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COMMISSION ON HUMAN RIGHTS  
Sub-Commission on Prevention of  
Discrimination and Protection  
of Minorities  
Thirty-fourth session  
Item 8 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO  
ANY FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:  
QUESTION OF MISSING AND DISAPPEARED PERSONS

(f) Question of disappeared persons

Report by the Secretary-General prepared in accordance  
with resolution 18 (XXXIII) of the Sub-Commission on  
Prevention of Discrimination and Protection of  
Minorities

Addendum

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LEBANON

[Original: French]  
[11 March 1981]

1. As regards the detention of persons by the legal authorities, both the Lebanese Constitution and Lebanese penal law guarantee the freedom of the individual, and provide that detention can take place only in situations specified by law, and in legally prescribed forms. This principle is set forth in article 8 of the Constitution which says that no one may be arrested or detained except in accordance with the provisions of the law, and that no offence or penalty may be established other than by the law. Article 6 of the Penal Code embodies the same principle.
2. When an offence is committed (a serious offence or crime), and a preliminary investigation has been opened to establish the identity of the suspects, Lebanese law provides for the possibility of "pre-trial detention" which, however, may under no circumstances exceed 24 hours. Resort may also be had to "pre-trial detention" in order to prevent any disturbance of order, for example, in a case of drunkenness (article 197, DL.No.54, 5 August 1967).
3. In cases of flagrante delicto, the police authorities in charge of an investigation are required to bring the suspect before the judicial authorities within 24 hours. These authorities (the Attorney-General) may then decide that the suspect is to be arrested if there is serious evidence against him (articles 35 and 36, Penal Procedure).
4. If the action taken by the police officers fails to take account of the legal protection referred to above, the victim may bring an action before the judicial authorities who are thus the guardians of individual freedom. A series of legal decisions have admitted personal fault on the part of members of the police who have infringed this rule, and have compensated the victim. Similarly, the responsibility of the State has been recognized in a series of cases, particularly where there has been bodily assault. It should also be noted that articles 367 et. seq. of the Penal Code establish penal sanctions against police officers who arrest individuals in cases other than those provided for by law or who ignore the legally prescribed forms of detention.
5. In connection with the protection of the individual, there is also more than one text devoted to the inviolability of the home. Article 4 of the Constitution embodies this principle when it states that no one may enter the home of a person other than in the cases laid down by the law and as prescribed by the law. Article 370 of the Penal Code punishes by imprisonment of between three months and three years any official who, acting in that capacity, enters the home of a private individual outside the cases provided for by law and without due regard to the formalities prescribed by the law. The Code of Penal Procedure (articles 91 to 95) and D.L.54 of 5 August 1967 lay down rules in this regard.
6. When the forced or involuntary detention has been perpetrated by private individuals, the Lebanese Penal Code provides for sanctions against any person who infringes upon the personal liberty of others (articles 569 and 570, Penal Code). It should be noted that, in an endeavour to render these measures still more

dissuasive, Decree No. 27 of 5 March 1959 reinforces the above mentioned penalties. Article I of that text lays down a penalty of between six months and three years of penal servitude if the period of detention does not exceed 24 hours. This becomes penal servitude for life if the period of detention is more than one month, or if the authors of the offence have ill-treated the victim.

7. Any person becoming aware of the involuntary or forced detention of any person in a place of detention other than one legally provided by the Government for that purpose is required so to inform the Attorney-General, the examining magistrate or the judge (article 427, Penal Procedure);

8. The magistrates mentioned above are then required to repair immediately to the place of detention for the purpose of releasing the person detained. Any negligence in carrying out this mission will cause them to be accused of complicity (article 428, Penal Procedure).

9. Article 399 of the Penal Code punishes with a period of imprisonment of between three months and three years and a fine of between 10 and 100 Lebanese pounds any member of the police force who does not inform the competent authorities of the existence of an offence or crime which has come to his attention.

