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DRAFT BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS  
UNDER ANY FORM OF DETENTION OR IMPRISONMENT

Report of the Working Group on the Draft Body of Principles  
for the Protection of All Persons under Any Form of  
Detention or Imprisonment

Chairman-Rapporteur: Mr. Tullio TREVES (Italy)

1. At its forty-first session, 1/ the General Assembly decided that an open-ended working group of the Sixth Committee would be established at its forty-second session in order to conduct a further examination of the draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment with a view to the completion of the principles (decision 41/418).
2. At the forty-second session, the Sixth Committee, in accordance with that decision, established at its 3rd meeting, on 22 September 1987, an open-ended Working Group, to the chairmanship of which it reappointed Mr. Tullio Treves (Italy).
3. The Working Group held 11 meetings between 23 September and 19 November 1987. Most of those meetings were devoted to a review of those of the principles provisionally agreed upon at previous sessions which still contained alternative wordings or bracketed language (see chap. I below). The Working Group also considered decision 1987/108 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, entitled "Question of human rights of persons subjected to any form of detention or imprisonment", which had been transmitted to it as requested by the Sub-Commission in paragraph 3 of its decision (see chap. II below). It finally dealt with definitional issues, i.e. the question of the definition of the words "a judicial or other authority" (see chap. III, sect. A below) and the provision on "Use of terms" as provisionally agreed upon at the previous session (see chap. III, sect. B below).

I. REVIEW OF THOSE OF THE PROVISIONALLY AGREED PRINCIPLES WHICH STILL CONTAINED ALTERNATIVE WORDINGS OR BRACKETED LANGUAGE

4. At its 1st meeting, on 23 September 1987, the Working Group agreed that in conducting a further examination of the draft Body of Principles, as mandated by decision 41/418, it would focus on those draft principles which still contained alternative wordings or bracketed language, taking as a basis the "Text of the principles as provisionally agreed" reproduced in the annex to the 1986 report of the Working Group (A/C.6/41/L.19). The Working Group accordingly started its work with principle 8.

Principle 8

5. The text provisionally adopted in 1981 read as follows:

"The authorities which arrest a person, keep him under detention or investigate the case should/shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority provided by law."

6. The Working Group agreed that, in the light of article 9 of the International Covenant on Civil and Political Rights, 2/ the alternative "shall" was the appropriate one.

Principle 9

7. The text provisionally adopted in 1982 read as follows:

"Anyone who is arrested shall be informed, at the time of his arrest, of the reasons for his arrest and shall be promptly informed of any charges against him [and the grounds for his detention]."

8. The Working Group noted that the phrase "and the grounds for his detention" did not appear in the corresponding provision of the International Covenant on Civil and Political Rights (art. 9, para. 2) and that its purpose was met by the concluding words of paragraph 2 of principle 10 ("together with the reasons therefor"). It therefore agreed on its deletion.

9. The question was raised whether principle 9 should not cover deprivations of liberty unrelated to criminal charges. Some delegations felt that the matter could best be dealt with in a general clause to be formulated at a later stage. It was agreed not to deal with that question in the framework of principle 9 since it concerned the scope of the draft Body of Principles as a whole.

Principle 10

10. The texts provisionally adopted in 1981 for paragraph 1 and in 1982 for paragraphs 2 and 3 read as follows:

"1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or be assisted by counsel as prescribed by law.

"2. A detained person and his counsel, if any, shall receive prompt and full communication [in oral and/or written form] of any order of detention, together with the reasons therefor.

"3. A judicial authority or other [impartial] authority prescribed by law shall be empowered to review the grounds for [the continuance of] detention."

11. The Working Group agreed to delete the bracketed phrase in paragraph 2. It observed in that connection that the word "full" covered all forms of communication, whether written or oral, and that the details of implementation of the principle could be left to national legislations.

12. The Working Group deferred to a later stage the consideration of the phrase "a judicial authority or other [impartial] authority prescribed by law". As to the second part of paragraph 3, the Working Group agreed that the reference to the grounds of the detention narrowed the scope of the text and could be dispensed with. It observed that, in that context, "to review" did not mean "to examine for the second time", but "to assess", and that an appropriate equivalent should be used in the various language versions.

13. The Working Group accordingly adopted the following texts for paragraphs 2 and 3:

"2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

"3. A judicial authority or other [impartial] authority prescribed by law shall be empowered to review as appropriate the continuance of detention."

#### Principle 11

14. The text provisionally adopted in 1982 read as follows:

"There shall be duly recorded and, upon request, shall be communicated to the detained/arrested person or his counsel, if any, in the form prescribed by law:

- The reasons for the arrest;
- The time of the arrest and of taking an arrested person to a place of custody as well as that of his first appearance before a judicial or other authority provided by law;
- The identity of the law enforcement officials concerned;
- Precise information concerning the place of custody."

/...

15. It was generally agreed in the Working Group that the recording of the elements of information referred to in the text and their communication to the person concerned or his counsel were distinct concepts which should be dealt with separately. The Chairman accordingly proposed a reformulation which read as follows:

"1. There shall be duly recorded:

- The reasons for the arrest;
- The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority provided by law;
- The identity of the law enforcement officials concerned;
- Precise information concerning the place of custody.

"2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law."

16. The text was adopted by the Working Group.

#### Principle 12

17. The text provisionally adopted in 1982 read as follows:

"An arrested, detained or imprisoned person shall, at the moment of arrest or the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for the arrest, detention or imprisonment, respectively, with information as to and an explanation of his rights relating to the arrest, detention or imprisonment and how to avail himself of such rights."

18. In order to simplify the text, the Working Group agreed to substitute for the opening words the expression "Any person", and to eliminate the words "relating to the arrest, detention or imprisonment".

