (IRCT), alleged torture victim

**Case or report No:** Beirut-6-2012

**Duration of evaluation:**

Psychological: 2 hours 30 minutes

Physical: 1 hour 25 minutes

**Subject's given name, birth date, birth place:**

, Iraq

**Subject's family name, gender, IT**

Male,

**Interpreter (yes/no) name:**

(during physical examination only)

**Informed consent (yes/no):** Yes

**Persons present during the exam (name and position):** -

### II. CLINICIANS' QUALIFICATIONS

B. Prof. Jørgen Lange Thomsen, Physician, Doctor of Medical Science, Professor of Forensic Medicine, University of Southern Denmark. Many years of experience in the evaluation of alleged torture victims. Publications on medico-legal issues, including human rights and torture.

### **III. STATEMENT REGARDING VERACITY OF TESTIMONY**

I, \_\_\_\_\_ personally examined this individual and examined the facts recited in this written report. I believe all statements to be true. I would be prepared to testify to these statements based on my personal knowledge and belief.

I, Jørgen Lange Thomsen, personally examined this individual and examined the facts recited in this written report. I believe all statements to be true. I would be prepared to testify to these statements based on my personal knowledge and belief.

### **IV. BACKGROUND INFORMATION**

#### **General Information**

\_\_\_\_\_ Iraqi man, born in \_\_\_\_\_, Iraq. He grew up with \_\_\_\_\_ brothers and \_\_\_\_\_ sisters and went through public school after which he was studying at \_\_\_\_\_ and graduated as a bachelor in Economy. He was never able, however, to use his bachelor degree as shortly after his graduation he was taken for military service and was a soldier in Saddam's army for four years. He participated in the war against Iran, and after that he also participated in the first Gulf War. He was sent to Kuwait, and his unit was the last to leave Kuwait when the allied forces arrived. He was arrested as a war prisoner and spent one and a half month in Saudi Arabia. He was never wounded, and he did not feel that he had any mental problems due to his military service or the subsequent imprisonment in Saudi Arabia. He was a common soldier and had never advanced to become an officer.

During the 1990's, after his military service, he worked in a small shop that he rented from another man. He was once arrested, around 1994 and 1995, because there were complaints about his prices. They were too high, and he spent one night in prison and was given a fine, but was not beaten or tortured otherwise. He is a Sunni Muslim, married and has four girls and two boys.

#### **Past medical history**

He has generally enjoyed a good health and has only been hospitalized twice, once because of almost constant headache and once because of pains in his right kidney region. His headache was said to be due to his sinusitis in the upper jaw. He is still suffering a lot from headache, sometimes even when he is sleeping.

He still has kidney pains once in a while, especially if he eats some particular types of food (not described further).

**Past psychiatric history**

nas no past psychiatric history.

**V. ALLEGATIONS OF TORTURE AND ILL-TREATMENT****1. Summary of detention and abuse**

was arrested on November 25<sup>th</sup> 2004 in Al-Zubayr region by the Danish, English and Iraqi forces. 10 of his relatives and friends were also arrested with him. During his arrest, he was subjected to different forms of ill-treatment. His arrest was allegedly not based on a particular charge but rather on a religious background. He remained detained for about 3 months.

**2. Narrative account of ill-treatment and torture**

In November 2004, he was praying one early morning around 5.30 in the mosque near to his home when seemingly without reason a number of Iraqi and Danish soldiers searched the house, and he was arrested. He was in the mosque when he was arrested by an Iraqi, and the Danes were present during the arrest. On the question of whether he was certain that there were Danish soldiers present, he said that these were the only foreign soldiers at the moment as the British had left at the time. He was body searched by the Iraqis, and they took photos. He was put together with the ten of a group of 11 and taken on a pickup to Akka. The Iraqis took him to Akka, but the Danes followed immediately after the pickups in tanks. He was not beaten during the transportation.

In Akka, he was put in a room together with the ten other arrested Iraqis. The guards asked their names and took photos of them. He was sitting there in Akka for four hours, handcuffed with his hands on his back, tied together by plastic strips, and he was further blindfolded. The 11 were sitting in a circle. He felt humiliated at the time because the Danish soldiers had dogs, and they moved around the prisoners with the dogs which is an insult to a Muslim.

After four hours they were taken to **Shalbah base** to a tent, one at a time, where again he had to tell his name, and they took his personal items. He was taken to a second tent where he was badly humiliated. On cautious interrogation he explained that the humiliation was in the form of a Danish soldier inserting a finger in his anal canal. He was not able to state this directly as during the questioning he became very embarrassed, but he confirmed to the question of whether the Danish soldier inserted the finger inside his body from behind.

