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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT  
OR PUNISHMENT

Report by the Special Rapporteur, Mr. P. Kooijmans, appointed  
pursuant to Commission on Human Rights resolution 1985/33

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## INTRODUCTION

1. Torture is sometimes called "the plague of the second half of the twentieth century". What distinguishes the present plague from the one prevalent in earlier centuries is that it is man-made. What they have in common is that both are extremely contagious. It has been possible to eradicate the plague, will it ever be possible to eradicate torture? To overcome the plague was not only a matter of increased scholarship and medical insight, better conditions of hygiene and improved medical care were as indispensable. In a similar way, the evil of torture cannot be done away with by improved legal standards, much more is needed to make the struggle against torture a fruitful one.

2. Torture may be the plague of the second half of the twentieth century, but as a phenomenon it is very old. Until the nineteenth century, physical torture was officially admitted as a method of interrogation in many national systems. It was only when the concept of fundamental human rights, among which the right to physical integrity figured predominantly, developed within national systems that this method of interrogation was officially abolished. The recognition that information or confessions obtained under duress are in many cases far from reliable and, therefore, cannot be admitted as evidence in a judicial process may also have been important. It was only after the Second World War that torture - just like human rights in general - became a matter of international concern and it is only during the last 20 years that torture has received special attention as a particularly heinous violation of human rights since that time.

3. The struggle against torture has become one of the leading themes within the international community. Torture is now absolutely and without any reservation prohibited under international law whether in time of peace or of war. In all human rights instruments the prohibition of torture belongs to the group of rights from which no derogation can be made. The International Court of Justice has qualified the obligation to respect the basic human rights, to which the right not to be tortured belongs beyond any doubt, as obligations erga omnes, obligations which a State has vis-à-vis the community of States as a whole and in the implementation of which every State has a legal interest. The International Law Commission in its draft articles on State responsibility has labelled serious violations of these basic human rights as "international crimes", giving rise to the specific responsibility of the State concerned. In view of these qualifications the prohibition of torture can be considered to belong to the rules of jus cogens. If ever a phenomenon was outlawed unreservedly and unequivocally it is torture. The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly of the United Nations by consensus on 9 December 1975.<sup>1/</sup> This was also the case with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984.<sup>2/</sup> If there was some disagreement in respect to this treaty, it had to do with the methods of control and implementation. There was no disagreement whatsoever on the fact that torture is absolutely forbidden.

4. Why this general revulsion from torture? What distinguishes man from other living beings is his individual personality. It is this individual personality that constitutes man's inherent dignity, the respect of which is, in the words of the preamble of the Universal Declaration of Human Rights, "the foundation of freedom, justice and peace in the world". It is exactly this individual personality that is often destroyed by torture, in many instances, torture is even directed at wiping out the individual personality.

Torture is the violation par excellence of the physical and mental integrity - in their indissoluble interdependence - of the individual human being. Often a distinction is made between physical and mental torture. This distinction, however, seems to have more relevance for the means by which torture is practised than for its character. Almost invariably the effect of torture, by whatever means it may have been practised, is physical and psychological. Even when the most brutal physical means are used, the long-term effects may be mainly psychological; even when the most refined psychological means are resorted to, there is nearly always the accompanying effect of severe physical pain. A common effect is the disintegration of the personality.

5. It is this dehumanizing effect of torture - the destruction of exactly that which makes man a human being - which may well explain the general condemnation of the phenomenon of torture. It may be remarked incidentally that not only the victim is affected by this process of dehumanization, but also the torturer. He is forced to ignore and to deny the humanness of his fellow human being thereby debasing himself. This effect is admitted in the testimonies of many erstwhile torturers.

6. Given the fact that the condemnation of torture is so general and unequivocal, it seems surprising indeed that the phenomenon of torture is still so widespread. At any rate it is evident that the outlawry of torture - indispensable as it may be as an initial step - is far from sufficient. The international community has therefore escalated the struggle against torture. In the first place it adopted a convention containing various venues and mechanisms to suppress and ultimately prevent torture. Since such a convention will only bind the parties to it and ratification procedures in many cases take a long time (20 years after the United Nations Covenants on Human Rights were adopted, they are in force for only slightly more than half of the States Members of the United Nations), the Commission on Human Rights decided on 13 March 1985 to appoint for one year a Special Rapporteur to examine questions relevant to torture.

7. It is in the context of the foregoing remarks that the Special Rapporteur, who was appointed by the Chairman of the Commission on 12 May 1985, interpreted his mandate as contained in Commission resolution 1985/33.

8. First of all he has tried to analyse the alarming discrepancy between *opinio juris* and actual practice. In general it may be said that as long as there are situations in which human beings find themselves in the absolute power of other human beings, such situations will be conducive to the practice of torture. As these situations will always occur, the struggle against torture will have a never-ending character. In this respect, it is highly important to have a system with built-in checks and balances, such as judicial control over the period and the conditions of detention, access of the detainee to a lawyer, medical control, etc. It is no matter for surprise that many allegations of torture deal with situations of incommunicado detention.

9. There are, however, also specific situations in which torture may easily occur. In particular, situations of civil war and civil strife must be mentioned. In societies ridden by civil war and civil strife, violence is quite a normal phenomenon and respect for human life and physical integrity are easily undermined. The opponent parties consider each other as enemies and if a member of the opponent group of those suspected of sympathizing with them are captured, they are often tortured to obtain information or just to force them into subservience.

10. In such situations, but also in cases when the authorities fear increasing social or political unrest, the Government often declares a state of emergency during which many civil rights are suspended and which may easily lead to a disintegration of the usual system of checks and balances mentioned earlier. Especially during states of emergency the period of incommunicado detention may be considerably prolonged and the treatment of convicted opponents in prisons tends to become harsher.

11. It is in such situations, as well as in cases where there is a strong authoritarian government which does not tolerate dissenting opinions and where civil opposition is made wellnigh impossible, that torture most often occurs and may well obtain a systematic character, either inspired by or condoned by public officials.

12. As such situations are not exceptional in today's world, it is not surprising that torture is still widespread in spite of its universal condemnation. In these circumstances it is, however, highly important to have well-trained police and security personnel who are aware of the Standard Minimum Rules for the Treatment of Prisoners and of the Code of Conduct for Law Enforcement Officials. Thorough training can do much to prevent torture and oppress treatment. In view of the fact that all Governments condemn torture, they can be expected to give high priority to such training. For the same reason they may be expected to prevent the activities of parastatal groups which in many instances indulge in torture.

13. The Special Rapporteur has, consequently, approached all Governments of States Members of the United Nations with the request that they provide him with detailed information of legal or administrative provisions which may prevent the occurrence of torture.

14. The Special Rapporteur has received an alarming amount of information about alleged torture. By its nature torture often takes place during interrogation in isolation and in secret places. Unless the victim is released or the body is found with marks of torture on it, it is almost impossible to obtain direct evidence of torture. Moreover, there are a considerable number of techniques of torture which leave no traceable marks on the body. However, whenever the Special Rapporteur, on the basis of all available information came to the conclusion that the allegation was reasonably reliable, which could also be deduced from repeated allegations, he approached the Government concerned with a request for further information. He felt all the more justified in doing so as he has come to the conclusion on the basis of the available material, that no society, whatever its political system or ideological colour, is wholly immune to torture. Torture may happen everywhere and in fact - in varying degrees - it occurs in all types of society.

15. The Special Rapporteur is grateful for the replies - either oral or in writing - he has received so far from the Governments concerned. He expresses the hope that those governments which have not yet replied will be in a position to do so in the near future. In this respect he may recall paragraph 4 of Commission resolution 1985/33 in which the Commission requests the Secretary-General to appeal to all Governments to co-operate with and assist the Special Rapporteur in the performance of his tasks and to furnish all information requested.

16. The universal condemnation of torture has, however, a remarkable side effect: Governments may feel hesitant to admit that torture has indeed occurred and therefore may be inclined either flatly to deny the allegation or

to reply that alleged victims of torture may lodge a complaint with the competent authorities and that, since they have not done so, obviously the allegation is false. The fact that no complaint was lodged may, however, be due to other circumstances (fear or a desire to leave the country) and is not evidence that no torture took place.

17. In the view of the Special Rapporteur, Governments should see these requests for further information as a means to suppress and prevent the occurrence of torture. For this reason, the letters of the Special Rapporteur also contain a request to provide information on measures to be taken if the allegations are found to be correct to punish the perpetrators and to prevent a reoccurrence. The Special Rapporteur appreciates the fact that some Governments have understood his attitude and responded accordingly.

18. Resolution 1985/33 also invites the Special Rapporteur to bear in mind the need to be able to respond effectively to credible and reliable information that comes before him. In various instances information reached the Special Rapporteur in which fear was expressed that a person who was still under detention might be in danger of being tortured. This fear was expressed either because in similar cases torture had allegedly taken place or because information had been received that the person himself had allegedly been tortured on previous occasions. As the person himself is still under detention no conclusive evidence can be provided that the person is indeed likely to be tortured. However, in order, to be able to respond effectively the Special Rapporteur has thought it appropriate in some of these cases, where the information appeared to be reliable, to approach the Governments concerned, without taking any position with regard to the content of the allegation, with the request that they assure him that everything will be done to guarantee the physical and mental integrity of the person or persons concerned. It is obvious that in such cases the humanitarian concern is prevalent. The Special Rapporteur regrets that only two Governments have forwarded him an official reply.

19. In carrying out his mandate the Special Rapporteur has been keenly aware of the vital importance of the co-operation of Governments and their willingness to provide him with information. It has also attracted his attention, however, that whenever torture occurs it almost invariably takes place in a political context. Practically no information has been brought to his attention where torture allegedly took place to extract information from a suspected criminal who had committed a crime without any political motives. It is in particular with regard to people who have political ideas and convictions which are sharply at variance with those of the incumbent group and who are considered to be a danger to the existing political and/or social system, that torture seems to be practised. This makes allegations of torture highly sensitive also from a political point of view.

20. It is the Special Rapporteur's strong conviction, however, that in view of the fact that all States have unequivocally committed themselves to respect the inherent dignity of man, torture should be seen essentially as a non-political issue. For it is generally acknowledged that under no circumstances is torture justifiable and that, consequently, each allegation of torture, unless it is manifestly ill-founded, asks for a thorough investigation. The Special Rapporteur realizes that allegations may also be brought forward to discredit the Government involved. He feels, however, that only by taking these allegations seriously and by taking concrete measures which make torture virtually impossible can Governments dispel the doubts which may exist with regard to the seriousness with which they combat torture.

21. The Special Rapporteur expresses the hope that the recommendations contained in the last chapter of his report, will meet with the approval of Governments and that they will ultimately be implemented.

