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Comments relating to the submission of the Third Periodic Report to the United Nations Committee against Torture

In view of the examination of Switzerland's third periodic report[1] on its implementation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture) by the UN Committee against Torture, on 14 November 1997, Amnesty International takes this opportunity to comment on some of its concerns relating to alleged ill-treatment by police officers in Switzerland.

Previous scrutiny of Switzerland's record on torture and ill-treatment

Switzerland ratified the UN Convention against Torture in December 1986 and the UN Committee against Torture considered the government's initial report in November 1989. Following its consideration, in Geneva, of Switzerland's second periodic report on its implementation of the Convention in April 1994, the Committee against Torture indicated concern, *inter alia*, about cases of police ill-treatment and stated that it considered reforms in legislation and practice relating to police custody to be desirable. In particular, it recommended the introduction of the guaranteed right for detainees to get in touch with their families, to have immediate access to a lawyer and to a medical examination by a doctor of their own choice or drawn from a list of doctors compiled by the Medical Association.[2]

In April 1994, prior to the Committee's examination of Switzerland's second periodic report, Amnesty International brought to its attention a report published by the organization entitled *Switzerland - Allegations of ill-treatment in police custody* (AI Index: EUR 43/02/94).

Amnesty International's report expressed concern about reports that police officers had sometimes used deliberate and unwarranted physical violence against people at the time of arrest or during the first 24 hours in police custody, before being put at the disposal of a judge (that is, during the *garde à vue* period). Many of the allegations concerned foreigners and people of non-European ethnic origin and verbal racial abuse was frequently reported in such cases. The organization pointed out that the allegations had been made over a period of several years; that they came from several cantons; were largely consistent in their nature and content, and originated from a variety of sources. The report described cases which were illustrative of the

[1] CAT/C/34/Add.6 - unpublished by the UN at the time of writing.

[2] CAT/A/49/44.

allegations received, many of them from the Canton of Geneva.[3]

Amnesty International also noted that in cases where formal complaints of ill-treatment were lodged, judicial and administrative investigations often appeared to lack thoroughness and very rarely resulted in disciplinary or criminal sanctions against law enforcement officers.

The organization was not in a position to confirm, or reject, the accuracy of all the allegations of ill-treatment made by individuals which it had received. It did not find, nor has it at any time since claimed, ill-treatment of detainees by police officers to be systematic in Switzerland generally, or in any individual canton. The conclusion of its April 1994 report was that there was "a substantial cause for concern" because of "the number of allegations ... taken together with the conclusions of other, reputable, international governmental and non-governmental organizations", including the Council of Europe's Committee for the Prevention of Torture (CPT)[4] and the Geneva-based Association for the Prevention of Torture (APT)[5], which had also publicly reported receiving numerous similar allegations.

In the period since the publication of Amnesty International's report and the UN Committee against Torture's examination of Switzerland's second periodic report there have been a number of significant developments. These developments include further reports of ill-treatment of detainees in police custody which have been raised with the Swiss authorities by individuals, domestic and international non-governmental organizations (NGOs), including Amnesty International, by the UN-based Human Rights Committee,[6] by the UN Special Rapporteur on Torture[7] and the CPT, as well as recommendations from these bodies to review present inadequacies in safeguards against ill-treatment in police custody.

[3]Geneva is one of the 26 cantons and semi-cantons which make up the Swiss Confederation. Each canton has its own constitution, government and legislative assembly, its own police force and relevant police legislation and its own code of penal procedure. The cantons work in one of the three official languages of Switzerland: French, German and Italian.

[4] A body of experts elected by states parties to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to strengthen the safeguards against torture and other ill-treatment afforded by the European Convention for the Protection of Human Rights and Fundamental Freedoms and other international standards by making periodic visits to the countries which have ratified the convention and making recommendations to the governments in question.

[5]Formerly known as the Swiss Committee against Torture, founded in 1977.

[6]A body of experts which monitors states parties' implementation of the International Covenant on Civil and Political Rights.

[7] Appointed by the UN Commission on Human Rights.

In February 1995 the **Association for the Prevention of Torture** published a *Rapport sur les conditions de détention en Suisse* (*Report on conditions of detention in Switzerland*). APT found that "Cases of physical violence or abuse by police (insults, threats, intimidation, racist language) are regularly reported,"[8] that the victims of police ill-treatment were in general "people who are foreigners or on the fringes of society"[9] and that ill-treatment most frequently occurred during the arrest and *garde à vue* period. The document, which focused on eight cantons, cited allegations of physical assault by police officers in six of them and stated that a study of these cases demonstrated clearly that on almost every occasion when use of violence by the police was acknowledged, the authorities said it was justified because the police had acted in proportion to provocation or resistance on the part of the alleged victim.

In June 1992 Switzerland acceded to the International Covenant on Civil and Political Rights (ICCPR), Article 7 of which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". In November 1996, following its consideration at the UN in Geneva of Switzerland's initial report on its implementation of the ICCPR, the **Human Rights Committee** indicated that its main areas of concern included the "numerous" allegations of ill-treatment, "particularly in respect of foreign nationals or Swiss citizens of foreign origin" in the course of arrests or police custody (*garde à vue*), unsatisfactory investigations into complaints of ill-treatment and failure to impose appropriate, or any, penalties on those responsible for such treatment.

The Committee recommended that Switzerland intensify discussions aimed at harmonizing the 26 cantonal codes of penal procedure, particularly concerning the provision of fundamental guarantees for detainees. The Committee stressed the need for all cantons to introduce a legal right for criminal suspects to contact a lawyer and their family and friends as soon as they are arrested, noting that in practice it appeared very difficult for the majority of people under arrest to inform their family or friends. It also emphasized the need for the detainee to be examined by an independent doctor upon arrest, after each period of questioning and before appearing before the judge of instruction or being released.

The Committee also recommended that independent mechanisms, subject to public supervision, be established in all cantons to receive and examine complaints of police ill-treatment.[10]

[8] "Des cas de violences physiques ou d'abus policiers (insultes, menaces, intimidation, langage raciste) sont régulièrement rapportés".

[9] "Les victimes sont en général des personnes étrangères ou marginales."

[10] See CCPR/C/79/Add.70.

Continuing allegations of ill-treatment in police custody and official initiatives aimed at improving safeguards against such treatment

The vast majority of allegations of police ill-treatment described by Amnesty International in its April 1994 report, in subsequent external documents concerning Switzerland and in correspondence with cantonal authorities, as well as those raised by inter-governmental organizations (IGOs) and other NGOs, have been dismissed as unfounded by the relevant cantonal authorities following administrative and/or judicial investigations. Where the use of force has been acknowledged, it has usually been said to be only that necessary to subdue a person violently resisting arrest and injuries recorded in medical reports said to be sustained while resisting arrest.

Amnesty International recognizes that the police have a difficult and often dangerous job. It also recognizes that police officers are permitted, even obliged, to use force in certain situations. However, the authorities have a responsibility to ensure that deliberate and unwarranted ill-treatment will not be tolerated under any circumstances.

According to Principle 4 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials: "Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms." The Code of Conduct for Law Enforcement Officials states, in Article 3, that: "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty".

New allegations of ill-treatment by Swiss police have been received by Amnesty International from detainees themselves, their families and friends, lawyers, social workers, representatives of religious bodies, groups and individuals offering support to refugees and asylum-seekers, and locally-based NGOs, as well as from members of the public who have witnessed arrests on the street or other public confrontations with police officers. A high proportion of the allegations continue to concern foreigners and are often accompanied by reports of racist insults.

The most common forms of physical ill-treatment alleged to Amnesty International in recent years are single or repeated slaps, kicks and punches and handcuffs applied very tightly around the wrists of detainees in such a way as to cause intense pain. Blows with sticks or batons are sometimes reported and also heavy pressure on the windpipe causing breathing difficulties. There have been several allegations of police dogs attacking and inflicting unwarranted injury on people who claim they had already surrendered or posed no threat, and of officers not calling the dogs off when they should (see, for example, the allegations made by Marc Guerrero - Appendices 3, 4 & 5).