He did not understand the body search and the insertion of the finger as they would not carry any weapons and those weapons that were in the mosque had been found in the form of four Kalashnikov rifles used by the guards. Later he had his personal items given back. In Shalbah base he was not exposed to other violence.

They were then taken to **Al Shu'oon (The Serious Crime Unit)** by the Iraqis. The Danish soldiers followed them to Al Shu'oon, but when they had arrived, the Danes left the place, and he never saw them again. In Al Shu'oon they were all kept in a room. Then one by one they were taken for investigation, again blindfolded, handcuffed behind their backs. The Iraqi forces wanted him to confess, but he did not have anything to confess. They started beating him and told him to confess that he was a terrorist. They kicked him, and they beat him with their hands. He was lying down, and after some time he lost consciousness. He woke up by them beating him again and pouring water upon him. He felt that he had been unconscious for about five minutes. They beat and kicked him all over his body, and during the abuse they kept asking him to confess that he was a terrorist. They also insulted him for being Sunnite and called him "wahhabiyyine" (this is an



insult). He felt very weak as he was fasting. He stayed in Al Shu'oon one week, but was only physically abused on the first day. In Al Shu'oon they had food and water.

After that they were transferred to Tasferat Prison where he was beaten at arrival, but not after that. He was still accused of being a terrorist and mocked because he was a Sunni Muslim. He was released after 70 days in captivity together with the other last three from the group of 11. He was only released after the payment of 50,000 \$ to the Iraqis. This sum of money had been collected by the family, including his brothers and uncles.

During his stay in Tasferat he was presented to a judge who did not see any proof of terror. He told the judge that he had been physically abused, and the judge did not react to this.

### **3. Review of abuse and ill-treatment**

#### **Physical forms**

- Beating and kicking
- Sensory deprivation (blindfolding)
- Deprivation of food and water

#### **Psychological forms**

- Insulting
- Deprivation of food and water
- Sensory deprivation (blindfolding)
- Sexual assault during body search
- Humiliating

### **VI. PHYSICAL SYMPTOMS AND DISABILITIES**

When he was beaten and kicked, he felt a pain in his body, and he lost consciousness one time. He never experienced blood in his urine. Presently he enjoys good health. He sleeps at night, but as mentioned above he suffers from headache, especially in his forehead. He has a good family life, including sex life. He does not suffer any diseases in the heart, lungs or gastrointestinal canal, but sometimes he feels pain in his right kidney.

### **VII. PHYSICAL EXAMINATION**

A middle weight, healthy looking middle-aged man. He was active and eager, complying with the examination and tried to answer the questions as well as possible. He was collaborative during the entire examination. There were no obvious signs of disease. His expression was usually smiling and open, but when it came to the physical abuse, especially the insertion of a finger in

his anus, his looks changed into an embarrassed expression with redness of the face and no eye contact.

The eyes were normal with pupils reacting normally to light. The oral cavity was normal. There was a lot of caries on his teeth that were not well preserved. The neck was normal. At stethoscopic examination of the heart there was a slight systolic murmur with a maximum at the apex (probably without any significance). Blood pressure 150/95, pulse 96/min. Stethoscopic examination of his lungs revealed no sign of any disease. His abdomen was soft without any palpable tumors or tension. There was a scar in the right lower part of the abdomen due to appendectomy. Arms and legs were normal. On the inside of the right thigh and on the left knee there were small scars, and on the question of the cause of these scars he said they were unrelated to his imprisonment. The plantar reflexes were normal.

### **VIII. PSYCHOLOGICAL HISTORY/EXAMINATION**

#### **1. Methods of assessment and psychological testing**

- Clinical interviews
- Beck Depression Inventory (BDI)
- Hamilton Anxiety Scale (HAM-A)
- Harvard Trauma Questionnaire

#### **2. Current psychological complaints**

In what follows, we will divide the symptoms into 2 categories: the 1<sup>st</sup> set of symptoms is based on narrations and the 2<sup>nd</sup> one is identified through testing.