## I. BACKGROUND

### A. Scope of the Special Rapporteur's mandate

22. On 13 March 1985, the Commission on Human Rights adopted resolution 1985/33, by which it expressed its determination "... to promote the full implementation of the prohibition under international and national law of the practice of torture and other cruel, inhuman or degrading treatment or punishment" (fifth preambular paragraph). The Commission furthermore decided "... to appoint for one year a special rapporteur to examine questions relevant to torture" (para. 1) and requested him to report "... on his activities regarding the question of torture, including the occurrence and extent of its practice ..." (para. 7). It should be noted that the Commission revised the original draft resolution (E/CN.4/1985/L.44), deciding to delete references to "other cruel, inhuman or degrading treatment or punishment" in both paragraphs 1 and 7, following the word "torture". <sup>3/</sup> It would then appear quite clear that the intention of the Commission was to restrict the Special Rapporteur's mandate to "the question of torture".

23. Nevertheless, the Special Rapporteur should take into account certain "cruel, inhuman or degrading treatment or punishment" that could, in a further analysis, constitute an act of torture. As a matter of fact, there is a "grey area" between "torture" and "other treatment or punishment", that could be clarified if the appropriate international legal concept of torture and its practical implementation are taken into account (see below, para. 33).

24. In addition, the Special Rapporteur "... shall seek and receive credible and reliable information ..." about torture (para. 3 of resolution 1985/33), bearing in mind "the need to be able to respond effectively" to that credible and reliable information (para. 6). The information received by the Special Rapporteur shows that torture undoubtedly exists. Consequently, measures should be taken to promote full implementation of the prohibition of the practice of torture under international and national law in two ways: prevention (see below, sect. C) and, wherever it does occur, banning it or mitigating its effect (see below, sect. D).

### B. International legal concept of torture

25. It is a well-known fact that the United Nations has sought in many ways to ensure adequate protection for all against torture. It has adopted universal standards of protection applicable to everyone and embodied them in international declarations and conventions. In particular, article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights provide that "no one shall be subjected to torture ..." In addition, article 4, paragraph 2, of that Covenant prevents any derogation from article 7.

26. A number of rules covering particular situations have also been adopted:

(a) Article 5 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) provides inter alia that:

"... the act of mutilating, branding or otherwise marking a slave or a person of servile status in order to indicate his status, or as a punishment, or for any other reason ... shall be a criminal offence ... and persons convicted thereof shall be liable to punishment".

(b) The Convention on the Prevention and Punishment of the Crime of Genocide (1948) defines "genocide" as meaning:

"... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

...

(b) Causing serious bodily or mental harm to members of the group".

(c) Article II of the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973) defines the term "the crime of apartheid" as applying:

"... to the following inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) ...

(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm ... by subjecting them to torture ...".

(d) Paragraph 5 of the Declaration of the Protection of Women and Children in Emergency and Armed Conflict (1974) provides that:

"All forms of repression and cruel and inhuman treatment of women and children, including ... torture ... committed by belligerents in the course of military operations or in occupied territories shall be considered criminal".

(e) Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (1965) provides that:

"... States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone ... to equality before the law, notably in the enjoyment of the following rights:

...

(b) The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution".

(f) Principle 9 of the Declaration of the Rights of the Child (1959) provides, inter alia, that "the child shall be protected against all forms of neglect, cruelty and exploitation ...".

(g) Paragraph 6 of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind (1975) provides, inter alia, that:



"All States shall take measures ... to protect [all strata of the population] from possible harmful effects of the misuse of scientific and technological developments ... particularly with regard to ... the protection of the human personality and its physical and intellectual integrity".

(h) Paragraph 6 of the Declaration on the Rights of Mentally Retarded Persons (1971) provides that "the mentally retarded person has a right to protection from exploitation, abuse and degrading treatment ...".

(i) Paragraph 10 of the Declaration on the Rights of Disabled Persons (1975) provides that "disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature".

(j) General Assembly resolution 440 (v) of 2 December 1950 recommended that measures should be taken immediately to bring about the complete abolition of corporal punishment in all Trust Territories where it still existed. General Assembly resolution 562 (VI) of 18 January 1952 repeated the previous recommendation.

(k) Rule 31 of the Standard Minimum Rules for the Treatment of Prisoners (Economic and Social Council resolutions 663 C (XXIV) of 1957 and 2076 (LXII) of 1977) provides that "corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences".

(l) Article 5 of the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169 of 17 December 1979) provides, inter alia, that:

"No law enforcement official may inflict, instigate or tolerate any act of torture ... nor ... invoke superior orders or exceptional circumstances ... as a justification of torture or other cruel, inhuman or degrading treatment or punishment".

(m) Principle 2 of the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment (General Assembly resolution 37/194 of 18 December 1982) provides that:

"It is a gross contravention of medical ethics, as well as an offence under applicable international instruments, for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture or other cruel, inhuman or degrading treatment or punishment".

(n) Principle 5 of the draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (as adopted by the Working Group of the Sixth Committee of the General Assembly, see A/C.6/40/L.18, annex) provides that:

"... no person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment".

The Working Group drew attention to the fact that "the term 'cruel, inhuman or degrading treatment or punishment' has not been defined by the General Assembly, but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental".

27. As general standards, mention should also be made of article 3, paragraph 1, common to the four Geneva Conventions on humanitarian law, adopted on 12 August 1949 by a Diplomatic Conference of Plenipotentiaries. According to that article:

"... in the case of armed conflict not of an international character ..., persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat ... shall in all circumstances be treated humanely ...

To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

(a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture, ..."

In addition, article 99, paragraph 2, of the third Convention (Treatment of Prisoners of War) reads as follows:

"No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused".

Furthermore, article 11, paragraph 1, of Protocol I Additional to the Geneva Conventions provides that:

"... the physical or mental health and integrity of persons who are in the power of the adverse Party ... shall not be endangered by any unjustified act or omission ...".

Article 45, paragraph 1, of the same Protocol also provides, inter alia, that:

"A person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war, and therefore shall be protected by the Third Convention ..."

Finally, article 4, paragraph 2, of Protocol II Additional to the Geneva Conventions relating to the protection of victims of non-international armed conflicts, provides that:

"(a) violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment, ..."

are and shall remain prohibited.

28. Article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (General Assembly resolution 2391 (XXIII) of 26 November 1968) considers as "war crimes", inter alia:

"(a) ...the 'grave breaches' enumerated in the Geneva Conventions of

Consequently,

"... torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health ...",

are considered "grave breaches" in article 50 of the First Convention, article 51 of the Second Convention, article 130 of the Third Convention and article 147 of the Fourth Convention. In accordance with the Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity (General Assembly resolution 3074 (XXVIII) of 3 December 1973):

"1. War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment".

29. Regional Standards should also be mentioned:

Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Draft European Convention on the Protection of Detainees from Torture and from Cruel, Inhuman or Degrading Treatment or Punishment, as adopted by recommendation 971 (1983) of the Parliamentary Assembly of the Council of Europe, on 28 September 1983.

Article I of the American Declaration on the Rights and Duties of Man (1948).

Article 5, paragraph 2, of the Inter-American Convention on Human Rights (1969).

Article 5 of the African Charter on Human and Peoples' Rights.

30. However, the international legal concept of torture is contained in two main United Nations texts: article 1 of both the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX) of 9 December 1975), and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (as adopted by General Assembly resolution 39/46 of 10 December 1984). Article 1, paragraph 1, of the Convention reads:

"... the term torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity ...".

31. The above definition was inspired by that contained in article 1, paragraph 1, of the Declaration of 1975. It also developed and updated some elements of the Declaration's definition.

32. In accordance with the above-mentioned texts, the international concept of torture comprises three main elements: "material", "intentional" and "qualified perpetrator".

#### The "material" element

33. "Severe pain or suffering, whether physical or mental" is involved. Consequently, "other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1 ..." (art. 16, para. 1, of the Convention) should be excluded. As a matter of fact, "torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment" (art. 1, para. 2 of the Declaration). In practice, there would appear to be a "grey area" regarding the degree of "pain or suffering" which distinguishes "torture" from "other treatments", 4/ particularly when the alleged "severe suffering" is more "mental" than "physical".

34. In this connection it should be recalled that the European Commission of Human Rights considered that the combined use of five techniques of interrogation (namely, wall-standing, hooding, subjection to noise, deprivation of sleep and deprivation of food and drink) constituted torture, but the European Court of Human Rights concluded that although they constituted "inhuman and degrading treatment ... they did not occasion suffering of the particular intensity and cruelty implied by the word torture as so understood". 5/

35. With regard to the "distinctions between the various prohibited forms of treatment or punishment", the Human Rights Committee pointed out that "these distinctions depend on the kind, purpose and severity of the particular treatment". 6/ In a particular case, the Human Rights Committee decided that the pianist Miguel Angel Estrella "... was subjected to severe physical and psychological torture, including the threat that the author's hands would be cut off by an electric saw, in an effort to force him to admit subversive activities". 7/ In particular cases, the Human Rights Committee identified torture with "... beating, electric shocks and mock executions", 8/ "plantones", beatings, lack of food, 9/ fracture of the jaw caused by beating, 10/ being held incommunicado for more than five months, much of the time tied and blindfolded, 11/ being held incommunicado for more than 100 days, most of the time kept blindfolded with hands tied together, resulting in serious physical injuries (one arm paralysed, leg injuries and infected eyes) and substantial loss of weight, 12/ having been held completely incommunicado with the outside world for about 50 days, 13/ maltreatment resulting in permanent injury, as evidenced by the fact that one leg is several centimetres shorter than the other. 14/

#### The "intentional" element

36. Torture is described as being "intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind ..." (art. 1, para. 1, of the Convention). The list of purposes appears to be self-explanatory and not exclusive ("such purposes as ..."); it also develops that contained in the Declaration of 1975 by adding "discrimination of any kind".

37. Article 1, paragraph 1, of the Convention excludes "... pain or suffering arising only from, inherent in or incidental to lawful sanctions" (last sentence). The last sentence of article 1, paragraph 1, of the Declaration was the same but added "... to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners". As a result, "lawful sanctions" under national law (e.g. mutilation or other corporal punishments) may not be lawful under international law, including the Convention, and may be considered as torture. Finally, it should be recalled that the definition of torture in article 1, paragraph 1, of the Convention "... is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application" (art. 1, para. 2, of the Convention).

#### The "qualified perpetrator"

38. Article 1, paragraph 1, of the Convention reads as follows: "... when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity". The Convention was again following the Declaration of 1975, but developing it by adding the phrases "or with the consent or acquiescence of" and "or other person acting in an official capacity". Consequently, State responsibility is apparent even when the authorities resort to the use of private gangs or paramilitary groups in order to inflict "severe pain or suffering" with the intention and purposes already mentioned. However, private acts of brutality - even the possible sadistic tendencies of particular security officials - should not imply State responsibility, since these would usually be ordinary criminal offences under national law. Nevertheless, the authorities' passive attitude regarding customs broadly accepted in a number of countries (i.e. sexual mutilations and other tribal traditional practices) might be considered as "consent or acquiescence", particularly when these practices are not prosecuted as criminal offences under domestic law, probably because the State itself is abandoning its function of protecting its citizens from any kind of torture.

