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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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Annex. Questionnaire

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 had 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 a number of aspects listed in the same 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 paragraphs 4, 5 and 6 of its resolution 33/178 of 20 December 1978, the General Assembly took note of the report of the Secretary-General containing replies to the questionnaire (A/33/196 and Add.1-3); called upon Member States which had not yet done so to reply to the questionnaire, as called for under resolution 32/63; and requested the Secretary-General to submit to the General Assembly at its thirty-fourth session further information provided in response to the questionnaire, and to submit all the information available which he had received to the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

3. In accordance with paragraph 6 of resolution 33/178, this report contains the information received as at 14 September 1979.

II. REPLIES RECEIVED FROM GOVERNMENTS

BARBADOS

[Original: English]

[16 May 1979]

Question 13:

1. The Government of Barbados has the honour to provide the following information which is additional to that previously submitted in respect of question 13 of the questionnaire: 1/

The highest authority against torture or other cruel, inhuman or degrading treatment is the Barbados Constitution. Section 15 (1) of that document states:

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

2. In relation to statements extracted under torture or other cruel, inhuman or degrading treatment, the law of Barbados is the same as the English position. Where such an accusation is made, the presiding judge determines the issue on a "voir dire" or a case within a case. Where it is found that the statements have been elicited through torture or other cruel, inhuman or degrading treatment, the judge has the discretion to exclude such statements as inadmissible evidence. The procedure is best exemplified when allegations of police brutality are made in an attempt to negate confessions.

BELGIUM

[Original: French]

[January 1979]

Question 1:

1. Such practices as torture and other cruel, inhuman or degrading treatment or punishment are never tolerated in Belgium, in any circumstances whatsoever.

2. Acts constituting torture or inhuman treatment are prohibited and punishable under the relevant provisions of Belgian criminal law, although torture is not penalized as such (see information communicated by Belgium under General Assembly resolution 3218 (XXIX) and incorporated in report A/10158 and Corr.1 and Add.1 of the Secretary-General of the United Nations). This prohibition remains strictly

1/ See A/33/196/Add.2.

in force in the exceptional circumstances defined by the Legislative Decree of 11 October 1916 relating to state of war and state of siege (cf. Belgian reply in E/CN.4/Sub.2/393/Add.2). It should also be pointed out that article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (A/33/417, annex II), which was approved by Act of 13 May 1955 and is directly applicable in Belgian municipal law, stipulates that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

3. Article 15 of the European Convention on Human Rights permits certain derogations in time of war or other public emergency threatening the life of the nation, in a spirit identical with that of article 4 of the International Covenant on Civil and Political Rights (Assembly resolution 2200 A (XXI)). However, it stipulates that no derogation shall be made from a number of specific provisions, including article 3. The latter prohibits torture and inhuman or degrading treatment in terms very close to those of article 7 of the Covenant.

Question 2:

1. On taking up their appointment, prison staff are given a copy of the Royal Decree of 21 May 1965 setting out the general regulations for penal institutions, together with a booklet containing a commentary on certain of the regulations in connexion with the organization of the prison warder service.
2. Part I of this booklet, dealing with the duties and powers of warders, draws the attention of staff to the provisions of article 109 of the general regulations, which expressly prohibits prison staff from committing any act of violence or assault against prisoners, except for such restraint as is strictly necessary for the maintenance of order.
3. It also states that warders must treat prisoners without harshness, incivility or rudeness and must refrain from degrading them by, for example, reminding them of their misdeeds.
4. Warders are required to attend in-service courses at the Training Institute for Prison Staff.
5. The instruction provided at the Institute deals in particular with the practical aspects of a warder's duties and his relations with the prisoners.
6. During these courses, frequent reminders are given of the prohibition of any physical or mental violence against prisoners and of the need to treat them in a humane manner.

Question 3:

1. The rules and instructions relating to the subject of the questionnaire are contained in the following texts:

- (a) Royal Decree of 21 May 1965 (M.B., 25 May 1965) setting out the general regulations for penal institutions.

- (i) Articles 107 and 108 strictly regulate the use of instruments of restraint (handcuffs, strait jackets, shackles).
- (ii) These instruments can only be used by order of the prison governor when other means of restraint have failed and when the behaviour of the prisoner constitutes a danger to himself or to others and poses a risk of material damage. In such a case, the governor must, as a matter of urgency, consult the doctor (art. 107). Such instruments may in no case be used as a means of punishment (art. 108).
- (iii) Article 109 of the above-mentioned general regulations prohibits any form of violence against prisoners.

(b) Ministerial Decree of 12 July 1971 (M.B., 10 August 1971) containing instructions for penal institutions. Article 41.2 stipulates that technicians and staff must treat prisoners with justice, humanity and understanding, but without familiarity, and must show concern for their physical and mental condition.

Question 4:

1. Penal institutions are subject to the control of various authorities. These controls constitute a sure safeguard against the infliction of torture and other treatment or punishment of the kind referred to in the Declaration.
2. Under article 128 of the general regulations, institutions are subject to inspection by officials of the Department of Justice, in accordance with the instructions in force in that Department.
3. They are also visited by examining judges, presidents of assize courts, provincial governors and mayors in conformity with articles 611 and 612 of the Code of Criminal Procedure.

Question 5:

1. Although, as indicated in the reply to question 1, torture does not in itself constitute an offence under Belgian law, there are very many legal provisions which penalize acts likely to constitute means of torture.
2. Homicide and wilful bodily injury are punishable under articles 392 to 410 of the Criminal Code; they include poisoning (art. 397) and failure to care for a child or a person incapable of supporting himself (art. 401 bis).
3. Violations of individual freedom are the subject of articles 434 to 438, the last of which deals with physical torture, that being regarded in this case, as an aggravating circumstance.
4. Article 454 prohibits the admixture with food-stuffs of substances likely to cause death or impair health. Moreover, under a special legislative provision, the dispensing of medicines (this term covers any substance represented to possess curative or preventive properties) is subject to medical prescription (articles 1 and 6 of the Act of 25 March 1964). Royal Decree No. 78 of 10 November 1967 also

regulates the practice of medicine and related professions. Hence, the improper use of substances with a view, for example, to lowering physical and mental resistance is a punishable offence.

5. Finally, various means of pressure likely to constitute methods of mental torture are also prohibited by law; articles 443 to 450 of the Criminal Code deal with attacks on the honour or the reputation of individuals, while blackmail forms the subject of article 470 and carries the same penalties as those stipulated in article 468.

Question 6:

1. With regard to the means of recourse available to prisoners if they believe that they have been subjected to "torture or other cruel, inhuman or degrading treatment or punishment", the following should be noted:

2. In the first place, they can correspond freely (without such correspondence being subject to any censorship) not only with persons directly involved in the penal system, such as the Minister of Justice, the Secretary-General of the Department of Justice and general officials of the Penal Institutions Administration but also with the King, the ministers, the presidents of legislative bodies and the judicial authorities.

3. They correspond with their lawyers under sealed cover and are in no way hindered from appealing to the European Commission of Human Rights.

4. Finally, they have the same right as any free citizen to lodge a direct complaint with the judicial authorities for infractions to which they are subjected or which simply come to their knowledge. In this respect, it should be noted that legal proceedings can be brought against public officials without any prior authorization (art. 14 of the Constitution).

Questions 7 and 8:

1. All the rules laid down in the Code of Criminal Procedure apply to the cases referred to in these questions.

2. The penalties presented by the Criminal Code and by the laws mentioned in the reply to question 5 are also applicable.

3. These offences are treated in the same way as all other offences brought to the attention of the Public Prosecutor.

Questions 9 and 10:

1. As mentioned in the reply to question 4, penal institutions are subject to the control of various authorities.

2. If a staff member were guilty of inhuman treatment, the judicial authorities would initiate proceedings as indicated above.

3. The law makes no provision for the barring from certain professions, such as lawyer or physician, of persons guilty of torture. In fact, this term does not appear as such in the Criminal Code (cf. reply to question 1). As in the case of any other offence, disciplinary sanctions and even barring would be possible, depending on the seriousness of the case in question.

Question 11:

The judicial authorities who were consulted did not mention any proceedings initiated in connexion with torture since the adoption of the Declaration.

Question 12:

1. The general rules governing redress for a criminal offence apply where a person is the victim of brutality or cruel treatment.

2. If a person is subjected to ill-treatment, the State may be ordered by the courts to redress the damage caused by one of its officials.

Question 13:

1. There is no law specifically excluding from evidence in any proceedings confessions obtained under torture.

2. However, the courts would not accept statements which were proved to have been obtained by unlawful means (such as torture) and in contravention of the freedoms guaranteed by the Constitution.

Question 14:

1. As a party to various binding international instruments entailing the prohibition of torture, such as the European Convention and the Geneva Conventions of 12 August 1949, Belgium, when ratifying these instruments, took the necessary measures for their implementation by the authorities concerned. The adoption of these instruments and of the Declaration was given wide coverage in the mass media. Since it is through the said instruments and the provisions of municipal law that the Declaration is implemented, it was not thought necessary to give the Declaration special publicity.

2. Belgium was the first State Member of the United Nations to make the unilateral declaration called for under General Assembly resolution 32/64 of 8 December 1977. The Belgian press also gave coverage to this action.

Question 15:

This point calls for no special comment.

BRAZIL

Original: French
11 October 1978

Act No. 4898

"Article 1: The right to institute proceedings and administrative, civil and penal liability suits against authorities who, in the exercise of their functions, have committed abuses shall be governed by this Act.

"Article 2: The right to institute proceedings shall be exercised by means of an application:

"(a) To the higher authority empowered by law to impose the corresponding sanction on the civil or military authority concerned;

"(b) To the office of the Public Prosecutor competent to bring a penal action against the authority concerned.

"Sole sub-clause: The application for the institution of proceedings shall be submitted in duplicate and shall include a detailed account of the act constituting abuse of authority, the position held by the accused and a list of witnesses, if any, not exceeding three in number.

"Article 3: Violations of the following shall be deemed to constitute abuse of authority:

"(a) Freedom of movement;

"(b) Inviolability of the home;

"(c) Privacy of correspondence;

"(d) Freedom of conscience and belief;

"(e) Freedom of religious worship;

"(f) Freedom of association;

"(g) The rights and guarantees provided by law for the exercise of the right to vote;

"(h) The right of assembly;

"(i) The physical integrity of the individual.

"Article 4: Abuse of authority shall also be deemed to occur in the following cases:

"(a) The ordering or application of a measure privative of individual liberty, without legal formalities or in commission of an abuse of power;

"(b) The subjection of persons in custody or detention to harassment or violence not authorized by law;

"(c) Failure to notify the competent judge immediately of the imprisonment or detention of any person;

"(d) Failure on the part of a judge to order release or termination of an illegal detention of which he is notified;

"(e) The imprisonment or continued detention of a person who offers bail as authorized by law;

(f) ...

(g) ...

(h) ...

"Article 5: For the purposes of this Act, the term 'authority' means any person exercising a public office, employment or function, civil or military, even temporarily and without remuneration.

"Article 6. Abuse of authority shall render the offender liable to an administrative, civil and penal sanction.

"First sub-clause: The administrative sanction shall be commensurate with the seriousness of the abuse committed and shall consist of:

"(a) Admonition;

"(b) Reprimand;

"(c) Suspension from office, function or position for a period of 5 to 180 days, without pay or allowances;

"(d) Dismissal;

"(e) Resignation;

"(f) Resignation in the public interest.

"Second sub-clause: Where it is not possible to evaluate the damage, the civil sanction shall consist of an indemnification of 500 to 10,000 cruzeiros.

"Third sub-clause: The penal sanction imposed in accordance with the provisions of articles 42 to 56 of the Penal Code Imposition of penalties shall consist of:

"(a) A fine of 100 to 5,000 cruzeiros;

"(b) Imprisonment for a period of ten days to six months;

"(c) Loss of office and disqualification for any other public function for a period not exceeding three years.

"Fourth sub-clause: The penalties provided for in the preceding sub-clause may be imposed separately or concurrently.

"Fifth sub-clause: Where the abuse was committed by an official of a police authority, civil or military, of whatever rank, the accused may be prohibited from exercising any police or military function in the municipality where the abuse was committed, for a period of not less than one year and not more than 15 years, the penalty being imposed singly or concurrently with others.

"Article 8: The sanction imposed shall be recorded in the files of the civil or military authority.

"Article 9: Concurrently with, or independently of, the application to the administrative authority for the institution of proceedings, a civil and/or penal liability suit may be brought by the victim of the abuse against the authority concerned."

DEMOCRATIC YEMEN

[Original: Arabic]

[18 July 1979]

Question 1:

1. The People's Democratic Republic of Yemen forbids torture and other cruel, inhuman or degrading treatment or punishment in accordance with the text of its Constitution promulgated on 30 November 1970 (as amended on 31 October 1978) and its legislation in force. Article 45 of the Constitution guarantees personal freedom and stipulates that arrest is not permitted except in connexion with acts punishable by law. The above-mentioned article categorically adds that "no person shall be subjected to torture during investigations nor shall he be forced to confess or be treated in an inhuman way ... and corporal punishment is forbidden". The Constitution also restricts the power of the legislator, and article 48 thereof stipulates that "no law shall provide for cruel or inhuman punishment".

2. These constitutional principles are reaffirmed in the Penal Code (arts. 6 and 7 of Act No. 3 of 1976). Article 38 of the Code lists the general principles for measures and penalties as follows:

- (a) Criminal responsibility is personal;
- (b) Penalties must not be cruel or inhuman;
- (c) Corporal punishment is prohibited;
- (d) Measures and penalties must be commensurate with the crime;
- (e) Penalties restricting liberty shall not be inflicted except by competent courts;
- (f) Care shall be taken to impose measures and penalties in keeping with the circumstances of each offender;
- (g) Measures and penalties shall be designed primarily to reform and re-educate the convicted person in a spirit of respect for the law and the social conventions of life.

These principles reflect a modern humane view of the question of punishment.

Punishment must be regarded not as revenge, retaliation and reprisal but as a means to reform and re-educate the convicted person in preparation for his reintegration into society in order to participate in its development and evolution. This view and the application of humane principles are clearly seen in the way in which the Penal Code deals with certain difficulties inherent in the imposition of penalties. Article 53 of the Code stipulates that, in the event

of its being impossible to collect a fine from a convicted person, the court may, at the request of the Department of Public Prosecutions and in respect of offences for which imprisonment or a fine is specified, sentence the offender to compulsory service on a public project at the rate of two days for each dinar up to a maximum period of one year. The court may also reject the request and grant the convicted person a period of grace. Article 59 of the Penal Code defines "imprisonment" as "placing the convicted person in a state penitentiary in which the prisoner shall be assigned to socially beneficial work compatible with his abilities and designed to raise his standards in accordance with an educational and cultural programme aimed at stimulating his awareness and reintegrating him in the new Yemeni society".

3. With regard to the prohibition of torture and other cruel treatment in exceptional circumstances such as a state of war, the first chapter of the special section of the Penal Code gives a list of crimes against peace, humanity and human rights. In the eyes of the law, the offender remains criminally responsible and may not base his defence on the argument that he was enforcing the law or carrying out an order issued by a superior if he has committed one of the crimes listed in the first chapter of the special section (art. 101 - Penalties). Article 100 of the Penal Code stipulates that anyone committing any of the following acts, which are regarded as a violation of the principles of international law, during armed engagements shall be punished by imprisonment for a period of not less than five years and the penalty shall be imprisonment or execution if the offender deliberately causes serious damage:

- (a) Using or ordering the use of forbidden weapons;
- (b) Inhuman acts against civilian, wounded, sick or unarmed persons or prisoners;
- (c) Acts of plunder and looting, sabotage without military justification or ordering the commission of such acts;
- (d) The abuse or misuse of the Red Crescent or similar symbols or the commission of acts of violence against persons carrying that symbol or against establishments appertaining thereto;
- (e) Acts of violence against negotiators under a flag of truce or ordering the commission of such acts.

Question 2:

The Constitution, the Penal Code and the Code of Criminal Procedure constitute the basic material studied by trainees in the Police Officers College and the Law Institute, those being the two establishments from which law enforcement officials (officers of the criminal police) normally graduate. They also study modern scientific methods of investigation and interrogation. Training courses are held, and the Attorney-General of the Republic or his representatives give periodic lectures to investigating officers, during which recent legislative acts are discussed and emphasis is placed on the need to preserve and comply with democratic legality.

Question 3:

As can be clearly seen from the reply to question 1 above, the Constitution forbids torture and other cruel, inhuman or degrading treatment or punishment. The Constitution also stipulates that no law shall provide for cruel or inhuman punishment. Since the Constitution is the basic law of the State, any instructions or directives given to persons concerned with the detention or treatment of prisoners are in conformity with those constitutional principles, and such instructions and directives affirm the need for humane treatment of prisoners.

Question 4:

The Constitution assigns to the Attorney-General of the Republic responsibility for supervising compliance with the law in detention and prevention centres (art. 132 of the Constitution). This supervisory function is specified in a clear and detailed manner in the Public Prosecutions Act (Act No. 1 of 1973) and in the Code of Criminal Procedure in force in the Republic. Article 10, paragraph 7, of the Public Prosecutions Act stipulates that the functions of the Attorney-General shall include control of investigating agencies, penal institutions and detention centres and issuance of the necessary instructions to that end. Article 65 of the Code of Criminal Procedure details the functions of the Attorney-General of the Republic with regard to the preservation of democratic legality during the various stages of criminal procedure in the following terms:

- (1) The Attorney-General of the Republic shall, personally or through his subordinate representatives, supervise the meticulous enforcement of the law in connexion with criminal procedure;
- (2) At every stage of criminal procedure, the Attorney-General shall be obliged to take the measures provided by law for the elimination of any infringement of legality, irrespective of the identity of the person responsible for such infringement;
- (3) The Department of Public Prosecutions shall exercise its powers in regard to criminal procedure independently of any authority or official, subject only to the law and in conformity with the instructions of the Attorney-General of the Republic;
- (4) The decisions taken by the Department of Public Prosecutions in accordance with the law shall be applicable to all bodies, officials and citizens.

The Attorney-General of the Republic is appointed by the People's Supreme Council and heads the Department of Public Prosecutions. The Department is organized in a vertical manner in all parts of the Republic and is independent of all local authorities, being subordinate only to the Attorney-General of the Republic. The Attorney-General exercises his supervisory functions over the various investigating agencies and penal institutions through his representatives, who are subject to his directives and instructions, in most of those agencies and institutions, to which they are assigned on a full-time basis. They issue the necessary directives for the proper conduct of investigations and supervise law

enforcement and the observance of democratic legality. It is hoped that such representatives of the Attorney-General will shortly be assigned to all the agencies and institutions concerned, once the necessary legally trained manpower is available.

Question 5:

The Penal Code in force in Democratic Yemen stipulates punishment for acts of torture and for the forced extraction of confessions. Article 134 of the Penal Code specifies the penalty of imprisonment for a term not exceeding eight years for any person who, deliberately and by means of torture, causes grave bodily harm which endangers life or results in loss of sight or hearing, in loss of function of any other part of the body, in mental illness or in miscarriage. Article 221 of the section of the Penal Code relating to abuse of authority stipulates that:

(1) Any official who knowingly and in contravention of the law detains any person shall be punished by removal from office and a fine not exceeding 50 dinars.

Article 222 of the same section of the Penal Code stipulates that:

(1) Any public official who, in the exercise of his duty, uses or orders the use of force or threats against any person in order to induce such person to confess a crime, or against a witness, an expert or an interpreter in order to induce such persons to make statements or provide information regarding a crime, shall be punished by imprisonment for a term not exceeding seven years, and the Court shall order that the offender be removed from office.

(2) With regard to participation or complicity in or the attempt to commit a crime, the general section of the Penal Code contains provisions which specify the responsibility and punishment of accomplices to a crime and also the punishment for attempting to commit a crime. These general provisions apply in cases where the provisions relating to a particular crime do not provide for specific penalties for complicity in or the attempt to commit such crime. Article 24 of the Penal Code stipulates that "any person actively participating, instigating or collaborating in a crime shall incur the penalty prescribed for such crime unless otherwise specified in the Code ...". Article 19 of the Code defines the penalty for the attempted commission of a crime in the following manner:

(1) Any public official who, knowingly and in contravention of the law, arrests any person shall be punished by a suspended prison sentence with removal from office or by imprisonment for a term not exceeding one year.

(2) An attempt to commit a crime shall be punished in accordance with the provisions dealing with responsibility for the crime in question. When determining the penalty, the judiciary shall take into consideration the nature and social gravity of the acts committed by the offender, the extent to which criminal intent is established and the reasons why the crime did not take place, provided that the penalty shall not exceed half the maximum penalty prescribed for the crime in question.

(3) If the full punishment for the crime is execution, the penalty for an attempt to commit such crime shall be imprisonment for a term not exceeding 15 years.

(4) The provisions relating to supplementary penalties for the full crime shall apply to the attempt to commit such crime.

(5) All the above shall apply unless otherwise specified by law.

Question 6:

As a general principle laid down in the Constitution, every citizen has the right to lodge complaints and proposals with organs and institutions of the State (article 43 of the Constitution). As already explained in the reply to question 4 above, the Constitution and the law assigned to the Attorney-General of the Republic responsibility for the supervision of investigating agencies and penal institutions in order to protect the dignity of citizens and to ensure that they are not indiscriminately accused or subjected to illegal restriction of their rights. The procedure for lodging complaints against such agencies and institutions is laid down in a number of provisions contained in the Code of Criminal Procedure. Under these provisions, the suspect, accused person, defendant, witness, interpreter, expert, plaintiff, injured party and other persons have the right to lodge a complaint, in the form of a petition submitted to the public prosecutor responsible for supervising the investigation procedure, against any decision taken by the investigating agency concerning them. Complaints against decisions taken by a public prosecutor are lodged with a higher authority in the Department of Public Prosecutions. Complaints may also be submitted directly to a member of the investigating agency, who must then immediately inform the public prosecutor that a complaint has been lodged. The public prosecutor must issue a ruling on the complaint within three days of its submission and must notify the petitioner of the outcome. If the public prosecutor regards the complaint as justified, he must issue the appropriate instructions, which are binding on the investigating agency (articles 221 to 224 of the Code of Criminal Procedure).