##### **a- Symptoms identified based on speech:**

**Avoidance** ("I don't like to talk about this issue. I don't dare going to the places where I was arrested. I take another road. When I remember that they accused me of being a terrorist, I try to escape")

**Physiological and emotional reactions when recalling the traumatic event** ("I feel that my head is so heavy when I recall this issue. I also have headaches and fast heartbeats. I feel that I'm suffocating. I also feel as if my head and body are numb")

**Fear that the incident might happen again** ("I'm always worried about the possibility of being arrested again. This is still happening in Iraq. Some time ago, they arrested 2 men who had no charges against them. They could arrest me anytime")

**Anxiousness** ("My anxiousness increases whenever I know that they will arrest someone. I feel they may arrest me too")

**Irritability**

**Feelings of persecution and humiliation**

**Sleep disturbances**

**b- Symptoms detected through testing:****PTSD symptoms rated as "very distressing" by  
Questionnaire)****(Harvard Trauma**

- Recurrent and intrusive distressing recollections of the event, including images and thoughts
- Feeling as if the traumatic event is recurring
- Cautiousness
- Avoidance of activities that recall the event.
- Lack of interest in daily activities
- Feeling of foreshortened future
- Blaming self for things that happened
- Hopelessness
- Avoidance of thoughts and feelings related to the traumatic event
- Physiological and emotional reactions when recalling the traumatic event
- Feeling that you have no one to rely on

**Anxiety symptoms rated as "averagely intense" by  
Scale)****(Hamilton Anxiety**

- Anxious mood
- Insomnia
- Cardio-vascular symptoms
- Gastro-Intestinal symptoms
- Respiratory symptoms

**Depression symptoms confirmed by****(Beck Depression Inventory)**

- I feel the future is hopeless and that things cannot improve.
- As I look back on my life, all I can see is a lot of failures.
- I feel quite guilty most of the time.
- I am disgusted with myself.
- I have lost all of my interest in other people.
- I have to push myself very hard to do anything.
- I feel there are permanent changes in my appearance that make me look unattractive
- I have no appetite at all anymore.

**3. Assessment of social functioning**

social life has been enormously affected by the incident. Noting that he describes himself as someone who used to be very calm, states that he has become very irritable, which is certainly affecting his relationships even with his family members. Moreover, is currently not working. In fact, being at an age during which people are usually active while he's not, worsens psychological state making him feel guiltier and causing him further problems on the economical and social levels.

**IX. DIAGNOSTIC TEST RESULTS**

Based on the above, is diagnosed with Anxiety, Depression and PTSD (Post-Traumatic Stress Disorder).

## **X. INTERPRETATION OF FINDINGS**

### **Physical evidence**

There is no present physical evidence, but the type of abuse in the form of blunt violence that the examinee sustained does not necessarily lead to scar formation.

### **Psychological evidence**

- has undergone physical abuse and significant psychological trauma
- He is in need of psychotherapy and psychiatric management
- His claims of ill-treatment are fully consistent with his psychological signs and symptoms
- Diagnosis: PTSD (Post-Traumatic Stress Disorder), Depression and Anxiety

## **XI. CONCLUSIONS AND RECOMMENDATIONS**

1. There is full consistency between the psychological findings and alleged report of ill-treatment because symptoms of PTSD, Depression and Anxiety can be detected even today seven years after the ill-treatment
2. should undergo psychotherapy and psychiatric management
3. The described humiliations and physical abuse amount to serious maltreatment, and torture may well be the most appropriate term for the abuse.

## **XII. CLINICIAN'S SIGNATURE, DATE, PLACE**

### **EXPERT PSYCHOTHERAPIST**

#### **FORENSIC DOCTOR**

Professor, Dr. Jørgen Lange Thomsen

Signature:



## MEDICAL REPORT

### I. CASE INFORMATION

**Date of exam:** 14 May 2012 (psychological assessment) and 15 May 2012 (physical examination)

**Place of exam:**  
Lebanon

Beirut,

**Exam requested by, reason for exam:** International Rehabilitation Council for Torture Victims (IRCT), alleged torture victim

**Case or report No:** Beirut-4-2012

**Duration of evaluation:**

Psychological: 90 minutes

Physical: 95 minutes (1.40 pm – 3.15 pm)

**Subject's given name, birth date, birth place:**  
Iraq

**Subject's family name, gender, ID:** Male,

**Interpreter's (yes/no) name:**

**Informed consent (yes/no):** Yes

**Subject accompanied by:** -

### II. CLINICIANS' QUALIFICATIONS

B. Prof. Jørgen Lange Thomsen, Physician, Doctor of Medical Science, Professor of Forensic Medicine, University of Southern Denmark. Many years of experience in the evaluation of alleged torture victims. Publications on medico-legal issues, including human rights and torture.

### III. STATEMENT REGARDING VERACITY OF TESTIMONY

I, \_\_\_\_\_ personally examined this individual and examined the facts recited in this written report. I believe all statements to be true. I would be prepared to testify to these statements based on my personal knowledge and belief.

I, Jørgen Lange Thomsen, personally examined this individual and examined the facts recited in this written report. I believe all statements to be true. I would be prepared to testify to these statements based on my personal knowledge and belief.

