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# TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

## Questionnaire on the Declaration on the Protection of all Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

## Report of the Secretary-General

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# I. INTRODUCTION

1. In paragraph 1 of its resolution 32/63 of 8 December 1977, the General Assembly requested the Secretary-General to draw up and circulate among Member States a questionnaire soliciting information concerning steps they have taken, including legislative and administrative measures, to put into practice the principles of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment while giving special attention to certain points enumerated in that paragraph. In paragraph 2, the Secretary-General was requested to submit the information provided in response to the questionnaire to the General Assembly at its thirty-third session and furthermore to submit such information to the Commission on Human Rights and to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-second session.

2. In accordance with paragraph 1 of that resolution, the Secretary-General prepared a questionnaire, a copy of which is annexed to this report, and it was sent to Member States with the request that they should provide him with any relevant information they might wish to submit in response to the questionnaire.

3. In accordance with paragraph 2 of the resolution, this report contains the information received as of 1 October 1978 from the Governments of the following States: Australia, Bahamas, Chile, Denmark, El Salvador, Ethiopia, German Democratic Republic, Guatemala, Jordan, Kenya, Kuwait, Luxembourg, Netherlands, Norway, Pakistan, Qatar, Senegal, Sweden, United Kingdom of Great Britain and Northern Ireland, Upper Volta and Yugoslavia. Any further replies received will be contained in an addendum.

## II. REPLIES RECEIVED FROM GOVERNMENTS

### AUSTRALIA

[Original: English]
[8 August 1978]

Question 1

1. In Australia, civil and criminal proceedings may be brought in the courts in respect of acts that involve torture and other cruel, inhuman or degrading treatment or punishment.

2. Civil proceedings at common law may be brought in the courts for damages for assault and battery. Proceedings may be brought for assault where there has been an intentional creation in another person of apprehension of imminent harmful or offensive contact. If the threat is carried into execution by the actual application of unlawful force, proceedings may be brought for battery as well as for assault. Proceedings for battery apply not only in respect of bodily harm but also in respect of any interference with the person which is offensive to a reasonable sense of honour and dignity. Relief will also be given in respect of an infliction of severe nervous shock where there is an intention to frighten or terrify the victim and where the conduct is of a kind reasonably capable of terrifying a normal person. At common law, civil proceedings may also be brought for damages for false imprisonment. Proceedings for false imprisonment may be brought where there is an intentional and unlawful subjection of another against his will to a total restraint of movement by causing his confinement or preventing him from leaving the place where he is.

3. In relation to criminal proceedings, assault and battery are crimes at common law and a range of statutory offences are also relevant. The offence of common assault applies where a person unlawfully strikes or otherwise applies force of any kind, or attempts or threatens to apply force to another person, either directly or indirectly, without his consent. In some statutes, the term "applies force" includes the applying of heat, electricity or any other substance or thing, if applied in such a degree as to cause injury or personal discomfort. The maximum penalty for the offence of common assault in the various jurisdictions in Australia is generally six months' imprisonment. There are also statutory offences applying to more serious assaults, such as assaults occasioning bodily harm, for which the maximum penalty is usually three to five years' imprisonment, and acts intended to cause grievous bodily harm, bringing a maximum penalty of life imprisonment.

4. The following additional safeguards are available in Australia to protect a person from subjection to torture or other cruel, inhuman or degrading treatment or punishment:

(a) A person who considers that he is unlawfully detained may seek a writ of habeas corpus ordering his release from custody;

(b) Magistrates or justices of the peace are required to visit prisons regularly to hear and investigate complaints of prisoners and report thereon;

(c) In most jurisdictions in Australia, complaints by persons detained or imprisoned may be examined by an ombudsman and made the subject of a report;

(d) Wide facilities for legal aid have been developed to provide assistance to persons who require legal advice;

(e) In legal proceedings, confessional statements not given voluntarily are not admissible in evidence. In addition, the judge has a discretion to exclude from evidence confessional statements where he considers that admission of the evidence would be unfair to the accused;

(f) Coroners have jurisdiction to hold an inquest concerning the manner of the death of any person who dies suddenly or violently, including those in prison or detained in a mental hospital;

(g) Disciplinary action including dismissal may be taken against members of the police forces and other public officers who fail to comply with statutory provisions, rules or instructions laying down standards to be observed in relation to the treatment of members of the public and interrogation or treatment of detained persons;

(h) Action may be taken against persons employed in corrective institutions or mental hospitals who fail to comply with statutory provisions, rules or instructions laying down standards to be observed in relation to the treatment of persons detained or imprisoned;

(i) A person claiming to have been subject to such treatment may write to his member of Parliament or the appropriate Minister and seek a parliamentary or ministerial investigation or other inquiry into the allegation;

(j) Federal and State Governments may appoint Royal Commissions to inquire into complaints. An advantage of this procedure is that the Commission is not strictly bound by formal rules of evidence and thus may take cognizance of matters which a court could not.

5. The legislative, administrative and other measures referred to above continue to apply so far as possible in exceptional circumstances, such as a state of war, a threat of war, internal political instability and other public emergencies.

6. So far as war is concerned, as with the police and other public officers, criminal or disciplinary action may be taken against members of the defence force who fail to comply with statutory provisions, rules or instructions laying down standards to be observed in relation to the interrogation or treatment of detained persons. In addition, Australia is a party to the Geneva Conventions and requires the principles embodied in them to be observed.

7. In the case of detention under emergency powers, detainees have recourse to advisory committees consisting of ministerial appointees under the chairmanship of a federal or state judge.

8. To supplement the remedies set out above, the Australian Government has proposed legislation to implement the provisions of the International Covenant on Civil and Political Rights, including provisions of article 7 which provide that no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment. The proposed legislation provides for the establishment of a commissioner who would examine individual complaints on behalf of aggrieved persons and take appropriate action on their behalf. The legislation will have application in the Australian Capital Territory and to all matters of Federal law and administration. In addition, consultations are being held with the Australian states with the view to achieving a co-operative and uniform approach in Australia for the protection of human rights, including the rights the subject of this questionnaire.

Question 2

1. The United Nations Standard Minimum Rules for the Treatment of Prisoners have been widely disseminated in Australia and have been discussed at seminars and meetings of law enforcement personnel and administrators. In general, there is substantial compliance with the rules in Australia and the standards laid down in the rules are exceeded in a number of areas. The United Nations Draft Code of Conduct for Law Enforcement Officials has also been disseminated to law enforcement administrators in Australia and has been the subject of discussion at conferences and meetings of persons interested in this area.

2. In addition, training programmes for law enforcement personnel, such as those of the police academies, include the study of the human rights of persons deprived of their liberty.

Question 3

The proscription of such treatment is achieved through the operation of statute and common law, administrative action and procedures (see answer to question 1), standing orders, official instructions to officers, training courses, meetings, seminars and other forms of consultation and co-operation.

Question 4

The safeguards outlined in the answer to question 1 obviate the need for systematic review of the kind mentioned.

Question 5

Yes, in all States and Territories.

Question 6

See answer to question 1. Procedures are available for impartial hearing of complaints, either by the independent judiciary or by the other tribunals or bodies.

Question 7

Yes. Police and other law enforcement bodies have a duty to act to enforce the law (see answer to question 1). Police are independent of the executive in enforcement of the law. If a prima facie case against a person is established, the matter may be brought before the courts and in a serious case would be so brought before the courts.

Question 8

Yes. The normal criminal procedures would apply. Penalties which could be incurred range from substantial periods of imprisonment to fines, suspended sentences and bonds according to the circumstances and the seriousness of the act. An act constituting torture would normally attract a substantial penalty. Penalties are imposed by the courts. The prosecution has no say in the determination of appropriate penalties. Sentences may be suspended, but only at the discretion of the independent court. Pardon, commutation of sentence may apply in appropriate cases, subject to well established principles applicable to criminal offenders generally. Normally the court fixes a non-parole period that must be served by an offender before parole may be considered.

Question 9

See answer to question 1, particularly paragraph 4, subparagraphs (g) and (h). Members of occupational associations and other professions when committing such a grave breach of professional ethics may be excluded from practising their profession. This is normally a matter for the governing body of the association concerned.

Question 10

The answers to questions 8 and 9 apply to acts constituting other forms of cruel, inhuman or degrading treatment or punishment to the extent that these acts constitute criminal offences or breaches of disciplinary codes or, in appropriate cases, breaches of codes of professional ethics.

Question 11

No allegations of torture have become known. No serious allegations of the other forms of treatment or punishment are known. Allegations of a non-serious kind that may have arisen would be investigated by appropriate procedures of the kind mentioned in the answer to question 1.

Question 12

Redress and criminal injuries compensation to victims are assured by the laws of all states and the Northern Territory. Forms of redress are available in the Australian Capital Territory, and in limited cases, criminal injuries compensation is available in that Territory. Legislation is presently being drafted to provide criminal injuries compensation in the Australian Capital

Territory. There are also laws and procedures in Australia for civil redress, including damages. These matters are dealt with by the courts or individual tribunals. The states may be liable to pay compensation in some areas. No information is at present available as to whether any such redress and compensation referred to in the question has been afforded.

Question 13

See question 1, paragraph 4, subparagraph (e).

Question 14

Consideration is being given to the question whether Australia should make a unilateral declaration of intention to comply with the Declaration on Torture. Following a decision on this question, consideration will be given to the measures necessary to disseminate the Declaration throughout Australia.

Question 15

Australia and its states had, prior to the Declaration's adoption, laws, procedures and practices having the effect of preventing and punishing acts amounting to torture and affording other effective sanctions, of a criminal or other nature, in relation to other cruel, inhuman or degrading treatment or punishment. No difficulties have been encountered in this matter to date and none is expected.

BAHAMAS

/Original: English/
/28 June 1978/

A. Answers to queries raised in so far as they concern the Prison Department

Question 2

Every member of the Bahamas Prison Service has been advised of the United Nations Standard Minimum Rules for the Treatment of Offenders, and the Rules are strictly adhered to. These Rules are included in the Training Manual for newly recruited officers and are lectured upon in great detail during refresher courses for trained officers.

Question 3

The Bahamas Prison Rules made under the Prison Act and which are issued to each officer of the prison prohibit such Treatments.

Question 4

The Bahamas Prison Service has appointed for these and other purposes a Visiting Committee which acts as a "watch-dog" over the prisons.

Question 6

The Bahamas Prisons Visiting Committee.

Question 10

In relation to Sections 8 and 9, if an investigation reveals that such an act may have been committed by a member of the prison staff, the degree of the act would determine what type of proceedings will be instituted against the offender, i.e. (i) criminal proceedings before a Court of Law, (ii) public service disciplinary trial before a Tribunal, or (iii) a disciplinary trial by the head of department. If he is found guilty by reason of (ii) or (iii) above, punishment could range from a reprimand to dismissal.

Question 11

No complaints have been made, and, as a result, no investigations have been carried out or proceedings instituted since the adoption of the Declaration.

B. Answers to the queries raised in so far as they concern the Royal Bahamas Police Force

Question 1

The fundamental rights and freedoms of the individual are written in the Constitution of the Commonwealth of the Bahamas. The Judges Rules 1964 set out in

precise detail the procedure to be followed when dealing with a suspected and/or detained person. Any admission obtained by force, fear, fraud, is rendered inadmissible. Any police officer proven to have assaulted a person in custody is amenable to prosecution under the provisions of the Penal Code.

Question 2

All police officers are trained in the fundamental rights and freedom of the individual. The Judges Rules are taught from the inception of a police officer's career. Police officers are taught that they are not above the law and that they are liable under the Penal Code for prosecution should they use excessive or unnecessary force in the execution of their duty.

Question 3

As in reply to question 2.

Question 4

To be answered by superintendent of prisons.

Question 5

As in reply to question 2.

Question 6

Any allegation of ill treatment made against a police officer is investigated by a senior officer, and, if the evidence adduced supports the allegation, the police officer concerned, depending on the gravity of the case, is liable to departmental disciplinary proceedings, or prosecution in a Court of Law.

Question 7

Police brutality in any form is not condoned and information of such conduct emanating from any source would be investigated and dealt with in a manner appropriate to the circumstances (e.g. disciplinary proceedings or criminal prosecution).

Question 8

Same as replies to questions 6 and 7.

Question 9

Any police officer found guilty of brutality towards a person in custody is liable to a term of imprisonment and automatic dismissal from the service. Any case dealt with departmentally could result in dismissal, reduction in rank, loss of seniority, required to resign, fined one month's pay, or reprimand.

Question 13

The administrative procedure known as the Judges Rules made by Her Majesty's Judges of the Queen's Bench Division as a guide to police officers conducting an investigation to avoid any method which could be regarded as in any way unfair or oppressive.

CHILE

/Original: Spanish/
/9 August 1978/

A. General

1. The prohibition of any kind of torture and other cruel, inhuman or degrading treatment or punishment is provided for in our legal system under the constitution, statutes and rules and regulations.

2. The philosophy underlying our system of law is based on respect for and full development of the human person, whose physical, moral and spiritual integrity is thereby guaranteed.

3. As will be shown below, our penal legislation, whether civilian or military, has always contained provisions for the punishment of conduct deemed to be prejudicial to the integrity of the human person.

B. Analysis of the questionnaire

Question 1

1. Legislative Decree No. 1009 of 1975, which lays down systematic rules for the juridical protection of the legal rights of persons detained for crimes against national security, stipulates in article 1 that:

> "During the existence of a state of siege, the specialized organs responsible for ensuring the normal discharge of national activities and the maintenance of constituted institutionality shall, when proceeding - in exercise of the powers vested in them - to detain pending investigation persons reasonably presumed to be guilty of endangering State security, be obliged to give notice of such detention, within a period of 48 hours, to the immediate members of the family of the person detained."

> "Detention by the organs mentioned in the foregoing paragraph may not exceed five days and within that time-limit arrested person must either be released or placed at the disposal of the competent court or to the Minister of the Interior in the case of use of the special powers pertaining to the state of siege, accompanied, where appropriate, by a written report of the background information gathered."

2. Supreme judicial Decree No. 187 of 1976, which lays down rules guaranteeing the rights of detainees under the state of siege, stipulates that:

> "Any person detained by the organs and the situations referred to in article 1 of Legislative Decree No. 1009 of 1975, shall be examined by a physician and surgeon prior to admission to the offices, establishments or places of detention under their authority.

"A similar examination shall be carried out at the time the detainee leaves such offices, establishments or places of detention.

"The Department of Forensic Medicine and the National Health Service shall jointly assign a doctor to the offices, establishments or places of detention, who shall be responsible for carrying out the examinations referred to in this article.

"In each case the doctor shall make a written report on the condition of the person examined, for immediate dispatch to the Ministry of Justice".

3. In addition, article 7 of the above-mentioned law provides that "Both the President of the Supreme Court or the Ministry of Justice shall be empowered to carry out inspections without prior notice of any place where detainees are held in connexion with the state of siege, to ascertain whether the statutory provisions in force concerning the rights of detainees are being strictly observed and to report any irregularities they may find to the competent authorities, in a confidential communication, without prejudice to their right to order an immediate medical examination of any detainee who, during the visit of inspection, claims to have been ill-treated or subjected to unnecessary coercion during his stay in the place inspected". Article 8 provides that "in geographical locations outside the Metropolitan Region, the Ministry of Justice, in agreement with the President of the Supreme Court, shall appoint an official to carry out all or part of the functions and procedures referred to in article 7 of this Supreme Decree".

4. Another measure designed to prevent torture and other cruel, inhuman or degrading treatment or punishment, is the provision for weekly or half-yearly visits.

5. Weekly visits are governed by article 567 of the Judicature Act which provides that: "Any judge who is a member of the bar and exercises jurisdiction in criminal matters must, on the last working day of each week, pay a visit, in the company of his clerk to the prison or establishment in which the detainees or prisoners he is trying are being held, in order to ascertain if they are suffering undue harassment, if their freedom of defence is being restricted and if their trial proceedings are being unlawfully protracted" (art. 567 of the Judicature Act).

6. On such visits the judge shall advise detainees that they may lodge any complaints they may wish to make either about the treatment they are receiving, the food they are given, or any difficulties placed in the way of their defence at their trials (art. 571, Judicature Act).

7. Article 578 of the above-mentioned Act governs half-yearly visits and provides that "two visits shall be paid per year to each penal establishment and prison in all the Department capitals for the purpose of ascertaining the state of security, order and hygiene and whether the prisoners are serving their sentences, and of hearing their complaints".

8. In Santiago the visit shall be paid by the president, a court-appointed judge and the prosecutor of the Supreme Court, the president of the Court of Appeal, presidents and prosecutors of court divisions, criminal judges who are members of the bar, and the provincial governor. The clerk of the Supreme Court and the sessional lawyers and procurators for criminal matters shall be in attendance (art. 580, Judicature Act).

9. The visitors shall inspect the various prison facilities, verify the treatment and food given to prisoners, ensure that the regulations are being complied with, and take the statements of accounts of the prisoners' savings. The president shall advise the prisoners that they may submit any complaints they wish to make.

10. Where such complaints relate to undue harassment, restrictions on freedom of defence or unjustified delays in the trial proceedings, written evidence shall be taken and submitted to the Court of Appeal so that it may take the necessary action.

11. If the visitors find any abuses or short-comings which they have the authority to remedy, they shall give the necessary orders.

12. They may, if they deem it appropriate, make representations to the President of the Republic, either on behalf of an individual prisoner, or concerning the prison (arts. 582 and 583 of the Judicature Act).

13. Article 149 (3) of the Penal Code provides for a penalty of medium-term imprisonment (reclusión menor) and suspension in the minimum to intermediate degrees in respect of any person who prevents detainees from communicating with the judge who is hearing their case or prevents convicted persons having no further recourse (rematados) from contacting the magistrates responsible for visiting their penal establishments.

14. Moreover, Act No. 9347 of 1949 abolished the penalty of flogging, repeating article 4 of the Act of 3 August 1876 which stipulated that:

> "Persons convicted of larceny or robbery shall, in addition to the penalties provided in the Penal Code for such offences, receive 25 lashes for each six months of imprisonment. On no account may more than 100 lashes be given under the same sentence", and the Act of 7 September 1883, which provided that "the penalty of flogging may be imposed only in cases of repeated larceny or robbery, or robbery with violence and intimidation of persons, and then only in the case of males between 18 and 50 years of age".

15. Another measure designed to prevent torture and other cruel, inhuman or degrading treatment or punishment is article 12 of Act No. 11743 of 1954 which states that:

> "Immediately upon arresting a person the investigation department of the police shall place the person at the disposal of the competent judge. If, because of the time of the arrest, this rule cannot be immediately complied with, any detainee who so requests, before being detained in the offices or quarters of the Directorate-General of Investigation, shall be examined by an expert in medical jurisprudence who shall be required to issue a health

certificate making special mention of any lesions, erosions, ecchymoses or other internal or external indications that the detainee has been subjected to beating, maltreatment, injuries or any other kind of violence.

"Should the detainee so request, a similar examination shall also be carried out at the time of his admission to prison and a certificate shall be issued.

"Both medical reports shall be sent to the judge in the case for inclusion in the court records".

Question 2

1. By Supreme Decree No. 775, of the Ministry of Justice dated 9 February 1954, the Gendarmerie School was set up for the purpose of providing instruction for staff of the Chilean Gendarmerie responsible for the custody and treatment of offenders. The Gendarmerie is the service responsible for persons undergoing deprivation of liberty.

2. Training is given at the school to both prison officers and administrators, as well as to prison governors (civilian officials responsible for prisons or penitentiaries), and to their subordinates.

3. It should be noted that, although the Gendarmerie Service is made up of professionals responsible for the custody of prisoners, it is not, however, an enforcement service ("servicio de represión") in the sense of the question to which we are replying.

4. Various classes at this educational institute comprise units dealing directly relating with information for Gendarmerie personnel on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. For example, the object of the "Correctional Technique and Tactics" class is to train the future officer to deal appropriately with everyday and sporadic correctional situations in a penitentiary. By correctional situations, we mean those occasions when it is necessary to correct or punish anti-social behaviour on the part of prisoners.

5. Unit No. 5 of this class studies the duties and rights of prison guards and the obligations and prohibitions to which they are subject. Obviously, among these prohibitions emphasis is placed on the rule against inflicting or allowing others to inflict ill-treatment on an individual. Unit No. 6 of the class studies the procedure for the admission and discharge of prisoners, stressing the details concerning the medical examination to which the detainee must submit on entering a prison or penitentiary. Unit No. 17 studies the cases in which a prisoner may be isolated from the rest of the prison population, and it is emphasized that this solitary confinement does not mean that the prisoner is deprived of food or of minimum comforts but that it does involve a daily visit from the prison doctor.

6. A prisoner is kept in solitary confinement in the following cases:

(a) When the judge dealing with the case orders that he be kept incommunicado under the rules of criminal procedure;

(b) When the detainee has been recaptured after escaping from prison;

(c) When he has been punished for a breach of discipline at the penal establishment.

7. Unit 22 of the class provides information on how to escort prisoners on a public thoroughfare in such a way as to ensure that the experience is not humiliating or degrading for them.

8. Unit No. 36 specifically studies the prohibition of maltreatment of prisoners by prison staff.

9. Another class relating to this subject is the class on constitutional law. Its object is to acquaint the official with the basic provisions of the Fundamental Charter, special study being given to the constitutional guarantees for the protection of all the country's inhabitants.

10. In the class on prison law, he becomes acquainted with the rules of the Gendarmerie Service itself, so that he may carry out his duties as a prison guard satisfactorily. Unit No. 9 of this class studies the minimum rules for the treatment of offenders approved by the United Nations.

11. The training course for non-commissioned officers includes methodological classes and units similar to those already mentioned in the case of the course for officers. It should be noted, in particular, that Unit No. 7 of the class on "Laws and Regulations" studies the rules of conduct applicable to Gendarmerie personnel, which specify the penalties incurred by an official who ill-treats a prisoner.

12. In the foregoing paragraphs we have described the form and scope of the information provided under training programmes for Gendarmerie personnel in Chile on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

Question 3

1. The Regulations on the basic standards for the implementation of a national prison policy, which entered into force on 19 November 1965 under Decree No. 3140, issued by the Ministry of Justice, provides, in article 2, that a main guideline for all prison activity shall be the criterion that the prisoner's relationship with the State is governed by public law, so that, except for any rights forfeited or restricted by his detention or sentence, his legal status is identical to that of citizens who are at liberty. As a result, his rights as a human person, such as the right to work, to social welfare, education and medical attention, as well as his family rights, must be fully respected.

2. It is important to note that, according to article 3 of these regulations "the rules laid down in this decree must be applied impartially and there can be no differential treatment based on sex, religion, any political or ideological belief, fortune, birth or other status".

3. Article 32 of the Regulations provides that corporal punishment, solitary confinement in a dark cell, and any cruel, inhuman or degrading punishment are completely prohibited as disciplinary measures.

4. Paragraph 2 of the article in question stipulates that solitary confinement and dietary restrictions may be applied only when the medical officer, after examining the prisoner, certifies in writing that the latter is able to endure them. The same applies in the case of any other punishment which may affect the physical or mental health of the prisoner. Paragraph 3 states that the medical officer shall visit prisoners who are undergoing such disciplinary measures and shall inform the governor if he considers it necessary to discontinue or mitigate the punishment on grounds of physical or mental health.

5. It is important to note that under our penal system the use of irons and chains has been abolished as a lawful means of punishment. These measures were expressly abolished by Act No. 17266 of 6 January 1970.

6. In this connexion, it should be pointed out that article 23 of the Regulations concerning the prison system stipulates that "means of restraint, such as manacles, chains, irons and strait jackets, shall never be used as a punishment. Nor shall chains and irons be used as a means of restraint. Other means of restraint shall be used only in the following cases:

(a) As a precautionary measure to prevent escape during transfer from one place to another, provided that they are removed when the prisoner appears before a judicial or administrative authority;

(b) For medical reasons, on doctor's orders;

(c) By order of the prison governor or chief warder, or persons acting on their behalf, where the prisoner must be prevented from injuring himself or others or causing material damage, and other means of subduing him have failed".

