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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 1975.1/ This was also the case with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984.2/ 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 indissoluable 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 iuris 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 Rapportuer 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". 3/ 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 emobdied 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 Covention 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 criinal".

(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 unjusitifed 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 12 August 1949 for the protection of war victims; ...".

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, paragaraph 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 compulstory 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" 24/ 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". 25/

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 Comorros, Ecuador, Honduras.

III. NATIONAL LEGISLATION AND REGULATIONS

69. Up to 22 January 1986, the Special Rapporteur received information from 43 States concerning their respectives 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, auxilliary 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 Portugese 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 "Instructions 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 accesories, 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 Politicial 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 agains 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.

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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

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 1986/50

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GE.87-10024/6597E

I. MANDATE

1. At its forty-first session in 1985, the Commission on Human Rights, by resolution 1985/33 decided to appoint a Special Rapporteur to examine questions relevant to torture. The Chairman of the Commission appointed the Special Rapporteur on 12 May 1985. Pursuant to this resolution, "the Special Rapporteur shall seek and receive credible and reliable information from Governments, as well as specialized agencies, intergovernmental organizations and non-governmental organizations" concerning torture (para. 3) and "respond effectively" to such information (para. 6).

2. As requested, the Special Rapporteur submitted a comprehensive report to the Commission on Human Rights at its forty-second session entitled "Torture and other cruel, inhuman or degrading treatment or punishment" (E/CN.4/1986/15) and informed the Commission on his activities regarding the question of torture, including the occurrence and extent of its practice, together with his conclusions and recommendations.

3. At the same session, the Commission, by resolution 1986/50, decided to extend the mandate of the Special Rapporteur for one year in order to enable him to submit further conclusions and recommendations to the Commission at its forty-third session. The Council endorsed that resolution by decision 1986/138 of 23 May 1986.

4. The interpretation of the scope of the mandate of the Special Rapporteur is contained in his first report to the Commission (E/CN.4/1986/15, paras. 22-24). In the present report he will make some additional comments relevant to the interpretation of his mandate.

5. On various occasions the Special Rapporteur has been asked to disclose the identity of his sources, as they were considered by the country concerned to be unreliable or biased. He has invariably replied that he is not in a position to do so for several reasons. First, if he provided this information in some cases and refused to do so in others, it would put him in an awkward position. And in some cases there are very good reasons for not disclosing the identity of the source in order to protect the persons involved or their relatives against retaliatory measures. This is true in particular when the organization which provided the information is either within the country where torture is allegedly practised or received its information directly from persons living in that country. Secondly, the Special Rapporteur feels that it is his responsibility to determine which information is reliable and which is not. It would be wrong to shift that responsibility to the organization which provided the information. Since torture generally takes place in secluded places and often leaves no directly recognizable physical marks, evidence is hardly ever fully conclusive. It is only by carefully evaluating the concrete information against the background of what is known about the general situation in the country concerned that the reliability of the source can be determined. Moreover, as stated in the previous report, torture almost invariably takes place in a political context. Victims of torture are very often opponents of the government in power. First-hand information about torture, therefore, in many cases inevitably comes from groups whose political ideas are at variance with those of the incumbent régime. The fact that allegations of torture are coming from politically motivated sources does not

imply, however, that the allegations themselves are politically motivated too. Torture is absolutely forbidden under international law and everybody therefore has the right to bring alleged cases of torture to the attention of the world community. To his regret, the Special Rapporteur has found too often that the alleged unreliability of the sources has been used by governments as an argument for not giving detailed information about the cases brought to their attention. The best way to prove the falseness of the allegations is to provide this detailed information or to invite the Special Rapporteur to visit the country and to see for himself what the situation is.

6. As the Special Rapporteur said in his first report, 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. It should, therefore, be a matter of concern that still too often disclosure of the practice of torture is seen as a hostile act against the State and that those who have made such disclosures are in danger of being arrested and, possibly, subjected to torture themselves. Highly detailed information is frequently brought to the attention of the Special Rapporteur with the explicit request that it should not be conveyed to the Government of the country concerned as that could place certain persons or their relatives in great danger.

7. The Special Rapporteur wishes to stress that the identity and character of the source which provides the information is not the only criterion for ascertaining its reliability; other factors, such as its consonance with information from other sources and the general human rights situation in the country concerned, are also taken into account.

8. The Special Rapporteur has also been requested on several occasions to plead with Governments not to expel aliens within their jurisdiction to their countries of origin where they might be in danger of being subjected to torture.

9. It may be recalled that article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides that no State Party shall expel, return ("refouler") 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 and that, for the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

10. This conventional specification - which is not yet in force - of the customary law principle of non-refoulement indicates that a State is under a clear obligation not to expel aliens from its territory to their country of origin if there is a real risk that the person involved might be tortured after his return. In the case of asylum-seekers whose request for asylum has been rejected, it is first and foremost for the United Nations High Commissioner for Refugees to intervene with the Governments involved; and, in fact, UNHCR has done so on various occasions in the past.

11. Although in such cases - and even more so in cases where the issue of asylum does not play a role - it is ultimately the Government of the country of sojourn which, under current international law, is competent to decide whether the alien will be returned, the Special Rapporteur feels that might be appropriate for him to draw the attention of that Government to the fact that in the country of origin torture is by no means an exceptional phenomenon and to request it to take this into account in the decision-making process. In this connection, Recommendation R(80)9, adopted on 27 June 1980 by the Committee of Ministers of the Council of Europe recommended Governments:
"1. not to grant extradition where a request for extradition emanates from a State not party to the European Convention on Human Rights and where there are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing the person concerned on account of his race, religion, nationality or political opinion, or that his position may be prejudiced for any of these reasons".

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Correspondence

12. In pursuance of paragraph 3 of resolution 1986/50, the Special Rapporteur addressed notes verbales to Governments and letters to intergovernmental organizations and non-governmental organizations on 17 June 1986 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.

13. In a reminder, dated 19 June 1986, the Special Rapporteur reiterated his invitation to Governments to provide him with information on allegations of cases of torture transmitted in 1985. He also stressed the importance of receiving information on legislation aimed at ensuring adequate protection of the right to physical and/or mental integrity of the individual, as well as on training programmes for police and security personnel.

14. In response to his request the following Governments submitted information: Byelorussian Soviet Socialist Republic (23 October 1986), Bolivia (22 June 1986), Congo (17 September 1986), Cuba (16 July 1986), Denmark (23 June 1986), Finland (9 July 1986), German Democratic Republic (26 September 1986), India (18 October 1986), Indonesia (12 August 1986), Italy (5 February 1986), Japan (27 August 1986), Liechtenstein (15 November 1986), Libyan Arab Jamahiriya (2 July 1986), Mexico (15 October 1986), Netherlands (24 July 1986), New Zealand (17 July 1986), Norway (16 January 1986), Nigeria (5 August 1986), Peru (11 August, 10 September 1986), Philippines (15 August 1986), Portugal (30 September 1986), Republic of Korea (6 November 1986), Sweden (11 July, 25 August 1986), Switzerland (2 September 1986), Syrian Arab Republic (14 July 1986), Togo (17 October 1986), Turkey (15 September 1986), Ukrainian Soviet Socialist Republic (2 October 1986), Union of Soviet Socialist Republics (13 October 1986) Zaire (27 August 1986).

