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TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING
TREATMENT OR PUNISHMENT

Draft body of principles for the protection of all persons
under any form of detention or imprisonment

Report of the Secretary-General

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Annex. Draft body of principles for the protection of all persons under
any form of detention or imprisonment

I. INTRODUCTION

1. On the recommendation of the Commission on Human Rights (resolution 17 (XXXV) of 14 March 1979) the Economic and Social Council, by its resolution 1979/34 of 10 May 1979, requested the Secretary-General to transmit to all Governments the draft body of principles for the protection of all persons under any form of detention or imprisonment, adopted by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, to solicit their comments and to report to the General Assembly at its thirty-fifth session, so that the Assembly could consider their adoption. Accordingly, the Secretary-General, by a note verbale of 15 June 1979, transmitted the draft body of principles to all Governments, for observations. The text of the draft body of principles for the protection of all persons under any form of detention or imprisonment (E/CN.4/1296, para. 109) is reproduced as an annex to this report.

2. The present report contains summaries of the comments received, as at 15 June 1980 from the following States: Austria, Barbados, Byelorussian Soviet Socialist Republic, Cyprus, El Salvador, Germany, Federal Republic of, Hungary, Iraq, Italy, Ivory Coast, Japan, Niger, Norway, Panama, Sweden, Switzerland, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, and the United Kingdom of Great Britain and Northern Ireland. 1/ Any comments received subsequently will be summarized in addenda to the report.

II. REPLIES RECEIVED FROM GOVERNMENTS

AUSTRIA

/Original: English/

/29 February 1980/

1. Austria has no misgivings about the fundamental concept of this draft. Though in formulating certain rules, still more account should be taken of the general nature of the Principles by not using, for instance, the term "lawyer" instead of "adviser" of a detained person. For the purposes of detention proceedings under civil law on the grounds of a psychic handicap an "adviser" should be understood to be not only a "legal-adviser"/lawyer/ but also another type of "adviser"/counsel or "curator"/administrator/ (cf. e.g. rule 15, paras. 2 and 3). If the term "counsel" is used, it should be clearly defined in order that it could be used for all relative types of procedure and forms of assistance.

1/ In accordance with Economic and Social Council resolution 1979/41 entitled "Control and limitation of documentation" and General Assembly resolution 34/50 of 25 November 1979, the replies of Governments have not been reproduced in extenso. The full texts of the replies are on file in the Secretariat and are available to delegations upon request.

Principle 8

2. The principle of separation of the authorities competent for the detention of a person and those competent for the investigation of the case is understandable in the light of the legal objective of the subject Principles and should be definitely subscribed to as a goal to be achieved.

3. But the formulation should be reconsidered because the important point is not necessarily the distinction between the two authorities but rather the mutual independence of the authorities competent for keeping a person in detention, on the one hand, and those competent for conducting the proceeding (the investigation), on the other hand. For this reason the following wording, for example, seems preferable: "The officials responsible for arresting the suspect and keeping him in detention shall as far as possible be distinct from and independent from those entrusted with the investigation of the case. Both authorities shall be under the control of a judicial or other authority."

Principle 9

4. This principle is obviously meant for the formal order of detention (cf. also the "bringing forward" as provided in para. 3 of art. 5 of the European Convention on Human Rights and paragraph 3 of article 9 of the International Covenant on Civil and Political Rights) or other formal decisions of detention rather than for the issue of a warrant of arrest or arrestation by policemen. It refers to "order of detention rather than "arrest". But this wording alone does not sufficiently make clear said distinction (and in particular the fact that the term "order of detention" does not include a warrant of arrest, the search for a person, etc.). Clarification might be achieved either by a reference to the last sentence of principle 33 or by supplementing paragraph 1, say, as follows: "Before an order of detention is issued against an arrested person, this person shall be given the opportunity to be heard. He shall have the right to defend himself or be assisted by counsel as prescribed by law.

Principle 11

5. Objection is raised to revealing to criminal offenders the names of enforcement officials since this has repeatedly led to the policemen's families being exposed to reprisals.

6. This objection should be allowed for by formulating the principle in a way enabling the authority to replace in the records the names of such officials by other identification symbols (e.g. official's internal identification number, code number, etc.).