7. The final paragraph of this article states that the authorized types and methods of use of such means of restraint shall be determined by the regulations. They shall not be used longer than strictly necessary.

8. Prison staff must not use force in their dealings with prisoners, except in cases of self-defence, escape attempts, or physical resistance to orders based on laws or regulations. Prison officers shall limit the use of force to the extent strictly necessary and shall immediately report such use to the governor of the establishment, through the appropriate channel, as stipulated in the relevant regulations.

9. The foregoing is explicitly set out in article 34 of Supreme Decree No. 3140 of the Ministry of Justice, dated 1965.

10. Finally, it should be mentioned that, with the establishment of the Gendarmerie Service of Chile, under DFL (Executive Decree) No. 189 of 29 March 1960,

the old-fashioned "gaoler" was replaced by the modern corrections officer who performs a social service, since his activity is not confined to the custody and surveillance of prisoners, but is designed to have an educational influence on them, affording them personal guidance and direction.

11. With a view to achieving these aims, the staff at the various levels (professional, technical), and especially those responsible for the custody and treatment of offenders, attend advanced training courses and national and international seminars.

Question 4

1. Article 323 of the Code of Criminal Procedure stipulates that: "It is absolutely forbidden not only to resort to promises, coercion or threats to induce an accused person to tell the truth, but also to resort to captions or leading questions, such as those implying that the accused has actually admitted to something, when he has not in fact done so".

2. Furthermore, article 481 of the above-mentioned code states that "the accused person's confession shall be proof of his involvement in an offence when the following conditions are fulfilled:

(1) When it is made before the judge in the case, that is, not only the judge whose competence has been established beyond doubt, but also the judge who conducts the preliminary investigation, under article 47;

(2) When it is made freely and knowingly;

(3) When the deed confessed to is both possible and probable, given the circumstances and the personal conditions of the defendant: and

(4) When the corpus delicti is legally established by other means and the confession matches the circumstances and characteristics thereof".

3. According to article 483 of the code in question: "If the accused retracts statements made in his confession, the retraction shall be inadmissible unless it is established beyond doubt that he made the confession in error, or under duress or that he was unable freely to exercise his powers of ratiocination at the time".

4. With regard to statements by witnesses, article 213 of the above-mentioned Code stipulates: "No captions or leading questions shall be put to a witness, nor shall coercion, promises, deceit or artifice be used to compel or induce him to make a statement to a particular effect".

5. Article 6 of Act No. 6180 of 1938 stipulates:

> "Officials of the Investigation Service are forbidden to commit any act of violence to obtain particular statements from a detainee. The penalty for violating this provision shall be that prescribed in article 255 of the Penal Code."

6. With regard to the specific study of the provisions governing the treatment of detainees, it should be noted that both at the Technical Investigation School, where the civilian police are trained, and at the Gendarmerie School, continuing studies are made on this subject and students are instructed in these provisions as part of their vocational training.

7. Article 17 of Decree No. 2419 of the Ministry of Justice, which contains the code of conduct for the Gendarmerie Service of Chile, states that "verbal or physical abuse of prisoners shall be a breach of the prison code".

8. The Gendarmerie Service of Chile attaches vital importance to behaviour towards prisoners in numerous orders issued to its officers. For instance, Order of the Day No. 14, of 15 April 1971, issued by the Private Secretariat of the Service, states, in paragraph 2, "On the treatment of prisoners and their visitors", as follows:

> "Earlier instructions with regard to the need for due consideration in direct dealings with prisoners and due respect for their visitors, especially relations of inmates, are hereby reiterated. We consequently expect staff to show the utmost good judgment, consideration and intelligence in their dealings with inmates. Prison governors shall require their staff to conduct themselves in accordance with the foregoing."

Question 5

1. Article 1, paragraph 3, of Legislative Decree No. 1009 of 1975 stipulates that "The exertion of undue pressure on detainees shall be punishable in accordance with article 150 of the Penal Code or article 330 of the Code of Military Justice, as applicable".

2. According to article 150 of the Penal Code "The penalty of medium-term imprisonment (reclusión menor), or suspension, in any degree shall be incurred by:

> (1) Any person who orders or unduly prolongs the solitary confinement of an offender, tortures him, or treats him with unnecessary severity. If the application of torture or unnecessary severity results in injury to or the death of the victim, the person responsible shall receive the maximum penalty prescribed for such offences.
>
> (2) Any person who arbitrarily causes the arrest or detention of persons in places other than those prescribed by law."

3. Article 330 of the Code of Military Justice stipulates that:

"Military personnel who, in executing any order from above, or in the performance of their military duties use, or cause to be used, without reasonable grounds, unnecessary violence to carry out a required procedure, shall incur:

(1) A penalty of long-term imprisonment with compulsory work (presidio mayor) in the minimum to intermediate degrees, for causing the death of the victim;

(2) A penalty ranging from medium-term imprisonment with compulsory work (presidio menor) in the intermediate degree, to long-term imprisonment with compulsory work (presidio mayor) in the minimum degree, for causing serious injury to the victim;

(3) A penalty ranging from medium-term imprisonment (presidio menor) in the maximum degree for injuries of a less serious nature; and

(4) A penalty ranging from short-term imprisonment (prisión) in the maximum degree to medium-term imprisonment with compulsory work (presidio menor) in the minimum degree, where there were no injuries or only slight injuries.

Where violence is used against detainees or prisoners for the purpose of eliciting information, reports or evidence pertinent to the investigation of a criminal act, the penalty shall be increased by one degree."

4. Furthermore, article 2 of Supreme Decree No. 187 of 1976 stipulates that "if it should appear from the medical certificates that the detainee has been subjected to ill-treatment or undue pressure, the Ministry of Justice shall report the matter to the competent administrative, institutional or judicial authority".

5. Article 9 of the above-mentioned Supreme Decree provides that:

"The competent authority shall, within a period of 48 hours, order the appropriate preliminary inquiry (sumario) to be carried out, on the basis of the report by the President of the Supreme Court, the Minister of Justice or any official appointed by him, for the purposes of identifying the culprits and imposing the proper penalties.

"In the preliminary inquiry special consideration shall be given to the investigation and establishment of the facts relating to any possible infringements of articles 150, 253 and 255 of the Penal Code and articles 328 and 330 of the Code of Military Justice."

6. Article 255 of the Penal Code stipulates that:

"Any public employee who, in the performance of his duties, commits an abuse against any person, or exerts unnecessary or unlawful pressure upon him for the purpose of performing such duties, shall incur the penalties of suspension from duty in any degree and a fine ranging from 11 to 20 months' salary."

7. Article 328 of the Code of Military Justice provides that:

"Armed military personnel exercising authority or performing a duty who, without good cause fail when so requested by the competent authority, to co-operate properly in law enforcement or other public service, shall incur the penalty of suspension from duty or dismissal from the Service.

"Should such failure result in serious harm to the public interest, a serious breach of the peace or serious harm to the Armed Service or to a third party, the penalty shall be military imprisonment in the minimum to intermediate degree or discharge.

"This provision shall apply unless the act of commission or omission constitutes a special offence of a more serious nature."

8. Article 7 of act No. 11743 of 1954 stipulates, in paragraphs 1 and 2, that:

"Criminal judges shall oversee the official conduct of the investigation personnel operating within their area of jurisdiction and help them in the investigation and prevention of crime, and shall immediately report to the competent Court of Appeal any irregularity or short-coming they may find or notice and, in serious cases, may suspend them from their posts on a temporary basis pending a decision by the higher court. The Court of Appeal shall decide within three days whether or not to uphold the temporary suspension ordered by the judge. If it is upheld the duration of the suspension shall be indicated, without prejudice to any other measures that may be taken by the Court under the provisions of this Act."

9. Article 9 of the above-mentioned Act stipulates that "no official who has been sentenced by a judge under a final decision for having committed a criminal or a merely correctional offence in the performance of his duties or for taking advantage of his position, may return to or remain with the Service, even though he may have been pardoned or rehabilitated".

10. Supreme Interior Decree No. 6778 of 1961, which endorses the Code of Conduct for the Investigation Service deals, in article 6, paragraph 5, with the offence of "abuse of authority", which covers any overstepping of powers, whether directed against subordinates or the public, and any act which may be described as an abuse of office.

11. The disciplinary measures that may be applied to officials of the Service, as a result of the administrative inquiries and preliminary judicial investigations prescribed for the Investigation Service, regulations for which were approved by Supreme Interior Decree No. 6778 of 1961, are: simple caution, severe caution, up to 15 days' confinement to barracks, request for resignation, dismissal and discharge for misconduct; dismissal and expulsion (art. 18 of Decree No. 6778 of 1961).

12. The administrative liability of members of the Gendarmerie Service of Chile is established in accordance with the procedure laid down in Title IV of Executive Decree (DFL) No. 338 of 1960, and the disciplinary measures applicable are "caution; reprimand in writing; a fine of one to thirty days' wages; suspension from duty for a period ranging from 30 days to three months; transfer; request for resignation, and dismissal (art. 177).

13. Article 12 of Executive Decree (DFL) No. 189 of 1960 stipulates that officials who have been marked off for dismissal or terminated as a result of an administrative inquiry may not be reinstated.

14. Code of Conduct for the Carabinero Service No. 11 of 17 July 1967 deals, in article 22, paragraph 5, with the offence of abuse of authority, which includes "any overstepping of powers, whether directed against subordinates or the public, and any act which may be described as an abuse of office, except where it is of such a magnitude as to constitute a correctional offence (delito)".

15. The disciplinary measures applicable to members of the Carabinero Service are laid down in article 23 of the above-mentioned Code, as amended by Decree No. 315 of 1976. In the case of officers and civilian employees appointed by the Executive or under contract, these are: caution; reprimand; arrest for five, ten or twenty days; availability for reassignment, for up to three months; suspension from duty for up to two months; compulsory retirement; and dismissal from the service.

16. The disciplinary measures for personnel under contract are: caution; reprimand; arrest for up to 30 days; dismissal for breach of professional ethics, with an appropriate conduct mark, according to their service record, and dismissal for misconduct.

17. Article 31 of DFL (Executive Decree) No. 2 of 1968 stipulates that the following shall be barred from further active service: (b) any person who has been involved in flagrant violations of disciplinary or moral principles, of such gravity that their continued presence in the ranks would be harmful to the prestige of the institution.

18. Acts Nos. 4409 of 1941 on the Bar Association and 9263 of 1948, as amended by Act. No. 16585 of 1966, on the Chilean Medical Association, in articles 16 and 29 respectively, provide disciplinary measures as a penalty for any act dishonouring or abusing the exercise of the profession or incompatible with professional dignity and etiquette. Such penalties may include: a caution, censure, suspension from the exercise of the profession, a fine, and stripping of professional qualifications when warranted by serious grounds.

Question 6

1. According to the general procedural rules in force in Chile, the courts of justice, the Investigation Service and the Corps of Carabineros are empowered to receive any complaints of torture or other cruel, inhuman or degrading treatment or punishment.

2. Public prosecution proceedings may be instituted to establish criminal liability for offences involving torture or other cruel, inhuman or degrading treatment or punishment.

3. Chilean law not only provides that any judicial authority must initiate proceedings to investigate a complaint of torture or ill-treatment, which the Investigation Service and the Carabineros are obliged to refer to it, but also affords a real practical opportunity for the presumed victim to make such a complaint in any case.

Question 7

1. The procedure may be instituted ex officio on the basis of a report or complaint by the victim, in accordance with the general Chilean rules of criminal procedure.

2. While the State of Siege remains in force, proceedings may be instituted on the basis of the report of the President of the Supreme Court, the Minister of Justice, or the official appointed by him (art. 9 of Supreme Justice Decree No. 187 of 1976).

3. The proceedings take place in accordance with the Chilean law of criminal procedure.

4. Under our procedural rules, judges must proceed to try such cases ex officio, without awaiting a report or complaint, but it may be noted that in such cases public action is also admissible for the purpose of establishing the criminal liability of the culprits.

5. At the administrative level, the authorities proceed in a similar manner (ex officio) to investigate and take disciplinary action against officials responsible for torture or ill-treatment.

Question 8

1. We should emphasize that once the authorities have taken cognizance of an act which appears to constitute a correctional offence or which, as in the case under consideration suggests that the alleged torture or ill-treatment could have taken place, they are obliged to institute the necessary proceedings which means taking the appropriate criminal action against the alleged offender.

2. As stated earlier, such trials follow the procedure prescribed in book two of the Code of Criminal Procedure which contains the rules governing the conduct of an ordinary criminal trial for a criminal offence (crimèn) or merely correctional offence (delito) subject to public action.

3. The main aspects of this procedure are as follows:

(a) It is instituted on the basis of a complaint or report or ex officio by the court or at the demand of the Ministerio Público.

(b) There are two main stages: the preliminary inquiry (sumario) which is the initial, preparatory stage at which the necessary background information for the trial is examined and assembled; and the full proceedings (plenario), which is the trial proper, beginning with the formal indictment of the prisoner and ending with the dismissal of the case or the final verdict which settles the matter in dispute by acquitting or convicting the defendant.

(c) Under this procedure, if the person concerned so requests, the proceedings of a civil suit may be admissible, to claim damages, for injury, including moral injury, suffered by the victim.

(d) This procedure consists of a first instance before a professional criminal judge who is a member of the bar (court of one judge) and a second instance, if an appeal is lodged, before a court of appeal (court consisting of several judges). The only remedy against a decision of the latter court is an appeal for cessation to the Supreme Court of Justice. These remedies differ in that the appeal to the former implies a review of all the questions of fact and law raised in the proceedings, while the cessation deals solely and exclusively with the points raised in lodging the appeal, on certain specific grounds set forth in the law.

4. The penalties applicable are either penal or administrative in nature. The former range from 40 days of imprisonment (prisión) to 15 years of imprisonment with compulsory work (presidio), according to the gravity of the torture or ill-treatment, and without prejudice to any extenuating or aggravating circumstances that may be adduced.

5. Those of an administrative nature extend to the maximum disciplinary measure, namely, dismissal of the official.

6. In addition, the penal sanctions are accompanied, as an extra penalty, by absolute disqualification, in perpetuity, from holding public posts and offices, in accordance with article 28 of the Penal Code.

7. The possibility of granting the convicted person the benefit of a pardon or amnesty is governed by the general rules in force on the subject, and there is no special legislation favouring such persons or excluding them from such benefits. The sentence may therefore be remitted conditionally provided that it does not exceed three years. The beneficiary remains under the surveillance and control of the National Prisoners' Association (Patronato Nacional de Reos) and the remission may be revoked if he commits another offence.

8. A pardon may be granted in accordance with the general rules contained in the Regulations concerning Pardons of 21 July 1959.

9. There is no such thing as a suspended sentence under our laws.

10. An amnesty may only be granted by law and no exception has been made either in favour of, or against, this type of offence.

Question 9

1. The disciplinary sanctions to which a person guilty of torture or ill-treatment may be subjected, when the latter are not of criminal proportions, range from a caution, which involves a verbal rebuke to the culprit in private, to dismissal from his post.

2. In the case of professionals, such as physicians and lawyers who are not public officials or military personnel, they are subject only to the disciplinary jurisdiction of their respective professional associations which, as a general rule, are empowered to suspend their members from the exercise of their profession for up to six months when they have committed acts in breach of professional ethics. When a lawyer is expelled from the Bar Association or stripped of his professional title as a disciplinary measure, he may appeal to the Supreme Court of Justice.

Question 10

No information is available regarding other forms of cruel, inhuman or degrading treatment or punishment.

Question 11

Since the adoption of the Declaration, the General Directorate of the Chilean Gendarmerie has instituted 22 administrative investigations of mistreatment of prisoners in various prisons in the country, which represents a marked decrease in comparison with previous years.

Question 12

1. Chilean legislation gives persons the right to claim compensation for any physical or moral injury they may have suffered.

2. Non-contractual civil liability arising from the commission of an act of torture is dealt with in the Civil Code, which has been in force since 1 January 1857, in Title XXXV of Book Four, relating to "Delicts and Quasi delicts" (Los delitos y los Cuasi-delitos).

3. Article 2314 of the Civil Code provides that "a person who commits a delict or quasi delict which causes injury to another shall be liable for compensation, without prejudice to the punishment prescribed by law for the delict or quasi delict".

4. Article 2316 of the Code provides that "the individual who causes an injury and his heirs are liable for compensation".

5. Compensation for moral injury, in accordance with case-law, is to be made on the same conditions as in the case of physical or material injury.

Question 13

1. Article 323 of the Code of Criminal Procedure stipulates that "it is absolutely forbidden not only to resort to promises, coercion or threats to induce an accused person to tell the truth but also to resort to captious or leading questions, such as those implying that the accused has actually admitted to something when he has not in fact done so".

2. Article 481 of the Code of Criminal Procedure provides that:

"The accused person's confession shall be proof of his involvement in the offence when the following conditions are fulfilled:

(1) When it is made before the judge in the case; that is, not only the judge whose competence has been established beyond doubt but also the judge who conducts the preliminary investigation, under article 47;

(2) When it is made freely and knowingly;

(3) When the deed confessed to is both possible and probable, given the defendant's circumstances and the personal conditions of the defendant; and

(4) The corpus delicti is legally established by other means and the confession matches the circumstances and characteristics thereof."

3. According to article 483 of the Code of Criminal Procedure "if the accused retracts statements made in his confession, the retraction shall be inadmissible unless it is established beyond doubt that he made the confession in error, under duress, or that he was unable freely to exercise his powers of ratiocination at the time the evidence was taken".

4. With regard to statements by witnesses, article 213 of the Code of Criminal Procedure stipulates that "No captious or leading questions shall be put to a witness, nor shall coercion, promises, deceit or artifice be used to compel or induce him to make a statement to a particular effect."

5. Article 6 of Act No. 6180 of 1938 provides that:

"Officials of the Investigation Service are forbidden to commit any act of violence to obtain particular statements from a detainee."

"The penalty for violating this provision shall be that prescribed in article 255 of the Penal Code."

Question 14

Since Chile signed the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or

Punishment, on 9 December 1975, the Declaration has been widely publicized both in official government bulletins, circulated to the various ministries, and in the press.

Question 15

As indicated in previous replies, Chilean legislation enacted long before the Declaration provides for the prevention and punishment of torture and other cruel, inhuman or degrading treatment and punishment. Accordingly, there has been no need for new initiatives in this area.

DENMARK

/Original: English/
/1 August 1978/

Questions 1 and 5:

1. Under the Danish Administration of Justice Act (1916) the police shall not order any person to give evidence, nor shall duress be applied to elicit a statement from a person.

2. To guarantee adherence to these provisions it is laid down in the law that the police shall explicitly inform a person charged with a criminal offence of the charge and of the fact that he is under no obligation to make a statement. Promises, false pretences or threats shall not be resorted to, nor shall the interrogation be prolonged solely in order to obtain a confession. For interrogations which are not quite brief, the starting and finishing times shall be recorded in the police report.

3. Under the Danish Penal Code (1930), persons engaged in the enforcement of the punitive powers of the State shall be liable to punishment for resorting to illegal means in order to obtain a confession or statement. Complicity in and attempts to commit such acts are punishable as well. In addition to criminal liability, such acts may also result in disciplinary action, possibly leading to dismissal and loss of pension benefits.

4. In this context it should be noted that oral and public proceedings in the courts are the predominant rule, and that counsel for the defence is appointed in all bona fide criminal cases.

Questions 2 and 3:

The persons referred to receive training which includes instruction in the Penal Code and the Administration of Justice Act and hence also in the provisions referred to above on prohibition of resort to duress.

Questions 4 and 6 to 10:

1. All prisoners have the right of uncensored correspondence with the courts, the prosecuting authority, counsel for the defence, the police, the minister of justice, the director of the Department of Prisons and Probation, the parliamentary ombudsman, and the European Human Rights Commission. Foreign nationals are, moreover, allowed uncensored correspondence with their respective diplomatic or consular representative. Letters to other public authorities and to members of the Folketing (parliament) may not be opened.

2. In each police district a specially designated authority, the local board, will decide, also ex officio, whether complaints about the conduct of members of the police staff in the discharge of their duties should be further investigated.

In addition to police representatives, the local board seats the mayors of the municipalities of the police district and in certain cases other members of the local government council. The chairman and vice-chairman must be elected from among the local government council members.

3. Complaints by remand prisoners against prison staff are governed by rules which guarantee that the complaints can be taken to court for investigation.

4. Complaints by persons serving sentence are dealt with by the Department of Prisons and Probation.

5. Finally, complaints may be filed with the ombudsman who may also, on a par with the authorities of the local administrations mentioned above, take up a matter ex officio. Hence a formal complaint is not necessary.

6. Where investigations disclose a criminal offence, a criminal case shall be instituted in conformity with the standard rules of criminal procedure. Infringement of the provisions of the Penal Code on public sector employees applying illegal duress is punishable by imprisonment for up to three years, but a stiffer penalty may be meted out in pursuance of other penal provisions; for instance, where the offence involves serious bodily harm the penalty may be imprisonment for up to 18 years. The general rules on suspended sentence, probation and free pardon apply. Public sector employees who have been convicted of violating the rule on application of illegal duress may, pursuant to standard rules on deprivation of rights, be deprived of the right to hold the kind of employment in the execution of which they have committed an offence.

Questions 11 and 15:

In recent decades no cases have been reported in Denmark on the use of cruel, inhuman or degrading treatment.

Question 12:

1. The central Government is liable in damages for any economic loss resulting from acts of torture or other cruel, inhuman or degrading treatment committed by a civil servant. Damages may also be claimed from the central Government for non-economic losses.

2. The claim will at first be dealt with at the executive level but may be brought before the courts.

Question 13:

In deciding whether a point has or has not been proved during a trial, account is taken solely of the evidence produced in the course of the hearing of the case. To the greatest possible extent proceedings are public and oral; they are held with the assistance of a counsel for the defence. The evaluation of the weight of the evidence is not bound by any legal provisions.

EL SALVADOR

/Original: Spanish/
/4 July 1978/

1. Since 8 December 1977, when the United Nations General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, no legislative or administrative steps have been taken in El Salvador to prevent or punish torture and other degrading treatment or punishment, as its legislation has long included various provisions prohibiting the application of such punishments to human beings.

2. Article 168, second paragraph, of the Constitution of El Salvador prohibits life imprisonment, degrading treatment or punishment, proscriptive penalties, and any kind of torture. The Penal Code also contains the following provisions:

3. Abuses against detainees - Article 222:

"Any person responsible for the custody or conveyance of any detained or convicted person who commits arbitrary acts against that person or subjects him to disciplinary measures which are not authorized by the pertinent regulations, shall be punishable by a term of one to three years of imprisonment, unless the acts constitute a more serious offence."

4. Arbitrary acts - Article 428:

"Any civil servant or public employee or person responsible for a public service who, in the performance of his duties, perpetrates or allows a third person to perpetrate any illegal or arbitrary act against, or harassment or abuse of persons, or damage to property, or who exerts unlawful and unnecessary pressure in the performance of his duties or service, shall be punishable by a term of six months to two years of imprisonment.

"When, during the detention of a person, the investigation of an incident, an inspection or search, or the conduct of proceedings, violence or unnecessary harassment are resorted to, or actions, inquiries or investigations which are manifestly at variance with their purpose are carried out, or the legal formalities are not observed, the penalty shall be one to five years of imprisonment.

"If the abuse involves torture or flogging, the penalty shall be two to seven years of imprisonment, and loss of citizenship rights for a period of not less than five years following completion of the period of deprivation of liberty."