Question 7:

The reply to question 6 describes the procedure followed in the event of complaints. In this context, it should be stressed that the various legal provisions defining the functions of the Attorney-General of the Republic as the authority responsible for supervising enforcement of, and compliance with, the law by all organs of the Republic do not limit his supervisory function to cases in which complaints are received from injured parties. On the contrary, those provisions oblige him and his representatives to carry out their duties and, if there are reasonable grounds to believe that an act of torture has been committed, the Attorney-General must initiate an investigation *ex officio* and issue the necessary ruling, which is binding on all bodies, officials and citizens (see the text of article 65 of the Code of Criminal Procedure quoted in the reply to question 4 above).

Question 8:

1. The Constitution of Democratic Yemen lays down the principle of equality before the law (art. 35). This principle is reiterated and reaffirmed in article 7 of the Penal Code and article 8 of the Code of Criminal Procedure and, if the investigation establishes that an act of torture has been committed, criminal proceedings are taken against the offender or offenders. The Attorney-General of the Republic initiates criminal proceedings in accordance with the legislative provisions in force, and the crime is dealt with under the same procedure as that followed for other crimes and offences.

2. The reply to question 5 above cited articles 134, 221 and 222 of the Penal Code relating to the penalties likely to be imposed on persons guilty of torture, and the reader is therefore referred to those texts.

3. As a general principle, if a final and definite sentence is passed on an offender, that sentence must be carried out. However, in keeping with the modern humane view of punishment as a means to reform and re-educate the offender for rehabilitation in society, the Penal Code has adopted the principle of parole and conditional release. Article 61 of the Penal Code states: "In the event of compulsory assignment to a public project or a penal institution, the convicted person may be paroled or released if his behaviour in the project or penal institution gives reason to believe in the reform of his character and if he has fulfilled his financial obligations with respect to the crime for which he was sentenced by the court, unless such fulfilment should be impossible, and provided that he has served in the project or institution for half the period of detention imposed. The period served in the project or institution shall be not less than six months." The persons entitled to submit an application for parole or conditional release are specified in article 62 of the Penal Code, which states that "the order for parole or conditional release shall be issued by the summary court having jurisdiction over the project or penal establishment on the basis of a petition by the director of the project or institution or of an application by the convicted person or the public prosecutor. Such a court order shall in no way be open to appeal."

4. Furthermore, the convicted person may, as a general rule, be released before serving his full sentence if a decision is taken by the Chairman of the Presidium of the People's Supreme Council to declare a general amnesty, pardon or commutation of sentence under the terms of article 94, paragraph 20, of the Constitution.

Question 9:

Disciplinary sanctions may be applied to persons guilty of torture. They include expulsion from the occupational associations to which such persons belong, in addition to the penalties which the court may impose on the guilty persons in accordance with the provisions quoted in the reply to question 5 above and which include disbarment from public service in the case of an official who forcibly extracts a confession from any person. Disbarment from holding public office is categorically prescribed and the responsible court must rule accordingly.

Question 10:

This is covered by the replies to questions 8 and 9 above.

Question 11:

No complaints have been lodged. No proceedings have been instituted and no investigations have been carried out in connexion with allegations of torture or other forms of cruel treatment, etc.

Question 12:

1. The law ensures redress and compensation to the victim of acts of torture or other cruel treatment. Article 49 of the Constitution (as amended on 31 October 1978) stipulates that "every citizen shall be entitled to compensation for damages resulting from illegal acts on the part of officials, and the conditions and procedures for claims for such compensation shall be regulated by law."
2. Claims for compensation for material and mental damage shall be made by means of an independent civil action for damages or of a civil action brought by the injured party before the competent criminal court. This is provided for in article 8 of the Code of Criminal Procedure, which states: "(1) If the criminal action is instituted by the Department of Public Prosecutions, the person who sustained material or mental damage through the crime, whether such person is a citizen or a corporate body, may bring a civil action against the accused or the person bearing civil liability for the latter's act before the court in which the criminal action has been brought. The court shall hear both actions simultaneously. (2) The civil action may be brought by submitting a petition to the clerk of the court concerned at any stage of the criminal proceedings, provided that this is done before the beginning of the final speech for the defence." Article 83, paragraph 2, of the Code further provides that "the Department of Public Prosecutions may bring a civil action on behalf of an injured citizen if it is satisfied that he is unable to bring the action himself." Article 95 of the Code defines civil liability for compensation in the following terms: "Civil liability shall be borne by the superior or supervisor who is responsible before the law for the damage resulting from the act of the accused. If civil liability is borne by several persons, civil proceedings may be initiated against all or some of them in accordance with the criminal action."
3. There is no indication that any cases involving claims for compensation have been heard in connexion with any of the criminal acts mentioned in the questionnaire.

Question 13:

The Code of Criminal Procedure stipulates that the proceedings shall be regarded as absolutely null and void if restrictions are placed on any of the fundamental guarantees prescribed for citizens (article 207 of the Code). Any party may so allege at any stage of the proceedings and the court may, ex officio,

so rule. Articles 104, 141 and 142 of the Code define confessions which may be admitted in evidence against the accused. Those provisions prohibit the judge from recording any confession unless he is satisfied, after questioning the accused, that the latter is voluntarily making such statements of his own free will. The judge must also draw the attention of the accused to the fact that he is not obliged to make a confession and that any such statement may be used in evidence against him.

Question 14:

The authorities concerned have been informed of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Question 15:

The constitutional provisions prohibiting torture or cruel treatment predated the Declaration, and the legislative acts reviewed in this reply to the questionnaire have made it clear that the content of the Declaration is incorporated in the legislation of Democratic Yemen. Consequently, no difficulties have been encountered in Democratic Yemen in connexion with adherence to the provisions of the Declaration.

ECUADOR

[Original: Spanish]

[28 June 1979]

1. It should be emphasized that the Ecuadorian State ensures the supremacy of the provisions of the Constitution, with the result that the rest of its legislation must be in conformity with the Constitution if it is to have any validity. This supremacy, which is absolute as regards positive law, extends to administrative or judicial provisions which could be detrimental to constitutional principles. It is also given particular emphasis where constitutional guarantees are concerned.

2. Article 2 of the new Political Charter, which will enter into force on 10 August 1979, proclaims:

"The prime function of the State is to strengthen national unity, ensure respect for fundamental human rights and promote the economic, social and cultural progress of its inhabitants."

3. Although part II of the Constitution, entitled "Rights, duties, and guarantees", expressly guarantees each individual human right, chapter VII includes a single article which contains the following "general rule":

"Art. 44. The State guarantees to all individuals under its jurisdiction, without distinction as to sex, the free and effective exercise and enjoyment of the civil, political, economic, social and cultural rights embodied in the international declarations, covenants, agreements and other instruments in force."

4. In other words, the recognition, safeguarding and promotion of human rights, which are inherent in Ecuadorian society, have found expression both in the national Constitution and laws and in the various international human rights instruments to which Ecuador is a signatory.

Question 1:

1. Article 141 of the Political Constitution of 1945, which is still in force, provides as follows:

"The State guarantees: (1) the inviolability of life and personal integrity. There is, therefore, no death penalty or torture. Penal institutions shall be organized to effect the re-education and social rehabilitation of the criminal".

2. Article 19 of the new Political Charter includes the following among the rights which the State guarantees to individuals:

"1. The inviolability of life, personal integrity and the right to full physical and mental development. Torture and all inhuman or degrading

treatment shall be prohibited. There shall be no death penalty. The penal system shall be designed to effect the re-education, rehabilitation and social reintegration of prisoners."

3. Thus, the Constitution prohibits not only physical but also mental torture, so that even these forms of torture which are not strictly physical but are indicative of a disregard for human dignity are ruled out. The Ecuadorian State accordingly protects the physical, psychological and mental integrity of all individuals under its jurisdiction. In the same spirit, both article 141 (4) of the 1945 Constitution and article 19 (16) of the new Political Charter ensure that no one can be detained without judicial process and without a legal order for more than 48 hours, since imprisonment of this kind pending trial could be regarded as mental torture.

4. In accordance with the legal principles outlined above, the Penal Code includes an entire chapter (arts. 180-189) on acts which infringe individual freedom. Article 187 imposes a penalty of imprisonment for a term of three to six years on anyone who has physically tortured a person under detention. If the prisoner dies as a result of such torture, the penalty for the offence, previously 12 to 16 years' imprisonment, was increased to 16 to 25 years by a recent reform (Official Register No. 621 of 4 July 1978, annex).

5. In addition to the above-mentioned legal measures, the Ecuadorian State endeavours in the administrative field, as will be seen from the replies to subsequent questions, to give appropriate instructions to the officials concerned, particularly members of the police and other law enforcement personnel.

6. With regard to the status of constitutional guarantees in exceptional circumstances, article 78 (n) of the new Constitution empowers the President of the Republic:

"To declare a state of national emergency and assume some or all of the following powers in the event of imminent foreign aggression, international war or serious internal upheaval or disaster, notifying the National Chamber of Representatives, if it is in session, or the Court of Constitutional Guarantees ... 6. To suspend the application of constitutional guarantees, but under no circumstances may he decree the suspension of the right to inviolability of life and personal integrity, the expatriation of an Ecuadorian national, or internal banishment from provincial capitals or to a region other than that in which the person concerned lives".

The same spirit is reflected in the Constitution of 1945.

Question 2:

1. The courses at the Police College attach particular importance to studying the provisions of Ecuador's Constitution and penal laws, which are designed to provide absolute guarantees of personal integrity, while the Police Penal Code and the relevant regulations reflect the same legal spirit.

2. The police force has also been informed through the Ministry of Government, to which it is subject administratively, of all the recommendations and studies made in this connexion by international organizations.

3. Finally, the compulsory courses taught by specialists to citizens wishing to enter the police force as policemen or officers approach the issue from a technical standpoint.

Question 3:

In accordance with the above, police rules and instructions embody the general legal norms. Prison regulations and internal instructions reflect the corresponding legal norms on the prohibition of torture and draw attention to the legal consequences of committing this offence.

Question 4:

1. The Officer Training College includes in its curriculum the study of "criminal investigation", as a result of which members of the police force have access to up-to-date scientific information on the subject, which is later applied in the College's modern central laboratory or its other laboratories.

2. So far as the legal aspect is concerned, reference may be made to the relevant articles of the Regulations of the Police Criminal Investigation Service, which are also studied at the Officer Training College:

"Art. 65. In conformity with the law, the use of any kind of mental or physical torture as a means of extracting statements is strictly prohibited. The provincial Chiefs of Police shall supervise and be responsible for compliance with this provision.

"Art. 69. Special interrogations may not be carried out using scientific or double interrogation methods ...

"Art. 70. No scientific method shall be used as a means of determining whether testimony is true or not, unless the following conditions are fulfilled: (a) the person giving testimony indicates in writing his desire to be freely and voluntarily subjected to such a test; (b) the judge assigned to the case also authorizes such a test, in writing; (c) the test is carried out by specialists; and (d) the test is directed and supervised by a physician if drugs are to be administered or if the test involves a risk to the health of the person giving testimony.

"Art. 76. Personnel of the Criminal Investigation Service are strictly prohibited from using force as a means of intimidation, a security measure, a means of investigation, a means of repression, etc. This prohibition shall not apply to the exercise of the right of self-defence as defined by law".

Question 5:

1. Torture is officially punishable and open to investigation, as indicated in the reply to question 1.

2. It is not only the person committing torture who is punishable; accomplices and accessories after the fact are also liable. The Penal Code provides as follows in this respect:

"Art. 41. Authors of offences, accomplices and accessories after the fact shall be liable for such offences.

"Art. 42. The following shall be deemed to be authors of an offence: anyone who committed the offence, either directly and immediately or by advising or instigating another to do so, when the Council has determined that such offence was committed; anyone who prevented or attempted to prevent the foiling of such offence; anyone who decided to commit the offence and, in committing it, availed himself of other persons, whether indictable or not, by means of payment, gifts, promises, orders or any other fraudulent and direct means; anyone who assisted significantly in the commission of the offence by deliberately and intentionally performing some act without which the offence could not have been committed; and anyone who, by physical violence, abuse of authority, threats or other means of coercion, forces others to commit the punishable act, although the force used to such end cannot be regarded as irresistible.

"Art. 43. The following shall be deemed to be accomplices: anyone who indirectly or secondarily co-operates in the commission of the punishable act by performing prior or simultaneous acts. If the special circumstances of the case indicate that the person accused of complicity intended only to co-operate in an act less serious than that committed by the author of the offence, the penalty imposed on the accomplice shall only be that applicable to the act which he intended to commit.

"Art. 44. The following shall be deemed to be accessories after the fact: anyone who, being aware of the criminal conduct of the malefactors, regularly harbours or conceals them or provides them with a meeting-place; or supplies them with the means to profit from the effects of the offence which they committed; or assists them by hiding the instruments or material proof of the offence or by removing any evidence or trace of the offence, in order to prevent their arrest; and anyone who, being required by reason of his profession, employment, trade or occupation to examine any evidence or trace of an offence or to investigate the punishable act, conceals or distorts the truth in order to assist the offender."

3. An attempt to commit an offence is deemed to exist if the person concerned began to commit the offence but did not complete it or is not proved to have done so. Article 16 of the Penal Code states:

"Any person who performs acts, the clear object of which is to commit an offence, shall be guilty of attempting to commit such offence if the offence is not completed or cannot be proven. If the author voluntarily desists from committing the offence, he shall be subject only to the penalty applicable to the acts actually committed, provided that they constitute a different offence, unless the law, in special cases, regards as criminal even the mere attempt to commit an offence. If the author voluntarily prevents the commission of the offence, he shall be subject to the penalty prescribed for attempting such offence, reduced by one third to one half. Petty offences shall be punishable only when they have actually been completed."

Question 6:

1. At the administrative level, the police authorities, beginning with the district Political Lieutenant and ending with the Minister of Government and Police, are competent to receive and examine complaints from victims of torture inflicted by public officials. All such police authorities must ensure the security of citizens and of their interests, in accordance with the provisions of the articles of the Code of Penal Procedure reproduced below:

"Art. 434. The National Civil Police is responsible for: ... 2. The security of citizens and of their interests; ... 4. Investigation of offences; 5. Trial and punishment of offences; ... 7. Protection of public morality ...

"Art. 435. The functions of the National Civil Police shall be preventive, suppressive and correctional, as the case may be. They shall be preventive when they prevent the commission of offences; suppressive when they prevent the completion of an offence; and correctional when they punish the authors of an offence in accordance with the law.

"Art. 437. The following are police authorities: the Minister of Police, Police Intendants or their deputies according to law, Police Commissioners and Political Lieutenants."

2. At the judicial level, the following are competent to receive individual complaints or accusations of the use of torture against prisoners: National Commissioners, Police Intendants, criminal-court judges and judges of the Superior and Supreme Courts.

Question 7:

The authorities do not generally carry out any investigations ex officio. When they receive a complaint and establish that it is justified, they refer it to the criminal-court judges for the institution of proceedings and punishment of the offender. If the act is a matter of common knowledge, it is for the representative of the Public Prosecutor to request the institution of preliminary proceedings against the alleged offenders.

Question 8:

1. The procedure in trials for torture is as follows:

- (a) Individual complaint or accusation by the person concerned or affected, or his representative;
- (b) The judge opens the initial proceedings;
- (c) A suitable amount of time is devoted to preliminary proceedings to investigate the liability of offenders, accomplices or accessories after the fact;
- (d) At the end of the preliminary proceedings, the accused is ordered to stand trial;
- (e) Sentence is then passed.

2. The sentence is open to appeal and, if the penalty imposed on the accused is more than two years, he may submit a third-instance appeal to the Supreme Court of Justice.

3. The sentence may be suspended under the legal provision contained in article 82 of the Penal Code, reproduced below: however, crimes of torture generally involve penalties of more than six months, so that conditional sentencing does not apply.

"Art. 82. In the case of a first offender, if he has been convicted of an offence punishable by not more than six months' correctional imprisonment or an offence punishable only by a fine, the court may order, in the sentence itself, that enforcement of the sentence shall be suspended. This decision shall be based on a judgement of the over-all personality of the accused, the nature of the offence and the circumstances surrounding it, where these help to assess his personality. The judges shall call for such information as they deem relevant in order to make such a judgement."

4. Any convicted person, regardless of the offence, is entitled to the pardon which may be granted by the President of the Republic. While his trial is in progress, the accused may benefit from an amnesty. Once the trial is over, only a pardon is possible. Both amnesty and commutation of sentences are matters for the legislature. However, there are no known cases in which enforcement of a sentence has been suspended for a person convicted of torture. The relevant legal provisions are reproduced below.

5. Article 1 of the Plenary Act states:

"Clemency is exercised in the form of a pardon or of commutation or reduction of penalties imposed by judicial sentence, upon petition in writing to the President of the Republic after final sentence has been passed".

6. Under article 34 (29) of the Constitution now in force, the Congress also has the power "to grant amnesties and pardons whenever some important reason so requires".

7. Similarly, article 59 (k) of the new Constitution confers the following powers on the National Chamber of Representatives:

"To grant a general amnesty for political offences and collective pardons for common crimes, whenever some overriding reason justifies such action".

Question 9:

1. We have already indicated, in the replies given above, the sanctions applicable to persons guilty of the crime of torture.

2. If a professional - a lawyer or physician - was responsible for an act of torture, he is criminally liable like any other person. The penalties laid down in the Penal Code, in addition to that of deprivation of liberty, which the judge may impose are temporary deprivation of civic rights, a prohibition on leaving the country and supervision. In this connexion, the Penal Code expressly provides as follows:

"Art. 60. Any sentence of hard labour (reclusión) or imprisonment shall entail the suspension of civic rights for a period equal to the term of the sentence. However, in the cases expressly laid down in this Code, judges and courts may order the suspension of such rights for a period of three to five years, even if the term of imprisonment does not exceed six months."

"Art. 61. Where a convicted person is placed under special supervision by the authorities, the judge may prohibit him from going to certain specified places after serving his sentence. Accordingly, the convict shall, prior to his release, state where he chooses to reside and shall receive a travel pass indicating the route he must follow and the length of time he may stay at each place in transit. In addition, he shall be requested to report to the police authority of his place of residence within 24 hours after his arrival and may not remove to another place without the written permission of that authority, which shall also have the right to prescribe what occupation and means of livelihood he shall pursue in the event of his having none."

"Art. 62. Persons sentenced to hard labour may, as part of the sentence, be placed under supervision by the authorities for five to ten years; if they repeat the offence or commit another offence punishable by hard labour, they shall be subject to such supervision throughout their natural lives."

3. The Ecuadorian Bar Association Act provides for the existence of an Ethics Tribunal, but its jurisdiction is limited to cases of professional misconduct. The Ecuadorian Medical Association Act also provides for an Ethics Tribunal which judges the conduct of physicians, whether or not members of the Association, but only with regard to the exercise of their profession. In the case of lawyers, the Judiciary Act empowers the Supreme Court of Justice to suspend lawyers from the exercise of their profession in cases where "in the opinion of the Court, they have shown themselves to be unworthy of their high office or of the trust placed in them by the law".

Question 10:

No provisions exist in this connexion.

Question 11:

No complaints have been submitted in this connexion.

Question 12:

1. Ecuadorian legislation guarantees redress and compensation, but only against convicted offenders or accomplices. This rule applies to all offences. Article 52 of the Penal Code is explicit on this point:

"Any conviction entails an obligation on all those responsible for the offence to pay jointly the costs of the trial. Damages shall also be paid jointly by all those responsible to any persons who brought an individual charge against them with a view to obtaining such compensation."

2. Similarly, article 294 of the Code of Penal Procedure provides:

"Sentences shall also specify the costs to be paid by the convicted person. A similar penalty shall be imposed on individuals who have wrongfully accused others."

3. In order for compensation to become effective, a new trial takes place before the same judge who sentenced the accused. Article 296 of the Code of Penal Procedure provides as follows in this connexion:

"Where a person is found guilty, and where damages have been claimed by means of an individual accusation, the suit for damages shall not suspend the execution of the sentence and shall be heard by the judge in the case, in a summary verbal hearing, and recorded separately, thereby maintaining the unity of the trial."

4. Similarly, article 67 of the Penal Code provides:

"Any sentence to the penalties established by this Code shall be independent of compensation for damages in accordance with the provisions of the Civil Code and the Code of Civil Procedure. Once the amount of compensation is determined, it shall be collected by judicial writ. The injured party or his legal representative may claim before the criminal court compensation for the damage caused by the offence by making the corresponding individual accusation required to that end. The determination of compensation awarded by a final sentence shall be made at a summary verbal hearing, in accordance with the provisions of the Code of Penal Procedure. Collection shall be effected by judicial writ against the debtor or the person bearing civil liability. In case of proven insolvency, no writ shall be issued for payment of court costs."

5. With regard to redress, the Penal Code provides for the sentence to be published if such publication will serve to redress the non-financial damage caused by the offence:

"Art. 71. The offender shall be required to publish the sentence at his own expense if publication will serve to redress the non-financial damage caused by the offence."

6. There is no possibility of claiming compensation from the State, as such, for offences committed in the circumstances under discussion here. The public official who committed the offence must bear the responsibility for the consequences of his act.

Question 13:

1. In order to prevent this possibility, the law provides that statements or confessions obtained on police premises have purely informational value. Only the facts investigated and substantiated in the course of the trial are regarded as valid. In this connexion, the Code of Penal Procedure provides:

"Art. 138. The accused may not be coerced into making statements against himself and accordingly has the right to remain silent. This shall not be construed as evidence of guilt."

"Art. 140. In order for a judicial confession to constitute full proof, it must: ... 3. Be free and spontaneous."

"Art. 141. The use of torture, inhuman treatment and systems involving narco-analysis or other similar procedures in order to extract testimony from the accused shall be totally prohibited, whether such testimony is in the form of a statement to the examining judge or a judicial confession or is taken before penal proceedings commence. Officials or employees who contravene this provision shall be liable to the corresponding legal penalty."

Question 14:

The Government of Ecuador has disseminated the contents of the Declaration through the media and has also brought it to the attention of the competent government departments, particularly the Ministry of Government and Police, with a view to its observance and implementation.

