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TORTURE AND ILL-TREATMENT OF PRISONERS THE RECORD SINCE 1975

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Agenda item 3:
Crime and the abuse of power:
offences and offenders beyond
the reach of the law.

Agenda item 4:
Deinstitutionalization of cor-
rections and its implications
for the residual prisoner.

Agenda item 5:
United Nations norms and
guidelines in criminal justice:
from standard-setting to imple-
mentation.

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TORTURE AND ILL-TREATMENT OF PRISONERS THE RECORD SINCE 1975

I. THE CONTINUING PRACTICE OF TORTURE AND ILL-TREATMENT

1. Introduction

Five years ago, the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, at the request of the General Assembly, considered the problem of torture and other cruel, inhuman or degrading treatment or punishment. Its work culminated in a draft declaration on the matter. Subject to minor amendment, the General Assembly adopted the text in resolution 3452 (XXX) of 9 December 1975 by acclamation.

In the period since the General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (Declaration against Torture), Amnesty International has taken action on torture as well as other cruel, inhuman or degrading treatment or punishment ("ill-treatment") in more than 60 countries where government officials inflicted violent measures on people in custody with the deliberate intention of causing them extreme physical and mental suffering.

The techniques, institutions and patterns of torture vary widely. Torture is not confined to any particular region or political ideology. The victims include men and women, children and old people, political and ordinary criminal prisoners, people engaged in or allegedly engaged in armed conflict and people who have not used or advocated violence. Methods of torture include beatings, mutilations and involve the use of well elaborated techniques and equipment, both ancient and modern in conception, sometimes designed to make the subsequent verification of torture difficult. Deaths under torture have been common. Torture has taken place in time of war or other emergency and in time of peace and apparent stability. Some governments, including governments which did not themselves use torture, have forcibly repatriated people to countries where they faced torture.

Most of the states where torture has been inflicted in the recent period have not only consented to the terms of the Declaration against Torture, but are also parties to international conventions forbidding it. Many have similar provisions in their domestic legislation. Virtually every government proclaims that torture is illegal. It is practically unknown for any government to defend its use, although occasionally definitions conflict as to what constitutes torture. In a number of countries legislation permits the infliction

of punishments (for example, flogging, amputation, stoning) which by international standards may be regarded as torture.

A number of governments have systematically cooperated in the illegal abduction, torture and murder of real or suspected opponents by extra-governmental bodies, often combining to result in their "disappearance". Usually the victim is arrested by uniformed personnel or other armed individuals operating with impunity and the authorities simply deny knowledge of the person's whereabouts. Sometimes the body, often mutilated, will eventually be found. All available information suggests that the number of victims of such crimes by government agents or sympathizers has in recent years been much higher than the number of victims of similar crimes by anti-government forces.

In some countries psychiatric and medical personnel, in collaboration with police and security officials, have misused methods of psychiatric treatment in relation to people forcibly confined to psychiatric hospitals for political rather than authentic medical reasons. Powerful drugs, (which are often also used to help patients in an acceptable psychiatric practice), have been administered to such inmates of psychiatric hospitals thus causing severe suffering and jeopardizing their health.

2. Purposes of torture

Prisoners have often been tortured as a form of punishment or revenge, to intimidate them or a broader public, to force them to cooperate with the authorities and, in view of the gruesome nature of recent torture techniques, for the sadistic pleasure of their captors.

However, torture is most commonly used to obtain information or statements from the victims incriminating themselves or others during the period of interrogation after arrest. In a number of countries torture of political suspects during interrogation has been and still is routine practice.

3. Absence of safeguards against torture

a) Laws permitting broad government discretion

Although in most cases national legislation proscribes torture, nevertheless it often includes provisions permitting arrest and detention procedures which facilitate the use of torture. Torture occurs most often where legislation provides for the arrest of people suspected of being or alleged to be in opposition to the government: various types of emergency legislation, laws allowing detention on the vaguest of suspicions,

laws giving broad and elastic definitions of crimes against the state—all of these have contributed to arrest by "dragnet", when torture is frequently inflicted. Often legislation permits prolonged detention *incommunicado* in the custody of the investigating authority, confinement in isolation or prolonged detention without charge or trial, which is also conducive to the infliction of torture. There is often legislation which gives broad jurisdiction to state security and military bodies, virtually concealing how political detainees are treated and restricting or preventing the civil courts from monitoring complaints of torture or acting on them.

b) Absence of judicial and other independent controls

The absence or suspension of certain legal safeguards tends to facilitate the use of torture. Almost invariably the victims are held *incommunicado*. People detained *incommunicado* for even a week have regularly been severely ill-treated. Normally, victims cannot resort to *habeas corpus* or other legal remedies whereby they might be brought quickly before an independent authority able to assess or alter their treatment by their captors. Usually there are no effective procedures for monitoring and recording the victims' medical condition. In a number of countries, government-employed medical personnel are known deliberately and with impunity to have falsified the victims' medical records so as to make subsequent investigation impossible.