Enforced stripping in police stations for no apparent reason except to cause humiliation is often reported. In early 1995 there were also a number of reports of people stopped by police in the city of Zurich, on suspicion of being drug-users or dealers and/or illegal immigrants, being forced to strip down to their underclothes, and sometimes strip naked, on the street, sometimes in sub-zero temperatures.

Amnesty International has received a number of reports of alleged ill-treatment from concerned members of the public in various cantons, who state that they have witnessed violent and insulting behaviour towards people stopped on the street by police officers and that they wish to register their concern but who, nevertheless, do not wish their names to be passed on to the authorities or to be made public.

A number of allegations of physical ill-treatment and verbal racial abuse by police officers operating on the streets and in police stations in the city of Zurich, have reached Amnesty International over recent years, but the overwhelming majority of these allegations have been made by people who wish to remain anonymous. In many instances the alleged victims, and also witnesses, have expressly

asked local non-governmental groups and Amnesty International not to raise their cases or names with the authorities, or to make them public because, rightly or wrongly, they fear repercussions (some alleged victims acknowledge that they are residing illegally in Switzerland and therefore fear expulsion; other victims and witnesses have said that they fear police harassment).

Relatively few formal complaints appear to be lodged with the administrative or judicial authorities in Zurich (see case of Hassan Laamouri - Appendices 2 & 3) and Amnesty International has noted the cooperation of the Zurich Municipal Police authorities with regard to the organization's requests for information on cases it has raised where formal complaints have been lodged.

Amnesty International fully recognizes that, if allegations are made anonymously and no formal administrative or criminal complaints are lodged, this poses obvious difficulties for any investigation by the responsible authorities. However, in its overall assessment of the situation, Amnesty International has to take such allegations into account. This is a situation which is often encountered in other countries and underlines the need for fully independent and accessible mechanisms to receive and investigate complaints.

It should also be recognized that in recent years several steps have been taken at federal and cantonal level aimed at addressing some of the concerns which have been raised by IGOs and NGOs about the treatment of detainees in police custody. A number of these are noted in subsequent pages. However, further measures appear necessary.

Several of the reforms instituted by the Canton of Geneva before 1994 were summarized in Amnesty International's report of April 1994 (see Appendix 1). This Canton in particular, from which many of the allegations of ill-treatment raised by Amnesty International and other organizations have emanated, has in recent years initiated further reforms aimed at improving safeguards against ill-treatment in police custody. However, there appear to be difficulties in the full and effective implementation of some of these. Several of the initiatives are described in subsequent pages. (See also Appendix 6.)

The Geneva Chief of Police, while emphasizing that he considers the number of complaints of ill-treatment made against the Geneva police to be extremely small in number, when set against the number of police arrests and interventions per annum, and noting problems of under staffing and excessive workload suffered by the police, has publicly acknowledged that some of the complaints of ill-treatment made against officers of the Geneva police are well-founded.

He has publicly supported the introduction of reforms aimed at improving safeguards against ill-treatment, pointing out that a proposed systematic medical examination of detainees entering police custody would also serve to protect police officers from unfounded allegations of ill-treatment. In the course of the work of a parliamentary commission drafting amendments to the Geneva Code of Penal Procedure (see later), the Chief of Police indicated his willingness to examine other possible safeguards against ill-treatment, such as the installation of video equipment in police interview rooms and the creation of the post of police ethics commissioner, similar to an existing post in Canada.

Notwithstanding efforts made at cantonal and federal level, and welcomed by Amnesty International, to address the issue of alleged police ill-treatment, fresh allegations of ill-treatment by police officers continue to be received from Switzerland, together with the persistence of complaints that some investigations into alleged police ill-treatment are not carried out promptly, thoroughly or impartially. (See later - ***Prompt and impartial investigations into alleged ill-treatment***.)

Like other IGOs and NGOs which have expressed concern about allegations of ill-treatment by Swiss police officers, Amnesty International is concerned that all possible safeguards against the ill-treatment of detainees should be in place, that prompt, thorough and impartial investigations should be conducted into allegations of ill-treatment and that those who may be guilty of such abuses should be brought to justice.

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The most detailed recent study published by an IGO or NGO concerning detention in police custody and safeguards against ill-treatment in police custody in Switzerland is contained in a CPT report published in June 1997.

Findings of the European Committee for the Prevention of Torture

The European Convention for the Prevention of Torture and Other Inhuman or Degrading Treatment or Punishment, ratified by Switzerland in October 1988, established the **European Committee for the Prevention of Torture** (CPT). In June 1997 the Federal Council (the government) authorized publication of the CPT's report[11] on its second periodic visit carried out in February 1996, to follow up the criticisms and recommendations made after its 1991 visit[12] and to examine the treatment and conditions of detention of people held in various places of detention in the cantons of Bern, Geneva, Ticino, Valais, Vaud and Zurich. The government's interim response was published simultaneously.

The CPT stated that the great majority of individuals met during its two-week visit, held or recently held in police custody, indicated that they had been correctly treated both at the time of arrest and during police interrogation. However, the CPT added that it had met "a certain number of people, in particular foreign nationals and people arrested in connection with drugs-related offences, who alleged having been subjected to ill-treatment, consisting mainly of insults, slaps and blows, by officers *at the time of arrest*"[13]. The CPT also noted that in Zurich it had met two detainees who stated they had been severely bitten by police dogs at the time of arrest. One of them still displayed wounds on his shoulder and thigh. Zurich cantonal police authorities stated that the police intervention had respected the principle of proportionality: the person had tried to run away when stopped during a drugs check, ignored police orders to halt and had resisted arrest "energetically".[14] In response to the CPT's request for detailed information on standing instructions on the use of police dogs in arrest operations, the federal authorities indicated that, their knowledge, no such guidelines existed in the Swiss cantons.

The CPT also noted that it had received a list, relating to 1995, of 22 people bearing traumatic injuries which had been passed to the Geneva Chief of Police by Geneva's University Institute of Forensic Medicine. Twenty-one of them alleged being ill-treated by the police, mainly at the time of arrest. Two alleged being ill-treated during police interrogation: one of these claimed to have been slapped and received blows to the lower half of his body with an electric flex. A clinical examination

[11] CPT/Inf (97) 7.

[12] See CPT/Inf(93) 3, 4 and 7. See AI Index: EUR 43/02/94 for a summary of the CPT's findings and recommendations regarding detention in police custody following its 1991 visit.

[13] "... un certain nombre de personnes, notamment des personnes de nationalité étrangère et des personnes arrêtés pour des infractions liées aux stupéfiants qui ont allégué avoir subi de mauvais traitements de la part des fonctionnaires de police lors de leur arrestation".

[14] "énergiquement".

carried out two days after the alleged incidents recorded injuries consistent with the use of an electric flex.

The Geneva authorities indicated, with reference to these 22 cases and four other cases of alleged ill-treatment raised by the CPT, that in the majority of cases no criminal complaint had been lodged by the individual concerned so that the allegations mentioned in the medical reports had not been confirmed. In most cases where there had been criminal complaints it had been found that the police officers had behaved in conformity with the law, leading to the Procurator General archiving the complaints.

The CPT stated that it had encountered very few allegations of physical ill-treatment being inflicted *during police interrogation* but noted that it had heard some such isolated allegations in the Cantons of Valais and Zurich. In one case a medical report drawn up on the detainee's admission to prison recorded that his injuries (including a haematoma to the abdominal wall and contusions around the abdomen, liver and bladder) were consistent with his allegations of ill-treatment. The Department responsible for justice, police and military affairs in the Canton of Valais responded that, without further details about the allegations, it was not in a position to establish, via appropriate investigations, whether the allegations were well-founded and that, in the absence of formally registered complaints, it disputed them.

