

E-mail message to the Office of the High Commissioner for Human Rights, concerning a request by a Member State for United Nations records

CONVENTION ON THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS, 1946—INVIOABILITY OF UNITED NATIONS DOCUMENTS AND ARCHIVES—THE UNITED NATIONS HAS A GENERAL OBLIGATION TO COOPERATE IN THE ADMINISTRATION OF JUSTICE AND MAY RELEASE INTERNAL DOCUMENTS TO MEMBER STATES IN THIS REGARD—DOCUMENTS RELEASED MUST NOT CONTAIN INFORMATION THE DISCLOSURE OF WHICH WOULD PLACE ANYONE IN DANGER, VIOLATE A DUTY OF CONFIDENTIALITY WHICH THE ORGANIZATION OWES TO A THIRD PARTY, COMPROMISE THE CONFIDENTIALITY OF THE ORGANIZATION'S INTERNAL DECISION-MAKING PROCESSES, OR IMPEDE THE EFFECTIVE FUNCTIONING OF MISSIONS OR OPERATIONS OF THE ORGANIZATION—DOCUMENTS RELEASED ON STRICTLY CONFIDENTIAL BASIS MUST NOT BE MADE PUBLIC WITHOUT FURTHER EXPRESS AND WRITTEN AUTHORIZATION BY THE ORGANIZATION—UNITED NATIONS DOCUMENTS ARE RELEASED ON A VOLUNTARY BASIS AND WITHOUT PREJUDICE TO THE PRIVILEGES AND IMMUNITIES OF THE ORGANIZATION AND ITS OFFICIALS

This is with reference to your email below to [Name 1].

We note that the [Member State A] authorities have requested the Office of the High Commissioner for Human Rights (OHCHR) to disclose records “which supply the details of potential further victims and witnesses to the torture and mistreatment of detainees by the [...] Battalion of the [Member State B] Army while under the command of the defendant [Name 2] from [date] to [date]. These records can be in the form of written reports and any related documentation or material from which the reports are constructed.” Furthermore, the “request for disclosure of the above material is solely to assist in identifying and tracing further potential victims and witnesses to the torture and mistreatment of detainees by [Member State B] soldiers of the [...] Battalion under the command of [Name 2]. Anything which is not relevant to this enquiry is not required.”

We note that OHCHR wishes to support the present case and has identified the following seven documents as falling within the ambit of the request:
[...]

We wish to provide the following comments.

1. As you know, documents and archives of the United Nations are inviolable in accordance with article II, section 3 of the Convention on the Privileges and Immunities of the United Nations.* Nevertheless, the United Nations may release documents at the request of national authorities for the administration of justice, and there is a general obligation for the United Nations to cooperate in the administration of justice in accordance with article V, section 21 of the Convention.

In the present circumstances, it would be for OHCHR to determine whether the documents can be released in the current form to the [Member State A] authorities. It may be necessary to redact the documents. In making an assessment on the release/redaction of the communications, OHCHR should be guided by the following criteria for maintaining confidentiality and review the documents in order to verify that they fall within the scope of the request and that they do not either:

* United Nations, *Treaty Series*, vol. 1, p. 15 and vol. 90, p. 327 (corrigendum to vol. 1).

- (i) contain any information, the disclosure of which would place anyone in danger;
- (ii) violate a duty of confidentiality which the United Nations owes to a third party;
- (iii) compromise the confidentiality of the Organization's internal decision-making processes, including the political organs of the United Nations; or
- (iv) impede the effective functioning of current or future missions or operations of the United Nations.

2. We suggest that OHCHR respond formally to the [Member State A] authorities through the [Member State A] Mission to the United Nations in Geneva. OHCHR has released documents through the [Member State A] Mission in Geneva in the past (including in the latter part of 2013).

3. In the response, we would suggest that OHCHR refer to the fact that the United Nations is providing copies of the documents to the [Member State A] authorities solely for the purposes of the investigation into [Name 2]. We suggest including the following paragraphs outlining the conditions of the release of the documents:

“I would note that the United Nations is providing copies on the documents listed above on a strictly confidential basis for the sole purpose of assisting the [Member State A authorities] in identifying and tracing further potential victims and witnesses to the torture and mistreatment of detainees by [Member State B] Army soldiers of the [...] Battalion under the command of [Name 2]. I would note that these documents are not to be made public in any form, either in whole or in part, without further express and written authorization by the United Nations.

For the avoidance of doubt, I would note that a separate request will be required in the event that, as a result of reviewing the documents provided, you decide that you wish to interview, and/or obtain witness statements and/or testimony, from any United Nations officials in relation to these documents.

I would also note that the provision of these documents by the United Nations is on a strictly voluntary basis and is without prejudice to the privileges and immunities of the United Nations and its officials.”

4. [...]

5. There is a possibility, given that the trial will start on [date], that the [Member State A] authorities will revert requesting that the documents be released for it to be put before the court. It may be useful for OHCHR to keep this in mind and identify any documents which may be difficult to release publicly.

We are available to review the letter by which the documents are transmitted to the [Member State A] and to provide any clarifications or further information on how we usually cooperate with national authorities.

8 January 2014