5. Genocide - Article 486:

"Any person who, for the purpose of partially or completely destroying a particular human group on grounds of its nationality, race or religion, commits

homicide or causes bodily or psychological harm to members of the group, or subjects them to conditions which make their survival difficult, or imposes on them measures designed to prevent them from reproducing, or forcibly moves them to other groups, shall be punishable by a term of ten to twenty-five years of imprisonment.

"The penalty may be increased to thirty years if the person directly responsible for any act of genocide is a civilian or military official.

"Any proposal or conspiracy to commit acts of genocide shall be punishable by six to twelve years of imprisonment, and public incitement to commit genocide shall be punishable by four to eight years of imprisonment."

6. Offences against the Laws or Customs of War - Article 488:

"Any civilian not subject to military jurisdiction who, during an international or civil war, violates the international laws or customs of war by such acts as causing psychological or bodily harm, deportation of civilian population to occupied territory for the purposes of forced labour, maltreatment of prisoners of war, murder of hostages, looting of private or public property, unnecessary destruction of towns or villages or devastation which is not justified by military necessity shall be punishable by five to twenty years of imprisonment."

7. Offences against the principles of humane treatment - Article 489:

"Any civilian not subject to military jurisdiction who violates the principles of humane treatment in dealing with prisoners or hostages of war wounded in war action and held in hospitals or places intended for the wounded, or who commits any inhumane act against the civilian population before, during or after war actions shall be punishable by five to twenty years of imprisonment."

8. In El Salvador, under the Law governing Penal and Rehabilitation Centres, penalties involving deprivation of liberty shall be served in a penitentiary or other penal establishment existing or established under any designation and intended specifically for that purpose (article 3).

9. "Penalties and security measures shall be applied without recourse to torture or any action or procedure involving harassment. Any member of the staff of a penitentiary or detention centre who orders or permits such abuses shall be subject to the prescribed disciplinary measures, without prejudice to any criminal liability which he may incurr" (article 5).

10. "The General Board of Penal and Rehabilitation Centres is an organ coming under the Ministry of Justice and is responsible for organizing, operating and supervising penitentiaries and penal and rehabilitation centres and for designing and implementing programmes for the social rehabilitation of prison inmates" (article 7).

11. "The Board pays particular attention to the training of prison staff and shall, for that purpose, be responsible for providing staff training programmes, in particular through the operation of a permanent school governed by the relevant regulations. The training received shall be taken into account in the promotion and upgrading of prison staff" (article 11).

12. "Each penitentiary shall have a director who shall be the head of the establishment and the person directly responsible for compliance with the laws, decrees, regulations and instructions. He is assisted by whatever technical, administrative and corrections staff are necessary for the normal functioning of such establishments. At the discretion of the Ministry of Justice, foreign nationals may be appointed directors of women's rehabilitation centres" (article 27).

13. "The duties and powers of the directors of women's penitentiaries and rehabilitation centres and of commanders and governors of penal centres include compliance with and ensuring compliance with the provisions of the Law governing Penal and Rehabilitiation Centres and its regulations, and the instructions and orders received from the Ministry of Justice or the General Board in matters concerning and applicable to each establishment. They shall ensure that the centre's standards of discipline, morality and hygiene are maintained and supervise the operation of the various sections" (article 29).

14. "In no case shall the authorities of penal centres or penitentiaries question prisoners concerning their participation in the offence or offences of which they are accused" (article 35).

15. "Before questioning the accused concerning the offence, the judge shall verify his identity by asking him his first name and family name, his nickname or alias, if any, his age, marital status, profession or occupation, place of birth, current address, place of past or present employment, his salary or wage, personal history, whom he associates with, whether he has been tried before and, if so, on what grounds, by what court, what sentence he received and whether he served that sentence, and personal particulars concerning his parents, lawful or common-law spouse and their current addresses. The judge shall compare the information on personal identity provided by the accused with that given on the personal identity card or other means of identification surrendered to him, which he must return to the accused" (article 190 of the Code of Criminal Procedure).

16. Interrogation concerning participation - Article 191 of the Code of Criminal Procedure of El Salvador states that:

> "Once the accused has been questioned as to his identity, the judge shall question him about his participation in the offence under investigation, taking care to ensure that the accused specifies his whereabouts on the day and at the time the offence was committed, in whose company, and in what circumstances or under what conditions, and any other information which he considers appropriate in order to arrive at the truth.
>
> "The investigating judge shall dictate the replies, taking care to ensure

that the exact words of the accused are recorded; however, if the latter asks to dictate his own replies and the magistrate considers him able to do so, he shall grant the request.

"In the course of the inquiry, the accused shall be shown all the effects taken from him so that he can say whether he recognizes them, and he shall be asked about the origin and purpose of the effects which he recognizes, and the reasons why they were in his possession.

"If the examination of the accused lasts for a long time and he shows signs of fatigue or agitation, the judge may, on his own intiative or at the request of the accused or his defence counsel, suspend the proceedings for a reasonable period."

"The accused may make as many statements as he likes, provided that such statements are related to the case. If in subsequent statements he contradicts what he said earlier, or if he retracts an earlier confession, he shall be asked why he contradicted himself or why he retracted the confession" (article 195 of the Code of Criminal Procedure).

17. Concerning the confession of an accused person, the Code of Criminal Procedure of El Salvador provides as follows:

Judicial Confession - Article 494:

"A clear, spontaneous and definitive confession to having committed an offence or misdemeanour shall be sufficient proof of guilt, provided that the following conditions are fulfilled:

(1) That the confession was made in person by the accused in the presence of the competent judge and at the appropriate hearing; (2) That there was no obvious mistake, violence or intimidation; (3) That the person making the confession was in full possession of his mental faculties; (4) That the offence confessed to was possible and probable, given the circumstances and personal conditions of the accused and the actual nature of the offence; and (5) That the confession was logical and consistent with the manner in which the offence was committed.

"A confession which fulfils the above conditions shall be presumed to be true in the absence of proof to the contrary.

"Recognition by the accused, in the presence of the judge, of letters, papers and other private documents, shall have the same evidentiary value as his confession concerning any points which they cover."

Indivisibility of the Confession and Related Norms - Article 495:

"In penal matters, a confession is indivisible and must be accepted with respect to both its favourable and its unfavourable aspects."

"If there is different evidence which contradicts the statements made by the accused concerning matters which may constitute grounds for exemption from liability or circumstances which could alter liability, the following procedure shall be followed: (1) In cases heard by a jury, the judge shall refrain from ordering a stay of proceedings and the jury shall decide the question; (2) In cases not heard by a jury, the judge shall, in accordance with the rules of sound judgement and having regard to the extent of conformity with the evidence on the corpus delicti and the nature of the offence, assess such evidence and base his decision on that assessment."

Extrajudicial Confession - Article 496:

"In the case of the political offences referred to in article 151 of the Penal Code, extrajudicial confessions shall have no value as evidence.

"In the case of offences under ordinary law, extrajudicial confessions shall be regarded as sufficient proof if they fulfil the following requirements: (1) If the confession is confirmed by at least two witnesses whom the magistrate regards as trustworthy in accordance with the provisions of the Penal Code, even though the confession was made before each witness at a different time and in a different place; (2) If the confession accords with other considerations in the case concerning the same punishable offence.

"In addition to the aforesaid requirements, confessions made before auxiliary organs must meet the following requirements: (1) They must have been made within 72 hours of the arrest; (2) The document containing the confession of any accused person must also be signed by two persons who are of age, who are able to read and write, and who witnessed and heard the confession. If the auxiliary organ has the technical facilities to make a sound recording of the accused's confession, it should verify it as it is for submission to the competent court, rather than transcribe it. The sound recording shall be made in the presence of two witnesses and this fact, as well as the information that the accused was informed beforehand that his statement would be recorded, shall be noted in a separate document; (3) The witnesses who vouch for an extrajudicial confession must indicate in their statements that when the accused was questioned and made a statement he was not subjected to physical force or intimidation.

"In cases involving offences under ordinary law, extrajudicial confessions which fulfil the above requirements shall be regarded as sufficient proof for ordering provisional detention, so that the case can be submitted for a full trial (juicio contradictorio) or a trial by a jury, as appropriate.

"In cases not appropriate for a hearing by a jury, if after the trial has been ordered and before sentence has been passed the only proof of guilt is an extrajudicial confession, the judge must evaluate that confession in accordance with the rules of sound judgement in order to deliver the necessary verdict.

"In the cases referred to in article 154 of the Penal Code (patricide and murder), if an extrajudicial confession is the only proof, or only one of a

number of considerations which would not alone be sufficient grounds for a full trial, the accused shall not be sentenced to death but to a prison term of twenty to thirty years."

18. The first paragraph of article 151 of the Penal Code, which is mentioned in the foregoing paragraph, provides as follows:

"For the penal purposes, political offences are punishable acts against the international or internal personality of the State, with the exception of vilification of the fatherland, its symbols and leaders.

"Offences under ordinary law, committed for political purposes are also deemed to be political offences, except in the case of offences against the life and personal integrity of Heads of State.

"Offences under ordinary law which have a direct or immediate connexion with the political offence, or which constitute a natural and frequent means of planning, executing or promoting political offences, are deemed to be politically related offences under ordinary law. The following offences are thus to be considered politically related offences. In cases of rebellion embezzlement or misappropriation of public funds; extortion; acquisition of weapons and ammunition; the possession, carrying or conveyance of weapons of war; interference with radio channels and telegraph and telephone lines, and withholding of correspondence."

19. Supervision of Penal and Rehabilitation Centres. The Code of Criminal Procedure of El Salvador contains the following provisions:

"Judicial Supervision - The country's penal centres shall be supervised by the appropriate judicial authorities for the purposes stated in the Code of Criminal Procedure, without prejudice to the powers vested in the administrative authorities" (article 688).

Direct Supervision by Judges of the First Instance - Article 689:

"In each district, such supervision shall be exercised directly by judges of the first instance who deal with criminal cases.

"In places where there is more than one judge of the first instance and where there is no separation of civil and criminal law or, if there is such separation, where there is more than one criminal judge, all such judges shall exercise supervision jointly or separately.

"The same powers shall be vested in judges who try traffic or fiscal offences and who are holding arrested or convicted persons in prison."

"Supervision by the Supreme Court - The Supreme Court of Justice and the courts of second instance shall be responsible for over-all supervision of penal centres and shall exercise such supervision as they see fit" (article 690).

Purposes of Supervision - Article 691:

"The aforesaid supervision shall have the following purposes: (1) To ensure that penal centres meet the proper standards with regard to security, size, health conditions and proper separation of departments, and have all the equipment required to service them; (2) To ascertain the treatment given to prisoners by prison heads and any other necessary personal assistance which prisoners may request on account of illness or any other just cause; (3) To verify that the heads of penal establishments keep the books required by the relevant regulations properly, as well as the files on each prisoner; (4) To ascertain that prisoners are not suffering any more privations or lack of communication than are required by law; (5) To ensure that prisoners are strictly serving the penalties imposed on them, and to order their release at the proper time; (6) To take special care to ensure that no one is detained illegally in a penal centre."

"In order to ensure that the above objectives are achieved, judges shall personally visit penal centres as often as necessary and appropriate, and shall be required to do so on the last day of the months of January, May and September of each year; they shall at any time request such reports as they consider necessary from the heads of penal establishments and from any other authority and, depending on the results of their investigations, decide what is just and lawful and give an account thereof to the competent authority for the appropriate purposes" (article 692).

"The Supreme Court of Justice and the criminal courts of second instance may, in their respective jurisdictions, decide that prison visits shall be made at any time and may assign to that task a judge of the first instance whom they shall designate" (article 694).

"Any anomalies in the functioning of penal establishments which are found as a result of visits of inspection shall be notified to the authorities responsible for administering such establishments, so that they may be rectified as soon as possible" (article 698).

It can be seen from the foregoing that, in El Salvador, prison staff are trained by means of courses provided by a regular school which is governed by the appropriate regulations, and that such training is taken into account in the upgrading and promotion of prison staff. Also, torture and its various manifestations are regarded as punishable acts under the Penal Code of El Salvador and supervision of penal and rehabilitation centres by the judicial authorities safeguards against and prevents such inhuman acts or treatment. Both judicial and extrajudicial confessions by accused persons are subject to certain legal requirements, and failure to fulfil any of those requirements robs the confession of its probative value. As a general rule, the authorities competent to try cases of torture or other inhuman treatment would be criminal judges of the first instance.

ETHIOPIA

/Original: English/
/12 July 1978/

Question 1:

1. The legislative measures for the prevention and punishment of torture and other cruel, inhuman or degrading treatment or punishment are set forth in the Penal Code and Criminal Procedure Code of Ethiopia.

2. The Penal Code lays down the basic principle which subjects public servants to punitive provisions where they commit these offences in the discharge of their office. The relevant provisions dealing with such offences are clearly enumerated in articles 410 et seq. Public servants who with intent to procure for themselves or another an unlawful advantage or to do injury to another are punishable with fine or imprisonment not exceeding five years (article 414 Penal Code). Public servants are punishable with imprisonment or fine for an abuse of the right of search and seizure - (article 415 Penal Code). "Any Public Servant who arrests or detains another except in accordance with the law, or who disregards the forms and safeguards prescribed by law, is punishable with rigorous imprisonment not exceeding five years, and fine" (article 416 of the Penal Code). Moreover, article 417 of the same Penal Code brings within its ambit all forms of improper or brutal methods and renders them punishable where any public servant is charged with their commission. In particular, this provision provides that where a public servant "in the performance of his duties, treats the person concerned in an improper or brutal manner, or in a manner which is incompatible with human dignity ... , especially by the use of blows, cruelty, or physical or mental torture, be it to obtain a statement or confession, or to any other similar end" is punishable with fine or imprisonment.

3. The provisions of the Penal Code are supplemented by the Criminal Procedure Code. These are contained in articles 22, et seq.

4. The interrogation of an accused person and the extent of power of the investigating body are clearly defined in article 27 of the same procedure Code. This article under the heading "interrogation" confirms that "He /the accused/ shall not be compelled to answer and shall be informed that he has the right not to answer and that any statement he may make may be used in evidence". The term "shall" assures that it is obligatory and no public official is entitled to derive information through torture or other unlawful means. Article 31 of the criminal Procedure Code further bolsters this fundamental principle of the law by specifically prohibiting police officers or persons in authority from employing inducement or any other improper methods in the process of examination.

Question 2:

Courses on Criminal law and Criminal Procedure are offered to cadets and law enforcement officials at the Police Officers Training School.

Question 5:

1. The fact that acts of torture are punishable under the Ethiopian legal system are sufficiently elaborated under Q1. To illustrate this, under article 27(2) of Criminal Procedure Code any investigating public official is prohibited from deriving information through torture. If he does so, in neglect of the law, he will be held responsible for abuse of power under article 414(1c) of the Penal Code. If the injury caused to the person is more severe than what is prescribed under this provision he can still be punished under other articles of the Penal Code corresponding to the offence committed.

2. Thus if death of a human being ensues, homicide provisions (articles 521-524) are applicable. If the harm results in bodily injury articles 537-544 of the Penal Code shall apply.

Question 6:

Under Article 16 Criminal Procedure Code the authority competent for receiving accusation or complaint is the police or the public prosecutor. An accusation or complaint regarding a young person shall be made to the court.

Question 7:

Duties of the police, inter alia, are (a) preserving the peace and preventing crime, (b) discovering the commission of offences and (c) apprehending of offenders (article 9 Criminal Procedure Code). In addition the Public Prosecution Department is entrusted with the duty to give the necessary orders and instructions to the police and ensures that they carry out their duties in accordance with the law. The law further imposes a duty on law enforcement institutions to investigate offences regardless of whether the information or accusation or complaint they receive is in doubt (article 23 Criminal Procedure Code).

Question 8:

1. Under article 40 of the same Code the Public Prosecutor is under a legal duty to institute proceedings whenever he is of the opinion that there are sufficient grounds for prosecuting the accused. The grounds under which he may not institute proceedings are laid down in article 42. Hence, there can be no fear of abuse of discretion.

2. The trial proceedings are no different from any other criminal proceedings. The trial part of the criminal proceedings is dealt with in Book IV, Title I of the Criminal Procedure Code.

3. Conditions under which sentences may be suspended under the Penal Code are:

(a) Article 194: when the court considers that conditional suspension of penalty will promote the reform and reinstatement of an offender.

(b) Article 195: when the offender has no previous conviction and does not appear dangerous and where his offence is punishable with fine, compulsory labour or simple imprisonment for less than three years.

(c) Article 196: when the court considers that the offender shall receive a warning it shall enter a conviction and pass sentence but may order that the enforcement of the sentence be suspended for a specified period of probation.

4. Convicted persons could benefit from pardon or amnesty under articles 239 and 240 of the Penal Code. Commutation of sentence is provided in articles 184 to 187 of the Penal Code. The nature of mitigation can be either compulsory or optional depending on the gravity of the offence. The Court may even exempt an offender from any penalty.

Question 9:

The provisions which render abuse of power a punishable offence have been cited in answer to Q1. The consequences of such acts will definitely reverberate to the employment of the public official. In fact many administrative regulations include laws which make conviction involving disregard of official duty incompatible with the holding of public office. To compliment this, article 411 of the Penal Code states that penalities imposed under the chapter, i.e. offences against public office are without prejudice to the imposition of appropriate administrative penalities.

Question 10:

Same as above.

Question 11:

No statistics have been compiled so far to provide such information.

Question 12:

Yes, article 411 of the Penal Code firmly establishes the law that nothing in the chapter relating with the breaches of the obligations of office shall affect claims for damages. Where such offence has caused considerable damage to the victim the criminal court can render a judgement to that effect according to article 100 of the Penal Code. However the right of the injured person to bring civil action is reserved. The extra-contractual provisions of the civil code sufficiently treat the mode and assessment of compensation -- articles 20, 27 et seq.

Question 13:

This question is already covered in the answer to Q1. The relevant provisions of the Criminal Procedure Code which exclude such statements are articles 27, 29, 31 and 35.

GERMAN DEMOCRATIC REPUBLIC

/Original: English/
/29 August 1978/

1. Being a socialist State, the German Democratic Republic condemns torture and other cruel, inhuman or degrading treatment or punishment. Such acts, alien to the very nature of socialism, do not occur here. On the basis of socialist political and socio-economic relations the active implementation of the basic civil rights guaranteed in the Constitution - protection of the health, life and property of the individual, rule of law and security - are an integral part of the policy pursued by the German Democratic Republic and a social reality.

2. The fundamental stand of the German Democratic Republic on the subject in question has been outlined in detail in the message (A/10158/Add.1) addressed to the Secretary-General of the United Nations in reply to his note verbale of 5 December 1974. The message also deals at length with the legal provisions in force in the German Democratic Republic and with their practical application. It shows that the German Democratic Republic, which has acceded to the International Covenant on Civil and Political Rights, not only fully abides by the obligations arising from these Covenants, but goes well beyond them in both legislation and judicial practice.

3. The laws and legal provisions newly enacted since the note verbale of the Secretary-General was answered do not contain any substantive changes relating to the subject of torture and other cruel, inhuman or degrading treatment or punishment.

GUATEMALA

/Original: Spanish/
/4 September 1978/

1. Guatemalan law makes appropriate provision for the protection of detainees and prisoners not only as regards their rehabilitation but also as regards the exercise of their rights as individuals. The following provisions may be cited by way of illustration:

2. According to article 55 of the Constitution of the Republic:

"The prison system shall promote the reform and social readjustment of prisoners. Sentences shall be served only in establishments designated for such purpose. Places designed for detention or for the serving of sentences are centres of a civilian nature.

"No detainee or prisoner shall be prevented from performing his natural functions. Nor may physical or moral torture, cruel treatment, degrading punishment or action, harassment or coercion be applied to him, nor may he be forced to do work detrimental to his health or incompatible with his physical constitution or dignity, nor may he be subjected to any unlawful exaction."

3. Article 56 stipulates:

"Public officials or employees who give orders that are contrary to the provisions of the foregoing article, and subordinates who execute such orders, shall be dismissed from office, permanently disqualified for any public office or position whatsoever, and shall incur the appropriate legal penalty.

"Directors of prisons and places of detention shall be held responsible as principals for any act of torture, cruel treatment or degrading punishment inflicted on convicts or persons held in custody in establishments under their direction and, even when it appears that a subordinate was directly responsible, they shall be punishable as accessories before or after the fact unless they took the necessary steps, immediately upon discovering the act, either to prevent it or stop it and initiated proceedings against the principals.

"Any guard who unnecessarily uses arms against a detainee or prisoner shall be liable under criminal law. Action arising from an offence committed in these circumstances is imprescriptible."

4. The third paragraph of article 51 of the Constitution states that "any authority, prison director or employee who orders a person to be held incommunicado or keeps him incommunicado shall be dismissed from office without prejudice to the application of penalties prescribed by law."

5. Article 425 of the Penal Code states that "Any public official or employee who orders illegal constraint, torture, degrading punishment, harassment or methods not authorized by law to be used against a detainee or prisoner shall be punishable by a term of two to five years imprisonment and complete disqualification. The same penalty shall apply to anyone who executes such orders."

6. Article 25 of Guatemala's Prison Regulations reads as follows: "In no circumstances may torture, abuse, harassment, or any other form of coercion be applied to inmates, nor may they be subjected to unlawful exactions".

JORDAN

/Original: Arabic/
/20 June 1978/

Question 1

1. With regard to question 1 of the questionnaire referred to in General Assembly resolution 32/63, Jordanian legislation punishes officials who commit acts of torture or other cruel, inhuman or degrading treatment. Article 208 of the Criminal Code provides as follows:

> "Anyone who inflicts on any person any kind of violent or harsh treatment not permitted by law, with the intention of obtaining confession of an offence or information regarding an offence shall be punished by imprisonment for a term of three months to three years. If the violent or harsh treatment results in illness or injury, the penalty shall be imprisonment for a term of six months to three years, provided that the act in question does not entail a more severe penalty."

2. Furthermore, articles 358, 359 and 360 of the Criminal Code impose on any person who slanders, libels or degrades another a penalty of imprisonment and a fine. These articles do not exempt public officials from this penalty if they commit any of these acts. Article 358 of this Code imposes on any person who slanders another a term of imprisonment from two months to one year. Article 359 imposes a term of imprisonment from one week to three months or a fine of between 5 dinars and 25 dinars for libel and degradation. Article 260 imposes on any person who degrades another, in cases other than those involving slander and libel, by speech or by action, face to face, by a written letter addressed to him or intended for him to read, by abuse, by a special sign or by rough treatment shall be punished by imprisonment for a term not exceeding one month or by a fine not exceeding 10 dinars.

3. The provisions of the Criminal Code imposing penalties for torture or other degrading treatment apply in all circumstances, whether under normal conditions or under conditions of war, threat of war or political instability.

Question 2

The articles of the Criminal Code imposing penalties for torture and degrading treatment are taught in the Police College from which the officials graduate who are responsible for persons deprived of their liberty.

Question 3

The reply to this question lies with the competent public security authorities.

Question 4

1. These matters too come within the purview of the competent public security authorities.

2. With regard to interrogation practices, article 63 of the Code of Criminal Procedure provides that when an accused person comes before the public prosecutor, his identity is ascertained, the charge against him is read out, and he is called upon to answer it, while being informed that he has the right to refuse to answer without the presence of his counsel. This advisement is recorded in the procès-verbal. However, in the event of urgency, where there is danger of the evidence being lost, the accused may be interrogated before his counsel is invited to attend, provided that at the end of such interrogation, his counsel may request to read his client's statement.

3. Article 48 of the Code of Criminal Procedure provides that the public prosecutor may, in the course of carrying out his functions and in the circumstances set forth in articles 29 and 42, entrust part of his functions to the heads of police stations, where he deems this necessary, except for the interrogation of the accused.

4. Article 159 of this Code provides that a statement made by a suspect or an accused person in the absence of the public prosecutor, confessing to the commission of a crime, is accepted only if the prosecution submits evidence of the circumstances in which the statement was made and the court is satisfied that the suspect or the accused made the statement willingly and voluntarily.