SRI LANKA

[Original: English]  
[18 March 1981]

10. The Constitution of Sri Lanka guarantees to all persons equality before the law and the equal protection of the law (Article 12(1)). No person whether he be a national or not, can be arrested except according to procedure established by law (Article 13(1)). Under the terms of the Constitution every person held in custody, detention or otherwise deprived of personal liberty has to be brought before the judge of the nearest competent court and cannot be further held in custody, detained or deprived of personal liberty except upon and in terms of the order of such judge (Article 13(2)). Every citizen is entitled to freedom of movement (Article 14(1)).

11. The fundamental rights enshrined in the Constitution can be restricted only by the enactment of an Act of Parliament and that, too, for prescribed purposes such as the interests of national security and public order (Article 15).

12. Under the Constitution the Supreme Court has the exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right (Article 126). The Supreme Court is empowered to grant "relief or redress" in respect of any such infringement.

13. The identification of missing and disappeared persons could be initiated in Sri Lanka through other legal as well as administrative measures. For instance, the Court of Appeal is empowered by law to grant and issue orders in the nature of writs of habeas corpus to bring up before such Court:-

(a) the body of any person to be dealt with according to law;

or

(b) the body of any person illegally or improperly detained in public or private custody (Article 141).

14. The Court could make order to discharge or remand the persons so alleged to be imprisoned or detained or otherwise deal with such person according to law. In the past there have been instances in which applications for the writ of habeas corpus have been filed for the release of persons who have been illegally or improperly detained in public or private custody. However, such instances are few and far between for the reason that there are other provisions in the law which make it mandatory for law enforcement officers to comply with certain procedural requirements relating to the arrest or detention of persons. More specifically, the Code of Criminal Procedure Act does not permit the detention in custody or confinement of a person for a period exceeding 24 hours without obtaining an order from a Magistrate (Section 37). In the event of any contravention of this requirement the law provides for a civil action to be instituted claiming damages. Wrongful confinement and wrongful restraint are offences under the Penal Code and in addition to or in lieu of an action for damages a criminal action could be instituted against an offender. There are certain other provisions in the Code of Criminal Procedure Act which facilitate the identification of persons whose identity or whereabouts are not known.

The Magistrate's Court has been empowered to issue a search warrant if it has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence (Section 72). The person to whom such warrant is directed has to search for the person so confined and if as a result of the search any person is found, such person has to be immediately taken before the Court. The Act has also provided for any inquirer who receives information of the death (either suddenly or from a cause which is not known) of a person to proceed immediately to the place where the body of such deceased person is and after inquiry to transmit a report to the Magistrate (Section 370). Where any person has died while in the custody of the police or in a mental or a Leprosy hospital or prison the Magistrate has to be informed with a view to examining the body and holding an inquiry. The Act also empowers any Magistrate or any Inquirer to order a post-mortem examination of any dead body (Section 375(1)). For the purposes of a post-mortem examination, a Magistrate may, if the dead body has already been buried, cause that body to be disinterred (Section 375(2)).

15. Under the provisions of the Parliamentary Commissioner for Administration Act which was recently passed by Parliament, provision exists for a petition to be presented where there is an infringement of a fundamental right or other injustice by a public officer and the Ombudsman is required to investigate and report on such petition. The Ombudsman's powers of investigation and report are extensive and notwithstanding anything in any other written law which provides that any decision, act or omission shall not be called in question in a court or tribunal by writ or otherwise. This is a new mechanism which provides for independent investigation.

16. The identification of missing and disappeared persons is mainly the responsibility of the law enforcement agencies, the principal agency for this purpose being the Police. The Department of Social Services of the Ministry of Social Services is administratively responsible for the identification of children who are reported to be missing from Certified Schools or from Remand Houses. The responsibility for identifying children who are abandoned in public institutions such as hospitals and schools devolves upon this department.

17. According to the statistics available to the Sri Lanka Police, in the year 1980, information had been received regarding 4,615 missing or disappeared persons, of whom 2,557 had been males. This figure includes juveniles, insane persons and those who had voluntarily disappeared. The figure does not represent any enforced or involuntary disappearances due to State action, but covers those persons reported missing by parents or guardians. According to information available to the Sri Lanka Police, certain persons who are suspected of serious offences have left Sri Lanka and are hiding in neighbouring countries.