39. The mandate of the Special Rapporteur covers allegations of torture based on credible and reliable information concerning all parts of the world. According to a well-established rule in international law, the Convention against Torture provides that "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" (art. 2, para. 2).

#### C. Measures to prevent acts of torture

40. At the international level, torture has been considered "... an offence to human dignity", "a denial of the purposes of the Charter of the United Nations" and "a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights" (art. 2 of the Declaration of 1975). Consequently, the broadest possible ratification of international instruments that prohibit acts of torture, namely the Convention against Torture of 1984 (not yet in force) and the International Covenant on Civil and Political Rights as well as its Optional Protocol, which provides for individual communications, should be encouraged. In this way, the international community would have available binding international standards prohibiting torture and the appropriate machinery for international supervision of their implementation, as well as international legal remedies, particularly those contained in articles 17 to 24 of the Convention of 1984, which provide for the establishment of a committee against torture.

41. However, international concern about torture goes beyond the adoption of compulsory international standards, in view of the determination expressed in Commission on Human Rights resolution 1985/33 to promote the full implementation of the prohibition of torture, inter alia, through the appointment of a Special Rapporteur to examine questions relevant to torture.

42. The Special Rapporteur has paid special attention to emergency legislation in force in a number of countries. According to article 2, paragraph 2, of the Convention of 1984 and article 2 of the Declaration of 1975, no exceptional circumstances may be invoked as a justification of torture. Since an important number of countries, where torture has been reported also have emergency legislation in force, the Special Rapporteur concludes that the provisions of such legislation which might increase the danger of torture should be avoided, as a preventive measure. In particular, provisions on national remedies, such as habeas corpus or amparo (enforcement of constitutional rights), as well as their availability before the national courts, should be maintained no matter the circumstances.

43. Additional preventive measures should be adopted regarding particular situations already taken into consideration by international standards for example: slaves or persons of servile status; ethnic, racial or religious groups; apartheid or racial discrimination; Trust Territories; international or internal armed conflicts; internal political instability or public emergency; women and children in emergency and armed conflicts; children, mentally retarded and disabled persons; places where gross, flagrant or mass violations of human rights have been consistently reported, especially summary or arbitrary executions, forced or involuntary disappearances, or torture itself.

44. At the national level, States shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in their territory (art. 2, para. 1, of the Convention and art.4 of the Declaration). Accordingly, the Human Rights Committee pointed out that "... States must ensure an effective protection through some machinery of control". 15/ In this connection, procedural guarantees and national legal remedies (e.g. habeas corpus and amparo) should be available in order to prevent the torture of arrested persons. All acts of torture shall be considered a criminal offence under national laws (art.4, para.1, of the Convention and art.7 of the Declaration).

45. Special safeguards should be adopted concerning arrested or imprisoned people in order to prevent them from being tortured. Among the safeguards, the Human Rights Committee drew attention to "... provisions against detention incommunicado, granting, without prejudice to the investigation, persons such as doctors, lawyers and family members access to the detainees; provisions requiring that detainees should be held in places that are publicly recognized and that their names and places of detention should be entered in a central register available to persons concerned, such as relatives; ...". 16/ It also indicated that "... all persons deprived of their liberty ... they shall be treated with humanity and with respect for the inherent dignity of the human person". 17/ Accordingly, article 2 of the Code of Conduct for Law Enforcement Officials provides that "in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons". States shall furthermore ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in

the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment (art. 10 of the Convention of 1984 and art.5 of the Declaration of 1975). They shall also keep under review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of arrested and detained persons, with a view to preventing any cases of torture (art. 11 of the Convention).

46. Additional preventive measures may be adopted: article 2, paragraph 3 of the Convention against Torture provides that "an order from a superior officer of a public authority may not be invoked as a justification of torture". 18/ It is also a contravention of medical ethics for health personnel, particularly physicians: (a) to apply their knowledge and skills in order to assist in the interrogation of prisoners and detainees in a manner that may adversely affect the physical or mental health or condition of such prisoners or detainees and which is not in accordance with the relevant international instruments; (b) to certify, or to participate in the certification of, the fitness of prisoners or detainees for any form of treatment or punishment that may adversely affect their physical or mental health ... 19/ Provision shall also be made under domestic law to ensure that any statement made as a result of torture shall not be invoked as evidence in any proceedings (art.15 of the Convention and art. 12 of the Declaration). Finally, as a preventive measure no State shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture (art. 3, para. 1, of the Convention).

47. Pupils and patients in educational and medical institutions shall also be prevented from using torture. The Human Rights Committee indicated that "... the prohibition extends to medical or scientific experimentation without the free consent of the person concerned". It also added that "special protection in regard to such experiments is necessary in the case of persons not capable of giving their consent". 20/ In addition, the physical and intellectual integrity of the human personality shall be protected "... from possible harmful effects of the misuse of scientific and technological developments". 21/ Furthermore it is prohibited for health personnel, particularly physicians, to engage, actively or passively, in acts which constitute participation in, complicity in, incitement to or attempts to commit torture. 22/

48. Corporal punishments as "lawful sanctions" under domestic laws may constitute "severe pain or suffering" under international law. Consequently, this kind of chastisement should be revised, in order to prevent torture, particularly amputations, caning or flogging. In this connection, the Human Rights Committee pointed out in paragraph 2 of general comment 7 (16) that, in its view, "the prohibition must extend to corporal punishment, including excessive chastisement as an educational or disciplinary measure. Even such a measure as solitary confinement may, according to the circumstances, and especially when the person is kept incommunicado, be contrary" to article 7 of the Covenant. Accordingly, "corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences". 23/

49. Finally, attention must be paid to so-called "traditional practices", such as sexual mutilation in certain tribal societies, that might constitute "severe pain or suffering" according to international law. States shall provide appropriate protection under law against such treatments, even when the perpetrators are "private" persons rather than "public officials". In this connection, the Human Rights Committee indicated in paragraph 2 of the same general comment that "... it is also the duty of public authorities to

ensure protection by the law against such treatment even when committed by persons acting outside or without any official authority". It should be recalled that the Convention's definition of torture includes pain or suffering when it is "inflicted by ... or with the consent or acquiescence of a public official ..." (art.1 para. 1).

D. Measures to abolish torture or mitigate its effects

50. The international prohibition of any act of torture must be followed by adequate international provisions to combat it. States should adopt appropriate measures to consider torture as an "international crime". In this regard, the definition of "war crimes" and "crimes against humanity" <sup>24/</sup> should be extended to cover all acts of torture. Consequently, "war crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment". <sup>25/</sup>

51. States should also encourage the adoption of international standards in order to facilitate international co-operation for punishment of the crime of torture. In this connection, torture shall be deemed to be an extraditable offence in any extradition treaty (art. 8, para. 1, of the Convention against Torture). In addition, States should afford one another the greatest measure of assistance, including mutual judicial assistance, in connection with criminal proceedings brought in respect of any of the offences of torture (art.9 of the Convention). Finally, States must adopt measures with the view to supervising international trade in implements specially designed for torture.

52. At the domestic level, States should ensure that all acts of torture are offences under their criminal law, including attempts to commit torture and complicity or participation in torture (art. 4, para. 1, of the Convention against Torture). Such offences shall be punishable by appropriate penalties which take into account their grave nature (art. 4, para. 2, of the Convention). States shall establish their own jurisdiction in accordance with article 5 of the Convention, when an act of torture appears to have been committed. Consequently, they shall ensure that their competent authorities "proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory" under their jurisdiction (art. 12 of the Convention). In addition, if an investigation establishes that an act of torture appears to have been committed, criminal proceedings shall be instituted "against the alleged offender" in accordance with national law, including "disciplinary or other appropriate proceedings" (art. 10 of the Declaration of 1975). The Human Rights Committee indicates in paragraph 1 of general comment 7 (16) that "those found guilty must be held responsible ...". Finally, article 15 of the Convention against Torture provides that "... any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made".

53. The United Nations Voluntary fund for Victims of Torture, established by General Assembly resolution 36/151 of 16 December 1981, receives voluntary contributions for distribution, through established channels of assistance, as humanitarian, legal and financial aid to individuals whose human rights had been severely violated as a result of torture and to relatives of such victims. In order to mitigate the effects of torture, the Commission on Human Rights, convinced that assistance should be provided in a humanitarian spirit



to the victims and their families, appealed in resolution 1985/19 to all Governments, organizations and individuals in a position to do so to respond favourably to requests for further contributions to the Fund.

54. At the national level, a number of measures may contribute to mitigating the effects of torture. First, the individual's right to complain. According to article 13 of the Convention against Torture, States "... shall ensure that any individual who alleges he has been subjected to torture in any territory under [their] jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, [their] competent authorities". It also provides that the complainant and witnesses shall be protected against "... all ill-treatment or intimidation as a consequence of his complaint or any evidence given". Secondly, States shall ensure in their legal systems that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible, in the event of the death of the victim, his dependants shall be entitled to compensation (art. 14 of the Convention). Thirdly, to ensure appropriate rehabilitation, measures to provide specialized medical services for the victims of torture would be welcome.

## II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

### A. Correspondence

55. In pursuance of paragraph 4 of resolution 1985/33 of the Commission on Human Rights, the Special Rapporteur addressed notes verbales to Governments and letters to intergovernmental organizations on 11 July 1985 with the request that they provide information on measures taken or envisaged, including legislation, to prevent and/or combat torture and to establish safeguards designed to protect the individual against torture.

56. In a reminder note, dated 25 September 1985, the Special Rapporteur expressed the wish to receive from Governments information on training programmes for police and security personnel concerning the protection of the right to physical and mental integrity of the individual.