Question 15:

The fact that, since it achieved independence, Ecuadorian society has by its nature neither conceived of nor allowed the practice of cruel and inhuman treatment or punishment has meant that the penal law and national institutions have been able to incorporate the latest legal theories and humanistic concepts on this subject immediately and without any difficulty.

The country's history is untainted and shows how Ecuador has unerringly defended the fundamental rights and freedoms of every individual, both at home and abroad. Among such rights and freedoms, it has been and continues to be the State's constant practice to respect the integrity and dignity of the human person and reject torture and other cruel, inhuman or degrading treatment, a practice which it strives to maintain and uphold by all the means at its disposal.

GERMANY, FEDERAL REPUBLIC OF

Note: In a communication dated 11 May 1979, the Government of the Federal Republic of Germany referred to the information that it had transmitted under resolution 18 (XXXIV) of the Commission on Human Rights concerning a draft convention on torture and other cruel, inhuman or degrading treatment or punishment (E/CN.4/1314/Add.2).

HAITI

/Original: French/

/17 May 1979/

1. The Ministry of Foreign Affairs would emphasize that the Republic of Haiti has always opposed all forms of degradation of the human person. Respect for the fundamental attributes of the human person has been a constant feature of all Haitian Constitutions.
2. The concluding clause of article 17 of the 1964 Constitution, now in force, referring to torture and other forms of degradation of the human person, states, in connexion with the legal guarantees applying to arrest and detention, that "All violations of these provisions shall be considered arbitrary acts against which the injured parties may, without prior authorization, appeal to the competent courts, prosecuting either the authors or the perpetrators, regardless of their rank or the body to which they belong."
3. On behalf of the Haitian Government, the Ministry of Foreign Affairs declares that torture constitutes the worst humiliation that one human being can inflict upon another.
4. Torture violates the physical, and often the moral, integrity of the person, and leads to dehumanization.
5. While torture reducing the torturer to the level of the brute beasts, it forces the victims to draw on their religious or philosophical beliefs to give them the necessary strength not to despair of humanity.
6. For this reason the Haitian Government, justifiably alarmed at the use of torture and other forms of human degradation in prison systems, urgently appeals to the Governments of the States Members of the United Nations to put an end to such barbarous and archaic practices, which are totally alien to the economic, cultural and moral progress of the international community in the twentieth century.

HUNGARY

/Original: English//10 July 1979/

1. The Government of the Hungarian People's Republic resolutely condemns the use of torture and other cruel, inhuman or degrading treatment in whatever form. Humanism is a basic feature of the Hungarian administration of justice based on socialist legality. The laws and regulations circumspectly provide for the observance of legality and the protection of citizens in all phases of judicial proceedings. Any methods that would be suitable for causing physical or psychological torture are totally alien to the Hungarian authorities.
2. In 1975 the Government of the Hungarian People's Republic gave detailed information on its position concerning torture and other cruel, inhuman or degrading treatment (see A/10158 and Corr.1 and Add.1). Most recently, new laws have been enacted on this subject as well.
3. As experience has confirmed the adequacy of guarantees provided by the existing laws and regulations against violation of the rights of citizens, Act IV of 1978 of the Penal Code, which entered into force on 1 July 1979, has in a new classification essentially maintained its regulation of the guarantees which exclude tortures and degrading treatments in the execution of punishments. The relevant provisions of the amended Penal Code threaten official persons resorting to inadmissible means with legal consequences identical to the punishments established by the previous law.
4. Law-Decree No. 11 of 1979 on the Execution of Punishments and Measures also came into force on 1 July 1979. This new legislation lays down uniform standards for the execution of all punishments and measures and provides for increased enforcement of humanitarian considerations in the application of sanctions established by the Penal Code.

INDIA

/Original: English//13 February 1979/

The salient feature of the Indian Constitution is that the Executive Government is responsible and accountable to a Parliament elected on the basis of adult suffrage and an independent judiciary has the power to annul the orders of the Executive as well as laws passed by the Parliament if they are inconsistent with the fundamental rights guaranteed in Part III of the Constitution. This combined with the freedom of the press constitutes an adequate guarantee against any abuse of police power.

Question 1:

1. The matter of prevention and punishment of torture and other cruel inhuman or degrading treatment or punishment has been given due consideration in our country. The Constitution of India provides for basic human rights and is an ample safeguard against any torture and other cruel, or degrading treatment. In the chapter on fundamental rights, in part III of the Constitution, there are various articles which ensure the dignity of the individual. Some of these are as follows:

- (a) Article 17 relating to the abolition of untouchability;
- (b) Article 21 relating to the protection of life and personal liberty;
- (c) Article 23 prohibiting traffic in human beings and forced labour;
- (d) Article 24 prohibiting the employment of children in factories etc.

Different acts amounting to physical torture are encompassed by specific offences (depending on the gravity of the offence) in the Indian Penal Code. Though the word torture has not been defined specifically in any section of the Indian Penal Code, sections 319, 330 and 331 which would cover various forms of torture, are reproduced below: "319. Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt". Section 320 defines aggravated forms of hurt as "grievous hurt". Since causing bodily pain is torture, the offence of torture can be covered under this section. The punishment for this offence is provided in section 323 of the Indian Penal Code.

"330. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct or for the purpose of contraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

"331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer or from any person interested in the sufferer any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

2. Sections 330 and 331 of the Indian Penal Code cover physical torture inflicted on a person by or at the instance of a public servant for the purpose of obtaining from him information or confession about the commission of an offence.

3. Section 322 relates to the offence of voluntarily causing grievous hurt and section 325 provides for punishment for voluntarily causing grievous hurt. Section 350 deals with "using criminal force" and Sections 351 to 358 relate to assault. Section 220 deals with wrongful confinement by public officials.

4. Prisons in India are maintained and regulated under specific laws, viz., the Prisons Act, 1894, and the Prisoners Act, 1900. The State Governments have further formulated their respective state prison manuals and treatment of prisoners is, thus, regulated under a proper legal framework.

5. As regards the measures taken to prohibit such treatment in exceptional circumstances such as war, a threat of war, internal political instability or any other public emergency, it may be mentioned that in our country an emergency can be proclaimed by the President of India according to article 352 of the Constitution when the President is satisfied that a grave emergency exists, whereby the security of India or any part of the territory thereof is threatened by war or internal disturbances. When such an emergency has been declared, article 19 of the Constitution relating to the protection of certain rights regarding freedom of speech, etc. remain suspended, and, by an order, the right to move a court for the enforcement of such of the fundamental rights conferred by part III of the Constitution as may be mentioned in the order can be suspended. But even during the emergency, the provisions of the Indian Penal Code mentioned above remain applicable and action can be taken in accordance with the law whenever any such offence is committed. An amendment to the Constitution already approved by the Indian Parliament and referred to the State Governments for ratification will make the rights under article 20 relating to protection in respect of conviction for offences and under article 21 relating to protection of life or personal liberty enforceable in courts even during the proclamation of emergency.

6. Civil action for damages in tort for injury or false imprisonment, etc. can be brought about by a person under common law.

7. To mitigate any feelings of inequality and discrimination among the minorities, the Government of India set up in January 1978 a Minorities Commission, the mandate of which, inter alia, is to look into specific complaints regarding deprivation of rights and safeguard of minorities. A Commissioner for Scheduled Castes and Scheduled Tribes has been investigating allegations of torture or atrocities on members of Scheduled Castes and including his findings in the annual reports to Government. The report is also placed before the Parliament. The Government have now appointed a Commission on Scheduled Castes and Scheduled Tribes.

Question 2:

1. The training courses for all police and ranks from constables to gazetted officers in the police training schools and colleges all over the country lay special emphasis on the proper treatment of the persons who are in police custody. Section 49 of the Code of Criminal Procedure enjoins upon police officers to use only reasonable force while arresting a person. There are adequate provisions in this regard in police regulations of various States.

2. As regards the treatment of such persons who are in gaols, all those engaged in the treatment of persons deprived of their liberty are imparted pre-service and in-service training in the gaol training schools and allied institutions. In addition, short-term courses are organized to orient these personnel to the philosophy of corrections. Study of gaol manuals and other relevant laws and rules is included in the curricula of such courses.

Question 3:

1. As far as the proper treatment of prisoners in police custody is concerned, the state police manuals and standing orders by the State Governments/Inspectors General of Police contain instructions in this regard. Maltreatment of persons in custody, according to these rules/orders, is viewed seriously and is punishable departmentally as well as judicially, depending on the nature of gravity of maltreatment.

2. Regarding the treatment of prisoners in gaols, the Prison Act specifically mentions penalties for the personnel involved in the custody and treatment of prisoners, in case of default. With the enforcement of the Abolition of Whipping Act in 1955, corporal punishment has been removed from the statute.

Question 4:

1. Vigilance at the supervisory level is ensured. Standing orders and instructions ensure systematic enforcement of interrogation practices. Regarding the arrangements for custody and treatment of prisoners, as far as police department is concerned, there are instructions in the police manuals and standing orders of the concerned Governments which ensure proper administrative checks and balances to ward against such malpractices.

2. Article 22 (1) of the Indian Constitution provides: "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

3. Similarly, article 22 (2) of the Constitution provides: "Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate".

4. The law provides, and courts have always insisted, that the relatives of the accused should be informed where he is detained and that inquiry be made from him whether he wishes legal assistance or not. If the accused wishes to have counsel to represent him, it is the duty of the Magistrate to allow him time for counsel to appear and argue the matter before him. The High Courts have the power to interfere and direct the police to permit an interview of the accused with his legal adviser.

5. It may also be mentioned in this behalf that the Government of India have set up the National Police Commission in November 1977, with inter alia, the following terms of reference:

(a) Inquire into the system of investigation and prosecution, the reasons for delay and failure, the use of improper methods, and the extent of their prevalence; and suggest how the system may be modified or changed, and made efficient, scientific and consistent with human dignity; and how the related laws may be suitably amended.

(b) Recommend measures and institutional arrangements:

- (i) To prevent misuse of powers by the police and to examine whether police behaviour, outlook, responsiveness and impartiality are maintained at the correct level, and, if not, the steps such as recruitment and training which should be taken to improve them.
- (ii) To prevent misuse of the police by administrative or executive instructions, political and other pressure, or oral orders of any type, which are contrary to law;
- (iii) For the quick and impartial inquiry of public complaints - made against the police about any misuse of police powers.

Question 5: Yes.

Question 6:

1. India is broadly divided into States and Union Territories for purposes of administration. States are further subdivided into districts. Except in some big cities, the district magistrate is the head of the police administration, and the superintendent of police, in each district, looks after the enforcement of law. The district has various area-wide police stations whose job is to prevent and detect crime in their respective areas. Each district has courts also. These executive as well as judicial authorities are competent to go into the allegations made by an alleged victim. The course of action taken depends on the gravity of the offence. There may be a departmental, magisterial or judicial inquiry or a case may be registered and investigation undertaken in accordance with the procedure laid down in the Code of Criminal Procedure which means that if, after the investigation, the case is proved, the police will submit a charge-sheet in a court of law where the prosecution and defence witnesses are examined and then the Court decides whether the person is guilty or not depending on the evidence. If the accused is found guilty, he is awarded punishment as laid down for the offence.

2. In so far as persons in prisons are concerned, the superintendent of the prison and in some cases district magistrates are empowered to receive and examine complaints from alleged victims in the light of procedure laid down in the Code of Criminal Procedure. Under article 226 of the Constitution the High Courts have the power to issue writs of habeas corpus for production of any detainee on

whose behalf an application is made. The court may order the release of a person on bail, even in non-bailable offence, unless he has been proved guilty of an offence punishable by death or imprisonment for life.

Question 7:

Yes, in such cases, the competent authorities are empowered to examine the cases suo moto and if prima facie it is found that a crime has been committed, a case is registered and investigation undertaken. Vide Section 190 (1) (c) of the Code of Criminal Procedure if in the course of any proceedings before any court, evidence is disclosed to indicate that a criminal offence has been committed against a person, appropriate proceedings can be initiated against the person prima facie found to have committed the particular offence. The rest of the procedure is the same as mentioned in answer to question 6.

Question 8:

Yes, criminal proceedings are instituted against those committing offences of torture. The main aspects of the procedure applicable to such trials is given in the Code of Criminal Procedure according to which first the case is registered against the offenders. Then the police conduct an investigation and if the offender is found guilty, a charge-sheet is put up in a court. Then the court hears the prosecution as well as the defence evidence of the case. If the court finds the offender guilty, he is convicted and sentenced and if not, he is let off. Regarding the penalties, these depend on the nature of offence committed. Under section 323 of the Indian Penal Code, for causing hurt, the punishment may be imprisonment for a term which may extend to one year, or a fine which may extend to 1,000 rupees, or both. If an offence is committed under section 330 of the Indian Penal Code, i.e., voluntarily causing hurt to extort confession or to compel restoration of property, the punishment provided is imprisonment for a term which may extend to seven years, and also a fine. If the offence of wrongful confinement is committed as mentioned in section 340 of the Indian Penal Code, the punishment as given in section 342 of the Indian Penal Code is imprisonment for a term which may extend to one year, or a fine which may extend to 1,000 rupees, or both. And if the offence of unlawfully compelling any person to labour against the will of that person is committed, as given in section 374 of the Indian Penal Code the punishment for this is imprisonment which may extend to one year, or fine, or both. As far as the suspension, remission and commutation of sentence is concerned, the provisions with regard to these are contained in sections 432, 433 and 434 of the Code of Criminal Procedure. However, these provisions do not apply to the punishments awarded exclusively under the offence of torture or other cruel inhuman or degrading treatment or punishment but to other offences also. Under section 306 of the Code of Criminal Procedure pardon can be given to an accomplice on the condition of his making a true disclosure of the circumstances relating to the offence. Articles 72 and 161 of the Constitution also provide for pardon etc. by the President of India and Governors of States respectively.

Question 9:

There are departmental rules and the penal sanctions provided for in the Prisons Act and the Code of Criminal Procedure to take action against those public servants

who are guilty of infringing law/rules on the subject. Such public servants who are found guilty are suspended and an inquiry is held into their conduct. If it is found that a public servant has committed the offence, like the one mentioned in section 330 of the Indian Penal Code, which is voluntarily causing hurt to extort confession or to compel restoration of property, a case is registered, investigated and charge-sheeted in the Court if the public servant is found guilty. If convicted, such public servant may be dismissed from service. The same laws apply to lawyers and physicians if they happen to be in government service. Regarding the action taken by the occupational associations against their members convicted of torture as a grave breach of professional ethics it is only a moral force and the Bar Council of India, in the cases of practising advocates and the Indian Medical Association, in case of physicians, would and may take cognizance of breach of professional ethics.

Question 10:

The answers to questions 8 and 9 above also apply to those guilty of other criminal offences involving cruel, inhuman or degrading treatment or punishment.

Question 11:

Ordinary cases are investigated by appropriate agencies in accordance with the criminal law. For allegations regarding misuse of powers of arrests and other excesses committed during emergency (25 June 1975 to 21 March 1977) the Government of India appointed a Commission of Enquiry headed by Justice J. C. Shah, former Chief Justice of India. 2/ Many other commissions of inquiry have been appointed to look into specific allegations.

Question 12:

There is no enforceable right to compensation against the Government in favour of a person who is unlawfully detained, arrested, etc. Such a right does, however, exist if the victim of torture or other inhuman or degrading treatment initiates civil action for damages or compensation against an individual wrongdoer. Again, under section 357 of the Code of Criminal Procedure, the court imposing a sentence of fine or a sentence including a sentence of death of which fine forms a part is empowered to order that the whole or any part of the fine recovered may be applied, inter alia, in payment of any portion of compensation for any loss or injury caused by the offence in respect of which compensation is in the opinion of the court recoverable by such a person in a Civil Court.

Question 13:

In the Indian Evidence Act, there are a number of provisions which bar the admissibility of a statement extracted under torture. The relevant provisions are as follows: Section 24 of the Evidence Act says that a confession (a statement extracted from the accused) made by an accused person is irrelevant in a criminal

2/ The Government of India attached to their communication an English translation of the report of the Commission of Enquiry, which may be consulted in the Secretariat files.

proceeding if the making of the confession appears to the court to have been caused by an inducement, threat or promise proceeding from a person in authority. Section 25 says that no confession made to a police officer shall be proved as against a person accused of any offence. According to section 26, no confession made by any person while he is in the custody of a police officer shall be proved as against such person unless it is made in the immediate presence of a magistrate. Section 162 of the Code of Criminal Proceedings forbids the signing of statements made to police officers in the course of investigation of a case. The object of this Section is to ensure that the police cannot, in a criminal prosecution, give evidence of admission which was either not a fact or was obtained by improper means. Further, section 164 of the Code of Criminal Proceedings prescribes that the recording of a confessional statement before any metropolitan magistrate or judicial magistrate will be done only when the same is made voluntarily.

Question 14:

The question of India making a unilateral declaration adopting the Declaration on torture is under the consideration of the Government of India. Necessary action to disseminate the Declaration to the public at large will be taken after this question is decided.

Question 15:

We have not come across any difficulty so far. The constitutional and legal provisions and the administrative practice which obtain in India constitute an adequate safeguard.

IRAN

Original: French
3 July 1979

Torture and cruel treatment are prohibited under Iranian law. Any violation of this principle is punishable under articles 131, 132 and 136 of the Penal Code.

Confessions extracted under torture are considered invalid by the courts. Any person who has been subjected to torture may claim redress through the competent courts, in accordance with the procedure laid down in the Code of Criminal Procedure.

Article 131

Any official of the judiciary order or any other civil servant who, with a view to extracting a confession from an accused person, subjects him to physical violence, or gives an order to that effect, shall be sentenced to imprisonment or forced labour for a term of three to six years. If the accused person dies as a result of the ill-treatment inflicted, the guilty person shall be liable to the penalty imposed for murder.

Article 132

Any civil servant who inflicts, or orders to be inflicted, on a prisoner a penalty more severe than that prescribed by law, or a penalty for which the law makes no provision, shall be sentenced to imprisonment for a term of six months to three years. If the action of the civil servant involves other offences, he shall also be liable to the penalties prescribed for such offences.

Article 136

Any civil servant who, in the discharge of his duties or by reason of those duties, subjects any person to physical violence, or gives an order to that effect, shall be sentenced to the maximum penalty prescribed for such an offence.

However, the existence of such laws and the unilateral declaration made by Iran against torture had virtually no practical effect in preventing the authorities of the former régime from not only tolerating but also making sadly familiar the use of cruel and degrading punishment such as torture and other inhuman treatment of accused persons and prisoners. The sinister exploits of the Savak gaolers have left the Iranian people with painful memories, and this explains certain decisions of the revolutionary courts of the Islamic Republic of Iran, which, in contrast to the judicial authorities under the monarchy, impose on torturers sentences commensurate to their crimes.

IRAQ

[Original: English]
[30 August 1979]

1. Human dignity is protected by the Constitution. Article 22, paragraph (6) of the Constitution provides that "human dignity is protected. The exercise of any form of physical or psychological torture is prohibited." The Law for the Reformation of the Legal System has set "the protection of the freedom, security and dignity of all citizens" as one of the general objectives of criminal legislation.

2. While discussing article 6, mention has already been made at the fact that the Penal Code No. 111 (1969) regards as a criminal offence any act endangering man's life or his physical safety (all the articles of chap. 1, book 3 of the Law). The Law imposes penalties for acts of wounding, battering, and deliberate harm. These include acts of deliberate attacks on others, wounding, battering, using violence, giving a harmful substance, and any other act which infringes upon the law. It also imposes penalties for acts causing harm or illness to others by a mistake resulting from negligence, recklessness, carelessness, lack of precaution or disregard for laws, regulations and orders. The penalty for some of these cases is imprisonment for a term not exceeding 15 years.

3. Nothing in the existing legislation permits the subjection of anyone without his free consent to medical or scientific experimentation. While setting forth the grounds for permission in articles 39-46, and discussing the criminal responsibility and the preclusions thereof in articles 60-65, the Penal Code does not regard these kinds of experimentation as a ground for permission or a reason for precluding responsibility.

JAPAN

[Original: English]

[29 January 1979]

Question 1:

1. The Constitution of Japan (enforced in 1947) provides as follows:

Article 18. No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited.

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 36. The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

2. Thus, the Constitution prohibits torture and other cruel, inhuman or degrading acts and the like, by express provisions, just like the declaration annexed to General Assembly resolution 32/64 adopted on 8 December 1977 and, as mentioned later, there are more concrete provisions at various places of the Penal Code, the Code of Criminal Procedure and many other laws to ensure that these provisions of the Constitution are fully observed. Also, although the Constitution and the relevant national laws have no such special provisions as are referred to in question 1 in order to prohibit torture and other cruel, inhuman or degrading acts and the like in exceptional circumstances such as a state of public emergency, etc., there has not arisen such a situation in Japan that requires legislative or administrative measures for prohibiting torture and the like in these exceptional circumstances. Therefore, there have been no measures taken or contemplated for such purposes, either before or since the adoption of the Declaration.

Question 2:

1. As regards public prosecutors, the Public Prosecutors Office Law (enforced in 1947) provides for strict qualifications for them (arts. 18, 19) and, under the firmly established hierarchical system of guidance and supervision with the Prosecutor General at its top (art. 1, arts. 7 to 13, same law), there has never happened any case involving torture or other cruel or inhuman acts committed by public prosecutors in the conduct of their duties, from generation to generation, and complete guidance and supervision are being exercised at all times. There is also a system in Japan for examining the competency, etc. of public prosecutors, under which the Committee for Screening Public Prosecutors, including in its membership members of learning outside the Ministry of Justice, examines individual prosecutors periodically or whenever necessary (art. 23, same law). There has thus been no case where a public prosecutor or public prosecutor's assistant officer performing his duties under the direction of a public prosecutor (art. 27, same law) inflicted torture or committed similar acts.

2. Next, as regards the administration of prisons, they are administered strictly in accordance with the Constitution and relevant laws and the prison officials participate in training courses at the central or regional Training Institute for Correctional Officials or in-service training at their own institutions, which both emphasize in their curricula respect for the fundamental rights of prisoners. Thus all efforts are being paid to make each officer fully aware of his rights. Accordingly, torture or similar inhuman incidents have never been reported in Japanese prisons.

3. The activities of the immigration authorities are also carried out in strict compliance with the Constitution and relevant laws, and in the training courses for immigration officers they are emphatically instructed to respect the rights of foreigners in the performance of their duties. Thus there have been no cases of torture or similar acts in the past.