The CPT requested that - in view of the information gathered during its visit - law enforcement officers be reminded that the use of force should be limited to what is strictly necessary and that as soon as a person has been subdued, nothing could ever justify officers physically abusing him/her.

The CPT also made a number of detailed recommendations aimed at improving safeguards against ill-treatment in police custody. These and the response of the Swiss authorities are summarized in subsequent pages.

A case of alleged police ill-treatment which has recently attracted extensive attention in Geneva, engendered widespread concern and protest from the NGO human rights community, as well as expressions of great concern from the Nigerian authorities, is that of a prominent Nigerian human rights lawyer, **Clement Nwankwo**. (See Appendix 5 for further details.)

Clement Nwankwo is the Executive Director of the Constitutional Rights Project, one of Nigeria's leading human rights organizations and has won several human rights awards, including the Martin Ennals Human Rights Award (jointly given by a number of NGOs: Amnesty International, Article 19, HURIDOCS and International Alert) in 1996.

The allegations made by Clement Nwankwo about his treatment while in the custody of Geneva police in April 1997, following his arrival in the city to attend a session of the UN Commission on Human Rights (sponsored by the International Commission of Jurists), appear to illustrate a number of concerns regarding the treatment of detainees in police custody in Switzerland generally. They also underline the need for the implementation of reforms in areas highlighted by IGOs and NGOs in recent years.

Frequent reference is made, therefore, to the case of Clement Nwankwo in the course of this document. Reference is made to other, individual, cases of alleged ill-treatment where they present particular features illustrating concerns raised by IGOs and NGOs.

Clement Nwankwo alleged - *inter alia* - that:

_ he was subjected to physical ill-treatment and degrading treatment at the time of arrest and during the first hours in police custody. He alleged being kicked, punched and beaten by officers who used fists and batons, and who put a baton across his neck exerting such pressure

that he lost consciousness and being slapped and stripped naked in the police station and left in his underpants, handcuffed to a table leg for around an hour;

_ he was racially abused;

_ he was questioned by the police and the judge of instruction and then found guilty of shoplifting and opposing the police,[15] without the assistance of a lawyer;

_ he was not allowed to contact a third party while in police custody to inform anyone of his detention. (He was allowed to make his first phone call from court, some 48 hours after his arrest);

_ he was refused access to a doctor of his own choice in police custody (having refused the option of the police calling in a doctor) and not medically examined on entry to prison. As a result he did not receive a medical examination and treatment for his injuries until after his release some 72 hours after his detention;

_ he was given no information about his rights while in police custody and was not informed of the reason for his detention until over two hours had elapsed;

_ he was asked to sign documents while in police custody which he was unable to read as they were written in a language he did not understand.

In June 1997, after challenging the April verdict, and in the absence of any incriminating evidence, Clement Nwankwo was acquitted of stealing two women's suits. However, the conviction for opposing the police was confirmed. He has stated that, a few days before the hearing, the police authorities made a verbal offer to withdraw the charges of opposing the police, if he undertook not to pursue a claim for compensation against them. He rejected the offer. A further appeal against the charge was heard in September 1997. The verdict had not been issued at the time of writing.[16]

[15] "Opposition aux actes de l'autorité".

[16] Amnesty International observers attended both the June and September hearings.

In May 1997 the Geneva authorities had informed Clement Nwankwo that an internal administrative inquiry had dismissed his allegations of physical assault as unfounded, arguing that it was his "strong resistance"[17] to arrest that led the police officers to use force. However, it concluded that the "conditions" in which he had been held in a police interview room "were not in conformity with the rules of ethics of the Geneva police".[18] Clement Nwankwo was informed that sanctions would be taken against the officers concerned.[19] In his reply he stated categorically that he did not resist arrest or oppose the police and had already handed his passport over to the police, as requested, before they tried to handcuff him, without explanation, and then assaulted him. In July Clement Nwankwo lodged a criminal complaint against the Geneva police officers involved in his arrest.

Introducing measures and undertaking systematic reviews to prevent torture and ill-treatment

Articles 2, 11 and 16 of the UN Convention against Torture require each State Party to take effective legislative, administrative, judicial or other measures to prevent torture and ill-treatment and to keep under systematic review interrogation rules and practices and other arrangements for overseeing the custody and treatment of detainees, in order to prevent acts of torture and other cruel, inhuman or degrading treatment.

As already indicated above, Switzerland has ratified the principal international instruments prohibiting torture and cruel, inhuman or degrading treatment and punishment and has regularly submitted periodic reports to the relevant UN bodies and sent official representatives to respond to the questions raised by these bodies. The federal government has also allowed publication of the periodic reports of the CPT on its visits of 1991 and 1996, together with the interim and follow-up responses which it has supplied promptly to the questions and recommendations put forward by the CPT.

The CPT's report on its February 1996 visit, published in June 1997, shed light on Switzerland's implementation of some of these recommendations.

In that report the CPT noted that, following its 1991 visit, it had recommended, *inter alia*, the introduction of three safeguards against the ill-treatment of detainees in police custody which it considered fundamental:

1. **to have a relative or a third party informed of the arrest without delay;**
2. **to have access to a lawyer from the moment of arrest;**
3. **to have access to a doctor, *including one of the detainee's own choice*.**

[17] "vive résistance".

[18] "Les conditions .... ne sont pas conformes aux règles de déontologie de la police genevoise".

[19] Amnesty International understands that one police officer has since received a reprimand and two have received official warnings and that these disciplinary sanctions are currently the subject of internal police appeals procedures.

The CPT recalled that at that time the Federal Council had expressed its agreement with the first recommendation but disagreement with the second and third recommendations. The Committee noted that, according to its observations in the cantons visited in February 1996, the situation with regard to these three recommendations appeared to have "scarcely developed"[20] since its 1991 visit. It recommended, therefore, that the authorities re-examine their position in these areas. (See paragraph 40 of CPT/Inf (97) 7.)

[20]"La situation n'avait guère évolué".

1. The right to have a relative or third party informed of the arrest without delay[21]

Rule 92 of the UN Standard Minimum Rules for the Treatment of Prisoners states that: "An untried prisoner shall be allowed to inform immediately his family of his detention and shall be given all reasonable facilities for communicating with his family or friends, and for receiving visits from them, subject only to such restrictions and supervision as are necessary in the interests of the administration of justice and of the security and good order of the institutions".

Principle 16 (1) of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment has a similar requirement. In the case of foreign nationals Article 16(2) further stipulates that the detained person should also be informed of his right "to communicate by appropriate means with a consular post or the diplomatic mission of the State of which he is a national".

Switzerland's initial report to the Human Rights Committee (CCPR/C/81/Add.8), dated February 1995, stated under Paragraph 128 that "... in general there are no express provisions in cantonal law to enable a person arrested ... to inform a near relative or a third party of his arrest ....The right to notify near relatives is also expressly covered only after provisional detention has been imposed and, in principle, it is the examining magistrate who informs the person's near relatives." Paragraph 129 continued: "... in spite of the absence of express provisions on this subject, in practice the arrested person is given the right to notify his near relatives immediately."

In its 1997 report the CPT stated its view that the right for the detainee to notify friends and family should be expressly guaranteed from the beginning of the period of deprivation of liberty. It stated that there might be certain exceptions to the exercise of this right, in the interests of justice, but emphasized that every exception should be clearly defined and strictly limited in time.

In its interim response to the CPT, the Federal Council stated that the principle according to which every detained person has the right to inform a close friend or third party of his or her detention was recognized in a general way in Switzerland and that almost all the cantonal legislatures had incorporated this principle into their own codes of penal procedure to a greater or lesser extent. The government indicated that the formulations used in the cantonal legislation usually made allowance for exceptions to the principle if there were a perceived danger of collusion or of compromising the investigation.