Principle 14

7. The expression "members of his family" for designating the group of persons to be informed of a person's arrest or transfer from one place of detention to another is considered too narrow since in the circumstances that may be given in

a specific case other relatives or friends of the detained person might be eligible (cf. art. 18, 19 of the Draft Principles on Freedom from Arbitrary Arrest "or other person of his confidence").

Principle 16

8. It is held by Austria that the possibility of "suspending or restricting" a detained person's right to be visited by and to communicate with his counsel as provided for exceptional cases in paragraph 4 of this principle breaks or limits in a given case also the ban on the control of the contents of such interviews or censoring of written messages as stipulated in paragraphs 2 and 3 thereof. It is noted that the criteria for the exceptional circumstances referred to in paragraph 4 should include not only the aspects of security and good order in the place of detention but also the aspect of ensuring the conduct of the proceeding and the purposes of detention (cf. "purposes of detention" referred to in principle 17).

Principle 20

9. Austria advocates this rule. As regards indication of the names of officials the attention is drawn to the comments on rule 11.

Principle 22

Paragraph 1

10. A detained person's right to be examined by a physician of his own choice should be limited in the same way as this is done in rule 91 of the Standard Minimum Rules for the Treatment of Prisoners by adding the words: "if there is reasonable ground for his application".

Paragraph 2

11. This paragraph raises the question of maintenance of the physician's professional secrecy which serves the protection of the patient's privacy. Having regard to a reasonable balance of interests between the protection of the detained person's privacy and the control of the prison administration in the interest of the detained, retention of the present form of the regulation should be considered.

Principle 23

12. The scope of the rule should clearly relate to the ban on torture and other inadmissible methods of interrogation (rules 5 and 19) and not simply refer to "contravention of these Principles".

Principle 28

13. In view of the justified objective of these provisions it is held by Austria that especially for paragraph 3 a version should be sought which provides formal requirements that are less strict and worded in more general terms and takes better account of existing legal protection arrangements within Continental legal systems.

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BARBADOS

/Original: English/
/7 May 1980/

1. In practice, an arrest generally takes place during an investigation. In other words, one or more members of the investigating team make the arrest.
2. There might be some cases when a new team could be assigned to carry out further investigation after an arrest has been made but this would become rather burdensome on a force with limited personnel resources if it had to be done in every instance and one is left to wonder what real purpose would be served.

Principle 12

3. It is strange to hear of a prisoner's "obligations".

Principle 15 (2)

4. It might be that this should apply to certain serious offences which would be specified. Our laws do not provide for this assistance to all prisoners, but only to those charged with certain specified offences.

Principle 31 (1)

5. The right of the dependants to compensation is provided for only in cases where the death of the prisoner was caused by the wrongful act.

Principle 33

6. Consideration may be given to providing some flexibility for the police to detain a prisoner pending investigation for a limited period prior to his being taken before a judicial authority. The stipulated period could be "not more than 72 hours".

BYELORUSSIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/
/18 March 1980/

1. The Byelorussian Soviet Socialist Republic is in favour of the idea of preparing a body of principles for the protection of all persons under any form of detention or imprisonment, and believes that the draft transmitted could serve as a basis for discussion by the United Nations General Assembly at its thirty-fifth session.

2. The following are the main comments from the Byelorussian SSR:

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3. In paragraph (a) of the definitions, stress should be laid on the necessity of legal grounds for an arrest, since "arrest" means the apprehension of a person strictly in accordance with the law and only by the competent authorities authorized for the purpose.
4. In paragraph (b), the difference in meaning between the terms "arrest" and "detention" should be more clearly brought out.
5. Paragraph (c) should make clearer the distinction between the import of the term "imprisonment" and that of the terms "arrest" and "detention", for it should be borne in mind that detention and arrest are preventive measures, which may be carried out by investigating authorities, whereas imprisonment, as a form of punishment, is permissible only upon the decision of a court, with respect to the commission of specific offences.
6. Principle 1 should stress the inadmissibility of any illegal deprivation of liberty.
7. Principle 4, paragraph 1, it would be desirable to specify that the provisions of this instrument apply both to citizens, whether by birth, or by naturalization, and to non-citizens.
8. Principle 5, the meaning of the expression "cruel, inhuman or degrading treatment or punishment" should be more clearly defined; a distinction being made between forms of treatment and forms of punishment. The principle should also include a reference to the inadmissibility of the use of physical force against detained or imprisoned persons.
9. Principle 8 should be amended to specify that the administration and staff of places of confinement, who are responsible for holding a suspect in detention, should to the greatest extent possible be distinct from the authorities entrusted with the investigation of the case. Both should be under the control of a judicial or other authority.
10. Principle 19, paragraph 1, should be amended to read: "No detained person shall be compelled to testify against himself, or against any other person".
11. Principle 20, paragraph 2, should specify the time for the provision of access to the records. The detained person should be shown the record immediately after the interrogation and should sign it to attest to his having seen it.
12. In principle 22, more emphasis should be laid on the duty of the State to provide imprisoned persons with free medical care, while not establishing for such persons any special advantages.
13. Principle 35 should be drafted in such a way as to make it clear that the provisional release of a detained person suspected of having committed an offence is a right, and not a matter within the responsibility of the officials on whose initiative he was detained.
14. Many other principles, also, need to be made more exact and precise, especially principles 6, 7, 9, 11, 13, 15, 16, 24, 25, 26, 27, 31 and 33.