19. Doubts were expressed on the alternative "at the moment of arrest or the commencement of detention". The remark was made that the option given to the authorities between the moment of arrest and the commencement of detention might be taken advantage of to delay the communication to the person concerned of the information referred to in the text. The Working Group consequently decided to replace "or the commencement of detention" by "and at the commencement of detention".

20. It was suggested to replace "at the moment of" by "at the time of", in order to bring the text in line with that of principle 9. The Working Group agreed to deal with problems of terminological consistency at a later stage.

21. In the light of the above, the Working Group adopted the following text for principle 12:

"Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information and an explanation as to his rights and how to avail himself of such rights."

Principle 14

22. The text provisionally adopted in 1983 read as follows:

"1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall [unless otherwise required by the needs of the investigation] be entitled to require the competent authority to notify members of his family [or other appropriate persons] of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

"2. If a detained or imprisoned person is a foreigner [or a refugee], he shall also be promptly 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 or which is otherwise entitled to receive such communication [or with the office of the competent international organization].

"3. [If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the responsibility for undertaking any notification referred to in this principle shall rest with the competent authority.]

"4. Any notification referred to in this principle shall be forwarded by the competent authority without delay. However, due regard shall be paid to exceptional circumstances related to the conduct of the investigation."

23. As regards paragraph 1, it was suggested to provide for the possibility of the detained or imprisoned person undertaking himself the notification referred to in the text so as to lift the burden from the authorities. The Working Group accepted that suggestion. With respect to the first bracketed phrase, the remark was made that its purpose was met by paragraph 4, which gave the authorities the leeway they needed to take account of the needs of the investigation. The Working Group therefore agreed to delete the phrase in question. As to the bracketed phrase "or other appropriate persons", it was generally considered to be a useful addition, provided that the selection of the appropriate person was made by the imprisoned person and not imposed on him by the authorities. The Working Group therefore agreed to retain the bracketed phrase with the addition of the words "of his choice". It was also agreed that the authorities would bear the burden of proof if they claimed that the selected person was inappropriate.

24. With respect to paragraph 2, some delegations insisted on the retention of the reference to refugees and of the consequential reference to the "competent international organization" and drew attention in this connection to rule 34, paragraph (2), of the Standard Minimum Rules for the Treatment of Prisoners. Others said that the draft Body of Principles should not deal with particular categories of persons for which special régimes were provided in other contexts. The Working Group, after reviewing the practice of the Office of the United Nations High Commissioner for Refugees (UNHCR) as reflected in a recommendation adopted in 1986 by its Executive Committee, 3/ agreed that refugees, like foreigners, should enjoy special guarantees in addition to those provided in paragraph 1 and that paragraph 2 should therefore encompass both categories of persons. However, it was felt necessary to link more closely the two bracketed phrases in order to make it clear that the right to communicate with an international organization did not extend to all foreigners but only to those who had a legitimate claim to the protection of an intergovernmental organization, for example, to international civil servants. The Working Group accordingly agreed to delete the words "or a refugee" in the first line and to retain the second bracketed phrase supplemented by the words: "if he is a refugee or is otherwise under the protection of an international intergovernmental organization". The Working Group also agreed to replace in the bracketed phrase the word "office" by "representative", in order to make the text as all-embracing as possible.

25. The thrust of paragraph 3 was generally considered to be acceptable. The question was however asked whether juveniles who were capable of understanding their entitlement should not be excepted from the rule enunciated in the paragraph, and granted the discretion which paragraph 1 conferred upon adult detainees and prisoners. The Working Group considered that question at length but came to the conclusion that the opening part of the paragraph should be left unchanged, as it would be extremely difficult to find objective and generally acceptable criteria for distinguishing between the two categories of juveniles. As regards the second part of the paragraph, it was agreed to clarify its intent by reformulating it as follows: "... the competent authority shall on its own initiative undertake the notification referred to in this principle". It was remarked that those who were legally responsible for the type of persons referred to in paragraph 3, namely the parents and guardians, should be given precedence by the authorities in undertaking the notifications referred to in the principle. The Working Group therefore agreed to add at the end of the paragraph a third sentence reading as follows: "Special attention shall be given to notifying parents or guardians."

26. With respect to paragraph 4, it was remarked that the first sentence needed adjustment since, as currently formulated, it covered only the second of the situations envisaged in paragraph 1, namely the one in which the notification was undertaken by the authorities, and left out the case where the detainee himself undertook such notification. It was first proposed to replace the words "forwarded by the competent authority" by the verb "made". Attention was however drawn to the fact that thus reformulated the text would impose on the detainee an obligation to notify without delay, which did not correspond to the intent of the principle. The Working Group therefore agreed to use the phrase "made or permitted to be made".

27. As regards the second sentence, the Working Group agreed to make it more precise and to link it more closely to the first sentence by reformulating it as follows:

"The competent authority may however delay a notification for a reasonable period when exceptional needs of the investigation so require."

28. In the light of the above, the Working Group adopted the following text for principle 14:

"1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

"2. If a detained or imprisoned person is a foreigner, he shall also be promptly 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 or which is otherwise entitled to receive such communication or with the representative of the competent international organization if he is a refugee or is otherwise under the protection of an international intergovernmental organization.

"3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in this principle. Special attention shall be given to notifying parents or guardians.

"4. Any notification referred to in this principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require."

#### Principle 15

29. The text provisionally adopted in 1983 read as follows:

"1. A detained/accused person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and provided with reasonable facilities for exercising it.

"2. If a detained/accused person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay."

30. With reference to the alternative "detained/accused" in paragraphs 1 and 2, the Working Group observed that the draft Body of Principles, as its title indicated, concerned persons under detention, and that accused persons who were not under detention fell outside its ambit. It therefore agreed to delete the word "accused" in both paragraphs.

Principle 16

31. The text provisionally adopted in 1983 read as follows:

"1. A detained/accused or imprisoned person shall be entitled to communicate/consult with his legal counsel.