15. Information was also provided by the International Labour Organisation (ILO); the United Nations Educational, Scientific and Cultural Organization (UNESCO); the Inter-American Commission on Human Rights; Amnesty International; SOS Torture; the British Medical Association, the Commission on Human Rights of Guatemala; Socorro Jurídico (El Salvador) and the Swiss Committee against Torture.

16. As in 1985, the Special Rapporteur received numerous allegations of the practice of torture from different sources. After analysing them, letters with a brief description of the allegations received were transmitted to 19 countries for clarification. In addition, the Special Rapporteur decided to retransmit, on 19 July 1986, allegations sent to 15 Governments in 1985. At the time of the preparation of this report no replies to specific allegations had been received from the Governments of Afghanistan, the Congo, Egypt, El Salvador, Iran (Islamic Republic of), Iraq, the Libyan Arab Jamahiriya, Mozambique, South Africa, Suriname, the Syrian Arab Republic, Uganda and Zimbabwe.

B. Consultations

17. The Special Rapporteur held consultations in Geneva during visits in June, September and November 1986. Private consultations with those Governments that expressed the wish to meet with him were maintained. He also received non-governmental organizations, private individuals and groups. On 26 November 1986, the Special Rapporteur heard six witnesses, who testified concerning the torture and ill-treatment to which they had been subjected while held in detention.

C. Urgent action

18. A number of requests for urgent action were received during 1986. The Special Rapporteur decided to bring 19 to the immediate attention of the respective Government on a purely humanitarian basis, to ensure that the right to physical and mental integrity of the individual was protected. He also requested information on remedial measures, including those taken by the Judiciary, in case the allegations were proved correct. Most of the allegations concerned persons subjected to torture during interrogation while being held incommunicado by security police.

19. Urgent appeals were sent to the Governments of the following States:

(a) Bahrain (30 September 1986), concerning three persons in investigative detention, two of whom had allegedly needed medical care as a result of the ill-treatment they received;

(b) Bangladesh (5 June 1986), concerning three persons in police custody;

(c) Chile (27 June, 15 July, 3 October and 4 November 1986), concerning a number of persons recently arrested by the security forces;

(d) Colombia (16 July 1986), concerning two persons detained by the military;

(e) El Salvador (6 June 1986), concerning eight persons arrested and detained by security forces;

(f) Indonesia (10 September 1986), concerning a student of East Timor descent who had been arrested at the university campus;

(g) Islamic Republic of Iran (30 September 1986), concerning three physicians held in custody;

(h) Paraguay (17 November 1986), concerning a journalist held in incommunicado detention;

(i) Republic of Korea (6 June 1986), concerning seven persons detained by the military security police;

(j) South Africa (19 June, 15 July and 10 September 1986), concerning a priest and three other persons who were arrested and detained under the state of emergency;

(k) Suriname (24 September 1986), concerning a number of people of Bush-Lepo descent;

(l) Thailand (5 June 1986), concerning persons of Kampuchean descent, who were arrested on a charge of robbery and manslaughter;

(m) Turkey (9 and 30 October 1986), concerning a Turkish national, residing in Sweden, who was arrested after re-entry into Turkey and about 10 persons of Iranian descent;

(n) Zimbabwe (5 June 1986), concerning a leading politician who has been under arrest for some time.

20. In response to his appeal the Special Rapporteur received seven replies:

(1) The Government of Bangladesh reported, by letter dated 7 August 1986, that the matter had been thoroughly investigated by the appropriate authorities; the allegations of torture were found to be baseless and false. The alleged victims of torture were released;

(2) By letters dated 17 and 18 November 1986 respectively, the Government of Chile made reference to the duplication of procedures, since the same cases had been brought to its attention by the Special Rapporteur on the situation of human rights in Chile. Nevertheless, the Government stated that special instructions had been issued on 30 July 1985 regarding treatment of detainees. It also announced the conclusion of an agreement with the International Committee of the Red Cross (ICRC), concluded in September 1986, whereby delegates and doctors paid regular visits to the inmates with whom they held private interviews. Security personnel kept ICRC informed on the status of the list of detainees;

(3) The Government of Colombia transmitted, on 17 October 1986, a reply provided by the Military Prosecutor, dated 29 September 1986. According to the information received, the alleged victims were arrested by the National Police on 28 May 1986. They admitted to having connections with guerrilla groups and signed a declaration stating that they had never been subjected to torture. One of the alleged victims is currently in prison for a common crime.

(4) Informally, the Special Rapporteur was also informed by the Indonesian authorities that the cases brought to the attention of their Government had been thoroughly investigated in conformity with the existing legal procedures. The alleged victims were released on 11 October 1986;

(5) The Government of the Republic of Korea also provided information in a letter dated 6 November 1986 stating that one case was still under investigation. According to the information, no evidence of torture had been found in the other cases;

(6) The Special Rapporteur was informed by the Government of Thailand, by letter dated 4 July 1986, that the alleged victims of torture were common criminals charged with murder and robbery. According to the information, they were arrested on 21 March 1986 and bore no visible evidence of torture.

Subsequently, the Special Rapporteur was provided with additional information. On 27 November 1986, the representative of Thailand met the Special Rapporteur and provided further clarification on the cases. According to an aide-mémoire, the alleged victims of torture received "medical examinations as stipulated by the prison's rules and regulations". Some marks and wounds on their bodies were duly noted, and "... It is conceivable that they might have acquired such marks and wounds prior to being arrested ...";

(7) On 28 November 1986, the Government of Turkey informed the Special Rapporteur that one of the alleged cases of torture (a foreigner who had entered the country illegally), was released on 30 September 1986. As for the second case, no record or information had been found. According to the information, torture is categorically prohibited. "The Turkish Government is resolved to continue its policy of ensuring the protection of the physical and mental integrity of the individual, regardless of whether the individual might be a Turkish citizen or a foreigner".

21. The Special Rapporteur received no reply to his urgent appeals from the Governments of Bahrain, the Islamic Republic of Iran, Paraguay, South Africa, Suriname and Zimbabwe.

D. On-site observations

22. The Special Rapporteur has, on several occasions expressed his readiness to travel to the territory of any member State with the consent or at the invitation of the Government concerned for the purpose of carrying out on-site observations. Such visits would enable the Special Rapporteur to assess the allegations transmitted by different sources on concrete cases and verify facts. During such visits the Special Rapporteur in addition to consulting with the authorities, might also hold private interviews with alleged victims of torture, groups, entities or institutions, including persons sentenced or in detention in local prisons.

III. ROLE OF MEDICAL PERSONNEL IN TORTURE

23. In his first report, the Special Rapporteur mentioned special safeguards that should be adopted concerning arrested or imprisoned people in order to prevent them from being tortured (E/CN.4/1985/15, paras. 45-47). Among the safeguards, article 2 of the Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in resolution 34/169, 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". Accordingly, "an order from a superior officer or a public authority may not be invoked as a justification of torture" (art. 2, para. 3, of the Convention against Torture). 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, para. 1, of the Convention 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). Any victim of an act of torture obstains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible (art. 14, para. 1, of the Convention).