### IV. BACKGROUND INFORMATION

#### General information

\_\_\_\_\_ year old Iraqi man. He was born in the \_\_\_\_\_ region in Basra and grew up with \_\_\_\_\_ brothers and \_\_\_\_\_ sisters. He went to school for ten years, and after school he joined military service from 1971 and stayed in the army until 1989. He was "just a soldier" and was never promoted to officer. He spent several years in the army during the war against Iran, but he was never wounded, and he did not feel that he had any mental problems due to his many years in a state of war.

He is married and has \_\_\_\_\_ children. He currently lives with his family in Bahrain seeing that he had to flee his country of origin after being arrested in 2004 and subjected to ill-treatment. From 1989 he rented a shop selling spare parts for cars, but had been out of work since 2005. \_\_\_\_\_ was diagnosed with cancer in 2008, thus, his medical condition is hampering him from working). He is now financially supported by one of his children.

#### Past medical history

He used to enjoy good health up until 2008 when he was diagnosed with cancer in the bladder. He applied for treatment in Saudi Arabia and received a grant from the Saudi Arabian Queen to have surgery. Now he is urinating into a bag on his abdominal wall. Apart from that he has never been to hospital. He is taking drugs for a high blood pressure in the form of Tenormin and Coboltine.

#### Past psychiatric history

\_\_\_\_\_ has no past psychiatric history.

## V. ALLEGATIONS OF TORTURE AND ILL-TREATMENT

### 1. Summary of detention and abuse

was arrested on November 25<sup>th</sup> 2004 in Al-Zubayr region in Iraq by the Danish, English and Iraqi forces. His brother and 9 of his friends were also arrested with him. During his arrest, he was subjected to different forms of ill-treatment. His arrest was allegedly not based on a particular charge but rather on a religious background.

### 2. Narrative account of ill-treatment and torture

The story as it was told by

"On November 25<sup>th</sup> 2004, the Danish forces arrested me and my brother and they took us to **Akka camp**. They attacked us in the house early morning when I was performing ablution. They took me and they took from Al-Diwan (sitting room). When they arrested me I was wearing the Dashdasha (Arabic costume). They forced our family outside the house and searched the house and we stayed outside for about 30 minutes. We were in the house at the time me, my brother, my father, my sister, my mother-in-law, my nieces, my wife and 7 of my children. They stole about 200\$ from my father's money. They turned a closet over, but apart from that they didn't destroy anything. I assume they were looking for weapons but they did not find anything. They said that we were terrorists. Then they took me and my brother in a car with the group from the mosque. We were eleven who know each other and stayed together. They took us to Akka camp (for Iraqis) where we stayed for about 2 to 3 hours. Afterwards, they took us to one of the Danish forces' camp named **Shalbah**. We were blindfolded and hands tied on the back with plastic strips. We were sitting outside in the sun and they took us, one by one, to a tent at about 3:30 pm. We didn't get any food or drink. In the tent, they body-searched us despicably. There were only Danes in the tent. They touched us all over the body and one of them entered his fingers into our buttocks. I could feel his finger. I didn't wear under pants and he penetrated my body from behind. It was very humiliating. They didn't beat us. Afterwards, they took us to another tent for about 15 minutes and then they handed us over to the Iraqi forces. These blindfolded us and handcuffed us with strips again and took us by car to the **Shu'oon**. Then they took us to the investigation separately. Then they took us to Al-Shuun by the Iraqi forces. The Danes were also going. I was in a pickup and was only beaten a little. In Al-Shu'oon we were all placed in the same room and taken one by one for interrogation. I was interrogated for only about ten minutes. I was asked religious questions and they were not beating me or abusing me in any way. Maybe because I was too old. Then they placed us in the jail. We remained without food until 10:00 p.m. I remained in jail for 7 days. Then, they took us to the Court and released us there."

### 3. Review of abuse and ill-treatment

- Deprivation of food and water
- Sensory deprivation (blindfolding)
- Sexual assault during body search
- Beatings

## VI. PHYSICAL SYMPTOMS AND DISABILITIES

found the penetration of his body extremely degrading. He didn't sustain any significant violence. He feels that he still suffers from his captivity and the degrading treatment.

He is more anxious than before, and his threshold level for anger is lower. He does not suffer from sleep disturbances, but he easily gets tired and gets tachycardia (fast heart beating) at efforts. He relates this symptom to his cancer operation. He sometimes suffers a feeling of pressure in his chest. He does not have any breathing problems. His stomach functions well if he is not eating too much fat because then he has pain in the upper mid part of his abdomen.