5. These are the main factors involved in interrogation, and our legislation contains no provisions for a systematic review of these elements from time to time, although there is nothing to prevent a review being made through the promulgation of new legislation whenever circumstances so require.

Question 5

The commission of acts of torture or degrading treatment is punishable by law, as we have explained in our reply to question 1. Complicity in the commission of such acts and incitement thereto are punishable also under articles 76 and 81 of the Criminal Code.

Question 6

Any person who has been subjected to torture or degrading treatment may submit a complaint to the competent judicial authorities requesting the prosecution and punishment of the persons who committed these acts. There are no restrictions placed on the exercise of this right.

Question 7

The commission of acts of torture or degrading treatment are regarded as offences punishable by law. Every public official entrusted with the investigation

of or prosecution for offences must notify the competent authorities of acts of torture and degrading treatment which he has witnessed or learnt of, and, if he neglects to or delays notifying the competent authority of a crime or offence of which he has learnt in the course of the performance of his duties, he is punished by imprisonment and a fine under article 207 of the Criminal Code.

Question 8

1. The reply to the first part has been given in our reply to question 1.

2. With regard to the second part of question 8, our legal system does not apply the principle of suspension of sentence in respect of convicted persons. Persons convicted of offences of torture and use of degrading methods benefit from mitigating circumstances or commutation of sentence under our law without any distinction being made between persons convicted of such offences and persons convicted of other offences, where appropriate circumstances apply.

3. With regard to pardon and amnesties, the legislation governing amnesty promulgated in our country does not except persons having committed offences of torture and degrading treatment from the application of this legislation.

Question 9

It is the public security authorities who are competent to reply concerning the disciplinary and other penalties imposed on persons committing torture or other degrading acts.

Question 10

Our replies to questions 8 and 9 contain the appropriate answer.

Question 11

We have no information concerning any measures taken with regard to any person who has committed acts of torture or degrading treatment. The public security authorities might be asked for a reply to this question.

Question 12

Any victim of acts of torture or degrading treatment may apply for compensation from the person who inflicted this treatment on him for the moral or physical injury to which he has been subjected. Article 267 of the Civil Code deals with liability for moral injury, and any infringement on the freedom, reputation, honour, good name, social position or financial standing of another renders the offender liable. Article 274 of the Civil Code stipulates that anyone who commits an act harmful to life, such as murder or the infliction of a wound or injury must pay compensation for the harm which he has inflicted to the victim, his legal heirs or his dependants who are deprived of his support because of the offence. Furthermore, the State is also responsible for the compensation where the wrongful act was committed by one of its employees in the course of or by reason of the performance

of his duties. Although article 288, 1 (b), of the Civil Code states that no person shall be responsible for the act of another, the court may, upon the application of the injured party, where it finds such a course justified, make payment of the compensation awarded the obligation of whoever had actual authority over the offender with regard to supervision and direction, where the injurious act was committed by a subordinate in the course of or by reason of his performance of his duty.

Question 13

1. The means of substantiating an offence of torture or degrading treatment does not differ from the means of substantiating any other offence. Article 147 of the Code of Criminal Procedure provides that evidence shall be established in respect of felonies, misdemeanours and infractions by all methods of substantiation and that it shall be for the judge to rule on the basis of his findings, unless the law lays down a specific method of substantiation, in which case that method must be applied.

2. The law does not lay down any specific method for substantiating an offence of torture or degrading treatment.

Questions 14 and 15

Our public security authorities are responsible for publicizing the contents of the Declaration among the ranks of their employees. In addition, our information media constantly publicize the means of torture and degrading treatment which the Israeli occupation authorities are utilizing in the occupied Arab territories, in violation of the Declaration of Human Rights and the United Nations Declaration prohibiting torture and degrading treatment, and our information media also publicize the torture inflicted on African citizens by the white minority in South Africa, thereby giving publicity to the Declaration and its contents, informing citizens and stressing the illegality of these acts, regardless of the identity of the perpetrators.

KENYA

/Original: English/
/29 May 1978/

1. The Government of Kenya is a great believer in human rights and every effort is made to safeguard these rights. The Constitution of Kenya which is supreme law in the country devotes a whole chapter (i.e. chap. V) enumerating these rights. Any action or law which is inconsistent with the Constitution is void to the extent of that inconsistency.

2. Section 70 of the Kenya Constitution states that "every person in Kenya is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, tribe, place of origin or residence or other local connexion, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for public interest to each and all of the following namely:

(a) life, liberty, security of the person and the protection of law;

(b) freedom of conscience, of expression and of assembly and association and

(c) protection for the privacy of his home."

3. Section 74 of the Constitution expressly states that:

(a) "No person shall be subject to torture or to inhuman or degrading punishment or other treatment."

(b) "Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section".

4. It should be remembered that no law can be enacted that is inconsistent with the constitution for it is the supreme law of the land and therefore no law can ever be inconsistent with it and should there be any as said earlier it would be void to the extent of that inconsistency. Suffice to say that this section of the constitution is given a wide interpretation by the courts.

5. Section 72 of the Constitution states that: "No person shall be deprived of his personal liberty save as may be authorised by law". Subsection 2 states that: "Any person who is arrested or detained shall be informed as soon as reasonably practicable, in a language that he understands of the reasons for his arrest or detention." These sections are self-explanatory.

6. To fortify individuals rights Parliament enacted Evidence Act, Cap. 80 of Laws of Kenya which forbids by Section 26 any evidence obtained by force from an accused person to be used against him in any court of law. This means that any confession or admission that may be extorted from any individual by use of torture or any other inhuman treatment cannot be legally used against him or any other person and thus no torture or inhuman or degrading act is used to obtain any conviction and should this means be used the victim has legal remedies.

7. The President has power to invoke Preservation of Public Security Act, Cap. 57 of Laws of Kenya. The President is the only person empowered to put this Act into operation if it appears to him that it is necessary for the preservation of public security to do so. Under the Act the President has very wide powers which include making regulations for the preservation of public security. However his powers are subject to the Kenya Constitution.

8. Every subsidiary legislation, which means every regulation made under the Act, must be laid before the National Assembly for approval or for annulment. An order made under the Act cannot have effect on the expiration of the period of twenty-eight days commencing with the day on which the order is made, unless before the expiration of that period it has been approved by a resolution of the National Assembly. This is provided by section 85 of Kenya Constitution and is a check against the presidential powers.

9. The definition under the Act of the Preservation of Public Security includes, inter alia, the defence of the territory and people of Kenya, securing of the fundamental rights and freedoms of the individual, securing the safety of persons and property, and the prevention and suppression of rebellion, mutiny, violence, intimidation, disorder and crime and unlawful attempts and conspiracies to overthrow the Government or the Constitution. The President can only invoke the Act when the public security is threatened.

10. It is worth noting that during times of war the individual liberties may be withdrawn to enable the Government to protect the Nation.

11. During the training of law enforcement officials the officials are warned not to interfere with individual liberties except when law authorizes such a move. The duties and functions of law enforcement officers are well defined and set in various Acts of Parliament and the regulations which are passed with individuals' liberties in mind. Disciplinary actions are provided where a law official goes beyond his limits.

12. There is a systematic review of the sentences of all serving prisoners by a Board of Review appointed by the President established by the Prisons Act, Cap. 90 of Laws of Kenya. Every month a report is submitted to the Board of Review on the general condition and conduct of every prisoner.

13. Legal remedies are available and compensation is given when a person becomes a victim of torture by the law enforcement officials.

KUWAIT

/Original: Arabic/
/13 July 1978/

Question 1:

1. The Constitution of the State of Kuwait, and its legislation generally, stipulate that people shall enjoy the freedom guaranteed them by the Constitution in accordance with the provisions of the law. The Constitution regulates the fundamental principles of this matter by spelling them out in articles 7, 8, 29, 30, 31, 32 and 34, and they are embodied also in articles 1 and 12 of the Code of Criminal Procedure. We cite below the above-mentioned texts.

2. Article 7 of the Constitution provides that:

"Justice, liberty and equality are the pillars of society; co-operation and mutual help are the firmest bonds between citizens."

3. Article 8 provides that:

"The State safeguards the pillars of society and ensures security, tranquillity and equal opportunities for citizens."

4. Article 29 provides that:

"All people are equal in human dignity and in public rights and duties before the law, without distinction as to race, origin, language or religion."

5. Article 30 provides that:

"Personal liberty is guaranteed."

6. Article 31 provides that:

"No person shall be arrested, detained, searched or compelled to reside in a specified place, nor shall the residence of any person or his liberty to choose his place of residence or his liberty of movement be restricted, except in accordance with the provisions of law."

"No person shall be subjected to torture or to degrading treatment."

7. Article 32 provides that:

"No crime and no penalty may be established except by virtue of law, and no penalty may be imposed except for offences committed after the relevant law has come into force."

8. Article 34 provides that:

"An accused person is presumed innocent until proved guilty in a legal trial at which the necessary guarantees for the exercise of the right of defence are secured."

"The infliction of physical or moral injury on an accused person is prohibited."

9. It is thus decreed that everyone shall enjoy his freedom as safeguarded by the Constitution and exercise it in accordance with the provisions of the law, so that no one may interfere with him or place any restriction on his freedom except in accordance with legal procedure. However, he enjoys this freedom when he is innocent, but if he commits an offence, he is prosecuted and sentence is passed on him and executed in accordance with the provisions of the law, which, in turn, pays attention to the human factors which preserve the dignity and humanity of the individual, without any humiliation or degradation or any procedure repugnant to humanity. Accordingly, no criminal sentence may be imposed except after a trial conducted in accordance with the principles and procedures laid down by the law (art. 1 of the Code of Criminal Procedure). Moreover, neither the investigating magistrate nor any person holding judicial authority is permitted to use torture or force in order to obtain evidence from an accused person or witness or to prevent him from giving such evidence as he may wish during the trial or the investigation. Any person committing an act of this type is punished in accordance with the rules laid down in article 12 of the Code of Criminal Procedure.

Question 2:

The above-mentioned principles and rules of conduct apply to all citizens, including law enforcement officials and other public officials. These are the principles which inspired the United Nations in preparing a draft code of conduct for law enforcement officials, as proposed by the Committee on Crime Prevention and Control. Kuwait has shown keen support for this draft code, because of the model rules for conduct and ethics which it contains and which should be adhered to and followed by law enforcement officials. Moreover, these principles are a reaffirmation of the fundamental principles of the Constitution of the State of Kuwait and of Kuwait's internal legislation, as has been indicated above.

Question 3:

This is done through the promulgation of legislation and regulations. These rules are covered in Kuwaiti legislation by Act No. 26 of 1962 concerning the organization of prisons, Decree of the Minister of the Interior No. 25 of 1976 establishing prison regulations and Act No. 23 of 1968 concerning the Statute of the Police Force.

Question 4:

1. Act No. 26 of 1962 concerning the organization of prisons gives the Director

of Prisons the right to inspect them at any time and gives any prisoner the right to meet with the Director during the inspection and to submit any complaint to him. The Director must investigate the complaints submitted to him and take the necessary measures to ensure that the grounds for them are removed. The authorities concerned must always ascertain that no person has been wrongfully imprisoned. No person may be imprisoned without a written order issued by the competent authority or detained in prison longer than the term specified in such order (arts. 15, 16 and 18 of the Prisons Act). This Act guarantees for prisoners all kinds of health, social and educational care (arts. 65 to 90 of the Prisons Act).

2. The execution of sentences involving deprivation of liberty must be carried out under judicial supervision and in places where the primary consideration is the preservation of the condemned person's dignity and humanity and where he will be psychologically, socially and culturally re-educated, so that the sources of wrong-doing will be extirpated from his character and he will be prepared to become a sound member of society after he has completed the term of his sentence.

Question 5:

1. Under criminal law, the offences referred to are declared punishable in articles 53, 54, 56, 57 and 58 of Act No. 31 of 1971 amending certain provisions of the Criminal Code.

2. Article 53 provides that:

"A penalty of imprisonment for a term not exceeding five years and a fine not exceeding 500 dinars or either of these two penalties shall be imposed on any public official or employee who himself or through the agency of another tortures an accused person, a witness or an informant in order to force him to confess to an offence or to produce oral evidence or other information concerning an offence.

"If the torture leads to or is accompanied by an act legally punishable by a more severe penalty, the more severe penalty shall apply.

"If the torture results in death, the penalty shall be that prescribed for deliberate murder."

3. Article 54 provides that:

"Any public official and any official entrusted with public service who orders the infliction of or himself inflicts on a convicted person a punishment more severe than that legally prescribed or a punishment not legally prescribed shall be liable to imprisonment for a term not exceeding five years and a fine not exceeding 500 dinars or either of these two penalties."

4. Article 56 provides that:

"Any public official or employee and any person entrusted with public service who uses his office to employ cruelty against persons in such a way as to degrade them or cause them physical pain shall be liable to imprisonment for a term not exceeding three years and a fine not exceeding 225 dinars or either of these two penalties."

5. Article 57 provides that:

"Any public official or employee and any person entrusted with public service who forces persons to work in circumstances not permitted by the law or who uses persons for work other than that prescribed for them by the law shall be liable to imprisonment for a term not exceeding two years and, in addition, be sentenced to pay the value of the wages earned by those whom he has wrongfully employed."

6. Article 58 imposes on any public official who uses the authority of his office to force a person to sell or dispose of his property or to abrogate any of his rights, whether in favour of the official himself or in favour of another, a penalty of imprisonment for a period not exceeding 225 dinars /sic/ or either of these two penalties.

Question 6:

1. The authorities competent to receive and examine the complaints are the Bureau of Investigations and Public Prosecution in the case of misdemeanors, the Public Prosecution Office in the case of felonies and the Director of Prisons in the case of complaints by prisoners.

2. The investigation is conducted when the injured party submits his complaint to any of these authorities. The authority concerned hears the complaint and the evidence against the official against whom the complaint is made. The latter is then interrogated and confronted with the evidence given by the complainant. The investigating authority assesses the evidence, and, if it finds the complaint against the accused official valid, it refers him for criminal trial. If the accusation is not found valid, the authority puts the complaint on record.

Question 7:

1. The competent authorities usually proceed to an investigation on the basis of a complaint by the victim or by any other person. Article 14 of the Code of Criminal Procedure makes it obligatory for any person who witnesses or learns of the commission of an offence to inform immediately the nearest police or investigation authority.

2. Any person who fails to give such notification shall, on grounds of complicity with the accused, be liable to the penalty for refusal to give testimony. Article 40, paragraph 2, makes it obligatory for any policeman who learns of the

commission of an offence to notify immediately the Public Prosecution Office in the case of a felony and the police investigator in the case of a misdemeanor.

Question 8:

1. In replying to this question we would refer the reader back to our replies to questions 5 and 6. We would add that the permissibility of suspended sentence comes within the discretionary powers of the judiciary with regard to offences generally, and in the circumstances and within the limits set forth in articles 81 and 82 of the Criminal Code.

2. With regard to the question of pardon and amnesties, article 238 of the Code of Criminal Procedure provides that:

> "The Amir may at any time issue an amnesty for a specific offence or specific offences. Such amnesty shall be regarded as equivalent to a verdict of innocence and entails the rescission of all previous measures and judgements conflicting with it. An amnesty for an offence does not preclude the bringing of a suit for civil compensation."

3. Article 239 provides that:

> "The Amir may, after a judgement has been handed down against a specific individual and before or during the execution of such judgement, issue an order for pardon or commutation of the sentence.
>
> "Such pardon shall not entail rescission of the judgement but only a change in the type or extent of the sentence or its being deemed to have been already executed."

Question 9:

1. "Any public official who violates the obligations laid down by law, acts ultra vires in the performance of his duties or conducts himself in a way degrading to his office shall be liable to disciplinary sanctions" (art. 110 of Amiri Decree No. 7 of 1976 concerning the Civil Service Act).

2. "Any public official held in preventive detention shall be suspended from his work during the period of his detention and payment of his salary shall be suspended. At the end of the term of detention, the amount previously deducted from his salary shall be paid to him if the investigation for the purpose of which he was detained proves him innocent; otherwise his salary shall be withheld" (art. 114).

3. "Any public official who is detained pursuant to a judicial decision shall be suspended from his work and deprived of his salary for the term of his detention" (art. 115).

4. "The disciplinary sanctions which may be imposed on an official who commits an offence shall include dismissal from office" (art. 116).

5. The action which may be taken by occupational unions and associations against any of their members who are convicted of torture are governed by the laws and regulations of each union or association.

Question 10:

On this question we have nothing to add to what we have already said in our replies to these two questions.

Question 11:

No.

Question 12:

It may be said that, where an infraction of human rights involves injury or a gross violation of human rights, whether as a result of torture or for any other reasons constituting an offence under the law, the injured party may, after a criminal judgement has been handed down, bring before the civil courts a suit for compensation for the injury sustained. He may also claim compensation by bringing a civil suit before the criminal courts during the process of the criminal suit. In the latter event, the criminal court rules on both the criminal and the civil suit, and the authority employing the public official accused is held liable for the compensation, in accordance with the principle respondera son soveraigne, if the offence was committed in the course of or by reason of the performance of official duty.

Question 13:

This is covered by the Code of Criminal Procedure. Where the court finds that the evidence or confessions of an accused person have been extracted under torture or compulsion, it must hold such evidence or confessions null and void (art. 159 of the Code of Criminal Procedure).

Question 14:

They have been studied by the competent authorities.

Question 15:

We have mentioned above the legislative texts incorporating the fundamental principles laid down in the Declaration. No difficulties have been encountered since the promulgation of the Declaration.

LUXEMBOURG

/Original: French/
/31 May 1978/

Question 1:

Torture does not exist in Luxembourg. The abolition of torture and other cruel, inhuman or degrading treatment or punishment is inherent in the Constitution of Luxembourg.

Question 5:

Under the penal law of Luxembourg, any act of torture or complicity in torture is considered to be an offence of wilful bodily harm and wounding. Offenders are liable to the penalties provided in the Penal Code for such an offence.

Question 8:

The laws on suspension of the enforcement of the sentence, extenuating circumstances and pardons may also be applied in accordance with Luxembourg legislation.

NETHERLANDS

/Original: English/
/4 September 1978/

A. General observations

1. The Government of the Netherlands wishes to preface its replies to the questionnaire with some observations of a general nature.

2. The use of torture, which is a regrettably widespread evil, should be combated in the first instance by national legislative and administrative measures aimed at preventing acts of torture, punishing those who commit them and affording redress to victims. It would be wrong, however, to suppose that the use of torture can be stamped out simply by enacting laws; the letter and spirit of the law must actually be observed. For this, governments and especially the prosecuting authorities under their control must be both able and willing to ensure that all public officials, even those in the lowest positions, observe the rules against torture, which the Declaration defines as a crime "inflicted by or at the instigation of a public official".

3. Unfortunately, experience shows that torture may occur even in countries where there is a system of statutory safeguards to prevent it. In such cases the judicial authorities often lack the necessary firmness or opportunity to use their powers to the full. Yet, even if a court is willing to issue a writ of habeas corpus, the results depend ultimately on the co-operation of the executive. If a government denies having any knowledge of the whereabouts of missing persons, even the most perfect system of statutory safeguards will fail. Another important factor is the existence of secret police forces, because it is often they who are responsible for committing acts of torture. Sometimes their actions have no satisfactory legal basis or no legal basis at all, and in many instances their conduct escapes judicial scrutiny either de jure or de facto. Yet another factor is the general relationship between the government and its citizens. Are the latter, for instance, prepared to invoke the existing statutory safeguards against the government or do they refrain from doing so for fear of reprisals or because they feel they would have no success? Closely connected with this is the question of whether private individuals are sufficiently aware of the existing legal remedies for vindicating their rights. Lastly there is the elusive factor of attitude, the awareness of moral norms and values, on the part both of government officials and of private individuals and the population as a whole. This attitude is bound in one way or another to affect a country's political climate and stability, and the latter will in turn affect the actions of the government and its respect for human rights in general.

4. Even if it is accepted that these factors affect the over-all situation, it is still tempting when answering questionnaires of this nature to emphasize the content and importance of legal safeguards, if only because they lend themselves to clear and factual description. In fact, the detailed comments set out below will also in the main restrict themselves to outlining the legislative provisions, first because this follows from many of the questions asked, and second because the Dutch legal system, upholding the principle that the treatment and discipline of

prisoners and detainees should respect human dignity, functions in practice in such a way that if torture or other cruel, inhuman or degrading punishment were to take place, those responsible would not escape prosecution under the criminal law.

B. Replies to questionnaire

Question 1

1. The Netherlands has been bound by the European Convention for the Protection of Human Rights and Fundamental Freedoms since 3 September 1953. Article 3 of the Convention provides that no one shall be subjected to torture or to inhuman or degrading treatment or punishment and Article 6 lays down a number of important legal safeguards for suspects in the conduct of criminal proceedings against them. These treaty provisions constitute part of Dutch law since they are directly applicable. Any person may, therefore, invoke these treaty provisions in the courts.

2. While Dutch law contains no provisions expressly prohibiting torture in the meaning of the Declaration, certain of its provisions and institutions restrict the theoretical opportunity for acts of torture to a minimum. This will be apparent in part from the answers to the remaining questions. One of the principal provisions in Article 29 of the Code of Criminal Procedure, which states that in all cases where a person is being interrogated as a suspect, the judge or official hearing the case must in no way attempt to obtain a statement which is not made freely. Before suspects are questioned they are told that they are not obliged to answer questions. The basic rule contained in Article 29 is repeated in the articles dealing with hearings before examining magistrates and in trials. Police officers who do not observe the basic rule may have disciplinary action taken against them.

3. As regards the second part of the question, pursuant to Article 15 of the European Convention, the prohibition laid down in Article 3 of the Convention may not be derogated from even in time of war or other public emergency. In wartime the armed forces are subject not only to the provisions of the ordinary criminal law but also to Articles 148 and 149 of the Military Criminal Code, which inter alia make it a criminal offence for members of the armed forces to use violence against one or more persons or intentionally and unlawfully to cause damage to property if this constitutes an abuse of their power, position or means as members of the armed forces. Moreover, the prescriptions and prohibitions contained in the Third and Fourth Geneva Conventions are incorporated in Article 8 of the Wartime Criminal Law Act. More detailed provisions are included in the military handbooks and instructions for all ranks.

Question 2

1. The training of policy and prison staff lays special emphasis on respect for human dignity in general and on a humane approach to suspects and prisoners in particular. The fact that each officer's powers are limited is also stressed. Much is done to ensure that the officers acquire a knowledge of the relevant laws

and regulations. To qualify for appointment, staff must satisfy stringent requirements and are obliged to take a psychological test to assess in particular their mental stability and ability to get on with people.

Question 3

The Code of Criminal Procedure lays down rules governing the way in which persons may be deprived of their freedom and on the way in which the implementation of detention and prison sentences is to be supervised. The Prisons Act and the Prison Rules made under the Act regulate the way in which detention and prison sentences are to be served and provide a definitive list of the disciplinary measures which may be taken in prisons and similar institutions. There is also a separate set of rules on the use of force by prison staff in the institutions. When deciding how to perform their duties the police are bound by the law of the land; according to a generally recognized principle, this means that they must not use unnecessary force or force which is not in proportion to the gravity of the wrongful act which is to be prevented or remedied. They too are subject to a separate set of rules on the use of force, which are contained in Articles 6-10 of the Instructions for the National Police. Similar provisions are laid down for municipal police forces by the local authorities concerned. Police officers who do not observe the rules may be subjected to disciplinary action.

Question 4

1. For each house of detention, prison and state asylum for criminal psychopaths there is an independent Supervisory Committee which has a statutory duty to supervise all matters affecting the institution, in particular the treatment of the inmates and the observance of the regulations. Each Committee always includes a number of the judiciary.