In many countries trial procedures are such as to permit the use in evidence of "confessions" or statements by witnesses which have been obtained under torture. In some countries courts accept such statements as sufficient to convict an accused person even when there is no other evidence, and thus provide the investigating and prosecuting authorities with an incentive to torture arrested people into supplying "evidence". Often torture has been used to obtain confessions from people who manifestly did not commit the crime to which they confessed.

Even when the law provides that confessions obtained by torture are inadmissible as evidence, the *incommunicado* nature of pre-trial detention may prevent the trial judge from objectively assessing the circumstances in which a confession was obtained.

In some countries torture victims have been subjected to administrative detention without trial; thus their confessions have served to justify their imprisonment without ever being assessed by any judicial body. In a number of countries confessions obtained under torture have been publicized by the government without the accused ever being brought to trial. It is also common for people to be released without being charged or tried after being tortured in custody.

It is noteworthy that not only political prisoners

but also people accused of ordinary criminal offences have been tortured during interrogation. In any given country either category of prisoner may be the more liable to torture, although most of Amnesty International's information (and most of this submission) is about the torture of political prisoners.

c) Refusal to investigate torture allegations

As a rule governments have either ignored or flatly denied the truth of complaints that their officials have tortured or ill-treated prisoners. This is usually the case even where there is overwhelming evidence that such complaints are valid, for example, when there is a consistent pattern of deaths in custody. Individuals and organizations making complaints of torture normally urge the government responsible to investigate them and take remedial action. However, very often governments pass legislation which prevents the normal agencies of inquiry (the courts, the civil prosecuting authorities, the civil police) from examining complaints to do with political cases. Usually governments have refused or ignored calls for investigations into persistent allegations of torture. Most investigations that have been initiated by governments have been carried out by agencies themselves in some way implicated in the alleged torture. It is common for such investigations to be conducted in secret, without the participation of independent impartial individuals or bodies and without publication of the details of the investigation.

Governments still usually prevent publication of information about the use of torture within their jurisdiction and persecute citizens who complain of and publicize such matters. This is one of the factors which makes it imperative to increase the possibilities of international investigation of torture allegations and international monitoring of the treatment of prisoners. In most countries complaints and evidence of torture have been compiled and publicized by non-governmental bodies, private individuals, international non-governmental organizations or, in a few instances, by regional or global inter-governmental organizations. However, governments that use torture frequently impede the efforts of international non-governmental bodies to conduct such investigations, and inter-governmental bodies have often been inhibited by the argument that such investigations constitute "interference in domestic affairs".

In the recent past a number of governments have fallen from power after persistently denying allegations of torture and refusing to conduct open investigations into them. Subsequently, their records of human rights violations have been openly examined and condemned by their successors in government. In a number of such instances it has emerged that previous complaints of torture were fully justified. Once the veil of official secrecy was lifted, it became clear that they had been understatements of the true position.

d) Rarity and inadequacy of criminal proceedings against alleged torturers

Although virtually every government maintains that torture is illegal, in most countries where torture is known to have occurred there have been no prosecutions of officials involved in torture. There have been exceptions. Some governments have prosecuted the officials of former regimes. In some countries where torture is neither usual nor approved government practice, officials have been prosecuted and punished for torturing prisoners on their own initiative. In other countries where torture has been common practice there have been isolated prosecutions for torture, usually of low-ranking officials and with only mild punishments being imposed. Such prosecutions have apparently been intended to detract from complaints of systematic torture by suggesting that it was inflicted by aberrant individuals, not as part of official policy. Some governments have passed legislation giving blanket immunity or amnesty to officials for crimes committed against people in their custody while acting in the course of duty.

e) Denial of compensation to torture victims or their families

Since few governments acknowledge the occurrence of torture or their complicity in it, it is not surprising that victims of torture or their families rarely receive any legal redress, social or medical rehabilitation or financial compensation for their ordeal. This is despite the fact that torture has cost very many families the life of one of their members and the fact, borne out by growing evidence based on the medical examination of torture victims, that many who have been tortured suffer long-lasting, often permanent, physical and mental handicaps.