4. Also, the Ministry of Justice has the Civil Liberties Bureau as one of its inner departments and, as its local organs, there are Civil Liberties Divisions in the eight Legal Affairs Bureaux and Civil Liberties Sections in the 42 District Legal Affairs Bureaux and, besides these government organs, there are voluntary workers, namely, Civil Liberties Commissioners in cities, towns or villages throughout the country who are appointed by the Minister of Justice to protect the rights of local residents. These human rights organs carry out public information and education activities to diffuse the thought of respect for human rights and freedom. They make all efforts to promote community campaigns for the protection of human rights and, through these activities and school education, the thought of respecting human rights is widely diffused nowadays among our people (please see the Public Prosecutors Office Law). 3/

Question 3:

As regards the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, a directive having the same purport was issued by the central authorities in January 1945, immediately after the Second World War and, thereafter, the authorities have taken action to draw attention to this point by issuing instructions, etc. from time to time in order to ensure its full observance. Also, there is an inspection system established by law to give guidance on the actual performance of business at individual prisons. Under this system, the senior staff of the Ministry of Justice makes an inspection of each institution accommodating inmates at least once in two years by order of the Minister of Justice. This inspection may be made by a judge or a public prosecutor. (Article 4 of the Prison Law provides that "the Competent Minister shall cause officials to inspect prisons at least once every two years. Judges and public prosecutors may inspect prisons.") This system functions as an important safeguard against torture or other inhuman acts at these institutions.

Question 4:

Because of the strict qualifications and the firmly established system of

3/ The Government of Japan attached to this communication an English translation of the Law, which may be consulted in the Secretariat files.

guidance and supervision for public prosecutors and their assistant officers mentioned above and also the establishment of the Committee for Screening Public Prosecutors, it is impossible that torture or similar inhuman acts are done in their interrogation practices. For this reason, there are no other methods being used to ensure the systematic review of interrogation practices and there has been no case where any problem has arisen in this connexion in Japan.

Question 5:

1. The acts mentioned here are punishable under the Penal Code. The Penal Code of Japan (enforced in 1908) provides as follows:

Article 193. When a public officer abuses his authority and causes a person to perform an act which he has no obligation to perform, or obstructs a person from exercising a right which he is entitled to exercise, imprisonment at or without labour for not more than two years shall be imposed.

Article 194. When a person performing, or assisting in, judicial, prosecutive or police functions abuses his authority and arrests or detains another, imprisonment at or without labour for not less than six months nor more than ten years shall be imposed.

Article 195. (1) When a person performing or assisting in judicial, prosecutive or police functions, in the performance of his duties, commits an act of violence or cruelty upon the defendant in a criminal action or other person, imprisonment at or without labour for not more than seven years shall be imposed. (2) The same shall apply when a person who is guarding or escorting another person detained in accordance with law or ordinance commits an act of violence or cruelty upon him.

Article 196. A person who commits a crime provided for in the preceding two articles and thereby kills or injures another shall be dealt with according to the punishments prescribed for the crimes of bodily injury if they be graver.

Article 204. A person who inflicts a bodily injury upon another shall be punished with imprisonment at labour for not more than 10 years or a fine of not more than 500 yen or a minor fine. (The above fine is made 200 times as much under the Law for Temporary Measures concerning Fines.)

Article 205. (1) A person who inflicts a bodily injury upon another and thereby causes his death shall be punished with imprisonment at labour for a limited term of not less than two years. (2) When the crime referred to in the preceding paragraph is committed against a lineal ascendant of the offender or of his or her spouse, imprisonment at labour for life or for not less than three years shall be imposed.

2. Thus the Code stipulates strict punishments for torture and other illegal acts committed by public officers, and the provisions of article 60 (co-principals), article 61 (instigators) and article 62 (accessories) of the Code are applied to articles 193 through 196 mentioned above, accomplices being punished as well.

Note: Article 60. Two or more persons who act jointly in the commission of a crime are all principals.

Article 61. (1) A person who through his instigation causes another to commit a crime shall be dealt with as principal. (2) The same shall apply to a person who instigates an instigator.

Article 62. (1) A person who assists a principal is an accessory. (2) A person who instigates an accessory shall be dealt with as an accessory.

Question 6:

1. A person injured through the commission of torture or similar acts may file a complaint to a public prosecutor or a judicial police official in accordance with article 230 of the Code of Criminal Procedure (enforced in 1949) and the articles following it, and any person who believes that a crime has been committed may make an accusation with a public prosecutor or a judicial police official in accordance with article 239 of the same Code and downwards.
2. Also, the Civil Liberties Bureau of the Ministry of Justice and its local organs, namely, Legal Affairs Bureaus and District Legal Affairs Bureaus and over 10,000 Civil Liberties Commissioners in cities, towns or villages throughout the country (all these are hereinafter referred to as "human rights organs") may receive and investigate a complaint from a person injured through the commission of torture or similar acts (article 4 of the Regulations for the Investigation and Disposition of Cases Involving Infringements of Human Rights and article 11, item 3 of the Civil Liberties Commissioner Law).
3. A judicial police official receiving a complaint or accusation investigates and refers the case concerned to a public prosecutor in accordance with the Code of Criminal Procedure and a public prosecutor himself also investigates the cases in which complaints or accusations have been received or those which have been sent from the police, and, after he institutes prosecution or decides not to do so, he informs the complainant or accuser to that effect immediately under the Code of Criminal Procedure (article 260). In cases of non-institution of prosecution, the complainant or accuser has the right to be informed of the reasons for the action (article 261, same code). The complainant or accuser who is dissatisfied with such action of the prosecutor not to institute prosecution is legally guaranteed two ways of filing an appeal. In the first place, such an appeal may be filed, for the review of the action concerned, with the Inquest of Prosecution established in a district court or branch district court jurisdictional area in order to reflect popular opinion on the proper means to exercise the power of prosecution. The inquest is established under the Inquest of Prosecution Law as an organ quite independent from public prosecutors and other organs (article 3), and is composed of 11 members selected by lot from among persons eligible to vote for members of the House of Representatives, with the exception of public officers of certain categories and interested parties in the case (article 4). Upon receipt of a request for review from complainants or accusers, the inquest examines the propriety of decisions by public prosecutors not to institute prosecution, but it

may by a majority vote of its members carry out the examination on its own initiative on the basis of the information or materials obtained by it (article 2). After the examination, the inquest prepares its verdict together with its reasons and forwards it to the Chief Prosecutor of the District Public Prosecutors Office supervising the public prosecutor concerned. Further, it must post the gist of the verdict at a designated notice-board (article 40). Upon receipt of the verdict, the Chief Prosecutor must order public prosecution to be instituted if he believes this should be done in the light of the verdict (article 41).

4. Secondly, there is a system called the analogical institution of prosecution through judicial action. If a person who has made a complaint or accusation regarding the illegal acts by public officers mentioned above is dissatisfied with the public prosecutor's decision not to institute prosecution, he may make application to the district court in the jurisdictional area of the office to which the public prosecutor in question is assigned, requesting that the case be committed for trial under article 262 of the Code of Criminal Procedure. When such application is made, the prosecutor reviews his decision and, if he considers the application to be well-founded, he must institute prosecution (article 264, same code). Even when the prosecutor does not change his decision not to institute prosecution, the court renders a ruling to commit the case to a competent district court for trial if it judges that the application is well founded (article 266, same code). Such a ruling creates the same results as if prosecution had been instituted (article 267, same code). When the case has been committed to the court for trial, a practicing attorney appointed by the court plays the role of prosecutor and takes charge of the prosecution. He may conduct the necessary investigation as prescribed by the Code of Criminal Procedure and entrust to a public prosecutor the direction of a public prosecutor's assistant officer or a judicial police official in the course of any investigation (article 268, same code). (See articles 230 through 246 and articles 260 through 266 of the Code of Criminal Procedure, and the Inquest of Prosecution Law.) 4/

Note:

Regulations for the Investigation and Disposition of Cases Involving Infringements of Human Rights:

Article 4. The investigation of a case shall be commenced, when it is deemed appropriate in the light of the objectives of article 2, on the basis of a written or oral complaint, or notification or information given by a Civil Liberties Commissioner or the government (public) office concerned.

Civil Liberties Commissioner Law:

Article 11. The duties of a Civil Liberties Commissioner shall be as follows:

4/ The Government of Japan attached to this communication an English translation of these documents, which may be consulted in the Secretariat files.

- (1) To carry out public information and education activities to diffuse the thought of respect for freedom and human rights;
- (2) To make efforts to promote community campaigns for the protection of human rights;
- (3) To investigate and collect information on the cases involving infringements upon human rights in order to take remedial steps pertinent action, such as reporting to the Minister of Justice, giving advice or warning to the agencies involved, etc.;
- (4) To provide succour in litigation and take other pertinent relief measures for the poor, for protecting their rights;
- (5) To make efforts for the protection of human rights in any other matter.

5. When a human rights organ receives a complaint, it starts an investigation if it is suspected that an infringement of human rights has been committed and, in cases where a fact of infringement of human rights is detected in the course of the investigation, the director of the competent Legal Affairs Bureau or District Legal Affairs Bureau takes the following action (article 12, paragraph 1, Regulations for the Investigation and Disposition of Cases Involving Infringements of Human Rights):

- (a) To file an accusation under the Code of Criminal Procedure;
- (b) To indicate to the person who committed an infringement of human rights (hereinafter to be referred to as "infringer") or his supervisor the fact of infringement of human rights and give necessary warning in writing;
- (c) To notify the fact of infringement of human rights in writing to government or public offices or other organs deemed appropriate;
- (d) To persuade the infringer or his supervisor, orally or in writing, to reflect on his conduct and take steps with prudence;
- (e) To make a report to government or public offices or other organs concerned on those whose rights seem to have been infringed, introduce them to legal aid organs, give them legal advice and other appropriate aid;
- (f) To give advice, exercise good offices and take other measures deemed appropriate to eliminate the infringements committed, for the parties involved.

Question 7:

1. If any one of the crimes under articles 193 through 196 of the Penal Code mentioned above is suspected to have been committed, public prosecutors or judicial

police officials, etc. who have the power of investigation carry out investigation in accordance with the provisions of the Code of Criminal Procedure. For this purpose, no formal complaint is required.

2. The condition necessary for initiating and carrying out an investigation is that a judicial police officer believes that a crime has been committed (article 189, paragraph 2, same code), which means that he has the suspicion that a specific crime has been committed. A public prosecutor may conduct an investigation himself when he deems it necessary (article 191, same code).

3. The procedures applicable in such cases are, just as those applicable to other ordinary crimes, prescribed by the same code and under the relevant provisions of the code investigation based on voluntary co-operation or compulsory investigation (arrest, detention, search, seizure, etc.) is carried out, as the case may be. (See articles 189 and 191 of the Code of Criminal Procedure.)

4. Also, the human rights organs mentioned above may conduct investigation ex officio even in the absence of a formal complaint, if there is a reasonable ground to suspect that an act of torture has been committed (article 4 of the Regulations for the Investigation and Disposition of Cases Involving Infringements of Human Rights and article 11, item 3 of the Civil Liberties Commissioner Law). The procedures applicable to the disposition of these infringements after investigation are the same as those mentioned in the reply to question 6 above.

Question 8:

1. A public prosecutor institutes prosecution with the court (article 247, Code of Criminal Procedure) if he deems, after investigation, that the criminal facts involving torture or similar acts are clear in the light of evidence and the institution of prosecution against them is appropriate (article 248, same code). (See articles 247 and 248 of the Code of Criminal Procedure.)

2. The procedures applicable to the trial of these cases are just the same as those applicable to ordinary crimes, which are provided for in article 271 of the Code of Criminal Procedure and downwards, and applicable to these procedures are various modern principles of trial, such as the principle of adversary proceedings, that of directness (Unmittelbarkeit), that of orality (Mündlichkeit; oralité), that of free evaluation of evidence and that of public trial (Öffentlichkeit; publicité), etc.

3. The penalties to be imposed are determined by the court at its discretion within the limits of the statutory penalties prescribed by articles 193 through 196 of the Penal Code as already mentioned.

4. In Japan, the only system adopted by the Penal Code is the suspension of execution of sentence (article 25) and its requirements and conditions are as follows:

Article 25.

1. When any one of the following persons has been sentenced to imprisonment at or without labour for not more than three years or a fine of not more than 5,000 yen, the execution of the sentence may, according to the circumstances, be suspended for a period of not less than one year nor more than five years as from the day when the sentence becomes finally binding:

(a) A person not previously sentenced to imprisonment without labour or a heavier punishment;

(b) A person who, although previously sentenced to imprisonment without labour or a heavier punishment, has not again been sentenced to imprisonment without labour or a heavier punishment within five years from the day when the execution of the former punishment was completed or remitted.

2. When a person, who has been sentenced to imprisonment without labour or a heavier punishment and has been granted the suspension of execution of the sentence, is sentenced to imprisonment at or without labour for not more than one year and there are extenuating circumstances especially favourable to him, the provisions of the preceding paragraph shall apply; provided that the same shall not apply to a person who has been placed under protective supervision in accordance with the provisions of paragraph 1 of article 25-2 and has committed a crime again within the period of such supervision. (Note: "A fine of not more than 5,000 yen" in article 25, paragraph 1 above is to be read as "a fine of not more than 200,000 yen" under the Law for Temporary Measures concerning Fines.)

5. For convicted persons, general amnesty, special amnesty, commutation of sentence, or reprieve or restoration of rights may be granted in accordance with the provisions of the Amnesty Law (enforced in 1947).

Note: The Amnesty Law

Article 1. General amnesty, special amnesty, commutation of penalty, remission of execution of penalty and restoration of rights shall be provided for by this Law.

Article 2. General amnesty shall be granted with respect to the crimes which shall be specified by a Cabinet Order.

Article 3. General amnesty shall, except as otherwise provided for by the Cabinet Order referred to in the preceding article, have the following effects upon the crimes with respect to which general amnesty is granted:

(1) That as for the persons who have been convicted, the pronouncement of the judgement of guilty shall lose its effect; or

(2) That as for the persons who have not yet been convicted, the right of prosecution shall be extinguished.

Article 4. Special amnesty shall be granted individually to the specified persons who have been convicted.

Article 5. By special amnesty, the pronouncement of the judgement of guilty shall lose its effect.

Article 6. Commutation of penalty shall be granted to persons who have received sentence by specifying by Cabinet Order the categories of crimes or kinds of penalties with respect to which commutation shall be granted, or individually to specified persons who have received sentence.

Article 7. (1) By commutation of penalty by Cabinet order, penalties shall be reduced, except as otherwise provided for by the Cabinet Order concerned.

(2) By commutation of penalty granted individually to the specified persons, penalties shall be reduced or a portion of the execution of penalties shall be remitted.

(3) Notwithstanding the provisions of the preceding paragraph, in favour of those for whom suspension of execution of penalties has been pronounced but the term of such suspension has not yet expired, only the dispositions to reduce the penalties shall be taken and at the same time the term of suspension may be shortened.

Article 8. Remission of execution of penalty shall be granted individually to the specified persons who have received penalties. However, it shall not be granted to those to whom suspension of the execution of penalties has been pronounced, in case the term of such suspension has not yet expired.

Article 9. Restoration of rights shall be granted to those who by virtue of laws or ordinances have been deprived of or suspended from their public rights or qualifications because of their having been convicted, by specifying the conditions by Cabinet Order, or individually to the specified persons. However, it shall be granted neither to those whose penalties have not yet been executed completely nor to those whose execution of penalty has not been remitted.

Article 10. (1) By restoration of rights, the deprived or suspended rights or qualifications shall be restored. (2) Restoration of rights may be granted with respect to the specified rights or qualifications.

Article 11. General amnesty, special amnesty, commutation of penalty, remission of execution of penalty and restoration of rights shall not alter retroactively the effects of the matters which have already been brought about based on the pronouncement of judgement of guilty.

Article 12. Special amnesty, commutation of penalty to be granted individually to specified persons, remission of execution of penalty, and restoration of rights to be granted individually to the specified persons shall be granted to the persons recommended by the National Offenders Rehabilitation Commission.

Article 13. When special amnesty, commutation of penalty to be granted individually to specified persons, remission of execution of penalty, or restoration of rights to be granted individually to specified persons has been granted, the Minister of Justice shall issue writs of special amnesty, of commutation of penalty, of remission of execution of penalty or of restoration of rights to the persons in question.

Article 14. When general amnesty, special amnesty, commutation of penalty, remission of execution of penalty or restoration of rights has been granted, public prosecutors shall enter such facts in the original protocol of the judgements concerned.

Article 15. Necessary matters for the enforcement of this law shall be fixed by Cabinet Order of Ministerial Ordinance.

Question 9:

1. In case a public prosecutor is sentenced to imprisonment without labour or a heavier punishment, he comes under the reasons for disqualification prescribed in article 20 of the Public Prosecutors Office Law and loses his job. Also, under article 82 of the National Public Service Law (enforced in 1948), he may be subjected to such disciplinary punishment as dismissal, suspension of duty, reduction of salary or reprimand and, in some cases, he may be subjected to screening by the Committee for Screening Public Prosecutors and be dismissed.

Note: National Public Service Law

Article 82. In case an official or employee falls under any one of the following items, he may, as a disciplinary punishment, be dismissed, suspended from duty, subjected to reduction in salary or reprimand:

- (1) When he has acted contrary to this law or orders issued thereunder;
- (2) When he has acted contrary to his duties or neglected his duties;
- (3) When he has committed misconduct unbecoming to a public servant for the whole people.

2. As regards public prosecutor's assistant officers, correctional officials and immigration officials, they come under the disqualification clause of article 38 of the National Public Service Law when they are convicted and sentenced to imprisonment without labour or a heavier punishment, and naturally they lose their job. Also, they may be dismissed, suspended from duty, subjected to reduction in salary or reprimand, as a disciplinary punishment, under article 82 of the same law, and they may also be subjected to demotion, dismissal or temporary retirement under article 78 or 79 of the Law.

Note: National Public Service Law

Article 38. (Provisions for disqualification):

No person falling under one of the following items shall be eligible for appointment to a government position, except as provided by rules of the Authority:

- (1) A person who has been adjudicated incompetent or quasi-incompetent;
- (2) A person who has been sentenced to imprisonment without labour or a heavier punishment by the court and of whom the execution of the sentence has not been completed or who has not yet ceased to be amenable to the execution of the sentence;
- (3) A person who was dismissed by disciplinary decision and for whom a period of two years has not expired since the date of dismissal;
- (4) A Commissioner or Director-General of the Authority who has committed a crime prescribed in articles 109 to 111 inclusive, and has been convicted;
- (5) A person who has, on and after the date of the enforcement of the Constitution of Japan, formed or belonged to a political party or other organization which advocates the overthrow by force of the Constitution of Japan or the Government existing thereunder.

Article 78. (Instances of demotion and dismissal against his will):

In cases where an employee falls under one of the following items, he may be demoted or dismissed against his will, as provided by rules of the Authority:

- (1) When his performance of duty is not satisfactory;
- (2) When, due to mental or physical debility, he has difficulty or is incompetent to perform official duties;
- (3) When otherwise he lacks the qualifications for fitness required for his government position;

(4) When he becomes a supernumerary or his position is abolished due to an amendment or abrogation of the law concerning the official organization or of the fixed number of personnel, or as a result of a reduction in budget.

Article 79. (Instances of temporary retirement against his will):
In cases where an employee falls under one of the following items, or in other cases established by rules of the Authority, he may be temporarily retired against his will:

(1) When he requires a prolonged period of rest due to mental or physical debility;

(2) When he is prosecuted with respect to a criminal case.

3. The Lawyer Law (enforced in 1949) provides in article 6 that a person who has been sentenced to imprisonment without labour or a heavier punishment (item 1), or a person who has been in public service but dismissed as a disciplinary action and, in regard to whom, three years have not passed since such action (item 3) shall not be permitted to become a lawyer. Also, if a practicing lawyer is sentenced to imprisonment without labour or a heavier punishment, he is to be disqualified automatically. Incidentally, articles 56 through 71 of this law provide for disciplinary punishment and the procedure to be followed by bar associations. In accordance with these provisions, the bar associations give disciplinary punishments to their members for those acts which impair the dignity of lawyers.

Note: Lawyer Law

Article 6. (Disqualification of lawyer):
No person as mentioned below shall be qualified as lawyer irrespective of the provisions of the preceding two articles:

(1) A person who has been sentenced to imprisonment without labour or a heavier punishment;

(2) A person against whom the Impeachment Court has rendered a decision of dismissal;

(3) A person who has been disbarred from a bar association or prohibited from performing the business of a patent attorney or has his registration struck off as a certified public accountant or has been prohibited from performing the business as a tax agent, or removed from his office as a public servant through disciplinary action shall not be qualified as a lawyer unless three years have passed since such disciplinary action was imposed upon him;

(4) Incompetent or quasi-incompetent person;

(5) A person who has been declared bankrupt, and not yet reinstated.

Article 56. (Reasons for disciplinary punishment and authorities empowered):

(1) A lawyer shall be subject to disciplinary punishment for a violation of this law or the regulations of the bar association to which he belongs or of the Japan Federation of Bar Associations, or for any act which is prejudicial to the good order or prestige of his association or otherwise disgraceful in any way whether performed on or off duties.

(2) Disciplinary punishment shall be given by the bar association to which he belongs in accordance with the resolution of the Disciplinary Committee.

Article 57. (Kinds of disciplinary punishment):

Disciplinary measures shall be classified into the following four categories: (a) reprimand; (b) suspension of business for not more than two years; (c) order of compulsory withdrawal from the association; and (d) disbarment.

Article 58. (Request for disciplinary punishment, investigation and examination):

(1) In the event that any person considers a due reason exists for imposing disciplinary punishment upon a lawyer, he may request the bar association to which the lawyer belongs to impose it upon him by presenting a paper explaining the reason therefor.

(2) When the bar association considers that due reasons exist for the imposition of disciplinary punishment upon its member, or receives a request as mentioned in the preceding paragraph, it shall cause the Discipline Maintenance Committee to conduct an investigation.