18. As far as the Police is concerned the main strategy deployed for the identification of missing and disappeared persons is the extensive use of mass media. Through radio and newspaper announcements the assistance of the public is solicited for the identification of missing and disappeared persons. Information about such persons is disseminated to all Police Stations in the country through the Police communication network. Posters, too, are sometimes used to identify disappeared persons - mostly in order to identify and arrest persons who are wanted in connection with major criminal activities. The Department of Social Services makes use of its network of probation officers, including volunteers, to identify children who are reported to be missing.

19. Detention without trial is exceptional. However, with a view to suppressing insurgent and terrorist activities which endanger public life and security, legislation has been enacted for a limited period to provide for detention without trial for a limited period of time. A recent example of such a law is the Prevention of Terrorism (Special Provisions) Act, No. 48 of 1979 which provides for detention orders to be made periodically extending up to 18 months. However, information is available to any member of the public regarding the identity of persons who are under detention.

20. The Sri Lanka Police has collaborated with other Governments and with INTERPOL in assisting the identification of foreign nationals who are said to be in Sri Lanka or who are likely to seek refuge in Sri Lanka.

21. Information received regarding missing or disappeared persons from organizations such as INTERPOL is disseminated by the Police to other related agencies such as the Customs and the Immigration and Emigration Department.

VENEZUELA

[Original: Spanish]

22. The legal protection of human rights as regards the alleged illegal disappearance of persons and other violations of human rights is a problem which basically affects countries ruled by despotic governments.

23. It is for this reason that, in a democratic State like Venezuela which respects the law, there are institutions responsible for supervising internally the strict observance of the Constitution and laws of the Republic and for protecting those rights internationally considered to be fundamental, namely, human rights.

24. Within Venezuela, this role devolves on the Public Ministry and in particular the Prosecutor General, who is the director of and official responsible for that institution, which has a broad basis of autonomy as indicated by the laws that govern the discharge of its sensitive functions.

25. The Constitution of Venezuela, in its article 220, paragraph 1, gives the Public Ministry the role of seeing that constitutional rights and guarantees are respected, thus making it the guardian of the fundamental rights of mankind, i.e. human rights.

26. The position as regards the illegal disappearance of persons in democratic systems of government like our own is an exceptional one which, far from denying the existence of the constitutional State, **confirms** it and the Public Ministry devotes all its zeal and efforts to investigating such cases and establishing the liabilities which may exist.

Methods used in searching for disappeared persons

27. In practical terms, the Public Ministry has received applications from relatives of persons who are alleged to have disappeared. In such cases, the Prosecutor's Department approaches the various State police and security agencies, particularly the Technical Corps of Judicial Police, the Metropolitan Police, the Department of Intelligence and Prevention Services (DISIP) and the Sectoral Directorate-General of Military Intelligence (DGSIM) to request information as to whether the person alleged to have disappeared has been arrested by the body in question and the grounds for the arrest. Under article 67 of the Constitution the petitioner is entitled to receive a reply from the Public Ministry and the police and security authorities of the State are required to inform that body according to the provisions of article 4 of the Organic Law of the Public Ministry which states:

"The authorities of the Republic shall provide the Public Ministry with any co-operation it may require in order to perform its functions more effectively. Persons who, when requested to do so, refuse assistance to the officials of the Public Ministry shall be disciplined for failing to carry out their official duties."

28. Once the reports received have been **analysed**, if they prove positive, the petitioner is so informed and a request made through the prosecutors of the Public Ministry for information on the current state of the case.

29. If the reports are negative and the petitioner has, in his application, attributed responsibility to officials of the bodies referred to above, the opening of an investigation is requested. If police officers have been the subject of the allegation, a preliminary investigation of the facts is made in order to determine the accuracy of the complaint. Once this procedure has taken place, and if there are prima facie grounds for the complaint, a corresponding information is requested, consisting of an investigation prior to any legal action which is requested of a criminal magistrate by the Prosecutor of the Public Ministry or the private individual who considers himself aggrieved by the conduct of the officer concerned, either to charge that officer, in the case of the former, or accuse him, in the case of the latter, if it appears from the information prepared that the officer has in fact committed a punishable excess.