4. Ill-treatment of convicted prisoners or prisoners on remand

The issue of cruel, inhuman or degrading treatment or punishment is also raised by the practice of subjecting prisoners to prolonged solitary confinement and other similar forms of isolation. This happens in many countries but has been particularly noticeable in a number of developed countries throughout the 1970s. On the basis of its own investigations supported by medical research, Amnesty International has concluded that such treatment can lead to the impairment of prisoners' physical and mental health. Governments have defended the use of such methods as being necessary for security reasons and prison discipline. In Amnesty International's view neither argument can justify the subjection of prisoners to what amounts to cruel and inhuman treatment.

Amnesty International has also noted the severe ill-treatment arising from cruel and inhuman prison conditions and punishments, including inadequate food and medical care, lack of hygiene and danger of infection and compulsory labour prejudicial to sound

health. Typical punishments include isolation, deprivation of food and the use of restraints such as fetters, handcuffs and even hoods, and the enlisting of criminal prisoners to terrorize political prisoners. These practices are clearly incompatible with the Standard Minimum Rules for the Treatment of Prisoners.

II. RECOMMENDATIONS OF AMNESTY INTERNATIONAL

In the submission of Amnesty International the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders can act to inhibit if not end the practices described in Part I by promoting the implementation of the Declaration against Torture. Amnesty International therefore suggests that the Congress consider favourably the following recommendations:

1. Speedy adoption of the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment at the 35th Session of the General Assembly (Agenda items 3 and 5).

As Part I of this document shows, the situation of maximum danger for anyone apprehended by the authorities is when that person is under the exclusive control, and thus at the mercy of, the capturing body. Once an arrested person has access to family and to legal advice and is brought before the courts the likelihood of ill-treatment is significantly curtailed. In other words, arbitrary arrest and detention are a principal condition for torture and other cruel, inhuman or degrading treatment.

The General Assembly has before it a Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This constitutes a major compilation of international standards that would, if observed, do much to reduce arbitrary arrest and detention. It would be desirable if the Assembly were aware that this Congress supports adoption of the Draft Body of Principles.

It should be noted that this Draft Body of Principles was prepared as a result of a request by the General Assembly in its resolution 3453 (XXX) of 9 December 1975 which the Assembly adopted by way of follow-up to the Declaration against Torture.

2. The speedy adoption by the United Nations of a convention against torture and cruel, inhuman or degrading treatment or punishment (Agenda items 3 and 5).

In 1977, the General Assembly, in resolution 32/62 of 8 December 1977, requested the Commission on Human Rights to draft a convention that would be based on the Declaration against Torture.

Amnesty International considers it necessary for the convention to indicate that torture in all its forms, including the widespread practice of "dis-

appearances", is manifestly a grave criminal offence which must be treated as such at the international level. To be effective the convention should include provision for:

- a) an obligation to establish national jurisdiction over suspected torturers on the basis of the principle of universality of jurisdiction, and to try such individuals if they do not extradite them;
- b) an obligation not to extradite those accused of any offence to a country where they might face torture or cruel, inhuman or degrading treatment or punishment;
- c) an obligation to make reparation to victims of torture or other cruel, inhuman or degrading treatment or to their dependents, including financial compensation as well as medical treatment and all other means of rehabilitation to restore the victim to his or her previous condition;
- d) an obligation to take effective measures to repress torture and other acts of cruel, inhuman or degrading treatment or punishment;
- e) an obligation to establish mechanisms to ensure the effective implementation of the convention.

3. Promotion of internationally acceptable standards for rehabilitation of and compensation for victims of torture (Agenda item 5).

The effects of torture do not end when the torture stops. Doctors who have examined and treated former victims have been able to identify enduring sequelae of torture. These victims require and deserve treatment and restitution for their suffering. This should be a clear governmental responsibility arising from the original responsibility of government officials for the torture. The principle of compensation is contained in the Declaration against Torture.