24. Article 6 of the Code of Conduct for Law Enforcement Officials provides that "law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required". The "medical attention" refers to "services rendered by any medical personnel, including certified medical practioners and paramedics".

25. Concerning the protection of victims of international armed conflicts, article 16 of Protocol I additional to the Geneva Conventions of 12 August 1949 1/ provides general protection of medical duties. It states that "under no circumstances shall any person be punished for carrying out medical activities compatible with medical ethics, regardless of the person benefiting therefrom" (para. 1); that "persons engaged in medical activities shall not be compelled to perform acts or to carry out work contrary to the rules of medical ethics ..." (para. 2); and that medical personnel shall not be compelled to give any information concerning the wounded and sick who are, or who have been, under their care, if such information would, in their opinion, prove harmful to the patients concerned or to their families. (para. 3).

26. In regard to prisoners, rules 22 to 26 of the Standard Minimum Rules for the Treatment of Prisoners 2/ govern medical services. At every institution the services of at least one qualified medical officer with some knowledge of psychiatry, specialized institutions for specialist treatment, and a dental officer must be available (rule 22). In women's institutions, the necessary pre-natal and post-natal care must be provided, as well as a nursery staffed by qualified persons (rule 23). Every prisoner should be examined by the medical officer as soon as possible after his admission (rule 24). The

medical officer shall have the care of the physical and mental health of the prisoners and should see all sick prisoners daily (rule 25). In addition, he shall inspect the food hygiene, cleanliness, sanitation, heating, lighting, ventilation, clothing and bedding in the institution (rule 26).

27. A Working Group of the Sixth Committee has drafted a number of principles concerning detainees (A/C.6/40/L.18, annex). Draft principle 21 provides that "proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge".

28. In addition to the protective measures described above, the General Assembly decided in resolution 37/194 to adopt 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, because it was "alarmed that not infrequently members of the medical profession or other health personnel are engaged in activities which are difficult to reconcile with medical ethics". The epxression "health personnel" includes not only physicians, but also people such as physician-assistants, paramedics, physical therapists and nurse practitioners.

29. In the same resolution, the General Assembly recalled with appreciation the Guidelines for Medical Doctors concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to Detention and Imprisonment adopted by the World Medical Association in the 1975 Declaration of Tokyo (A/31/234, annex II). According to paragraph 4 of the Declaration, "the doctor's fundamental role is to alleviate the distress of his or her fellow men, and no motive whether personal, collective or political shall prevail against this higher purpose". In this context, the Principles of Medical Ethics establish that "it is a contravention of medical ethics for health personnel, particularly physicians, to be involved in any professional relationship with prisoners or detainees the purpose of which is not solely to evaluate, protect or improve their physical and mental health" (principle 3).

30. The principle of non-discrimination is incorporated in the Principles of Medical Ethics as follows: "Health personnel, particularly physicians, charged with the medical care of prisoners and detainees have a duty to provide them with protection of their physical and mental health and treatment of disease of the same quality and standard as is afforded to those who are not imprisoned or detained" (principle 1). It is also provided that "there may be no derogation from the foregoing principles on any ground whatsoever, including public emergency" (principle 6). In addition, the General Assembly expressed its conviction in resolution 37/194 that "under no circumstances should a person be punished for carrying out medical activities compatible with medical ethics regardless of the person benefiting therefrom, or be compelled to perform acts or to carry out work in contravention of medical ethics, but that, at the same time, contravention of medical ethics for which health personnel, particularly physicians, can be held responsible should entail accountability". However, persons accused of acting in contravention of these principles might, under particular circumstances, plead force majeure. Consequently, the General Assembly noted that "in accordance

with the Declaration of Tokyo measures should be taken by States and by professional associations and other bodies, as appropriate, against any attempt to subject health personnel or members of their families to threats or reprisals resulting from a refusal by such personnel to condone the use of torture or other forms of cruel, inhuman or degrading treatment".

31. The Principles of Medical Ethics prevent health personnel, particularly physicians, from:

(a) Engaging, 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 (principle 2);

(b) Applying 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 (principle 4 (a));

(c) Certifying the fitness of prisoners or detainees for any form, of treatment or punishment that may adversely affect their physical or mental health and which is not in accordance with the relevant international instruments, or participating in any way in the infliction of any such treatment or punishment (principle 4 (b)); and

(d) Participating in any procedure for restraining a prisoner or detainee unless such a procedure is determined in accordance with purely medical criteria as being necessary for the protection of the physical or mental health or the safety of the prisoner or detainee himself, of his fellow prisoners or detainees, or of his guardians, and presents no hazard to his physical or mental health (principle 5). (Nevertheless, according to the Declaration of Tokyo, "where a prisoner refuses nourishment and is considered by the doctor as capable of forming an unimpaired and rational judgement concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially" (para. 5).)

32. Article 7 of the Covenant on Civil and Political Rights states that "in particular, no one shall be subjected without his free consent to medical or scientific experimentation". The Human Rights Committee indicated that "... the prohibition extends to medical or scientific experimentation without the free consent of the person concerned" and that "special protection in regard to such experiments is necessary in the case of persons not capable of giving their consent". 3/ Moreover, paragraph 6 of the Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind (adopted by the General Assembly in resolution 3384 (XXX)) states that the physical and intellectual integrity of the human personality shall be protected "... from possible harmful effects of the misuse of scientific and technological developments". In addition, draft principle 19 bis of the draft body of principles referred to in paragraph 27 states that "no detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health".

33. In regard to persons detained on grounds of mental ill health or suffering from mental disorder, the Special Rapporteur of the Sub-Commission on that subject concluded that psychiatry "is often used to subvert the political and legal guarantees of the freedom of the individual and to violate seriously his human and legal rights"; that "in some States, psychiatric hospitalization and treatment is forced on the individual who does not support the existing political régime ..."; and that in other States "persons are detained involuntarily and are used as guinea-pigs for new scientific experiments". 4/ The Special Rapporteur of the Sub-Commission also concluded that "by involuntary admission and detention of a patient many of his human and legal rights can be collectively violated", inter alia, "the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment ..."; 5/ and that "some of the scientific and technological advances have adverse effects and in certain cases they pose threats to the physical and intellectual integrity of the patient. Thus, the side-effects of the major tranquillizing and antidepressant drugs can be very severe; for example the administration of strong tranquillizing or antidepressant drugs over a long period may be such as to cause unpredicted personality changes in the patient". 6/

34. Consequently, the Special Rapporteur of the Sub-Commission proposed the adoption of a draft body of principles, guidelines and guarantees for the protection of the mentally ill or persons suffering from mental disorder. 7/ They include the following: "difficulties of adaptation to certain moral, social, cultural or political values or religious beliefs shall not be a determining factor in diagnosing a mental illness or a mental disorder" (draft art. 5, para. 2); "certain therapies and treatments, such as psychosurgery and electroconvulsive treatment, shall never be applied without the patient's consent or the consent of his legal representative" (draft art. 9, para. 3); "medication shall be given to a patient only for therapeutic purposes and shall not be administered as a punishment or used for the purpose of restraint or for the convenience of the medical and nursing staff" (draft art. 10, para. 1); and "every patient shall have the right to refuse treatment" (draft art. 11, para. 1).