(3) When the Discipline Maintenance Committee deems it appropriate to impose disciplinary punishment upon a lawyer by the investigation as provided for in the preceding paragraph, the bar association shall request the Disciplinary Committee to examine the case.

Article 59. (Ruling on a demand for review by a person subjected to disciplinary punishment):

In cases where the Japan Federation of Bar Associations is to make a ruling on a demand for review under the Administrative Complaint Investigation Law with respect to the disciplinary punishment given by a bar association in accordance with the provision of article 56, it shall make a ruling, based on the decision of the Disciplinary Committee.

Article 60. (Disciplinary punishment by Japan Federation of Bar Associations):

The Japan Federation of Bar Associations may, when it considers it proper, impose disciplinary punishment upon a lawyer, at its own initiative and in respect of the cases as provided for in article 56, paragraph 1, in accordance with the resolution of the Disciplinary Committee.

Article 61. (Objection by the person requesting disciplinary punishment):

(1) When the bar association fails to impose disciplinary punishment upon a lawyer or does not conclude the procedures for such punishment within a reasonable period in spite of the request for disciplinary punishment against the lawyer in accordance with the provisions of article 58, paragraph 1, the person who made the request may file objection with the Japan Federation of Bar Associations. The same shall apply when the said person considers the disciplinary punishment imposed by the bar association unduly light.

(2) Upon receipt of the objection as mentioned in the preceding paragraph, the Japan Federation of Bar Associations shall, when it considers the objection well-founded, inform the bar association concerned to that effect or impose disciplinary punishment of its own motion under the preceding article, or reject the objection when it considers it groundless, according to the resolution of the Disciplinary Committee.

(3) The provisions of article 14, paragraph 3 shall apply mutatis mutandis to the disposition as mentioned in the preceding paragraph.

Article 62. (Filing of suit):

(1) A person whose request for review of the disciplinary punishment under the provision of article 56 has been dismissed or rejected, or who has been subjected to the disciplinary punishment under the provision of article 60, may institute a suit for cancellation thereof with the Tokyo High Court.

(2) As regards the disciplinary punishment under the provision of article 56, the suit for cancellation may be instituted only against the ruling made thereon by the Japan Federation of Bar Associations.

Article 63. (Restriction on request for change of registration, etc.):
A lawyer against whom the procedures for disciplinary punishment are in process may not make a request for the change of registration or rescission of registration until such procedures have been concluded.

Article 64. (Limitations):

Upon the lapse of three years after the existence of reasons for disciplinary punishment, the procedures for such punishment shall not be commenced.

Article 65. (Establishment and functions of the Disciplinary Committee):

(1) The Disciplinary Committee shall be set up in each bar association and the Japan Federation of Bar Associations respectively.

(2) The Disciplinary Committee shall, upon request of the bar association or the Japan Federation of Bar Associations in which it has been set up, conduct necessary examination relative to disciplinary punishment of a lawyer belonging thereto.

Article 66. (Organization of Disciplinary Committee):

The Disciplinary Committee shall consist of a chairman and several committee members.

(2) The chairman shall be elected from among committee members by mutual voting.

(3) In the event the chairman is prevented from performing his duties, another committee member shall assume chairmanship temporarily according to the order which shall beforehand be determined by the Disciplinary Committee.

(4) The Disciplinary Committee shall have several reserve members.

Article 67. (Reviewing procedure of Disciplinary Committee):

(1) When the Disciplinary Committee has been requested to review the disciplinary procedure imposed upon a lawyer, it shall forthwith notify the lawyer who is going to be examined to that effect by fixing the date of the review.

(2) The lawyer who is to be examined may appear on the date of review and make a statement, provided that he shall obey the instructions given by the chairman of the Disciplinary Committee.

(3) The provisions of article 55, paragraph 1 shall apply mutatis mutandis to the review conducted by the Disciplinary Committee.

Article 68. (Suspension of disciplinary procedures):

The Disciplinary Committee may suspend the disciplinary procedures while a criminal suit is pending for the same cause.

Article 69. (Mutatis mutandis application):

The provisions pertaining to the chairman, members and reserve members of the Qualifications Screening Committee in article 52, paragraphs 3 and 4; article 53, paragraphs 2 and 3; and article 54, shall apply mutatis mutandis, respectively, to the chairman, members and reserve members of the Disciplinary Committee, provided that in this case the term "chairman" in article 52, paragraph 3 shall read as "the president of the bar association in the case of the Disciplinary Committee of the bar association and the president of the Japan Federation of Bar Associations in the case of the Disciplinary Committee of the Japan Federation of Bar Associations".

Article 70. (Establishment and functions of Discipline Maintenance Committee):

(1) The Discipline Maintenance Committee shall be set up in each bar association.

(2) The Discipline Maintenance Committee shall take charge of the investigation as mentioned in article 58, paragraph 2, and other matters

concerning the maintenance of discipline of the members of the bar association in which it is set up.

(3) The members of the Discipline Maintenance Committee shall be mutually elected from among the members of the bar association in which it is set up.

Article 71. (Mutatis mutandis application):

The provisions of article 52, paragraph 4; article 54; article 55, paragraph 1; and article 66, paragraphs 1 to 3 inclusive shall apply mutatis mutandis to the Discipline Maintenance Committee, provided that in this case the term "president" in article 54 shall read as "chairman".

4. The Medical Practitioner Law (enforced in 1948) provides in article 4 that a practitioner's licence may not be given, at the discretion of the Minister of Health and Welfare, to a person who has been sentenced to a fine or a heavier punishment (item 2) or who has committed a crime or wrongful act (item 3), and, when a medical practitioner comes under these categories of disqualification, his licence may be cancelled or he may be suspended from practicing medicine (article 7, paragraph 2 of the same law). Furthermore, the Medical Practitioners' Society (incorporated association) stipulates in its articles of incorporation that a practitioner who has impaired the reputation of the Society in violation of the ethics of medical practitioners may be dismissed from membership.

Note: Medical Practitioner Law

Article 4. A licence may be withheld from a person falling under any one of the following items: (1) an insane person, or a narcotic, marijuana or opium addict; (2) a person who has been sentenced to a fine or a heavier punishment; or (3) a person who has committed a crime or wrongful act in connexion with the practice of medicine, besides those falling under the preceding item.

Article 7.

(1) In case a medical practitioner falls under article 3, the Minister of Health and Welfare shall withdraw his licence.

(2) In case a medical practitioner falls under any one of the items in article 4 or has committed any act which impairs the dignity of medical practitioners, the Minister of Health and Welfare may withdraw his licence or suspend him from practicing medicine for a period of time the Minister designates.

(3) Even when a person has his licence withdrawn in accordance with the preceding paragraph, he may be granted a licence again if he has recovered from sickness or shown clear signs of reformation. In this case, the provisions of paragraphs 1 and 2 of article 6 shall apply with necessary modifications.

(4) In case the Minister of Health and Welfare takes the measures mentioned in the three preceding paragraphs, he shall have the opinion of the Council on Medical Ethics beforehand.

(5) In case the measures mentioned in paragraph 1 or 2 are to be taken, the person who is subjected to such measure shall be given an opportunity to explain his position to the Minister of Health and Welfare or a government or municipal official designated by the Governor of Tokyo, Hokkaido or a Prefecture or a member of the Council on Medical Ethics. In this case, the Minister of Health and Welfare or the Governor of Tokyo, Hokkaido or a Prefecture shall in writing inform the person subjected to the measure beforehand of the date, time and place for explaining his position and the reasons for taking such measure.

(6) The person receiving the information mentioned in the preceding paragraph may appear by proxy and present the evidence favourable to him.

(7) The person who hears his explanation shall prepare and keep a record of hearing and prepare a report and present his opinion to the Minister of Health and Welfare as regards the determination of the measure.

Question 10:

The statements made in 8 and 9 above are also applicable to other forms of cruel, inhuman or degrading treatment or punishment than torture.

Question 11:

There has occurred no case coming under this paragraph.

Question 12:

1. The State Redress Law (enforced in 1947) provides for a system of compensation for damage and the State or local public entity involved has the obligation to compensate for the damage (see note below). The requisites for such obligation are that a public official exercising the power of the State or of a local public entity has inflicted damage, intentionally or through negligence, on some person through an illegal act in the conduct of his duties.

2. There has been reported no case, since the adoption of the Declaration, which comes under the last sentence of question 12.

Note: State Redress Law

Article 1.

(1) If a public official authorized to exercise the power of the State or of a local public entity has inflicted, intentionally or through negligence, any damage on any person through an illegal act, in the

conduct of his official duties, the State or the local public entity concerned shall be under obligation to make compensation for it.

(2) If, in the case referred to in the preceding paragraph, the public official has perpetrated the act intentionally or through gross negligence, the State or the local public entity concerned shall have the right to obtain reimbursement from the official.

Article 2.

(1) If a person has suffered damage through the existence of any defect in the construction or maintenance of highways, rivers or other public installations, the State or the local public entity concerned shall be under obligation to make compensation for it.

(2) If, in the case referred to in the preceding paragraph, there exists any other person who is responsible for causing the damage, the State or the local public entity concerned shall have the right to obtain reimbursement from him.

Article 3.

(1) If, in cases where the State or a local public entity has an obligation to make compensation for damage in accordance with the provisions of the preceding two articles, the State or the local public entity responsible for the appointment or supervision of the official in question or for the establishment or maintenance of the public installation in question is different from that which defrays the salary, allowance or other expenses of such public official or bears the expenses necessary for the establishment or maintenance of such public installation, the latter shall also be under obligation to make compensation for the said damage.

(2) In the case referred to in the preceding paragraph, the State or the local public entity that has made compensation for the damage shall have the right to obtain reimbursement from the one which is under final obligation to make compensation for the said damage.

Article 4. Subject to the provisions of the preceding three articles, the provisions of the Civil Code shall apply to the liability of the State or of the local public entity for damage.

Article 5. In case any law other than the Civil Code provides otherwise, such provisions shall apply to the liability of the State or of the local public entity for damage.

Article 6. In cases where a foreigner is the injured party, this law shall apply so long as the compensation is reciprocally guaranteed.

Question 13:

1. The Constitution of Japan provides in article 38, paragraph 2 that confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence, and following this provision the Code of Criminal Procedure contains the same provision in article 319, paragraph 1.
2. The term "compulsion" here is widely interpreted to mean all the acts which impair the free exercise of one's will. All involuntary confessions are denied as evidence under this article.
3. This has been confirmed by a number of decisions of the Supreme Court (Supreme Court decisions of 7 August 1951, vol. 5 no. 9, page 1684 and of 7 March 1952, vol. 6 no. 3, page 387, etc.).

Note: The Constitution of Japan

Article 38. No person shall be compelled to testify against himself. Confession made under compulsion, torture or threat, or after prolonged arrest or detention shall not be admitted in evidence. No person shall be convicted or punished in cases where the only proof against him is his own confession. (See article 319 of the Code of Criminal Procedure.)

Question 14:

As mentioned above, the Constitution and other laws of Japan strictly prohibit torture and other cruel or inhuman acts, etc. and there has arisen no problem in this connexion in the past. Accordingly, no special measures have been taken.

Question 15:

Nothing worth mentioning has occurred in connexion with this question.

LIBYAN ARAB JAMAHIRIYA

/Original: Arabic/

/23 April 1979/

Question 1:

1. The prohibition of torture and other cruel, inhuman or degrading punishment constitutes an integral part of the legislation currently in force in the Socialist People's Libyan Arab Jamahiriya, and there are a great many legislative provisions which expressly prohibit torture and other cruel treatment or punishment of any kind. We cite some of them below by way of demonstration:

(a) Penal Code

Article 235. Abuse of authority in the absence of any other legal provision:

"Any public employee who abuses the powers of his office in order to benefit or injure another shall, where his act does not come under any other provision of the criminal legislation, be punished by imprisonment for a term of not less than six months."

Article 431. Abuse of authority against individuals:

"Any public employee who, in the performance of his functions, uses violence against individuals in such a way as to degrade them or cause them physical pain shall be punished by imprisonment and by a fine not exceeding 150 dinars."

Article 432. The searching of persons:

"Any public employee who searches any individual and in so doing acts ultra vires shall be punished by imprisonment."

Article 433. Unauthorized arrest of persons:

"Any public employee who arrests any person and in so doing acts ultra vires shall be punished by imprisonment."

Article 434. Unjustified restriction of personal freedom:

"A penalty of imprisonment and a fine not exceeding 50 dinars shall be imposed on any public employee who is assigned to direct a prison or other establishment for the implementation of preventive measures if he admits thereto any person without an order from the competent authorities, refuses to obey an order from such authorities for the release of a person or prolongs without justification the term of a penalty or preventive measure."

Article 435. Torture of prisoners:

"Any public employee who orders or personally undertakes the torture of a suspect shall be punished by imprisonment for a term of 3 to 10 years."

(b) Code of Criminal Procedure

Article 30. Legality of arrest:

"No person shall be arrested or detained except by order of the legally competent authorities."

Article 31. Place of detention:

"No person may be detained except in a prison designated for that purpose. The governor of a prison shall not admit any prisoner except in pursuance of an order signed by the competent authority or keep him there after the expiry of the term specified in such order."

Article 32. Visiting and inspection of prisons:

"Officials of the Public Prosecution Office, enforcement judges, and the presidents and deputy presidents of the courts of first and second instance shall be responsible for visiting the general prisons within their areas of jurisdiction, ascertaining that no person is being detained illegally, examining and taking copies of the prison registers and of the various arrest and detention orders, communicating with any prisoner and hearing any complaint he may wish to submit to them. The prison governor and other prison officials shall provide them with every assistance in obtaining such information as they may request."

Article 33. Prisoners' complaints and illegal imprisonment:

"Every prisoner shall have the right to submit, in writing or orally, a complaint to the governor of the prison and to request him to transmit it to the Public Prosecution Office or the competent judge. The governor shall receive the complaint and transmit it forthwith, after recording it in a register kept in the prison for that purpose."

"Any person who learns of a person who is detained illegally or in a place other than that designated for detention shall so inform an official of the Public Prosecution Office or the competent judge. Either of the latter, as the case may be, shall, immediately upon receiving such notification, proceed to the place of detention, conduct an investigation, order the release of the illegally detained person and make a full record of the matter."

Article 106. Presence of counsel:

"Except in case of flagrante delicto or in case of urgency arising from fear of the loss of the evidence, the examining judge may not interrogate the

accused or confront him with other suspects or witnesses without first inviting his counsel, if he has one, to be present. The accused must give the name of his counsel in a statement written in the office of the clerk of the court or transmit it to the governor of the prison. His counsel may assume responsibility for such statement or declaration."

"The counsel may not speak unless the judge permits him to do so. If the judge does not permit him to speak, that must be recorded in the procès-verbal."

2. With regard to the second part of this question, the above-mentioned provisions apply in all exceptional circumstances such as a state of war, a threat of war, internal political instability or any other public emergency.

3. Accordingly, no measures have been taken since the adoption of the Declaration, because the current legislative provisions and other measures currently in force in the Socialist People's Libyan Arab Jamahiriya conform fully to the spirit of the said Declaration.

Question 2:

1. Information and educational materials regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment are included in all programmes and activities for the training of law enforcement personnel and other public officials. We list below some of the institutions which include such information in their programmes and activities:

(a) The Police Officers' College;

(b) The institutes for training policemen, customs officials and the municipal guard;

(c) The faculties of law in the universities and in the other specialized institutes.

2. This is in addition to the administrative instructions and standing orders which are issued from time to time and the studies and lectures provided for law enforcement personnel, such as the members of the judiciary and the Public Prosecution Office and policemen, either in the course of their regular daily work or at special courses, symposia and meetings held for them on this question.

Question 3:

1. The legislation in force in the Socialist People's Libyan Arab Jamahiriya ensures special protection for persons deprived by law of their liberty, since it stipulates that such persons must be treated humanely, like all other citizens, because, in the philosophy of our penal system, the goal is to reform and rehabilitate the offender and not to punish him and make him suffer loss.

2. The Prisons Act guarantees inmates enjoyment of all legitimate rights, such as health and social care, education, visits, correspondence, leave periods and conditional release. The Act also stipulates that the principles of work and re-education must be observed in the enforcement of penalties involving restriction of freedom, in order to ensure the reform and treatment of this category of persons.

3. We cite below, by way of demonstration, some of the legislative provisions governing this matter:

(a) Penal Code

Article 41. Principles to be followed in the enforcement of penalties:

"The manner in which a penalty is enforced should aim at the reform and education of the criminal, with a view to the attainment of the ethical and social objectives for the purpose of which the penalty was imposed.

"In the enforcement of penalties involving restriction of freedom, due regard must be had to humane principles and the principles of work and re-education."

(b) Code of Criminal Procedure

See the provision quoted in the reply to question 1 above.

(c) Prisons Act

Article 9.

"No person may be imprisoned except by a written order, duly signed and sealed, of the Public Prosecution Office or be kept in prison after the expiry of the period specified in such order."

Article 12.

"A summary of the duties and rights of inmates shall be read out to every inmate upon his entry into the prison, in the presence of the governor of the prison or his representative, and this summary shall be posted in prominent places in the prison."

Article 37.

"Education shall be compulsory for inmates who are illiterate. The prison administration shall also endeavour to provide education and vocational training for other inmates, taking into account their age, their aptitude and the length of the sentence and in accordance with the curricula established for the various stages of the national education system. The Ministry of the Interior, in co-operation with the Ministry of Education and the Ministry of Labour and the Civil Service, shall provide the basic requirements for education and training in each prison."

Article 64.

"No punishment shall be inflicted on an inmate in any circumstances before he has been informed of the charge against him and his statement has been heard. His defence shall be recorded in a register kept for this purpose."

Article 65.

"All punishments inflicted on inmates shall be recorded on a special form kept in a file maintained for that purpose and shall be recorded also in the special register of punishments."

Article 68.

"There shall be established in the Ministry of the Interior a Directorate of Prisons, headed by a Director-General, who shall be responsible for the administration thereof, for the supervision of the prisons coming within its purview and for the conduct of operations therein, in accordance with the provisions of this Act and the decrees for its implementation. Each prison shall be directed by a governor, who shall be responsible for the implementation of this Act and the decrees for its implementation in the prison under his administration."

Article 73.

"The governor of the prison shall receive any complaint submitted by an inmate, whether orally or in writing, take the necessary steps concerning it and record the whole matter in the register of complaints and applications submitted by inmates. Should the inmate request that his complaint be transmitted to another authority, the governor of the prison shall refer it to the Public Prosecution Office or to the authority to which the complaint is addressed."

Article 74.

"No official of the public authorities may communicate with a person held in preventive detention except with written permission from the competent Public Prosecution Office. The governor of the prison must record in the register of visits the name of the person who is permitted such communication at the time of the meeting, together with the date of the permission and its content."

Article 102.

"The penalty prescribed in article 434 5/ of the Penal Code shall be imposed on any governor of a prison or any prison employee who admits thereto any person without an order from the competent authorities in accordance with

5/ See the text of this article in the reply to question 9 below.

/...

the provisions of article 10 6/ of this Act, who refuses to obey an order from such authorities for the release of a person or prolongs without justification the term of his imprisonment."

(d) Police Act

Article 57, paragraph 5.

"The functions of the police are a trust invested in those performing them. Their purpose is to serve citizens in order to ensure the public interest in accordance with the laws, regulations and orders in force.

"A policeman must:

"...

"5. Have a calm temperament, have self-control at all times, preserve the dignity and humanity of citizens and avoid as far as possible the use of violence against citizens."

Article 62, paragraph 14.

"Without prejudice to the penalties prescribed by the Penal Code or any other legislation, disciplinary proceedings shall be instituted against any person who:

"...

"14. Mistreats any member of the public in the course of the performance of his duty."

Question 4:

The methods used to ensure that interrogation practices and arrangements for the custody and treatment of persons deprived of their liberty do not entail torture and other cruel, inhuman or degrading treatment or punishment are regulated in the Code of Criminal Procedure as follows:

Article 11. Powers of the criminal police:

"Officers of the criminal police shall be responsible for investigating offences and the perpetrators thereof and for collecting the evidence required for the examination and legal proceedings."

6/ This article reads as follows: "The governor of the prison or his deputy shall, before admitting any person to a prison, receive the committal order, sign the second copy to notify his receipt thereof and return it to the person who delivered the inmate, which latter official shall sign the original order."

/...

Article 12. Surveillance by the Public Prosecution Office:

"Officers of the criminal police come under the Public Prosecution Office and are subject to surveillance by it with regard to the performance of their functions. The Public Prosecution Office may request the competent authority to investigate the case of any member of the criminal police who acts contrary to his duties or is derelict in the performance of his functions. The Office may request that disciplinary action be brought against such person. This shall not preclude the bringing of a criminal action."

Article 61. Persons entitled to attend the examination:

"The Public Prosecution Office, the accused, the victim of the offence, the civil plaintiff, the official in charge of the civil suit and their duly authorized representatives may attend all the examination proceedings. The examining judge may conduct the examination in their absence if he deems this necessary in order to ascertain the truth, and as soon as this necessity is removed, they may attend the examination."

"Nevertheless, the examining judge may, in case of urgency, conduct some of the examination proceedings in the absence of the parties to the suit."

"The latter are entitled to read the substantiating documents of these proceedings. The parties to the suit are always entitled to be accompanied by their duly authorized representatives at the examination."

Article 68. Copies of records:

"The accused, the victim of the offence, the civil plaintiff and the official in charge of the civil suit may, at their own expense, request during the examination copies of the records, of whatever type they may be, unless the examination takes place in their absence on the basis of a decision to that effect."

Article 72. Expert consultants:

"The accused may seek the assistance of an expert consultant and request that he be given access to the records and any other materials previously submitted to the expert appointed by the judge, provided that this does not involve any delay in the procedure of the case."

Article 73. Rejection of experts:

"The parties to the suit may reject the expert where there are strong grounds for so doing. The request for rejection shall be submitted to the examining judge for a decision. The request must set forth the causes for rejection. The examining judge shall take a decision on the matter within three days from the submission of the request."

"Upon the submission of such request, the expert shall discontinue his work, except in case of urgency and upon the order of the judge."

Article 76. Presence of the householder:

"Searches shall, where possible, take place in the presence of the accused or his representative. If the house searched is not the house of the accused, the owner of the house in question or his representative shall, where possible, be invited to attend."