The CPT found that although several cantonal codes of penal procedure made express provision for relatives to be informed of detention, these provisions did not generally come into play until after the initial period in police custody.

Law enforcement officers in Geneva had informed the Committee that they had received instructions that all requests made by those in *garde à vue* to have family or a close friend informed of their situation should be followed up, unless there was a risk of collusion. However, those detained in *garde à vue* were not informed of this possibility by the police.

Clement Nwankwo has stated that his requests to telephone friends while in the custody of Geneva police in April 1997 were refused and that he was informed that the judge was the only person who could allow him to make a telephone call. (See Appendix 5 for further details.)

[21] See CPT/Inf (97) 7 - paragraph 41 of CPT report and paragraph 42 of the Swiss Federal Council's interim response.

In its interim response to the CPT, the Federal Council stated that the current practice of the Geneva police authorities allowed the possibility for a detainee, in the absence of a risk of collusion, to inform or have informed, his or her family or a close friend and that the interpretation of a risk of collusion had not hitherto caused problems, being understood as the risk that the person informed might damage the evidence (by destroying it, influencing accomplices, witnesses or experts).

(See Appendix 6 for proposed reforms in the Canton of Geneva relating to the right to inform friends and relatives of arrest.)

2. Access to a lawyer[22]

Criminal suspects detained in Switzerland do not normally have access to a lawyer until 24 to 48 hours after arrest, but this may sometimes be extended at weekends or at the request of the judge of instruction. Switzerland's initial report to the Human Rights Committee,[23] dated February 1995, stated under paragraph 128 that: "... in general there are no express provisions in cantonal law to enable a person arrested ... to contact a lawyer. The right of access to a lawyer is, in principle, guaranteed only after the arrested person has appeared before a magistrate for the first time. Access is then free, apart from restrictions that may be justified for the purposes of the investigation and specifically indicated in cantonal law".

Paragraph 129 continued: "... the Federal Council has stated ... that it would be paradoxical to authorize the assistance of a lawyer right from the beginning of the period of police custody, for the initial police questioning, whereas cantonal procedures exclude this subsequently until the end of the first hearing before a magistrate. According to the Federal Council, this exclusion is in conformity with the Constitution and the case-law of the organs of the European Convention".

In February 1996 the CPT found that, as in 1991, access to a lawyer was not permitted during the *garde à vue* period in the various cantons visited and generally was only allowed from the time the detainee was brought before the competent magistrate who, however, had the power to delay access to a lawyer for a further period.

The CPT stated that, as in 1991, the Swiss authorities had clearly indicated their reservations regarding the right of access to a lawyer from the beginning of the *garde à vue* period and in particular had advanced the argument that the CPT's recommendation went "against the interests of the prosecuting authorities"[24]: premature contact with a lawyer could compromise the investigation.

[22] See CPT/Inf (97) 7 - paragraphs 43 to 45 of CPT report and paragraph 45 of Swiss Federal Council's interim response.

[23] CCPR/C/81/Add.8.

[24] "s'oppose aux intérêts des autorités de poursuite pénale".

The CPT underlined that in its experience the period immediately following deprivation of liberty is the one when the risk of intimidation and of physical ill-treatment is greatest. In its view, the possibility for people in *garde à vue* to have access to a lawyer during this period is consequently a fundamental guarantee against ill-treatment and its existence would have a dissuasive effect on those who might be inclined to ill-treat detainees. In addition, the CPT considered that a lawyer would be well-placed to take effective measures if a person were ill-treated. International standards require access to a lawyer without delay[25] and, as Amnesty International has had occasion to note in correspondence with Swiss cantonal authorities, lawyers are often the only people who can give a detainee the practical help they need immediately after the detention, including assessing whether rights have been infringed and seeking remedial action.

Clement Nwankwo's requests to contact a lawyer while in police custody in Geneva in April 1997 were refused. He was transferred to prison where he was held overnight and where, the next afternoon, he was brought before the judge of instruction (*juge d'instruction*) who asked if he needed assistance in hiring a lawyer. He said that he could afford to pay a lawyer and asked to be allowed to make a phone call to the headquarters of the International Commission of Jurists (ICJ) in Geneva, which had sponsored his participation at the UN Commission on Human Rights then under way. The judge indicated he would ask the prison officials to allow the call. However, Clement Nwankwo was not allowed to make it and was taken to the court the next day, appearing before the judge of instruction who interviewed him and the two shop assistants who had accused him of theft. He was assisted by an interpreter but not a lawyer. He said that the judge agreed to allow him to phone the ICJ from his own office at the end of the proceedings but only on condition that he signed a record of the proceedings. The ICJ secured a lawyer for Clement Nwankwo the following day. However, by then the judge had issued his verdict and thus Clement Nwankwo was found guilty before he could be legally represented. (See Appendix 5 for further details.)

The CPT stated that there might be exceptional situations which would make it necessary to delay a detainee's access to the lawyer of his or her choice for a certain period, but said this should not lead to the total refusal of the right of access to a lawyer during that period. In such a case, access to another, independent, lawyer could be offered.

The CPT asked the authorities to re-examine their position on this matter. The Federal Council indicated that a re-evaluation of the question of access to a lawyer would be opportune during drafting of legislation aiming at the unification of the 26 cantonal codes of penal procedure. (See Appendix 6 for proposed reforms in the Canton of Geneva relating to access to a lawyer.)

3. Access to a doctor, including a doctor of the detainee's own choice[26]

Following the CPT's 1991 visit the Swiss Government informed the CPT that the right to receive medical treatment and to be examined by "a" doctor was recognized without restriction in Switzerland.

[25] See Principles 7 and 8 of the UN Basic Principles on the Role of Lawyers and Principle 18 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

[26] See CPT/Inf (97) 7 - paragraphs 46 to 49 of CPT report and 47 to 49 of Swiss Federal Council's interim response.

A formal complaint lodged with the Public Prosecutor's office in Lugano in January 1996, by **A.S.**,[27] an asylum-seeker from the Kosovo province of the Federal Republic of Yugoslavia, suggested that he was denied medical examination and treatment for the approximately 30 hours he spent in police custody after being arrested for theft in December 1995. He said that when he asked to see a doctor he was told he could see one when released. The police deny that he made any requests while in police custody. Within about an hour of his release he was examined at a local hospital where doctors recorded heavy bruising to his lower leg, bruising and swelling to his right arm, extensive injuries to his right eye which required further specialist treatment, and blood in his urine. (See Appendix 7 for further details on this case and relevant international standards relating to the right to a medical examination in police custody.)

The CPT found that, according to the observations made during its February 1996 visit, a detainee requiring medical examination by a doctor received it. However, the Committee recorded that the right for a person in police custody to be examined by a doctor *of his or her choice* was still not recognized.

The federal government's original opposition to the introduction of this right was based on grounds of a possible risk of collusion. The CPT subsequently clarified that the possibility of being examined by a doctor of one's choice could be offered, not as the norm, but if the detainee considered that the intervention of a doctor designated by the authorities should be complemented by an examination by a doctor of his or her own choice. In the Committee's opinion there was no reason why such a second examination should not be paid for by the detainee. The risk of collusion could be thwarted in a number of ways (for example, by ensuring that the doctor designated *de oficio* was present at any medical examination carried out by the doctor chosen by the detainee).

In response, the Federal Council stated it understood the CPT's concern but considered, essentially for reasons of security, that it was not opportune to provide the right to be examined by a doctor of one's choice during the *garde à vue*. However, it stated that it would draw the attention of the cantons to the CPT's recommendation that all detainees had the right to a medical consultation at their own cost, in order to obtain a second medical opinion.