57. In response to his request the following Governments submitted information: Argentina (26 November 1985), Australia (11 November 1985), Bolivia (31 July 1985), Brunei Darussalam (19 November 1985), Bulgaria (25 November 1985), Burkina Faso (30 October 1985 and 2 January 1986), Byelorussian Soviet Socialist Republic (11 November 1985), Canada (9 September 1985), Central African Republic (26 November 1985), Chad (5 November 1985), Colombia (3 December 1985), Cuba (9 December 1985), Cyprus (14 October 1985), Democratic Kampuchea (15 October 1985), Denmark (26 November 1985), Ecuador (20 November 1985), Ethiopia (1 November 1985), Finland (23 October 1985), France (4 October 1985), Germany, Federal Republic of (12 November 1985), Greece (29 November 1985), Grenada (4 November 1985), Honduras (18 September 1985), Indonesia (15 January 1986), Iraq (1 October 1985 and 14 November 1985), Japan (11 November 1985), Liechtenstein (15 November 1985), Mauritius (28 October 1985), Mexico (17 September 1985), Nauru (19 October 1985), Netherlands (27 August 1985), Norway (16 January 1986), Pakistan (4 December 1985), Peru (4, 17 and 20 September 1985, 3 October 1985, 18 November 1985 and 14 January 1986), Philippines (11 December 1985), Portugal (23 October 1985), Qatar (25 November 1985), Rwanda (31 October 1985), South Africa (2 January 1986),

Spain (4 and 29 October 1985), Sweden (23 September 1985), Thailand (18 December 1985), Turkey (16 September 1985), Ukrainian Soviet Socialist Republic (25 December 1985), Union of Soviet Socialist Republics (17 October 1985 and 27 November 1985), United Arab Emirates (14 November 1985), United States of America (25 November 1985).

58. Information was also provided by the Organization of American States, Amnesty International, the International Commission of Jurists, the Inter-Parliamentary Union, the World Federation of Trade Unions, Action des chrétiens pour l'abolition de la torture, the International Abolitionist Federation, the Lutheran World Federation, Quaker Peace and Service, the Friends Committee on National Legislation, and Socorro Jurídico from El Salvador.

59. At the preliminary stage of the preparation of his report, the Special Rapporteur received from different sources numerous materials containing allegations of practice of torture in several countries. After analysing it, he decided to consider 33 country situations. Letters with a brief description of the allegations received were transmitted to the Governments concerned for clarification. The Governments of Afghanistan, Chile, El Salvador, Guatemala and the Islamic Republic of Iran, considered by the Commission in pursuance of its resolutions 1985/38, 1985/47, 1985/35, 1985/36 and 1985/39 respectively, were also informed of the accusations of torture which reached the Special Rapporteur during 1985.

60. Replies to these letters were received from 11 Governments. In view of the fact that some of the letters sent by the Special Rapporteur contained somewhat detailed allegations, he does not consider it appropriate to name those countries which have already replied and those which have not yet seen fit to do so.

#### B. Consultations

61. In connection with his mandate the Special Rapporteur held consultations in Geneva during the months of June, September and November 1985 and January 1986. At each stage he maintained private consultations with representatives of those Governments which expressed the wish to meet with him. He also received members of non-governmental organizations and individuals. On 27 November 1985, the Special Rapporteur heard a witness, who testified that he had been tortured while held in detention by the army.

#### C. Urgent action

62. The Special Rapporteur received a number of requests for urgent action, eight of which were immediately brought to the attention of the respective Government on a purely humanitarian basis, to ensure that the right to physical and mental integrity of the individual is protected. According to the allegations, most of the cases concerned persons subjected to torture during interrogation while being held incommunicado by security police, others referred to physical and psychological pressure applied to detainees serving sentences in prisons.

63. In response to his appeal the Special Rapporteur received five replies. The Government of Chile stated that no complaint of unlawful coercion had been submitted by the two alleged victims and that strict compliance with the time-limits on detention provided by law were observed.

64. The Government of South Africa also provided by letter dated 6 January 1986 information on seven individual cases of detainees allegedly subjected to torture by the security police during incommunicado detention. According to the Government's reply official investigations have been opened on those cases but have not yet been completed.

65. Informally, the Special Rapporteur was also informed by the Indonesian authorities on an informal basis that the allegations brought to their attention were unfounded.

66. Although the Special Rapporteur took note of the information regarding the release of five Ugandan prisoners, it remains unconfirmed whether these individuals were subjected to torture while being held by the military authorities.

67. The Special Rapporteur was informed that the USSR rejected the allegation sent to it as baseless and false and pointed out that the action of the Special Rapporteur violated the provisions of Commission resolution 1985/33.

68. The Special Rapporteur also addressed urgent appeals to the Governments of Comoros, Ecuador, Honduras.

### III. NATIONAL LEGISLATION AND REGULATIONS

69. Up to 22 January 1986, the Special Rapporteur received information from 43 States concerning their respective domestic legislation, namely: Argentina, Australia, Bolivia, Brunei Darussalam, Bulgaria, Byelorussian SSR, Canada, Chad, Colombia, Cuba, Cyprus, Denmark, Ethiopia, Finland, France, Germany, Federal Republic of, Greece, Grenada, Honduras, Indonesia, Iraq, Japan, Liechtenstein, Mauritius, Mexico, Nauru, Netherlands, Norway, Pakistan, Peru, Philippines, Portugal, Qatar, Rwanda, South Africa, Spain, Sweden, Thailand, Turkey, Ukrainian SSR, USSR, United Arab Emirates, United States of America.

70. According to the replies, 5 States have ratified the International Covenant on Civil and Political Rights (Australia, Canada, Iraq, Mexico and the Netherlands); 13 States have signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Argentina, Bolivia, Canada, Colombia, Cyprus, Denmark, Greece, Peru and Sweden); and 2 States have made a unilateral declaration on their compliance with the 1975 Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Canada and Mexico).

71. Four States (Colombia, Greece, South Africa and Spain referred to the existence of emergency legislation. Colombia reported that it had been "compelled to declare a state of siege on various occasions in recent years ... That indicates, on the one hand, a respect for constitutional principles, a state of siege being an exceptional measure for exceptional situations where there is a breakdown of law and order, but a legal one subject to democratic control, and, on the other hand, the weakness of democracy in a Latin American developing country faced with the challenge of violence, irrationality, subversion and terrorism." Greece reported that article 137 D (1) of its Penal Code provides that "a state of emergency cannot justify the acts referred to in article 137 A and B" (torture and other abuses of human dignity). In Spain, "Organizational Act No. 9/1984 of 26 December against the activities of armed groups and terrorist elements ... provides for a number of guarantees and a monitoring system to prevent abuse of its

provisions; the monitoring is done by the judicial authorities and the parliament, to which the Government must report at least every three months on the application of the measures provided for in the Act."

72. Among the legislative measures designed to prevent acts of torture, 24 States (Bolivia, Byelorussian SSR, Canada, Colombia, Cuba, Cyprus, Denmark, Grenada, Honduras, Iraq, Japan, Mauritius, Mexico, Nauru, Norway, Pakistan, Philippines, Portugal, Qatar, Spain, Turkey, Ukrainian SSR, USSR and United States of America) have incorporated in their Constitutions the equivalent to the right not to be subjected to any cruel, inhuman or degrading treatment or punishment. In addition, three States (Honduras, Mexico and Portugal) reported on national provisions concerning the protection of persons deprived of their liberty. In the particular case of Portugal, article 306 of the "Code of Penal Procedure prohibits any authority or agent thereof responsible for making an arrest from mistreating, insulting or exercising violence against the person arrested. Only in cases of resistance, escape or attempted escape shall those authorities be entitled to use force or any other means deemed necessary to overcome such resistance or to place or keep the person under arrest.". Moreover, article 261 "prohibits any person or body participating in penal procedure from: 1 (a) impairing the accused person's freedom of will or decision through ill-treatment, physical violence, administration of substances, hypnosis or the use of cruel or deceptive methods; (b) impairing the accused person's memory or power of judgement; (c) using force against the accused person outside the cases and beyond the limits expressly provided by law; (d) threatening the accused person with legally inadmissible measures or promising him rewards not provided for by law."

73. Article 137 D (2) of the Greek Penal Code provides that "a superior's order concerning the acts referred to in article 137 A and B cannot justify them" (torture and other abuses of human dignity). One State (Spain) reported on its national provisions concerning legal assistance to detainees, as follows: "Organizational Act 14/1983 of 12 December develops article 17.3 of the Constitution in relation to legal assistance for detainees ... providing that the arrest and all subsequent actions shall be carried out in the manner least detrimental to the person and reputation of the accused ... Legal assistance, whether requested by him [the detainee] or ordered by the court, [means] the presence of his lawyer during questioning and the verification of his identity and [the right], in any event, to be released or placed at the disposal of the court within a maximum of 72 hours.". Moreover, the Spanish report mentioned "instructions issued by the Office of the State Security Police Force on 31 May 1985 concerning the application of Organizational Act No. 14/83 of 12 December developing article 17.3 of the Constitution in relation to legal assistance for detainees and prisoners."

74. Ten States (Colombia, Finland, the Netherlands, Norway, the Philippines, Portugal, Qatar, Spain, Sweden and the USSR) referred to the prohibition of torture both by administrative rules and regulations concerning the police and by administrative regulations concerning the care of prisoners. In the case of prisoners in Portugal, article 122 of "Decree-Law No. 265/1979 provides that prison staff shall not use physical coercion against prisoners unless it proves impossible to use other methods instead, and only in cases of self-defence, attempted escape and forceful or passive resistance to a lawful order.". Article 123 "defines coercion as any action taken against a person using physical force, auxiliary means or arms.". Moreover, Portuguese legislation states that "prison staff shall be entitled to use firearms in cases of necessity, direct action or self-defence, especially in cases of riot

or escape. The use of firearms shall always be preceded by a shot in the air, except where aggression is imminent or already occurring." Article 111 provides that "the following special measures shall be authorized: prohibition of the use of certain objects or their confiscation, observation of a prisoner during the night, isolation of a prisoner from the rest of the inmates, deprivation or restriction of outdoor periods, use of handcuffs when absolutely necessary and under medical supervision and confinement in a special security cell." According to article 127, "medical examination, medical treatment and food shall not be forced upon a prisoner unless his life or health is in danger. Such measures shall be prescribed and applied only under a doctor's supervision."

75. In Norway, the Instructions concerning the Organization of the Public Prosecution Authority, passed by Royal Decree of 28 June 1985, state in section 8 (2) that "the police shall always act in a calm and considerate manner during interrogation. They should not give promises or incorrect information, nor use threats or compulsion."

76. Spain reported that its General Penitentiary Law (Organizational Act No. 1/1979 of 26 September) "includes the Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Geneva, 1955) ... To expand that legislation, Royal Decree No. 1201/1981 of 8 May, whereby the Penitentiary Regulations were adopted, provides for a general system governing penitentiary institutions ... and a disciplinary system and the participation of inmates in the activities of the institution."

77. The Union of Soviet Socialist Republics also reported that its national law "provides for criminal penalties for employees of judicial or interrogative agencies and other officials who exceed their authority or official powers and accompany this by violence, the use of weapons, torture or other degrading acts against the victim."

78. Training programmes for law enforcement officials were reported by four States (Argentina, Norway, the Philippines and Sweden). Argentina referred to its "programmes for the training of law enforcement officials and military personnel ... Among the guiding principles for the revision of training programmes, it is stated that trainees should be made aware of the fact that they will become public servants and that their behaviour must conform to the National Constitution and the laws based on it. Likewise, they must learn to value and respect human rights, that is, the intrinsic rights of a human being per se, irrespective of circumstances."