2. There is also a Central Advisory Board for Prisons, the Care of Criminal Psychopaths and the Rehabilitation of Prisoners which is responsible for general supervision of the institutions. The members of the Board have access to all institutions and may talk freely with the inmates.

3. Police methods and the treatment of prisoners are matters which are closely scrutinized by Parliament. The members of the Upper and Lower Houses of Parliament have the right to request information and the Minister concerned is obliged to provide it, either orally or in writing.

Question 5

Dutch law does not contain a definition of torture similar to that given in Article 1 of the Declaration. However, ill treatment as such is a criminal offence under Articles 300-303 of the Criminal Code. Ill treatment occurs if a person intentionally causes bodily pain or injury. Intentionally causing injury to health is equated with ill treatment. Article 301, concerning premeditated ill treatment, would seem applicable in most cases of torture. This offence normally carries a maximum prison sentence of three years, but if the victim suffers serious bodily injury or dies the maximum penalty is a prison sentence of six or nine years

respectively. Article 365 of the Criminal Code provides that a public servant who by abusing his authority forces a person to do, not do or suffer some act is liable to a prison sentence not exceeding two years. Article 284 provides that any person who by the use of force or threats coupled with force unlawfully compels a person to do, not do or suffer some act is liable to a maximum of nine months' imprisonment or a fine not exceeding 600 guilders. Persons who give instructions for, are accessories to or incite the commission of a crime are treated as having committed the offence and punished accordingly. Sentences are reduced by one third for persons convicted as accomplices or for attempts to commit a crime. Article 78 provides that references in the law to crime in general or to particular crimes are to include complicity in and attempts to commit crimes in so far as the provisions in question do not exclude this. The only relevant exception is Article 300, paragraph 5, which provides that an attempt to inflict ill-treatment is not a criminal offence. On the other hand, attempts at premeditated ill treatment (article 301) and attempts to inflict serious bodily injury (article 302) are criminal offences pursuant to article 78.

Question 6

1. Persons who consider that they have been subjected to torture or other cruel, inhuman or degrading treatment or punishment have two ways of obtaining legal redress, one based on national law and the other on international law. Under national law an aggrieved person may file a statement with the Public Prosecutor that a criminal offence has been committed against him. Whenever a Public Prosecutor has reason to suppose, either from such a statement or from some other source, that torture or some other cruel, inhuman or degrading treatment or punishment has taken place, he investigates the matter in accordance with the normal rules laid down in the Code of Criminal Procedure. If the Public Prosecutor decides not to take proceedings, the injured party may lodge a complaint with the Court of Appeal within whose jurisdiction the prosecution would have to take place, and the Court may order that proceedings should nevertheless be instituted.

2. The Prisons Act also lays down a procedure whereby prisoners can lodge a complaint against decisions taken by the governor of the institution in which they are detained and which they consider to infringe upon their rights. The complaint is dealt with by a special committee of three members (one of whom is always a member of the judiciary) appointed by the Supervisory Committee from among its own members. Both the Governor and the complainant may appeal to the Prisons Section of the Central Advisory Board a decision on a complaint. Prisoners may also apply to the President of the District Court in their area for an interlocutory injunction, and to the Queen, the Minister of Justice and Parliament. All prisoners have the right to correspond freely with the persons and bodies referred to above. Furthermore, they may communicate with their counsel and their social worker either orally or in writing; this is another way in which complaints can reach the competent authorities.

3. Since the Netherlands has recognized the right of the individual to lodge complaints under the European Convention for the Protection of Human Rights and Fundamental Freedoms, any person who considers that he is the victim of a violation of one of the provisions of that Convention may petition the European Commission of Human Rights, providing he has first exhausted all legal remedies under national law. Petitions lodged with the Commission may ultimately be referred to the European Court of Human Rights.

Question 7

If the competent authorities have reason to suppose that an act of torture has been committed, the National Criminal Investigation Department will as a rule be ordered to start an investigation. This will take place in accordance with the normal rules of criminal procedure as laid down in the Code of Criminal Procedure. If a member of the armed forces is suspected of having committed an act of torture, the investigation is conducted by the military authorities in accordance with the normal procedural rules of military law. No special procedures exist for use in cases where an act of torture is believed to have been committed.

Question 8

1. There is no rule in Dutch criminal law that proceedings have to be taken against an alleged offender, but in view of the grave nature of torture, if the Public Prosecutions Department has reasonable grounds for believing a person to be guilty it will in all probability institute proceedings. The ensuing trials are governed by the normal rules laid down in the Code of Criminal Procedure for the prosecution of criminal offences. Persons suspected of having committed an act of torture would probably be charged with an offence under Article 301 of the Criminal Code, which relates to ill-treatment inflicted with premeditation. For the penalties incurred, please refer to the answer to question 5.

2. Public servants who commit offences are liable to sentences which exceed by one third those for other offenders, if in committing the offence they disregard an official duty specially entrusted to them or abuse the power or position which they enjoy by virtue of their office. As an additional punishment, the court may order that they be deprived of various rights; it may for instance order that they may not hold public office or certain public offices or practise certain professions, or both. Convicted persons are not excepted from the general rules relating to suspended sentences contained in the Criminal Code and to remission of sentences contained in the Constitution and the 1976 Pardon Regulations.

Questions 9 and 10

1. Article 104 of the Government Personnel (National Police) Regulations and article 105 of the Government Personnel (Municipal Police) Regulations list the punishments (ranging from a written reprimand to dismissal) which may be imposed on police officers who fail to discharge their obligations or otherwise neglect their duties. Dereliction of duty includes both infringing a regulation and doing or failing to do something which a public servant who was carrying out his duties properly should not or should have done in similar circumstances.

2. Article 111 of the Government Personnel (National Police) Regulations and article 112 of the Government Personnel (Municipal Police) Regulations provide that a police officer may be suspended if he has been charged with a felony. Inflicting ill-treatment is a felony.

3. In the case of doctors, disciplinary action can be taken against them by their own professional body. In the case of members of the armed forces, additional punishments such as dismissal from the service may be imposed under military law.

Question 11

No investigations have been carried out or proceedings instituted since the adoption of the Declaration.

Question 12

Claims for damages may be brought against the State for unlawful acts of the Government.

Question 13

According to the Dutch law of evidence in criminal proceedings a suspect can only be convicted if lawfully admissible evidence has convinced the court of the suspect's guilt. The law also provides that a suspect can never be convicted on the basis of his own statements alone, and that suspects are not obliged to answer questions. Any statement which is found not to have been given freely, contrary to Article 29 of the Code of Criminal Procedure, does not constitute lawfully admissible evidence. It can be assumed that if any such cases do occur, the courts will decide fully in conformity with Article 12 of the Declaration.

Question 14

The text of the Declaration has been brought to the knowledge of the national police, the municipal police and the penitentiary institutions. It has also been brought to the notice of several interested non-governmental organizations. Attention is being given to the contents of the Declaration in the training of personnel of the national police, the municipal police and the penitentiary institutions. Further, the text of the Declaration will be gradually incorporated in the military handbooks.

Question 15

Not applicable.

NORWAY

/Original: English/
/15 September 1978/

Question 1:

1. According to Norwegian law it is a punishable offence to commit any illegal act of violence against another person, cf. in particular the Penal Code of 22 May 1902, Chapter 22. Any form of torture would be an illegal act of violence. The second sentence of Article 96 of the Constitution prohibits "interrogation by torture", cf. also paragraph 256 of the Criminal Procedures Act of 1 July 1887. Nor can the infliction of physical pain be imposed as a penal sentence, cf. paragraphs 15 and 16 of the Penal Code and paragraph 12 of the Military Penal Code (Act no. 13 of 22 May 1902) or as a disciplinary measure in respect of prisoners or others who have been deprived of their liberty without their own consent, cf. inter alia paragraph 26 of the Prison Administration Act of 12 December 1958.

2. A limited use of coercion and weapons is allowed in prisons for reasons of security (Directives of 22 April 1960). Convicts can also be placed in solitary confinement when this is considered advisable for reasons of treatment or security (para. 16 of the Prison Administration Act). It is clearly assumed that other restrictive measures than those explicitly set forth in the applicable rules and regulations cannot be resorted to. The latter measures are within the limits set by the United Nations Standard Minimum Rules for the Treatment of Prisoners.

3. Norway has recently signed the Additional Protocols I and II to the Geneva Conventions of 1942 which, inter alia, provide protection for persons also in internal conflicts.

4. Furthermore, the general rules applicable to the Norwegian public administration and criminal procedure ensure that no one shall be treated in an inhuman or degrading manner. This applies also in situations of public emergency.

Question 2:

1. Information regarding the prohibition of torture or other cruel, inhuman or degrading treatment is an integral part of the training programme for personnel responsible for prisoners and others deprived of their liberty without their own consent.

Question 3:

1. As far as the police and the prosecuting authority are concerned, rules for their conduct towards the public and arrested persons are set forth in the Instructions to the Police and the Instructions to the Prosecuting Authority, respectively. Attention is drawn in particular to paragraph 30 of the Instructions to the Police: "Every member of the police force is required to conduct himself with absolute integrity. Both on and off duty, he must behave honourably and with propriety so that he gains the respect and confidence of his fellow-citizens."

2. In regard to the obtaining of statements, it is stated in item 4 of paragraph 7 of the Instruction to the Prosecuting Authority that "during interrogation the officer concerned shall always conduct himself in a calm and dignified manner and shall not attempt through promises, misrepresentations, threats or coercion to obtain a statement or a statement tending in a particular direction."

3. There are no specific rules prohibiting torture and other inhuman treatment in prisons.

Question 4:

1. The prosecuting authority, the prison administration and the social welfare administration are built up on a hierarchical basis which means, inter alia, that senior officials are generally and continuously responsible for seeing that their subordinates do not exceed their duties.

2. According to paragraph 21 in the Instructions to the Police, it is incumbent on every member of the police force to report to his immediate superior without delay should it come to his knowledge that another police officer has been guilty of misconduct in the course of his duties. Similarly, it is incumbent on him, if so requested, to make a statement on circumstances related to other officers, subject to such limitations as ensue from the rules of the Criminal Procedures Act regarding exemption from the obligation to give evidence in special cases.

3. Each prison has a duty to report to the central Prison Board any application of the following measures: all reprimands decided by the Director; solitary confinement exceeding one month, use of security bed exceeding 24 hours and use of security cell exceeding two weeks.

4. Furthermore, reprimands and use of coercive measures are recorded in the prisons' annual reports.

Question 5:

Yes, cf. item 1.

Question 6:

1. The competent authority to deal with complaints regarding misconduct in the course of duty is the immediately superior administrative authority or special supervisory bodies. Such cases may also be submitted to the Storting's Ombudsman for the Public Administration. His function is to seek to ensure that the public administration does not commit an injustice against the individual citizen (cf. para. 3 of Act no. 8 of 22 May 1962). Such cases may also be brought before the ordinary courts as criminal or civil actions.

2. Complaints by the public or by arrested persons regarding police conduct will, to the extent a punishable offence is alleged to have been committed, be investigated by the police and the prosecuting authority according to normal procedure in penal

cases. Such investigation will be carried out by the police in a district other than the district where the officer concerned serves. When investigations have been completed, the question of whether to bring a formal charge is decided by the superior prosecuting authority (distinct from the police).

Question 7:

1. Yes. The superior administrative authority has a general duty to take up the matter ex officio, if there is reason to believe there has been any misconduct in the course of duty. Similarly, the Ombudsman may take up cases on his own initiative (cf. para. 5 of the Ombudsman Act). The courts can only proceed in such cases on the basis of a request from a party which, according to the general rules of procedure, is competent to institute proceedings.

Question 8:

1. If there is reason to believe that a punishable act has been committed, proceedings will be instituted according to the general rules of criminal procedure.

2. So far as is known, no legal actions, or even investigations, have been instituted in respect of members of the police force or the prison administration, alleging that arrested persons or prisoners have been subjected to torture, etc. It cannot therefore be said that there is any established practice in this field. Moreover, if a police officer or a prison official had subjected an arrested person to torture, it would lead to a more severe reaction than disciplinary measures against the officer in question. This would also apply to other forms of abuse of authority.

3. From time to time there are reports accusing police officers or prison officials of using physical force unlawfully - generally in connexion with the arrest or transportation to the police station of a suspected person who forcibly resists or who is under the influence of alcohol or drugs. Misuse of force, if such has occured, is punishable according to the general provisions of the Penal Code, and the case will be dealt with and decided according to the same rules as are applicable to all Norwegian subjects. In addition such a case would automatically have further career consequences for the guilty officer in the form of disciplinary measures or dismissal.

Question 9:

1. Paragraph 10 of the Act of 10 June 1977 relating to civil servants, authorizes the imposition of disciplinary sanctions in the form of a written reprimand, suspension of up to three months without pay and transfer to another service post of the same or lower rank. Misconduct may also represent grounds for notice of termination or dismissal. The Instructions to the Police authorize the entry in service records of warnings and reprimands. Misconduct may also constitute grounds for withdrawing authorization to practise as, for example, a medical practitioner or a lawyer. Serious breaches of service/professional ethics may result in exclusion from professional organizations.

Question 10:

1. Rules corresponding to those mentioned under items 8 and 9 are applicable.

Question 11:

1. As stated under item 8, so far as is known there have been no allegations of torture or similar acts being committed by the police or the prison administration. Allegations regarding violence and reports to this effect are always investigated in the usual manner, and the guilty party has been indicted in the comparatively few cases where a punishable offence is presumed to have been committed.

Question 12:

1. The general rules on liability for compensation apply to acts covered by the Declaration. Both the perpetrator and the public authorities may be held liable for compensation. Moreover, in certain cases, ex gratia compensation may be granted by Parliament (the "Storting"). There is no record of compensation having been afforded for any such offences as are covered by the questionnaire since the adoption of the Declaration.

Question 13:

1. The right to put forward evidence obtained by illegal means is not specifically regulated in the rules on criminal procedure. It would be up to the particular court to assess in the individual case whether illegally obtained evidence should be allowed to be put forward and, if so, how much weight should be attached to it.

Question 14:

1. So far as is known, no special measures have been initiated in this respect. It must be remembered, however, that the circumstances the Declaration particularly refers to are hardly likely to prevail in Norway.

Question 15:

1. Torture and other inhuman treatment do not constitute any problem in Norway. The implementation of the Declaration has not led to difficulties of any kind.

PAKISTAN

/Original: English/
/27 June 1978/

Question 1:

Torture and other cruel inhuman or degrading treatment is a penal offence in Pakistan under the Pakistan Penal Code 1860. The code makes no exceptions, and therefore any perpetrator of this offence, whether in Government or a private person, is considered to have committed a crime and is dealt with accordingly. The Victim has both executive (complaint to the police) and judicial (complaint to the Magistrate) remedies available to him. There are several instances where an executive agency like the police or the prisons service has been complained against, and the offending officers have then been prosecuted and in some cases convicted by the courts in Pakistan. Emergency laws, wherever promulgated, have built in safeguards against torture - the general law of the land has precedence over Special Law for the time being in force.

Question 2:

Law enforcement personnel and other public officials responsible for persons deprived of their liberty are briefed during their training about their legal powers, and the consequences of illegal action. They are reminded of these through executive directives like standing orders, refresher training courses and Code of Conduct. Every law officer in Pakistan clearly knows that torture and other degrading treatment is illegal under the law of the land. Where they transgress, they are brought to account for their action.

Question 3:

Same reply as in (2) above.

Question 4:

There is a well established pattern of inspection of police stations and prisons, whereby senior responsible officers of the Government keep a vigilant eye on the working of subordinate officers. Departmental heads call for regular reports on this subject and keep themselves thoroughly informed. Complaints of this nature are taken very seriously and thoroughly examined.

Question 5: Yes.

Question 6:

Districts and departmental heads in the police and prison service, on receipt of complaint, can take either of the two courses:

(a) Enquire into the matter personally;

(b) Appoint an enquiry committee of unconnected officers. The findings may result in either departmental action or the institution of a criminal case against the accused officer. The victim has the option to go directly to a Magistrate who may decide to take cognizance of the matter and carry out a judicial probe. The Magistrate may then suo moto convict the accused, or have a criminal case instituted against the delinquent.

Question 7:

Yes. The procedure is the same as in 6. However, in this case the preliminary enquiry may either be secretly conducted or done openly.

Question 8:

Where a case of torture is established, criminal proceedings follow. The procedure is contained in the Criminal Procedure Code of 1898. Penalties which can be imposed are imprisonment, fine and compensation to the victim. There is no provision for suspended sentences. Pardons, amnesties and commutations are provided for, but these are rarely exercised. Commutation in sentence for good behaviour in gaols is provided for but it cannot exceed one third of the total sentence.

Question 9:

Disciplinary action follows a conviction as a matter of course. The various professional associations have their own rules whereby their members may be discharged from the body in case of illegal use of powers. The Bar Council and the Pakistan Medical Association are two such bodies.

Question 10: Apply equally.

Question 11:

Yes, at various times, with legal action following, both judicial and administrative.

Question 12:

Compensation can be awarded to the victim and is paid by the accused person personally even where the accused is a government servant acting as such. However, compensation is rarely awarded. Rigorous imprisonment is usually awarded.

Question 13:

Constitution forbids subjecting any person to torture for the purpose of extracting evidence vide article 14 (2). The evidence Act 1972 provides that no confession or admission is admissible in evidence against an accused person unless made before a Magistrate. Even that may be later retracted, though it carries great weight.

Question 14:

There is very little such practice in Pakistan. It is an area where, because of long standing safeguards, there are few complaints.

Question 15:

In the presence of a substantive law to prevent torture, no difficulty has been experienced in accomplishing the objective.

## QATAR

[Original: English]
[5 May 1978]

Referring to the Secretary-General's note dated 23 March 1978 concerning General Assembly resolution 32/63 entitled "Questionnaire on the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment", I have the honour to advise you that the above-mentioned Declaration doesn't apply to the State of Qatar, as there is no single case of such nature available in the State of Qatar because of the virtual nature of Islam that calls for decent treatment of the individual and no effort spared to bolster Man's integrity.

SENEGAL

/Original: French/
/3 July 1978/

Questions 1, 14 and 15:

1. The Constitution of the Republic of Senegal of 8 March 1963 includes a title II, "Civil freedoms and freedoms of the human person", which reflects the dedication of the Senegalese people to fundamental rights, as defined in the Declaration of the Rights of Man and of the Citizen of 1789 and the Universal Declaration of 10 December 1948.

2. Accordingly, article 6 of the Constitution provides:

(a) In the first paragraph: "The human person is sacred. The State has a duty to respect and protect it."

(b) In the second paragraph: "The Senegalese people acknowledge the existence of the inviolable and inalienable rights of man as the basis of every human community and of peace and justice throughout the world."

(c) In the third paragraph: "Everyone shall have the right to life and to physical integrity under the conditions defined by law."

3. All these provisions have their basis in the prohibition of torture and other cruel, inhuman or degrading treatment or punishment (art. 5 of the Universal Declaration of Human Rights and art. 7 of the International Covenant on Civil and Political Rights), which can never be waived even in cases of exceptional public danger.

4. They are also a guarantee for the application of article 47 of the Constitution, which gives the President of the Republic exceptional powers in times of political instability. The aforementioned constitutional provisions are complemented by the provisions of the Penal Code and of the Code of Criminal Procedure.

5. Thus persons committing acts of torture and inflicting cruel treatment may be prosecuted for wilful bodily harm and wounding or other violence or assault and battery (arts. 294, 295 and 296 of the Penal Code).

6. The applicable procedure therefore comes under ordinary law, and no distinction is made between a state of emergency and a period of stability.

7. All the measures mentioned were adopted prior to the resolution connected with the questionnaire.

8. In fact the resolution came at a time when Senegal already had legislation which effectively protects the individual from the practices condemned therein, and which is entirely in keeping with the Declaration.

9. It must be added, however, that resolutions and declarations adopted in the United Nations are always published and disseminated in Senegal through the mass media. They are also discussed in lectures for associations, such as the United Nations Association of Senegal and the Federation of Women Lawyers.

Question 2:

1. The officials referred to in paragraph 2 of the questionnaire are trained at the National Police Academy, which has a section dealing with prison administration.

2. The curriculum deals:

(a) In the case of police officers:

(1) With contemporary econimic, political and racial problems;

(2) With criminal law and criminal procedure;

(3) With public law;

(b) In the case of prison officers:

(1) With criminal law and criminal procedure;

(2) With prison administration (system of penal institutions, discipline).

3. The training programmes are based primarily on Senegal's penal policy, which is designed to rehabilitate prisoners. This calls for scrupulous respect for the rights of prisoners and effective participation in their education by those responsible for the treatment of offenders.

Question 3:

1. These duties and functions set forth in Decree No. 66-1081 of 31 December 1968 on the organization and system of penal institutions and Order No. 08683/MI/CAB/CT of 29 June 1967 on the internal regulations of penal institutions.

A. Provisions of the Decree of 31 December 1966

2. Article 90 of the decree prohibits all employees, warders and persons having access to places of detention:

(a) From committing acts of violence against prisoners;

(b) From making insulting accusations against them or using coarse or familiar language when speaking to them;

(c) From employing inmates as personal attendants or assistants, except in especially authorized cases.

3. Article 120 stipulates that "If a prisoner uses threats, insults or violence against the governor or his assistants or against other prisoners, or if he refuses to comply with the regulations for the maintenance of order and obedience to orders and regulations, he shall be liable to disciplinary penalties, without prejudice to the penalties provided for in the Penal Code, where applicable."

4. The disciplinary penalties which may be imposed by the governor upon the recommendation of the head warder are as follows:

(a) Reprimand;

(b) No walks for a maximum of one week;

(c) No correspondence for a maximum of two weeks, except for permission to write to the administrative and judicial authorities.

5. The following disciplinary penalties may also be imposed on prisoners: ban on the use of pocket money (pécule); solitary confinement; calcellation of visits.

6. The duration of these penalties may vary according to whether they are ordered by the Minister of the Interior responsible for prison administration or by the prison governor.

7. In no circumstances may solitary confinement or cancellation of visits exceed one month.

B. Provisions of the Order of 29 June 1967

This order stipulates:

(a) In article 18: "Solitary confinement does not, however, mean that the prisoner is deprived of visits from his defence counsel. Marabouts, chaplains and social workers may visit prisoners in solitary confinement".

(b) In article 2: "Order and discipline must be firmly maintained, but without more coercion than is necessary for the maintenance of security and the proper organization of institutional life".

(c) In article 3: "Prison staff may use force against a prisoner only in cases of violent or passive resistance to orders".

(d) In article 4: "Handcuffs and shackles shall not be used for punishment; they shall be used within the place of detention only in cases of fits of anger or serious violence, or if there is no other way of subduing a prisoner or preventing him from doing damage or injuring himself or others".

Question 4:

1. One set of regulations, on the protection of the physical integrity of the person under arrest, is applicable in cases of police custody.

2. The Code of Criminal Procedure provides that after 48 hours a medical examination must be performed if the person under arrest or a member of his family so requests. The investigators are bound to advise the person under arrest of this right.

3. A special register must be kept on the police premises where persons may be kept in custody. The criminal police officer holding the prisoner must enter in the register, in the record of the interrogation and in the book of statements (carnet des declarations) in departments where such a book is compulsory, the date and time when police custody began and ended, the reasons for it, the duration of the interrogations and of the intervals between them; all these notes must be initialled by the persons concerned and, should they refuse, their refusal must be mentioned in the record.

4. A second set of regulations concerns detention pending trial and the execution of sentences. In this connexion, the President of the chambre d'accusation, as often as he deems it necessary, and not less than once a year, visits places of detention (maisons d'arrêt) falling within the competence of the Court of Appeal and ascertains the conditions of persons undergoing detention pending trial.

5. In addition, the examining magistrate, the President of the chambre d'accusation, the Chief State Counsel (Procureur de la République) and the State Counsel General (Procureur général) visit penal institutions whenever they see fit to do so.