IV. RESPONSIBILITY FOR THE VIOLATION OF THE PROHIBITION OF TORTURE

35. In the introduction to his first report the Special Rapporteur concluded that the prohibition of torture could be considered to belong to the rules of jus cogens, since it is an international obligation of essential importance for safeguarding the human being from which no derogation is possible.

36. What kind of responsibility does the violation of such an important international obligation entail? In the first place a distinction must be made between international, individual and State responsibility.

37. In virtually all countries acts of torture are a crime punishable under national law. It goes without saying that this is the most appropriate way for torturers to be brought to justice. However, in view of the fact that torture has been defined in international instruments, such as the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as "any act by which severe pain or suffering ... is intentionally 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", it is by no means exceptional that an offender is not prosecuted in the country in which the offence is committed. In fact, this is precisely why torture has become so much a matter for international concern.

38. One of the important elements of the 1984 Convention is, therefore, the establishment of universal jurisdiction with regard to torture. According to articles 4 and 5, each State party shall ensure that all acts of torture, wherever they are committed and irrespective of the nationality of the alleged offender, shall be punishable under its national law, and article 7 introduces the principle of dedere aut judicare for perpetrators of torture.

39. Although the discussion as to whether torture is an international crime has not yet come to a conclusion - a discussion which may be called theoretical as long as no international criminal court has been established - there are strong arguments for including torture - at least if it is practised regularly by an individual - in that category. As the Special Rapporteur of the International Law Commission on a draft code of offences against the peace and security of mankind, Mr. Doudou Thiam of Senegal, said in his second report:

> "Violations of human rights may at one time fall within the scope of internal law and at another within that of international law, depending on their seriousness. If the violation goes beyond a certain point, it falls within the category of international crimes and, depending on its seriousness, it may be at the top of the scale, in other words it may be a crime against humanity. There is strictly speaking no difference of nature between the two concepts, only a difference of degree. Once they exceed a certain degree of seriousness, violations of human rights are indistinguishable from 'crimes against humanity'." (A/CN.4/377, para. 40)

40. Although he did not include serious cases of torture explicitly in his draft articles, he did not exclude them either. In his categorization of crimes against humanity in draft article 12, he mentions in paragraph 3 "inhuman acts which include, but are not limited to, murder, extermination,

enslavement, deportation or persecution, committed against elements of a population on social, political, racial, religious or cultural grounds." (A/CN.4/398, para. 262)

41. It may thus be concluded that torture, when practised systematically against certain groups of the population, is a serious crime for which the perpetrator is directly accountable under international law whatever his position in the official hierarchy. In this respect it is relevant to quote draft article 9:

> "The fact that an offence was committed by a subordinate does not relieve his superiors of their criminal responsibility, if they knew or possessed information enabling them to conclude, in the circumstances then existing, that the subordinate was committing or was going to commit such an offence and if they did not take all the practically feasible measures in their power to prevent or suppress the offence".

42. The situation with regard to the responsibility of the State within whose jurisdiction torture is practised is more complex. State responsibility creates a legal relationship between the active side and the passive side, the State which has violated its obligations under international law and the injured State. In the case of violations of human rights it may be difficult to identify the injured State since the victims of these violations are generally the offending State's own subjects. As no other State is immediately and indirectly affected by the violation, it could be said that all other parties (in the case of a convention) or all other States (in the case of customary law) have a legal interest in the termination of the violation and, consequently, may intervene with the offending State to that end. Under conventional law this is institutionalized (usually in an optional way) by the right of a State to complain; in more general terms it is virtually established that diplomatic intervention, in the case of serious violations of human rights, by the organized community of States or by individual States does not constitute interference in the internal affairs of the offending State - which is prohibited by international law, although it is still a matter of controversy whether individual States may take unilateral measures which go further.

43. This legal interest of other States in the compliance with international obligations in the field of human rights has been officially recognized by the International Court of Justice if basic human rights are violated. In the case of a State's obligations vis-à-vis the international community as a whole, all States can be held to have a legal interest in their protection; they are obligations erga omnes. As an example of such obligations the Court mentioned, inter alia, obligations deriving from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. 8/

44. There is no doubt that the right not to be tortured belongs to this category of basic human rights and that, consequently, all States have a legal interest in compliance with the prohibition of torture, in other words the transgressor of this prohibition is responsible to the international community as a whole and, in principle, other States may bring a claim as

representatives of that community. If the practice of torture takes on a "massive", "persistent" or "systematic" character, it may even fall within the concept of an "international crime". As the International Law Commission put it:

> "Contemporary international law has reached the point of condemning outright the practice of certain States ... in imperiling human life and dignity ... The international community as a whole, and not merely one or other of its members, now considers that such acts violate principles formally embodied in the Charter and, even outside the scope of the Charter, principles which are now so deeply rooted in the conscience of mankind that they have become particularly essential rules of general international law. There are enough manifestations of the views of States to warrant the conclusion that in the general opinion, some of these acts genuinely constitute 'international crimes', that is to say, international wrongs which are more serious than others and which, as such, should entail more severe legal consequences". 9/

45. It is not yet clear what form this special type of international responsibility will take, but the International Law Commission stressed that

> "the attribution to the State of an internationally wrongful act characterized as an 'international crime' is quite different from the incrimination of certain individuals-organs for actions connected with the commission of an 'international crime' of the State, and that the obligation to punish such individual actions does not constitute the form of international responsibility specially applicable to a State committing an 'international crime' or, in any case, the sole form of this responsibility" 10/

(which it might do in the case of a less serious international wrongful act (P.H.K.)).

46. In conclusion it can be said that, according to contemporary international law, torture is a violation of an erga omnes obligation and therefore entails the responsibility of the State towards the international community as a whole. If torture is practised in a persistent and systematic manner or on a widespread scale it amounts to an international crime.

V. NATIONAL STANDARDS FOR CORRECTING AND/OR PREVENTING TORTURE

47. In pursuance of paragraph 3 of Commission on Human Rights resolution 1986/50, on 17 June 1986 the Special Rapporteur addressed notes verbales to Governments and letters to specialized agencies, intergovernmental organizations and non-governmental organizations, 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.

48. By 16 December 1986, the Special Rapporteur had received new information from 19 States concerning their respective standards designed to correct and/or prevent torture, namely: Canada, Congo, German Democratic Republic, Guatemala, India, Italy, Libyan Arab Jamahiriya, Mexico, Niger, Peru, Philippines, Portugal, Republic of Korea, Sri Lanka, Switzerland, Togo, Turkey, Union of Soviet Socialist Republics and Venezuela. The new information complements that contained in the Special Rapporteur's first report (see E/CN.4/1986/15, paras. 69-94).

49. Information was also provided by the International Labour Organisation and UNESCO; the Inter-American Commission on Human Rights; and a number of non-governmental organizations.

