

An Interview with Manfred Nowak, UN Special Rapporteur on Torture

After completing his visit to China, Manfred Nowak, UN Special Rapporteur on Torture (SR), gave a wide-ranging interview to Dui Hua's John Kamm and Joshua Rosenzweig (DH).

DH: In Beijing you stated that the Chinese had "in principle" respected the terms of your mandate, but you brought up a number of restrictions and obstructions.

SR: Yes. That's not unusual: governments accept the terms of reference and then still try to interfere. It didn't get to the point where they violated the terms of reference. But I have the right to freedom of inquiry, and every interference with my counterparts—be they victims, lawyers, human rights defenders, whoever—is in principle an infringement of the terms of reference. It was not such a serious violation that I [would have] quit the whole exercise, but on several occasions I really had to protest to my main counterpart, the Ministry of Foreign Affairs [MFA]. The problem was that the MFA was very helpful and concerned that my mission go ahead without any major interference, but on the other hand the Ministry of State Security did obstruct.

DH: Shortly after you left Beijing, an MFA spokesman insisted that there were no security personnel impeding family members of detainees from meeting with you [and] there were no staff stalking or monitoring your activities.

SR: I have proof, which I have provided to the MFA. For instance in my conversations with [Beijing human rights lawyer] Gao [Zhisheng], I counted a total of nine secret service agents in the very hotel where we were meeting. . . . The government knew, of course, that I met him because I protested the circumstances of our meeting. When we were meeting on the first evening in a public restaurant, it was clearly filled with people who put us under surveillance. We had to leave the restaurant and go to the hotel in order to continue without being directly observed. There were a couple of other instances. In particular, there were family members of detainees whom we wanted to meet where we have evidence that people were actually prevented by force—taken out of Beijing in order to prevent them from meeting me. I shall make these individual cases public in my report.

DH: How far in advance did the people who run the detention centers and prisons know that you were coming? Some have speculated that they had one or two hours notice before you would show up at a detention center, is that correct?

SR: Yes. Again, I would not call this a violation of my terms

of reference because they actually don't say anything about unannounced visits, they just say "visits to all places of detention." So, legally speaking, [the Chinese] could still say you have to announce. There was pressure on me to announce, and I refused up until the beginning of the mission.

What I usually do is ask the respective ministries for a letter authorizing me to visit any place of detention that I can just show. Usually, I never announce; I just go to a particular place and say who I am and if they make problems then I show this letter, which usually opens the doors. Now, I could not receive such a letter [in China]. Again, the letter is not mentioned in the terms of reference, so the fact that I did not receive one is not a violation; it's just that it's my normal method of work.

I was told that the only way that the MFA could ensure unrestricted access to places of detention was if they accompanied me. I have not done this in any other country. If I were to meet the president or the prime minister or any other high-level governmental people, for example, I would typically be accompanied by the protocol officer or someone else from the foreign ministry, but of course I would not usually have anybody with me when I visit prisons. This was different in China.

In practice, of course, that means that I have to tell them at a certain point where we are going. They would have liked it if I announced it the day before so that they could prepare, but I said no. In the end it worked out quite well. We said, "Okay, we'll meet at 9 AM in the hotel lobby and then I'll tell you where we're going." If the facility was an hour away, then they had an hour's advance notice; if it was just half an hour driving, then they had a half-hour notice. When the MFA escort stepped into the car, [I'd tell them]. They would get on the mobile phone and announce that we were coming.

In principle, I would still call these unannounced visits. In half an hour you can't totally change the situation. There was not one prison where I did not have access, and within the prisons I could meet whomever I wanted to meet, if the people were there. Usually those I had on my list and was looking for, I could meet.

DH: You were not allowed to bring any cameras or any sound recording devices with you into the prisons. In your country visits prior to going to China, were such restrictions placed on you?

SR: Again, the terms of reference are very general. There's nothing written that says I have the right to bring a camera. On the other hand, it says that I have the full right to carry out my investigation. Now, in my interpretation, that means that I have to bring a camera. But that's [something] I understand my predecessors never did.

I also like to take doctors—again, my predecessors have to my knowledge not had doctors accompanying them. In my opinion, if I really want to take evidence on persons who have been subjected at least to physical torture, but partly also [to] mental torture, it's the doctor who is in a much better position [to make an assessment.] It's my opinion that I need to take photos and [in the past] I've just insisted and it has worked. In China, it didn't work, but again I would not call this a violation of the terms of reference. I call it an obstruction because it made it more difficult for me to obtain evidence. If someone has a scar on his or her body and you take a photo then this is of course stronger evidence than if you just write it down.

It's not just signs of torture on the body; it's also the whole atmosphere—if you take a photo of an overcrowded cell, that describes it ten times better than a whole page of description. So, I am just used—and I will continue in the future—to take cameras and other equipment in order to take evidence, but it is kind of on the margin of interpreting the terms, so I want to be very careful: this is not what I would call a violation of my terms of reference.

DH: In the area of transparency and statistics, was any progress made, for instance, on getting the number of executions in China?

SR: No, they haven't told me. I haven't really insisted, because, strictly speaking, the death penalty as such does not fall under my mandate. Of course, if there are certain methods of execution or if there are kinds of punishment in addition—like the way people are treated on death row—then that definitely falls under my mandate. There is now a decision that the Supreme People's Court has the unrestricted right to review every death sentence and that is a major improvement. In my conversations, and I will also make this recommendation, I have said that we should take this improvement as a starting point for better monitoring of death sentences and hopefully for the government to make statistics public. In principle, those proceedings before the Supreme People's Court are public, so if people take the time to monitor this we should know how many cases the court approves.