"2. A detained/accused or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.

"3. The right of a detained/accused or imprisoned person to be visited by and to communicate with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by the judicial or other authority in order to maintain security and good order [in the place of detention].

"4. Interviews between a detained/accused or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

"5. [Unless it is necessary in order to ensure the conduct of the proceedings and the realization of the purposes of the detention and in so far as it is permitted by law or lawful regulation] written messages between a detained/accused or imprisoned person and his legal counsel shall not be censored, nor shall the transmittal thereof be delayed.

"6. Communications between a detained/accused or imprisoned person and his lawyer mentioned in this principle shall be confidential and inadmissible as evidence against the detained or imprisoned person."

32. As regards the alternative "detained/accused", in paragraphs 1, 2, 3, 4, 5 and 6, the Working Group chose to retain the word "detained" for the reasons explained in paragraph 30 above.

33. With respect to the alternative "communicate/consult" in paragraph 1, the Working Group felt that the basic principle governing the subject-matter covered by principle 15 should be given as broad a formulation as possible and that both terms should therefore be retained, the more so as paragraph 2 dealt with "consultations" between the detainee and his counsel and paragraph 3 with the detainee's "right to communicate" with his counsel. For the sake of consistency, the Working Group agreed to insert the words "consult and" before the words "communicate with" in the second line of paragraph 3.



34. The bracketed phrase "in the place of detention" in paragraph 3 gave rise to divergent opinions.

35. Some delegations held the view that the right to the assistance of a counsel was a fundamental guarantee for persons under detention and that exceptions to that rule should be of as limited a scope as possible. It was observed in particular that security and good order were elusive concepts which, unless qualified by the phrase in square brackets, could easily be taken advantage of in order unduly to deny a detainee the possibility of consulting his counsel, and that it was difficult to understand how good order outside the place of detention could be threatened by the communications referred to in the paragraph.

36. Other delegations pointed out that there were examples in practice of detainees directing criminal activities from their place of detention through their counsel and that society needed to be protected against such abuses. They observed that by subjecting the possibility of suspending or restricting the right to communicate with a counsel to the threefold requirement that the circumstances should be exceptional, that they should be specified by law or lawful regulations and that a judicial or other authority should take the decision, the text afforded sufficient protection against arbitrariness.

37. While there was agreement that the control of a judicial authority was an important guarantee, the remark was made that the text as currently formulated referred to a "judicial or other authority" and therefore left open the possibility that an authority lacking the required degree of impartiality and independence might tamper with the exercise of one of the most basic rights of persons under detention. The Working Group agreed to delete the words "in the place of detention" on the understanding that a definition of the phrase "judicial or other authority" meeting the concerns reflected above would be worked out at a later stage.

38. With respect to paragraph 5, the view was expressed that the bracketed phrase might give rise to abuse and that its scope should be narrowed down. It was generally agreed that the paragraph elaborated on a particular aspect of the principle set forth in paragraph 3 and that its content could be transferred to the latter paragraph, which would have the advantage of subjecting possible departures from the rule in paragraph 5 to the stringent requirements laid down in paragraph 3 rather than to the loosely formulated condition enunciated in the bracketed phrase.

39. In the light of the above, the Working Group agreed to delete paragraph 5.

40. Regarding paragraph 6, the Working Group agreed that the confidentiality of the communications with the legal counsel and the inadmissibility of such communications as evidence against the detainee were two different concepts which should be dealt with separately. It was observed in that connection that the principle of confidentiality should logically be subject to the same exceptions as the more general principle enunciated in paragraph 3, while the rule of the inadmissibility of communications with the counsel as evidence against the persons concerned admitted of an exception in the case of communications connected with a continuing or contemplated crime.

41. The Working Group agreed that the concept of confidentiality of communications should be dealt with in paragraph 3 so as to make the corresponding right of the detained or imprisoned person subject to the same proviso as the more general right to be visited by and to consult and communicate with the counsel. The Working Group furthermore agreed that the principle of the inadmissibility of communications with the legal counsel as evidence against the person concerned should not apply to communications connected with a continuing or contemplated crime.

42. In the light of the above, the Working Group adopted the following text for principle 16:

"1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

"2. A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.

"3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.\*

"4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

"5. Communications between a detained or imprisoned person and his legal counsel mentioned in this principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime."

#### Principle 17

43. The text provisionally adopted in 1983 read as follows:

"A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given [reasonable] opportunity to communicate with [the outside world], subject to conditions and restrictions as specified by law or lawful regulations [in the interests of [the administration of] justice and public order]."

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\* This paragraph was adopted on the understanding reflected in paragraph 37 above.

44. With regard to the phrase "the outside world", it was remarked that one of the sections of part I of the Standard Minimum Rules for the Treatment of Prisoners was entitled "Contact with the outside world", a phraseology which usefully encompassed communications with such persons as social workers, chaplains, etc. The Working Group accordingly agreed to retain the phrase "the outside world".

45. In the last bracketed phrase, some delegations observed that the content of "justice" and "public order" varied greatly from country to country, and that such amorphous concepts might easily be taken advantage of in order unduly to curtail the right enunciated in principle 17 which was a fundamental one, not only from a humanitarian point of view but also because contacts with the outside world facilitated the rehabilitation of prisoners. Those delegations therefore favoured the deletion of the phrase in question. Other delegations observed that, by identifying the specific concerns which warranted restrictions to the right enunciated in paragraph 17, the bracketed phrase sought to limit the domestic legislators' discretion in enacting relevant laws or regulations and therefore to protect detained and imprisoned persons against arbitrariness.