30. If the person involved is a military officer, the complaint is sent to the Military Court under the terms of article 164 of the Code of Military Justice, so that the corresponding administrative inquiry can be opened, and information is requested on the progress and degree of the case from the Military Prosecutors, who are obliged to supply it, under the terms of the last paragraph of article 1 of the Organic Law of the Public Ministry which states:

"The Prosecutors of the Military Courts are excluded from the area of application of this Law. Nevertheless, these Prosecutors shall be required to inform the Prosecutor General of the Republic, when so required by him, of the current state of any military proceedings."

31. Through its representatives, the Public Ministry may require the officials of the Judicial Police or of the Examining Magistrates to begin penal investigations when they have cognizance of any punishable public action, and may intervene actively in the preparation of the investigation, by promoting as far as they think advisable more effective clarification of the facts, the pursuit of the truth and the establishment of liabilities, as laid down in article 42, paragraphs 3 and 4, of the Organic Law of the Public Ministry.

#### Determination of the responsibilities of officials in charge of law enforcement

32. The Public Ministry in Venezuela, as protector of constitutional rights and guarantees, has supervised and continues to supervise the activities of the police and security bodies of the State to ensure that their members do not make abusive use of their authority or commit systematic violations of human rights. For this purpose, it has officials whose specific duty is to intervene in the pre-trial and trial stages of criminal proceedings, thus allowing the Public Ministry to exercise effective surveillance from the pre-trial detention of the person concerned until the completion of the trial.

33. The Prosecutors of the Public Ministry have the constitutional function of ensuring respect for the individual's inviolable right to liberty, a function assigned to them by Venezuelan penal procedural legislation since the Code of Procedure of 1897, and contained in paragraph 3 of article 34 of the present Code which states that the Prosecutors of the Public Ministry are required:

"To investigate any arbitrary detentions of which they may become aware, occurring within their jurisdiction, and to promote such action as may be appropriate to terminate such detentions and redress their consequences."



34. This function is also assigned to them by the Organic Law of the Public Ministry in article 42, paragraph 18 which states:

"To investigate in their respective jurisdictions any arbitrary detentions of which they may become aware and to promote such action as may be appropriate for the protection of the freedom of the individual."

35. In carrying out this function, the representatives of the Public Ministry, in the course of their periodic visits to police stations, prisons, penitentiaries, reformatories, labour camps and other imprisonment and detention establishments, investigate the existence of persons arbitrarily detained, i.e., where the legal formalities have not been complied with or where detention has been ordered by authorities lacking, the legal competence to do so, or if the period laid down in article 75 H of the Code of Criminal Procedure for the pre-trial detention of persons allegedly responsible for committing punishable actions has run out. This last-mentioned period should not exceed eight (8) days as from the date of detention by the Judicial Police, at the end of which time the detainees must be placed at the disposal of the Examining Court. The authority of the Prosecutors of the Public Ministry to visit detention establishments derives from the provisions of article 6 paragraph 13 of the Organic Law of the Public Ministry which states:

"To ensure that, in police stations, prison premises, places of imprisonment of the military commands, labour camps, prisons and penitentiaries, reformatories, and other establishments for imprisonment and detention, the human and constitutional rights of prisoners and minors are respected; to superintend the conditions in which prisoners and detainees are held; to take adequate legal measures to uphold human rights when there is evidence that they have been or are being impaired or violated. In the discharge of this constitutional duty, the officials of the Public Ministry shall have access to all the establishments referred to above. Those who hinder in any way the discharge of this duty shall be liable to disciplinary measures."

36. Once this investigation has been carried out, the Prosecutor of the Public Ministry urges the erring official to restore the right that has been violated, explaining to him the penal, disciplinary and civil consequences that he may incur if he maintains the arbitrary measure of detention, or else approaches the superior of the police officer who ordered the measure in an endeavour to have it voluntarily and promptly revoked.

