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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Questionnaire on the Declaration on the Protection of All Persons
 from Being Subjected to Torture and Other Cruel, Inhuman or
 Degrading Treatment or Punishment

Report of the Secretary-General

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* A/35/150.

I. INTRODUCTION

1. In paragraph 1 of resolution 32/63, of 8 December 1977, the General Assembly requested the Secretary-General to draw up and circulate among Member States a questionnaire soliciting information concerning steps they had taken, including legislative and administrative measures, to put into practice the principles of the Declaration on the Protection of All Persons from Being Subjected to Torture, Inhuman or Degrading Treatment or Punishment, giving special attention to a number of aspects listed in the same paragraph. In paragraph 2, the Secretary-General was requested to submit the information provided in response to the questionnaire in a report to the General Assembly at its thirty-third session and furthermore to submit such information to the Commission on Human Rights and to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirty-second session.

2. In paragraphs 4, 5 and 6 of resolution 33/178, of 20 December 1978, the General Assembly took note of the report of the Secretary-General containing replies to the questionnaire (A/33/196 and Add.1-3), called upon Member States which had not yet done so to reply to the questionnaire, as called for in resolution 32/63 and requested the Secretary-General to submit to the General Assembly at its thirty-fourth session further information provided in response to the questionnaire and to submit all the information available which he had received to the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

3. In paragraph 6 of resolution 34/167, of 17 December 1979, the General Assembly requested the Secretary-General to submit to the General Assembly at its thirty-fifth session further information provided in response to the questionnaire and to submit all the information available which he had received to the Commission on Human Rights, to the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

4. In accordance with paragraph 6 of resolution 34/167, this report contains the information received as at 15 August 1980.

II. REPLIES RECEIVED FROM GOVERNMENTS

AUSTRALIA

Note: In a communication dated 16 April 1980, the Government of Australia referred to the information which it had transmitted under paragraph 1 of resolution 7 (XXVII) of the Sub-Commission on Prevention of Discrimination and Protection of Minorities concerning the question of human rights for all persons subjected to any form of detention or imprisonment (E/CN.4/Sub.2/354).

BANGLADESH

/Original: English/
/25 March 1980/

The Government of Bangladesh stresses that it is wedded to upholding the principles of the Universal Declaration of Human Rights and announces the revocation at the end of November 1979 of the state of emergency proclaimed in 1975. Accordingly, all the emergency powers rules in force in the country have become inoperative, and persons subjected to detention under the state of emergency have been released. Only the laws applicable in peacetime remain in force.

Question 1

It is the responsibility of the Government of any country to take preventive measures when the security of the State is threatened. However, the Government of Bangladesh is very conscious of the need to prevent any abuse of the provisions of the preventive law.

Question 4

1. The District Magistrate or Additional District Magistrate who signs the detention order under the Act must report the fact to the Government, specifying clearly the grounds for detention. No such detention order may remain in force for more than 30 days, unless it has in the meantime been approved by the Government.

2. In every case in which a detention order has been issued under the Special Powers Act, the authority must inform the person detained under that order of the charges made against him not later than 15 days after the date when the detention began in order to enable him to obtain assistance.

Question 6

1. Every detained person has the right to make a submission in writing to the High Court, which may call upon the Government to satisfy it with regard to the justification for the detention.

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2. Suitable measures are taken to guarantee the security of prisoners during detention, and no case of ill-treatment of a detained person has been brought to our notice. Any act of torture which came to the knowledge of the Government would immediately give rise to a thorough investigation by the country's highest court.

3. Moreover, no person can be detained without valid grounds. The secret police and the paramilitary organizations have no power to arrest or detain unless they have received formal orders.

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/

1. The legislation of the Byelorussian SSR, which is based on the principles of socialist humanism, totally excludes the possibility of the subjection of any person whatsoever to torture and other cruel, inhuman or degrading treatment or punishment, and provides for all the necessary juridical guarantees in this respect.

2. Article 4 of the Constitution of the Byelorussian SSR stipulates that the Soviet State and all its bodies function on the basis of socialist law, ensure the maintenance of law and order, and safeguard the interests of society and the rights and freedoms of citizens. Article 52 states that "citizens of the Byelorussian SSR are guaranteed inviolability of the person". Under article 55, "citizens of the Byelorussian SSR have the right to protection by the courts against encroachments on their honour and reputation, life and health, and personal freedom and property". Article 56 further stipulates that "actions by officials that contravene the law or exceed their powers and infringe the rights of citizens may be appealed against in a court in the manner prescribed by law". The same article states that "citizens of the Byelorussian SSR have the right to compensation for damage resulting from unlawful actions by State organizations or public organizations, or by officials in the performance of their duties".

3. Article 174 of the Criminal Code of the Byelorussian SSR expands the provisions of the Constitution, and provides for liability in the case of knowingly unlawful arrest or detention. Article 175 of the Code also forbids the use of compulsion to obtain testimony by means of threats or other illegal actions on the part of a person conducting an enquiry or preliminary investigation. Article 179 forbids the use of threats of murder, violence or destruction of the property of the persons concerned or of those close to them to compel witnesses, victims or experts to offer false testimony or false conclusions to organs of judicial investigation. The legislation of the Byelorussian SSR also provides for the liability of officials of organs of judicial investigation, as well as other officials, who exceed their authority or official powers by the application of violence, the use of weapons, or acts inflicting torment on the victim and insulting his dignity.

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4. Article 159 of the Constitution of the Byelorussian SSR states that "no one may be adjudged guilty of a crime and subjected to punishment as a criminal except by the sentence of a court and in conformity with the law". Article 20 of the Criminal Code of the Byelorussian SSR and Article I of the Corrective Labour Code stipulate that the imposition of sentences by a court of law, and their execution, not only constitute a penalty for the crime committed but also have the aim of correcting and re-educating convicted persons in the spirit of an honest attitude to labour, strict observance of the laws and respect for the rules of socialist society, and of preventing the commission of fresh crimes by the convicted person or by other persons. Punishment and its execution do not have the purpose of inflicting physical suffering or degrading human dignity.

5. All the above information indicates that both the legislation and the practice of the Byelorussian SSR are fully in accordance with the provisions of the Declaration on the Protection of All Persons from Being Subjected to Torture, adopted by the General Assembly of the United Nations.

COSTA RICA

/Original: Spanish/
/11 August 1980/

Question 1

Under the Costa Rican legal order, the fundamental rule on the subject is contained in the Political Constitution in force and reads:

"Article 40: No person shall be subjected to cruel or degrading treatment, to life sentences or to the penalty of confiscation. Any statement obtained by means of violence shall be null and void."

It will be noted that this rule satisfactorily proscribes both cruel, inhuman or degrading penalties and treatment and life sentences, thereby precluding possible legal tolerance of them.

It is relevant to point out that a careful study of the provisions of the legal and criminal regulations and those regarding criminal procedure shows that these principles are satisfactorily observed.

The Criminal Code rules out the death penalty and any other cruel, inhuman or degrading treatment or penalty and states that the only permissible types of punishment are imprisonment, fines, deprivation of civil and political rights, and exile.

The Code of Criminal Procedure uses the procedural sanction of invalidating the statement by an accused person in cases in which coercion or threat or any other means was used of compelling, inducing or causing him to make a statement against his will (article 276). No such provision applies to statements by witnesses and other persons involved in the proceedings.

There are also other rules from which the prohibition of torture derives.

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In the event of a state or threat of war, Act No. 4364 of 4 August 1969 applies: it ratifies the Geneva Convention of 12 August 1969 on the treatment of prisoners of war; the Geneva Convention of 27 July 1929 was also ratified by Act No. 65 of 26 June 1942.

Internal political instability or any other form of public emergency are the sole instances of the application of the constitutional guarantee on authorization of detention of persons without reliable evidence that they have committed an offence and without a judge's written order, in which case detention must not be for a period longer than three months and must be in an establishment not intended for common criminals or in an assigned place of residence (article 121, para. 7).