In recognition of this need, an international seminar of doctors and lawyers, convened by Amnesty International in Geneva in June 1979, recommended that, in addition to the principle reflected in recommendation 2c above, a number of specific provisions should be included in or annexed to the proposed Convention on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These are:

- a) The States parties to the Convention agree that torture and other cruel, inhuman or degrading treatment or punishment as defined by the Convention constitutes not only a serious criminal act, but also a separate legal ground for a claim for restitution against the State.
- b) The fact that torture takes place in a public building or compound, regardless of the capacity of the torturer (public official or private person), is *prima facie* evidence that torture was committed or instigated by a public official, thus creating

liability for the State.

c) Restitution includes:

- i) substantial compensation for the pain and suffering that the victim has experienced;
 - ii) expenses for medical treatment and rehabilitation necessary for restoring the physical and mental health and the working capacity of the victim to a level comparable to the one enjoyed before the arrest, preferably in the form of special programs initiated by the State;
 - iii) in the case of permanent damage, restitution will be estimated on the basis of the reduced working ability of the victim;
 - iv) where torture resulted in the death of the victim, the dependents shall be entitled to substantial compensation.
- d) the above-mentioned claims should not be frustrated by a domestic Statute of Limitations as long as the claiming party has no substantial or procedural possibility whatsoever to raise a claim before a competent court.
- e) The findings of authorized United Nations bodies ascertaining acts of torture shall be taken full account of in proceedings concerning claims for restitution.

4. The speedy elaboration and adoption of principles restricting compulsory detention on grounds of mental ill-health (Agenda items 3 and 5).

Amnesty International has found that in many countries the situation of people detained on psychiatric grounds amounts to cruel, inhuman or degrading treatment. When such treatment is meted out to those who represent no direct threat to themselves or others and may even be perfectly sane, such treatment can well amount to torture. This is clearly the case where the apparent reason for the detention and the "treatment" is mere political dissent.

The importance of drafting principles to deal with this matter was recognized by the General Assembly in its resolution 32/62 of 8 December 1977. The Commission on Human Rights was given the task of examining the problem and drafting possible principles, and it sought the advice of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which is at present examining the matter.

5. Support for the principle of international visits to places of arrest, detention and imprisonment for possible incorporation in or annexation to the proposed convention against torture (Agenda item 5).

Experience has shown that on the rare occasions when humanitarian bodies have had free access to places where people were being held by the authorities, the number of allegations of torture and ill-treatment has diminished significantly. This has led to considerable international support for a proposal from the Inter-

national Commission of Jurists and the Swiss Committee against Torture. This proposal, based on a draft prepared by a meeting of international experts in Geneva in 1977, envisages the conclusion of an Optional Protocol to the proposed Convention on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment. By this Optional Protocol an international committee would be created to organize visits to places of detention.

6. Support for the creation of machinery within the United Nations to take effective action against violations of human rights and, in particular, to take emergency action on behalf of people arrested or detained in circumstances giving rise to fears for their life or safety (Agenda item 5).

In cases of torture, "disappearances" and unlawful killings, it is often in the period directly after arrest that a person's life or physical well-being is threatened. The sooner international awareness of someone's plight can be communicated to the authorities, the greater the chances of rescuing the victim. International concern about enforced or involuntary disappearances has already led to the establishment of a group of experts of the United Nations Commission on Human Rights charged with examining questions relevant to the matter and with performing its functions in an effective and expeditious manner. It is important that such a body be able to take emergency action and deal not just with disappearances but also with other threats to the life or security of those in detention. It would be valuable if the Congress supported the creation and operation of appropriate machinery that could constitute an internationalization of the remedy of *habeas corpus*. The goal offices role of the Secretary-General is also relevant here.

The United Nations has for many years discussed proposals for the creation of a United Nations High Commissioner for Human Rights. The content of the proposals has varied. According to some proposals the High Commissioner would be a sort of international ombudsman capable of taking up individual cases; according to others, the High Commissioner would be able to deal only with general situations of serious human rights violations. The idea was given new impetus by the then President of Uganda, Godfrey Binaisa, at the 34th Session of the General Assembly on 28 September 1979. Having expressed the "disappointment" of Ugandans at "the silence of this organization at the time of their greatest need", he declared that "Uganda supports, among other measures, the proposal now under discussion for the creation of an office of United Nations High Commissioner for Human Rights". Former United Nations Commissioner for Namibia, Seán MacBride S.C., has proposed an alternative measure. In a lecture at the

12th International Council Meeting of Amnesty International on 6 September 1979 at Leuven in Belgium, he proposed the creation of a United Nations Commissioner for the Prevention of Genocide and Torture, whose mandate would be to deal with "gross and massive violations of human rights involving genocide and torture".

7. Initiating a study by an appropriate United Nations body on maximum security detention practices (Agenda item 4).

The issue of maximum security detention cannot be ignored. Isolation, in particular, is an aspect of many present forms of high security detention. At its worst this involves prolonged solitary confinement, sometimes with aggravating features (bare cells), or as part of a special program for behaviour modification. On the basis of its own research Amnesty International has concluded that other forms of isolation in high security detention can also seriously affect the health of prisoners and that the effects of isolation militate against reform and rehabilitation.