37. If this administrative step is unsuccessful, he makes use of the recourse laid down by the Fifth Transitory Provision of the Constitution and requests the issue of a writ of habeas corpus on the grounds that the person has been deprived of his liberty in the violation of the constitutional guarantees. The text of the provision in question is as follows:

"The protection of personal liberty, until a special law is enacted to govern this in conformity with the provisions of article 49 of the Constitution, shall be upheld by the following rules:

Every person who becomes subject to deprivation or restriction of his liberty, in violation of constitutional guarantees, has the right to ask the Judge of First Instance in Criminal Matters who has jurisdiction at the place where the act was executed which caused the request or where the aggrieved person is to be found, to issue a writ of habeas corpus.

When the request is received, which may be made by any person, the Judge shall immediately order the official in whose custody the aggrieved person is held, to report within twenty-four hours as to the grounds for deprivation or restriction of liberty, and shall initiate a summary verification.

The Judge shall decide, within a period of not more than ninety-six hours after the request was submitted, on the immediate release of the aggrieved or end of the restrictions imposed, if he finds that the legal formalities for deprivation or restriction of liberty were not met. The Judge may subject this decision to the granting of bail or prohibition of departure from the country by the aggrieved person, for a period of not more than thirty days, if this is considered necessary.

The decision issued by the Judge of First Instance shall be referred to the Superior Court to which the case must be sent on the same or the following day. Such referral shall not prevent immediate execution of the decision. The Superior Court shall render its decision within seventy-two hours following the date of receipt of the case."

38. The Judge of First Instance in Criminal matters decides immediately whether the release of the detainee or the cessation of the restrictions which may have been placed on him is appropriate or not in the light of the information obtained from the authorities which had detained him.

39. On the basis of the writ issued, the Prosecutor of the Public Ministry requests an Examining Magistrate to open an information - a special procedure outlined in articles 374 et seq. of the Code of Criminal Procedure in proceedings regarding the liability of officials for offences committed in the discharge of their duties and referred to above.

40. The Prosecutor registers a copy of the writ, requests that such formalities as he considers relevant should be carried out and, once they have been completed, charges the official concerned before the Court of First Instance in criminal matters, and thus criminal proceedings are begun.

41. The Prosecutors of the Public Ministry treat charges of the physical ill-treatment of detainees in a similar way, beginning the corresponding investigations and starting the appropriate criminal proceedings in cases in which prima facie evidence has been obtained.

42. This fundamental role of the institution of the Public Ministry in Venezuela is performed with the greatest impartiality as laid down in article 2 of the Universal Declaration of Human Rights which proclaims that everyone is entitled to all the rights and freedoms set forth in the Declaration "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

43. This is a serious responsibility which our Constitution imposes on the Prosecutor General of the Republic and the other representatives of the Public Ministry, and for this reason they go ahead unhesitatingly when these rights are infringed or violated, with the appropriate legal proceedings. They act, of course, with seriousness, steadiness and prudence, so as not to become passive instruments of private interests.

Procedure to render detention official

44. The Constitution of Venezuela lays down in article 60, paragraph 1, that no one may be arrested or detained, unless caught in flagrante, except by virtue of a written order of an official authorized to decree the detention, in the cases and with the formalities prescribed by law. The last sub-paragraph of the same paragraph and article reads:

"In the event that a punishable act has been committed, the police authorities may adopt provisional measures of necessity or urgency, indispensable to ensure investigation of the act and trial of the guilty parties ..."

45. The Sixth Transitory Provision of the Constitution further states:

"Until ordinary legislation fixes the time limits and periods to which the last sub-paragraph of paragraph 1 of article 60 of the Constitution refers, police authorities who have adopted preventive detention measures must place the accused at the disposition of the appropriate Court within a time limit of not more than eight days, together with the action that has been taken, for purposes of prosecution of the summary proceedings. The examining Court must decide, with respect to the detention, within a time limit of ninety-six hours, except in serious and complex cases which require a longer time, which in no case shall exceed eight days. Only the police authorities are empowered to take the measures provided for in article 60 of the Constitution, since according to law they are auxiliary officials of the Administration of Justice."

46. From the above we may deduce that, in Venezuela, detention is official in the following cases:

1. When the person is arrested in flagrante.
2. When, for reasons of necessity or urgent need, the police authorities arrest a person on a preventive basis.
3. When, after the formalities required by article 182 of the Code of Criminal Procedure have been completed, a court orders the detention.