46. There was general agreement in the Working Group that a requirement that the conditions and restrictions specified by law should be reasonable would provide a useful guarantee against the principle being nullified by domestic legislations. Such a requirement, it was observed, was consonant with the standard-setting function of the Body of Principles. It was therefore agreed to delete the last bracketed phrase, to insert the word "reasonable" before "conditions and restrictions" and to substitute for the phrase "reasonable opportunity" the phrase "adequate opportunity".

47. In the light of the above, the Working Group adopted the following text for principle 17:

"A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations."

#### Principle 18

48. The text provisionally adopted in 1983 read as follows:

"If a detained or imprisoned person so requests, he shall as far as possible be kept in a place of detention or imprisonment reasonably near his usual place of residence [so as to facilitate visits from members of his family]."

49. While they were aware that the Working Group was, at that stage of its work, focusing on bracketed language or alternatives, some delegations felt it necessary to emphasize that principle 18 was unrealistic and that it was in practice extremely difficult if not impossible to keep detained or imprisoned persons in places near their usual place of residence on account of, inter alia, the rules

governing the jurisdiction of criminal courts, the specific characteristics of penitentiary systems in the various countries and the expenses involved. On the other hand, it was observed that conventional international law revealed a trend on the part of States to let foreigners serve their sentences in their country of origin, and that while the draft Body of Principles was intended to apply at the domestic level that trend was none the less indicative of an awareness in the international community that detained or imprisoned persons should if possible not be cut off from their environment. The Working Group therefore agreed to retain that principle but decided, in order to stress its residual character, to replace "as far as" by "if".

50. As to the bracketed phrase, the remark was made that a person might wish to be kept in custody near his usual place of residence for reasons other than to facilitate visits from members of his family and that the singling out of that particular reason would result in discrimination against detained or imprisoned persons who had no family. The Working Group therefore agreed to delete the phrase in question.

51. In the light of the above, the Working Group adopted the following text for principle 18:

"If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence."

Principle 23

52. The text provisionally adopted in 1986 read as follows:

"Non-compliance with these Principles in obtaining evidence shall/should be taken into account in determining the admissibility of such evidence against a detained or imprisoned person."

53. With reference to the alternative "shall/should", the Working Group, considering that principle 23 was couched in flexible terms, opted for the term "shall", which was consistently used throughout the draft.

Principle 29, paragraph 1

54. The text provisionally adopted in 1986 read as follows:

"A detained or imprisoned person, his counsel or a member of his family, or if none of these is able to do it himself, [any person] [any citizen] who has knowledge of the case, shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant."

55. The remark was made that the draft Body of Principles was intended to protect all detainees and that any person who was in a position to promote the observance of the norms contained therein should be allowed to do so irrespective of his nationality. It was also said that the right of initiating proceedings before courts was not restricted to nationals and that the more limited right to make a complaint should a fortiori not be subject to any such restriction, particularly where human rights were at stake. There was, on the other hand, a view favouring the retention of the phrase "any citizen". This view was not insisted upon on the understanding that the phrase "any person" meant any person within the territory of the State to which the complaint was addressed.

Principle 30

56. The text provisionally adopted in 1985 read as follows:

"Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or [any person] [any citizen] who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such an inquiry or a report thereon shall be made available upon request unless doing so would jeopardize an ongoing criminal investigation."

57. The Working Group agreed to retain the alternative "any person" for the reasons explained in paragraph 55 above. The understanding indicated in that same paragraph was reiterated in relation to principle 30.

Principle 32, paragraph 1

58. The text provisionally adopted in 1985 read as follows:

"A [detained, arrested or imprisoned] person suspected or accused of a criminal offence shall be presumed innocent and shall be treated as such until finally proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

59. Some delegations favoured the deletion of the bracketed phrase on the ground that the presumption of innocence applied to any person suspected or accused of a criminal offence. Others observed that the draft Body of Principles dealt with persons deprived of their individual freedom and that principle 32 should be focused accordingly. The Working Group agreed that only the first of the three bracketed adjectives should be retained, in the light of the definition provisionally adopted at the previous session for the terms "detained persons" and "imprisoned persons".

60. The Working Group also agreed to replace the word "accused" by "charged", to bring the provision more closely in line with article 14, paragraph 2, of the International Covenant on Civil and Political Rights.

61. Some delegations observed that the latter provision did not refer to persons suspected of a criminal offence. Others remarked that under many legislations a person could be kept in custody for a brief period before being formally charged with a criminal offence and that the presumption of innocence should apply during that period. The Working Group accordingly agreed to retain the word "suspected". In that connection the remark was made that the principle of the presumption of innocence should not be so broadly interpreted as to prevent authorities from detaining a suspect pending trial.

62. As regards the word "finally", the remark was made that while, under some legal systems, a convicted person was presumed innocent as long as his conviction was appealable, such was not the case under many other legal systems. It was therefore suggested to delete the word in question since the text would thus become compatible with the latter legal systems without becoming incompatible with the former. The Working Group agreed with the suggested deletion.

63. In the light of the above, the Working Group adopted the following text for paragraph 1 of principle 32:

"A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

#### Principle 6

64. During the stage of its proceedings relating to the definition of the words "a judicial or other authority" (see chap. III, sect. A below), the Working Group noted that there was a discrepancy between paragraphs 2 and 3 of principle 6 as regards the reference to other appropriate authorities or organs vested with reviewing or remedial powers. It agreed to bring paragraph 3 into line with paragraph 2 by deleting therefrom the words "including those".

#### II. CONSIDERATION OF DECISION 1987/108 OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

65. The above-mentioned decision entitled "Question of human rights of persons subjected to any form of detention and imprisonment" was brought to the attention of the Working Group at its 5th meeting, on 21 October, in accordance with its paragraph 3, whereby the Sub-Commission had decided to request the Secretary-General to convey to the Working Group of the Sixth Committee the hope of the Sub-Commission that the Working Group would give consideration to the concerns reflected in paragraphs 1 and 2 of the decision.