6. A third set of regulations is contained in Decree No. 66-1081 of 31 December 1966 on the organization of penal institutions.

7. This text makes a point of ensuring respect for human rights and more humane detention conditions. This purpose is reflected in the following provisions:

(a) Article 97: Each penal institution has a watchdog committee, whose Chairman is: In the region of Cap-vert and in the communes of Saint-Louis, Thiès, Diourbel, Kaolack, Tambacounda and Ziguinchor, the Governor or his representative; in other regions, the Prefect or his representative; and whose members are: A magistrate appointed by the Keeper of the Seals (Garde des Sceaux), Minister of Justice; the Chief Medical Officer for the area in question; the District Public Works Officer or his qualified representative.

(b) Article 98: "The watchdog committee shall inspect the prison and oversee all matters connected with hygiene, food, discipline, and work, the provision of health services, the moral rehabilitation of prisoners, the upkeep of the requisite registers and the conduct of prison officers".

(c) Article 99: "The watchdog committee shall be convened by its Chairman once a year or more frequently if he deems it necessary. It shall produce a report of its findings and make such proposals as it considers appropriate. A copy of the report shall be transmitted to the Minister of the Interior responsible for prison administration and another copy to the governor of the prison inspected".

Question 6:

1. In the event of grievous bodily harm and wounding or other maltreatment, the person under arrest or detention may institute criminal proceedings against those responsible.

2. The initiative for the prosecution lies with the Chief State Counsel, who receives the complaints and charges and decides what action will be taken.

3. If he considers that prosecution is necessary, he initiates prosecution proceedings either by having a preliminary investigation made by the examining magistrate or by resorting to the procedure of a direct summons to the criminal court (tribunal correctionnel). Otherwise he classifies the case as requiring no action. Such classification, however, is an administrative measure, not a jurisdictional act; the parquet can always reopen a case and set prosecution proceedings in motion if, for example, new circumstances come to light which make the nature of the case more serious.

4. Prosecution proceedings may also be set in motion by the filing of a complaint and institution of civil proceedings before the examining magistrate. In that event the ministère public is obliged to prosecute those responsible for unlawful acts against the person under arrest or detention, and the examining magistrate must investigate, even if the ministère public acting on the communication to the parquet, concludes in the requisitoire that there are no grounds for proceeding with an investigation.

Question 7:

1. When an offence of this kind is committed, it can as a rule be brought to the attention of the police, the gendarmerie or the ministère public. The police and gendarmerie, once notified, will inform the parquet which may, however, also be informed by means of complaints or charges which private individuals are entitled to lodge with it directly.

2. Before instructing a court to investigate or adjudicate, the ministère public considers the gravity of the case, exercises power vested in the parquet to decide whether prosecution is appropriate, and decides on the tribunal.

3. At the instigation of the ministère public, or acting on their own initiative, the police and gendarmerie make what are known as preliminary inquiries.

4. In addition, in cases of emergency, or where it is necessary to find evidence quickly, the criminal police authorities are entitled to institute "flagrancy" inquiries (enquêtes de flagrance) in order promptly to discover and establish the first pieces of evidence and, if possible, discover the culprits before it is too late.

5. In the course of their inquiries, the criminal police perform a number of functions similar to those which might be performed by an examining magistrate:

hearing of witnesses, questioning, attachment and the taking of statements. Action connected with the search for evidence is called criminal police action.

Questions 5, 8, 9 and 10:

1. After considering the circumstances of the case before him on the basis of the documents in his possession and particularly in the light of the evidence resulting from the police inquiry, the Chief State Counsel may: refer the case to the appropriate court in cases of flagrant délit; directly summon the offender to the criminal court; order an investigation at the end of which the examining magistrate will refer the case to the criminal court or transmit the file to the State Counsel General if a criminal offence has been committed.

2. The penalties incurred by principals and accessories before the fact in cases of torture and other cruel, inhuman or degrading treatment or punishment are set forth in articles 294, 295 and 296 of the Penal Code, which read as follows:

(a) Article 294: "Any individual who wilfully wounds or strikes another person or commits any other act of violence or assault resulting in illness or total incapacity for personal work for more than 20 days shall be liable to one to five years of imprisonment and a fine of 20,000 to 250,000 francs. The offender may also be deprived of the rights referred to in article 34 for a minimum of five years and a maximum of 10 years. When the acts of violence referred to above result in death, mutilation, amputation, loss of the use of a limb, blindness, the loss of an eye or any other permanent infirmity the offender shall be liable to 5 to 10 years of imprisonment and a fine of 20,000 to 200,000 francs."

(b) Article 295: "In the event of premeditation or ambush, if the victim dies or if the violence results in mutilation, amputation, loss of the use of a limb, blindness, the loss of an eye or any other permanent infirmity, the offender shall be liable to 10 to 20 years of hard labour. In cases of the kind referred in the first paragraph of article 294, the term of imprisonment will be from 5 to 10 years."

(c) Article 296: "When the injuries or blows or other acts of violence or assault do not result in illness or incapacity for personal work as mentioned in article 294, the offender shall be liable to one month to two years of imprisonment and/or a fine of 20,000 to 100,000 francs. In the event of premeditation or ambush, the offender shall be liable to two to five years of imprisonment and a fine of 50,000 to 200,000 francs."

3. Save as otherwise provided by law, if the person sentenced to a term of imprisonment or fined has not previously been sentenced to a prison term for a criminal or correctional offence under ordinary law, the courts and tribunals may order, in the decision itself or the opinion (décision motivée), that the principal penalty shall be executed.

4. The convicted person may be granted a pardon, commutation of the punishment or amnesty. The penalites may be accompanied by the definitive loss of all or some civic rights. But in addition to these penalties there are the disciplinary penalties set forth in the staff regulations for officials responsible for the custody and treatment of persons under arrest or detention.

5. In this connexion, offences committed by prison staff and police officers are punishable under the internal regulations. In addition to such punishment the following disciplinary penalties may be imposed:

(a) Removal from the promotion register;

(b) Transfer;

(c) Downgrading;

(d) Demotion;

(e) Suspension without pay for a period not exceeding six months;

(f) Dismissal without loss of pension rights.

6. In the event of a conviction involving the definitive loss of all or some of his civic rights, the individual is summarily dismissed.

7. Moreover, the exercise of the occupations in question requires moral standards that rule out convictions for certain offences.

Question 11:

1. Since the adoption of the Declaration, no proceedings have been instituted.

2. It should be noted, however, that the Court of Appeal, in a decision dated 30 July 1973, gave four prison warders charged with wilfully doing bodily harm and injury to prisoners a prison sentence of one month with suspension of enforcement and ordered them to pay 25,000 francs in fines and 25,000 francs in damages.

3. In addition, on 30 January 1978, the Court handed down a decision whereby a police inspector and four policemen were given the following sentences for involuntary homicide, wilful bodily harm and wounding and failure to assist someone in danger: a prison term of two years with suspension of enforcement and a fine of 100,000 francs; a prison term of 18 months with suspension of enforcement and a fine of 100,000 francs; a prison term of one year with suspension of enforcement and a fine of 100,000 francs; and a prison term of eight months with suspension of enforcement and a fine of 50,000 francs.

Question 12:

1. The law ensures redress and compensation to the victim of acts of torture or other cruel, inhuman or degrading treatment or punishment in the form of damages paid by the offender.

2. An example of this procedure is provided by the decision of the Court of Appeal of 30 July 1973 awarding the victim 25,000 francs in damages.

Question 13:

1. All forms of brutality ("third degree", torture or similar treatment, prolonged interrogation) are strictly prohibited. Statements extracted under torture cannot be used as evidence in the proceedings.

2. Moreover, under article 415 of the Code of Criminal Procedure, the acceptance of confessions is left to the discretion of the judge.

SWEDEN

/Original: English/
/18 July 1978/

Question 1:

1. The basic provision on the protection from torture and other cruel, inhuman or degrading treatment or punishment is to be found in chapter 2, section 5 of the Constitution, provision of which reads (translation into English):

> "Every citizen is protected from corporal punishment. He is also protected from torture and from being medically influenced for the purpose of extorting or preventing statements."

2. According to section 20 of the same chapter, aliens in Sweden have the same status as Swedish citizens with regard to the protection offered by section 5.

3. It can be added that this provision does not require any supplementary legislation in order to be binding on public officials.

4. Protection from torture and other cruel, inhuman or degrading treatment or punishment is, however, also offered by certain provisions of the Penal Code, in particular the provisions on assault (chap. 3, sect. 5), aggravated assault (sect. 6), unlawful coercion (chap. 4, sect. 4) and unlawful threat (sect. 5).

5. These provisions of the Penal Code read (translation into English):

(a) "CHAPTER 3. Of Crimes Against Life and Health."

"Section 5. A person who inflicts bodily injury, illness or pain upon another or renders him unconscious or otherwise similarly helpless, shall be sentenced for assault, to imprisonment for at most two years or, in case the crime was petty, to pay a fine."

"Section 6. If the crime mentioned in Section 5 is considered grave, the sentence shall be for aggravated assault to imprisonment for at least one and at most ten years."

"In judging the gravity of the crime, special attention shall be paid to whether the deed involved a mortal danger or whether the offender had inflicted grievous bodily injury or severe illness or had otherwise shown great ruthlessness or brutality."

(b) "CHAPTER 4. Of Crimes Against Liberty and Peace."

"Section 4. A person, who, by assault or otherwise by force or by threat of a criminal act, compels another to do, submit to or omit to do something, shall be sentenced for unlawful coercion to pay a fine or to imprisonment for at most

two years. If someone with such effect exercises coercion by threat of prosecuting or accusing another of a crime or of giving detrimental information about another, he also shall be sentenced for unlawful coercion, provided that the coercion is wrongful."

"If a crime referred to in the first paragraph is grave, imprisonment for at least six months and at most six years shall be imposed. In judging the gravity of the crime, special attention shall be paid to whether the act included the infliction of pain to force a confession, or other torture."

"Section 5. If a person raises a weapon against another or otherwise threatens to commit a criminal act, in a manner suited to evoke in the threatened person a serious fear for his own or someone else's safety as to his person or property, he shall be sentenced for unlawful threat to pay a fine or to imprisonment for at most two years."

6. In addition to these provisions of a basic and general nature, there are also relevant provisions in, inter alia, the Act (1976:371) on the treatment of detained and arrested persons and others and the Act (1974:203) on institutional treatment of offenders. A detained person shall be treated in such a way that harmful effects of the deprivation of liberty are avoided; the convicted prisoner shall be treated with respect for his human dignity. Furthermore, during the preliminary investigation of an offence, the interrogating officer must not use false information, promises, threats, coercion, exhaustion or other improper measures for the purposes of obtaining a confession, nor must the interrogated person be refused his meals or the necessary rest (chap. 23, sect. 12 of the Code of Judicial Procedure).

7. The guarantees offered by chapter 2, section 5 of the Constitution (reproduced under paras. 1 to 6 above) cannot be restricted by an ordinary law adopted by the Parliament, but amendments require two decisions by the Parliament with elections in between. This fundamental rule also applies to a situation where the country is at war, or is exposed to danger of war, or if such exceptional circumstances prevail as are due to war or to a danger of war to which the country has been exposed (chap. 13 of the Constitution). If, under such conditions, the Government, with authorization by law, issues regulations by way of decrees, it is, thus, obliged to observe the limits set by chapter 2 of the Constitution. Under no circumstances is the Government empowered to enact, amend, or repeal any constitutional provision.

8. No additional measures have been considered necessary as a follow-up of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Question 2:

Programmes and activities for the training of law enforcement personnel and other public officials responsible for persons deprived of their liberty vary

according to the tasks of the officials concerned. Common to them all is, however, instruction of officials in the legislation governing the treatment of persons deprived of their liberty as well as in its implementation. A detailed account of the various training schemes would, in the light of this explanation, be superfluous.

Question 3:

Certain relevant provisions in the Act on the treatment of detained and arrested persons, the Act on institutional treatment of offenders and the Code of Judicial Procedure have been referred already in the answer to question No. 1. It can be added that the different instructions concerning the duties of law enforcement personnel and other public officials responsible for persons deprived of their liberty contain explicit rules providing for medical treatment or examination in case of suspicion of corporal injury or illness.

Question 4:

1. The central governmental authorities supervise, each one within its field of competence, the activities of subordinate bodies and officials. In such a way the systematic review referred to in this question is guaranteed. If necessary, instructions are issued for the proper carrying out of these activities in accordance with law. Furthermore, the central authorities may, if the circumstances so warrant, propose to the Government that new legislation be enacted.

2. Moreover, the Parliamentary Ombudsman and the Chancellor of Justice (appointed by the Government) have supervisory functions with regard, inter alia, to law enforcement personnel and other public officials, responsible for persons deprived of their liberty. Their review of the activities of public officials should perhaps not be termed systematic, but they have the faculty to intervene in any case brought to their notice where a violation of the human rights of an individual is alleged to have taken place. If they so deem proper, they may propose new legislation or administrative regulations.

3. Mention should also be made of the possibility for a prisoner to appeal to an administrative court a decision affecting his treatment in an institution, for instance a decision to place him under solitary confinement.

Question 5:

1. In the answer to question No. 1 the relevant penal provisions have been reproduced. As regards participation in, complicity in, incitement to or the attempt to commit torture, reference may be made to chapter 23, sections 1-4 of the Penal Code, provisions of which read (translation into English):

"Section 1. If someone has begun to commit a given crime without its arriving at completion, he shall, in cases where specific provisions have been made

governing this, be sentenced for attempt to commit the crime, if there had been a danger that the act would lead to the completion of the crime or such danger had been precluded only because of accidental circumstances."

"Punishment for attempt shall be fixed at most at what applies to a completed crime and not at less than imprisonment if the lowest punishment for the completed crime is imprisonment for two years or more."

"Section 2. A person who, with the intention of committing or promoting a crime, presents or receives money or something else as prepayment or payment for the crime of who procures, constructs, gives, receives, keeps, conveys or engages in any other such activity with poison, explosive, weapon, picklock, falsification tool or other such auxiliary means, shall, in cases where specific provisions have been made governing this, be sentenced for preparation of the crime, unless he is punishable for completed crime or attempt."

"In specially designated cases punishment for conspiracy shall also be imposed. By conspiracy is meant that someone decides on the act in concert with another, or also that someone seeks to incite another or agrees to or offers to commit it."

"Punishment for preparation or conspiracy shall be fixed lower than the highest and may be fixed below the lowest limit applicable to a completed crime. No greater punishment than imprisonment for two years may be imposed, unless imprisonment for eight or more years may be imposed for the completed crime. If there was slight danger of the crime being completed no punishment shall be given."

"Section 3. Punishment for attempt, preparation or conspiracy to commit a crime shall not be imposed on one who voluntarily, by discounting the execution of the crime or otherwise, has prevented the completion of the crime. Even though the crime was completed, a person who has unlawfully had to do with auxiliary means may not be punished for that reason if he has voluntarily prevented the criminal use of the means."

"Section 4. Punishment provided in this Code for an act shall be inflicted not only on the one who committed the act but also on anyone who furthered it by advice or deed. A person who is not regarded as the actor shall, if he induced another to commit the act, be punished for instigation of the crime or else for being an accessory to the crime."

"Each accomplice shall be judged according to the intent or the carelessness attributable to him. Punishment fixed by law for the act of a manager, debtor or other person in a special position shall also befall a person who together with him was an accomplice in the act."

"The provisions of this paragraph do not apply if the law provides otherwise in special cases."

2. According to chapter 3, section 10 of the Penal Code, the provisions of chapter 23 regarding attempt, preparation and conspiracy shall apply in cases of attempt or preparation to commit an assault not of a petty nature. Furthermore, according to chapter 4, section 10 of the Penal Code, the provisions of chapter 23 regarding attempt and preparations shall apply in cases of attempt or preparation to commit unlawful coercion of a grave nature.

3. Under certain circumstances failure to reveal an offence is also punishable under chapter 23 of the Penal Code.

Question 6:

1. If a person alleges that he has been subjected to illegal practices, his allegations can be submitted to a public prosecutor for an investigation. (An investigation of a complaint against a police official shall always be conducted by a chief public prosecutor.) The public prosecutor is also as a rule obliged ex officio to undertake such an investigation if there are reasonable grounds to believe that an offence has been committed. If the public prosecutor arrives at the conclusion that an offence has been committed, he will normally institute criminal proceedings before a court. If he decides not to prosecute, the alleged victim is free to institute criminal proceedings on his own.

2. A person who considers that he has been subjected to illegal practices by a public official can also submit a complaint to the Parliamentary Ombudsman, who will then investigate the matter and, if need be, take appropriate action against the official concerned, including the institution of criminal proceedings. He may also, inter alia, propose a settlement of a claim for damages. Complaints may likewise be submitted to the Chancellor of Justice, who is appointed by the Government but whose functions are in this respect similar to those of the Parliamentary Ombudsman. The latter, as well as the Chancellor of Justice, can initiate an investigation even if there is no formal complaint. A case may be brought to his attention for example through an article in a newspaper or in connexion with an inspection of the authority in question.

3. In addition it should be mentioned that, with regard to measures taken by individual public officials, complaints can be lodged with the central authority concerned.

Question 7:

See answer to question No. 6.

Question 8:

1. The information requested in this question is to a large extent already covered by the answers to, in particular, questions No. 1 and No. 6.

2. The procedure applied in a trial where the defendant is accused of having committed torture follows the general rules applicable to criminal proceedings. The procedure has thus no distinctive marks, and the requested account of "the main aspects of the procedure applicable to such trials" would therefore seem superfluous.

3. Nor does the faculty of the Government to grant exemptions from laws and regulations, for instance by granting pardon, commutation of sentences or amnesties, depend on the character of the offence, but the authorization embodied in the Constitution is generally worded.

Question 9:

1. Also with regard to this question, the answer must be given in general terms.

2. With regard to public officials, chapter 20, section 1 of the Penal Code provides, inter alia, that an official who violates the rules applicable to the exercise of his authority under a statute or other regulation may be sentenced for misuse of authority, if the offence causes such detriment to the public interest or an individual as is not considered to be insignificant. The offender may be sentenced to a fine or imprisonment for at most two years. If the offence is grave imprisonment for at most six years may be imposed.

3. Should an offence referred to in the preceding paragraph be committed through gross negligence the offender may be sentenced for negligence in the exercise of authority to a fine or imprisonment for at most one year.

4. In neither of these cases will a sentence be imposed, if the offence is otherwise punishable under Swedish law.

5. These sanctions are supplemented by certain provisions in the Public Employment Act (1976:600). Thus, a public official may be dismissed if he, by committing an offence or otherwise, has shown that he is manifestly unfit to hold his office.

6. A public official may, furthermore, be suspended from his office, if proceedings according to the Public Employment Act have been instituted for the purpose of imposing disciplinary sanctions on him or of his dismissal or of his impeachment. It is a prerequisite, however, that the offence may ultimately result in his dismissal.

7. According to chapter 8, section 7 of the Code of Judicial Procedure a Swedish attorney, who is deliberately acting incorrectly in his profession or is otherwise acting dishonestly, shall be expelled from the Swedish Bar Association by a decision of its Board or, to the extent decided in the statutes, by another organ of the Association. When there are extenuating circumstances, he may instead be given a warning. An attorney who in any other respect disregards his duties may be given a warning or a reminder. When the circumstances are particularly aggravating, he may be expelled from the Association.

8. The Act (1960:408) on the Right to Exercise the Medical Profession provides for the withdrawal of the registration of a medical practitioner under certain circumstances, if he, by comitting an offence, has proved to be unfit to practise medicine. This may occur, for instance, if a medical practitioner, by virtue of a decision which has become legally valid, has been sentenced to imprisonment for an offence committed in the exercise of the medical profession or if a medical practitioner who is covered by the Public Employment Act, has been dismissed by virtue of a legally valid decision on account of an offence committed in the exercise of the medical profession.

9. With regard to occupational associations which have no official status, the statutes govern the conditions under which a member may be expelled or suspended on account of unprofessional behaviour.

Question 10:

The answers to questions No. 8 and No. 9 apply, mutatis mutandis, to question No. 10.

Question 11:

As far as it has been possible to ascertain, no investigations have been carried out or proceedings instituted. It should, however, in this connexion, be mentioned that each year a certain number of complaints are being made by prisoners or detained or arrested persons, alleging that a police-officer, prison warden or other public official has exceeded his right to use violence, for example in connexion with the seizure of the claimant. Such cases are always subject to investigation and, if circumstances so warrant, to subsequent prosecution. However, the complaints are often very hard to investigate properly. It has been suggested that in cases where a policeman is involved the investigation should be carried out by a special authority.

Question 12:

1. According to chapter 22 section 1 of the Code of Judicial Procedure an individual may, in connexion with criminal proceedings for an offence, bring an action for damages in consequence of the offence. If the individual claim for damages is based on an offence in respect of which the public prosecutor makes an investigation ex officio, he is obliged, at the request of the party concerned, to prepare and present that party's claim, provided that this can be done without inconvenience and the claim is not considered ill-founded (section 2). In case an action for damages may be based on the offence, the investigating officer or the public prosecutor shall so inform the party concerned well in advance of bringing criminal charges against the suspect (section 2). If the action for damages is not taken up together with the criminal proceedings, either because the public prosecutor decides not to bring action for the damages or because the court decides that the matter be dealt with separately, the civil claim shall be

dealt with in accordance with the rules governing civil proceedings (sects. 1 and 5). If a separate action for damages is brought against the suspect in the criminal proceedings the court may, on the other hand, decide that the civil and criminal proceedings be joined together (sect. 3).

2. Unless a voluntary settlement is reached, the case will be decided upon in accordance with the provisions of the Act (1972:297) on Damages. Briefly, it can be stated that the employer is liable for acts committed intentionally or by negligence by his employees in the exercise of their duties. Apart from this normal employer's liability, the State has an additional liability under Swedish law for the behaviour of its employees in the exercise of their duties. This rule applies to activities which may be regarded as exercise of authority.

3. As far as it has been possible to ascertain, no such claim as is referred to in question No. 10 has been dealt with by a Swedish Court since the adoption of the Declaration.

Question 13:

It is for the court to determine what evidence should be admitted and the value of that evidence. It may be expected that, to the extent that statements made outside Court proceedings may be used in such proceedings, the Court will disregard as evidence statements that have been extracted under conditions violating the fundamental rights of the defendant.

Question 14:

The Declaration has been translated into Swedish and this translation published in one of the publications of the Ministry for Foreign Affairs. Further measures for the purpose of giving the Declaration a wider dissemination are being contemplated.

Question 15:

Swedish legislation was considered to conform to the provisions of the Declaration already at the time of its adoption. No further development of the legislation has, therefore, been required, nor have any difficulties been encountered in its application.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/
/11 August 1978/

1. The existence of a sound legislative basis is only one of several important components in the mechanism by which the practice of torture and the infliction of other cruel inhuman or degrading treatment or punishment by agents of the State is controlled. Of overriding importance is the constitutional framework within which such laws are enacted, the key features of which in the United Kingdom are the complete independence of the judiciary, full equality before the law for everyone (including agents of the State), the accountability of the Executive to a democratically elected Parliament and the freedom of the press. This system of government has been developed over the centuries for the precise purpose of safeguarding the individual against the use of excessive power by the State and is in itself the best guarantee that abuses like torture would, if they ever occurred, be brought to light immediately and dealt with appropriately. The following answers to the questions enclosed with the Secretary-General's letter of 23 March 1978 should be seen against this background.

2. In replying to the questionnaire, the Government of the United Kingdom has sought to give a comprehensive review of the constitutional, legal and procedural safeguards which protect individuals from ill treatment of whatever degree of gravity at the hands of public officials. The range of acts in respect of which legal remedies are available goes much wider than torture or cruel, inhuman or degrading treatment or punishment within the meaning of the Declaration.