Question 2

The public force is composed of the Department of the Civil Guard and its subordinate units (air and sea patrols, medical department, narcotics section, patrol radio, presidential guard, military police, provincial command (first company, second company, third company, and plans and operations section), Transit Department and its subordinate units, Investigations Department and its subordinate units).

The staff of the public force is trained through the Francisco J. Orlich National Police School. The written teaching material has been revised and contains no provisions incompatible with article 40 of the Political Constitution.

The teaching material used by the Judicial Investigation Organization in the Judicial School and the (recently-established) Judicial Training School does not exist in written form. We are informed, however, that the subject is mentioned in the lessons forming part of the courses.

Question 3

The Regulations of the "La Reforma" Correctional Centre (No. 6738-G of 30 December 1976) govern the penitentiary régime of that centre. They are applied generally to the other detention centres, because separate regulations do not exist for each establishment.

Article 5 embodies the prohibition of cruel treatment of prisoners.

The Admission Units of the National Penitentiary System are currently regulated by the Order and Discipline Regulations for Custodial Personnel of the Department of Social Rehabilitation (DE-3378-G, 8-XI-73), which does not contain an express prohibition of the infliction of torture or ill-treatment, and also by the Statutory Regulations of the Higher Council for Social Defence (DE-5 of 31 January 1962, article 207). The "La Reforma" regulations may apply subsidiarily in these cases.

Question 4

As has been stated, in Costa Rica all cruel penalties have been abolished - in other words, they are not institutionalized. Accordingly, any situation which may arise is de facto and contrary to law.

The director of every penitentiary establishment must monitor observance of the prohibition of ill-treatment of persons in detention. In addition, a person in detention who is the victim of an attack may complain to the Prison Visiting Magistrate or to a counsel or other person who can handle the complaint.

If the alleged ill-treatment was administered by the authorities of the Judicial Investigation Organization (OIJ - the Judicial Power), the complainant may report the fact to the Office of the Public Prosecutor or the Judicial Inspectorate.

Question 5

The criminal legislation contains no section expressly sanctioning the infliction of torture on anyone, let alone a detained person.

One section of the Criminal Code deals with injuries, which are classified in three categories: minor, serious and extremely serious. These are governed by articles 123 et seq. The minimum penalty is a fine equivalent to one day's salary and the maximum up to 10 years' imprisonment.

The section on injuries is the only one which can be applied in the case of facts which demonstrate the infliction of torture on a person in detention.

The general part of the Criminal Code also lays down as a general principle applicable to any offence that instigation and attempt to commit an offence are matters to be considered by the judge in imposing the penalty. In the case of the former, under article 74, the instigator is given the penalty laid down by the law for the offence; in the latter case, if the offence did not go beyond an attempt, it is punishable by the penalty provided for the consummated offence, which may or may not be reduced at the judge's discretion (article 73).

The foregoing means, in short, that if a detained person is injured by an attack committed against him, he may bring proceedings for the offence of injury, and the instigator will be punished by the penalty laid down for the offence of consummated injury.

Attempt does not exist in the case of an offence of injury, because in the case of injury, the offence is a result.

With regard to cases of psychological torture, we may apply the section on coercion of article 193 of the Criminal Code:

"A penalty of imprisonment for one to two years or a fine equivalent to from 50 to 200 days' salary shall be imposed on any person who by grave threats or physical or moral violence compels another person to do, not to do or to tolerate something which is not compulsory".

Question 6

The circumstances in which complaints are investigated and the procedures applicable in these cases are described below.

Reports of injury or coercion are received, like all criminal accusations, by the Office of the Public Prosecutor, a department of the Supreme Court of Justice, which conducts the summary investigation of the facts. Thereafter the matter is referred to an examining judge and to a criminal or higher court (depending on the magnitude of the penalty), which renders an oral judgement in open court.

In addition, in the administrative field there is a department of the Ministry of Public Security - the Department for Supervision of Authorities - whose basic function is to carry out the investigations and enforce the penalties provided for in article 16 of the Statutory Regulations of that Ministry, when there is evidence of some irregularity with regard to detained persons.

Question 7

As stated in the preceding reply, the Office of the Public Prosecutor and the Department for Supervision of Authorities of the Ministry of Public Security are the authorities competent to receive, respectively, reports of offences of this kind and reports of irregularities. In general, they act on the basis of a report from an individual.

In addition, the Code of Criminal Procedure, article 156, lays down that public officials or employees must report any irregularity or commission of an offence which is brought to their notice in the exercise of their functions.

It is a duty of both organs (the judicial and the administrative) to carry out the necessary investigations to ascertain and verify illegal acts which come to their notice, whether through a report from outside or because the matter concerns them directly.

Question 8

With regard to paragraphs 6 and 7, the offence that might occur is injury.

When the Office for Supervision of Authorities makes an investigation of irregularities regarding detained persons, it sends the report to the Office of the Public Prosecutor (the sole body instituting criminal proceedings).

The Office of the Public Prosecutor is the first link in the chain of criminal justice. Then, if the offence is one of those punishable by less than three years' imprisonment, it is dealt with by what is called the "direct summons" court, in which judgement is rendered by a criminal judge, and if the maximum penalty exceeds three years, a formal preliminary hearing is held and judgement is rendered by a higher criminal court; in both cases proceedings are oral and public.

There are several types of penalty laid down for injuries: extremely serious injuries: imprisonment of from three to ten years; serious injuries: imprisonment of from one to six years; minor injuries: from three months' to one year's imprisonment or a fine of the equivalent of up to 50 days' salary.

The penalty will be increased to the maximum if any of the aggravating circumstances taken into account in connexion with homicide are present and will be reduced by reason of states of violent emotion (articles 123 et seq., Criminal Code).

With regard to pardon, amnesty or commutation of penalty, the provisions of article 90, 89 and 69 of the Criminal Code, respectively, apply. There is no special provision for the case of offences of injury, so that a person who satisfies the requirements of those provisions can be accorded the same treatment as any other person in the same circumstances who has been convicted of another type of offence.

Question 9

The disciplinary regulations and the police bodies to which they apply are described below.

Disciplinary regulations: Regulations under the Statute of the Ministry of Security, which covers all public forces.

With regard to the prohibition embodied in article 207 of the Statutory Regulations of the Higher Council for Social Defence mentioned above, there is no corresponding provision on punishment for contravening it.

Contravention of article 191 of the Regulations of the "La Reforma" Correctional Centre, which has also been mentioned earlier, is dealt with by the penalty provided for in articles 212 and 214. Contravention of that provision is considered a serious offence and is punishable by suspension for up to five days for a first offence, by suspension for up to 15 days for a second offence and by dismissal without liability on the part of the employer for a third offence.

The medical profession is also governed in our country by strict ethical principles, violation of which is punishable by severe penalties imposed by a tribunal of honour appointed by the Society of Physicians and Surgeons.

Question 10

Our legal order rules out torture and all other cruel, inhuman or degrading treatment. Where it occurs, the culprit is convicted of injury or coercion. We must therefore state that we can report on no other forms of ill-treatment.

Question 12

We give below the conditions and procedures for the granting, if the need arises, of such compensation and explain, in particular, whether and to what extent the State or other public entities may be held liable to pay such compensation. Information is given on whether, since the adoption of the Declaration, such redress and compensation have been afforded.

As stated earlier, the charge applicable for the purpose of punishing conduct amounting to torture or other ill-treatment is one of injury or of coercion. Having made a report, the injured person is entitled to bring, within the criminal jurisdiction, a civil compensation action, through which he requests to be regarded as a civil party for the purpose of exercising his right to claim compensation in the same proceedings. Civil legislation also permits him to recover damages through an ordinary hearing or a hearing for the enforcement of a judgement.

The State may be held liable to pay compensation arising from punishable acts committed by its officers during the performance of their functions. This is a subsidiary liability (article 106, Criminal Code).

Question 13

On the basis of the last paragraph of article 40 of the Constitution, which states: "Any statement obtained by means of violence shall be null and void", a plea of nullity may be brought with regard to the interrogation or testimony obtained by the use of cruel treatment.