In 1976, the United Nations Social Defence Research Institute (UNSDRI) embarked on a study of such practices. It is understood that UNSDRI was unable to pursue its project for various reasons. The Congress should express itself in favour of UNSDRI resuming this work.

8. Consideration of how national mechanisms for the protection of human rights could be strengthened (Agenda item 5).

Virtually all national legislations include safeguards against violations of human rights, certain standards for the treatment of detainees and specific rights for the defendant in the legal proceedings. Such provisions are: prohibition of torture; *habeas corpus (amparo)*; the limitation on the length of time the defendant may be held by police before being handed over to the authority of the judge (often 24 hours); access to defence lawyer; time limit on the judge's decision on committal for trial or release; the right to be under the jurisdiction of the judge while in prison; the right to retraction of confession if made under torture. It is well known that these provisions are often ignored by law enforcement agencies and even by the courts. Police or armed forces do not respect the time limit for handing over to the judge; the arrested person is held *incommunicado* for lengthy periods and tortured; the judge's request to see a detainee is met with blatant denial that the latter is held by the agency in question; the court does not accept the retraction of confession, nor investigate the alleged torture. The state prosecution office does not initiate investigation or legal proceedings against officials who are alleged to have ill-treated detainees. These basic safeguards are essential for maintaining the rule of law in any country, and are the responsibility of various

national institutions. The first prerequisite for upholding these safeguards is the citizen's own knowledge of his or her rights under the law. The Congress could consider ways of including basic instruction about citizens' constitutional and other legal rights in the educational curriculum at all levels, including adult education.

However, in order to spread knowledge and raise awareness among all sections of the population, sustained and concerted efforts are needed not only by national and local governments but also by mass media, bar associations, other professional organizations, youth movements, trade unions, churches and women's associations. Such groups are in the best position to advise the victims on international complaints machinery and represent them at international bodies. They can also monitor a national government's adherence to international commitments in the field of human rights, assess the effectiveness of the international petition system and suggest reforms. Education in human rights by UNESCO and regional inter-governmental organizations could be valuably undertaken.

Further important steps are the proper training of

personnel of law enforcement agencies and instruction in their obligations under national and international law. The implications of the Nuremberg principles should be explained to them. The Congress could consider arranging compulsory national and international courses for such personnel.

The practice in many countries of identifying the defence lawyer with the political views or even activities of his or her client makes effective legal defence and consequently detection and prevention of torture in political cases virtually impossible. In recent times it has also led to the imprisonment or exile of the lawyers themselves. The Congress could consider how to counter such dangerous tendencies.

The proper functioning of *habeas corpus* is indispensable to the safeguarding of a detainee's physical integrity and subsequent fair trial. The Congress could consider how the legal profession, the judiciary and civil liberties bodies can help to strengthen this legal procedure and to penalize any agency that falsely denies detaining an individual, thus flouting the authority of the judiciary.

Emphasis should be given by the Congress to other measures governments might take at the national level to prevent the crime of torture.

AMNESTY INTERNATIONAL is a worldwide movement which is independent of any government, political grouping, ideology, economic interest or religious creed. It plays a specific role within the overall spectrum of human rights work. The activities of the organization focus strictly on prisoners:

- It seeks the *release* of men and women detained anywhere for their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence. These are termed "*prisoners of conscience*".
- It advocates *fair and early trials* for all *political prisoners* and works on behalf of such persons detained without charge or without trial.
- It opposes the *death penalty* and *torture* or other cruel, inhuman or degrading treatment or punishment of *all prisoners* without reservation.

AMNESTY INTERNATIONAL acts on the basis of the United Nations Universal Declaration of Human Rights and other international instruments. Through practical work for prisoners within its mandate, Amnesty International participates in the wider promotion and protection of human rights in the civil, political, economic, social and cultural spheres.

AMNESTY INTERNATIONAL has over 2,000 adoption groups and national sections in 39 countries in Africa, Asia, Europe, the Americas and the Middle East, and individual members, subscribers and supporters in a further 86 countries. Each adoption group works on behalf of at least two prisoners of conscience in countries other than its own. These countries are balanced geographically and politically to ensure impartiality. Information about prisoners and human rights violations emanates from Amnesty International's Research Department in London.

AMNESTY INTERNATIONAL has consultative status with the United Nations (ECOSOC), UNESCO and the Council of Europe, has cooperative relations with the Inter-American Commission on Human Rights of the Organization of American States and is a member of the Coordinating Committee of the Bureau for the Placement and Education of African Refugees of the Organization of African Unity.

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