50. On 11 January 1986, Canada reported to the Special Rapporteur about the Archambault Institution riot (25 July 1982), during which hostages were taken. As a result, three Correctional Officers were murdered, two instigators of the riot took their own lives, 11 inmates were eventually brought to trial and five were convicted of various charges. In the following weeks, allegations of abuse of inmates emerged during the period following the riot from friends and relatives of inmates, as well as non-governmental organizations, who called for further inquiry into the allegations. In response, the Solicitor General decided, on 23 June 1983, to appoint Correctional Investigator, Mr. Ron Stewart, to conduct an inquiry.

51. The Stewart report documented specific abuses about which inmates testified: unnecessary use of gas, physical abuse, threats and verbal abuse, adulteration and denial of food and water, deprivation of sleep, bedclothes, mattresses and clothing and denial of toiletries and writing materials. The Correctional Investigator concluded that it was likely that certain instances of abuse did occur, however the precise extent or severity of the abuses could not be established, nor could specific abusive acts be linked to specific staff members.

52. Nevertheless, the Correctional Investigator recommended that specific measures be taken to try to prevent similar occurrences in the future. Thus, it was accepted that "during an emergency situation, an accurate record of work assignments be kept" (recommendation 6); that "accurate and intelligible gas inventories be kept and that every withdrawal of gas from the armory be signed for by the recipient, who must indicate in writing the purpose and place of use" (recommendation 8); and that "a health care officer visit each occupied cell in dissociation on a daily basis and speak with each inmate without a guard being present. If the inmate complains of mistreatment, ... he should be taken to the hospital and given a physical examination" (recommendation 13). However, recommendation 10 ("that any disciplinary

charge against a correctional officer found to be valid be permanently recorded on the file of the officer involved") was rejected; and recommendation 15 ("that in those instances where an inmate is suspected of being involved in any incident being investigated by the police and which may lead to criminal charges, he be allowed to consult with counsel prior to being questioned by the police and that he be allowed to have counsel present during such questioning") was kept under consideration.

53. On 21 November 1986, Guatemala transmitted to the Special Rapporteur the text of the Act on the Human Rights Commission of the Congress of the Republic and the Procurator for Human Rights. According to the law, the Commission "is a pluralist body with the function of promoting the study and updating of legislation on human rights in the country ... for the purposes of dissemination, promotion and effective enjoyment of fundamental rights ..." (art. 1). It will be composed of "... a Deputy for each of the political parties represented in the Congress of the Republic ..." (art. 2). Among other competences of the Commission, it may "make recommendations to the Executive for the adoption of measures in favour of human rights and request it to submit the relevant reports"; "maintain constant contact with international bodies concerned with the defence of human rights, for the purpose of consultations and exchange of information" (art. 4 (f) and (g)); and "propose to the plenary congress ... the names of three candidates for the post of Procurator for Human Rights ..." (art. 4 (a)). According to article 6 of the law, the Procurator for Human Rights (equivalent to an ombudsman) "... is a Commissioner of the Congress of the Republic for the defence of the human rights which are safeguarded by the Constitution and the international treaties and conventions acceded to by Guatemala. He shall exercise his duties for a period of five years and shall have legal personality, jurisdiction and competence throughout the Republic; he shall be the highest authority in respect to human rights matters and shall not be subordinate to any organ or official". Among the most relevant of his competences, the Procurator may "investigate any complaints concerning violations of human rights submitted to him by any individual" and "promote actions and remedies, judicial or administrative, wherever appropriate" (art.15 (c) and (f)). In particular, article 17 establishes that the Procurator "shall take steps to ensure that fundamental rights the exercise of which has not been expressly restricted are fully guaranteed during a state of emergency ...".

54. On 18 October 1986, India transmitted to the Special Rapporteur relevant legislation regarding restraints on the use of force by the law enforcement authorities. Thus, since the process of arresting a person may involve the use of force, the Criminal Procedure Code prescribes the manner in which an arrest must be made: the Police Officer is authorized to touch or confine the body of the person to be arrested only if the person does not submit himself to custody (sect. 46); the arrested person also has the right to request the magistrate to have him examined by a medical practitioner, where such examination will establish the commission by any other person of any offence against his body (sect. 54). In addition to the law, police manuals contain detailed instructions either prohibiting or restricting the use of force by the police while effecting arrests, interrogating suspects and accused persons or during any other stage of investigation.

55. On 5 February 1986, Italy reported to the Special Rapporteur on preventive legislation. In particular, "a specific offence (abuse of authority against arrested or detained persons) is defined in article 608 of the Penal Code, which provides for the penalty of imprisonment for up to 30 months for a public official who subjects to measures of constraint not authorized by law a person who has been arrested or detained and who is in his custody". In addition, "article 41 of the Prison Regulations (Act No. 354 of 26 July 1975) restricts the use of physical force and means of coercion against detainees by establishing that physical force may be used only when essential in order to prevent or thwart acts of violence, to preclude escape attempts or to overcome resistance, even passive, to compliance with orders given ...".

56. On 6 November 1986, the Republic of Korea sent the Special Rapporteur, inter alia, the text of article 125 of the Criminal Code, by which "a person who, in performing or assisting in activities concerning judgement, prosecution, police or other functions involving the restraint of the human body, commits an act of violence or cruelty ... in the performance of his duties, shall be punished by penal servitude for not more than five years and suspension of qualifications for not more than 10 years".

57. As regards corporal punishment, the Special Rapporteur received information about the position of the Libyan Arab Jamahiriya. Article 2 of Act No. 148 of 1972, concerning the Islamic Law, penalty for theft and hiraba (highway armed robbery), provides that "if the conditions stipulated in the preceding article are met, the thief shall be punished by having his right hand cut off"; and article 5 provides that a muharib (one who commits hiraba) shall be punished by having his right hand and left leg cut off if he has unlawfully taken others' property". Moreover, article 2 of Act No. 70 of 1973 provides that an adulterer shall receive 100 lashes, in addition to being liable to imprisonment. Furthermore, Act No. 89 of 1974 provides that any Muslim convicted of drinking alcohol shall receive 40 lashes (art. 5); if he is convicted of having otherwise consumed alcohol, whether in pure or mixed form, he shall receive not less than 10 and not more than 30 lashes. The Government concluded that the Islamic Law penalties are established in the Holy Koran so that they form part of the religion and beliefs of the population and therefore cannot be altered by deletion or attenuation or be replaced by other man-made penalties or by any other internationally approved measures.

58. On 15 October 1986, Mexico reported to the Special Rapporteur on its ratification of the Convention against Torture (23 January 1986) and on the adoption of a Federal Law to Prevent and Sanction Torture (Diario Oficial, 28 May 1986). According to the new law, "whenever any detainee or accused person so requests, he shall be examined by a forensic medical expert or by a physician of his choice ..." (art. 4). It also provides that "any authority having knowledge of an incident of torture is obliged to report it immediately" (art. 6).

