

UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/CN.4/1285
23 January 1978

Original: ENGLISH



COMMISSION ON HUMAN RIGHTS
Thirty-fourth session
Item 10 of the provisional agenda



QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF
DETENTION OR IMPRISONMENT AND IN PARTICULAR THE BODY OF PRINCIPLES FOR
THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT

Letter dated 18 January 1978 from the Permanent Mission of Sweden to the
United Nations Office at Geneva addressed to the Division of Human Rights

... I am forwarding hereby a Swedish "Draft International Convention
against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment"
with a view to having it circulated as an official United Nations document in
connexion with item 10 of the provisional agenda of the thirty-fourth session
of the Commission on Human Rights.

(Signed) Lars Grundberg
(First Secretary)

DRAFT INTERNATIONAL CONVENTION AGAINST TORTURE AND OTHER CRUEL,
INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

[Preamble to be elaborated]

Article 1

1. For the purpose of the present Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 2

1. Each State Party undertakes to ensure that torture or other cruel, inhuman or degrading treatment or punishment does not take place within its jurisdiction. Under no circumstances shall any State Party permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment.

2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

3. An order from a superior officer or a public authority may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 3

Each State Party shall, in accordance with the provisions of the present Convention, take legislative, administrative, judicial and other measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

Article 4

No State Party may expel or extradite a person to a State where there are reasonable grounds to believe that he may be in danger of being subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Article 5

1. Each State Party shall ensure that education and information regarding the prohibition against torture and other cruel, inhuman or degrading treatment or punishment are fully included in the curricula of the training of law enforcement personnel and of other public officials as well as medical personnel who may be responsible for persons deprived of their liberty.

2. Each State Party shall include this prohibition in the general rules or instructions issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of persons deprived of their liberty.

Article 6

Each State Party shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

1. Each State Party shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in, incitement to or an attempt to commit torture.

2. Each State Party undertakes to make the offences referred to in paragraph 1 of this article punishable by severe penalties.

Article 8

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 7 in the following cases:

- (a) when the offences are committed in the territory of that State or on board a ship or aircraft registered in that State;
- (b) when the alleged offender is a national of that State;
- (c) when the victim is a national of that State.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these offences in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 14 to any of the States mentioned in paragraph 1 of this article.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 9

Each State Party shall guarantee to any individual who alleges to have been subjected within its jurisdiction to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of its public officials, the right to complain to and to have his case impartially examined by its competent authorities without threat of further torture or other cruel, inhuman or degrading treatment or punishment.

Article 10

Each State Party shall ensure that, even if there has been no formal complaint, its competent authorities proceed to an impartial, speedy and effective investigation, wherever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed within its jurisdiction.

Article 11

1. Each State Party shall, except in the cases referred to in article 14, ensure that criminal proceedings are instituted in accordance with its national law against an alleged offender who is present in its territory, if its competent authorities establish that an act of torture as defined in article 1 appears to have been committed and if that State Party has jurisdiction over the offence in accordance with article 8.

2. Each State Party shall ensure that an alleged offender is subject to criminal, disciplinary or other appropriate proceedings, when an allegation of other forms of cruel, inhuman or degrading treatment or punishment within its jurisdiction is considered to be well founded.

Article 12

Each State Party shall guarantee an enforceable right to compensation to the victim of an act of torture or other cruel, inhuman or degrading treatment or punishment committed by or at the instigation of its public officials. In the event of the death of the victim, his relatives or other successors shall be entitled to enforce this right to compensation.

Article 13

Each State Party shall ensure that any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment shall not be invoked as evidence against the person concerned or against any other person in any proceedings.

Article 14

Instead of instituting criminal proceedings in accordance with paragraph 1 of article 11, a State Party may, if requested, extradite the alleged offender to another State Party which has jurisdiction over the offence in accordance with article 8.

Article 15

1. States Parties shall afford one another the greatest measure of assistance in connection with proceedings referred to in article 11, including the supply of all evidence at their disposal necessary for the proceedings.

2. The provisions of paragraph 1 of this article shall not affect obligations concerning mutual judicial assistance embodied in any other treaty.

Article 16

States Parties undertake to submit to the Secretary-General of the United Nations, when so requested by the Human Rights Committee established in accordance with article 28 of the International Covenant on Civil and Political Rights (hereafter referred to in the present Convention as the Human Rights Committee), reports or other information on measures taken to suppress and punish torture and other cruel, inhuman or degrading treatment or punishment. Such reports or information shall be considered by the Human Rights Committee in accordance with the procedures set out in the International Covenant on Civil and Political Rights and in the Rules of Procedure of the Human Rights Committee.

Article 17

If the Human Rights Committee receives information that torture is being systematically practised in a certain State Party, the Committee may designate one or more of its members to carry out an inquiry and to report to the Committee urgently. The inquiry may include a visit to the State concerned, provided that the Government of that State gives its consent.

Article 18

1. A State Party may at any time declare under this article that it recognizes the competence of the Human Rights Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Convention. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Human Rights Committee. No communication shall be received by the Human Rights Committee if it concerns a State Party which has not made such a declaration.

2. Communications received under this article shall be dealt with in accordance with the procedure provided for in article 41 of the International Covenant on Civil and Political Rights and in the Rules of Procedure of the Human Rights Committee.

Article 19

If a matter referred to the Human Rights Committee in accordance with article 18 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission. The procedures governing this Commission shall be the same as those provided for in article 42 of the International Covenant on Civil and Political Rights and in the Rules of Procedure of the Human Rights Committee.

Article 20

1. A State Party may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to have been subjected to torture or other cruel, inhuman or degrading treatment or punishment in contravention of the obligations of that State Party under the present Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. Communications received under this article shall be dealt with in accordance with the procedure provided for in the Optional Protocol to the International Covenant on Civil and Political Rights and in the Rules of Procedure of the Human Rights Committee.

Article 21

The Human Rights Committee shall include in its annual report to the General Assembly a summary of its activities under articles 16, 17, 18, 19 and 20 of the present Convention.

[Final clauses to be elaborated]