Article 80. Prohibition of the confiscation of the papers made accessible by the accused to the defence counsel or expert consultants:

"The examining judge may not confiscate papers and documents made accessible to the defence counsel of the accused or his expert consultant for the purpose of performing the function which the accused has entrusted to them or the correspondence exchanged between the accused and his counsel or expert consultant concerning the case."

Article 106. Presence of counsel:

"Except in case of flagrante delicto or in case of urgency arising from fear of the loss of the evidence, the examining judge may not interrogate the accused or confront him with other suspects or witnesses without first inviting his counsel, if he has one, to be present. The accused must give the name of his counsel in a statement written in the office of the clerk of the court or transmit it to the governor of the prison. His counsel may assume responsibility for such statement or declaration."

"The counsel may not speak unless the judge permits him to do so. If the judge does not permit him to speak, that must be recorded in the procès-verbal."

Article 112. Interrogation of the accused:

"The examining judge must interrogate an arrested suspect immediately. Where this is not possible, the suspect shall be imprisoned until the time of his interrogation. The period of his imprisonment must not exceed 24 hours. Upon the expiry of this period, the prison governor must consign him to the Public Prosecution Office, which must immediately request the examining judge to interrogate the suspect. Where necessary, such requests may be addressed to the justice of the peace, the president of the court or any other judge appointed by the president of the court. Otherwise the Public Prosecution Office shall order his release."

Article 114. Objection of the suspect to being moved:

"If the suspect objects to being moved or if the state of his health does not permit his being moved, the examining judge shall be so informed and shall forthwith issue an appropriate order."

Article 124. Temporary release:

"The examining judge may at any time, either on his own initiative or upon a request from the accused, and after hearing the statement of the Public Prosecution Office, order the temporary release of the accused, if the judge himself ordered his detention as a preventive measure, provided that the accused pledges to present himself whenever asked and not to seek to escape the enforcement of such sentence as may be handed down against him."

Article 162. Appointment of counsel:

"The indictment chamber shall automatically assign a counsel to each defendant charged with an offence for which he is referred to the criminal court, if the defendant has not selected his own counsel."

"If the counsel appointed by the indictment chamber has excuses or objections which he wishes to maintain, he must express them without delay. If they arise after the transmission of the case file to the president of the appeal court and before the opening of the session, they must be transmitted to the president of the appeal court. If they arise after the opening of the session, they must be submitted to the president of the criminal court. If the excuses are accepted, another counsel shall be appointed."

Article 178. Release of the accused:

"The Public Prosecution Office may at any time release an accused person, with or without bail."

Article 209. Access of the parties to the records of the case:

"The parties may have access to the records of the case as soon as they are summoned to appear before the court."

Article 215. Presence of the defendant during the session:

"Should the defendant depart before the conclusion of the session at which the judgement against him is handed down, the case must be reheard in his presence."

Article 243. Presence of the defendant:

"The defendant shall attend the session without restraints and without shackles and shall be subject only to the necessary observation. He may not be removed from the court during the hearing of the case unless he causes a disturbance that requires such removal. In such a case, the proceedings shall continue until they reach a point where they can continue in his presence. The court shall inform him of the proceedings that took place during his absence."

Article 247. Interrogation of the defendant:

"A defendant may not be interrogated unless he so agrees.

"If, in the course of the hearing, certain questions arise regarding which clarifications from the defendant are deemed necessary in order to arrive at the true facts, the judge shall draw his attention to them and shall permit him to provide such clarifications."

"If the defendant refuses to answer or if his statement in court is contradictory to his statement in the record of the evidence or examination, the court may order that his previous statements be read out."

Article 250. Obligation of witnesses to attend:

"Witnesses shall be obliged to attend on the basis of a request by the parties transmitted to them by a bailiff or a policeman 24 hours before the session, not including travel time. However, in case of flagrante delicto, witnesses may be summoned to attend at any time, even orally by a judicial police official or a policeman. A witness may, at the request of the parties, appear in court without being officially summoned to do so."

Article 273. Effect of the initial examination:

"The court shall not be bound by what is recorded at the initial examination or in the records of evidence, save where the law provides otherwise."

Question 5:

1. All these acts are punishable under criminal law. The provisions cited in our replies to the previous questions answer this question also.
2. The legislature has prescribed special penalties for participation in or incitement to commit such offences. These provisions are set forth in the Penal Code and are as follows:

Article 99. The offender and his punishment:

"Any of the following shall be deemed to be an offender:

1. Any person who commits an offence either alone or with others;
2. Any person who participates in the commission of an offence where the offence consists of a number of acts and he deliberately commits one of the acts constituting the offence.

"The penalty prescribed for the offence committed shall be imposed on each offender.

"Nevertheless, where special circumstances apply to one of the offenders and change the character of the offence or the penalty in respect of him, the effect of such special circumstances shall not extend to any other of the offenders who was not aware of those circumstances. The same principle shall apply if the character of the offence is changed by reason of the intent of the perpetrator of the offence or by reason of the state of his knowledge of the offence."

Article 100. Accomplices:

"Any of the following shall be deemed to be an accomplice to an offence:

"1. Any person who incites to the commission of the act constituting the offence if this act occurred as a result of such incitement;

"2. Any person who gives the perpetrator or perpetrators a weapon, instrument or any other object used in the commission of the offence while having knowledge thereof or who assists the offender or offenders in any other way in acts preparatory to, facilitating or completing the commission of the offence;

"3. Any person who agrees with another to commit the offence, if the offence occurs as a result of such agreement."

Article 101. Punishment of accomplices:

"Any person who participates in the commission of an offence shall be liable to the penalty therefor, save where the law explicitly provides otherwise.

"Nevertheless:

"1. An accomplice shall not be affected by circumstances pertaining only to the principal offender which change the character of the offence, provided that the accomplice had no knowledge of those circumstances;

"2. If the character of the offence is changed by reason of the perpetrator's intent regarding the offence or the state of his knowledge of the offence, the accomplice shall be liable to the penalty to which he would have been liable if the perpetrator's intent regarding the offence or his knowledge of the offence had been the same as the accomplice's intent regarding the offence or the accomplice's knowledge of the offence."

Article 102. Punishment of the accomplice without punishment of the principal offender:

"If an offender is not punished because of extenuating circumstances, the absence of criminal intent or other circumstances pertaining only to him, the penalty laid down by law must nevertheless be imposed on the accomplice."

Article 103. Offences for which the accomplice is punished:

"Any person who is an accomplice to a crime is liable to the penalty therefor, even if the offence was not the one whose commission was intended, in any case where the offence which actually occurred was the usual probable result of the incitement, agreement or assistance which took place."

Article 103 bis:

"In cases where the law prescribes augmentation of the penalty because the offence was committed by more than one offender, there shall be deemed to have been more than one offender if the accomplice was present during the perpetration of the offence."

Article 103 ter:

"Where a single judgement relating to a single offence is handed down against a number of defendants, whether they be principal offenders or accomplices, any fines imposed shall be imposed on each of them individually, as opposed to proportional fines, for the payment of which offenders are jointly liable."

Article 104. Collaboration resulting in accidental offences:

"With regard to any accidental offence resulting from collaboration on the part of a number of people, each of them shall be liable to the penalty prescribed for the offence."

Question 6:

1. It is the criminal authorities who are competent to receive and examine complaints from alleged victims that torture or other cruel, inhuman or degrading punishment has been inflicted upon them by or at the instigation of public officials.

2. We cite below the legal provisions governing this matter:

(a) Code of Criminal Procedure

Article 12. Surveillance by the Public Prosecution Office:

"Officers of the criminal police come under the Public Prosecution Office and are subject to surveillance by it with regard to the performance of their functions. The Public Prosecution Office may request the competent authority to investigate the case of any member of the criminal police who acts contrary to his duties or is derelict in the performance of his functions. The Office may request that disciplinary action be brought against such person. This shall not preclude the bringing of criminal action."

Article 14. Receipt of communications and complaints:

"Officers of the criminal police shall receive communications and complaints addressed to them on the matter of offences and shall transmit them forthwith to the Public Prosecution Office.

"They and their subordinates must obtain all clarifications and conduct the necessary interviews to facilitate the verification of the facts of which they have been notified in the communications or complaints addressed to them or of which they have been informed in any other manner. They must take all the necessary precautionary steps to preserve the evidence of the alleged offence.

"All the measures taken by the officers of the criminal police must be recorded in procès-verbaux signed by them and giving the time and place at which each measure was taken.

"Such procès-verbaux must contain, in addition to the aforementioned, the signatures of the witnesses and experts whom the officers have heard. The procès-verbaux shall be transmitted to the Public Prosecution Office together with the papers and other materials obtained."

Article 15. Notification of the Public Prosecution Office:

"Any person who learns of the occurrence of an offence in respect of which the Public Prosecution Office may institute proceedings without receiving any complaint or application shall notify the Public Prosecution Office or an officer of the criminal police thereof."

Article 16. Duties of public officials and assimilated persons regarding notification:

"Any public official or public servant who, in the course of or by reason of the performance of his functions, learns of the occurrence of an offence regarding which the Public Prosecution Office may institute proceedings without receiving any complaint or application shall forthwith notify the Public Prosecution Office or the nearest officer of the criminal police.

"Any person who provides aid by reason of his being a member of the medical profession in cases where the symptoms indicate the occurrence of an offence shall submit a report on the matter to the Public Prosecution Office or to an officer of the criminal police within 24 hours from the provision of such aid. If he fears that delay entails a risk, he shall submit his report forthwith. The report shall contain the name of the person or persons who sought his aid, the place and time at which the aid was provided, the name and a description of the victim, the necessary details concerning the victim and other information which may facilitate ascertainment of the circumstances, motives, modalities and results of the incident."

Article 33. Prisoners' complaints and illegal imprisonment:

"Every prisoner shall have the right to submit, in writing or orally, a complaint to the governor of the prison and to request him to transmit it to the Public Prosecution Office or the competent judge. The governor shall receive the complaint and transmit it forthwith, after recording it in a register kept in the prison for that purpose.

"Any person who learns of a person who is detained illegally or in a place other than that designated for detention shall so inform an official of the Public Prosecution Office or the competent judge. Either of the latter, as the case may be, shall, immediately upon receiving such notification, proceed to the place of detention, conduct an investigation, order the release of the illegally detained person and make a full record of the matter."

Article 172. Examination by the Public Prosecution Office:

"Except in the case of offences which come within the competence of the examining judge under the provisions of article 51, 7/ the Public Prosecution Office shall conduct the examination of misdemeanors and felonies in accordance with the rules laid down for the examining judge."

7/ Article 51 of the Penal Code provides that:

"Where, with regard to infractions and misdemeanours, the Public Prosecution Office considers that proceedings may be instituted on the basis of the evidence which it has heard, it shall summon the accused to attend forthwith before the competent court. In the case of felonies and misdemeanours, the Public Prosecution Office may, before or after beginning the examination, request the president of the court of first instance to appoint a judge to conduct the examination or may itself conduct the examination. The competent official of the Public Prosecution Office may request the appeal court to appoint a counselor to investigate a specific offence or offences of a specific kind, and such appointment shall be by decision of the general assembly of the judges of the appeal court. In such a case, the appointed counsellor shall have exclusive competence in respect of the conduct of the examination from the time he begins his work. In the case of felonies, the accused may request the appointment of a judge to conduct the examination, and the president of the court shall in such a case hand down a decision after hearing the statement of the Public Prosecution Office. His decision shall be final. The Public Prosecution Office shall continue to conduct the examination until the appointed judge begins his task".

(b) Prisons Act

Article 73.

"The governor of the prison shall receive any complaint submitted by an inmate, whether orally or writing, take the necessary steps concerning it and record the whole matter in the register of complaints and applications submitted by inmates. Should the inmate request that his complaint be transmitted to another authority, the governor of the prison shall refer it to the Public Prosecution Office or to the authority to which the complaint is addressed."

Question 7:

Wherever there is reasonable ground to believe that an act of torture has been committed, the competent authorities are empowered by law to proceed to an investigation ex officio, even if there is no formal complaint. Article 16 of the Code of Criminal Procedure provides that:

"Any public official or public servant who, in the course of or by reason of the performance of his functions, learns of the occurrence of an offence regarding which the Public Prosecution Office may institute proceedings without receiving any complaint or application shall forthwith notify the Public Prosecution Office or the nearest officer of the criminal police.

"Any person who provides aid by reason of his being a member of the medical profession in cases where the symptoms indicate the occurrence of an offence shall submit a report on the matter to the Public Prosecution Office or to an officer of the criminal police within 24 hours from the provision of such aid. If he fears that delay entails a risk, he shall submit his report forthwith. The report shall contain the name of the person or persons who sought his aid, the place and time at which the aid was provided, the name and a description of the victim, the necessary details concerning the victim and other information which may facilitate ascertainment of the circumstances, motives, modalities and results of the incident."

Question 8:

If it is proved to the Public Prosecution Office that an act of aggression has been committed against a suspect and that he has suffered major or minor injury therefrom, the Public Prosecution Office undertakes the institution of proceedings and submits the case to the judiciary under the Code of Criminal Procedure. Furthermore, the Penal Code provides for the punishment of any person accused of committing such an offence, who is brought to trial through the procedures laid down in the Code. The court must hand down its judgement in accordance with the belief it has formed in full freedom, and it has the right to decree stay of execution or commutation of sentences, as provided for in articles 29 and 112 of the Penal Code, which we cite below:

Article 29. Commutation or substitution of sentences:

"The judge may, if the circumstances of the offence justify clemency, substitute or commute the penalty as follows:

"Imprisonment for life instead of the death sentence;

"Imprisonment instead of imprisonment for life;

"Detention for a period of not less than six months, instead of imprisonment;

"If the relevant conditions are not fulfilled, a judge may, in any case, reduce penalties for felonies and misdemeanours to half the minimum specified by law."

Article 112. Conditional suspension of the execution of sentences:

"In the case of a sentence of imprisonment for a term not exceeding one year or a fine, the court may in handing down the judgement order suspension of the execution of the sentence for a term of five years beginning from the day on which the judgement becomes final.

"A court may apply the provision of the preceding paragraph to a minor under 18 years of age and to any person aged 70 years or over when sentencing him to imprisonment for a period not exceeding two years.

"For the purposes of the application of this procedure to a sentence of indeterminate duration, the minimum penalty for the offence in question shall be taken as the guideline, provided that all other conditions of the sentence as required by law are fulfilled."

Question 9:

1. With regard to such action, the same penalties apply as are laid down in the provisions cited above. In this connexion, we may recall the following articles:

(a) Penal Code

Article 328, paragraph (b). Kidnapping:

"1. Whoever kidnaps, detains, imprisons or otherwise deprives another person of his personal liberty by force, threat or deception shall be punished by a term of imprisonment not exceeding five years.

"2. The penalty shall be a term of imprisonment not exceeding seven years if the act is committed:

"...;

"(b) By a public servant who thereby exceeds the authority vested in his post."

Article 431. Abuse of authority against individuals:

"Any public employee who, in the performance of his functions, uses violence against individuals in such a way as to degrade them or cause them physical pain shall be punished by imprisonment and by a fine not exceeding 150 dinars."

Article 434. Unjustified restriction of personal freedom:

"A penalty of imprisonment and a fine not exceeding 50 dinars shall be imposed on any public employee who is assigned to direct a prison or other establishment for the implementation of preventive measures if he admits thereto any person without an order from the competent authorities, refuses to obey an order from such authorities for the release of a person or prolongs without justification the term of a penalty or preventive measure."

Article 435. Torture of prisoners:

"Any public employee who orders or personally undertakes the torture of a suspect shall be punished by imprisonment for a term of 3 to 10 years."

(b) Prisons Act

Article 102.

"The penalty prescribed in article 434 of the Penal Code shall be imposed on any governor of a prison or any prison employee who admits thereto any person without an order from the competent authorities in accordance with the provisions of article 10 of this Act, refuses to obey an order from such authorities for the release of a person or prolongs without justification the term of his imprisonment."

2. In accordance with the foregoing, if an accused person is convicted, his conviction bars him from public service. Article 18 (c) of the Civil Service Act in force in the Socialist People's Libyan Arab Jamahiriya stipulates that any person appointed to public office "must not have had a judgement handed down against him involving a penalty for a felony or for a dishonourable felony or misdemeanour, unless his reputation has been cleared."

3. Furthermore, occupational associations have their own rules which allow them to expel or suspend from practice any member who abuses his powers and thereby commits a breach of professional ethics. On this point, articles 35 and 36 of the Penal Code provide as follows:

Article 35. Debarment of persons from occupations or professions:

"The debarment of a person from an occupation or profession means that

the offender shall for the duration of the period of debarment be deprived of the right to engage in any occupation, profession, industry, trade or craft which requires a special permit, authorization or licence from the public authorities. This sanction shall invalidate such permit, authorization or licence."

Article 36. Circumstances of debarment:

"1. The temporary debarment prescribed in the preceding article shall apply to any person who is convicted of a felony or misdemeanour deliberately committed in abuse of any occupation, profession, industry, trade or craft or functions relating thereto.

"2. Temporary debarment from public service, trusteeship or guardianship shall be imposed also on any person who is convicted of a felony or misdemeanour deliberately committed in abuse of authority vested in him or in violation of the duties of public service, trusteeship or guardianship.

"3. The debarment mentioned in the two preceding paragraphs shall continue for the duration of execution of the penalty and for a further period to be specified in the judgement. However, its duration shall be not less than one month and not more than three years in the case of misdemeanours, and not less than one year and not more than five years in the case of felonies."

Question 10:

See the replies to the previous questions.

Question 11:

No investigations have been carried out of allegations made in connexion with torture or other forms of cruel or degrading treatment in our Socialist People's Libyan Arab Jamahiriya.

Question 12:

1. Libyan law ensures redress and compensation to the victim of acts of torture or other cruel, inhuman or degrading treatment or punishment.

2. We cite below the many legal provisions which provide the answer to this question:

(a) Civil Code

Article 166. General principle:

"Any wrongful act which causes injury to another imposes an obligation on the perpetrator of the act to make redress therefor."

Article 170. Public officials:

"A public official shall not be held responsible for an act whereby he causes injury to another person if he acted in pursuance of an order from a superior, which order it was his duty to obey or which he thought it was his duty to obey, and if he proves that he believed that the act performed was lawful, that he had reasonable grounds for such belief and that he acted with due care."

Article 172. Joint and several responsibility:

"Where several persons are responsible for an injurious act, they shall be jointly and severally responsible for making redress for the injury. The liability shall be shared equally between them, unless the judge stipulates their individual shares in the damages due."

Article 173. Damages:

"The judge shall decide, in accordance with the provisions of articles 224 and 225 and in the light of the circumstances, the extent of the damages for the injuries suffered by the victim. If the judge is not in a position at the time of the judgement to make a final decision on the extent of the damages, he may allow the victim an extension of the time within which he may claim reassessment of the damages."

Article 177. Responsibility of the master:

"1. A master shall be liable for damage caused by an unlawful act of his servant if the act was performed by the servant in the course of or as a result of his employment.

"2. The relationship between master and servant shall be deemed to exist even when the master has not been free to choose his servants, provided that he has actual powers of supervision and control over his servant."

Article 225. Moral injury:

"1. Damages shall also include compensation for moral injury. The right to compensation for moral injury cannot, however, be transmitted to a third party unless an agreement has been made to that effect or unless it has been the subject of legal proceedings instituted by such third party.

"2. Nevertheless, the judge may award compensation for moral injury only to spouses and to relatives up to the second degree for grief caused to them by the death of the victim."

(b) Penal Code.

Article 15. Redress and compensation:

"A judgement imposing any of the penalties prescribed in this Code shall not prejudice any redress and compensation due to the parties."

(c) Code of Criminal Procedure

Article 17. Civil suits:

"Any person who alleges that he has suffered injury as a result of an offence may constitute himself the civil plaintiff by submitting a complaint to the Public Prosecution Office or to an officer of the criminal police.

"In the latter case, the officer in question shall transmit the complaint to the Public Prosecution Office together with the procès-verbal which he has drawn up. The Public Prosecution Office shall, when referring the allegation to the examining judge, transmit the above-mentioned complaint with it."

Article 173. Civil suits:

"Any person who suffers injury as the result of an offence may apply to institute civil proceedings in the course of the examination of the criminal charge. The Public Prosecution Office shall decide, within three days from the submission of such application, whether or not to accept the application. Any person whose application is rejected may raise an objection to the decision of rejection before the indictment chamber within three days from the time when he was notified of the decision."

Question 13:

Only a reasonable certitude of truth on the part of the court is taken into account. The courts have always acted on the principle of just judgement, in the full sense of the word "justice". Any evidence or confession extracted under torture and other cruel, inhuman or degrading treatment or punishment is therefore definitely excluded.

Questions 14 and 15:

The Declaration has been given publicity by our various information media. No difficulties have been encountered in its implementation, because the various laws in force in the Socialist People's Libyan Arab Jamahiriya are in full conformity with the spirit and objectives of the Declaration.

MALI

/Original: French/

/3 July 1979/

1. The Constitution of 2 June 1974 assures and guarantees to every human being the right to life and liberty. All forms of bodily assault and even threats or other inhuman treatment are punishable under the Penal Code.

2. Hence, in accordance with the principle of respect for the integrity of the person:

(a) No act of torture has been reported in Mali;

(b) No cruel, inhuman or degrading treatment or punishment has been observed in Mali.

MALTA

Note: In a communication dated 28 December 1978, the Government of Malta referred both to the note verbale of the Secretary-General transmitting the questionnaire for comments and to other notes verbales relating to the question of the human rights of all persons subjected to any form of detention or imprisonment, which is considered annually by the Sub-Commission on Prevention of Discrimination and Protection of Minorities. The comments transmitted by the Maltese Government have already been reproduced by the Sub-Commission in document E/CN.4/Sub.2/430.

MORCCCO

/Original: French/

/12 February 1979/

Question 1:

1. As regards legislation, Dahir (law) No. 1-72-041 of 17 February 1972 relating to the Constitution, article 10 of which stipulates that "No one shall be arrested, detained or punished except in such cases and in such manner as are specified by law", the Dahir of 26 November 1962 constituting the Penal Code and the Dahir of 10 February 1959 constituting the Code of Criminal Procedure form a set of guarantees conducive to the effective protection of the individual freedoms and human dignity of citizens against any possible abuse of authority.