59. In 1985, the Government of Peru informed the Special Rapporteur of the establishment of a Peace Commission as an advisory and consultative body of the Presidency of the Republic (see E/CN.4/1986/15, para. 88). On 5 September 1986, Supreme Resolution No. 265-86-JUS abolished the Peace Commission and on the same date Supreme Resolution No. 012-86-JUS established the National Council on Human Rights linked to the Ministry of

Justice. According to article 1, the Council shall be "... responsible for promoting, co-ordinating and advising the Executive with a view to protecting and ensuring the full enjoyment of the fundamental rights of the individual". The Council should be composed of nine people, namely the Minister of Justice, and representatives from the Ministries of Justice, Foreign Relations, the Interior and Education, as well as representatives of the Catholic Church, the Peruvian University, the bar, and a representative of the non-governmental organizations dealing with the protection of human rights.

60. On 15 August 1986, the Philippines reported on the establishment of a Presidential Committee on Human Rights (Executive Order No. 8 of 18 March 1986) for advisory and consultative purposes. In accordance with section 4, the Committee shall investigate complaints of unexplained or forced disappearances, extrajudicial killings, massacres, torture, and other violations of human rights, past or present, committed by officers or agents of the national Government or persons acting in their place or stead or under their orders, express or implied. Furthermore, it shall report its findings to the President and propose procedures and safeguards to ensure that human rights are not violated by officers or agents of the Government.

61. Subsequently, the Presidential Committee adopted Resolution No. CDH-1 of 14 April 1986 by which it proposed to maximize compliance with existing laws, inter alia, permitting family, lawyers, medical or religious personnel, to visit persons arrested, examine, treat and advise persons detained; it also proposed that the education and training of all police, military and other arresting and investigating personnel, especially those in charge of detention and convicted prisoners, shall include, in addition to the national standards, the United Nations Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Standard Minimum Rules for the Treatment of Prisoners, the United Nations Code of Conduct for Law Enforcement Officials, and the United Nations Principles of Medical Ethics, all of which the Philippines endorsed.

62. In order to strengthen existing law, the Presidential Committee also proposed disarming and disbanding the Integrated Civilian Home Defence Force and other paramilitary units; banning secret arrests and searches, secret detention places (safehouses), and incommunicado detention; suspending from office those charged with violations of human rights, and disqualifying them from promotion while the charges against them are pending; allowing inspection of all detention and imprisonment centres; ratifying Protocol II additional to the Geneva Conventions of 12 August 1949 (see footnote 1/), as well as the United Nations Convention Against Torture of 1984; punishing speedily violence to life or health, physical or mental, of persons who are no longer combatants, in particular political assassination or extralegal executions, forced disappearances, torture, other cruel or degrading treatment, mutilation or any form of corporal punishment, use of truth serums and other drugs; and increasing the penalties provided for by article 235 of the Revised Penal Code on the maltreatment of prisoners.

63. In addition, the Presidential Committee adopted Resolution No. CDH-2 of 22 May 1986, by which it was proposed to repeal or amend the repressive laws, decrees and executive issuances of the past administration violating basic human rights. Moreover, on 30 April 1986, the Philippines deposited its

instrument of acceptance of the United Nations Convention against Torture. Finally on 2 March 1986, Proclamation No. 2 lifted the suspension of the right of habeas corpus in the country.

64. On 30 September 1986, Portugal transmitted to the Special Rapporteur the text of new national standards, stating that "the regulations of the National Republican Guard mention ... the priority utilization, in the event of public disturbances, of persuasion and dialogue with the citizens in preference to any other means of coercion"; and "the use of coercive means to restore law and order and maintain the principle of authority only in cases where they are essential or where the above-mentioned means of persuasion have been exhausted". Members of the internal security service must "use force only to the extent strictly necessary and in fulfilment of their duties" and "not apply, inflict or tolerate acts of torture or any other cruel, inhuman or degrading punishment or invoke orders from their superiors to justify them". Finally, "Decree-Law 324/85 of 6 August provided for the possibility of compensation, through a resolution of the Council of Ministers, for officials against whom terrorist acts have been committed ...".

65. On 5 December 1986, Sri Lanka provided the Special Rapporteur with the text of the Instructions from the Deputy Inspector-General of Police to his officers on arrests under the Emergency Regulations. In accordance with the Instructions, any person arrested under Regulation 18 shall be produced before a magistrate within a reasonable time, in any event not later than 30 days after his arrest. In addition, a person so detained shall be kept in a place authorized by the Inspector-General of Police for a period not exceeding 90 days from the date of his arrest under Regulation 18 and shall, at the end of that period, be released by the Officer-in-charge of the place of detention unless such person has been produced before a court of competent jurisdiction. Moreover, a Police Officer investigating an offence under any Emergency Regulation has the right to question a person detained or held in custody under any Emergency Regulation and to take such person from place to place for the purpose of such investigation during the period of such questioning (Regulation 52 (a)(1)).

66. According to the Detention Order issued by the Minister under section 9 of the Prevention of Terrorism (Temporary Provisions) Act No. 48 of 1979, where "the Minister has reasons to believe or suspect that any person is connected with or concerned in any unlawful activity", he may order that such person be detained for a period not exceeding three months in the first instance, in such place and subject to such conditions as may be determined by the Minister. Such order may be extended for a period not exceeding three months at a time, provided that the total period of such detention shall not exceed 18 months. "Unlawful activity" is defined in section 31 (1) as

> "... any action taken or act committed by any means whatsoever, whether within or outside Sri Lanka, and whether such action was taken or act was committed before or after the date of coming into operation of all or any of the provisions of this Act in the commission, or in connection with the commission, of any offence under this Act or any act committed prior to the date of passing of this Act (i.e. 27 July 1979), which act would, if committed after such date, constitute an offence under this Act".

67. On 24 July 1986, the Parliament adopted, and the President approved the Regulations establishing the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights under the Sri Lanka Foundation Law No. 31 of 1973. With regard to the role of the Commission emphasis is placed on conciliation, mediation and discussion, rather than on adjudication. Thus, the Commission is vested with the functions of studying and investigating alleged discriminatory acts and reporting thereon; reviewing and researching legal developments which may be discriminatory and violate fundamental rights; and handling complaints and conciliation relating to discriminatory acts. No enforcement powers are vested in the Commission or the Director under the Regulations. Where no remedy is possible by conciliation or settlement, the Commission is required to forward a confidential report to the President setting out the matters at issue and recommending remedial action.

68. On 2 September 1986, Switzerland reported to the Special Rapporteur that "with regard to the training of persons who have to deal with individuals deprived of liberty, the competent Swiss authorities are guided ... by certain non-binding international instruments concerning the prohibition of torture which have been elaborated by the United Nations and the Council of Europe .... The instruments have an importance which should not be underestimated. The minimum rules of the United Nations have thus been accepted by a great number of States and constitute a very useful frame of reference for the activities of ICRC on behalf of political detainees ...". In particular, "mention should also be made in this context of Recommendation No. R (80) 9 of the Committee of Ministers of the Council of Europe to member States, dated 27 June 1980, concerning extradition to States not party to the Convention [see note 1/]. Swiss law is in harmony with this Recommendation since a provision of the Federal Act of 20 March 1981 on international mutual assistance in criminal matters is drafted in very similar terms".