Clement Nwankwo said that when he asked to be allowed to contact friends and arrange for a doctor to come to examine him while in the custody of the Geneva police in April 1997, the police, after refusing his request to make a phone call, told him that *they* could provide a doctor. Clement Nwankwo has stated that, as he had been ill-treated by police both on the street and in the police station, and falsely accused of theft, he had by then lost his trust in the Geneva police and could, therefore, have no faith in any person they provided to examine him. He refused the offer, therefore, insisting on seeing a doctor of his own choice. This request was refused. As a result, he did not receive any medical examination or treatment for his injuries while in police custody and no examination was apparently offered on his admission to the local prison. He was first seen by a doctor the day after his release, four days after his arrest. (See Appendix 5 for further details.)

See Appendix 6 for proposed reforms in the Canton of Geneva relating to access to medical examination during police custody.

Other safeguards against ill-treatment recommended by the CPT

[27] Name known to Amnesty International.

Providing detainees with information about their rights[28]

Amnesty International believes it is essential that detainees are provided immediately after their arrest with clear information regarding their rights if they are to exercise those rights effectively. This is even more important in the case of foreign nationals, since their ability or confidence in the language of the particular canton in which they are detained may be low and they may be less familiar with the legal system than native Swiss. In addition, any person who has been suddenly arrested, taken into a police station, perhaps for the first time in his or her life, and who may, furthermore, have suffered physical ill-treatment, is already likely to feel disoriented, helpless and confused. In Amnesty International's experience information about their rights is currently rarely provided to detainees held in initial police custody in Switzerland. A number of victims of alleged ill-treatment report that instead of having their rights explained to them, they have been kept in a state of ignorance, unsure how long they will be detained and, in some cases, told to sign pieces of paper, the significance of which was not made clear to them.

It has been alleged that, while in police custody for theft in the Ticino canton in December 1995, **A.S.**, an asylum-seeker from the Kosovo province of the Federal Republic of Yugoslavia, with extremely scant knowledge of Italian, signed a document, after being told by police officers that it would secure his release, unaware that it was an official request to withdraw his asylum application. (See Appendix 7 for further details.)

The right to be informed of the reason for detention is also a fundamental principle recognized in international human rights instruments, such as the ICCPR - Article 9(2), and the European Convention on Human Rights - Article 5(2). Both the latter and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principle 14) stress that the detainee must be informed of the reasons for his arrest "promptly, in a language which he understands".

Clement Nwankwo has stated that he was not informed of the reason for his arrest until some two and a half hours after being taken into police custody in Geneva and that on both occasions when he was questioned by the police he was asked to sign what he was told was a record of the proceedings but, as they were written in French, a language he did not understand, he was unable to read them and no interpreter was provided. He said he was offered no information about his rights until he appeared before the judge over 24 hours after his detention and was given a sheet of paper where they were set out. (See Appendix 5 for further details.)

In its report the CPT stated that it is clearly fundamental that detainees are informed without delay, in a language they understand, of all their rights, including those already mentioned in preceding sections of this paper. It recommended that a printed form setting out all their rights in a simple way be given systematically to people in the custody of law enforcement officers, at the beginning of their detention. This form should be available in several languages and detainees should certify that they have been informed of their rights.

The Federal Council supported this recommendation and stated that it would bring it to the attention of all cantons via a circular.

(See Appendix 6 for proposed reforms in the Canton of Geneva relating to the provision of information to detainees in police custody.)

[28] See CPT/Inf (97) 7 - paragraph 50 of CPT report and of Swiss Federal Council's interim response.

Introducing specific Codes of Conduct for police interrogations[29]

[29] See CPT/Inf (97) 7 - paragraphs 51 and 52 of CPT report and paragraph 52 of Swiss Federal Council's interim response.

In its report on its first visit to Switzerland, the CPT had underlined the importance of clear guidelines on the conduct of police interrogations during *garde à vue*. A subsequent study by the federal authorities found that only 2 of the 26 cantons (Aargau/Argovie and Geneva) had drawn up specific, internal, codes of conduct for police interrogations. The Federal Council indicated that in its view, clear and precise rules on the conduct of police interrogations was "... important in order to prevent the ill-treatment of people in *garde à vue*" and that "...the drawing up of such guidelines by the cantons would be welcome"[30].

The CPT found, on the basis of the response of the Swiss authorities and the information collected during its second periodic visit of 1996, that the great majority of cantons had still not drawn up such guidelines. The CPT considered that it would be highly desirable for the general provisions relating to the treatment of detainees contained in the different cantonal codes of penal procedure and laws on the police, to be completed by a code of conduct for police interrogations describing in detail the procedures to follow in a number of specific areas.

In response, the Federal Council stated that the drawing up of codes of conduct for interrogations would certainly be useful but that it considered that it would be very difficult to force the cantons to draw up such codes. It indicated that existing cantonal codes of penal procedure and cantonal legislation on the police contained the essential deontological rules regarding the activities of police involved in criminal investigations. The Council indicated it would remind the cantons of the CPT's recommendations in this area.

[30] "...important afin de prévenir les mauvais traitements des personnes en garde à vue". "L'élaboration de telles directives par les cantons serait bienvenue" [CPT/Inf (94) 7].

Electronic recording of police interrogations[31]

In its report on its first visit in 1991, the CPT recommended the introduction of a system of electronically recording police interviews. However, the Federal Council rejected the recommendation.

In its report on its 1996 visit the CPT stated that it considered such electronic recordings to constitute an important guarantee for people deprived of liberty, while at the same time presenting advantages for the police. Such recordings could supply a complete and accurate record of interrogations, thereby considerably facilitating investigations concerning allegations of ill-treatment.

The Federal Council said the question would be discussed in the context of the drafting of legislation aimed at the unification of the cantonal codes of penal procedure.

External monitoring mechanisms[32]

The CPT requested that a system of regular, unannounced, visits to places where people are held in police custody, carried out by a judicial or other independent body (similar to a system operating in the Canton of Geneva - see below), be introduced in all cantons, as a dissuasive measure against possible ill-treatment.

The Federal Council stated that it shared the views of the CPT on the whole and that the cantons would be informed of the recommendation via a circular.

In 1993 the mandate of the Geneva parliament's committee of official visitors, composed of nine deputies, until then limited to prison visits, was extended to include visits, including unannounced visits,[33] to police stations in the Canton of Geneva and to police premises at Geneva's international Cointrin airport, accompanied by a police officer on the premises in question. The committee's annual report for the year 1994 indicates that the first visits to police stations took place in April 1994. In its conclusions and recommendations the committee stated that it had not yet fully utilized its extended mandate with regard to visits to police stations and that its next objective was to develop unannounced visits.

A newspaper report published in August 1997[34] attributed comments to the current president of the committee indicating that, in practice, the committee was not carrying out unannounced visits to police stations and gave notice of a visit an hour, or half an hour, in advance. The president indicated that occasions had arisen when the police chief had telephoned, asking to be informed in advance of the stations the committee intended to visit and that, in general, the committee supplied this information to the police. The committee considered this to be a source of concern. It was reported that, in response, the police stated that, if they inquired as to where the committee intended to visit, it was solely for practical reasons.

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[31] See CPT/Inf (97) 7 - paragraph 53 of CPT report and of Swiss Federal Council's interim response.

[32] See CPT/Inf (97) 7 - paragraph 54 of CPT report and of Swiss Federal Council's interim response.

[33] Visites à l'improviste.

[34] See *Le Courrier* edition of 30-31 August 1997.

Education, training and instructions on the prohibition against torture and other cruel, inhuman or degrading treatment or punishment

Articles 10 and 16 of the UN Convention against Torture require that education and information regarding the prohibition against torture and other cruel, inhuman or degrading treatment or punishment be fully included in the training of law enforcement personnel and others and that this prohibition should be included in the rules or instructions issued in regard to the duties and functions of such personnel.