## VII. PHYSICAL EXAMINATION

was wearing a suit. He was serious and somewhat on the guard. He cooperated willingly in the examination. His state of nutrition was perhaps a little below mean.

The pupils of the eyes reacted normally. The oral cavity and teeth were normal. Blood pressure was 120/95 and pulse 64/min, a little irregular. By stethoscopic examination the heart was found normal and so were the lungs. The abdomen was soft with a urine bag on the right side. The urine looked normal without visible blood. The arms and legs were normal. There were no signs of physical abuse. The plantar reflexes (soles of the feet) were normal.

## VIII. PSYCHOLOGICAL HISTORY/EXAMINATION

### 1. Methods of assessment and psychological testing

- Clinical interview
- Beck Depression Inventory (BDI)
- Hamilton Anxiety Scale (HAM-A)
- Harvard Trauma Questionnaire

### 2. Current psychological complaints

In what follows, we will divide the symptoms into 2 categories: the 1<sup>st</sup> set of symptoms is based on narrations and the 2<sup>nd</sup> one is identified through testing.

#### a) Symptoms identified based on speech:

**Fears and feelings of persecution** ("I worry about my male children a lot. We are always accused. Whenever an explosion takes place they accuse us, mainly the young ones of our family. As for me, they don't accuse me seeing my age – After I was released, I developed a fear of being persecuted.")

**Intrusive thoughts** ("until now I always recall the immoral body search. By doing so, they killed me")

**Irritability** ("prior to the arrest I didn't use to get angry. Now I do")

**Avoidance** ("until now I never pass near the place where I have been arrested")

**N.B:** , also avoids raising this incident's issue. I had the impression that he had a desire not to complete the interview. He wanted to avoid talking about what happened.

**Sad mood** ("I lost parts of my body due to the cancer. I feel that my body is incomplete")



**b) Symptoms detected through testing:*****PTSD symptoms rated as "very distressing" by  
Questionnaire)******(Harvard Trauma***

- Irritability and outbursts of anger
- Avoidance of activities that arouse recollections of the traumatic event
- Sense of foreshortened future
- Avoidance of thoughts and feelings associated with the trauma
- Feeling that the people around you do not understand what happened to you
- Difficulty in accomplishing the daily tasks and duties
- Blaming self for things that happened
- Hopelessness
- Feelings of shame because of the traumatic events
- Feeling that you have no one to count on
- Feeling that others are hostile towards you

***Anxiety symptoms rated as "average" by******(Hamilton Anxiety Scale)***

- Anxious mood
- General somatic symptoms: Muscular
- Cardiovascular symptoms
- Respiratory symptoms
- Gastrointestinal symptoms

***Depression symptoms confirmed by******(Beck Depression Inventory)***

- I feel sad much of the time
- I am more discouraged about my future than I used to be
- As I look back, I see a lot of failures
- I feel quite guilty most of the time
- I have lost confidence in myself
- I am less interested in other people or things than before
- I have much greater difficulty in making decisions than I used to
- I am too tired or fatigued to do most of the things I used to do
- My appetite is much less than before

**3. Assessment of social functioning**

social functioning has been affected by 2 major factors: the arrest and ill-treatment as a first factor and his medical condition (cancer) as a second one. Due to these factors, .s currently not working as he feels unable to. Moreover, he expresses being less interested in other people or things than before.

**IX. DIAGNOSTIC TEST RESULTS**

Based on the above .s diagnosed with Depression and PTSD (Post-Traumatic Stress Disorder).

## X. INTERPRETATION OF FINDINGS

### Psychological evidence

- has undergone significant psychological trauma.
- He is in need of pharmacotherapy (seeing that he avoids talking about the incident, the psychotherapy may not be the best intervention at this point) and psychotherapy at a later stage.
- His claims of ill treatment are consistent with his psychological signs and symptoms.
- Diagnosis: PTSD (Post-Traumatic Stress Disorder) and Depression

## XI. CONCLUSIONS AND RECOMMENDATIONS

1. There is full consistency between the psychological findings and alleged report of ill-treatment because symptoms of PTSD and depression can be detected even today seven years after the ill-treatment.
2. should undergo psychiatric management and psychotherapy (at a later stage).
3. was only subjected to little direct physical violence. He was however allegedly subjected to rectal exploration which he found very humiliating and may be seen as a combination of physical and psychological human and degrading treatment amounting to torture.