2. For instance, articles 224 to 232 of the Moroccan Penal Code deal with "abuses of authority committed by officials against individuals". In this connexion, article 231 stipulates that:

"Any judge, public official or police officer who, without legitimate reason, uses violence or causes violence to be used against any persons in the exercise or on the occasion of the exercise of his functions shall be punishable for such acts of violence, according to their seriousness, under the provisions of articles 401 to 403 ...".

As regards violence, torture, brutality or other such treatment on the part of police officers in the exercise or on the occasion of the exercise of their functions, the Directorate of National Security has administrative regulations (instructions and disciplinary sanctions) prohibiting and penalizing such acts, independently of the penal sanctions.

3. It should be noted that no distinction is made according to circumstances (state of war, political instability and state of emergency in no way affect judicial proceedings).

4. In view of the normal situation prevailing in Morocco, there has been no reason to take any new measures since the adoption of the Declaration.

Question 2:

1. This question concerns the professional training of policemen in the procedure for arrest, interrogation and detention in custody.

2. The training programmes organized for trainee police officers include studies on law, ethics and human rights. Trainees are given practical training by experienced officers of the criminal police and take part in the various operations involving arrest, interrogation and detention in custody, the aim being that they should avoid committing abuses and comply with the laws and regulations in force, since their actions must be carried out in a legal manner and they are personally responsible before the law.

3. Prison staff are required under the regulations to treat prisoners in a humane manner, are forbidden to use brutality or corporal punishment and are called upon to preserve the human dignity of the prisoners under their charge in their relations with them.

Question 3:

1. The question is clearly worded; it refers to prisoners and not to persons awaiting trial, whose detention in custody is regulated by articles 68, 69 and 70 of the Code of Criminal Procedure concerning preliminary investigation.

2. The question therefore refers to prisoners either sentenced to terms of imprisonment or remanded in custody. In both cases, the convicted person or the person charged with a criminal or correctional offence punishable by imprisonment is detained in a penal institution.

3. Prisoners under the ordinary law are the subject of articles 660, 661 and 662 of the Code of Criminal Procedure as regards their rights and their protection.

("Article 660: Prisoners shall be inspected at least once every three months by the State Counsel (Procureur du Roi) and the examining judge. These judicial officers shall satisfy themselves, in particular, concerning the propriety of detentions and the proper maintenance of records.

"Article 661: In each province or prefecture, a Supervisory Commission shall be appointed with the primary functions of ensuring proper health, safety, dietary, sanitary and other material living conditions for prisoners, promoting their moral re-education and social readjustment and facilitating their rehabilitation on release.

"Article 662: The Commission, or such members as it delegates, shall be empowered to inspect penal institutions within the province or prefecture. It shall transmit to the Ministry of Justice such observations or criticisms as it deems necessary and shall also report any abuses to be halted and any improvements to be made ...")

4. It should be noted that, in accordance with appropriate instructions from the Directorate, the police place a special guard on prisoners in hospital.

Question 4:

1. This question may relate to two types of investigations: flagrante delicto and preliminary investigation. In the first case (flagrant offences), an officer of the criminal police can hold the accused or the suspect in custody only for 48 hours as a general rule, and for a maximum of three days with the written approval of the State Counsel, provided, however, that substantial and consistent evidence has been found against the person concerned (article 68 of the Moroccan Code of Criminal Procedure).

2. An accused person or suspect held in police custody may, by applying to the State Counsel, arrange to be examined by a physician. The State Counsel may appoint a physician to examine a person held in police custody, if he deems it necessary, at any time during detention in custody; in order to preserve the confidentiality of the medical profession, the police officer must not be present during the examination (which must take place at the police station).

3. If the physician is of the opinion that the person's condition precludes detention in custody and interrogation, these must be discontinued. The police officer may also summon a physician if the accused person is sick or injured, in order to protect himself before commencing the interrogation.

4. In the second case (non-flagrant offences), the officer of the criminal police may not hold a suspect for more than 48 hours. After that time, he must bring him before the State Counsel.

5. The suspect is summoned to appear and is given a hearing or has his statement taken without any coercion (on the principle of presumption of innocence).

6. In both of the above cases, the State Counsel has a right to supervise the activities of the police officer during the course of any judicial investigation (article 42 of the Code of Criminal Procedure), independently of the supervision exercised by the State Counsel General (article 51 of the Code of Criminal Procedure). Along with this functional control, every officer of the criminal police is also subject to a hierarchical control mainly concerned with interrogation practices, which must be both legal and proper.

Question 5:

Assault and battery (voies de fait) is the most perfect example of the offence constituted by "violence without legitimate reason" referred to in article 231 of the Penal Code, which is punishable under the provisions of articles 400 to 403 of the Code by simple or rigorous imprisonment, according to the seriousness of the case.

Question 6:

1. In the case of public officials in general as mentioned in the question, the police and the Royal Gendarmerie are just as competent as the State Counsel to receive and examine these complaints.

2. The State Counsel General can also receive complaints of this kind, but he must pass them on, with his instructions, to the State Counsel. The examining judge is also competent in the case of complaints in which the injured party institutes a civil action.

3. Where the police are concerned, a distinction must be made between two types of cases:

(a) Complaints involving a police officer other than an officer of the criminal police: the complaint is investigated in accordance with the instructions of the State Counsel (article 38 of the Code of Criminal Procedure). If there is a prima facie case and the charges are sufficiently serious, the officer involved is suspended from duty before the case is referred to the competent State Counsel's office.

(b) Complaints involving an officer of the criminal police. Where the act allegedly committed by the officer of the criminal police is classed as a criminal or correctional offence committed in the exercise of his duty, the First President of the Appeal Court to which the case is referred by the State Counsel General's office or by the civil plaintiff will, if he decides that the case should proceed, order an investigation by an examining judge chosen from outside the district in which the accused exercises his functions (article 270 of the Code of Criminal Procedure).

4. In the case of an officer of the criminal police empowered to exercise his functions throughout the territory of the Kingdom, the Supreme Court is competent. On application by the State Counsel General to the Supreme Court, the Criminal Chamber of the Court will, if it decides that the case should proceed, order an

investigation by one or more of its members (preliminary investigation). At all events, the officer of the criminal police will be brought before the competent State Counsel's office only after he has, as a provisional administrative measure, been suspended from duty.

Question 7:

Interrogations are, of course, conducted under the responsibility of an officer of the criminal police. In the event of torture or other similar treatment, if the officer of the criminal police is involved, the following action is taken:

"The Chambre d'accusation shall be apprised, either by the State Counsel General or by its President, of the improprieties of which the police officer is accused in the exercise of his functions. Once the Chambre d'accusation has been so apprised, it shall institute an investigation; after a statement by the State Counsel General, it shall hear the accused police officer. The latter must be invited to inspect his police officer's file, which is kept by the office of the State Counsel of the Appeal Court. He may be assisted by counsel.

"If, in the opinion of the Chambre d'accusation, the officer of the criminal police has committed a violation of penal law, it shall refer the file to the State Counsel General for appropriate action. Rulings by the Chambre d'accusation against officers of the criminal police shall be notified, at the suit of the State Counsel General's office, to the authorities to which the officers are subordinate" (articles 244-249 of the Code of Criminal Procedure).

Question 8:

As indicated above, the procedure followed in this case is the normal one. The penalties imposed are laid down in the Code and may, of course, be increased, commuted or suspended where appropriate. Thus, article 231 of the Penal Code states:

"Any judge, public official or police officer who, without legitimate reason, uses violence or causes violence to be used against any persons in the exercise or on the occasion of the exercise of his functions shall be punishable for such acts of violence, according to their seriousness, under the provisions of articles 401 to 403, but the penalty applicable shall be increased as follows:

"In the case of an act constituting a contravention of a correctional offence, the penalty applicable shall be double that prescribed for the offence;

"In the case of an act constituting a crime punishable by a term of rigorous imprisonment, the penalty applicable shall be rigorous imprisonment for life."

Question 9:

1. These sanctions are additional to, and may very often precede, the judicial sanctions. For instance, an accused police officer may be suspended from duty or dismissed if he is sentenced to a term of imprisonment without possibility of remission. The statutes of the occupational associations mentioned in the question do not expressly provide for a situation in which one of their members might be found guilty of acts of torture.

2. However, both in the case of the Medical Association and in that of the Bar Association, general clauses could certainly be applied if a member of the profession were to commit such acts of brutality.

3. Thus, article 25 of the Royal Decree of 1965, which constitutes the law governing the Medical Association, provides as follows: "The Regional Council shall summon to appear before it any physician who may have engaged in unprofessional conduct."

4. Article 27 states:

"The Regional Council, sitting as a disciplinary body, may impose, according to the seriousness of the acts, one of the following disciplinary penalties specified in article 3 bis of the Dahir:

"(a) Admonition in the Council Chamber;

"(b) Censure, to be recorded in the administrative and professional file;

"(c) Suspension for a period not exceeding one year;

"(d) Removal from the Medical Register."

5. Article 54 of the Royal Decree of 19 December 1968, concerning the organization of the Bar and the practice of law, states:

"The Council of the Association, sitting as a disciplinary body, shall investigate and punish any offences or misconduct committed by lawyers whose names are on the register or on the probationary list".

6. Article 55 adds:

"Disciplinary penalties shall consist of:

"(a) Admonition;

"(b) Reprimand;

"(c) Temporary disbarment for a period not exceeding three years;

"Admonition, reprimand or temporary disbarment may, under the terms of the decision imposing the disciplinary penalty, be accompanied by loss of eligibility for membership in the Council of the Association for a period not exceeding 10 years."

7. It should be noted that the commission of acts of torture by a member of a professional association would entail not only the above-mentioned disciplinary penalties but also penal sanctions as laid down in the Moroccan Penal Code (no case of this kind has hitherto been examined in Morocco).

Question 10:

1. This question is not very clear, but it could be taken as referring mainly to abuses which might arise from psychiatric or psychological treatment.

2. Judicial committal to a psychiatric institution is regarded as a security measure under article 61 of the Moroccan Penal Code. This delicate question is, however, extensively elaborated in the Moroccan Penal Code (arts; 75-79; art. 320).

3. Article 76 provides as follows:

"When a court considers, after a medical examination, that the individual brought before it on a criminal charge or for a correctional offence is in no way accountable for his actions by reason of mental disturbance at the time of the acts with which he is charged, it shall:

"(a) Find that the accused was, at the time of such acts, incapable of understanding or of intent as a result of disorder in his mental faculties;

"(b) Declare him in no way accountable for his actions and acquit him;

"(c) Order his committal to a psychiatric institution, if the disorder still exists.

"The validity of the detention warrant shall be extended until such time as committal is effected."

4. The Penal Code also provides (art. 77) that "The person committed must initially be placed under observation. He must be examined whenever the psychiatrist so requires, and in any event once every six months."

5. It should also be noted that article 33 of the Dahir (law) of 30 April 1959 on the prevention and treatment of mental illness and protection of the mentally ill states:

"Any person who, knowingly and with the intention of bringing about unjustified hospitalization in a psychiatric establishment, provides a public official with false information regarding the conduct and mental condition of another person shall be liable to imprisonment for a period of one month to two years and/or a fine of 50,000 to 500,000 francs."

Article 37 of the Dahir further states:

"Any director or official of a psychiatric establishment or institution and any attending physician who detain any person in a psychiatric establishment or institution in contravention of the provisions of this Dahir or the provisions of the Penal Code relating to judicial security measures shall be liable to imprisonment for a period of two months to two years and/or a fine of 100,000 to 500,000 francs."

Question 11:

No case relating to acts of torture has come before the courts since the adoption of the Declaration.

Question 12:

In Morocco, there is no official entity responsible for compensation. It rests with the victims to bring a legal action for damages against the offender, in which case the State may be liable for the payment of compensation awarded against one of its officials.

Question 13:

1. An officer of the criminal police might, in certain cases, have cause to explain to the judge the psychological means which he had used to obtain a confession. The transcript of the confession, although constituting the principal document in the case, does not necessarily ensure a conviction. It is subject to the discretion and judgement of the court, which accordingly may not be convinced by it (article 288 of the Code of Criminal Procedure). In case of retraction by the accused, if there is not sufficient evidence to corroborate his confession, the court may exclude the confession and the accused may be given the benefit of the doubt and acquitted. Hence, if it were established that statements had been extracted under torture, or even by acts of violence, they would of course be considered invalid, especially since criminal cases are heard in public (article 289 of the Code of Criminal Procedure states: "The judge shall base his decision solely on evidence presented during the proceedings and argued orally before him").

2. In all cases, the transcript of the confession is duly appraised, and trial judges have full discretion to assess the evidentiary value of confessions and of their retraction when the confessions are not corroborated by any material facts or conclusive evidence. It should be noted that the transcripts prepared by officers of the criminal police are regarded as valid until proven otherwise (article 291 of the Code of Criminal Procedure)

Question 14:

The Ministry of Foreign Affairs of the Kingdom of Morocco communicated to the various government departments (including the Ministry of Information) the Declaration on the Protection of All Persons from Being Subjected to Torture and

Other Cruel, Inhuman or Degrading Treatment or Punishment annexed to General Assembly resolution 3452 (XXX) of 9 December 1975, requesting them to ensure that the Declaration was given wide publicity both within their departments and among the public at large. The Ministry also transmitted the questionnaire on the Declaration, and the Government's replies, to the various departments for their information.

Question 15:

Nothing to report in this connexion.

SPAIN

Original: Spanish

19 June 1979

1. In the last few years Spain has undergone a legal and political transformation which has been affected by means of numerous laws and regulations directed towards the protection of human rights and culminating in the Constitution approved by the Cortes at plenary meetings of the Congress of Deputies and the Senate on 31 October 1978, ratified by the Spanish people in a referendum of 6 December 1978 and assented to by His Majesty the King before the Cortes on 27 December 1978.

2. Article 10.1 of the Constitution proclaims that: "dignity of the person, the inviolable rights inherent in the person, the free development of the personality, and respect for law and for the rights of others are the basis of political order and social harmony". In addition to this general provision, article 15 of the Constitution stipulates:

"Every person has the right to life and to physical and moral integrity; in no circumstances may any person be subjected to torture or to inhuman or degrading punishment or treatment. The death penalty is abolished, except as may be laid down in military penal laws applicable in time of war."

3. This is one of the fundamental rights set forth in the Constitution, and it may not be suspended in any circumstances. In this respect, article 55 of the Constitution, concerning the suspension of rights and freedoms in case of a state of emergency or state of siege and in connexion with investigations relating to the activities of armed bands or terrorist elements, does not include article 15 among the provisions dealing with rights which may be suspended.

4. Provision is also made in article 53 of the Constitution to give effect to this right by means of a dual safeguard mechanism: (a) by permitting challenges, on the ground of unconstitutionality, to provisions having the force of law which adversely affect the rights recognized in title II, chapter II - which includes the above-mentioned article 15 - and (b) by constitutional and judicial protection procedures; judicial protection may be applied for before the ordinary courts by any person, while constitutional protection will be granted by the Constitutional Court on the petition of "any natural or juridical person claiming a legitimate interest, and by the People's Advocate (Defensor del Pueblo) and the Ministerio Fiscal" (art. 162.2).

Question 1:

1. The drafting of the Constitution was preceded and accompanied by a series of legislative or administrative provisions designed to give immediate effect to human rights, including those relating to the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. The most important of these measures were the following:

(a) The ratification on 27 April 1977 of the International Covenant on Civil and Political Rights, which was published in the Boletín Oficial del Estado (Official Gazette) of 30 April 1977 and entered into force on 27 July 1977. Under article 1.5 of the Civil Code:

"Legal provisions contained in international treaties shall not be directly applicable in Spain until incorporated into domestic legislation through publication of the full text in the Boletín Oficial del Estado".

(b) Consequent on the entry into force of the International Covenant on Civil and Political Rights, Royal Decree 2273/1977 of the Ministry of Justice, dated 25 July, amended the Prison Regulations of 2 February 1956, as revised on 25 January 1968. The preamble of this Royal Decree explicitly states:

"Account has been taken of the Standard Minimum Rules for the Treatment of Prisoners, drawn up at the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, the International Covenant on Civil and Political Rights, done at New York on 19 December 1966 and recently ratified by Spain, the work of the Expert Commissions of the Prisons Department of the Ministry of Justice, scientific studies on problems of re-education, rehabilitation and reintegration of dangerous criminals and the most advanced up-to-date foreign legislation".

(c) The circular from the Office of the State Counsel of the Supreme Court, dated 25 April 1978, on "prison visits", the introductory part of which refers to "the functions of upholding justice and serving the public interest which the State has assigned and entrusted to the Ministerio Público and which have a direct bearing on the defence of human rights, essentially affecting, inter alia, the freedom of the citizen, which is an inseparable attribute of his dignity." The introduction also refers to "the supervisory function assigned to the Ministerio Fiscal in respect of physical and humane conditions for prisoners, with a view to providing appropriate protection in the public interest ...".

(d) Act 31/1978, of 17 July, amending the Penal Code to include a definition of the criminal offence of torture through the insertion of an article 204 bis, which makes it a specific offence for any public authority or public official, or any member of the prison service, to commit, or allow others to commit, acts against the physical or moral integrity of any person with a view to extracting a confession or evidence from a prisoner awaiting trial. In adopting that Act, Spain is following the lines of the draft Convention on torture (art. IV) submitted by the International Association of Penal Law and the delegation of the Swedish Government at the thirty-fourth session of the United Nations Commission on Human Rights.

(e) In accordance with these principles, the Government submitted to the Cortes on 12 September 1978 the General Prisons Bill, the salient features of which - as described in the explanation of intent - are as follows:

"To make explicit provision for the principle of legality with reference to the execution of penalties and penal measures, to favour the open prison system and restrict the use of closed prisons to special cases, to tailor the whole prison system to the need for scientific methods of dealing with inmates, to make work in prison comparable with that on the outside, to introduce a disciplinary system in line with the standards promulgated in 1973 by the Council of Europe, to establish the office of juez de vigilancia (supervisory judge) as the decisive authority for the protection of the rights of inmates, and to stress the importance of social welfare during and after imprisonment, leading to the establishment of the Welfare Commission and of the Social Workers' Corps employed by the Prison Board to play a key role in social welfare".

(f) Act 55/1978, of 4 December, concerning the police, which describes the function of the State security forces as "defending the constitutional order, protecting the free exercise of rights and freedoms and guaranteeing the security of the citizen" (art. 2.1).

(g) Act 62/1978, of 26 December, concerning judicial protection of the fundamental rights of the individual, which establishes certain procedures for judicial protection in cases of unlawful arrest.

(h) As already mentioned (see para. 3 above), article 55 of the Constitution which forms part of chapter V, entitled "Suspension of rights and freedoms", stipulates that:

"1. The rights recognized in articles 17, 18, paragraphs 2 and 3, 19, 20, paragraph 1 (a) and (d) and paragraph 5, 21, 28, paragraph 2, and 37, paragraph 2, may be suspended when a state emergency or state of siege has been declared under the terms established in the Constitution. Article 17, paragraph 3, shall be excluded from the foregoing in the case of a declaration of state of emergency."

2. This means that article 15, which proclaims the right to life and to physical and moral integrity and prohibits torture, may not be suspended in any circumstances.

3. In addition to the procedure mentioned above for the judicial protection of the fundamental rights of the individual before the ordinary courts having jurisdiction to deal with any offence committed against prisoners awaiting trial, the preliminary draft of the bill to amend the Criminal Procedure Act has introduced the habeas corpus procedure. Article 846 bis (d) expressly provides as follows:

"The judge shall investigate the grounds for the deprivation of liberty, the circumstances of such acts and the persons who ordered or executed them, if they are known. The judge shall take special steps to ascertain whether the person produced has been subjected to ill-treatment, assault of any kind or psychological pressure, or suffered any other affront to personal dignity, during his deprivation of liberty. At the hearing referred to in the preceding paragraphs, the parties may be assisted by their counsel."

"In accordance with article 846 bis (e), if the judge finds that such a circumstance has occurred, he shall order the person deprived of liberty to be immediately placed in his charge, and he may take other steps, including the institution of proceedings to punish any criminal offence on the part of those who ordered the detention of the person deprived of liberty or held him in custody.

Question 2:

The prohibition of torture and other cruel, inhuman or degrading treatment or punishment is embodied in the International Covenant on Civil and Political Rights (art. 7) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (art. 3), and information on it is therefore included in the Government's current programme to publicize human rights. Since 1 January 1979, specific instruction on this has been given at the General Police College and the School of Penal Studies, which are responsible for providing vocational training for police officers and prison service personnel respectively.

Question 3:

1. The existing Prison Regulations, as amended by Royal Decree 2273/1977 of 29 July, quoted above, stipulate in article 1.2 that "prisons shall be operated in strict respect for the human personality of the prisoners and such of their legal rights and interests as are unaffected by the sentence ...". Article 1.3 states that "care shall also be taken to ensure the strictest compliance with the legal guarantees afforded to detainees and prisoners through the provision of welfare services and assistance to inmates and ex-convicts." Article 10.1 stipulates that:

"The treatment of prisoners awaiting trial must conform, as regards both the underlying principles and the relevant safeguards, to the provisions laid down for such persons in the Penal Code and the Criminal Procedure Act.

"The serving of prison sentences or other forms of deprivation of liberty shall not give rise to privations or the placing of restrictions on the inmate beyond those necessary to achieve the purpose of the sentence and to ensure orderly and efficient conduct of the establishment. 3. A cardinal principle shall be to ensure that the prisoner is not excluded from, or kept on the fringes of, society, but remains a part of it. 4. The Prison Board shall endeavour to undertake, or shall at least permit whatever steps may be necessary to safeguard the legitimate penal, civil, commercial, labour, social or other similar rights and interests of the inmates, to the extent compatible with the legal order and the sentence imposed."

/...

2. Article 104 states:

"(1) Prison discipline shall be observed and maintained by both staff and prisoners as necessary to serve the purposes laid down in these Regulations. (2) Prisoners shall not be ill-treated. Only in cases of individual or collective breaches of the peace, and only when all other means have been exhausted, may physical coercion be used, and then solely for the purpose of restoring order. In such cases, a report shall be made to the Department as a matter of urgency, without prejudice to the provision of proper and immediate medical assistance, if required."