66. In those paragraphs, the Sub-Commission noted that the Working Group had apparently limited the scope of the principles and made amendments as a result of which the text might fall short of existing norms. It raised in particular the following questions:

"Under the Working Group's present text, do the principles apply only to persons charged with an offence without protecting the more vulnerable class of persons detained without charge or trial?

"Do the present references to a judicial or other authority open the door to review by an administrative official who may be directly or indirectly linked with an official responsible for an alleged violation of the detainee's rights?

"Have safeguards in the Sub-Commission's text concerning incommunicado detention and habeas corpus proceedings to question legality, necessity and conditions of detention been weakened in the Working Group's text or fall short of provisions in the International Covenant on Civil and Political Rights, the general comments of the Human Rights Committee, and the Standard Minimum Rules for the Treatment of Prisoners."

67. Within the Working Group, it was recalled that the draft Body of Principles had originated in the Sub-Commission and that the task of finalizing it, which had been initially assigned by the General Assembly to the Third Committee, had eventually been entrusted to the Sixth Committee for purely circumstantial reasons. The interest of the Sub-Commission in following up developments relating to the draft Body of Principles was, it was remarked, understandable even if it was not being conveyed through the normal channels.

68. Some delegations shared the concern expressed by the Sub-Commission and also reflected in the report of its Working Group on detention, particularly paragraph 13 thereof and annex V thereto. They observed that the goal of the Working Group was to draft a standard-setting body of principles, not a document representing the lowest common denominator of national legislations, and that its mandate was to deal with all persons under any kind of detention or imprisonment.

69. Concern was expressed over the implications of decision 1987/108 of the Sub-Commission for the future work on the subject and regret was also voiced on the lack of proper co-ordination between various United Nations bodies dealing with similar matters. It was emphasized that the activity of the Working Group should be in full keeping with the international instruments of a universal character to which States are parties. While encouraging the present activity of the Working Group, doubts were also expressed about the perspective of its finalization without prior clarification of all aspects put forward by the Sub-Commission in its decision 1987/108. It was observed however that the Working Group had a mandate from the Sixth Committee and that it was its task to comply with its mandate.

70. Other delegations, while expressing appreciation for the initiative taken by the Sub-Commission which, as a standing body of experts, was in a position to bring a useful contribution to the work of a sessional subsidiary body of the General Assembly, pointed out that the comments of the Sub-Commission were addressed to a provisional and incomplete text to which some key elements had yet to be added and that the Sub-Commission's concern was therefore somewhat premature.

71. As regards the first of the three questions raised by the Sub-Commission, some delegations felt that the current definition of "arrest" unjustifiably limited the scope of the draft on account of the inclusion of the words "for the alleged commission of a [criminal] offence" which excluded persons detained without charge or trial, including persons under administrative arrest. Other delegations stressed that there had always been within the Working Group an intention to cover all forms of deprivation of liberty, whether lawful or unlawful, as evidenced for example by paragraph 64 of the 1986 report, and that an express provision reflecting that intention could be added to remove any possible doubt. Still other delegations held the view that the principles as contained in the draft were principally geared towards persons charged with a criminal offence and that administrative confinement - a question for which the Sub-Commission had recently appointed a Special Rapporteur - would be more suitably covered by a different set of rules.

72. With respect to the second question, the view was expressed that the phrase "judicial or other authorities" should be defined so as to make sure that the term "other authorities", irrespective of domestic interpretations, referred to authorities which performed their functions with the highest degree of impartiality and independence. The remark was made in that connection that the concern of the Sub-Commission on that point was premature and that the Working Group had always been aware of the need for an appropriate definition of the phrase in question, as evidenced for example by paragraph 8 of the report of the Working Group at the fortieth session of the General Assembly (A/C.6/40/L.18), and by the fact that the matter was to be taken up at the current session (see chap. III, sect. A below).

73. As to the last question raised by the Sub-Commission, there was general agreement within the Working Group that the text under elaboration should not fall short of the provisions contained in existing instruments. While some delegations felt that the Sub-Commission's apprehensions in that respect were well-founded, others held the view that the principles were not prima facie at variance with existing instruments but might in some cases reflect a restrictive interpretation of their provisions. The matter was generally considered as one which the Working Group should study attentively in due course.

### III. DEFINITIONAL ISSUES

#### A. Question of the definition of the words "a judicial or other authority"

74. The question of the definition of the words "a judicial or other authority", which appeared in a number of principles, had come up on a number of occasions at previous sessions and the Working Group had all along had the intention of including in the draft a definition that would guarantee the required protection to the persons concerned (see, for example, para. 8 of the report of the Working Group at the fortieth session of the General Assembly (A/C.6/40/L.18)). The Working Group had before it in that connection a definition proposed by the Netherlands (A/C.6/42/WG/CRP.1) which read as follows:



"The words 'a judicial or other authority' mean a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence."

75. It was orally suggested to amend that definition by replacing the words "under the law" by "empowered under the law to exercise judicial functions".

76. The Working Group agreed to use as a working hypothesis the definition proposed by the Netherlands and to check its appropriateness on a principle-by-principle basis. It agreed that the adoption of that definition would entail technical changes in some principles as follows:

(a) In principle 3, replace "a judicial or other competent authority under the law" by "a judicial or other authority";

(b) In principle 8, delete "provided by law";

(c) In principle 10, paragraph 3, replace "A judicial or other [impartial] authority prescribed by law" by "A judicial or other authority";

(d) In principle 11, second subparagraph of paragraph 1, delete "provided by law";

(e) In principle 35, delete "provided by law".