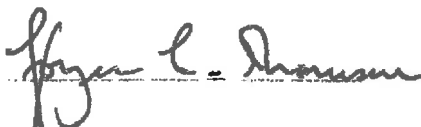
## XII. CLINICIAN'S SIGNATURE, DATE, PLACE

### EXPERT PSYCHOTHERAPIST

### FORENSIC DOCTOR

Professor, Dr. Jørgen Lange Thomsen

Signature:





**Udskrift af retsbogen**

Den 25. oktober 2011 kl. 13:36 blev retten sat i retssal 6 af dommerfuldmægtig Marianne Nørregaard.

Der blev foretaget i offentligt retsmøde sag nr. BS 1

c/o Advokatfirma Christian Harlang  
Nytorv 5  
1450 København K  
mod  
Forsvarsministeriet  
Holmens Kanal 42  
1060 København K

Ingen indkaldt eller mødt.

Der blev fremlagt stævning og sagsøgtes skrivelse af 20. oktober 2011.

Der blev afsagt

**Kendelse**

Da sagen af de grunde, som parterne har anført, må anses som principiel, og da en af sagens parter har anmodet om, at sagen bliver henvist til landsretten, jf. retsplejelovens § 226, stk. 1,

**bestemmes:**

Sagen henvises til Østre Landsret.

Retten hævet.

Marianne Nørregaard  
dommerfuldmægtig

Udskriftens rigtighed bekræftes.  
Københavns Byret, den 27. oktober 2011.

  
Sanne Bludholm, kontorfuldmægtig



BILAG 13

CHRISTIAN HARLANG

**Udskrift af retsbogen**

Den 31. januar 2012 kl. 11:30 blev retten sat i retssal 12 af dommer Marianne Lund Larsen.

Der blev foretaget i offentligt retsmøde sag nr. B<sup>S</sup>

-----  
c/o Advokatfirma Christian Harlang  
Nytorv 5  
1450 København K  
og

c/o Advokatfirma Christian Harlang  
Nytorv 5  
1450 København K  
og

--  
c/o Advokatfirma Christian Harlang  
Nytorv 5  
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Nytorv 5  
1450 København K  
mod  
Forsvarsministeriet  
Holmens Kanal 42  
1060 København K

Ingen indkaldt eller mødt.

Der fremlagdes: Stævning med bilag 2.

Det fremgår af stævningen, at sagsøgerne har fremsat anmodning om, at sagen henvises til Østre Landsret i medfør af retsplejelovens § 226, stk. 1.

For det tilfælde at anmodningen om henvisning imødekommes, har sagsø-

gerne fremsat anmodning om, at sagen behandles sammen med den for Østre Landsrets 7. afd. verserende sag mod Forsvarsministeriet (

Sagsøgerne har til støtte for anmodningen om henvisning anført, at der skal tages stilling til spørgsmål af principiel og vidtrækkende karakter, herunder Danmarks forpligtelser efter international ret. Sagsøgerne har endvidere henvist til, at sagen kan få betydning for andre end sagsøgerne.

Der fremlagdes endvidere breve af 12. januar 2012 og 30. januar 2012 fra Kammeradvokaten v/ advokat Peter Biering, der har erklæret sig enig i, at sagen henvises til Østre Landsret, og at sagen behandles sammen med den for Østre Landsret verserende sag mod samme sagsøgte.

Der blev afsagt

### **K E N D E L S E :**

Af de af sagsøgeren anførte grunde, som sagsøgte har tilsluttet sig, finder retten, at sagen må anses som principiel, og da begge parter har anmodet om henvisning til landsretten, jf. retsplejelovens § 226, stk. 1, tages begæringen herom til følge, hvorfor

**bestemmes:**

Sagen henvises til Østre Landsret.

Sagen sluttet.

Retten hævet.

Marianne Lund Larsen  
dommer

Udskriftens rigtighed bekræftes.  
Københavns Byret, den 31. januar 2012.

  
Fritze Irene Kramer, konterfuldmægtig



BILAG 16

CHRISTIAN HARLANG

**Udskrift af retsbogen**

Den 30. marts 2012 kl. 14:15 blev retten sat i retssal 17 af dommer Grethe Jørgensen.

Der blev foretaget i offentligt retsmøde  
sag nr. BS '

c/o Advokatfirma Christian Harlang  
Nytorv 5  
1450 København K  
og

c/o Advokatfirma Christian Harlang  
Nytorv 5  
1450 København K  
og

c/o Advokatfirma Christian Harlang  
Nytorv 5  
1450 København K  
mod  
Forsvarsministeriet  
Holmens Kanal 42  
1060 København K

Ingen indkaldt eller mødt.

Der fremlagdes stævning med bilag 1-4 og brev af 22. marts 2012 fra Kammeradvokaten v/advokat Peter Biering.