3. The details of legislative provisions differ in the constituent jurisdictions of the United Kingdom (England and Wales, Scotland and Northern Ireland) but principles and general procedure are comparable. However, the questionnaire has been answered primarily with reference to England and Wales, differences in Scotland or Northern Ireland being made clear where they are substantial.

4. A detailed description of the safeguards which operate in the United Kingdom against the practice of torture and other cruel inhuman or degrading treatment or punishment was sent to the Secretary-General in response to General Assembly resolution 3218 (XXIX). In addition, in its 1977 report to the Human Rights Committee the United Kingdom provided a comprehensive statement of the ways in which human rights as defined in the International Covenant on Civil and Political Rights are protected in the United Kingdom.

Question 1

1. A wide range of criminal offences exists to safeguard the individual against torture and similar treatment. These concern wrongs committed by one person against the personal security or personal liberty of another, whether it be an attack by one man on another or illegal imprisonment by the police if they detain someone unlawfully.

2. The offence of assault is committed when there is an intentional or reckless offer of immediate and unlawful force or violence by one person to another without that person's consent. There must be a menace of violence and the present ability to commit it. The offence of battery, which generally includes that of assault, involves the actual application of unlawful force, however slight, whether directly or indirectly. It ranges from pushing someone in anger to an attempt to commit a murder, robbery or rape.

3. The offence of false imprisonment is committed when there is any unlawful restraint of the freedom of movement of another, either intentionally or recklessly. To compel a person to remain in a given place or to go in a given direction against his will is an imprisonment. False imprisonment is also a ground for civil action. The substance of the action is the mere imprisonment; the plaintiff need not prove that the imprisonment was unlawful or malicious but establishes a prima facie case if he proves that he was imprisoned by the defendant; the onus then lies on the defendant to prove any justification. Police and prison governers may also be liable to an action for false imprisonment; a police constable, if he unlawfully arrests or detains another person without warrant or if he makes a lawful arrest but detains the person for an unreasonable time without taking him before a magistrate; a prison governor, if he detains the wrong person, or keeps a prisoner in custody without sufficient warrant of commitment or for a longer time than is lawful.

4. The law governing the use of force in making arrests and for similar purposes is contained in section 3 (1) of the Criminal Law Act 1967, which provides as follows:

> "A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large."

It should be noted that this provision does not confer any special immunity on police officers and other public officials as such. The legality of any use of force in making an arrest depends in the first place on whether the arrest itself is lawful under the rules of law defining powers of arrest; this in turn may depend on the status of the person effecting the arrest, since police officers (and in some instances other public officials) have wider powers of arrest than private persons. Even if the arrest is lawful, any use of force going beyond what is reasonable in the circumstances will be unlawful, and the question of what degree of force it was reasonable to use is one which will ultimately fall to be determined by a court (for instance, on the prosecution of the officer concerned) in the light of the particular facts.

5. Private individuals have a general right to institute criminal proceedings with certain limitations. For some offences a prosecution may not be instituted without the authority of the Attorney-General or the Director of Public Prosecutions. The Director also has a general power to intervene to take over proceedings at any stage. Prosecutions for minor cases of assault are almost invariably instituted by the aggrieved party. More serious assaults causing

actual bodily harm are normally prosecuted by the police. An individual may also take action in a civil court to obtain recompense for any injury that he has suffered (including that of false imprisonment referred to in para. 7). In addition, the United Kingdom has, under article 25 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, recognized the competence of the European Commission of Human Rights to receive petitions from persons or organizations who claim violation of the rights set forth in the Convention. Article 3 of the Convention declares that "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".

6. In agreeing to be bound by article 3 of the aforementioned Convention, the United Kingdom has taken note of the fact that no derogation from this article is possible under the Convention in time of public emergency threatening the life of the nation. A similar obligation has been accepted in relation to article 7 of the United Nations Covenant on Civil and Political Rights which has been signed and ratified by the Government of the United Kingdom. The United Kingdom has agreed to be bound by the Geneva Conventions of 1949 which contain absolute prohibitions on the practice of torture in conditions of armed conflict to which the Conventions apply, and has recently signed the two additional Protocols which reaffirm prohibitions against torture.

7. The armed forces are subject to the general law, as summarized above, in the same way as private citizens. They have no special powers of arrest and detention in relation to civilians, except as authorized by sections 14, 15, 17 and 18 of the Northern Ireland (Emergency Provisions) Act 1978. These provisions empower the armed forces to carry out arrests; to enter dwelling houses to search for munitions and radio transmitters; to enter dwelling houses to search for persons unlawfully detained; and to stop and question people on the street. The armed forces are also bound by the European Convention and the International Covenant referred to above and by the Geneva Conventions of 1949 (on which instruction is given to service personnel at all levels). In addition, members of the armed forces are subject to the disciplinary code of the service to which they belong. This provides for the trial and punishment of breaches of the general law (concurrently with the criminal jurisdiction of the ordinary courts), as well as for breaches of the disciplinary provisions of the code itself.

Question 2

1. It is made clear to all police officers under training that their responsibility is first and foremost to the law, and that they are answerable to its full rigours themselves in the course of their daily duties. A thorough knowledge of the criminal law, including the law relating to all forms of criminal assault, forms an indispensable part of their training, as does a careful grounding in all aspects of criminal procedure and the proper and lawful treatment of arrested and detained persons. It is also made clear to an officer under training that in addition to his liability to prosecution under the law for any criminal offence he may commit, an abuse of his authority as a police officer may constitute an offence under the discipline code (see para. 1 of question 3).

2. The extensive training of prison officers includes instruction on the rights of prisoners and the rules and regulations which provide the framework for their treatment in custody, the professional standards required for members of the prison service in their control of prisoners, the roles of the various treatment agencies within the prison, and the opportunities available to prison officers to make a positive contribution to assisting prisoners to prepare for their release.

3. During their initial training prison officers are issued copies of the statutory rules and the code of discipline dealing with their professional conduct which is approved by the Secretary of State under the Prison Rules. This code lays down strict rules for the conduct of prison officers and procedures for dealing with offences against discipline.

Question 3

1. Police officers are liable to be dealt with in internal disciplinary proceedings for any infringement of the police discipline code. Under this code (at present set out in Schedule 2 to the Police (Discipline) Regulations 1977) it is an offence, among other things, for a police officer to make an arrest without good and sufficient cause or to use any unnecessary violence towards a prisoner or other person with whom he may be brought into contact in the execution of his duty. Where a police officer is charged with a breach of the code the case is normally heard before the chief officer of the force in which the accused officer serves. If the officer is found guilty the punishments which may be imposed range from a caution or a fine to dismissal from the force. A right of appeal against any findings of guilt and against punishments lies to the Secretary of State.

2. Under Rule 84 of the Prison Rules 1964, the Secretary of State may approve a Code of Discipline for Prison Officers. The Code of Discipline approved under this rule applies only to members of the prison officer class and governs those aspects of their conduct which arise directly from their employment in penal institutions. The conduct of other civil servants employed in penal institutions is governed by the general civil service rules on conduct under which they could be dealt with for any offences of the kind specified in the Code of Discipline for Prison Officers. When the treatment of an inmate by a member of staff appears to have involved wilful physical assault, it is regarded as a crime and accordingly reported to the police for investigation. It has so far been the practice to dismiss any member of staff who had been convicted of assaulting an inmate. Where the alleged illtreatment did not amount to a criminal offence but was nevertheless considered to have amounted to excessive behaviour towards an inmate it would be dealt with as a disciplinary offence. If the accused officer was within the group of staff to whom the Code of Discipline for Prison Officers applies he would probably be charged with one of the following offences specified in the Code of Discipline for Prison Officers:

(a) Paragraph (i) (a): Discreditable conduct, that is to say, if he, while on or off duty, acts in a disorderly manner or any manner prejudicial to the discipline or likely to bring discredit on the prison service.

(b) Paragraph 1 (viii) (b): Improper relations with prisoners ... that is to say if he uses obscene, insulting or abusive language to a prisoner.

(c) Paragraph 1 (xi): Unlawful or unnecessary exercise of authority, that is to say, if he deliberately acts in a manner calculated to provoke a prisoner.

Both the Code of Discipline for Prison Officers and the general civil service disciplinary procedures provide for dismissal as a penalty for serious offences.

Question 4

1. In order to secure the proper treatment of arrested, detained and imprisoned persons in the United Kingdom chief reliance is placed upon the openness of the system of criminal justice and the assurance of access to all detained persons by their lawyers, members of their family or friends. The police have no power to detain a person for questioning or for any other purpose except by arresting him in accordance with the law. Any person so arrested must, in most circumstances, if he is not bailed by the police, be brought before a magistrate in court as soon as practicable, which normally means on the next weekday following the day of his arrest. Temporary exceptions to this general rule are provided for in the Northern Ireland (Temporary Provisions) Act 1978 and the Prevention of Terrorism (Temporary Provisions) Act 1976. Under section 11 of the former Act, the police (in Northern Ireland only) may arrest any person suspected of being a terrorist and detain him for up to 72 hours. Section 12 of the Prevention of Terrorism (Temporary Provisions) Act empowers the police anywhere in the United Kingdom to arrest a person suspected of being involved in certain types of terrorist activity and to detain him for up to 48 hours; this period may be extended by up to five days on the authorization of the Secretary of State. Although in these cases the requirement to bring the suspect before a court as soon as possible after arrest does not apply, he is entitled to the benefit of all other safeguards applying to persons in police custody.

2. The judges have for many years given guidance to the police with regard to interrogation and the taking of statements. This guidance is incorporated in the Judge's Rules which set out the basis on which the police should conduct interviews if any resulting statements are to be admissible as evidence in subsequent court proceedings. The Rules are accompanied by a set of Administrative Directions approved by the judges which set out the practices to be followed during interrogations and the facilities to be granted to a person in custody. The Rules and Directions were re-issued this year and distributed to all police forces.

3. Every person concerned in a police investigation is entitled at any stage to communicate and to consult privately with a solicitor. This is so even if he is in custody, provided that in such a case no unreasonable delay or hindrance is caused to the process of investigation or the administration of justice by his doing so. Subject to this proviso, a person in custody is allowed to speak on the telephone to his solicitor or his friends and to have his letters and telegrams despatched promptly. He should be supplied with writing materials on request. In addition to these facilities the law now provides that a person arrested and held in custody is entitled to have intimation of his arrest and of the place where he

is being held sent to a person reasonably named by him without delay or, if some delay is necessary in the interest of the investigation or prevention of crime or the apprehension of offencers, with as little delay as is necessary. The operation of this provision, which came into effect in June 1978, will be kept under review by the Government, and police forces have been requested to supply regular statistical returns.

4. If a person in police custody wishes to be medically examined, he may arrange, at his own expense, for a doctor of his choice to carry out the examination. In any event it is the practice of the police to call in a doctor at their expense if anyone in custody appears to be ill or otherwise in need of medical attention.

5. Untried prisoners remanded in prison custody are afforded immediate and ample facilities for communicating with their legal advisers. Visits by legal advisers to unconvicted prisoners for the purpose of discussing the proceedings to which the prisoner is a party take place out of the hearing of prison officers, and there are no restrictions on correspondence about the proceedings between a prisoner and his legal adviser. Relatives and friends are able to satisfy themselves as to the treatment of an unconvicted prisoner remanded in prison custody by means of daily visits. Up to three relatives or friends are permitted to visit on any weekday, normally for 15 minutes.

6. All penal establishments are subject to the direction of the appropriate Secretary of State who is answerable to Parliament for their proper administration. All establishments are subject to visits by senior officers from the regional and central headquarters of the Prison Department. Any magistrate has a statutory right to visit a prison to which his court commits prisoners. In addition, each penal establishment has its own Board of Visitors which is appointed by the Secretary of State and must include a proportion of magistrates.

7. The work of members of Boards of Visitors is voluntary and unpaid and covers three main formal functions:

(a) They constitute an independent body of representatives of the local community to which any inmate may make a complaint or request, both at their regular meetings and during the visits which individual members make between meetings;

(b) Their members regularly visit and inspect all parts of the establishment, paying particular reference to the state of premises, the quality of the administration as it affects inmates, and the treatment - in its widest sense - which inmates receive, with a view to reporting and making recommendations to the Secretary of State on any incompetence or abuse which may come to their notice;

(c) As the superior disciplinary authority of the establishment, they adjudicate when inmates are charged with any of the relatively serious offences against discipline.

8. To enable them to carry out their tasks the Prison Rules give the members of a Board the right to enter all parts of the establishment, to examine its records and to talk to any inmate out of sight and hearing of the Governor and other members of the staff.

9. Boards report direct to the Secretary of State both by formal annual reports and also, as occasion may require, on every aspect of the administration of their establishment, and they are obliged to enquire into and report on any matter which he may refer to them.

10. These represent the normal features of the system for ensuring that the proper treatment of persons deprived of their liberty is kept under review. In 1977, however, a Royal Commission on Criminal Procedure was established to consider a number of issues relevant to the investigation and prosecution of criminal offences, bearing in mind the need to strike a balance between the interests of the whole community and the rights and liberties of the individual citizen, and to make efficient and economical use of resources. The main areas of the Commission's work are the powers and duties of police in the investigation of criminal offences, the rights and duties of accused persons and the means by which they are secured, the process of and responsibility for prosecutions and related features of criminal procedure and evidence.

11. The Government is acutely aware that terrorism can present a grave dilemma for democratic governments, and therefore in Northern Ireland a number of committees of inquiry have reviewed the problems of upholding civil liberties and human rights while dealing with terrorism. Most recently, following certain allegations about police ill-treatment of suspects in Northern Ireland, an independent committee of inquiry was set up in June 1978, with a judge as chairman, to consider the present police practice and procedures in Northern Ireland relating to the interrogation of persons suspected of terrorist offences and the effectiveness of the present machinery for dealing with complaints against the police. The committee's report will be published, together with the conclusions of the Secretary of State for Northern Ireland on the results of its deliberations.

Question 5

Yes.

Question 6

1. There exist in the United Kingdom several methods whereby a person whose liberty has been restricted (and hence whose physical treatment is the responsibility of others) can have the legality of his detention tested and can draw attention to any complaints of ill-treatment. A most important safeguard lies in the writ of habeas corpus, the purpose of the writ being that the person must be produced before the court so that release from restraint may be ordered if appropriate. It is used to test any alleged invalidity in the commitment of a prisoner or want of jurisdiction to hold him in custody. It remains of the highest constitutional importance, for by it the liberty of the subject and his release from any form of unjust detention may be assured. Proceedings may be initiated by the person

detained, by someone acting on his behalf at his request, or by anyone else who believes him to be unlawfully imprisoned.

2. An application for a writ of habeas corpus must be made to the Divisional Court of the Queens Bench Division (or in the vacation to a single judge) and must be supported by an affidavit (sworn by the detained person, unless it can be shown that he is unable to do so, in which case someone can swear an affidavit on his behalf) setting out the reasons why it is claimed that he is unlawfully detained. In a criminal matter an order for release of the person restrained can be refused only after a formal hearing by the full Divisional Court. Facilities are made available by prison staff for prisoners, either convicted or untried, to apply for a writ of habeas corpus, although the Divisional Court has made it clear that a writ is not in general available to a prisoner in execution of a sentence, and is not to be used as a means of appeal against conviction or sentence. Legal aid is available to a detained person wishing to apply for a writ.

3. Prisoners have the right to petition the Secretary of State or see the Board of Visitors or a Regional Director of the Prison Department or a visiting officer of the Secretary of State about any matter of prison treatment. (The prison rules require that their attention must be drawn to these rights, and this is done by means of information cards placed in cells which also contain particulars of their other entitlements under the rules.) If the prisoner does not get satisfaction from any of these sources, he is allowed to write to his Member of Parliament, who may than take up the case as he wishes. Normally the Member would first write to the Secretary of State, but he can also refer the case to the Parliamentary Commissioner for Administration (the "Ombudsman"), or ask a Parliamentary Question or raise the matter in an adjournment debate in Parliament. Also, if, having raised his complaint through the internal channels the inmate wishes to seek legal advice with a view to taking civil legal proceedings against the governor, prison staff or officer of the Department, upon application to the governor he will be given reasonable facilities to do so and to instruct a lawyer. He is also allowed to write directly to the European Commission of Human Rights without any hindrance or any requirement that he should have raised the matter through ordinary channels first.

4. The Prison Rules provide for unconvicted prisoners to have a daily visit from their family and friends and to send as many letters as they wish, and for convicted prisoners to be visited at least once a month and to send out a letter at least once a week. In Northern Ireland a convicted prisoner has a statutory entitlement to one visit and one outward letter every four weeks. However, subject to good behaviour, he is normally allowed, as a privilege, one visit weekly and two outward letters weekly at public expense together with further letters within reasonable limits at his own expense. A prisoner who is a party to legal proceedings has the right to correspond with, and receive visits from his legal advisers.

5. The channels available to prisoners to make representations mean that any complaints of brutality or other physical or mental ill-treatment, like complaints about any other aspect of prison treatment, cannot be suppressed locally without direct infringement of the prison rules and standing instructions to Governors. The knowledge of the consequences which would ensue when this came to light is in itself an important sanction against such ill-treatment.

6. The law requires the chief officer of each police force to see that complaints against members of his force are promptly recorded and are investigated. In most forces the deputy chief constable is responsible for considering what action to take as a result of each investigation.

7. The investigation of a complaint against a police officer is carried out by a senior officer (who may come from a different police force). At the end of the investigation he will submit a report to the deputy chief constable, who must sent it to the Director of Public Prosecutions unless he is satisfied that no criminal offence has been committed. In Northern Ireland the Chief Constable is bound to refer to the Director of Public Prosecutions the police investigation report in all cases where criminal conduct is alleged against police officers. The Director will consider whether or not criminal proceedings should be brought and he will inform both the deputy chief constable and the complainant whether or not he proposes to prosecute. The deputy chief constable will also consider (after any reference has been made to the Director of Public Prosecutions) whether as a result of the investigation of a complaint the evidence is such as to justify bringing a disciplinary charge. If the deputy chief constable decides that a disciplinary charge would not be justified he must send a report to the Police Complaints Board. If the Board accept that no disciplinary charges should be brought, they will inform the deputy chief constable and the complainant. If, however, the Board disagree with the deputy chief constable, they may recommend, and in the absence of agreement direct, that disciplinary charges should be brought. Where charges are to be brought the police will inform the complainant.)

8. Her Majesty's Inspectorate of Constabulary have a statutory responsibility to satisfy themselves about the operation of the complaints system and Her Majesty's Inspectors regularly examine records of complaints. It is also the practice of Her Majesty's Inspectorate to review all cases in which expressions of dissatisfaction are received from particular complainants about the outcome of their complaints.

Questions 7 and 8

1. It is the duty of chief officers of police to cause to be investigated any criminal offence which may come to their attention and, if the necessary evidence is available, to institute criminal proceedings. Similarly, if in the course of proceedings before any court, evidence is brought to light to suggest that criminal offences may have been committed against any person, the judge or magistrate may draw the matter to the attention of the Director of Public Prosecutions, who will consider whether to order an investigation. Although the Secretary of State has general power to require a chief constable to submit a report on any matter within his police area, he does not have the power to order a chief constable to institute criminal proceedings in a particular case or, conversely, to refrain from taking proceedings.

2. Legal proceedings in which a public official was accused of an act of torture would be conducted in the same way as any other criminal process, that is to say

in public and in accordance with the criminal law and the normal procedures of the court. The issue of guilt would be a matter for a jury of independent citizens to determine and, thereafter, disposal of the case and the appropriate sentence will be entirely for the court to decide, subject to the normal rights of appeal. The maximum sentence for the most serious form of personal assault - wounding with intent to cause grievous bodily harm - is life imprisonment. For lesser forms of assault - unlawful wounding and assault occasioning actual bodily harm - the maximum penalty is five years' imprisonment. Although the Secretary of State has power to recommend exercisr of the Royal Prerogative of Mercy in certain circumstances, he would not attempt to substitute his opinion for that reached by the courts on the evidence before them. He would seek to interfere with a conviction or sentence only where significant new facts or considerations had arisen which the courts had not had the opportunity to consider.

Question 9

The Codes of Discipline regulating the conduct of police and prison officers are referred to in paragraphs 1 and 2, question 3. Prison Medical Officers are in the same position as any other doctor. In the event of allegations of torture being made against him, apart from any criminal proceedings to which he might be liable, a doctor would also be liable to disciplinary proceedings by the General Medical Council which could lead to his entitlement to practise as a registered medical practitioner being removed. (See para. 7, question 1 for codes of conduct relating to military personnel.) Members of the legal profession have their own internal disciplinary mechanisms.

Question 10

It is pointed out in the replies to questions 1 and 3 that a wide range of criminal and disciplinary offences exists to safeguard the individual against the treatment referred to in this question. Examples are given there of the kinds of conduct subject to criminal sanctions and disciplinary proceedings. The procedures described in response to question 8 apply irrespective of the nature of the offence.

Question 11

The United Kingdom was an active participant in the discussions at the fifth United Nations Congress on the Prevention of Crime and Treatment of Offenders which resulted in the draft United Nations Declaration against Torture. Her Majesty's Government was able to support General Assembly resolution 3452 (XXX) unreservedly because its law and practice were fully in conformity with the terms and spirit of the Declaration. The United Nations Declaration is not therefore regarded in the United Kingdom as requiring any fundamental change in consequence of which all offences against the person which may be committed by public officials have to be treated in some special way. Acts which come within the definition of Article 1 of the Declaration have always been treated as criminal offences and will continue to be dealt with as such in accordance with the law. (See para. 11, question 4.)

Question 12

1. In England and Wales a court may, when a person is convicted of an offence, make an order requiring him to pay compensation for any personal injury, loss or damage resulting from the offence. This is in addition to any other penalty. The criminal courts are expected to use this power only where questions of liability and quantum are not complicated and they will not normally make a compensation order where the offender is sentenced to a long period of imprisonment or where he lacks the money or means to make the payment. But in other cases the power is quite widely used. When criminal proceedings are followed by civil proceedings, the amount of damages in civil proceedings is calculated in the usual manner, but if compensation has been paid as the result of a compensation order issued in the criminal court, the amount of damages payable as a result of the civil proceedings is reduced accordingly.

2. It is possible for a person to use the civil courts to seek to obtain damages from any person whose action has caused injury, loss or damage. Payments under the Criminal Injuries Compensation Scheme (see para. 3 et seq. below) do not interfere with the rights of a citizen to use a civil court, but the Scheme requires that compensation should be reinbursed if the victim subsequently obtains damages as a result of civil proceedings. The whole question of civil liability and compensation for personal injury has recently been examined by a Royal Commission and its report is currently under consideration.

3. In 1964 the Criminal Injuries Compensation Scheme was established on an experimental and non-statutory basis to provide ex-gratia compensation from public funds to the victims of crimes of violence and to those hurt as a result of attempts to arrest offenders and to prevent offences. The Scheme is administered by an independent Board which consists of a chairman of wide legal experience and other lawyers who practise in the courts and give part of their time to the Scheme. The members of the Board are appointed by Ministers, but the Board is completely responsible for its own decisions, which are not subject to Ministerial review.

4. The Scheme applies where the injuries were sustained in Great Britain or on a British vessel, aircraft or hovercraft. It is not confined to British subjects and applies equally to visitors from other countries.

5. A comprehensive review of the Scheme has recently been undertaken to see what changes would be necessary in order to place it on a statutory footing. Matters which have been examined include the definition of the type of crime which should attract compensation, whether compensation should be paid to those injured in crimes of violence occurring within a family, the extent to which it is reasonable to take into account the conduct of the applicant or his character and way of life, and whether it should be possible to appeal against the decisions of the Board to the courts. The recommendations arising from the review are currently under consideration. No case has arisen for the Criminal Injuries Compensation Board involving torture or other cruel, inhuman or degrading treatment or punishment by public officials.