77. As to paragraph 1 of principle 28 and principle 33, the Working Group noted that they both had a counterpart in the International Covenant on Civil and Political Rights, more specifically in article 9, paragraphs 4 and 3, but used the phrase "judicial or other authority" where the Covenant utilized language which could only designate a judicial authority ("court" in the case of paragraph 4 of article 9, "a judge or other officer authorized by law to exercise judicial power" in the case of paragraph 3 of that same article). A delegation held the view that the phrase in question in paragraph 1 of principle 28 opened additional options to detained persons and thus afforded them better protection. Another delegation observed that if such was the intention underlying the phrase under consideration it should be made clear that the choice between a judicial authority and another type of authority belonged to the detained person and that paragraph 1 of principle 28 would otherwise fall short of existing provisions. As regards principle 33, some delegations felt that the difference with paragraph 3 of article 9 of the Covenant was essentially of a drafting character, a view with which other delegations disagreed.

78. There was general agreement that care should be taken not to call into question the norms established in the International Covenant on Civil and Political Rights and that that could be achieved through the inclusion in the draft of a new principle 36 modelled on article 8 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (resolution 36/55 of 25 November 1981).

/...

79. At the conclusion of its review on a principle-by-principle basis of the appropriateness of the definition of the words "a judicial or other authority" proposed by the Netherlands, the Working Group agreed:

(a) To adopt the definition proposed by the Netherlands with the inclusion therein between square brackets of the amendment referred to in paragraph 75 above, it being understood that a decision on the bracketed language would be taken at a later stage and that the possibility of simplifying the definition by focusing it on the words "other authority" would be looked into;

(b) To introduce in principles 3, 8, 10, paragraph 3, 11, paragraph 1, and 35, the consequential technical changes referred to in paragraph 76 above;

(c) To add a new principle 36 reading as follows:

"Nothing in the present Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights."

80. Some delegations, although not objecting to the above agreement, regretted that the phrase "judicial or other authority" should have been retained in paragraph 1 of principle 28 and in principle 33, pointing out that those two provisions were substantively in a separate category, which would have justified departures from the terminology used in other principles.

81. The deletion of the words "in the place of detention" in principle 16, provisionally made on the understanding set out in paragraph 37 of this report, was thus confirmed.

B. Provision on "Use of terms" as provisionally agreed upon at the previous session

82. The provision on "Use of terms" as provisionally agreed upon at the previous session read as follows:

"For the purposes of the Body of Principles:

"(1) 'Arrest' means the act of apprehending a person for the alleged commission of a [criminal] offence;

"(2) 'Detained person' means any person deprived of personal liberty before [final] conviction for a [criminal] offence or release;

"(3) 'Imprisoned person' means any person deprived of personal liberty as a result of [final] conviction for a [criminal] offence;

"(4) 'Detention' means the condition of detained persons as defined above;

"(5) 'Imprisonment' means the condition of imprisoned persons as defined above."

83. At the current session, the Working Group had before it a proposal by the Netherlands (A/C.6/42/WG/CRP.1) which sought to replace the above definitions by the following:

"For the purposes of these principles:

"(a) The word 'arrest' means the act of apprehending a person under the authority of law or by any compulsion by any authority;

"(b) The word 'detention' means the period of deprivation of personal liberty from the moment of arrest up to the time when the person concerned is either imprisoned as a result of final conviction for a criminal offense, or released;

"(c) The word 'imprisonment' means deprivation of personal liberty as a result of final conviction for a criminal offence;"

84. In comparing the two sets of definitions, it was observed that the first focused on the definition of "detained persons" and "imprisoned persons", rather than on the definition of "detention" and "imprisonment", and that points (4) and (5), which had been added at the previous session for the sake of completeness, could easily be dispensed with. Other delegations, however, favoured the retention of points (4) and (5).

85. It was furthermore observed that point (3) of the first set of definitions was largely similar to point (c) of the text submitted by the Netherlands and that point (2) only differed from point (b) of the latter text in that it did not provide an indication of the point in time at which detention started - a difference which, it was stated, was of no real consequence.

86. There was general agreement that the two sets of definitions were substantively at variance on the definition of "arrest". The Working Group decided to tackle the problem posed by this divergence of approach after it had settled the two issues which had been left outstanding at the previous session in the text reproduced in paragraph 1 above, and which were signalled therein by square brackets.

87. As regards the bracketed word "final", the remark was made that its retention would have no other effect than to subject the persons concerned during the period between conviction in the first instance and final conviction, to the régime applicable, under the draft Body of Principles, to detainees; it was added that since that régime was almost identical to the régime applicable to imprisoned persons, the word in question was of little consequence from the point of view of the protection of human rights. On the other hand, it was observed, its retention would force an interpretation of principle 32, whereby the presumption of innocence extended to convicted persons until the conviction had become final, an interpretation which was unacceptable for many legal systems.

88. In the light of the above, the Working Group agreed to delete the word "final" in subparagraphs (2) and (3), thereby leaving it to national legal systems to determine the exact point in time at which a person ceased to be a detainee and became an imprisoned person.

89. As regards the word "criminal", some delegations favoured its retention on the ground that it would rule out any possibility of excluding from the benefit of the guarantees contained in the draft persons charged with, or convicted of, offences other than criminal. Other delegations, however, remarked that the characterization of offences varied from legal system to legal system and that it would therefore be more prudent to eliminate the word "criminal".

90. The Working Group accordingly agreed to delete the word in question in subparagraphs (1), (2) and (3).

91. As regards the proposed new definition of the word "arrest", emphasis was placed on the words "by any compulsion by any authority", which recognized the fact that arrests were not always carried out under the authority of the law. It was recalled that the draft Body of Principles was a by-product of the efforts undertaken by various organs of the United Nations to check torture and cruel and inhuman treatment and that it reflected the international community's concern not so much over the fate of persons charged with a criminal offence, who were already protected by many international instruments, as over that of innocents who were picked up by the authorities and put away in safe houses all over the world.