Det fremgår af stævningen, at sagsøgerne har fremsat anmodning om, at sagen henvises til Østre Landsret i medfør af retsplejelovens § 226, stk. 1.

For det tilfælde, at anmodningen om henvisning imødekommes, har sagsøgerne fremsat anmodning om, at sagen behandles sammen med den for Østre Landsrets 7. afdeling verserende sag ( ) mod Forsvarsministeriet (B)

Sagsøgerne har til støtte for anmodningen om henvisning anført, at der skal tages stilling til spørgsmål af principiel og vidtrækkende karakter, herunder Danmarks forpligtelser efter international ret. Sagsøgerne har endvidere henvist til, at sagen kan få betydning for andre end sagsøgerne.

Det fremgår af brev af 22. marts 2012 fra Kammeradvokaten v/advokat Pe-

ter Biering, at sagsøgte har erklæret sig enig i, at sagen henvises til Østre Landsret, og at sagen behandles sammen med den for Østre Landsret verserende sag mod samme sagsøgte.

Der blev afsagt

**K E N D E L S E :**

Af de af sagsøgerne anførte grunde, som sagsøgte har tilsluttet sig, finder retten, at sagen må anses som principiel, og da begge parter har anmodet om henvisning til landsretten, jf. retsplejelovens § 226, stk. 1, tages begæringen herom til følge, hvorfor

**bestemmes:**

Sagen henvises til Østre Landsret.

Sagen sluttet.

Retten hævet.

Grethe Jørgensen  
dommer

Udskriftens rigtighed bekræftes.  
Københavns Byret, den 30. marts 2012.

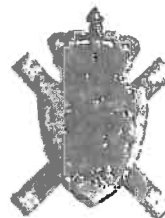
Birthe Plum, kontorfuldmægtig



BILAG

19

CHRISTIAN HARLANG



FORSVARSCHEFEN

16. december 2011

**Indstilling af Forsvarskommandoens Irak-undersøgelse**

Forsvarsministeriet meddelte den 11. november 2011 Forsvarskommandoen, at ministeriets Irak-undersøgelse indstilles i medfør af, at der nedsættes en uafhængig undersøgelseskommission samt opfordrede Forsvarskommandoen til på tilsvarende vis at afrunde sit arbejde og forberede sig på at kunne overdrage det gennemgåede materiale og det gennemførte arbejde til kommissionen. Forsvarsministeriet har den 7. december 2011 anmodet Forsvarskommandoen om ligeledes at indstille sin undersøgelse, mens kommissoriet for undersøgelseskommissionen afventes.

Det har vist sig nødvendigt at foretage en gennemgang af et betydeligt mere omfattende kildemateriale, end det blev vurderet ved iværksættelse af Forsvarskommandoens undersøgelse. Det betyder, at undersøgelsen endnu ikke er fuidt tilendebragt.

Task Forcen, som blev nedsat til at forestå undersøgelsen, har orienteret mig om, at der på nuværende tidspunkt er tilvejebragt et tilstrækkeligt solidt grundlag til at kunne orientere om foreløbige, men repræsentative konstateringer vedrørende undersøgelsens centrale spørgsmål. Jeg finder det derfor nødvendigt at orientere forsvarsministeren om de konstaterede centrale forhold og de tiltag, jeg har iværksat med henblik på at fastslå, hvorvidt der er behov for ændring af gældende praksis på pågældende områder.

**Markant forøgelse af antallet af dansktilbageholdte irakere**

Forsvaret orienterede den 24. marts 2011 Forsvarsministeriet om, at de foreløbige undersøgelsesresultater indikerede, at undersøgelsen ville udvise et større antal tilbageholdte, end hidtil oplyst til Folketinget.

Undersøgelsen har fastslået, at antallet af danske tilbageholdte overstiger 500 personer. I forbindelse med tidligere opgørelser, vedrørende antallet af dansk tilbageholdte personer, har der været anført en række faktorer, som har medført usikkerhed vedrørende de opgjorte tal.

Det er konstateret, at der efter magtoverdragelsestidspunktet i august 2004 i et mindre antal tilfælde – i strid med de nationale direktiver og den fastsatte rollefordeling mellem



irakiske enheder og internationale styrker – blev overdraget danske tilbageholdte personer til irakiske myndigheder.

Den foretagne gennemgang har fastslået, at der – især i Irak-periodens første del – ikke i tilstrækkelig grad blev registreret og systematiseret de nødvendige informationer om tilbageholdte, til at der kunne sikres et dækkende og blivende billede af indsatsen på området.