79. The domestic law of 11 States (Australia, Cuba, Ethiopia, Honduras, Japan, Portugal, Qatar, Thailand, Turkey, the USSR and the United States of America) prevents statements made as a result of torture from being invoked as evidence in any proceedings. Under Australian law, "a trial judge has discretion to exclude from the evidence any statement or confession obtained from the accused which the court does not consider to be voluntary." According to article 319 of the Japanese Code of Criminal Procedure (law No. 131 of 1948), "confession made under compulsion, torture or threat, or after prolonged arrest or detention, or which is suspected not to have been made voluntarily shall not be admitted in evidence. (2) The accused shall not be convicted in cases where his own confession, whether made in open court or not, is the only proof against him."

80. Articles 179 and 183 of the Criminal Code of the Russian Soviet Federal Socialist Republic also consider criminal offences "obtaining evidence by means of threats or violence against, or the humiliation of, persons being questioned and compelling witnesses, victims or experts to give a judicial or investigative organ false evidence or a false opinion by threatening them or persons having close ties with them with death, violence or destruction of their property."

81. As regards corporal punishment, the Special Rapporteur received information about the position of three States (Australia, Cuba and Pakistan). Australia reported that "other forms of corporal punishment (e.g. punishment of prisoners, such as solitary confinement, that permitted under the Education Acts of some States and that administered by parents) have been extensively discussed in this country and it has been concluded that these forms of corporal punishment should not be regarded as 'inhuman' or 'degrading' systems, and precautions are taken against abuse." In Cuba, article 30 (8) of the Penal Code prescribes that "an offender may not be subjected to corporal punishment, nor shall it be admissible to use against him any measure entailing humiliation or degradation".

82. As regards flogging, Pakistan informed the Special Rapporteur that this punishment is administered in its territory "in accordance with the Whipping Act, 1909 and the Hadooc Ordinance, 1979 ... the Government of Pakistan is committed to introducing the Islamic system of justice in the country ... flogging, as prescribed by Islam, ... is intended to wipe out certain heinous crimes, ensure the preservation of Islamic values, reform the convicts and to deter others from committing such crimes".

83. Among the legislative measures to abolish torture, 19 States (Argentina, Bulgaria, Byelorussian SSR, Canada, Chad, Ethiopia, Greece, Honduras, Iraq, Japan, Mexico, Qatar, Rwanda, Spain, Thailand, Turkey, Ukrainian SSR, United Arab Emirates and the United States of America) consider torture as an offence under their penal or criminal codes. In Argentina, "Act No. 23.097 of 24 October 1984 amending article 144 of the Argentine Penal Code makes the penalty for the crime of torture the same as that for the crime of homicide". Article 417 of the Ethiopian Penal Code defines what is meant by the use of improper methods as "the use of blows, cruelty or physical or mental torture, be it to obtain a statement or a confession, or to any other similar end ... the commission of the above-mentioned crime is punishable by rigorous imprisonment ranging from 5 to 15 years." In Greece, article 137 A (2) of the Penal Code defines torture as "any systematic infliction of acute physical pain or of physical exhaustion endangering the health of a person, or mental suffering leading to severe psychical injury, as well as any illegal use of chemicals, drugs or other natural or artificial means capable of bending the victim's will". Moreover, article 137 (B) ("special cases") provides "a minimum of 10 years' confinement: (a) if methods or means of systematic torture are used, in particular beatings on the soles of the victim's feet, electric shocks, mock executions or the use of hallucinatory substances; (b) if they result in serious bodily harm to the victim; (c) if the offender commits these acts habitually or if circumstances indicate that he is especially dangerous; (d) if the offender in his capacity as a superior, gave the orders to commit the act". Article 322 of the Penal Code of Iraq stipulates that "any government employee or public servant who takes advantage of his official authority to treat any person harshly in a manner detrimental to the said person's dignity or honour, or who causes pain by his own hand, shall be punished by imprisonment for a period not exceeding one year." Article 195 of the Japanese Penal Code (violence and cruelty by special public officials) provides "imprisonment with or without forced labour for not more

than seven years" (amended by Law No. 124 of 1947). Under the Spanish Penal Code, "acts of torture are considered wilful offences", and they are treated as such in article 204 bis, which "provides the maximum penalty corresponding to each offence as well as disqualification for all public authorities and officials who, in order to obtain a confession in the course of a police or judicial investigation commit any of the offences mentioned in title VII, chapters 1 and 4 - concerning homicide and injuries respectively - and title XII, chapter 6 - on threats and coercion". Moreover, "if, for the same purpose, they commit acts resulting in injuries or defined as minor offences of threats and coercion of a similar nature to those mentioned in articles 582, 582.1 and 585, those acts shall be considered serious offences and shall be punishable by brief imprisonment and suspension. The penalties of brief imprisonment and specific disqualification shall also apply to authorities and officials who, in the course of criminal judicial proceedings or the investigation of an offence, subject the person under questioning to intimidating or violent conditions or procedures. The same penalty shall apply to authorities and officials who, neglecting the responsibilities of their posts, allow others to commit such acts".

84. Under the law of a number of States, there is no legislation specifically dealing with the crime of torture per se, whether committed by private persons or public officials. Thus, in Australian law, "the torturing of a person by any person would be punishable by criminal law as, for example, an assault, battery or malicious wounding. A civil claim for damages could also result, e.g. assault, battery or false imprisonment". Similar regulations are provided for in France, the Netherlands, Norway, Peru, Sweden and the United States of America. As regards France, the Government informed the Special Rapporteur that "a bill providing for the punishment of torture as such is currently under consideration by the Ministry of Justice".

85. The codes of criminal procedure of 10 States (Chad, Colombia, Ethiopia, Finland, Iraq, Japan, Portugal, Qatar, Spain and the Ukrainian SSR) provide that no police officer or person in authority may make or use any inducement, threat or any other improper methods against any person examined by the police. Thus, article 127 of the Code of Criminal Procedure of Iraq "prohibits the use of any unlawful means to obtain a confession from an accused person. Torture, being a punishable offence is regarded as an unlawful practice". According to article 319 of the Japanese Code of Criminal Procedure (Law No. 131 of 1948), "confession made under compulsion, torture or threat, or after prolonged arrest or detention, or which is suspected not to have been made voluntarily shall not be admitted in evidence."

86. Argentina reported that "Law No. 23.097 of 24 October 1984 ... lays down severe penalties for any public officials who, although in a position to do so, do not prevent the crime of torture from being committed and for those who, having knowledge of such a crime, do not report it within 24 hours. If the official in question is a doctor, the Law makes him liable to specific disqualification from exercising his profession for twice as long as the prison sentence imposed. Under the Law the same charge can be brought against a judge who, having knowledge of any such facts by reason of his office, does not draw up the corresponding indictment or report the matter to the competent judge within 24 hours".

87. The domestic legislation of seven States (Argentina, Denmark, Pakistan, Peru, Portugal, Spain and Turkey) provides for an investigation wherever there are reasonable grounds to believe that an act of torture has been committed. In the particular case of Argentina, the Government reported that by Decree no. 158/83 of 13 December 1983 "the President of the Republic ordered that proceedings should be brought before the Supreme Council of the

Armed Forces against the nine members of the three military juntas that governed the country between 1976 and 1982, who were presumed to have planned and supervised the methods used in the anti-terrorist campaign, and at the same time that proceedings should be brought against the most important leaders of the terrorism by which the Republic was ravaged, in the belief that both the former and the latter had violated human rights and that no democratic Government could connive at any violation of such rights. On 15 December 1983, by Decree No. 187, the Executive set up the National Commission on the Disappearance of Persons ... [whose] function will be to play an active part in clearing up the circumstances surrounding the disappearance of persons in the country ... It will receive reports and evidence concerning these events, referring them to the judicial authorities when it appears that an offence has been committed. It will be for the judicial authorities, on receiving the material compiled by the Commission in its investigations and proceedings, to determine responsibility and take a decision concerning the guilty parties". Chapter I.C. of the report of the National Commission on the Disappearance of Persons specifically deals with the question of torture (pp. 26-54): "Almost all the reports received by the Commission mention acts of torture. It is not incidental. Torture was a key element in the methods used. The secret detention centres were designed among other things to allow torture to be practised with impunity" (p. 26).

88. The Government of Peru informed the Special Rapporteur that Supreme Resolution No. 221-85-Jus, adopted on 14 September 1985, established a "Peace Commission as an Advisory and Consultative body of the Presidency of the Republic" (art. 1), in view of the fact that "in recent years there have been many acts of subversive violence, leading to death and destruction, and accusations of flagrant violations of human rights, so that it has become necessary to find solutions consistent with the rule of law and with the Constitutional Government's commitment to peace and social justice". According to article 3, "it is the function of the Peace Commission, among other things, to receive and transmit to the public authorities reports that have been or may be received concerning violations of human rights through death, extra-judicial executions, disappearance of persons, torture and abuse of authority" (para. d). In Turkey, the Government reported to the Special Rapporteur that "between 12 September 1980 and October 1985, proceedings were brought in the civil courts against 4,623 officials with regard to 2,120 complaints of torture or ill-treatment. Proceedings against 410 of the accused were dropped. There were 2,052 acquittals and 439 convictions. Proceedings against 1,722 of the accused are still in progress".

89. Legislation in 13 States (Argentina, Australia, the Byelorussian SSR, Canada, Denmark, Finland, Honduras, Iraq, the Netherlands, the Philippines, Portugal, Spain and the USSR) has instituted in their domestic legislation disciplinary or criminal proceedings against the alleged offender. Thus, in Argentina, article 2 (4) of Law No. 23.097 of 24 October 1984 provides for a penalty of "disqualification for life from holding any position in the security services or the armed forces. The disqualification also applies to the holding or carrying of arms of any kind". In Canada, the Royal Canadian Mounted Police Act (RSC 1970, ch. R-9, 11.25 (1) and 36 (1)) establishes that, in addition to any criminal penalties, any member of the Royal Canadian Mounted Police who is cruel, harsh or unnecessarily violent to any prisoner, or other person, is guilty of a major service offence and is liable to punishment ranging from a simple reprimand to imprisonment for a term not exceeding one year. Similarly, any public servant or employee of the Canadian Penitentiary Service who tortures prisoners or uses cruel, inhuman or degrading treatment on them is subject to disciplinary action to which he may



be liable, because these practices are contrary to the obligation of safe custody of prisoners which governs the operations of the Canadian Penitentiary Service (Penitentiary Service Regulations, C.R.C. 1978, c.1251, s.38).

90. Article 333 of the Penal Code of Honduras (in force since 12 March 1985) states that "a sentence of two to five years' imprisonment and a fine of L 1,000-2,000 shall be imposed on any official; ... (3) who harasses persons in his custody"; and article 334 establishes that "public officials who commit any of the following offences shall be liable to a fine of L 100-500 and general disqualification for one to three years: ... (9). A prison officer who imposes on detainees or prisoners punishments or deprivations or applies to them rules not provided for in the laws and regulations".