DH: Prior to your visit, you collected what few statistics on torture the Chinese government has released. Did you get any new statistics

that might support your principal conclusion that torture remains widespread although apparently in decline in certain areas? Did they give statistics on torture that they have not already released publicly?

SR: I asked wherever I went for regional or local statistics about complaints, cases brought before the courts, and cases in which people have actually been prosecuted. The information I received, however, is in my opinion more proof that these kinds of complaints mechanisms are not taken very seriously or are not working very well rather than evidence that there's quite a high amount of cases where the government is admitting torture.

The information from the Supreme People's Procuratorate that I cited in my press release is not very strong. In a country the size of China, the cases that they admit would not prove the allegation of widespread torture. If you compare that with most other countries, it would not be high—probably in my country [Austria], compared to the population, the cases of ill-treatment that are proven are probably higher there than (what the Chinese government) claims take place in China.

DH: You detected a "palpable fear" that you hadn't seen elsewhere.

SR: I have been on four country visits during my first year in office, but in these four cases the only one where I concluded that torture is systematic is Nepal. Why did I conclude that? Partly because—and this might sound like a contradiction—although torture is systematic, prisoners, detainees, and, in particular, convicted prisoners—are fairly easy in telling you torture stories. The fear of repercussion is not that strong. In China, it was difficult—in pre-trial detention facilities, in reeducation-through-labor camps, and in prisons—to find people who would talk to me. Going into a cell and trying to find one person who would be willing to talk to me was often difficult or even impossible. But this is not necessarily only fear. This is also a certain culture of being disciplined, a culture of obedience. At one point I said it's not only the communist past but it's also the Confucianist past. It's this very strict disciplinary regime that I found in every place of detention in which people behave in a manner that is different from all the other places that I have seen.

DH: We understand from media accounts that you met with at least two individuals, He Depu and Yang Jianli.

SR: Yes.

DH: He Depu described torture suffered not in Beijing Number Two Prison but in the detention facility, is that correct?

SR: Yes.

DH: *Generally speaking, in China are instances of torture for which we have credible accounts taking place primarily in detention centers as opposed to prisons?*

SR: Yes, it's true. From the evidence that I've received, I would say that for torture in the classical sense, that is to extract confessions, there are definitely more instances in which people said it occurred in pre-trial detention facilities or in police lock-ups. But I am also very much concerned about—whether one qualifies it as torture or inhumane treatment, that's a legal question—punishments or what I would call brainwashing or breaking the will of a person for the mere fact that people didn't confess. And this is not just a question of pre-trial detention, it is also a question of post-trial or post-conviction sentencing [in which] people are put under different regimes simply because they didn't confess—and I'm talking primarily about political prisoners, prisoners of ethnic communities, etc.

There is a very strong pressure, and that is actually one of my main concerns—what I call breaking the will of a person. Even when prior to and during trial people remain strong in saying, “No, I didn't do anything wrong, I stand behind what I did, I'm not a counterrevolutionary” or “I stand behind the Dalai Lama,” after conviction at a certain point they give up and say, “I just want to get out of here.”

DH: *Our foundation is not just focused on China; we also work on US questions. Where do things stand with your visit to Guantánamo?*

SR: The visit was not agreed upon. We responded to the US invitation by announcing that we would visit on December 6, but [only] on the condition that the US complies with our terms of reference. The only point that was controversial was [with respect to] interaction with the detainees. We needed their assurances in order to proceed with preparations and set a November 18 deadline. Since we didn't receive those assurances we canceled the visit.

I'm not expecting to visit Guantánamo before we present our report to the [Human Rights] Commission. The report as such was presented to the [US] government at the beginning of January, and we have received their reply and are in the process of finalizing our report. None of this means that I'm closing any doors; I would still be happy to have access to Guantánamo but only [in full compliance with our terms]. This is non-negotiable.

My last public or official encounter with a US representative was, I believe, on December 22 when I spoke before the Permanent Council of the Organization for Security and Cooperation in Europe in Vienna, on which occasion the Russian

representative reiterated his invitation to the Russian Federation, including Chechnya, and the US representative said that she hoped that I would reconsider and still accept the invitation on the old condition of non-interaction with detainees. I said clearly that I would not. So I hope the US government changes their position.

That was the last official interaction that I have had, so my expectation is that there will be no visit until we present our report to the commission. Then it is in principle up to the commission how to act upon our recommendations, whether there will be a resolution or not, but irrespective of that I still hope that the US government will cooperate, not only on Guantánamo but also on other places of detention for which I receive allegations of ill-treatment, and that there will be more transparency. Actually, I'm fairly confident that there will be more openness in the future.

DH: *A federal judge has instructed the US government to release the names of detainees in Guantánamo.*

SR: That's just one of the positive signs. There are a number of positive signs. The McCain Amendment as such is a positive sign, irrespective of the presidential “signing statement” and of the Graham Amendment. Some of the statements that [Secretary of State] Condoleezza Rice made during her Europe trip gave me some hope and confidence that there is a certain opening-up. Also on the judicial front, as you just said, there are certain positive tendencies.

DH: *Finishing up with China, aside from the reporting taking place in March, do you have plans for a follow-up visit?*

SR: It's premature to think about that now. The normal procedure is first a written follow-up. I'm hoping that some of my recommendations will be implemented. And of course it depends on the Commission and whether it will take up a resolution, either a general one or a country-specific one.

We are now in the process of reforming the UN human rights machinery. The Human Rights Council will hopefully work in a different manner than the Commission, [which would mean] not just having country resolutions but having what is called peer-review or interactive dialogue. Expert bodies—be they treaty-monitoring bodies or special procedures or fact-finding bodies—should come up with their reports and their recommendations, but then it's up to the political bodies—and that will be the Human Rights Council in the future—who should then do the follow-up. ■