92. Several delegations expressed reservations on the proposal to alter the existing definitions which, it was recalled, were the result of a painstaking negotiation process. Some doubted the wisdom of embarking, at such a late stage of the proceedings, on an exercise that would imply reviewing all the substantive principles to determine whether they were consonant with the proposed new definitions. Others wondered if it was appropriate to include in the draft Body of Principles an explicit reference to the possibility of arbitrary actions which were prohibited under existing normative instruments, adding that a non-binding document like the draft Body of Principles would obviously not be taken into consideration by those State authorities which chose to violate binding legal norms.

93. Some delegations pointed out that arbitrary deprivations of liberty were a fact of life and that the purpose of the draft Body of Principles was not to impose legal obligations but to provide a set of standards against which the behaviour of States could be judged by the international community. They observed that, although the existing definition, correctly interpreted, covered all persons deprived of their freedom as long as they had not been convicted, it could also lend itself to a restrictive interpretation whereby those persons who were most in need of protection would be deprived of the guarantees contained in the draft.

94. In order to rule out any possibility of restrictive interpretations of the scope of the draft Body of Principles to the detriment of persons under unlawful detention, it was suggested to include in the draft a new provision entitled "Scope of the Body of Principles". The following text was proposed:

"The present Principles apply to the protection of all persons under any form of detention or imprisonment including arbitrary detention."

95. After considerable discussion, the Working Group decided to include at the beginning of the draft a provision entitled "Scope of the Body of Principles" and reading as follows:

"The present Principles apply for the protection of all persons under any form of detention or imprisonment."

96. Some delegations felt that, as a result, one could dispense with the latter part of the definition of the term "arrest" proposed by the Netherlands ("under the authority of law or by any compulsion by any authority") and perhaps even with the definition itself. It was observed in this connection that there were few references to "arrest" in the draft. It was also remarked that the main, if not the sole, function of the definition of the term "arrest" was to fix the point in time at which a person became a detainee and that the definition was unnecessary in view of the absence of a temporal reference in the definition of "detained person" provisionally agreed upon.

97. Other delegations pointed out that the "scope" provision which it had been agreed to include served a useful purpose only to the extent that the draft provided a clear indication of the point in time at which detention started, and that a definition of the term "arrest" was therefore necessary.

98. The Working Group noted that there was no disagreement on the opening words of the two definitions of "arrest". It agreed that, in order to reflect the stage it had reached in its consideration of this issue, the remaining part of each definition should appear within square brackets, as follows:

"(1) Arrest means the act of apprehending a person [for the alleged commission of an offence] [under the authority of the law or by any compulsion by any authority]."

#### Notes

1/ For a summary of the previous history of the item, see the report of the Working Group at the fortieth session of the General Assembly (A/AC.6/40/L.18, paras. 1 and 2).

2/ See resolution 2200 A (XXI), annex.

3/ This recommendation is to the effect that refugees and asylum-seekers under detention should be provided with the opportunity to contact the UNHCR office or, in the absence of such office, available national refugee assistance agencies (see Official Records of the General Assembly, Forty-first Session, Supplement No. 12A (A/41/12/Add.1), para. 128).

Annex

Text of the draft Body of Principles for the Protection of all  
Persons under any Form of Detention or Imprisonment provisionally  
agreed upon by the Working Group

Scope of the Body of Principles

The present Principles apply for the protection of all persons under any form of detention or imprisonment.

Use of terms

For the purposes of the Body of Principles,

1. "Arrest" means the act of apprehending a person [for the alleged commission of an offence] [under the authority of the law or by any compulsion by any authority].
2. "Detained person" means any person deprived of personal liberty before conviction for an offence or release.
3. "Imprisoned person" means any person deprived of personal liberty as a result of conviction for an offence.
4. "Detention" means the condition of detained persons as defined above.
5. "Imprisonment" means the condition of detained persons as defined above.
6. The words "a judicial or other authority" mean a judicial or other authority [empowered] under the law [to exercise judicial functions] whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence.

Principle 1

All persons under any form of detention or imprisonment shall be treated with humanity and with respect for the inherent dignity of the human person.

Principle 2

Arrest, detention or imprisonment shall only be carried out in strict accordance with the provisions of the law and by competent officials or persons authorized for that purpose.

Principle 3

There shall be no restriction upon or derogation from any of the fundamental human rights for the benefit of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that the present Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.

Principle 4

Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

Principle 5

1. These Principles shall be applied to all persons within the territory of any given State, without distinction of any kind, such as race, colour, sex, language, religion or religious belief, political or other opinion, national ethnic or social origin, property, birth or other status.

2. Measures applied under the law and designed solely to protect the rights and special status of women, especially pregnant women and nursing mothers, children and juveniles, aged, sick or handicapped persons shall not be deemed to be discriminatory. The need for, and the application of, such measures shall be always subject to review by a judicial or other authority.

Principle 6

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

Principle 7

1. States should prohibit by law any act contrary to the rights and duties contained in these Principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints.

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\* The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly, but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

2. Officials who have reason to believe that a violation of this Body of Principles has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial powers.

3. Any other person who has ground to believe that a violation of the Body of Principles has occurred or is about to occur shall have the right to report the matter to the superiors or the officials involved as well as to other appropriate authorities or organs vested with reviewing or remedial powers.

#### Principle 8

Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons.

#### Principle 9

The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law and the exercise of these powers shall be subject to recourse to a judicial or other authority.

#### Principle 10

Anyone who is arrested shall be informed at the time of his arrest of the reason for his arrest and shall be promptly informed of any charges against him.

#### Principle 11

1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

#### Principle 12

1. There shall be duly recorded:



- The reasons for the arrest;
- The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority;
- The identity of the law enforcement officials concerned;
- Precise information concerning the place of custody.

2. Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law.

#### Principle 13

Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information and an explanation as to his rights and how to avail himself of such rights.