The Swiss federal authorities have stated that "the teaching of human rights, including the prohibition of torture, forms part of the training of ... police ... personnel"[35].

As indicated earlier, the CPT requested, in view of information gathered during its 1996 visit, that law enforcement officers be reminded that the use of force should be limited to what is strictly necessary and that as soon as a person has been subdued, nothing could ever justify officers physically abusing him or her.

The Federal Council responded that this reflected the fundamental principles and essential rules of deontology (or ethics) which "are perfectly known to law enforcement officers who are reminded of them at every opportunity. The fact that these rules may be known cannot unfortunately prevent an exceptional violation."[36] It stated that all cantons would nevertheless be reminded of the rules.

In its report the CPT also underlined that the introduction of codes of conduct for police interrogations (see above) would also give a more solid grounding to the professional training given to law enforcement personnel.

In September 1997 the Geneva police authorities published a new four-page code of deontology, prepared for the Geneva police force, as "a first"[37] in Switzerland, indicating that previously the rules of deontology had been transmitted only orally. The code summarizes the rights and duties of police officers and their superiors, indicating - *inter alia* - that police officers should treat detainees with decency, in conformity with fundamental human rights, and use the powers conferred on them by law in a measured and balanced way, according to the circumstances.

The code failed to make any explicit reference to, for example, the use of force or a duty to report violations of the code. Nevertheless, Amnesty International welcomed this timely reminder to Geneva police officers regarding their broad duties towards people with whom they come in contact.

[35] See CCPR/C/61/Add.8, paragraph 100.

[36] "... qui sont parfaitement connus des membres des forces de l'ordre, auxquels ils sont rappelées à chaque occasion. Le fait que ces règles soient connues ne peut malheureusement pas empêcher un dérapage exceptionnel".

[37] "Une première".

In a letter sent to **Clement Nwankwo** in May 1997, dismissing his allegations of physical assault as unfounded, the head of the cantonal department responsible for justice and police acknowledged that an internal investigation had found that "the conditions" in which the lawyer had been held in the interview room of a Geneva police station in April 1997 were "not in conformity with the rules of deontology of the Geneva police"[38] and that the responsible officers would be sanctioned. He did not expand further. Clement Nwankwo had alleged that, in addition to physical assault, he had been forced to strip naked inside the police station and left for around an hour in his underpants, with his right hand tightly handcuffed to a metal table leg bolted to the floor of the interview room.(See Appendix 5 for further details.)

The importance of racial awareness as a core component of police training is widely accepted, particularly in a situation, as in Switzerland, where a very high proportion of detainees are foreign nationals and where a high proportion of the allegations of ill-treatment by police concern foreign nationals of non-European ethnic origin and where verbal racial abuse is frequently claimed.

It was reported that from Spring 1996 onwards all police officers attached to forces in the *Suisse-romande* (that is, the French-speaking cantons) were to attend a half-day course at the national Police Institute[39] entitled, *Police, migrants et minorités ethniques* (*Police, migrants and ethnic minorities*). In November 1996 the Conference of Swiss Cantonal Police Commandants (CCPCS) informed Amnesty International that, following this pilot project, the Police Institute, on behalf of the CCPCS, had made the course open to all police services in Switzerland.

Amnesty International welcomed these initiatives and also information supplied by the Zurich Municipal Police authorities that, at the beginning of 1997, they and Zurich Cantonal Police authorities, in collaboration with sociologists from Zurich University, started a regular half-day seminar on the topic of *Foreigners and Us*, which aims to encourage awareness of and understanding towards foreigners and which is obligatory for all members of the Zurich police. The authorities in the Canton of Ticino, which sees a very high number of foreigners from outside Europe entering the country via the Italian border, have indicated to Amnesty International that the course for new officers in the Ticino police force makes particular reference to the problems of xenophobia.

[38] "... les conditions ... ne sont pas conformes aux règles de déontologie de la police genevoise".

[39] Institut de police.

Prompt and impartial investigations into alleged ill-treatment

Articles 12, 13 and 16 of the UN Convention against Torture require that each State Party shall ensure that there is a prompt and impartial investigation, whenever there is reasonable ground to believe that an act of torture or other cruel, inhuman or degrading treatment has been committed. Article 12 makes it clear that this duty is not dependent on a formal complaint by a detainee.

Amnesty International recognizes that, like anyone else, police officers are entitled to protection of their reputation and believes that prompt, thorough and impartial investigations, with the methods and findings make public, serve to protect the reputations of law enforcement officers who may be the subject of unfounded accusations of ill-treatment, as well as to safeguard the interests of genuine victims of ill-treatment.

In most instances a complaint of police ill-treatment with a view to the opening of an administrative investigation can only be made to the cantonal police authorities in the canton where the incidents are said to have occurred. An internal administrative investigation may then be opened.[40] An internal police investigation lacks guarantees of impartiality and will not be perceived as impartial. (See later for special arrangements for administrative investigations established in the Canton of Geneva.) Criminal complaints may be lodged with the local Public Prosecutor whose first step is usually to ask the officer in charge of the police station to which the accused officer is attached, to carry out an investigation and supply a relevant report. In a number of cases which have come to Amnesty International's attention, the complainant has not been interviewed in the course of the prosecutor's investigation and it would also appear that, in assessing the evidence of a particular case, the prosecuting authorities invariably view the testimony presented in favour of the suspected police officer(s) as more credible than that supporting the victim's allegations.

In June 1995 the Ticino Public Prosecutor's office opened an investigation into the formal complaint lodged by cousins, **Ali Doymaz and Abuzer Tastan**, Turkish Kurds with official refugee status in Switzerland, alleging that they had been subjected to ill-treatment by law enforcement officers in Chiasso in April 1995. (See Appendices 2 & 3.)

The Public Prosecutor closed his investigation in November 1996, not only without having questioned the two complainants themselves, but also without having questioned the accused officers or their colleagues, or any of the three possible witnesses to the alleged ill-treatment and without having questioned or sought any further information from any of the individuals who saw the complainants within hours or days of their return to their cantons of residence, including two doctors who issued the medical certificates which accompanied their complaint. The Prosecutor only questioned the interpreter who assisted during their questioning by the police, and who was, therefore, not present at the time the incidents alleged by Abuzer Tastan and Ali Doymaz were said to have taken place, namely, at the moment of arrest and on arrival at the police station, before being interrogated by the police. The written report on the alleged incidents, drawn up by the police at the Prosecutor's request, was apparently signed collectively by the accused officers. It also does not appear that the Prosecutor at any stage communicated directly with the two complainants.

In March 1997 the Canton of Ticino's criminal appeal court *(Camera dei ricorsi penali del Tribunale di appello*) rejected the appeal which Abuzer Tastan and Ali Doymaz, with the assistance of

[40]Two police forces operate in Zurich - the Municipal and the Cantonal Police: complaints against one force may be lodged with and investigated by the other force.

a lawyer, lodged against the Prosecutor's ruling that there were no grounds to pursue criminal proceedings (*decreto di non luogo a procedere*) against any police officers.

Amnesty International was concerned to learn that in its ruling the Ticino appeal court listed as one of its reasons for endorsing the Prosecutor's conclusion that the allegations made by Abuzer Tastan and Ali Doymaz were unfounded, and that there were no grounds to pursue criminal proceedings against the accused police officers, the fact that their formal complaint of June 1995 was limited to a summary and generic description of the incidents, whereas - the court stated - it appeared, from the description of the allegations made by Abuzer Tastan and Ali Doymaz which were contained in the *Amnesty International Report 1996* (see Appendix 2), that they had apparently also made different and far more extensive and detailed allegations in another context.