3. To give effect to these safeguards, article 108 provides as follows:

"(1) Any prisoner shall have the right to submit requests and complaints to the Prison Governor or his representative, or to the Inspector of Prisons during an inspection, and to avail himself of the remedies established by law. (2) He shall also have the right to be informed of his legal status and the rights and duties pertaining thereto. (3) He may also communicate with the competent court or judge and with the Prisons Department, and may exercise the right of petition. Any such communication must be delivered to the addressee as a matter of particular urgency, under sealed cover if it was so submitted by the petitioner."

4. The circular from the Office of the State Counsel of the Supreme Court of 25 April 1978, mentioned earlier, requires all State counsel, in the course of prison visits, to interview prisoners at their request and to communicate to the Chief State Counsel "anything in these interviews found to be of particular human interest, in order that he may consider how to deal with it or may, if appropriate, communicate it to this Office (of the State Counsel of the Supreme Court)" (Instructions 1-5).

5. The Criminal Procedure Act was amended by Act 53/1978 of 4 December, article 520 of which lays down that in the case of a prisoner awaiting trial, "his freedom must not be restricted except to the extent absolutely essential to secure his person and to prevent any communication which may prejudice the judicial investigation". Article 525 provides that "no special security measures shall be taken in respect of such a prisoner except in case of disobedience, violence, riotous behaviour or plans or attempts to escape. Any such a measure must be temporary and continue only as long as is strictly necessary." Article 526 imposes on the examining judge the duty to visit the local prisons once a week and stipulates that "during the visit, he shall acquaint himself with all matters relating to the conditions of prisoners awaiting trial, and shall take such measures as fall within his competence to remedy any abuses that he may observe".

6. The General Prisons Bill, now under discussion in the Córtes, lays down in article 5 that "no prisoner shall be subjected to verbal or physical abuse", and title I, chapter IV (arts. 41-45), sets out in meticulous detail the disciplinary system, which will be aimed at "guaranteeing security and ensuring orderly coexistence". It also establishes a system of safeguards for the prisoner, under the ultimate protection of the juez de vigilancia, whose role, according to article 76, is "to safeguard the rights of the prisoners and to correct any abuses and deviations which may occur in the implementation of the precepts of the prison system".

Question 4:

1. Under the Spanish system, the methods used to prevent torture and other cruel, inhuman or degrading treatment or punishment are many and varied, constituting a complex mechanism whereby the judicial organ will ascertain the actual nature of such ill-treatment, which, as will be explained in the reply to question 5, is punishable under penal law.

2. Firstly, article 520 of the Criminal Procedure Act, as amended by the above-mentioned Act 53/1978 of 4 December, states:

"Every prisoner awaiting trial must be informed immediately, in clear, precise and easily understandable terms, of the grounds for his arrest and of the rights pertaining thereto. In no case may he be compelled to make a statement, after having refused an invitation to do so ... From the time of his arrest or committal to prison, he shall have the right to designate a lawyer and to request the latter's attendance at the place of custody in order that he may be present during questioning, may require the reading of this article if so he desires and may participate in any identification involving the detainee ... Likewise, from the time of deprivation of liberty the suspect shall have the right to inform a member of his family or other person of his choice of his arrest, of the place of custody and of his request for assistance from a lawyer. In the case of a minor or an incompetent, the authority having him in custody shall be required to notify the appropriate person of the aforementioned circumstances and, if that person cannot be found, to report immediately to the Ministerio Fiscal."

3. As can be seen from the above article, the presence of the lawyer during questioning constitutes the first guarantee against any irregularity in the interrogation. In this respect, article 17.3 of the Constitution states:

"Any person who is arrested must be informed immediately, in a clearly understandable manner, of his rights and of the grounds for his arrest, and shall not be required to make a statement. He shall be guaranteed the presence of a lawyer during the police and judicial proceedings, on the terms established by law."

4. In addition to the lawyer, when detainees are questioned, the Ministerio Fiscal and the examining judge will ensure compliance with the constitutional right of the person deprived of liberty not to be required to make a statement and to be protected from torture, coercion and any other ill-treatment. The safeguard mechanism established by the Constitution to give effect to the rights and freedoms proclaimed therein has already been explained in the introduction to the replies to the questionnaire.

5. With respect to the provisions to prevent the ill-treatment of prisoners awaiting trial, we have already referred to the obligations incumbent on the examining judge and the Ministerio Fiscal to hear any complaints they may receive from such prisoners.

6. In any event, the right of individual petition is recognized in article 29 of the Constitution and is referred to in article 108 of the Prison Regulations mentioned in the reply to question 3.

7. Under the General Prisons Bill, as already explained, the juez de vigilancia is responsible for safeguarding the rights of prisoners and supervising the execution of sentences involving deprivation of liberty and the measures taken to maintain prison discipline. He has a special responsibility (art. 76.2 (g)) "to take appropriate action on petitions or complaints from prisoners in connexion with the prison system and prison treatment, as they affect their fundamental rights or their rights or privileges while in prison".

Question 5:

1. Under Spanish law, following the amendment of the Penal Code by Act 31/1978 of 17 July, which makes torture a criminal offence, torture appears as a specific offence in the Code; thus, under the terms of article 3, "the commission of the offence or any attempt, conspiracy, intent or incitement to commit it is punishable."

2. Under article 204 bis of the Penal Code:

"Any authority or public official who, during the police or judicial investigation, for the purpose of obtaining a confession or evidence, commits any of the offences referred to in title VIII, chapters I and IV, and title XII, chapter VI, of this Code shall be liable to the maximum penalty prescribed for that offence and also to special deprivation of rights.

"If, for the same purpose, they commit any act punishable under articles 582, 583 (1) and 585, such act shall be deemed to be an offence and they shall be liable to a term of detention not exceeding six months and to suspension.

"The same penalties shall be incurred by any authority or prison official who commits the acts mentioned in the preceding paragraphs in respect of prisoners awaiting trial.

"Any authority or public official who, during judicial criminal proceedings or during the investigation of the offence, subjects the person under interrogation to conditions or procedures of an intimidating or coercive nature shall be liable to a term of detention not exceeding six months and to special deprivation of rights.

"The penalties provided for in the preceding paragraphs shall also be imposed on any authority or official who, by dereliction of duty, allows others to commit the acts referred to therein."

3. In explanation of the above article, it should be mentioned that chapter I and IV of title VIII of the Penal Code deal respectively with homicide and bodily injury; chapter VI of title XII of the Code covers the offences of threat and coercion; article 582 refers to the offence of inflicting injuries which are slow to heal or prevent the victim from working for up to 15 days; article 583 (1) refers to injuries which do not prevent the victim from carrying on his normal work or require medical assistance; and article 585 covers other forms of verbal or physical abuse and minor coercion or threats.

Question 6:

Any complaints by alleged victims of acts of torture or other cruel, inhuman or degrading treatment or punishment inflicted by, or at the instigation of, public officials and constituting the offence referred to in the reply to the preceding question (article 204 bis of the Penal Code) are the subject of ordinary criminal proceedings involving an investigation by the examining judge and a trial before the Provincial High Court, with the participation of the Ministerio Fiscal and of the complainant assisted by his lawyer.

Question 7:

Stress is laid on the criminal nature of any kind of torture or ill-treatment, which consequently, in accordance with article 300 of the Criminal Procedure Act, will give rise to an investigation instituted ex officio by the examining judge as soon as he becomes aware of the commission of the offence. The procedure is governed by the general provisions of the Criminal Procedure Act.

Question 8:

1. The criminal proceedings against the person or persons accused of the offence of torture or of any other offence involving bodily injury, threat or coercion committed against the person of a prisoner awaiting trial are instituted by the public authorities. Article 100 of the Criminal Procedure Act establishes that "any offence shall entail criminal proceedings for the punishment of the offender, any may also entail civil proceedings for restitution, redress and compensation for the injuries caused by the punishable act". According to article 101, the criminal proceedings are instituted by the public authorities. Any Spanish citizen may bring an action as prescribed by law.

"Officials of the Ministerio Fiscal shall, in accordance with the provisions of the law, be required to institute criminal proceedings whenever they consider that there is due cause, whether or not there is an individual complainant in the case, except where proceedings are restricted by the Penal Code to private actions ... (art. 105)".

In the case of offences for which criminal proceedings are instituted ex officio, the proceedings shall not be discontinued by reason of the withdrawal of the complainant (art. 106).

2. The penalties prescribed for the various offences involving torture or physical or verbal abuse depend on the seriousness of the acts; the relevant penalties are set out in detail in the Penal Code. The possibility of imposing a suspended sentence or granting a pardon to a convicted person is governed by the general rules laid down in the Penal Code (arts. 80-116).

Question 9:

Under the terms of article 204 bis of the Penal Code, any authority or public official found guilty of the offence of torture will incur the maximum sentence prescribed for bodily injury, threat or coercion and, in addition, the penalty of special deprivation of rights, which has the effect of depriving him of the office or employment which he held and the honours attaching thereto, and of barring him from obtaining similar employment during the period of the sentence. In addition to their criminal liability, government officials will be subject to a disciplinary liability "required of civil servants by the Administration in accordance with the provisions of the Civil Servants' Statute and the special provisions of each department" (article 48 of the Civil Service Act of 26 July 1957).

Question 10:

Covered by the replies to questions 8 and 9.

Question 11:

As stated in the reply to question 5, acts of torture or ill-treatment were made a specific offence by Act 31/1978 of 17 July, under which article 204 bis was inserted in the Penal Code. Prior to that express amendment to the Penal Code, acts of torture or ill-treatment were prosecuted as homicide, bodily injury, threat or coercion, it being considered an aggravating circumstance when the offender took advantage of his position as a public official (art. 10, circumstance 10 (a)). Consequently, the legal statistics do not show actual figures for allegation of acts of torture, since the latter appear under headings relating to the type of torture used and the result of the ill-treatment inflicted on the victim (homicide, bodily injury) and there is no way of singling them out. The 1978 statistics have not yet been published.

Question 12:

1. Compensation to victims of torture or other cruel, inhuman or degrading treatment is provided for in Spanish law, because of the criminal nature of those acts. According to article 19 of the Penal Code, "any person criminally liable for an offence also bears civil liability". Article 101 of the Code stipulates that civil liability includes: "1. Restitution. 2. Reparation for damage caused.
3. Compensation for injury". Article 104 specifies that:

"Compensation for material and psychological injury shall include not that suffered by the victim, but also any injury to his family or to a third party resulting from the offence. The courts shall decide the amount of such compensation on the same terms as are laid down in the preceding article for reparation for damage."

2. As regards the procedure for obtaining compensation, this usually involves the criminal proceedings, in accordance with article 110 of the Criminal Procedure Act, which provides that:

"Parties injured by an offence who have not waived their right may become parties to the proceedings, provided that they do so before the charge is brought, and may institute the appropriate civil and/or criminal actions, as long as that does not delay the proceedings. Even when the injured parties are not parties to the proceedings, that shall not be interpreted as meaning that they waive their right to any restitution, reparation or compensation which may be granted to them in the final judgement of the court, since any such waiver must be express and categorical".

3. When the criminal proceedings and the civil action for compensation are confined, the judgement must dispose of all the issues raised. As stated in article 742 of the Criminal Procedure Act:

"The judgement shall dispose of all the issues pertaining to the trial, conviction or acquittal of the accused, involving not only the principal and related offences but also any incidental offences which may have been dealt with in the case ... The judgement shall also dispose of any issues relating to civil liability which may have been dealt with in the trial."

4. In addition to the criminal liability of the perpetrators of an act of torture or ill-treatment constituting an offence, the State also bears a financial liability as provided in article 40 et seq. of the Civil Service Act, already mentioned above, under which:

"(1) Individuals shall have the right to compensation from the State for any damage caused to any of their property or rights, except in cases of force majeure, provided that the damage resulted from the normal or abnormal operation of public services or the adoption of measures which cannot be contested in the courts. (2) In all cases, the damage alleged by individuals must be actual, be calculable in money terms and be specific to a person or group of persons ... (3) Where the injury is the result of deeds

or administrative acts which may not be contested in the courts or where, although they may be so contested, the injured party opts for administrative recourse, the claim for compensation shall be addressed to the Minister concerned, or to the Council of Ministers if a special law so provides and the resulting settlement shall be subject to appeal to the administrative courts as regards the propriety and amount of the compensation. In every case, the right to claim shall lapse one year after the date of commission of the compensable act".

5. Lastly, article 106 of the Constitution provides that (a) The courts shall be empowered to review the regulating authority and legality of administrative proceedings and their conformity with the purposes for which they are established, and (b) under the conditions laid down by law, individuals shall have the right to compensation for any damage caused to their property or rights, except in cases of force majeure, provided that the damage resulted from the operation of public services.

Question 13:

1. In addition to the powers conferred on the criminal courts to consider the evidence submitted and to reject any which they deem irrelevant, the Criminal Procedure Act establishes a review procedure for final judgements on grounds set out in article 954, which include the following:

"(3) Where a prison sentence is being served by virtue of a judgement based on a document or evidence subsequently declared to be false by a final judgement in a criminal case, on a confession extracted from the prisoner by force or coercion or on the commission of any punishable act by a third party, provided that such facts have also been declared by a final judgement in a case conducted for that purpose... (4) Where, after pronouncement of the sentence, new facts or new evidence proving the innocence of the convicted person become known."

2. The review procedure, known as "recurso de revisión", ends in an irrevocable judgement which may quash the previous final judgement. If the latter was an acquittal, "the parties concerned or their heirs shall have the right to the civil damages they could have been obtained under ordinary law, which shall be paid by the State, without prejudice to the latter's right of recourse against the sentencing judge or court in respect of any liability incurred or against the person found directly responsible or his heirs." (art. 960).

Question 14:

As stated in the reply to question 2, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is included in publications relating to human rights.

Question 15:

This was answered in the introduction and in the reply to question 1.

TRINIDAD AND TOBAGO

[Original: English]

[21 June 1979]

1. The Constitution of the Republic of Trinidad and Tobago Act, 1976 is an Act to establish the Republic of Trinidad and Tobago, and to enact the constitution thereof in lieu of the former Constitution. Under section 4, chapter I, part I of the said Act, especial attention must be drawn to the existence, and continual existence without discrimination by reason of race, origin, colour, religion or sex, of the following enshrined fundamental rights and freedoms, namely:

(a) The right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

(b) The right of the individual to equality before the law and the protection of the law.

2. Moreover, under section 5, the protection of the basic human rights expressed in section 4 may not be abrogated, abridged, infringed; also their abrogation, abridgement or infringement may not be authorized accordingly unless so expressed by that chapter, and section 54. Furthermore, subject to that chapter and to section 54, Parliament may not deprive a person of the right to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations or of any criminal charge against him. The protection of these rights and freedoms is expressly stated in section 5.

3. Under sections 90 to 98, section 104, sections 110 and 111 of the Constitution of the Republic of Trinidad and Tobago 1976 provisions are made for the appointment, tenure, and functions of the Director of Public Prosecution, the Ombudsman, Judges and judicial officers in the Public Service.

4. The Judicial Legal Service Act 1977 is an Act to make provisions for the establishment, classification, remuneration and entitlement of officers of a judicial and legal service; and for other matters concerning the relationship between the Government and the judicial legal service. Moreover, The Judges' Salaries and Pensions Act 1965 is an Act to provide for the salaries, pensions and other conditions of service of judges of the Supreme Court of Judicature. The Judges' (Conditions of Service and Allowances) Regulations 1965 and 1971 are regulations made under section 14 of The Judges' Salaries and Pensions Act 1965, and deal with vacation and vacation passage allowances, housing, transport, chauffeur's allowance, subsistence, entertainment allowance, medical treatment and exemption from income tax.

5. It must be noted that the judiciary is both a privileged and restricted class, since a very high degree of conduct and character are demanded of their office to attain the impartiality and independence needed in order to administer the justice expected of them.

6. The judiciary decides cases in which the Government has, if at all, the remotest interest, in fact no interest at all. The judiciary is engaged in deciding the issue between citizens and very rarely between citizens and the Government. Consequently, the chances of influencing the conduct of a member of the judiciary by the Government are very remote.

7. The Jury Ordinance, chapter 4, no. 2, volume 1, an Ordinance relating to jurors and juries with attendant amendments, is a measure to ensure the impartiality and independence of the jurors. Furthermore, a list of jurors returned by the Registration Officer for the different Registration areas of the country has been drawn up, pursuant to the aforementioned ordinance for the year commencing 1 July 1978.

8. Other legislation measures that are relevant and in some measure attempt to ensure the impartiality and independence of the legal profession are as follows:

(a) The Legal Aid and Advice Act 1976 - An Act giving access to legal advice and legal representation for people who need it, and cannot afford it;

(b) Law Officers' Ordinance 22/1977;

(c) Solicitors' Ordinance, chapter 7, no. 4;

(d) The Supreme Court of Judicature Act 1962, section 77, Barrister (Disciplinary Proceedings), Rules 1965 G.N. 170/1977.

9. The White Paper on Law Reform, recently prepared by the Government, has proposed changes in the areas of power of arrest and bail. Of especial importance are efforts to remedy the fact that people are kept in custody for inordinately long periods and not immediately brought to court. Moreover, allegations of confessions obtained from accused persons by the exercise of force and violence have in recent times influenced juries to return verdicts of acquittal with disturbing frequency. It is further proposed to put forward legislation on these matters which, without limiting in substance existing police powers, will provide statutory laws with which observance will be required.

10. It must be noted that all legislation measures stated above or proposed reform tend to ensure the impartiality and independence of the judiciary, jurors and the legal profession to ensure non-discrimination in the exercise of justice.

TURKEY

[Original: English]

[4 May 1979]

Question 1:

1. The Turkish legislation pertaining to the "Protection of all persons from being subjected to torture and other cruel, inhuman or degrading treatment or punishment" contains the following provisions:

/...

(a) In the preamble of the Constitution, besides the other principal aims, inter alia, the aim to ensure and guarantee human rights and liberties has also been included. In article 14, chapter two of the Constitution it is laid down that "no individual shall be subjected to ill-treatment or torture. No punishment incompatible with human dignity shall be inflicted".

(b) The Turkish Penal Code, in its articles 243 to 251, under the heading of "ill-treatment of individuals by Government officials" provides that Government officials at various levels who are in charge of implementing the laws are subject to punishment and removal from office in the event that they commit torture or other cruel, inhuman or degrading treatment in the performance of their duties.

2. The provisions stated in the preceding paragraph are also applicable during the period when martial law is in force.

Question 2:

Training programmes directed at officials in charge of applying the law, are organized and carried out in accordance with the principles envisaged by the Constitution, the Penal Code and the relevant legislation pertaining to the authorities to which these officials belong.

Question 3:

Officials responsible for the surveillance of detainees undergo special training programmes.

Question 4:

Inspectors from the Ministry of Justice and the High Council of Judges regularly control the practices pertaining to Public Prosecutor's Office and Court proceedings as well as executing agencies.

Question 5:

In addition to those individuals who, according to Turkish laws, have committed torture and who shall consequently be prosecuted, other persons who have taken part in these offences as envisaged by articles 64 to 67 of the Penal Code are subject to punishment.

Question 6:

Under article 151 of the Criminal Procedure Law, those individuals who have suffered torture or other cruel, inhuman or degrading treatment or punishment can submit oral or written complaints to the Public Prosecutor, the Police Courts or to law enforcement officials.

Question 7:

In the event that a public official finds evidence to the effect that torture has been committed, Public Prosecutors can by themselves begin to investigate the case.

Question 8:

1. If a case of torture arises as envisaged in the answers to questions 6 and 7 above, a public suit is brought against the accused and penal prosecution is started under articles 243 and 251 of the Penal Code. In the event that the accused is found guilty, depending on the nature of the offence, he can be sentenced from 3 months' to 3 years' imprisonment or punished by temporary or permanent removal from office.
2. Under article 89 of the Penal Code and article 6 of the Law on the enforcement of Sentences, whenever an individual has been sentenced to one of the above-mentioned punishments and if he has not been found guilty prior to that of any offence subject to more than the payment of a fine, the Court may suspend the sentence if it is convinced by the examination of his past behaviour and moral disposition that the said individual will not commit any other crime in the future.
3. According to the Turkish Constitution, the Turkish Grand National Assembly is empowered to enact general or special pardons and amnesties. Additionally, the President of the Republic may commute a sentence or pardon a detainee on grounds of chronic illness, infirmity or old age (art. 64 of the Constitution).

Question 9:

1. In chapter 7 of the Public Officials Law No. 657 disciplinary punishment has been categorized as follows: warning, making critical comments and remarks, short period suspension, temporary and later permanent removal from office. The conditions applying to those disciplinary punishments have also been set out in the above-mentioned law. Furthermore, certain provisions of a similar nature have been included in the laws on the exercise of certain professions such as the legal and medical professions.
2. Under articles 48 and 98 of the Public Officials Law No. 657 imprisonment with hard labour or for more than 6 months also results in permanent removal from public office.

Question 10:

The answers given to the questions 8 and 9 above are also valid for question 10.

Question 11:

Even before the adoption of the United Nations Declaration on the prevention of torture, the provisions of the Turkish Constitution and Laws, which have been

referred to above, were already in force and the necessary action with respect to individuals guilty of such acts was taken by the appropriate courts or bodies. The existing practice will naturally be maintained.

Question 12:

Those individuals who have been subjected to torture and other cruel, inhuman or degrading treatment or punishment can bring a suit of damages before the administrative or juridical authorities and demand compensation for moral and material damages.

Question 13:

In accordance with article 254 of the Law on Practice of Penal Courts, the Courts, whose independence is guaranteed by the Constitution and relevant laws, can freely evaluate evidence obtained from investigations and Court hearing and act thereon. In practice, the Turkish Courts do not accept evidence which has been obtained through torture and similar practices.

Question 14:

The responsible authorities and law and order officials have been informed about the principles contained in the Declaration and its implications for the treatment of detainees and their punishment.

Question 15:

As has been stated above in answer to question 11, prior to the adoption of the Declaration, those individuals who had been found guilty of the offences of torture according to Turkish laws, had been sentenced and subjected to the punishments envisaged by those laws.

ANNEX

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

Note: In this questionnaire, "torture" is defined as in article 1 of the Declaration.

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.