The regulations governing proceedings likewise prohibit procedural measures for the obtaining of statements through force (article 276 cited above). Failure to comply with this provision makes the proceedings null and void, without prejudice to liability under the relevant disciplinary or criminal regulations.

CUBA

/Original: Spanish/
/14 July 1980/

Question 1

1. Torture is not mentioned as a specific offence in Cuban legislation, since it has been totally eliminated in our country. This was done by a process of education of the police and other officials responsible for detained persons.
2. Among the fundamental rights and guarantees enjoyed by the citizens under the Constitution of the Republic of Cuba are the following individual rights specified in article 57:

"Freedom and inviolability of the person are guaranteed to all who reside in the national territory. No one may be detained except in the cases, in the manner and with the guarantees laid down by law."

Question 2

1. Special attention is given to the training of the specialized personnel who work directly with prisoners, through an extensive training programme, the purpose of which is to enable them to give persons deprived of liberty a real education for their readaptation to society. Internal machinery has been set up in prisons to help prisoners to develop their skills.
2. They are also guaranteed better housing conditions and medical and hospital care, and sports, recreational and educational facilities are made available to them.

Question 3

Articles 182, 183, 196, 198, 213, 299, 326, 340 and 405 of the Civil Defence Code contain provisions guaranteeing the protection of the physical integrity of detained persons and laying down penalties, where appropriate, for officials whose conduct is not in conformity with socialist legality.

Question 4

1. Article 58 of the Constitution of the Republic of Cuba provides that:

"No person may be prosecuted or convicted except by a court competent under laws enacted prior to the offence and subject to the formalities and guarantees laid down by law.

"Every accused person has the right to a defence.

"No violence or coercion of any kind shall be employed to compel persons to make statements. Any statement obtained in violation of this provision shall be null and void and those responsible shall be subject to the penalties laid down by law."

Question 5

As mentioned under question 1, there is no provision for the offence of torture in Cuban legislation because it has been totally eliminated in our country.

Question 6

Article 109 of Act No. 5, on Criminal Procedure, gives the Office of the Public Prosecutor full responsibility for ensuring strict observance of socialist legality and guarantees, inter alia, that:

"(2) The dignity of the citizen shall be respected, and in no case shall he be subjected to illegal restrictions on his rights."

Question 7

1. There is no evidence that any act of torture has been committed since the triumph of the Cuban Revolution in 1959. Nevertheless, any suspicion of ill-treatment of a detained person is immediately investigated, even if it is not reported by that person.
2. If the offence is reported to the Public Prosecutor's Office, it notifies the authorities.

Question 8

Since 1959, these abuses have been eliminated in prison centres, and ill-treatment and torture of persons deprived of liberty have been completely eradicated.

Question 9

1. Article 42 of the Criminal Code, concerning military offences, provides that:

"Any person who ill-treats a prisoner of war shall be subject to a penalty of deprivation of liberty for from six months to three years. The same penalty shall apply to a person who in any way ill-treats a prisoner or a wounded or sick person or who refuses him the necessary means for his care and recovery."

Question 14

Respect for the dignity of the human person, of man as such, is one of the premises of the Cuban Revolution and, consequently, of the Cuban people and Government. This is reflected in a society devoid of abuses which is just towards all who form part of it.

Question 15

See the reply to question 7.

EGYPT

/Original: Arabic/
/23 July 1980/

The Egyptian Constitution of 1971 is the most important legal instrument that has this objective. Article 42 of the Egyptian Constitution provides:

"Any person who is arrested, imprisoned or in any way restricted in his freedom shall be treated in such a way as to ensure his human dignity, and may not be subjected to any kind of torture, whether physical or psychological. In addition, he may not be detained or imprisoned in places other than those subject to the laws regulating prisons. Any statement made by any person under the acts referred to above or under threat of resort to such acts shall be considered null and void".

Article 57 of the Constitution provides also:

"Any violation of personal freedoms, the private lives of individuals or other public rights or freedoms guaranteed by the Constitution and other laws shall be considered an offence. The criminal or civil proceedings resulting therefrom shall not lapse with the passage of time. The State shall ensure that the person or persons affected by such violations are duly compensated."

Article 71 provides:

"Any person who is arrested shall immediately be informed of the reasons for his arrests, and shall be entitled to notify whomsoever he wishes of what has happened and to seek his assistance in the manner approved by the law. He shall also be speedily informed of the nature of the charge against him and both he and the other persons shall be entitled to appeal to the courts against any legal procedure that restricted their personal freedom. The law shall regulate the right to appeal in such a way as to enable a final ruling to be given within a specified period; the person arrested shall otherwise be released."

In conformity with the aim of protecting the rights and freedoms of individuals, the Egyptian Penal Code contains, in Book II, Chapter II, entitled "Coercion and ill-treatment of individuals by public servants", provisions punishing any acts involving an infringement of the rights and freedoms of individuals. The penalties prescribed for acts of this kind, which range from those prescribed for serious offences to those prescribed for minor offences, are shown in the following articles:

Article 26:

"Any public servant who tortures an accused person or orders him to be tortured with the intention of extracting a confession from him shall be liable to punishment with hard labour or imprisonment for a period ranging from three to four years. If the accused dies under torture, the person responsible for his death shall receive the sentence prescribed for premeditated murder."

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Article 127:

"Any public servant or person entrusted with a public duty who orders a convicted person to be given a more severe punishment than that prescribed by the law or a punishment other than that to which the person convicted has been sentenced shall be liable to imprisonment."

Article 128:

"Any public servant or person entrusted with a public duty who, on the authority of his office, enters the house of a citizen without his consent in circumstances other than those specified by the law or without observing the rules laid down therein shall be liable to imprisonment or to payment of a fine not exceeding 20 Egyptian pounds."

Article 129:

"Any public servant or person entrusted with a public duty who, on the authority of his office, maltreats, degrades or inflicts physical pain on any person shall be liable to imprisonment for a period not exceeding one year or to payment of a fine not exceeding 20 Egyptian pounds."

Article 131:

"Any public servant who imposes work on people or engages their services for reasons other than those permitted by the law shall be liable to imprisonment for a period not exceeding two years and to dismissal from service, and shall be made to pay the money due to those illegally employed by him."

Article 280 of the Penal Code also provides that anyone who arrests, imprisons or detains any person without an order issued by a competent judge and in circumstances other than those specified by the law in this respect shall be liable to imprisonment or to payment of a fine not exceeding 20 Egyptian pounds. In addition, the Code of Penal Procedure regulates the process of arresting, interrogating and trying accused persons in a way that precludes arbitrary treatment. The following articles deal with this process:

Article 36:

"Law-enforcement officers shall immediately hear the statements made by the accused person, who shall be sent by them to the office of the competent Public Prosecutor within 24 hours, after which he shall order him to be arrested or released."

Article 40:

"No person may be arrested or detained except on the basis of an order issued by the competent authorities to that effect he may not be subjected to any form of torture, whether physical or psychological, and shall be treated in such a way as to ensure his human dignity."

Article 41:

"No person may be detained in a place other than a prison and no prison officer may admit anyone as prisoner except on the basis of an order signed by a competent authority or detain him after the expiry of the period specified in the order."

Article 42:

"Any member of the Office of the Public Prosecutor or President or Vice-President of a court of first instance or a court of appeal may visit national and district prisons falling within their competence for the purpose of ensuring that no person is illegally detained, and may check account books, arrest warrants, or writs of committal, take copies of them, contact any prisoner and listen to any grievances expressed by him. The prison governor and officials shall extend to them every assistance in obtaining the information required."

Article 43:

"Any prisoner may at any time submit to a prison official a written or verbal complaint, and request that it should be communicated to the Public Prosecutor. The prison official shall accept it and immediately forward it after setting it down in the prison's record. Anyone who learns that a person is illegally detained or is being held in a place not set apart for detention shall immediately so inform a member of the Office of the Public Prosecutor, who shall at once go there, conduct an inquiry, order the release of the person illegally detained and set down the facts of the case in writing."