Det skal understreges, at der i det gennemgåede materiale ikke er fundet oplysninger om, at danske tilbageholdte, i tilknytning til tilbageholdelse eller overdragelse til anden nation, har været udsat for overgreb, er dræbt eller på anden måde har lidt overlast.

Det kan ikke fastslås, hvorvidt der i alle tilfælde er blevet gennemført de tilsyn, der var fastsat krav om i gældende nationale direktiver.

#### **Revurdering af definitioner og fremgangsmåder**

Fraværet af en national definition for begrebet "tilbageholdt", og de varierende procedurer for registrering og rapportering, ses, sammen med en erkendt uensartet arkivering af informationer, at være medvirkende årsager til de konstaterede forskellige opgørelser.

Der er iværksat en gennemgang af de i dag gældende definitioner for tilbageholdte og de procedurer, der gælder for håndtering og registrering af informationer herom. Dette centrale arbejde skal ensrette fremgangsmåder for informationshåndtering vedrørende tilbageholdte ved de udsendte enheder og for informationsudvekslingen mellem disse og de hjemlige militære myndigheder.

Der er endvidere iværksat en gennemgang af procedurene for arkivering af sådanne informationer i forsvaret for at sikre, at relevante informationer hjemsendes til og arkiveres sikkert ved hjemlige militære myndigheder.

#### **Samvirke med andre nationers enheder**

Den danske bataljons samarbejde med andre nationers enheder afspejlede det multinationale operationsmiljø og rådigheden over forskelligartede kapaciteter, som enhederne naturligt støttede hinanden med. Imidlertid kan de underlagte og støttende enheders rådige kompetencer ikke i alle tilfælde alene forklare den praktiserede rollefordeling mellem fx danske og britiske enheder ved udførelse af tilbageholdelser. Således er engelsk personel i større omfang blevet anvendt til at forestå selve tilbageholdelsen, hvorved det har været opfattelsen, at danske enheder dermed ikke blev ansvarlige for tilbageholdelsen og de deraf følgende forpligtelser.

Et tæt samarbejde med enheder fra andre nationer forudsætter, at der til enhver tid – og på alle niveauer i enheden – er en opdateret og entydig viden om rollefordeling, kompetencer og ansvar for håndtering af eksempelvis tilbageholdte. Der er iværksat en afklaring af, hvorvidt der er behov for at udgive mere dækkende, klarere og om muligt mere kortfattede direktiver. Som led heri foretages en gennemgang af den uddannelse, der i dag gennemføres forud for udsendelse i internationale operationer i forhold til tilbageholdelsessituationer og den tilhørende håndtering heraf.

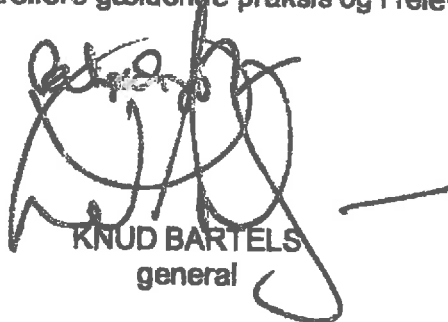
### **Konsekvent reaktion i tilfælde af overgreb**

Undersøgelsen har fastslået, at den danske bataljon i Irak har reageret konsekvent og hensigtsmæssigt i de situationer, hvor der direkte er bevidnet overgreb eller hårdhændet behandling fra irakiske enheders side. Det kan også konstateres, at der blev truffet en række foranstaltninger til imødegåelse af sikkerhedstrusler mod bataljonens lokalansatte medarbejdere.

Undersøgelsens gennemgang har ikke afdækket forhold vedrørende overgreb eller manglende hensynsfuld behandling, der involverede dansk personel, som ikke allerede var kendt og undersøgt. Jeg skal bemærke, at de pågældende allerede kendte sager har været af en karakter, der betyder, at de på ingen måde kan sidestilles med de alvorlige forhold vedrørende overgreb m.v. under Irak-missionen, som i 2004 påkaldte sig betydelig opmærksomhed.

### **Afslutning**

Afslutningsvis skal jeg bemærke, at der i sagens natur er sket en løbende erfaringsindhentning fra Irak-missionen og den efterfølgende internationale indsats. På den baggrund er der sket en fortsat udvikling af procedurer mv. Det skal derfor understreges, at det iværksatte arbejde skal kontrollere gældende praksis og i relevant omfang vil resultere i opdatering af procedurer mv.



KNUD BARTELS  
general

Kopi til:  
Departementschef Lars Findsen

Forsvarsminister Nick Hækkerup