69. On 18 September 1986, the Minister of Justice of Togo wrote to the Secretary-General transmitting information on a number of allegations and stating that "if necessary, Togo, a former Trust Territory of the United Nations, would always be prepared to receive any delegates which the Organization might wish to send to our country".

70. On 15 September 1986, Turkey transmitted to the Special Rapporteur a report dated 22 November 1985 adopted by the Parliamentary Committee for the Inspection of Prisons and Detention Houses. According to the report, "... the material conditions in the detention centres and prisons are not below the general material and financial norms available in our country". The Committee also reported on a number of charges of torture and ill-treatment before the Martial Law authorities (as of June 1985). A total of 941 cases were opened; of the people involved in those cases, 265 were acquitted, 105 convicted, 12 in detention awaiting trial and 13 on bail awaiting trial. The Committee also stated that "some allegations related to the period before incarceration, others to the period in prison.. However, the establishment of facts and collection of legally valid evidence with regard to allegations ... is not an easy task ...". It suggested "an appropriate system for preventing the occurrence of such individual cases in the future. The most adequate way of dealing with these allegations is to ensure that the most complete information concerning the alleged cases be submitted without any delay to the competent jurisdiction of the State". In particular, the Committee suggested that

convicts and detainees should have access to visits and means of communication, including access to legal counsel and telephone communications, that a handbook covering the rights and obligations of inmates should be prepared by the Ministry of Justice and distributed to all inmates, and that a system of following-up inmates' applications should be established.

71. On 13 October 1986 the Union of Soviet Socialist Republics provided the Special Rapporteur with additional information on its national standards. In particular, "pursuant to article 20 of the Fundamental Principles of Criminal Legislation of the URSS and the Union Republics and article 1 of the Fundamental Principles of Corrective Labour Legislation of the URSS and the Union Republics, the purpose of a penal settlement is not to wreak vengeance upon the criminal or to cause him physical suffering or torment, but to reform and re-educate him in the spirit of an honest approach to work, strict observance of the laws, and respect for the rules of socialist society". Moreover, "article 36 of the Fundamental Principles of Health Legislation admits the enforced treatment of persons suffering from tuberculosis, mental illnesses, venereal diseases or chronic alcoholism", and article 62 of the Criminal Code of the Russian Soviet Federal Socialist Republic provides, with regard to alcoholics and drug addicts, that "only if they have committed a crime and if there is a supporting medical opinion, may a court order their compulsory treatment ...".

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

72. Torture is still a widespread phenomenon in today's world. From the information he has received the Special Rapporteur has been confirmed in his conviction that no society, whatever its political system or ideological colour, is totally immune to torture. Of particular concern to the international community, however, are situations where torture has become a more or less normal element of daily life. In such situations the authorities have either lost control over the security or law-enforcement personnel and condone the practice of torture, seemingly for the sake of more important goals, such as "national unity" or "national security", or cast a benevolent eye on such practices, as they help to create an atmosphere of fear or terror where opposition may be fairly easily stamped out.

73. The first is usually the case in situations of civil strife, where there is a confrontation of hostile groups. Violence, fed by mutual hatred, becomes the predominant feature of everyday life. Especially where civil strife has taken the form of guerrilla tactics, military and security personnel feel threatened and may gradually fall into the practice of physical abuse and torture to extract information about their opponents. Every person living within the guerrilla area may be seen as a potential enemy who withholds information and may, therefore, be forced to disclose it by all available means. Although in many cases the victims of such abuse are completely innocent, the inevitable effect of such practices is that mutual hatred increases and life becomes ever more violent. Torture breeds hatred and the increased hatred leads to more atrocities which in themselves seem to justify the practice of more severe torture. The Government may genuinely condemn the practice of torture, but feels that, in view of the need to maintain and uphold national integrity and security, it cannot do anything against it. It, therefore, usually closes its eyes to reality and either flatly denies that torture takes place or contends that it is a reaction to the commission of terrorists acts. Governments should realize, however, that the vicious circle in which they seemingly find themselves may well have started with the abuses and the arrogant practices of the representatives of the official authorities. The prohibition and suppression of such practices are not only an obligation under international law but may also be a matter of sound policy.

74. The Special Rapporteur has received many allegations about the practice of torture in countries where the whole or parts of the country are the scene of civil strife or civil war. In some of these countries the climate of violence has indeed led to a disheartening loss of respect for the physical and mental integrity of the human person and for his dignity. In this respect the Special Rapporteur wishes to mention the situation in Afghanistan. The situation in Sri Lanka, which finds itself caught in a spiral of violence and where civilians are allegedly tortured in order to extract information from them about planned acts of violence by the insurgents is also of great concern. Serious allegations continue to come in about torture practices in El Salvador. In spite of the fact that the Government has once again committed itself to respect and guarantee fundamental human rights, certain parts of the State apparatus have obviously been successful in evading those commitments.

75. In other countries torture is practised to deter civil strike and to stifle opposition. It is used as a means not only to extract information but also to enforce behaviour in conformity with the prevalent rules. In this respect mention may be made of the situation in Chile and in South Africa. The Special Rapporteur has also received alarming reports about the practice of torture in the Islamic Republic of Iran where behaviour or even opinions that deviate from the norm are not tolerated.

76. It is significant that in many of the situations referred to above, either a state of emergency is declared for the whole or parts of the country, under which enjoyment of certain basic human rights has been curtailed or suspended, or special security legislation is in force, under which persons may be arrested without warrant and kept incommunicado for a considerable period. It is well known that such situations easily lend themselves to the practice of torture, as torturers may find it quite simple to avoid criminal responsibility for their acts. It is particularly disquieting that torture becomes so endemic in such a society that even a return to normality does not bring an end to the practice. In various cases the Special Rapporteur has continued to receive allegations from countries where either the previous régime has been replaced or a transfer to a civilian (elected) government has taken place. A firm and unrelenting attitude by the new incumbent is, therefore, required, as well as strict rules and retraining programmes for law enforcement personnel.

77. With regard to some countries the Special Rapporteur has received allegations of torture with regard to certain ethnic or religious groups in particular. In these cases torture usually took the form of gross physical abuses, such as beatings, rape, etc., often combined with robbery, testifying to a serious lack of respect for the dignity of these citizens. In such cases it should come as no surprise if eventually such a situation leads to insurgency of the group concerned, which in its turn will lead to the civil strife described above. Here again, the Government must adopt a firm position.

78. The Special Rapporteur has also received information concerning maltreatment in places of detention (irrespective of whether these were penal institutions) which amounted to torture as the effect was severe mental or physical pain. Such maltreatment can take the form of acts but also of omissions. In these cases the Special Rapporteur intends to start consultations with the Governments concerned and in one particular case has already done so. In such cases, the detained person, because he feels that his detention is the result of his divergent political views and that he is therefore unjustly detained frequently considers himself justified in resisting detention. This in turn leads to abusive treatment by security personnel which, however, is unacceptable if the detainee's physical or mental integrity is injured.

79. There are also cases where a specific type of punishment irreparably damages the integrity of the human person. Here also the Special Rapporteur feels that it is most appropriate to enter into consultation with the Governments involved and, in fact, he has tried to do so.