Article 124:

"In cases other than those of flagrante delicto and emergency cases (in which evidence is liable to be lost), the investigating officer may not question the accused or confront him with other accused persons or witnesses except after inviting his legal counsel to be present if possible. The accused shall announce the name of his counsel in a report to be deposited in court or handed to the prison official. The legal counsel may also undertake to do this on behalf of his client. The counsel may not speak unless he is authorized by the judge to do so. If the judge does not authorize the counsel to speak, this should be set down in the record."

Article 31:

"The examining judge shall immediately question the accused person who has been arrested. If this proves impossible, he shall be detained in prison until he is questioned. The period of custody shall not, however, exceed 24 hours, after expiry of which the prison official shall hand him over to the Office of the Public Prosecutor. The latter shall immediately

request the investigating judge and, if necessary, a judge, the President of the court or any judge appointed by him to question the accused, failing this the Public Prosecutor shall order the accused to be released."

Article 129:

"Any person who is arrested or detained in custody pending trial shall be informed of the reasons for his arrest and shall be entitled to contact whomsoever he wishes, to seek the assistance of a legal counsel, and to be speedily informed of the nature of the charges against him. Arrest warrants, summonses and writs of committal may not be executed six months after their issue unless they are extended by the examining judge for a further period."

The Prisons Act, No. 216, of 1956, contains various provisions that are aimed at ensuring humane treatment of prisoners. These include the following:

Article 15:

"Persons who are detained in custody shall be entitled to wear their own clothes, unless the prison management decides, in the interest of health, hygiene or security, that they should wear the same clothes as those worn by other prisoners."

Article 16:

"Persons who are detained in custody shall be entitled to buy food from outside the prison at the established prices. However, if they express no desire to do that or if they cannot afford it, the food prescribed for other prisoners shall be brought to them."

Article 17:

"The Director-General of Prisons may, subject to the approval of the Public Prosecutor, give prisoners serving short sentences some or all of the benefits enjoyed by persons detained in custody."

Article 19:

"A woman prisoner who has been pregnant for six months or more shall be given especially good treatment in respect of food, work and sleep until 40 days after childbirth. Both the mother and her child shall be given the necessary medical care, in addition to proper food, clothing and rest. No pregnant women prisoners or mothers may, for whatever reason, be denied the food prescribed for her."

Article 20:

"The child of a woman prisoner shall stay with her until the age of two. If, however, the mother expresses no desire to keep the child with her after the two-year period, he shall be handed over to his father or any relative chosen by the mother. If the child is fatherless and has no relatives to support him, the prison governor or official shall so notify the administrator of the district concerned for the purpose of moving him to an orphanage or similar institution. The mother shall likewise be informed of the place in which her child is kept and arrangements shall be made for her to see him regularly in accordance with procedure stipulated in the prison regulations."

Article 85:

"The Public Prosecutor and his deputies may accept complaints from prisoners and check records and legal documents in order to ensure that they conform to the models prescribed. The prison governor or responsible official shall provide them with all the information required in order to carry out the task assigned to them."

Article 86:

"The president or vice president of a court of appeals or court of first instance, or as examining judges, shall be entitled at any time to enter the prisons falling within the competence of the courts in which he serves. The president or vice-president of the court of correction may enter any prison. A prison governor shall communicate to the Director-General all the observations made by him."

It is clear from the above that under Egyptian law the provisions for criminal liability contain guarantees ensuring that accused persons are at all stages of legal cases treated in a manner consistent with human dignity. The judiciary take great pains to ensure that such provisions are observed. In addition, article 57 of the Constitution expressly provides that anyone whose personal freedom or private life has been violated shall be duly compensated.

IRAQ

/Original: Arabic/

/1 July 1980/

The Government of Iraq emphasizes that it has always actively collaborated with the Division of Human Rights in connexion with the Declaration on torture and other cruel, inhuman or degrading treatment or punishment and is always willing to do so if required. The Government of Iraq also declares its intention of acceding to the Convention on torture. The Government of Iraq therefore believes that it is unnecessary to reply to the questionnaire.

ISRAEL

/Original: English/

/24 July 1980/

Question 1

(a) The Ministry of Justice and other officials concerned with the administration of justice are conducting an ongoing review of the treatment of detainees and prisoners. Physical coercion or maltreatment in any form are prohibited by law. In a recent case, two policemen were charged and convicted of maltreating a murder suspect. A journalist from East Jerusalem made allegations of maltreatment and the State Attorney personally conducted an investigation.

(b) A special committee was appointed in May 1979 by the Ministers of Justice and the Interior to examine allegations of police brutality. The findings and recommendations are currently being considered.

(c) Delegates of the ICRC are permitted to visit security detainees under interrogation within 14 days of arrest. The visits are conducted without witness. During the past year 97 per cent of all security detainees under interrogation in the administered areas were visited by delegates of the ICRC within 14 days of arrest. Following such visits the ICRC transmits to the Israeli authorities reports detailing any allegations of maltreatment made by the detainee. These are then investigated in each case by a commission of inquiry. The ICRC is informed in writing of the findings and conclusions of the Commission. These arrangements are an important safeguard against the occurrence of any maltreatment.

Question 2

Weekly lessons are given to police officials which include information and educational material regarding the prohibition of torture. The prohibition of torture is also stressed in periodical instructions issued by the police authorities as well as in circulars and on any occasions where an allegation is raised.

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Question 3

Any unjustified and unreasonable use of force against a prisoner and any form of degrading inhuman or cruel treatment is prohibited by the Penal Code 1977 and the Prison Regulations 1978 as well as by internal standing orders issued in pursuance thereof. In each alleged instance of the above having taken place, a thorough investigation is conducted, the findings of which are submitted to the Legal Adviser of the Prison Services, who may decide to take suitable measures against those responsible. If the Legal Adviser is of the opinion that a criminal offence has been committed the matter is transmitted to the Attorney General or to the Israeli police.

Question 4

Please see reply to question No. 1 above.

Question 5

Yes. Under sections 280; 329; 333-335; 378-380; chapters 4 and 5 - Part One, of the Penal Law 5737-1977.

Question 6

The competent authorities are: the police, the District Attorney, the State Attorney, the Attorney-General, the ombudsman and the courts.

Regarding the courts, complaints can be filed both by special petition to the High Court of Justice as well as through the procedure of a "little trial" which examines the admissibility of the confession (see answer No. 13 below). The courts will also examine such complaints in cases of applications for arrest, extension of arrest or release on bail. Also, whenever during the trial proceedings it appears on the face of it that an act of maltreatment has been committed, the courts will refer the matter to the police or to the Attorney-General for investigation.

Question 7

Yes, although in practice this seldom happens, as nearly always there is a formal complaint. The procedures are identical with those applying in the cases of a formal complaint alleging that a criminal offence has been committed. The police will investigate the matter and, wherever on the face of the evidence before them there are grounds to believe that a crime has been committed, the file is forwarded to the District Attorney, the State Attorney or the Attorney General for a decision as to what action should be taken.

Question 8

Yes. The procedure will be that of a regular criminal trial. The maximum penalty is 20 years' imprisonment. Suspended sentences can be passed, although

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this is only likely in the case of a minor offence. As to pardon, commutation of sentences or amnesties, the considerations governing these are those applicable in all criminal cases.

Question 9

Torture of any sort and by any person, whether in public employ or otherwise, is a crime punishable by law. Police and prison personnel and investigating officers, are, in addition to criminal proceedings and independently thereof, subject to disciplinary proceedings, torture being a severe breach of discipline. (Police Regulations (Definition of Disciplinary Offences, 1955); Prison Regulations, 1978). Sanctions in disciplinary actions range from dishonourable discharge to reprimand, depending on the severity of the offence.

In appropriate instances, a previous conviction in criminal or disciplinary proceedings, may disqualify the officer from being recruited to the public service or prevent him from being admitted to the bar or from obtaining a licence to practice medicine. Lawyers and doctors in the public employ are liable, in addition to the aforementioned criminal and disciplinary proceedings, to disciplinary action by the appropriate professional bodies.

Under such proceedings a person may be disbarred or have his licence revoked, as the case may be. Readmission thereafter is a matter for special consideration by the authorities concerned.