91. Article 142ff. of the Portuguese Penal Code provides that "suspicion of unlawful or excessive use of coercion against prisoners shall be grounds for disciplinary proceedings against the person responsible ... violence against prisoners shall be treated as bodily harm". In addition, "the offender is liable to imprisonment, the criminal proceedings being conditional upon the submission of a complaint".

92. Articles 207 and 208 of the Spanish "Royal Decree 1346/1984 of 11 July on the Disciplinary Code for the Senior Police Corps makes it a very serious offence to engage in any conduct constituting a wilful crime, thus including torture, and a serious offence for any officer to act in manifest abuse of his powers, causing harm to individuals, to make excessive or unjustified use of physical or moral violence, to subject prisoners or persons in his custody to degrading treatment or harassment or to act in any way implying discrimination of any kind, such offences being punishable by dismissal from the service in the first case and suspension, transfer with change of residence and loss of 5 to 20 days' pay in the other cases". Moreover, according to the report of the Government of Spain, "... if it comes to be known that acts of torture have been alleged against officers ... the first step to be taken is always to initiate the appropriate investigations in order to determine reliably whether the allegations are true or false. If there is found to be evidence that such acts have occurred, the appropriate disciplinary proceedings shall be initiated in order to determine the disciplinary responsibility of such officers as have broken the rules and regulations governing police conduct, the appropriate penalties being imposed. If there is reasonable evidence that the crime of torture has been committed, in addition to the proceedings described above, a report shall be made to the judicial authorities, in accordance with the Criminal Procedure Act, while any disciplinary proceedings that may have been initiated shall be suspended until the judicial authority has pronounced an executable judgement on the offences in question, although action relating to the proceedings can continue and preventive measures can be taken in relation to the officials ... without any complaint or case being brought by the injured party".

93. Four States (Argentina, the Byelorussian SSR, Spain and the USSR) reported on specific provisions concerning medical personnel. In Spain, the "Instruccions of the Ministry of the Interior of 11 July 1981 on medical assistance for detainees require them to be given a medical examination on entering and leaving police premises ... making it possible to establish whether they have suffered ill-treatment or torture ...". Under article 37 of the Fundamental Principles of Corrective Labour Legislation of the USSR and the Union Republics, "in places of detention the use of convicted persons for medical and similar experiments is prohibited".

94. The legislation of 11 States (the Byelorussian SSR, Greece, Grenada, Indonesia, Mauritius, the Netherlands, Sweden, Turkey, the Ukrainian SSR, the USSR and the United States of America) establishes the right of victims of torture to obtain redress or an equivalent right. In Greece, article 137 D (4) of the Penal Code establishes that "the victim of the acts referred to in article 137 A and B (torture and other abuses), is entitled to claim from the offender as well as from the State - both of which are jointly liable - the indemnity for the damages suffered and compensation for any psychical and moral injuries (pain and suffering)". According to the USSR report, "citizens of the USSR have the right to compensation for damage resulting from unlawful actions by State or public organizations, or by officials in the performance of their duties".

#### IV. ANALYSIS OF THE INFORMATION RECEIVED BY THE SPECIAL RAPPORTEUR ON THE PRACTICE OF TORTURE

95. The documentation studied by the Special Rapporteur refers to information submitted by Governments, intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council, in response to his request. In addition, the Special Rapporteur considered materials provided by private organizations and individuals.

##### A. Analysis of allegations of torture

96. The numerous allegations of torture and other cruel, inhuman or degrading treatment and punishment concern more than 40 countries. It is important to note that the information provided by Governments on their internal norms and regulations as well as their responses regarding specific cases brought to their attention, proved to be valuable to the Special Rapporteur and will contribute to his understanding of the diversity of the internal legislation and socio-political factors prevailing in those States.

97. In analysing the different situations, the Special Rapporteur categorized these countries as follows: those where torture is systematically practised and is part of the State policy and those where the existence of torture has been acknowledged but is not systematic.

##### 1. Systematic practice of torture

98. The absence of democracy and of the rule of law appears to be a common element in this first category. Citizens have no participation in political life and legal remedies, even though available under the legislation - wherever it is in force - prove to be ineffective. Writs of habeas corpus and other remedies are hampered by the lack of independence of the judiciary, security forces conceal evidence of torture from lawyers, magistrates and independent doctors, who would be capable of taking action against their illegal activities.

99. Official doctrines based on national security are common justification for military governments. Torture is systematically used against political prisoners by military police and paramilitary groups as a means of extracting confessions and suppressing dissidents. Under the system of apartheid, political detainees may be held in preventive detention for an exceedingly long period without trial under the Internal Security Act if they are considered to "endanger the security of the State or the maintenance of public order". Statements made in detention are admissible and it is alleged that police use any method to extract information.

100. The limitations imposed on individual rights and fundamental freedoms often appear to be in direct correlation with the existence of a state of emergency. Emergency legislation allows wide powers of arrest and detention of individuals. Under these circumstances incommunicado detention appears to be the stage at which torture is invariably practised.

101. It should be noted that in cases of internal conflict, for example in El Salvador and Guatemala, the general attitude of the judiciary is either total inactivity regarding violations of "human rights or an extraordinarily slow response. So far there is no record of any criminal proceedings for acts of torture having resulted in a sentence. A breakdown of the powers of the judiciary is common to such situations. In most cases it is extremely difficult to determine the perpetrators either because there are no witnesses or because witnesses are afraid to testify. If denunciations are properly lodged before the courts, the proceedings immediately tend to come to a standstill and are classified as "pending investigations".

102. A profound socio-political and socio-economic change in the structures of the States concerned is required to eradicate this practice.

2. Countries where measures have been taken by the authorities to prevent the recurrence of torture

103. The main difference between these countries and those referred to in the preceding subsection is the enforcement of the rule of law. Individuals whose rights have been infringed may seek redress in court and the offenders punished. Allegations of torture are specifically directed to individual cases occurring either in military centres, prisons or police stations. Public awareness and instruction of police and army personnel could help to remedy the situation.

104. In these cases torture appears to be practised on either criminal suspects or political detainees during interrogation by the police or other law enforcement personnel. The complaints received refer mostly to ill-treatment such as beating, sexual harassment, deprivation of sleep, lengthy interrogation and lack of sanitary facilities. According to the information received, persons allegedly died while in custody. Under this category, since the will of the Government is to adhere to the rule of law, once the accusation against any law enforcement personnel is lodged before a court and/or administrative authorities, judicial and administrative investigations take place, criminal acts are punished and appropriate corrective administrative measures enforced. Some countries have incorporated specific provisions for the crime of torture in their national legislation. In this context the Government of Spain transmitted the following information to the Special Rapporteur:

"As already reported by Spain, the crime of torture is a specific offence under article 204 bis of the Spanish Penal Code.

"In Spain, moreover, it is not just the Public Prosecutor who can initiate proceedings with regard to presumed offences, but any person, whether the victim of the offence or not, can exercise *actio popularis* and request the opening of proceedings to investigate matters which appear to constitute an offence. He can also bring 'amparo' proceedings before the Constitutional Court if the ordinary courts do not take action on the complaint.

"Furthermore, under Spanish procedural law, the victim of a presumed offence can appear in court and request the investigations he considers necessary.

"Since January 1983, 470 judicial proceedings have been initiated and although in most of them the allegations made have not been substantiated, charges have been brought against 60 members of the State security forces and 32 officers have been convicted and given executable sentences. A list of the officers convicted and of the judicial organs by which they were convicted is available to the Special Rapporteur."

105. The Government of Canada submitted recommendations on specific measures to be taken to prevent occurrences of the practice of torture.

B. Conditions under which torture is practised

1. Incommunicado detention

106. An analysis of the information received by the Special Rapporteur shows the conditions under which torture normally takes place. In most cases, there are no eyewitnesses other than the victims and the torturers. Secrecy surrounds the practice of torture and this secrecy is created and protected most effectively by incommunicado detention. In fact most information on allegations of torture indicates that the victims were held, either legally or illegally, in incommunicado detention.

107. In most countries arrest and detention of a person is closely controlled by criminal procedures. As article 9 of the International Covenant on Civil and Political Rights provides, "no one shall be subjected to arbitrary arrest or detention" (para. 1). Once arrested, the person "shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him" (para. 2). He "shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release" (para. 3). The detained person is "entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful" (para. 4).

108. In a number of countries a person is entitled to contact his/her legal counsel immediately after arrest. In some other countries the arrested person is not allowed contact with legal counsel, relatives or any others for certain periods of time during which interrogation is carried out by the law enforcement agency or investigating authorities. These periods of initial incommunicado detention without charge are regulated by law, varying from several days to several weeks, depending on the country. Under security legislation the period of this detention tends to be longer than under normal criminal procedures. In one country, under the Internal Security Act a person can be detained for an unlimited period without charges and without being brought in personally before a judge or magistrate, subject only to review by the authorities or a reviewing board. In another country, under a terrorist act a person may be detained up to 18 months. Legal machinery to determine the legality of the detention and to protect the rights of detainees is unapplicable under security legislation in a number of countries.

109. In incommuniado detention the detained person is totally cut off from any contact with the outside world. Visits by lawyers and relatives are not allowed. Information on the conditions of the detainee is not made available. The detainee is not allowed to write letters or send requests to

anyone outside. The only persons with whom he/she has any contact are those who detained him/her and sometimes other detainees who share the same fate. When institutional checks and controls over detention are suspended or made inoperative, the fate of detainees falls into the hands of the detaining officials and they are at their mercy. These are ideal conditions for torture.

110. In a number of instances of torture, it was explained that some over-zealous officers interrogating detainees and trying to get a "quick solution" of the case lost control of themselves and ill-treated detainees. In several other cases, torture was allegedly carried out to extract a confession from the detainee to be used against him in court proceedings. In many cases torture appears to have been practised repeatedly, systematically and for extended periods of time, not just once for a few minutes in isolated incidents. Incommunicado detention gives a prime opportunity for the practice of torture.

111. Apart from "legal" detention, information received by the Special Rapporteur contained allegations of illegal detention, namely detention in secret detention centres, often called "safe houses". Persons were arrested or abducted frequently without acknowledgement by the authorities. They were held in the secret detention centres, such as military facilities, abandoned houses in remote areas or just ordinary apartment buildings in the heart of cities. No contact with the outside was allowed. In many cases detainees were kept blindfolded and did not know the identity of their captors. Such detention was kept secret even among the authorities and only a few officials involved were aware of it. The whole operation was carried out outside any legal proceedings. In such a situation there was no legal physical or psychological restraint on the practice of torture, which often resulted in the death of detainees.