VII. CONCLUSIONS AND RECOMMENDATIONS

80. Torture is an extremely complex phenomenon. It takes many forms and occurs in widely divergent situations. Its occurrence is often determined by specific political conditions; and at the same time in spite of the varying circumstances it occurs in a strikingly monotonous pattern.

81. Therefore, torture may be the derivative of certain political conditions, its source is invariably the same: contempt for the personality of the other individual which has to be destroyed and annihilated. It is for that reason that torture is one of the most heinous violations of human rights as it is the very denial of the essence of human rights, namely the recognition that each living being has a personality of his own which has to be respected.

82. Therefore, a society that tolerates torture can never claim to respect other human rights; the duty to eradicate torture is thus a primordial obligation. Efforts to realize that goal should first and foremost be concentrated on the prevention of torture. It goes without saying that repressive measures are called for whenever torture has been practised. Those who have committed this offence should be brought to justice; but it is more important to go to the roots of the evil itself and to take away the causes which make torture possible. The Special Rapporteur can, therefore, only repeat the recommendations he made in his first report. In particular he wishes to stress the importance of limiting the period of incommunicado detention under national law, since many of the allegations he has received refer to torture in countries where a detainee may be kept incommunicado for a prolonged period. He also wishes to emphasize the importance of training programmes for law enforcement and security personnel, especially in countries where torture was regularly practised under a previous régime. The United Nations programme of advisory services should be particularly geared to respond favourably to requests made by Governments in this field. In view of the multitude of norms for the conduct of medical personnel, enumerated in chapter III, and the crucial role medical personnel allegedly often play in the practice of torture, the Special Rapporteur recommends that Governments and medical associations take strict measures against all persons belonging to the medical profession who have in that capacity had a function in the practice of torture. He also recommends that the role that the medical profession may play in the practice of torture should be highlighted in all courses on medical ethics.

83. A measure which may have an important preventive effect is the introduction of a system of periodic visits by a committee of experts to places of detention or imprisonment. On 6 March 1980, the Government of Costa Rica submitted to the Commission on Human Rights a draft optional protocol to the draft convention against torture and other cruel, inhuman or degrading treatment or punishment which provided for such a system of periodic visits. In resolution 1986/56 the Commission noting that the draft European convention against torture was based on similar ideas, recommended that other interested regions where a consensus existed should consider the possibility of preparing draft conventions based on the concept of a system of visits. In this context, it may be mentioned that the Inter-American Convention to Prevent and Punish Torture (concluded on 9 December 1985) does not establish such a system of periodic visits nor any other comparable machinery.

84. The introduction of systems of periodic visits should be seen as a preventive rather than a repressive measure. Although the determination of actual acts of torture as a result of such visits could lead to repressive action against the offenders, the main emphasis should be on the advice which experts may give after such a visit with regard to steps to be taken to correct and improve the existing régime in places of detention and imprisonment in the country visited. The element of periodicity is designed to ensure that a system of visits is seen as a means of co-operating with Governments rather than as an instrument for denouncing them. The fact that the idea of periodic visits would eventually form part of regional systems for protection of human rights (of which there are currently three, established in the context of the Organization of African Unity, the Organization of American States and the Council of Europe) would not necessarily stand in the way of the conclusion of a world-wide convention to which States which were subject to such a system of visits under a regional instrument could become party. However, the implementation of the world-wide system could be suspended for States subject to a regional system.

85. Such a system of visits is no more an intrusion in the internal jurisdiction of a State than the visits of staff members of the International Atomic Energy Agency to nuclear plants which may also lead to recommendations for the improvement of existing standards. In both cases such visits would serve a purpose which is recognized by the international community as being of vital importance for the well-being of mankind as they would ensure respect for human dignity and the maintenance of international peace and security, respectively.

86. Until such systems of periodic visits have been established, the granting of admission to ICRC teams to places of detention and imprisonment must be recommended, as such visits by ICRC may contribute to the prevention of torture and - in fact - in some cases have ostensibly done so.

87. In this context, the Special Rapporteur may recall his readiness to visit countries with the consent or at the invitation of the Government, not only on account of allegations of torture he has received, but also on any other occasion for which such a visit may be deemed useful by the Government concerned, for instance, when a power has been transferred to a new Government which wishes to take effective measures to eradicate torture practices which occurred under the previous régime.

88. Another measure which may contribute to the eradication of torture is the establishment of an independent authority which can receive complaints by individuals about administrative abuses, including torture. In some countries such a post already exists, be it under the name of ombudsman or some other title. On several occasions the Special Rapporteur, after having brought allegations of torture to the attention of Governments, has received the reply that they must be false, since under national law victims of torture may lodge a complaint with the judiciary but the persons concerned have not done so. Such a reply seems to underestimate the effects of torture on the vistim and the circumstances in which it has taken place. In many cases the victim is afraid to take action against his erstwhile torturer publicly and independently and, rather than go through a further ordeal, prefers to do nothing at all. That may be different if he can appeal to a person who is not part of the State apparatus but has legal authority to take action against

official functionaries and who may decide not to disclose the identity of his informers or only to do so collectively. There again, the long-term effect will be preventive, since people who are in a position to practise torture will know that there is a fair chance that they will be held accountable if they actually do so.

89. Finally, the Special Rapporteur wishes to stress again that torture cannot be justified under any circumstances, be it external war or internal strife. Far too often torture or similar abuses are condoned or even encouraged on grounds of national security. As the Special Rapporteur has pointed out in chapter VI, this plea is usually self-defeating as the practice of torture is often at the root of greater instability and increased violence. The information extracted by torture (the need to obtain information is the usual justification for the practice of torture) in many cases is completely unreliable. The Special Rapporteur has seen many reports in which the victims stated that in the end they had said whatever the interrogator wanted them to say. The long-term effects of torture, however, are far more serious than the "profits" expected from it, not only for the victims but also for society at large.

90. Torture should be viewed objectively and seen by everyone, Governments and individuals alike, for what it is: the criminal obliteration of the human personality, which can never be justified by any ideology or overriding interest, as it destroys the very basis of human society.

Notes

1/ International Committee of the Red Cross, Protocols additional to the Geneva Conventions of 12 August 1949 (Geneva, 1977).

2/ Economic and Social Council resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Procedures for the effective implementation of the rules were adopted by the Economic and Social Council in resolution 1984/47 of 25 May 1984.

3/ Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V, general comment 7 (16) (art. 7), para. 3).

4/ Principles, Guidelines and Guarantees for the Protection of Persons Detained on Grounds of Mental Ill-Health or Suffering from Mental Disorder, report prepared by Erica-Irene A. Daes (United Nations publication, Sales No. E.85.XIV.9), para. 225(a)-(c).

5/ Ibid., para. 243.

6/ Ibid., para. 248.

7/ Ibid., annex II.

8/ Case concerning the Barcelona Traction, Light and Power Company, Limited, Judgment of 5 February 1970: I.C.J. Reports 1970, p. 32, paras. 33-34.

9/ Yearbook of the International Law Commission, 1976, vol. II, Part II (United Nations publication, Sales No. E.77.V.5 (Part II), para. 78, commentary on art. 19, para. (33)).

10/ Ibid., para. (59).