6. In Northern Ireland compensation is paid under legislation which was revised in 1977. As in England, Wales and Scotland, compensation is based on common law damages, and although there are some minor differences the general principles are similar to those in operation in the rest of the United Kingdom. One important difference is that the compensation is determined by the Secretary of State for Northern Ireland, though there is a provision for any applicant to appeal to the court against his determination. A victim may also bring action for damages in the civil courts against a person who has caused his injury.

Question 13

1. It is an absolute rule that a confession which is found by the judge not to have been made voluntarily is inadmissible as evidence against the person who made the confession. If a confession is challenged by the defence on these grounds, it will be admissible only if the prosecution proves to the judge beyond reasonable doubt that it was voluntary. In a jury trial, this question is decided by the judge after hearing evidence and argument in the absence of the jury and if the judge rules that the confession was not voluntary no reference to the confession may be made when the trial proper recommences. Even if the defence raises no objection to the confession, the judge must nevertheless be satisfied in his own mind as to its voluntary nature. If, after this procedure, the challenged confession is admitted, the defence may recall any witnesses who gave evidence in the absence of the jury and their testimony may be put to the jury and taken into account in determining the credibility and weight of the confession. Similarly, such evidence may be put to the jury if the voluntariness of the confession has not been challenged by the defence.

2. In Northern Ireland terrorist-type offences are tried on indictment before a single judge. In these cases, section 8 of the Northern Ireland (Emergency Provisions) Act 1978 lays down rules governing the admissibility as evidence of statements made by the accused. If there is prima facie evidence that the accused was subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement, then the onus is on the prosecution to prove beyond reasonable doubt that the statement was not so obtained; if the prosecution fails to do so, then the statement is not admitted as evidence. This provision does not however affect the duty of the court to have regard to all the circumstances in which a confession received in evidence was made; and its statutory test has not abrogated the wide discretion of the court, even where the conditions of the section have been satisfied, to exclude or disregard any statement of the accused if the interests of justice so require.

Question 14

Article 7 of the International Covenant on Civil and Political Rights and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms make it clear beyond all shadow of doubt that no one is to be subjected to torture or to inhuman or degrading treatment or punishment. Those instruments were published as Command Papers by the Government of the United Kingdom both at the time of signature and of ratification, and the European Convention was made the subject of a discussion paper published by the Government

in 1976. The United Kingdom has also reaffirmed its acceptance of an absolute prohibition on torture in situations of armed conflict to which Protocols I and II of the Geneva Conventions of 1949 apply and both of the Protocols were published at the time of signature. See paragraphs 7 and 8, question 1 for details of instructions given to the police and members of the armed forces.

Question 15

The statutory and administrative provision which exists in the United Kingdom to prevent the practice of torture, and more importantly the constitutional framework within which that provision operates, is considered to be effective.

UPPER VOLTA

/Original: French/
/4 August 1978/

Question 1:

1. The Constitution of the Third Republic states in its preamble (para. II), that "the human person is sacred; it has the right to protection and respect". In article 8 it reaffirms the support of the people of the Upper Volta "for the Charter of the United Nations and the Universal Declaration of Human Rights".

2. Furthermore, article 98 of the Constitution provides:

> "No one may be arbitrarily detained. Every accused person is presumed innocent until his guilt has been established by means of a procedure which affords him the guarantees necessary for his defence. The judiciary, which is the guardian of individual freedom, ensures respect for this principle in the conditions provided for by law."

3. The penal law in force in the Republic of the Upper Volta prohibits and provides for the punishment of torture and other cruel treatment ... in accordance with the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment, annexed to General Assembly resolution 3452 (XXX) of 9 December 1975.

4. In the application of penalties, except in the case of the death penalty, the penal law of the Upper Volta permits no penalty impairing the physical integrity of the individual.

Question 2:

1. A course on Civil Liberties has been included in the programmes of the National School of Administration and the Police School for the training of law enforcement personnel and other public officials responsible for persons undergoing deprivation of liberty.

2. The lessons given in this course stress the prohibition of torture and other cruel, inhuman or degrading treatment or punishment and the role which such officials should play in protecting citizens.

Question 3:

In the Republic of the Upper Volta, prison administration is the responsibility of the Ministry of the Interior and Security.

Question 4:

1. The criminal police are subject, in the exercise of their functions, to a certain amount of control by the judiciary.

2. According to the provisions of the Code of Criminal Procedure: "Criminal police work is carried out under the direction of the chief state counsel (Procureur de la République)" (art. 12 of the Code of Criminal Procedure).

3. "It comes under the supervision of the State Counsel General (Procureur Général) and under the control of the chambre d'accusation" (art. 13 of the Code of Criminal Procedure).

4. Control is exercised by the chambre d'accusation in accordance with the provisions of articles 224 to 229 of the Code of Criminal Procedure.

5. "Interrogation practices" which infringe on the dignity of the human person or respect for the fundamental rights of the citizen are prohibited.

6. The law provides for the punishment of any violation of the physical integrity of persons who are being interrogated and any abuse of powers.

7. Furthermore, jurisprudence condemns dishonest proceedings.

8. Police custody (garde à vue), the only coercive measure applicable during the police investigation stage, may be applied in respect of any person whose availability to the criminal police is essential to the successful conduct of an inquiry.

9. Police custody is strictly regulated by the provisions of articles 62, 63, 75 and 154 of the Code of Criminal Procedure. It is limited in time (to 72 hours), with the possibility of extension for a further 48 hours with the permission of the Chief State Counsel or the examining judge, depending on the case.

10. At any time during the police custody, the Chief State Counsel may, even at the request of a member of the family of the person held in custody, appoint a physician to examine the person in question.

11. After 72 hours the medical examination shall be compulsory if the person in custody requests it (art. 63 of the Code of Criminal Procedure).

12. Officers of the criminal police shall be personally liable for failure to comply with the rules governing police custody.

13. The interrogation during the preliminary investigation is regulated in detail by the Code of Criminal Procedure (see art. 111 et seq.) so as fully to protect the rights of defence.

14. The accused has the important safeguard of not being interrogated before having made contact with a lawyer or without a lawyer having been summoned.

Question 5:

Article 30 of Act 15-AL of 31 August 1959 makes it a special offence, in the context of abuse of authority, for officials to use violence without justification in the exercise or in connexion with the exercise of their functions. Accomplices and accessories are also liable to punishment.

Question 6:

1. There are no authorities especially empowered to receive complaints of this kind. Such complaints can, in general, be addressed to any constituted authority or any public official, such as the superiors of the perpetrator of the violence, the members of the parquet, the examining judge, etc. If the complaint is not directly addressed to the parquet, it will be transmitted, usually through official channels, to the parquet, which is normally competent to decide what action is to be taken (Cf. art. 39 of the Code of Criminal Procedure).

2. Officers of the criminal police are subject to disciplinary action in the chambre d'accusation for acts committed in their official capacity.

3. This chamber may, in accordance with the procedure provided for in articles 225 to 227 of the Code of Criminal Procedure: "decide that the officer of the criminal police against whom a charge has been brought may not, either temporarily or permanently, exercise his functions as an officer of the criminal police and representative of the examining magistrate anywhere in the territory" (art. 227 of the Code of Criminal Procedure).

4. Furthermore, under article 228 of the Code of Criminal Procedure: "If the chambre d'accusation considers that the criminal police officer has committed an offence under criminal law, the chamber shall also order the case file to be forwarded to the State Counsel General for appropriate action."

Question 7:

1. The Chief State Counsel may proceed ex officio as soon as he learns that a criminal offence (crime) or correctional offence (délit) has been committed. He shall do so without fail whenever there are reasonable grounds for believing that an act of torture has been committed. He will then take or order the action necessary for the prosecution of the offence.

2. The conditions under which the investigation is carried out will depend mainly on the gravity of the violence complained of, the evidence already gathered, and the position of the perpetrator of the violence.

Question 8:

1. When an administrative or judicial official, a prefect or a subprefect is suspected of having committed a criminal or correctional offence in the exercise

of his functions, the Chief State Counsel, on being seized of the case, shall immediately transmit the case file to the State Counsel General at the Supreme Court, who shall initiate and conduct public prosecution proceedings in the Judicial Division of the Supreme Court (art. 664 of the Code of Criminal Procedure). If the examination carried out by a member of the Judicial Division of the Supreme Court shows that there are grounds for continuing the proceedings, the accused shall be referred, in the case of a correctional offence, to a correctional court outside the district in which he exercised his functions and, in the case of a criminal offence, to an assize court covering an area other than that in which he exercised his functions (art. 666 of the Code of Criminal Procedure).

2. In the case of criminal police officers suspected of having committed criminal or correctional offences in the district under their jurisdiction, they shall be tried by the court designated by the Judicial Division of the Supreme Court, at the request of the Chief State Counsel seized of the case (art. 668 of the Code of Criminal Procedure). Once found guilty, the perpetrator of the violence (act of torture, inhuman treatment, etc.) is subject, according to the nature and gravity of the violence, to the imposition of augmented penalties according to the rule set forth in article 50 of Act 15-AL of 31 August 1959. For example, in the case of a correctional offence the offender will incur the maximum penalty prescribed for the type of offence involved. The rules of ordinary law are maintained with regard to suspension of enforcement of the sentence, amnesty or pardon.

Question 9:

1. Since the offence is connected with the exercise of his functions, the offender may be subject to both a criminal sentence and disciplinary penalties. He may incur the disciplinary penalties provided for in article 44 of the General Civil Service Regulations, which can include dismissal. Depending on the offence, the offender may lose his status as a public official, and that loss of status would mean the complete termination of his functions (art. 49 and 51 bis of the General Civil Service Regulations).

2. With regard to question 9, disciplinary penalties are provided for in the Republic of the Upper Volta under Act No. 22-AL of 1959, containing the General Civil Service Regulations, and these penalties are applicable to public officials who have been prosecuted for any reason, including acts of torture and inhuman or degrading treatment.

3. The penalties, which vary according to the severity of the offence are, in order of severity:

(a) A reprimand recorded in the file.

(b) Transfer to another post.

(c) Demotion (grade or rank).

(d) Suspension from duties (on one third of the salary or without salary).

(e) Dismissal (with or without the right to a pension).

Question 10:

The replies to questions 8 and 9 apply to other forms of cruel, inhuman or degrading treatment or punishment.

Question 11:

The competent authorities of the Upper Volta are not aware of any proceedings instituted on such grounds.

Question 12:

1. A person who has suffered injury as a result of violence may obtain compensation by instituting civil proceedings in a criminal court in addition to the public prosecution proceedings against the individual who committed the violence.

2. If the offence committed by the official guilty of violence is in some way connected with his official duties, the public authorities also incur liability for the offence. The victim therefore also has the right to take proceedings against the responsible public entity in order to obtain compensation for the injury suffered.

3. Payment of the compensation can thus be the responsibility of the public entity concerned, which may, if necessary, institute proceedings in turn against the offending official.

Question 13:

The rule of reasonable certitude of truth (intime conviction) applies in criminal courts. A confession which does not necessarily correspond to the truth has no special evidentiary value. It is, like other evidence, "left entirely to the discretion of the judges" (Cf. art. 428 of the Code of Criminal Procedure).

Question 14:

1. The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has been transmitted to all the technical branches responsible for law enforcement and for the care of persons deprived of their liberty, and in particular to the Ministries of the Interior, Security and Justice.

2. Furthermore, the communications media of our country have helped to make public opinion in the Upper Volta aware of the Declaration; the public may thus, if necessary, require its application by the competent authorities in specific cases.

Question 15:

No specific information on this point.

YUGOSLAVIA

/Original: English/
/24 August 1978/

Question 1:

1. Proceeding from the general principles inscribed in the Charter of the United Nations, the General Declaration on Human Rights and the International Pact on Civil and Political Rights, the working people, citizens, nations and nationalities of the Socialist Federal Republic of Yugoslavia are implementing a policy of protection of the inalienable freedoms, rights and duties of man and citizen, of guaranteeing and holding inviolable the human personality, personal and family life, and other rights proclaimed in the Constitution. To this end, criminal legislation in Yugoslavia also offers protection from violence and self-will, from violation of the constitutional and legislative foundations of the basic rights and freedoms of man and citizen (Article 1 of the Criminal Code of Yugoslavia) by prescribing penalties and other criminal sanctions against such deeds. The criminal legislation of Yugoslavia comprises the criminal codes of the federation and of the constituent republics and autonomous provinces of the country, as well as regulations relating to crime contained in certain laws not dealing specifically with crime. This legislation is not characterized by any cruel, inhuman or degrading procedures or penalties. Any activity violating the freedoms and rights of man and citizen is incompatible with the interests of socialist society.

2. In pursuit of a policy of peace and struggle against aggression, war and aggressive pressures of any kind whatsoever, Yugoslavia in its criminal legislation qualifies the violation of the rules of international law during wartime in the form of murders, torture, inhuman behaviour, biological experiments, the infliction of great suffering or violation of physical integrity or health, and so on, as deeds against humanity and international law for which the most severe penalties are prescribed (Article 42, Criminal Code).

3. The freedoms and rights of man and citizen cannot be restricted or denied, and are limited, in accordance with the principle of mutuality and solidarity, only by the equal rights and freedoms of others, or the interests of socialist society as defined by the Constitution; inhuman treatment or penalties cannot be justified by any exceptional circumstances, as the principle of socialist humanism is also the basic principle of all legislation.

4. The administration of justice (iuris dictio) in Yugoslavia is generally characterized by socialist legality, socialist humanism and socialist democracy and inhuman procedures or penalties are not among its attributes.

Question 2:

1. Law enforcement personnel and other public officials responsible for persons deprived of their liberty are educated, in their schooling and specialized training, to obey, like all other citizens, the Constitution and laws and to respect the

fundamental values of the socialist society of self-management. Article 198 of the Constitution states that any arbitrary act which violates or restricts the rights of man is unconstitutional and punishable, regardless of who has committed the act. Human dignity and the human personality are inviolable.

2. Officials who exceed their authority in contact with suspected, indicted or condemned persons, are liable to punishment not only by administrative measures but criminal sanctions as well. Republic criminal codes make provision for various punishable acts, such as: coercion, illegal deprivation of liberty, extortion of confessions, mistreatment in the course of duty, and so on.

Question 3:

1. A person who has committed a criminal act may, while serving sentence, be deprived of certain rights, or have certain rights restricted, only to an extent that is commensurate with the nature and substance of the sanctions taken against him and only in a manner that ensures respect for the personality of the person who has committed the act and for his dignity as a human being (Article 6 of the Criminal Code).

2. The purpose of punishment is to prevent the commission of crimes and to re-educate the person who has committed one as well as to have an educational effect on others in the sense of preventing them from committing crimes; it is also intended to strengthen the moral fibre of the socialist society of self-management and contribute to the development of social responsibility and discipline on the part of citizens; every procedure applied to persons serving sentence is subordinated to this purpose.

3. A condemned person is not considered lost for society; rather, full attention is paid to the process of his resocialization. Officials involved in the custody or treatment of prisoners are educated in the sense of such constitutional and legal solutions.

Question 4:

1. It is forbidden and punishable to extort confessions or any other kind of statement from persons who have been deprived of their liberty. The personality and dignity of a suspected, indicted or condemned person must not be violated. The Constitution guarantees the inviolable nature of the integrity of the human personality and of all other rights and freedoms (Article 176).

2. A person who has been taken into custody may be subjected only to such restrictions as are necessary to prevent escape or behaviour that might have a harmful effect on the successful conduct of proceedings. (Article 201 of the Law on Criminal Procedure). The use of force, threats and similar means is not permitted.

Question 5:

Every act inflicting physical or psychic pain or fear or any other cruel, inhuman or degrading treatment or punishment is considered violation of human

dignity and a criminal deed which is punishable, as are complicity, incitement or participation in the same. Provision is made under criminal law for the punishment not only of those who initiate the criminal act as above but also for participation in, or incitement of others to commit such a deed, or complicity in its commission.

Question 6:

The right to defense is guaranteed in the Constitution (Article 182) and concretized in a number of legal regulations and measures. No one may be punished unless legal grounds exist for punishment or without being afforded an opportunity to defend himself. No one may be considered guilty of a criminal offense until so proven by a final judgment of a court of law. Persons participating in proceedings enjoy court protection of freedoms and rights, and of the dignity of the personality, and may lodge complaints or appeals against any unconstitutional or unlawful behaviour on the part of any official whomsoever. Persons serving sentences may submit appeals to the director of the penitentiary or corrective institution if they are abused by the staff or subjected to any other kind of inhuman or degrading treatment in contradiction to the Constitution and laws. In such cases, the official in question may be punished for a misdemeanor, or he may be held responsible under criminal law if the elements of a criminal offense are present. Decisions are made by the competent administrative or judicial authority.

Question 7:

Wherever there is reasonable ground to believe that an act of torture has been committed, the public prosecutor may in the discharge of his duties initiate proceedings. It is not necessary in such a case for the victim to lodge a formal complaint as investigation is undertaken if indications exist or if there is foundation for the suspicion that a criminal act has been committed that calls for prosecution in the course of official duty. The prosecutor and the accused take part in the proceedings as parties to proceedings under criminal law and the case is conducted under conditions of equality for the parties involved.

Question 8:

1. If there is reasonable ground to believe that a criminal act has been committed, evidence and facts are collected at the instigation of the public prosecutor so that it may be decided whether an indictment will be raised or proceedings halted (Article 157 of the Law on Criminal Procedure).

2. The following criminal sanctions may be applied for criminal acts committed: punishment (death penalty, imprisonment, fine, and confiscation of property), conditional sentence, warning by the court, security measures and educational measures (Articles 5 and 34 of the Criminal Code).

3. A conditional sentence is passed in cases where it may be assumed that a warning accompanied by threat of punishment will be sufficient to prevent the guilty person from committing criminal acts (Article 51 of the Criminal Code); when such a sentence is passed, the court sentences the person who committed

the deed but at the same time decides that the sentence will be commuted if the condemned commits no other crime in the period determined by the court.

4. Persons to whom amnesties apply are relieved of further prosecution or fully or partially relieved of the serving of their sentence, or the punishment may be replaced by less severe punishment, or the sentence may be annulled or the legal consequences of the sentence abolished (Article 101 of the Criminal Code).

5. Pardon is granted individually to a specific person and he is thereby relieved of prosecution or fully or partially relieved of the serving of his sentence, or the sentence is replaced by a less severe sentence or by a conditional sentence, or the annulling of the sentence is ordered, or it is abolished, or the legal consequences of the sentence or security measures applied will be reduced (Article 102 of the Criminal Code).

6. If a sentence to imprisonment or juvenile imprisonment has been served, or if the person concerned has been granted a pardon, or if the punishment is no longer applicable because of the statute of limitation, the condemned person enjoys all the rights defined by the Constitution, laws, other regulations and self-management general enactments (Article 91 of the Criminal Code).

Question 9:

Persons who have been found guilty of torture may be given disciplinary punishment, dismissed or suspended from their jobs, expelled from their professional organization, and may also be prosecuted under criminal law. The following criminal sanctions may be applied: punishment, conditional sentence, warning by the court, security measures and educational measures. For instance, according to Article 190 of the Criminal Code, an official who in the course of duty uses force, threats or other impermissible means to coerce confession or other statements from the accused, witnesses, experts or other persons will be punished by imprisonment of up to five years. The same penalty is applicable to officials who in the course of official duty unlawfully deprive another of liberty.

Question 10:

Cruel, inhuman and degrading treatment or punishment are not characteristic of the administration of justice in Yugoslavia.

Question 11:

Since the adoption of the Declaration there have been no investigations of treatment or punishment that could be qualified as torture, or other forms of cruel, inhuman or degrading treatment in the sense of the Declaration.

Question 12:

The courts discharge their functions in accordance with the principles that all cases are to be subjected to due process of law and that the material truth should be arrived at, but this does not mean that mistakes cannot occur.

Consequently, the assembly of each socio-political community is accountable for the work of judges, whereas the Law on Criminal Procedure provides for special procedure regarding compensation, rehabilitation and the exercise of other rights belonging to persons who have been unjustifiably sentenced or deprived of liberty.

Question 13:

Statements extracted by coercion, threat or deception are appraised from the standpoint of the manner in which they were arrived at.

Question 14:

Yugoslavia supports all democratic and progressive ideas and movements, and protects the rights and freedoms of man through legislative and other measures. In this sense, it supports and gives publicity to the Declaration.

Question 15:

In view of the principles on which Yugoslav legislation rests, and the democratic system of procedure in relation to indicted or sentenced persons, no particular difficulties have been noticed in connexion with the prevention of cruel, inhuman or degrading treatment or punishment.

ANNEX

Questionnaire

Note: In this questionnaire, "torture" is defined as in article 1 of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

1. What are the legislative, administrative and other measures taken or contemplated for the prevention and punishment of torture and other cruel, inhuman or degrading treatment or punishment? In particular, what measures are taken or contemplated to prohibit torture and other cruel, inhuman or degrading treatment or punishment in exceptional circumstances such as a state of war, a threat of war, internal political instability or any other public emergency? Please include the measures which have been taken since the adoption of the Declaration.

2. How and to what extent are information and educational material regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment included in programmes and activities for the training of law enforcement personnel and other public officials responsible for persons deprived of their liberty?

3. How and to what extent is the prohibition of torture and other cruel, inhuman or degrading treatment or punishment incorporated in rules or instructions setting forth the duties and functions of anyone who may be involved in the custody or treatment of prisoners?

4. What methods are used to ensure the systematic review of interrogation practices and of arrangements for the custody and treatment of persons deprived of their liberty, with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment?

5. Are acts of torture, as well as participation in, complicity in, incitement to or the attempt to commit torture punishable under criminal law?

6. Which authorities are competent to receive and examine complaints from alleged victims that torture or other cruel, inhuman or degrading treatment or punishment had been inflicted upon them by or at the instigation of public officials? Describe the conditions under which such complaints are investigated, and the procedures applicable in such cases.

7. Wherever there is reasonable ground to believe that an act of torture has been committed, do the competent authorities proceed to an investigation ex officio even if there is no formal complaint? Describe the conditions under which such investigations are carried out and the procedures applicable in such cases.

8. If the investigation under (6) or (7) above establishes that an act of torture appears to have been committed, are criminal proceedings instituted against the alleged offender(s)? Describe the main aspects of the procedure applicable to such trials. Provide information regarding the penalties incurred, whether and under what conditions sentences may be suspended, whether convicted persons may benefit from pardon, commutation of sentences or amnesties, and any other relevant information.

9. What are the disciplinary and other sanctions, if any, which may be applied to persons guilty of torture? May such persons be barred or suspended from public service or from certain other professions involved in the treatment of prisoners, such as lawyer or physician? What action may be taken by occupational associations against their members convicted of torture as a grave breach of professional ethics?

10. Please reply to questions (8) and (9) also in relation to other forms of cruel, inhuman or degrading treatment or punishment.

11. Provide information whether, since the adoption of the Declaration any investigations have been carried out or any proceedings instituted in connexion with allegations of torture or other forms of cruel, inhuman or degrading treatment or punishment.

12. Does the law ensure redress and compensation to the victim of acts of torture or other cruel, inhuman or degrading treatment or punishment? If so, describe the conditions and procedures under which such compensation may be granted, in particular whether and to what extent the state or other public entities may be held liable to pay for such compensation. Provide information whether, since the adoption of the Declaration, any such redress and compensation have been afforded.

13. Describe the law or practice, if any, which excludes from evidence in any proceedings statements extracted under torture or other cruel, inhuman or degrading treatment.

14. What measures have been taken to give publicity to the Declaration in governmental bodies and services as well as among the public at large?

15. Indicate the progress accomplished and difficulties encountered, if any, as regards the prevention and punishment of torture and other cruel, inhuman or degrading treatment or punishment, since the adoption of the Declaration.

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