## 2. States of emergency

112. The practice of torture was often alleged in situations under states of emergency.

113. Article 4, paragraph 1, of the International Covenant on Civil and Political Rights provides that "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, ...". Under paragraph 2 of the same article no derogation is allowed from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18 which include, among others, the right to life, the right not to be subjected to torture and the right to freedom of thought, conscience and religion. Thus under a state of emergency, provided a State follows the prescribed procedure for declaration of the state of emergency, it is allowed to limit or suspend the enjoyment of certain basic rights, including the right to liberty and security of person (art. 9 of the Covenant), the right to a fair and public hearing by a competent, independent and impartial tribunal established by law (art. 14), the right to freedom of expression (art. 19), the right of peaceful assembly (art. 21) and the right to freedom of association (art. 22).

114. In a number of countries, under states of emergency above-mentioned rights have been severely curtailed.

115. In the context of allegations of torture, the limitation or suspension of the right to liberty and security of person is particularly relevant. A large

number of persons were arrested in various countries under circumstances which would not satisfy the required conditions for arrest under a normal situation. Procedures prescribed for arrest and detention were bypassed by emergency decrees and regulations proclaimed by the executive power, in some instances by the military authorities, i.e. powers of arrest and detention were granted not only to law enforcement authorities but also to the military. In several countries, under emergency regulations, legal machinery to determine the legality of detention, such as habeas corpus and amparo were explicitly made unapplicable to detainees. The whereabouts of detainees were often not disclosed. Emergency regulations authorized longer periods of incommunicado detention without charges.

116. In some instances "preventive detention" was provided for in order to legalize the arrest and detention of persons considered to be threats to the security of the State. The period of such detention was often unlimited.

117. States of emergency, as described above, legalized detention without sufficient safeguards to protect the rights of detainees, thus providing less control over their treatment, not only institutionally but also psychologically. The existence of acute internal conflict - division of the nation between those who hold power and those who are ruled, between the majority and the minority, etc. - enhances the psychological justification of harsh treatment of the perceived "enemy". It is not therefore surprising that a large number of allegations of torture have been made in such situations.

### C. Types and methods of torture

118. There are two main types of torture: physical and psychological or mental. In physical torture, pain is inflicted directly on the body, in the psychological or mental torture the aim is to injure the psyche. The two types are interrelated and ultimately, both have physical and psychological effects.

119. The following list, which is not exhaustive, refers to some methods of physical torture:

#### Beating

Blows to the feet

Blows with rifle-butt or bludgeons

#### Lashing

that cause wounds, internal bleeding, fractures, cranial traumatism.

"Falanga" or "falaga", that consists of hitting the feet with a stick or metal instrument and provokes a long-term "syndrome without apparent wounds on the feet" (e.g. plain, muscular insufficiency and sensoral difficulties, often resulting in permanent insensitivity of the soles of the feet)

Extraction of nails, teeth, etc.

#### Burns

Cigarette burns

Electrical burns

"Parilla", that consists of the attachment of the prisoner to a grill of burning coal

Burns by wax or boiling oil

Burns by cotton impregnated with petrol placed between the toes and then ignited.

#### Electric shocks

Shocks of variable intensity to any part of the body causing intensive muscular contractions

"Telephone", that consists of the application of electric shocks at the level of the ears

#### Suspension

Suspension by the feet, hands or testicles

Suspension on iron bars: this type of suspension has several names - drapeau, pau deara - and consists of the suspension of the prisoner by the knees - hands and ankles fastened together and head hanging down - until the prisoner faints

#### Suffocation

Suffocation by near-drowning in water (sous-marin) and/or excrement

Suffocation by covering the head of the prisoner with a plastic bag or a cowl containing gas

Plugging up the nose of the prisoner with limestone

#### Exposure to excessive light or noise

#### Sexual aggression

##### Rape

Insertion of objects into the orifices of the body

chevalet, that consists of placing the prisoner naked, on an iron bar - the prisoner is unable to touch the ground - that is moved violently, this causes severe tearing of the perineum

#### Administration of drugs, in detention or psychiatric institutions

Apomorphine, that causes vomiting

Curare, that causes asphyxia by paralysing the respiratory muscles

neuroleptics, that cause trembling, shivering and contractions, but mainly make the subject apathetic and dull his intelligence

#### Prolonged denial of rest, sleep

#### Prolonged denial of food

Prolonged denial of sufficient hygiene

Prolonged denial of medical assistance.

The following list, which is not exhaustive, refers to some methods of psychological or mental torture:

Total isolation and sensory deprivation: these conditions, if they are prolonged, entail serious psychosomatic, intellectual and emotional problems that are frequently irreversible, suicide is a frequent result

Being kept in constant uncertainty, in terms of space or time

Threats to kill or torture relatives, being forced to help torture relatives

Total abandonment

Simulated executions

Disappearance of relatives

#### D. Trade in implements of torture

120. Specially designed implements of torture are manufactured and exported by several countries. New legal provisions incorporated in the 1983 United States Export Administration Regulations broadened the licensing of "specially designed implements of torture" such as strait-jackets, police helmets and shields and parts and accessories, etc. (Provision 5999 B of the Export Administration Regulations). Applications for export licences are generally considered favourably, unless there is evidence that the Government of the importing country may have violated internationally recognized human rights and that the judicious use of export controls would be helpful in deterring the development of a consistent pattern of such violations or in distancing the United States from such violations (Provision 376.14 of the Export Administration Regulations).

121. According to the information received (Quaker Peace and Service Abolition of Torture Group, Newsletter No. 2, February 1985), the United Kingdom is the world's second largest exporter of police and paramilitary equipment. Licences to sell battery-operated cattle prods and electric-shock equipment abroad are given detailed consideration. The same source reported that within the last two years only three requests have been granted by the United Kingdom Government.

#### E. Torture and violation of other human rights

122. The practice of torture is a serious violation of the right to physical and/or mental integrity of the individual. A detailed analysis of the phenomenon of torture clearly shows that violation of this right is closely linked to violation of other human rights.

##### 1. Torture, disappearances and summary or arbitrary executions

123. A large number of allegations of torture were made together with allegations of disappearances and/or summary executions. In a number of countries, persons disappeared after having been arrested by uniformed military or police personnel, or abducted by armed groups of men in plain



clothes who in some cases identified themselves as security personnel. It was alleged that such abductions were carried out on the orders of the authorities or with official acquiescence. The arrests or detentions were not acknowledged by the authorities and the victims were tortured during interrogation in incommunicado detention, often in secret detention centres. Some, in more fortunate cases, were later released and testified on their experience. Others were found dead later in mass graves, ditches or at roadsides or dumping grounds with signs of torture on their bodies which had often been mutilated. In a number of cases the authorities explained that those persons had been killed by armed opposition groups and denied any involvement of government agents. In some other cases it was said that they were guerrillas who were killed in armed encounters with security forces. Such deaths were rarely investigated by the authorities.

124. In a number of cases persons were arrested by security personnel and their arrest was acknowledged. However, they were tortured in incommunicado detention and died under or as a result of torture. The authorities often explained that the detainees had committed suicide, died of a heart attack or other illness, or been killed by accident while trying to escape or being subdued by force. In other cases no explanation was given at all. An autopsy or post-mortem inquest was rarely held.

125. It should be noted that secrecy surrounds such practice by the authorities, and therefore very few cases of torture were brought to public attention.

## 2. Violation of other human rights conducive to the practice of torture

126. The practice of torture is in most cases preceded by violation of other rights, especially the rights of those arrested, detained, accused and convicted. In other words, torture occurs in the absence of safeguards designed to protect the rights of those persons under the control of the authorities. It also occurs when legal, judicial or administrative remedies are ineffective or unavailable for compensation of the victims of torture and punishment of the officials responsible.

### (a) Violation of the right to freedom of thought, opinion and expression (Universal Declaration of Human Rights, arts. 18 and 19, International Covenant on Civil and Political Rights, arts. 18 and 19)

127. Many of the torture victims were opponents or suspected of opposition to the Government. The Government, in one way or another, tried to suppress free expression of their opinions, in particular, their criticism of the Government. In a number of countries opposition movements, criticism of Government policies or simply the expression of opinions on human rights, religious practices, application to emigrate, etc. are viewed by the Government with hostility and as a threat to the security of the State. Arrest or abduction follows and in many cases those arrested or abducted are treated more harshly than common criminal suspects, and often become targets of torture.

### (b) Violation of the right to freedom of peaceful assembly and association (Universal Declaration of Human Rights, art. 20, International Covenant on Civil and Political Rights, arts. 21 and 22)

128. A large number of victims of torture were persons who had been active in organizing meetings perceived to be critical of the Government or its policies, or active in groups, organizations or trade unions which were

independent of the Government's control. In a number of instances, meetings or peaceful demonstrations were dispersed by the police or the military, when their aims were perceived as anti-government or prejudicial to national security. In some cases, trade-unionists were harassed by the authorities or by those acting under its control, or detained for their activities for trade unions and their members. Often, those who had participated in such gatherings, demonstrations or been involved in trade-union activities were arrested or illegally detained and interrogated under torture. A number of persons who had been organizing human rights groups were arrested before those groups were actually set up. In several countries, gatherings, demonstrations, or the organization of groups, associations or trade unions other than those sanctioned by the Government are prohibited de facto or de jure, especially under a state of emergency.

- (c) Violation of the right to liberty and security of person, arrest and detention  
(Universal Declaration of Human Rights, arts. 3 and 9, International Covenant on Civil and Political Rights, arts. 9 and 10)

129. The rights to be protected by these articles include: the right to freedom from arbitrary arrest and detention, the right to be informed of the reasons for arrest and of any charges, the right to judicial control of arrest and detention and the right to contest the legality of arrest and detention.

- (i) The right to freedom from arbitrary arrest and detention

130. Any arrest and detention not in accordance with the procedures established by pre-existing law is considered "arbitrary". Arrest without warrant is considered legal only under conditions strictly governed by criminal procedures or in certain cases by emergency legislation. In a number of countries security laws or emergency legislation gave extended powers to law enforcement authorities and/or the military to arrest without warrant, and it was often in those countries that arbitrary arrests and detention were alleged. In some other countries law enforcement agents or the military allegedly did not follow the prescribed procedures for arrest. Abduction by law enforcement officials, military personnel or agents acting under government control simply did not follow any procedures and could not in any sense be called "arrest". In a number of cases the authorities acknowledged that a person had been arrested only after his detention had been discovered.

- (ii) The right to be informed of the reasons for arrest, and of any charges

131. In a number of countries persons were allegedly not informed at all of the reasons for arrest nor of the charges against them. In some cases those arrested were allegedly detained without any explanation of their arrest or the charges for long periods of time, sometimes several years.

132. According to information received a number of persons testified that after arrest they were not informed of the reasons for the arrest, but were forced to "confess" under torture.