Question 10

Any form of cruel, inhuman or degrading treatment is considered under Israeli law and the rules of professional conduct to be gross breaches of both law and ethics.

Appropriate criminal and disciplinary action is applied, as set out above in the answer to question No. 9.

Question 11

Yes. Please see reply to question No. 1 above.

Question 12

In general, any person who has suffered injury by any state authority may freely apply to the courts for damages in tort.

Such person may also be awarded compensation under section 77 of the Penal Law 5737-1977, which provides that the courts may require the person convicted of the offence to pay compensation for the damage or suffering caused through the offence.

Intergovernmental committees may be set up to study claims for damages against the State. The application to such committees does not prejudice a tort action.

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Question 13

In any case when a defence counsel challenges the admissibility of a confession on the grounds that it was obtained by unlawful means, a "little trial" or a "trial within a trial" is held, in which witnesses are brought before the court and fully examined. In such cases, the onus is on the prosecution to disprove the allegations made by the defence.

Question 14

The principles included in the Declaration is brought to the knowledge and diffused among all the officials dealing with investigation and involved in the custody or treatment of prisoners.

Question 15

Israel believes that its system of legal and administrative control and safeguards implements in general the provisions of this Declaration. Notwithstanding this - an ongoing review of the practices and procedures is carried on by the authorities concerned.

ITALY

/Original: French/
/23 January 1980/

Question 1

1. The fundamental rights of Italian citizens before the law, without distinction of sex, race, language, religion, political opinion or personal and social status, are embodied in the fundamental principles of the Constitution of the Republic (art. 3) which entered into force on 1 January 1948.
2. The same constitutional charter (art. 27) stipulates that punishments shall not involve inhumane treatment and shall promote the rehabilitation of the convicted person.
3. These principles are widely reflected in current penitentiary legislation (approved by Act No. 354 of 26 July 1975), article 1 of which stipulates that the treatment of detained persons must be humane and ensure respect for human dignity.

Numerous articles in that legislation and in the regulations for its implementation (as approved by Presidential Decree No. 431 of 29 April 1976) provide for treatment consistent with the individual and personal needs of each detained person so that any disciplinary penalties are primarily aimed at educating rather than punishing.

Questions 2 and 3

Article 13 of the Constitution expressly stipulates that "physical or moral violence against persons placed under any form of detention shall be punished".

A similar principle is laid down in the above-mentioned penitentiary legislation (Act No. 354/1975) and in the regulations (431/1976) for its implementation; the same principle governs the Standard Minimum Rules for the Treatment of Prisoners approved by the United Nations in 1975.

The competent governmental authorities are endeavouring, through occupational training courses and appropriate refresher courses, to provide law enforcement personnel and prison staff with adequate theoretical and practical training in order to ensure that their behaviour towards prisoners in their custody is governed by respect for the life and physical and mental well-being of all persons.

Questions 4, 5, 6, 7 and 8

1. The supervising officer of the judiciary monitors the treatment of prisoners. Prison institutions are also inspected by officers of the Prison Service Inspectorate of the Ministry of Justice and by parliamentary commissions. Article 35 of Act No. 354/75 expressly provides that prisoners and detainees shall have access to external and internal prison authorities so that those authorities may be aware of any complaint and can take the necessary action or cause it to be

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taken. Under article 31 of the Criminal Code, persons found guilty of inflicting cruel, inhuman or degrading treatment may be punished by permanent or temporary disqualification from all government service.

2. In the event of criminal proceedings, the penalties imposed are, generally speaking, governed by the relevant provisions of the Criminal Code, which expressly specified which persons are empowered to institute criminal proceedings, depending on the seriousness of the crime committed, possible aggravating or extenuating circumstances, and conditions which may influence the extent and duration of the penalties imposed on offenders.

3. In this connexion, it should be noted that since the crime of torture, as such, does not exist in Italian law - that concept being foreign to the civil and moral conscience on which the law itself is based - account must be taken in each case of the scale of crimes, ranging from assault and battery to murder, which government officials might commit against prisoners or detainees and for which they bear full criminal and civil liability.

4. In addition to the above, it should be added that article 323 of the Criminal Code expressly stipulates that a government official who, by abusing the powers pertaining to his office, causes harm "through the commission of an act not designated as a crime under any provision of the law shall be punished by imprisonment for up to two years or by a fine".

Questions 9 and 10

1. In addition to the provisions mentioned in paragraphs 2, 3 and 4 of the preceding reply, this subject is also governed by article 608 of the Criminal Code which stipulates that a government official who subjects an arrested or detained person in his charge, even temporarily, to harsh measures not authorized by law commits an offence punishable by imprisonment for up to 30 months. Should the offence be accompanied by insults, blows, injuries or other violence to detainees, such acts are charged and punishable as separate offences.

2. The action taken by occupational associations against their members convicted of acts of torture is prescribed in the codes of professional ethics and differs from association to association and according to the seriousness of the offence committed.

3. Finally, article 32 of the Italian Constitution guarantees that no one shall be forced to undergo medical treatment except in cases provided by law. The same article also stipulates that the law shall in no case violate the limits imposed by respect for the human person.

Question 11

Criminal proceedings against persons responsible for acts of torture or other forms of cruel, inhuman or degrading treatment or punishment are governed by the relevant provisions of the Criminal Code and the Code of Criminal Procedure (see paras. 2, 3 and 4 of reply to question 4 and reply to question 10).

Question 12

1. The right to recompense for damage unjustly suffered is a principle of Italian law. Article 2043 of the Civil Code stipulates that any fraudulent, malicious or negligent act that causes unjustified injury to another obliges the person who has committed the act to repair the injury. Furthermore, article 185 of the Criminal Code stipulates that every offence which has caused damage to property or any other damage shall render the offender liable to pay compensation. The procedure of the action for damages against the party guilty of causing such damage is laid down by the Code of Civil and Criminal Procedure, and the judge has discretion to assess the amount of compensation to be awarded.

2. In no case is the State liable for damage caused by acts such as torture committed by government officials or law enforcement or prison personnel: as stated in paragraph 1, civil and criminal liability is incurred solely by the person responsible for the act.

3. However, article 571 of the Code of Criminal Procedure provides for compensation for damage sustained as a result of judicial error.

4. Since the use of torture or inhuman or degrading treatment is foreign to the civil and moral conscience of the Italian people, the number of cases calling for the measures described in paragraphs 1 and 2 is negligible.

Question 13

1. Under Italian law the judge's conclusion on the facts adduced in criminal cases must be arrived at in open court and through personal questioning of the accused. The accused person cannot be compelled to answer the questions put to him and must be able at all times to avail himself of the assistance of counsel.

2. It is an established principle of doctrine and jurisprudence that evidence obtained by torture or other cruel, inhuman or degrading treatment is always deemed to be null and void.

Questions 14 and 15

The Italian Government has always endeavoured to disseminate the text of the Declaration and all provisions that make reference to it to police forces or penal institutions by means of the publication and direct transmittal of texts and to law enforcement officials and prison staff and by means of seminars and occupational training courses. At all events, its duty in this respect has always been facilitated by the aversion which the moral and civil conscience of the Italian people has consistently felt towards the use of torture or cruel, inhuman or degrading treatment reminiscent of the dark ages.

JAMAICA

/Original: English/

/14 July 1980/

Question 1

There is no legislation apart from the Constitution which deals with the question of torture. However all the acts which are set out in Article 1 of the above Declaration as constituting torture, would, if committed in Jamaica be an offence either against the common law or the Offence Against the Person Act.

Section 17 of the Constitution provides that

1. No person shall be subjected to torture or to inhuman or degrading punishment or other treatment.
2. Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question authorizes the infliction of any description of punishment which was lawful in Jamaica before the appointed day.

The Appointed Day is 6 August 1962. (Independence Day)

A person therefore who has been tortured may apply to the Supreme Court for redress on the grounds that his constitutional rights under Section 17 have been breached. Such a person may also bring an action for damages against his torturers.

No law previous to the Appointed Day authorized the use of torture or cruel, inhuman or degrading treatment or punishment. The types of punishment authorized are (1) Sentence of Death (2) Incarceration and (3) Corporal Punishment.