CYPRUS

/Original: English/
/5 June 1980/

The principles enshrined in the aforesaid document are safeguarded by the Constitution of the Republic of Cyprus as well as the European Convention on Human Rights and other international instruments to which Cyprus has become a party and which form an integral part of the law of Cyprus. Therefore all these principles are applied as regards any form of detention or imprisonment of a person in Cyprus.

EL SALVADOR

/Original: Spanish/
/13 December 1979/

1. The draft body of principles is laid down in our Political Constitution and in the laws enacted in El Salvador to give full effect to the provisions of the Constitution, such as the Code of Criminal Procedure, the Code of Military Justice and the Regulations governing Penitentiaries and Rehabilitation Centres.
2. Notwithstanding the foregoing comments, the Government of El Salvador does not agree with the provision in principle 9, paragraph 1, of the draft which provides: "Before an order of detention is issued, the person concerned shall be given an opportunity to be heard." This Government considers that this provision does not correspond to the social and cultural reality in El Salvador. The way in which the matter is dealt with in the Code of Criminal Procedure seems to be more appropriate; article 247 of that Code provides that, for the purpose of making an order for the provisional detention of a person, it is not necessary to inform that person of the terms of the order of provisional detention; it is sufficient for this purpose that (a) there should be sufficient evidence of the commission of an offence, and (b) there should be sufficient evidence for considering that the accused was a party to the offence.
3. However, in serious cases of homicide, rape, wrongful imprisonment (kidnapping), wilful damage, theft, robbery, fraud and acts of terrorism it is sufficient that there should be evidence of the nature indicated under (b) above.
4. It should be noted that the law concerning criminal procedure in El Salvador, although it does not make it mandatory to give a hearing to persons before an order is made for their detention, offers guarantees of their rights to defence and to freedom: as regards their defence, by virtue of the right of any person to a hearing and to be represented by counsel and to be informed of the institution of criminal proceedings against him or of the issue of an order for his detention; as regards their right to liberty, by means of the institution of release on bail or provisional release pursuant to article 250 of the Code of

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Criminal Procedure, under which any person who is held in custody or against whom an order for his detention has been made may obtain his release or continue to enjoy his liberty in the case of offences punishable by a fine or by deprivation of liberty for a term of imprisonment not exceeding three years.

5. In conclusion, the Government of El Salvador shares the opinion of the Commission which prepared the draft body of principles under consideration, save as otherwise noted above.

GERMANY, FEDERAL REPUBLIC OF

/Original: English/
/11 March 1980/

The Federal Government is in agreement with the text and contents of the revised draft body of principles for the protection of all persons under any form of detention or imprisonment as contained in paragraph 109 of document E/CN.4/1296.

HUNGARY

/Original: English/
/18 March 1980/

1. From the draft it does not appear clearly which institutions are exactly covered by the term "judicial or other authority" called upon to enforce the guarantees of impartiality and independence. In order to avoid possible misinterpretations it would be advisable to retain the definitions of the Universal Declaration and the Covenant or to reword the text of this provision in the same sense.

Principle 6, paragraph 2

2. While it is fully acceptable to extend that obligation to persons who learn violations of the provisions during the performance of their official duties, general extension of it to private persons may be a source of conflicts in enforcing other important human rights and may deprive such persons of an essential choice.