The allegations described in the *Amnesty International Report 1996* were certainly more detailed than the summary, generic, allegations, as the court itself described them, contained in the June 1995 complaint, but did not contradict them. As their subsequent appeal lodged with the Federal Court in Lausanne in May 1997 pointed out, the complainants, with no knowledge of Italian and resident outside the Ticino canton, in a German-speaking canton, made their formal complaint to the Public Prosecutor's office without the intermediary of a lawyer. Amnesty International believes that, if the judicial authorities in Ticino were concerned about any perceived inconsistencies or discrepancies in the allegations which Abuzer Tastan and Ali Doymaz had made about their treatment in the formal context of the complaint to the Public Prosecutor and the allegations they had made outside this context, for example to any non-governmental organizations which were not direct parties to the proceedings, then there would have been an even greater onus on the authorities to obtain further details and clarifications through the direct questioning of the complainants.

In a decision issued in July 1997 the Federal Tribunal stated that it was not competent to examine Ali Doymaz and Abuzer Tastan's complaint that their rights had been violated because the Public Prosecutor had not ever corresponded with them directly and had not questioned them. It also disagreed with the importance which the cantonal court, in rejecting the complainants' appeal, had attached to the fact that their complaint against the police had been lodged some two months after the alleged incidents and did not consider it a determining factor, nor did they find the judges' assertion that the complaint was rather generic, in contrast to the detailed information passed to Amnesty International, to be determining. The Federal Tribunal found that the June 1995 complaint contained the essential elements required. The fact that the information given to "humanitarian organizations" was more detailed than the complaint itself did not detract from its weight or value. However, pointing in particular to the fact that in one case, four days, and in the other, five days, had elapsed between the alleged incidents in Ticino and the complainants visiting doctors in their home canton[41] and that the complainants had not attempted to obtain immediate medical help in Ticino, and that, when questioned by the Prosecutor in March 1996, the interpreter who assisted Ali Doymaz and Abuzer Tastan on the day of arrest stated that they had made no reference to being ill-treated and displayed no signs of injury, the Federal Tribunal rejected their appeal, thus confirming the closure of the case. The court awarded costs against them.

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In Geneva, as indicated in the report which Amnesty International published on Switzerland in April 1994, a retired magistrate was assigned a specific role in internal administrative inquiries into

[41] The incidents occurred on a Thursday: the complainants visited their doctors after the weekend, on the following Monday and Tuesday.

complaints of police ill-treatment, as part of the reforms instituted in the Canton in 1993 (see Appendix 1).

The annual report for 1995 of the Geneva parliament's committee of official visitors to places of detention stated, after interviewing the former magistrate currently acting as administrative investigator, that while it considered that the existence of this post limited violent behaviour, it found that, although the judge was supposed to receive *all* complaints relating to police violence, this was not in fact always the case and that this situation could be improved. In addition, the committee, noting that the magistrate could not receive complaints directly from alleged victims, considered that there was also room for improvement in the ways and means of making complaints.

Article 38 of Law PL 7439 modifying the law on the police, which came into force in July 1996, set out the formal legal basis for the role assigned to the former magistrate since 1993. It indicates that an individual from outside the administration, chosen by the Geneva Government (*Conseil d'état*) is charged with examining allegations and reports of police ill-treatment and proceeding, where necessary, to preliminary administrative investigations and then giving advice to the head of the cantonal department responsible for justice and police.

While welcoming the step taken by the Geneva authorities to introduce an investigator outside the police force to examine accusations of ill-treatment made against police officers, Amnesty International was concerned to note that in carrying out an internal administrative investigation into the allegations of ill-treatment made by **Clement Nwankwo** (see Appendix 5), the former magistrate does not appear to have appealed for witnesses to the events on the street at the time of arrest, and appears to have interviewed only the police and the two shop assistants who accused Clement Nwankwo of theft.

Delays have been reported in several judicial proceedings relating to alleged police ill-treatment, in some cases under staffing in the cantonal prosecutor's office appears to have been a contributory factor.

There was an interval of two and a half years between a complaint lodged by **M.F.**,[42] an Iranian political refugee, in December 1993 and the trial in June 1996 of three Zurich Municipal police officers accused of abusing their authority and causing him bodily harm during a drugs search. (M. F. was released without charge.) The court concluded that one or more of the police officers had used unwarranted and excessive force by kicking him, but acquitted all three on the grounds that it had been impossible to establish which officer(s) had kicked him. No internal administrative inquiry was carried out following this verdict. (See Appendix 3 for further details.)

In September 1997 investigations were still continuing into the criminal complaint lodged three years earlier, in September 1994, by **two Turkish Kurds**, brothers and asylum-seekers[43], concerning their treatment by Ticino police in June of that year. They had been detained on suspicion of aiding two other Turkish Kurds to enter Switzerland from Italy illegally. They alleged that at the Lugano police station officers accused them of being terrorists, on grounds of their Kurdish origin, handcuffed them by their left hands to fixed hooks, then punched and kicked them and beat them with the lower part of a chair. They were detained at the police station overnight and said that their requests to see a doctor were denied. Their formal complaint was supported by medical and dental reports recording, *inter alia*, numerous cuts and bruises to their bodies, and that one had suffered a perforated eardrum and the other had lost two upper incisors.

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[42] Name known to Amnesty International.

[43] Names known to Amnesty International.

APPENDICES

Appendix 1 - Extract from *Switzerland - Allegations of ill-treatment in police custody* (AI Index: EUR 43/02/94)

Appendix 2 - Extract from the *Amnesty International Report 1996* (POL 10/02/96)

Appendix 3 - Extract from *Amnesty International Concerns in Europe: January - June 1996* (EUR 01/02/96)

Appendix 4 - Extract from *Amnesty International Concerns in Europe: July - December 1996* (EUR 01/01/97)

Appendix 5 - Extract from *Amnesty International Concerns in Europe: January - June 1997* (EUR 01/06/97)

Appendix 6 - Summary of Proposed Modification of the Geneva Code of Penal Procedure

Appendix 7 - The case of A.S.

External: AI Index: EUR 43/02/97
APPENDIX 6

Modification of the Code of Penal Procedure in the Canton of Geneva

In April 1996 the Geneva cantonal parliament (*Grand Conseil*) approved Law PL 6957 modifying the canton's code of penal procedure (*Loi PL 6957 modifiant le code de procédure pénale)*. However, these reforms had not come into force by October 1997 as a cantonal referendum was requested by a referendum committee which campaigned against the reforms principally on grounds of financial cost, notably the cost of introducing a **systematic** medical examination of all criminal suspects on entering police custody.

Under the modified version of the cantonal Code of Penal procedure, all criminal suspects detained by the police must be brought before a doctor before questioning. On leaving police premises, they must receive another medical examination, if they or the police request it. If the person objects to the medical examination before questioning, or to a police request that he/she be examined on leaving custody, then the fact must be recorded in the police report: all medical certificates relating to allegations of ill-treatment must also be attached to the police report. Detainees taken into police custody must also be informed without delay, in writing and in a language they understand, of these provisions.

In view of the opposition to the law, an amended version of the proposal has been put forward by the parliamentary deputies who initiated the reforms, removing the obligation to carry out a systematic medical examination of all detainees before police questioning. Amnesty International understands that, if accepted by the Geneva parliament, it would replace the law approved in April 1996 and in all probability would come into force without being the subject of a referendum.

The modified version of the Code also states that criminal suspects in police custody must be informed, without delay, in writing and in a language they understand, that they may inform their lawyer of their detention and that they have a right to obtain a visit from a lawyer and to confer freely with him, from the end of the police questioning, but at the latest by the first working hour at the end of the 24 hours following the beginning of his questioning by the police, unless there is a risk of collusion or a danger to the investigation. Detainees must also be informed that, if they do not know a lawyer, they have the right to have a lawyer appointed to represent them.