47. We should explain that our standard use of the adjective "penal" does not determine which these cases are, and, in actual practice, the police authorities make arrests without producing a justification of the necessity or urgent need. What is, however, prescribed is the term of this detention. Article 75 of the Code of Criminal Procedure, in conjunction with article 75 H of the same Code, states that the Judicial Police must investigate the offences, identify and preventively apprehend the persons allegedly guilty and ensure the evidence required for the application of the law; where the accused person is held in custody, such preventive detention must not exceed eight (8) days, counting from the date of arrest, at the disposal of the Examining Court which must also be given an account of the steps taken, so that the investigation formalities can continue.

Suitability of measures to protect witnesses and journalists who supply information on disappeared persons

48. These measures are of a legal nature, and may be enforced by the Public Ministry as the organ responsible for overseeing observance of the laws of the State.

Article 67 of the Special Law on the Public Ministry reads: "The officials of the Public Ministry shall keep secret matters of which they have become aware through their duties ...". This prohibition on divulging the contents of the pre-trial proceedings under this Law is a repetition of the general principles laid down in the Code of Criminal Procedure, article 73 of which states:

"The formalities of the pre-trial investigation, whether begun ex officio or at the request of a party, shall be secret until the investigation is declared completed, except from the representative of the Public Ministry."

49. The secret of the pre-trial investigation lasts until the investigation has been expressly terminated by the provisions of article 204 of the same Law.

50. The witnesses and persons reporting offences, particularly the disappearance of persons, are protected by the secret of the pre-trial investigation, but may not repeat or comment upon anything they have said or expressed in the course of the pre-trial investigation. Once this has been terminated, the record ceases to be secret, but the protection of the investigation and of the persons taking part in it is no longer required once a decision has been made; it then becomes less urgent for any persons who may be interested in hindering an investigation to coerce witnesses or buy their silence.

51. As regards journalists, in their reports they protect the persons involved by omitting the name or names of persons who have provided them with information.

52. The Law on the Practice of Journalism establishes the right of social communicators not to reveal their sources of information, as stated in article 8: "The journalist has the right to professional secrecy vis-à-vis third persons and is not obliged to reveal his source of information unless criminal acts are involved".

Procedures for reporting the disappearance of persons

53. Three different forms of beginning an investigation of a punishable action are established in the Venezuelan Code of Criminal Procedure. They are:

1. Ex officio,
2. By notification, and
3. By an accusation or charge brought by the aggrieved party.

54. The first two refer to public offences and the last-mentioned concerns the procedure for private offences.

55. Ex officio proceedings are initiated when any primary examining body receives information, by whatever means, that a punishable act has been committed. It is required, without loss of time, to initiate proceedings by opening the corresponding investigation and deciding to carry out all the official steps required to elucidate the facts, without prejudice to the subsequent addition to the file of the investigation of charges by the aggrieved persons in the case of public offences, or accusations where private offences are concerned.

56. In the procedure by notification, the examining body initiates proceedings as a result of a notification by the aggrieved or interested party.

57. More specifically, the Public Ministry in Venezuela is obliged to hear and record in writing any notifications made to its representative and pass them on to the Examining Magistrate for ratification under oath. This obligation is established by article 93 of the Code of Criminal Procedure which states:

"The representative of the Public Ministry is also required to hear and record in writing, under the same conditions as the officials of the Examining Court, any notifications which may be submitted to him verbally and to accept any that may be addressed to him in writing, and to transmit both to the Examining Magistrate for ratification under oath."

58. From everything stated above it may be concluded:

1. That Venezuela is a constitutional state, the spirit of which forms and permeates the legal order in force, particularly in the constitution which embodies on a broad basis the guarantees of the people, i.e. human rights.

2. That, because of the democratic system in force, the principle practised as a general standard is respect for the dignity of persons and for human rights.

3. That the Public Ministry, the institution responsible for overseeing observance of the laws of the State, possesses effective legal means which it fully employs within the constitutional State existing in Venezuela in order to investigate, discover and request the application of the appropriate penalties to those who commit offences in violation of human rights.