Of these, the death sentence is being considered by the National Security Committee of Parliament with a view to deciding whether to recommend its retention or abolition.

Incarceration continues to exist but there should be noted the introduction of the Parole System which allows a prisoner, in accordance with certain rules and requirements, to serve a portion of his sentence on a non-custodial basis. There is also a new Criminal Justice (Reform) Act 1978 which has introduced the concepts of suspended sentences, community service orders and serving of custodial sentences only on weekends.

There is nothing in any law or the Constitution which authorizes torture or any inhuman or degrading punishment in a period of warfare or public emergency.

Question 2

Officers being trained are made to know that torture and general cruelty will not be countenanced. The Commissioner of Police from time to time issues what are

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known as Force Orders reminding the police that cruelty or torture will not be tolerated and in the case of proven instance offenders will be punished and/or severely disciplined.

Question 3

Rule 522 of the Rules for the Jamaica Constabulary states that

"Prisoners shall be treated by the Constabulary with every consideration and while no harshness or unnecessary restraint shall be used towards them, every precaution must be taken as regards their safe custody."

This refers to what may be called a lesser degree of violence. A greater degree of violence could attract criminal charges, and an officer tried and convicted could face dismissal and other serious disciplinary measures.

The treatment of prisoners and operation of penal institutions is covered and regulated by the Prisons Rules made under the Prisons Act.

Question 11

Since the adoption of the Declaration, no investigations have been made into torture, because there have been no allegations of torture or other forms of inhuman punishment.

Question 12

A person who alleges that he has been tortured may seek civil redress for damages against the person concerned. Such a person may also under Section 25 of the Constitution, seek redress in the Supreme Court on the ground that his constitutional rights under Section 17 have been infringed.

Question 14

The Government through the Responsible Ministries has publicized the Declaration and have ensured that its existence is brought to the attention of all law enforcement officers and agencies.

The public have also been made aware of the existence of the declaration both at the time of the adoption of the declaration and from time to time by reference thereto. The training of new recruits into the various law enforcement agencies include familiarization with the laws and various conventions and covenants to which Jamaica has acceded or is a signatory.

LEBANON

/Original: French/

/31 March 1980/

1. There are no legislative provisions or texts which allow discriminatory detention in the practice of either ordinary or special courts in Lebanon. On the contrary, in accordance with the second paragraph of article 115 of the Code of Criminal Procedure, an accused person in custody pending trial for a correctional offence punishable by less than one year's imprisonment is automatically released five days after the date of his arrest. In all other cases he has the unconditional right to apply for conditional release with or without bail provided that he indicates an address for the service of documents within the territorial area of jurisdiction of the court.
2. The provisions of the Code of Criminal Procedure stipulate that the police must bring every arrested person before the State Counsel General within 24 hours after his arrest, failing which they are liable to prosecution on the grounds of arbitrary arrest (Art. 197 of Legislative Decree No. 54 of 5 July 1961).
3. The ordinary procedure is applied in the case of political offences.
4. In exceptional circumstances such as the declaration of a state of siege, the accused is brought before the military court and the procedure followed is the same as in ordinary cases, thereby allowing the accused to enjoy all the guarantees provided by law, international conventions and United Nations resolutions.
5. Arbitrary (administrative or political) detention is not practised in Lebanon and is, in fact, prohibited by law.
6. All acts of torture or cruelty towards the person of the accused are absolutely forbidden by law. If such acts were ever to be practised by the police, the perpetrator would be prosecuted.
7. Members of the family of the detained person are allowed to visit and correspond with him, in accordance with general rules and regulations, unless the detained person is forbidden such communication during the investigation on the order of the examining judge; this restriction cannot be imposed for a period exceeding 10 days and can be renewed only once.
8. Women detainees and prisoners are provided with all the necessary care and attention.

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MEXICO

/Original: Spanish/
/24 July 1980/

Question 1

The answer to question 1 of the questionnaire must refer, primarily, to the guarantees of legal security laid down in articles 19 and 22 of the political Constitution:

Any ill-treatment in the course of an arrest or in prisons, any hardship caused without legal grounds, any tax or contribution levied in prisons, is an abuse that shall be remedied by law and punished by the authorities.

The penalties of mutilation, civil degradation, branding, whipping, beating, torture of any kind, excessive fines, confiscation of property and any other unusual and extraordinary punishment shall be prohibited.

The Regulations governing the Federal District Security Police state that: "The security police shall be prohibited from detaining any person without cause and without legal grounds or from ill-treating persons without justification during their arrest or while they are in prison, regardless of the misconduct or offence with which such persons are charged".

Article 13 of the Act establishing Minimum Rules for the Social Rehabilitation of Convicted Prisoners which is designed to organize the Mexican penitentiary system, states clearly that: "Any punishment consisting of torture or cruel treatment involving the unnecessary use of violence against inmates shall be prohibited".

Similarly, article 9 of the Prison Regulations of the Federal District states: "All forms of physical and moral violence and actions or procedures which undermine the dignity of inmates shall be prohibited; consequently, the authorities shall in no case perform actions that amount to inhuman, degrading or cruel treatment, torture or economic exactions".

Question 2

With respect to question 2 concerning training programmes and activities for the staff and public officials responsible for persons deprived of their liberty, attention is drawn to the provisions of article 674, paragraph VII, of the Code of Criminal Procedure of the Federal District:

"The creation, organization and administration of a selection and training system for the staff of social rehabilitation institutions".

Question 3

The answer to question 3 must likewise cite the provisions of Part Seven, chapter X, of the Code of Criminal Procedure of the Federal District, chapters II and III of the Act establishing Minimum Rules for the Social Rehabilitation of Convicted Prisoners, the Internal Regulations of the Department of Co-ordinated Preventive and Social Rehabilitation Services and the Prison Regulations of the Federal District Department.

Question 4

With regard to question 4, it is appropriate to refer to the relevant passages of the Political Constitution of the United Mexican States, particularly articles 16, 19, 20 and 22. Article 20, paragraph II, reads as follows:

"He may not be compelled to make a statement incriminating himself and, for that reason, keeping persons incommunicado or any other means designed to achieve that objective shall be strictly prohibited."

Account should also be taken of the content of Part Two, sections two and three, of the Code of Criminal Procedure of the Federal District and of the relevant sections of the Codes of Procedure of the States of the Federation.

An interesting example is provided by article 289 of the local Procedural Code, which reads:

"In no case may the judge for any reason use detention incommunicado or any other coercive measure to obtain a statement from the detained person".

Account must likewise be taken of articles 272 and 273 and other relevant articles of that same Code.

Witnesses are also protected; according to the provisions of article 255, paragraph II, they cannot be compelled to testify.

Also relevant are the articles dealing with: "Protection of the accused" and everything related to Part Six of the Code, governing all aspects of "evidence", particularly the paragraph on "legal value of evidence".

Question 5

The answer to question 5, concerning liability to punishment, is to be found in the provisions of the articles of Part Ten, chapter II, of the Criminal Code of the Federal District, for matters within the Common Jurisdiction, and of the entire Republic, for matters within Federal Jurisdiction. Typical provisions are article 213 which, under the heading "abuse of authority", states: "Anyone who commits the crime of abuse of authority shall be sentenced to imprisonment for from six months to six years, shall be fined 25,000 pesos and dismissed", and article 214, which states "Any civil servant or government official or any of their agents, regardless of his category, commits the offence of abuse of authority in

the following cases: ... II. If, in exercise of or by reason of his functions, he does violence to a person without legitimate cause, or unjustly injures or insults him; ... IV. If he performs any other arbitrary action that violates the rights guaranteed in the Constitution ..."

With regard to what the questionnaire refers to as "participation, complicity and incitement", reference must again be made to the Code, which states, in article 13, paragraphs I, II and III: "The following shall be deemed to commit an offence: I. Those involved in the planning, preparation or implementation of the offence. II. Those who induce or compel others to commit the offence. III. Those who assist or co-operate in any way in carrying it out."