In addition, the text states that, unless there is a risk of collusion or danger of compromising the course of the inquiry, every criminal suspect held by the police is permitted to contact, by telephone and under the supervision of a police officer, a close friend, a relative or his/her employer or to have one of these informed of the detention. Foreigners may also ask for their consulate to be informed. Authorizations and refusals to inform a third party are to be recorded in the police reports and the reasons for refusal briefly noted. Detainees are to be informed, without delay, in writing and in a language they understand, of these provisions.

As well as being promptly informed, in writing and in a language they understand, of the rights described above, detainees in police custody must also be informed, *inter alia*:

- that within a maximum of 24 hours they must - if not released without charge - be put at the disposal of the judge of instruction who then has a maximum of 24 hours to proceed to question them;

- that they can be informed of the offences which they are suspected of committing and the relevant charges;

- that they cannot be forced to testify against themselves or to make a confession of guilt;

- that they have a right to legal assistance.

External: AI Index: EUR 43/02/97

APPENDIX 7

The Case of A.S[44].

In June 1997 Amnesty International wrote to the Ticino authorities concerning a formal complaint lodged with the Public Prosecutor's office in Lugano on 11 January 1996 by **A.S.** an asylum-seeker from the Kosovo province of the Federal Republic of Yugoslavia. He alleged that he was ill-treated by five police officers following his detention in Lugano on the morning of 22 December 1995, for stealing a pair of shoes, and denied medical treatment during the approximately 30 hours which he spent in police custody.

He stated that after being escorted to the police station an officer asked him whether he spoke Italian and that when he replied that he knew little Italian the officer slapped him hard across the right and left cheeks. He claimed a second officer then punched him once in the face, near his right eye, and once in the chest and that a third seized him by his hair and banged his face on a desk. He alleged that a fourth, female, officer slapped him across the neck and then gave him a paper napkin to wipe away the blood which had issued from his lips and told him to clean up the blood which had dripped on the floor. He said a fifth officer pulled him to his feet by holding on to his clothes, pushed him against a wall and administered a martial-arts style kick to his right arm. He said that the above alleged ill-treatment took place over the space of around 10 minutes during which officers inflicted other kicks and blows to his body, in particular his flanks.

He said that he was then questioned for about half a hour at the end of which he was asked to sign a statement written in Italian but that, when he refused, protesting that he did not understand Italian, an officer slapped him on both sides of his face. He was then locked in a cell where he remained overnight. He said that in the morning, when he asked the guard for a doctor, he was told that he would be set free in the evening and could go to see a doctor then. He also claimed that he later asked for medication, but that this request was also refused.

He said that in the late afternoon of 23 December 1995 he was again questioned and asked to sign a document. He refused, stating that he did not understand Italian but apparently signed after being told that he would be allowed to go free if he did so. He was released at around 6pm and within about an hour was examined at the *Ospedale Civico* and told to return the following day for further examination. Doctors at the hospital recorded heavy bruising to his lower leg, bruising and swelling to his right arm, extensive injuries to his right eye which required further specialist treatment and blood in his urine. Three photographs of his injuries, taken by his wife the day after his release from police custody, also accompanied his complaint.

[44]Full name known to Amnesty International

Amnesty International was concerned to learn that in January 1996, some weeks after his release, and after he had lodged his complaint against the police, the man received a letter from the Federal Office for Refugees[45] confirming that it had received and acted upon a letter, apparently signed by him, and dated 23 December 1995, that is, on a date when he was still in police custody. The Federal Office for Refugees confirmed that it had cancelled his asylum application, in accordance with the statement contained in the letter of 23 December 1995 indicating that he was withdrawing his application and returning to his home country. Amnesty International understands that A.S maintained that he had no wish to withdraw his asylum application but had signed a document while in police custody on 23 December 1995, unaware of its contents, and that the Federal Office for Refugees subsequently allowed him extraordinary leave to remain in Switzerland.

Amnesty International sought the comments of the responsible Ticino authorities on the withdrawal of A.S's asylum application and claims that his signature to the letter to the Federal Office for Refugees was obtained by police officers under false pretences.

It pointed out that Principle 14 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment stipulates that "a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment is entitled to receive promptly in a language which he understands" information relating to - *inter alia* - "the reason for his arrest" and "any charges against him"and "to have the assistance, free of charge, if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest". The International Covenant on Civil and Political Rights (Article 14) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6) impose similar requirements.

Given the extremely scant knowledge of Italian which A.S. possessed at the time of his detention, Amnesty International expressed its concern about his allegations which indicate that he was apparently not provided with an interpreter at a crucial stage of his questioning by the police or with translations of papers presented to him for signature. Amnesty International said it would be grateful to the authorities, therefore, for any comments relating to this specific aspect of his detention.

Amnesty International also sought cooperation in informing the organization of the steps taken to investigate A.S's formal complaint, including whether he had yet been questioned about his allegations or had an opportunity to identify the officers whom he claims attacked him, and also in informing the organization us of the eventual outcome of the investigations carried out by the police and the Public Prosecutor.

It pointed out that, according to Article 6 of the United Nations Code of Conduct for Law Enforcement Officials, police officers are to: "Ensure the full protection of the health of persons in their custody and, in particular shall take immediate action to secure medical attention whenever

[45] Office fédéral des refugiés/Ufficio federale dei rifugiati.

required." Principle 24 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment imposes a similar requirement: "A 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". The organization stated it would be grateful to learn why A.S. apparently did not receive medical attention while in detention in December 1995.

Amnesty International received the following response on this case. In a letter of September 1997 the head of theTicino Department of Institutions, responsible for justice and police matters, stated that the Cantonal Police had not used any pressure or threats to obtain the statements made by A.S. during questioning and that the man had tried to escape: the police had used coercive methods proportionate to the situation. A report dated 17 July 1997 and drawn up by the Lugano Public Prosecutor's office was attached: this stated that following receipt of his complaint:

"... the magistrate in charge of the investigation asked for a detailed report from all the police officers who came into contact with the detainee. From these reports and the statements made by [AS] it appears that, during a period of questioning he tried to escape, slightly injuring a policewoman. The intervention of other police officers was then necessary and they stated that they tried to block the detainee with coercive methods, and that the man also tried to assault the officers who had come to the assistance of their colleague.

[A.S.], at the time of release, was informed that the slightly injured officer reserved the right to lodge a complaint against him for causing bodily harm. The investigation also ascertained, on the basis of the statements made by the police officers that [A.S.] had made no requests of any kind during his detention.

.... No reasons to doubt the truthfulness of the statements made by the police officers who had been questioned emerged from the investigation".[46]

[46] *"... il Magistrato incaricato di condurre l'inchiesta ha richiesto un rapporto dettagliato a tutti gli agenti di polizia che sono venuti in contatto con l'arrestato. Da tali rapporti e dai verbali resi da [AS] risulta che lo stesso, durante un interrogatorio, ha tentato di fuggire, ferendo leggermente una gendarme. È stato dunque necessario l'intervento di altri agenti di Polizia, che hanno dichiarato di avere bloccato l'arrestato in fuga con mezzi coercitivi, ritenuto come lo stesso abbia cercato di aggredire anche gli agenti intervenuti in soccorso della collega.*

Lo stesso [A.S.], al momento della sua scarcerazione, è stato informato che l'agente leggermente ferita si riservava di inoltrare querela nei suoi confronti per lesioni semplici.

L'inchiesta ha pure accertato, sulla base di dichiarazioni rese dagli agenti di custodia che [A.S], durante la sua incarcerazione, non ha avanzato richieste di alcun genere.

Tutti gli agenti di Polizia interpellati hanno espressamente dichiarato di avere usato mezzi coercitivi proporzionali alla situazione di fatto e di non avere messo in atto alcuna pressione e/o minaccia per ottenere le dichiarazioni rese a verbale da [A.S.].

Dall'inchiesta non sono emersi motivi che permettano di dubitare della veridicità delle dichiarazioni degli agenti ascoltati."