#### Principle 14

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 the information referred to in principles 10, 11, paragraph 2, 12, paragraph 1, and 13 and to have the assistance, free of charge if necessary, of an interpreter in connection with legal proceedings subsequent to his arrest.

#### Principle 15

1. Promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.

2. If a detained or imprisoned person is a foreigner, he shall also be promptly 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 or which is otherwise entitled to receive such communication or with the representative of the competent international organization, if he is a refugee or is otherwise under the protection of an intergovernmental organization.

3. If a detained or imprisoned person is a juvenile or is incapable of understanding his entitlement, the competent authority shall on its own initiative undertake the notification referred to in this principle. Special attention shall be given to notifying parents or guardians.

4. Any notification referred to in this principle shall be made or permitted to be made without delay. The competent authority may however delay a notification for a reasonable period where exceptional needs of the investigation so require.

#### Principle 16

1. A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and provided with reasonable facilities for exercising it.

2. If a detained person does not have a legal counsel of his own choice, he shall be entitled to have a legal counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require and without payment by him if he does not have sufficient means to pay.

#### Principle 17

1. A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

2. A detained or imprisoned person shall be allowed adequate time and facilities for consultations with his legal counsel.

3. The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.

4. Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official.

5. Communications between a detained or imprisoned person and his legal counsel mentioned in this principle shall be inadmissible as evidence against the detained or imprisoned person unless they are connected with a continuing or contemplated crime.

#### Principle 18

A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.

Principle 19

If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence.

Principle 20

1. It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.

2. No detained person while being interrogated shall be subject to violence, threats or methods of interrogation which impair his capacity of decision or his judgement.

Principle 21

No detained or imprisoned person shall, even with his consent, be subjected to any medical or scientific experimentation which may be detrimental to his health.

Principle 22

1. The duration of any interrogation of a detained or imprisoned person and of the intervals between interrogations as well as the identity of the officials who conducted the interrogations and other persons present shall be recorded and certified in such form as may be prescribed by law.

2. A detained or imprisoned person, or his counsel when provided by law shall have access to the information described above.

Principle 23

Proper 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.

Principle 24

A detained or imprisoned person or his counsel shall, subject only to reasonable conditions to ensure security and good order in the place of detention or imprisonment, have the right to request or petition a judicial or other authority for a second medical examination or opinion.

Principle 25

The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such an examination shall be duly recorded. Access to such records shall be ensured. Modalities therefor shall be in accordance with relevant rules of national law.

Principle 26

Non-compliance with these Principles in obtaining evidence shall be taken into account in determining the admissibility of such evidence against a detained or imprisoned person.

Principle 27

A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment.

Principle 28

1. In order to supervise the strict observation of relevant laws and regulations, places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment.

2. A detained or imprisoned person shall have the right to communicate freely and in full confidentiality with the persons who visit the places of detention or imprisonment in accordance with paragraph 1, subject to reasonable conditions to ensure security and good order in such places.

Principle 29

1. The types of conduct of the detained or imprisoned person that constitute disciplinary offences during detention or imprisonment, the description and duration of disciplinary punishment that may be inflicted and the authorities competent to impose such punishment shall be specified by law or lawful regulations and duly published.

2. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken. He shall have the right to bring such action for review to higher authorities.

Principle 30

The appropriate authorities shall endeavour to ensure, according to national legislation, assistance when needed to dependent, and in particular minor, members of the families of detained or imprisoned persons and shall devote a particular measure of care to the appropriate custody of children left without supervision.

Principle 31

1. A detained person or his counsel shall be entitled at any time to take proceedings according to domestic legislation before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful.

2. The proceedings referred to in paragraph 1 shall be simple and expeditious and at no cost for detained persons without adequate means. The detaining authority shall produce without unreasonable delay the detained person before the reviewing authority if the latter authority so requests.

Principle 32

1. A detained or imprisoned person, his counsel or a member of his family, or if none of these is able to do it himself, any person who has knowledge of the case, shall have the right to make a request or complaint regarding his treatment, in particular in case of torture or other cruel, inhuman or degrading treatment, to the authorities responsible for the administration of the place of detention and to higher authorities and, when necessary, to appropriate authorities vested with reviewing or remedial powers. Confidentiality concerning the request or complaint shall be maintained if so requested by the complainant.

2. Every request or complaint shall be promptly dealt with and replied to without undue delay. If the request or complaint is rejected or in case of inordinate delay, the complainant shall be entitled to bring it before a judicial or other authority. Neither the detained or imprisoned person nor any complainant under paragraph 1 shall suffer prejudice for making a request or complaint.

Principle 33

Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request unless doing so would jeopardize an ongoing criminal investigation.

Principle 34

1. Damage incurred because of acts or omissions by a public official contrary to the rights contained in these Principles shall be compensated according to the applicable rules on civil liability.

2. Information required to be recorded under these Principles shall be available in accordance with procedures provided by national law for use in claiming compensation under this principle.

Principle 35

1. A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. The arrest or detention of such a person pending investigation and trial shall be carried out only for the necessities of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or for preventing hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

Principle 36

A person detained on a criminal charge shall be brought before a judicial or other authority provided by law promptly after his arrest. Such authority shall decide without delay upon the lawfulness and necessity of detention. No person may be kept under detention pending investigation or trial except upon the written order of such an authority. A detained person shall, when brought before such an authority, have the right to make a statement on the treatment received by him while in custody.

Principle 37

A person detained on a criminal charge shall be entitled to trial within a reasonable time or to release.

Principle 38

Except in special cases provided for by law, a person detained on a criminal charge shall be entitled, unless a judicial or other authority decides otherwise in the interest of the administration of justice, to release pending trial subject to the conditions that may be imposed in accordance with the law. Such authority shall keep the necessity of detention under review.

Principle 39

Nothing in the present Body of Principles shall be construed as restricting or derogating from any right defined in the International Covenant on Civil and Political Rights.

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