Intent is also punishable under the Code, when acts are performed the direct and immediate purpose of which is the commission of an offence, but the offence has not been consummated owing to reasons beyond the person's control.

Accordingly, all the foregoing actions are punishable.

Question 6

The answer to question 6 is as follows: The offence of abuse of authority is defined in the Criminal Code as stated above; accordingly, it falls into the category of common crimes, cannot be treated as an internal public service offence and comes within the jurisdiction of the competent criminal courts.

Question 7

With regard to question 7, we must again refer to article 214 of the Criminal Code, the last paragraph of which states: "The offences referred to in this chapter shall be subject to citizen prosecution". Obviously, anyone may bring such an action, which is based on the public interest in prosecuting those who commit an offence to which the law accords exceptional treatment.

Question 8

With regard to question 8, we must refer to the main characteristics of proceedings, particularly the general rules for criminal proceedings, and those of the systems contained in the Codes of Criminal Procedure and the Act Establishing Minimum Rules for the Social Rehabilitation of Convicted Prisoners. These systems include partial remission of sentence, pre-release treatment, preparatory liberty, conditional sentence, commutation of sentence, pardon and, in particular, Amnesty Acts.

Question 9

Question 9 has, for the most part, been answered in preceding paragraphs. "Professional responsibility" is covered by the provisions of Part Twelve and article 45 of the Criminal Code and by the final part of article 213 of that Code.

Occupational associations are governed by their own statutes; accordingly, if these statutes are violated, they alone decide on the action to be taken.

Questions 10 and 11

No information is available to answer questions 10 and 11.

Question 12

With regard to question 12, on compensation for the victims of acts of torture or other cruel, inhuman or degrading treatment or punishment, noxal action can always be instituted in such cases.

Question 13

With regard to question 13, we must refer to article 287 of the Federal Code of Criminal Procedure, which lays down the requirements for a confession to be deemed valid, one of which is that it must have been made by a person over 18 years of age, acting deliberately and without coercion or violence.

NICARAGUA

/Original: Spanish/
/10 June 1980/

The Government of Nicaragua wishes to state that the People's Sandinist Revolution represents victory over methods of torture and cruel, inhuman and degrading treatment or punishment and that this is clearly reflected in the legislation that has been promulgated.

The following revolutionary Acts reflect this policy of good government: 1/

1. Fundamental Statute, Decree of 20 July 1979; published in Gaceta No. 1 of 22 August 1979;
2. Statute on the Rights and Guarantees of Nicaraguans, Decree no. 52 of 21 August 1979; published in Gaceta No. 11 of 17 September 1979;
3. Act approving and ratifying the American Convention on Human Rights, signed in San José, Costa Rica, on 22 November 1969, Decree no. 174 of 25 September 1979, published in Gaceta No. 67 of 26 November 1979;
4. By adoption and accession of the Government of Nicaragua to the International Covenant on Civil and Political Rights and the Optional Protocol thereto and to the International Covenant on Economic, Social and Cultural Rights, Decree no. 255 of 8 January 1980, published in Gaceta No. 25 of 30 January 1980;
5. (Protection of Personal Freedom and Security Act), Decree no. 232 of 4 January 1980, published in Gaceta No. 6 of 8 January 1980;
6. Act on Amparo, Decree no. 417 of 28 May 1980, published in Gaceta No. 122 of 31 May 1980.

The national penitentiary system is planned and organized according to modern criteria, the chief objective being the rehabilitation of the prisoner by means of a system of re-education designed to ensure his full reintegration into society.

The Government of National Reconstruction of Nicaragua is sparing and will continue to spare no effort to ensure that all persons without distinction as to sect genuinely enjoy human rights throughout the territory, and the Ministry of the Interior, the authority which guarantees law and order, has undertaken to monitor their observance in a climate of social peace and scrupulous respect for the individual.

1/ The laws mentioned above are on file in the Secretariat and are available upon request.

Article 6 of the Fundamental Statute guarantees that the human rights specified in the Universal Declaration will be fully observed and proclaims the unconditional equality of all Nicaraguans.

Article 8 guarantees freedom of conscience and of religion, based on the broadest spirit of tolerance, and unrestricted freedom of thought, expressed in speech and in writing, and freedom of political and trade union organization, subject only to any limitations emanating from the Statute on the Rights and Guarantees of Nicaraguans.

UKRAINIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/

/7 July 1980/

1. The legislation of the Ukrainian SSR not only strictly prohibits all forms of cruel treatment, but also precludes even the possibility of any person being subjected to torture or other cruel, inhuman and degrading treatment or punishment, and, in addition, provides all the necessary legal guarantees for this purpose (see CCPR/C/1/Add.34).
2. Among the constitutional guarantees, particular mention should be made of a number of articles of the Fundamental Law of the Republic. Article 4 of the Constitution of the Ukrainian SSR states that the Soviet State and all its bodies function on the basis of socialist law, ensure the maintenance of law and order, and safeguard the interests of society and the rights and freedoms of citizens. Article 52 of the Constitution of the Ukrainian SSR states that citizens of the Ukrainian SSR are guaranteed inviolability of the person. Article 55 of the Ukrainian Constitution confirms the right of citizens to protection by the courts against encroachments on their honour and reputation, life and health, and personal freedom and property.
3. Building on the Constitutional guarantees, the Criminal Code provides that no one may be tried except on the grounds and in accordance with the procedure established by law (article 5 of the Code of Criminal Procedure of the Ukrainian SSR); article 22 of the Ukrainian Code of Criminal Procedure contains provisions forbidding any attempt to obtain testimony from the accused by the use of force, threats or any other illegal means.
4. In defining the purposes of punishment, article 22 of the Criminal Code of the Ukrainian SSR states that the purpose of punishment is not to inflict physical suffering or to degrade human dignity. The same provision is contained in article 1, part 2 of the Correctional Labour Code of the Ukrainian SSR, which deals with the purpose of punishment.

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5. In addition to provisions forbidding the use of physical or psychological pressure on persons against whom criminal proceedings have been initiated or who are receiving punishment in the form of deprivation of liberty, the legislation of the Ukrainian SSR establishes criminal and disciplinary liability for officials guilty of violating the rules for the treatment of persons accused of crimes or sentenced to deprivation of liberty.

6. In the Criminal Code of the Ukrainian SSR, the use of force to obtain testimony is regarded as a serious crime. Under article 175 of the Criminal Code the extraction of evidence during interrogation, by illegal acts on the part of persons conducting the inquiry or preliminary investigation, is punishable by deprivation of liberty. Extraction of evidence, accompanied by the use of force or by mockery against the person of the accused, is punishable by deprivation of liberty for a longer term.

7. In addition to the provisions concerning criminal liability, article 443 of the Civil Code of the Ukrainian SSR states that the relevant State organs bear material liability, in the cases and within the limits specially prescribed by law, for harm caused by official misconduct on the part of the organs of inquiry or preliminary investigation, the Procurator's Office or the court.

8. As can be seen from the above, the legislation and practice of the Ukrainian SSR are in complete conformity with the principles of the Declaration adopted by the General Assembly, and consequently it has not been necessary to introduce any amendments or additions to the existing laws and regulations in the Ukrainian SSR as a result of the adoption of the Declaration.

YEMEN

/Original: English/
/8 July 1980/

Answer to question 1

The Constitution in force in the Yemen Arab Republic guarantees the basic principles established in the human conscience regarding the protection of human rights and ensures that they are not violated in any way.

The Constitution, as the country's supreme legislative instrument, is binding on all the legislative, executive and judicial authorities of the State. Any administrative, legislative or judicial procedure that violates the basic principles set forth in the Constitution is considered null and void as well as illegal and entails financial liability as well as penal liability, where appropriate.

Chapter III of the Constitution of the Yemen Arab Republic deals with public rights and duties in articles 21, 22, 23, 24 and 42-43.

In this connexion, it should be pointed out that under articles 27, 28, 29, 30 and 31 of this Chapter, no Yemeni citizen may be expelled from Yemeni territories or prevented from returning to them, nor may any citizen be detained, arrested or searched except pursuant to an order issued by a legally competent authority.