- (iii) The right to judicial control of arrest and detention

133. In a large number of countries the law requires persons arrested or detained to be brought "promptly" before a judge or judicial officer, and either be tried "within a reasonable time" or released. In a considerable number of countries it was alleged that the arrested persons were held in

incommunicado detention for prolonged periods, without being brought before a judge or judicial officer. In several countries emergency laws allow prolonged incommunicado detention without charge, in some cases extending from several months to over one year.

134. In one country the public prosecutor is legally responsible for the protection of the rights of detainees from the moment of arrest until the completion of the police investigation. According to national law the arresting police officer must immediately inform the public prosecutor of the arrest and the latter then has the authority to request the intervention of the investigating judge. The criminal procedure provides that detention without charge by the police may only be extended with the authorization of the public prosecutor. According to the procedure the detention by the police without charge is limited to four days in the case of criminal suspects, which can be extended by up to 48 hours with the authorization of the public prosecutor, and to eight days for those suspected of offences against "State security", which can be extended to 12 days with the public prosecutor's authorization. It was alleged, however, that the public prosecutor did not exercise his supervisory function in an appropriate manner, in particular, in political cases, and authorized repeated extensions of detention. Torture allegedly took place in such detention.

135. In another country, detainees awaiting trial may legally be held incommunicado for as long as nine months until the investigation of the case is complete. During this time the detainee has no right to contact a lawyer or relatives. The law does not require detainees in pre-trial detention to be brought before a judge.

136. In another country, under the state of emergency, regulations issued by the President gave the police and other law enforcement personnel, including the military, wide powers of arrest without warrant and detention without trial. Detention without charge was limited initially to 14 days, but further detention on an unlimited basis might be authorized by the Minister of Law and Order. Detainees were held incommunicado and they had no means of appeal against their detention. The authorities were not required to give any reasons for such detention nor was the place of detention disclosed. At the same time the Government granted immunity in advance to all members of the police and other law enforcement personnel, government ministers and state officials for any acts committed "in good faith" in connection with their use of emergency powers. Many detainees under the state of emergency were reportedly tortured.

137. In another country, even after the ending of martial law, the President retained emergency powers enabling him to order the indefinite detention of persons suspected of political offences and the writ of habeas corpus remained suspended for those detained for "crimes of insurrection or rebellion, subversion, conspiracy, or proposal to commit such crimes". Such wide powers given to the executive seriously undermined the effectiveness of the legal safeguards incorporated in the Constitution and other legislation designed to protect the rights of detainees.

138. In some countries the authorities allegedly ignored the requirements of the Code of Criminal Procedure, which provides for a maximum period of detention without charge for 48 hours before suspects are referred to a procurator, and did not refer cases of detention to the procurator for judicial investigation or possible prosecution. Political detainees remained in incommunicado detention without charge for periods of up to nine months. Those detained were held, therefore, outside the framework of law and had no possible recourse through courts.

(iv) The right to contest the legality of arrest and detention

139. In a number of countries there is a judicial procedure available to those deprived of their liberty in order to ascertain the legality of arrest and detention. These proceedings take the form of habeas corpus or recurso de amparo. According to this procedure the person must be released if the deprivation of his/her liberty is found unlawful.

140. In some countries the judiciary was neither effective nor independent of the executive power, and therefore, the judicial control machinery did not function as a safeguard to redress the unlawful arrest and detention. In one country the emergency powers of the President could restrict the application of this procedure to certain categories of detainees, mainly those arrested for political reasons.

V. CONCLUSIONS AND RECOMMENDATIONS

Conclusions

141. From the information he received the Special Rapporteur cannot but conclude that torture is still widespread and occurs in a rather systematic way in a number of countries.

142. Indeed, in some countries torture seems to have been institutionalized. Harsh and brutal treatment have become an habitual concomitant of interrogation during detention. In some cases equipment for torture is provided through the same channels as other equipment and material for normal services. A person who testified to the Special Rapporteur after having been present for two years during the 1970s at interrogations where torture was practised, when asked how many of the 500 detainees who had passed through his unit had actually been tortured said "all of them, because that was the normal treatment to which they were subjected right at the beginning".

143. In situations like these, the Government is obviously aware of what is going on in spite of the lip-service it pays to the universal condemnation of torture. The survival of the status quo and preoccupation with the danger to which it may be exposed seem to be factors of overriding importance. Public exposure and continuous pressure by other States, in particular those that are in other respects less inimical to the incumbent Government, seem to be the only means of persuading that Government to change its policy.

144. In other countries the torture which takes place is not so much part of a system as it is the consequence of passivity on the part of the authorities, who are preoccupied with other seemingly more important questions. In such situations control should be intensified, repressive measures taken and training programmes set up or, where they already exist, improved.

145. In some countries torture seems to be practised to stamp out all traces of opposition. Those who hold opinions which are at variance with the official views are arrested and sentenced. Torture or harsh treatment is used as a tool of "re-education" or as a punishment if "re-education" fails to have the desired effect. In such instances torture is not so much part of the interrogatory phase as it is a part of the process of "re-education". Here again torture seems to have become systematic in the sense of being part of the political system.

146. In other cases, the infliction of severe physical pain is part of the penal system and is considered a necessary part of repressive as well as preventive justice. In these cases attention should be drawn to modern penal theories which have amply proved that such punishments do not have the expected effect.

147. The most saddening conclusion the Special Rapporteur feels compelled to draw is that torture, in many, if not all, cases, is considered to be the easiest and the fastest way to solve problems. It is indeed shocking to see how easily people fall into the practice of torture. Torture became part of the interrogatory procedures in the middle ages and more recent centuries because it was thought to be the easiest and fastest way to ascertain the truth. Due to a moral awakening and the recognition of the dignity of the individual human being, such practices have been abolished in national legislations. An examination of the present situation where torture is still widely practised, but officially denounced, can only lead to the conclusion that this moral awakening has not yet had tangible results for everybody. It is, therefore, all the more important that the international community, supported by world-wide public opinion, should continue and intensify its struggle against the "plague of the second half of the twentieth century".

#### Recommendations

148. The entry into force of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment will undoubtedly be an important contribution to the eradication of torture. Governments should, therefore, speed up their ratification procedures.

149. In the mean time Governments should set in motion legislative procedures to give their judicial authorities jurisdiction to prosecute and punish persons who have committed torture, wherever this may have occurred.

150. All judicial systems should contain provisions under which evidence extracted under torture can not be admitted.

151. Incommunicado detention should be kept as short as possible and should not exceed seven days. During this period the detainee should be visited regularly by a doctor and should have the right to see a lawyer and/or doctor of his own choice immediately after the period of incommunicado detention.

152. Each detained person should be able to initiate proceedings before a court on the lawfulness of his detention (art. 9, para. 4, of the International Covenant on Civil and Political Rights). The right of habeas corpus or amparo should be strictly respected in all circumstances and should never be suspended.

153. Interrogation procedures should be made subject to internal scrutiny and the authorities should be held responsible for conducting such scrutiny.

154. Interrogation of detainees should only take place at official interrogation centres. Interrogation should, whenever possible, be tape-recorded.

155. All security and law enforcement personnel should be provided with the Code of Conduct of Law Enforcement Officials and receive instruction on its requirements. In particular they should be instructed on the absolute prohibition of torture, whether in time of peace or of war, including a state of emergency, and on their duty to disobey orders received from a superior to carry out torture.

156. A commission composed of representatives of the Government, including law enforcement and prison authorities, the judiciary and professional groups, such as lawyers and physicians, should be created with a mandate to inspect the conditions of detainees and make recommendations to the responsible authorities.

157. All personnel in the health sector should be instructed on the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment.

158. Training courses and training manuals for police and security personnel should contain specific material on the treatment of detainees and prisoners adapted to the local circumstances. Under the advisory services programme of the United Nations, assistance in this field should be given to those Governments which request it. It is suggested that under this programme regional courses should be organized to deal with this matter.

159. Whenever a detainee or his relatives or his lawyer lodge a complaint about his being subjected to torture, a judicial inquiry should take place. When the complaint is deemed to be well-founded the victim or his relatives should be entitled to compensation.

160. Export regulations should contain a prohibition on the transfer of material and equipment which lends itself in particular to the practice of torture.

- 1/ General Assembly resolution 3452 (XXX).
- 2/ General Assembly resolution 39/46.
- 3/ Official Records of the Economic and Social Council, 1985, Supplement No. 2 (E/1985/22), para. 235.
- 4/ See para. 23 above.
- 5/ European Court of Human Rights, Case of Ireland v. the United Kingdom, judgement of 18 January 1978, Series A, No. 25, paras. 96, 165 and 167.
- 6/ Report of the Human Rights Committee, Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40, (A/37/40), annex V, general comment 7 (16) (art. 7 of the Covenant), para. 2.
- 7/ Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A.38/40), annex XII, para. 8.3.
- 8/ Ibid., Thirty-ninth Session, Supplement No. 40 (A/39/40), annex XIII, para. 10.2 (Muteba v. Zaire)
- 9/ Human Rights Committee: Selected Decisions under the Optional Protocol (United Nations publication: Sales No. E.84.XIV.2), p. 104. para. 16.2 (Violeta Setelich v. Uruguay).
- 10/ Ibid., p. 90, para. 11.3 (Delia Saldías v. Uruguay).
- 11/ Ibid., p. 64, para. 9 (Leopoldo Buffo v. Uruguay).
- 12/ Ibid., pp. 59-60, para. 12 (Luciano Weinberger v. Uruguay).
- 13/ Ibid., p. 56, paras. 13-14 (Alberto Grille v. Uruguay).
- 14/ Ibid., p. 42, para. 9 (e) (ii) (M. Hernández v. Uruguay).
- 15/ Official Records of the General Assembly, Thirty-seventh Session, Supplement No.40 (A/37/40), annex V, general comment 7 (16) (article 7), para.1.
- 16/ Ibid.
- 17/ Ibid., para.2 in fine.
- 18/ See also, art.5 of the Code of Conduct for Law Enforcement Officials.
- 19/ Principle 4 of the Principles of Medical Ethics relevant to the role of health personnel, particularly physicians, in the protection of prisoners and detainees against torture and other cruel, inhuman or degrading treatment or punishment.
- 20/ Official Records of the General Assembly, Thirty-seventh Session, Supplement No.40 (A/37/40), annex V, general comment 7 (16) (article 7), para.3.

21/ Para.6 of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind, as adopted by General Assembly resolution 3384 (XXX) on 10 November 1975.

22/ Principle 2 of the Principles of Medical Ethics.

23/ Rule 31 of the Standard Minimum Rules for the Treatment of Prisoners.

24/ As provided by article I of the Convention on the Non-Applicability of Statutory Limitations to War Crimes against Humanity (in force since 11 November 1970).

25/ Principle 1 of the Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, as adopted by General Assembly resolution 3074 (XXVIII) of 3 December 1973.