As regards the measures taken in exceptional circumstances referred to in the question, these fall under what is called "state of emergency". The declaration of a state of emergency does not involve any violations of the principle of legality which is strictly observed by all the State's organs and bodies in the Yemen Arab Republic. The relevant procedures were specified in the Emergencies Act, No. 8, of 1963.

Reference should also be made to the Code of Penal Procedure, No. 5, promulgated on 27 February 1979. Section 1 of its Introductory Chapter deals with the provisions relating to the protection of the rights and personal freedoms of individuals.

No doubt the promulgation of this Code is a translation and an expression of the substance of the General Assembly resolution concerning the protection of persons against acts of torture and oppression.

Answer to question 2

No acts of cruel or inhuman treatment have been committed in the Yemen Arab Republic. The provisions of the Constitution and the Code of Penal Procedure ensure the protection of public freedoms by the official means of information. The principles of the constitution and the provisions of the Code

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cited above are considered as fundamental in both the faculty of law and the police training college. In addition, the office of public prosecutions, as the body responsible for instituting proceedings in criminal cases and in charge of law-enforcement officers in the Republic and of implementing the provisions of this Code, issues instructions, orders and directives to all the State's official organs for the enforcement of the provisions of the basic laws, thus ensuring the protection of the citizens' freedoms against any arbitrary acts of injustice. Moreover, the office of public prosecutions, the police department and the Ministry of the Interior have invited many legal experts from Arab as well as foreign countries to assist in training members of the above departments in ways of ensuring the protection of the citizens' freedoms and safety and of preventing any acts of injustice or oppression against citizens.

Answer to question 3

The office of public prosecutions is responsible for ensuring the protection of detained or arrested persons. It issues orders and instructions to the officials in charge of legal places for detention or arrest, which must be respected by those officials. Any official who fails to comply with instructions is liable to disciplinary or penal action for violation of the rights of arrested or detained persons as indicated above.

Law-enforcement officers, such as chiefs of public security, district officers, police and security officers, chiefs of guard patrols, chiefs of divisions and police stations and all those who are responsible for carrying out arrests are considered as being under the command and supervision of the public prosecutor who may call for an inquiry into alleged violations or derelictions of duty. Moreover, he may direct that disciplinary action be taken against the persons involved and possibly that criminal proceedings be instituted against them in accordance with articles 51 to 56 of the Code of Penal Procedure.

It should also be pointed out that the State issued, under Act. No. 31 of 1979, prison regulations in which it defined the responsibilities and powers of those in charge of supervising such institutions, and made provision for the decent treatment of prisoners.

Answer to question 4

The arrest of any person in the Yemeni Arab Republic is carried out pursuant to a written order issued by the office of public prosecutions or by the competent court and in the circumstances defined in articles 110 and 111 of the Code of Penal Procedure. Similarly, custody pending trial is resorted to only in the interest of the investigation process, as strictly specified in article 160 of the above Code, and in conformity with the conditions and circumstances set forth in articles 161 to 168. Every person who is restricted in his freedom is entitled to submit at any time to the director of the place where he is held in custody a verbal or written complaint, requesting him to transmit it to the office of public prosecutions. The person with whom a complaint is lodged is obliged to accept it and to refer it immediately to the public prosecutor, after setting down

particulars in the record. A person arrested is kept in a place other than that reserved for convicted persons, and is to be treated as innocent. In addition, he may not be subjected to any physical or psychological pressure for the purpose of extracting a confession from him or for any other purpose (art. 97 of the Code of Civil Procedure). He may also inform any person of what happened to him and to seek the help of legal counsel. The accused person and his defence counsel may not be kept apart in the course of the investigation. All such measures constitute a sure guarantee for a person under arrest or held in custody pending trial, and preclude any inhuman or degrading acts.

Article 52 of the Code of Penal Procedure provides that if the public prosecutor considers that the act committed by a law-enforcement officer is serious and that the penalty imposed is inadequate he may refer the case to a district court of appeal and request that the officer be relieved of his duty.

The district court of appeal may also take up the case on its own initiative. The decision relieving the law-enforcement officer of his duty entails dismissal from the service without prejudice to any disciplinary penalty or criminal trial.

Answer to question 5

Acts of torture, attempts to commit such acts or complicity in such acts are punishable under the Yemeni Penal Code. Any public servant who tortures an accused person or orders him to be tortured with the intent of extracting a confession from him is liable to imprisonment for a term not exceeding 10 years. This penalty is applicable in respect of criminal offences and if imposed entails dismissal from public office.

It should be noted that proceedings for such offences are not barred by the expiry of a specified period, as would be proceedings in respect of other types of criminal offences, inasmuch as they are acts affecting the freedom and dignity of citizens (art. 8 of the Code of Civil Procedure).

Answer to question 6

The office of public prosecutions is responsible, in accordance with the provisions of the Code of Penal Procedure, for carrying out an investigation into any complaint of this kind. If the complaint is substantiated, the normal procedure for taking legal action is set in motion in accordance with the provisions of the said Code, without prejudice to disciplinary action as indicated in the answers to questions 4 and 5. However, it may be noted that since the establishment of an office of public prosecutions and the entry into force of the Code of Penal Procedure no complaints of this kind have been filed.

Answer to question 7

Acts of torture are considered serious offences, in view of the penalty prescribed for them. The office of public prosecutions, as the guardian of the public interest, is empowered to investigate such acts on its own initiative when informed about the circumstances, without the need to wait until a complaint is

filed with the office. It may be pointed out, however, that no such cases have occurred since the office of public prosecutions began to function.

As mentioned earlier, the commission of or complicity in acts of torture is considered a serious criminal offence for which the penalty is dismissal from public office by virtue of the law. The legislative provisions relating to crimes of torture are defined in the Penal Code governing offences against the public interest, as explained in the answer to question 5. Certainly, any person who commits such an offence incurs contempt not only in the profession to which he belongs but also in society as a whole. Thus, Act No. 21 of 1963, which laid down certain general rules governing penalties provides that any person who is sentenced to temporary detention - a penalty applicable in respect of acts of torture - is deprived automatically of the following rights and benefits:

- (1) Eligibility to any kind of service in the government at any rank;
- (2) Entitlement to any military rank or order;
- (3) Capacity to testify in the courts, for the duration of the sentence;
- (4) Membership of any of the houses of parliament, councils or public committees;
- (5) Eligibility for membership of any of the bodies mentioned under (4).

Answer to question 10

The answer to this question is to be found in the answers to questions 8 and 9.

Answer to question 11

No investigations have been carried out by the office of public prosecutions in this regard as no circumstances have arisen to justify such investigations and no complaints have been filed regarding inhuman treatment or acts of torture since the adoption of the Declaration by the General Assembly.

Answer to question 12

A public servant who commits an act of torture or who pays other persons to commit such acts will be asked to pay damages for any harm caused to the person affected, since the act committed is regarded as attributable to him personally. Furthermore, the State itself will be held responsible for paying such damages in accordance with the general rules governing the accountability of superiors for the acts committed by their subordinates. No examples of such cases are available.

Answers to question 13

The translation of this question into Arabic is not clear. If what is required here is an indication of whether there is a law prohibiting that acts of torture must be proved to have been committed, then the answer is in the negative.

If, however, what is required here is an indication of whether there is a law allowing that the facts concerning acts of torture are explained and established, then the relevant law is the Code of Penal Procedure. Needless to say, such acts may prove to have taken place by the means available to the legal authorities in Yemen as elsewhere.

Answer to question 14

It has already been mentioned that training courses and studies, both in the office of public prosecutions and in the Ministry of the Interior, focus on the question of the protection of human rights and of guaranteeing public freedoms.

Answer to question 15

There are no difficulties in this respect. The practical application of the legislative provisions and the compliance of the citizens and the public servants with these provisions constitute the best guarantees for promoting personal freedoms and preventing any forms of violation of these freedoms. In addition, the authorities of the Yemen Arab Republic are planning to incorporate the recommendations of the General Assembly of the United Nations into the legislation of the Republic.