Principle 27

3. The Hungarian Government believes that the level of support to dependent members of the families of detained persons is set too low by the draft. Moreover, the attributive "minimum" leaves scope for arbitrary interpretations in support of additional restrictions. The Hungarian Government therefore suggests that this principle of a basically humanitarian character should be amplified and formulated in clearer terms as follows: "In case of need, the competent authorities shall endeavour to ensure the necessary support to dependent members

of the families of detained persons. They shall devote a particular measure of care to the appropriate custody of children left without supervision and to the safe-keeping of the property and dwelling of detained persons."

Principle 34

4. The attributive "reasonable" as used in the text lends itself to various interpretations and may give rise to arbitrariness in the practical realization of the purpose intended. The term "without undue delay" would be more appropriate.

IRAQ

/Original: Arabic/

/14 February 1980/

1. With regard to the definitions of "arrest", "detention", and "imprisonment" set forth in the preamble to the draft body of principles, section I of the Prisons Department Act (No. 151 of 1979), has, in the light of our country's legislation, defined "prisoner" as "someone against whom a judicial decision for committal to prison has been issued by a competent legal authority" and "detainee" as "someone against whom a judicial decision or order for detention has been issued by a competent legal authority". As regards the draft principles, it may be pointed out that one of the fundamental objectives of the Iraqi Constitution is the protection of human rights and that the substance of the draft principles is covered by Iraqi legislation.

2. There is no contradiction between the draft principles and the provisions of Iraqi legislation and their implementation in practice. In addition, Iraq's attitude and practice in the field of international relations underline its full respect for the rules of international law and its strong condemnation of the violation of human values and concepts by some members of the international community.

ITALY

/Original: French/

/6 May 1980/

Principle 8

1. Under the Italian system of penal procedure, the arrest order and warrant, and hence the ensuing state of detention pending investigation, issue from the same authority - the Procurator of the Republic and the examining judge - that is entrusted with the formal investigation and the preliminary proceedings. It follows that the draft principle whereby the authority that ordered detention pending investigation should be distinct from the authority subsequently entrusted with the investigation of the case conflicts with our system.

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Principle 9

2. Similarly, the principle that a person who is to be detained pending investigation should have an opportunity to be heard before the order of detention is issued is not fully compatible with Italian judicial procedure. An opportunity to be heard cannot be granted in the event of mandatory arrest (cases of flagrante delicto, Code of Penal Procedure, art. 235) and cannot be guaranteed in cases where it is mandatory to issue an arrest warrant or order (Code of Penal Procedure, arts. 253 and 393). On the other hand, an accused person detained pending investigation is interrogated "promptly" by the judge, since such interrogation must take place before that of accused persons not held in detention. During the investigation and after the interrogation, the judge must immediately, and indeed of his own motion, order the release of the accused if the evidence does not justify detention or if an arrest warrant is not authorized by law (Code of Penal Procedure, art. 269).

Principle 16

3. Under article 18 of the prison regulations, interviews between a detained person and his counsel, members of his family and other persons must be within sight, but not within the hearing, of a guard. The principle of freedom of correspondence is also in effect. In the case of persons detained pending investigation (for whom principle 16 is apparently formulated), article 18 of the prison regulations provides that interviews must be authorized by the judicial authority. The latter is also empowered to subject correspondence to inspection, the justification for this being the need to prevent any impediment to or interference with the orderly progress of the investigation and trial.

Principles 28 and 29

4. The requirements of draft principles 28 and 29 are fulfilled by the relevant provisions of the Code of Penal Procedure, the prison regulations and the rules for their implementation.

IVORY COAST

/Original: French/

/5 November 1979/

1. The Government of the Ivory Coast has no substantive objections to the draft principles for the protection of all persons under any form of detention or imprisonment.

2. However, since the purpose of the draft is to enumerate rules of conduct which are to apply to States and are therefore to be enforced upon the responsible State authorities, it is difficult to understand the wording of principle 6, paragraph 2, which deviates from that purpose by imposing a special obligation on any person at all, not on the State.

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3. It would be more in keeping with the spirit of the text to delete the paragraph, or at least to incorporate it in paragraph 1, which might be worded as follows:

"States shall enact laws penalizing those responsible for any act contrary to the rights and duties contained in these Principles and requiring any person who has knowledge of any such a violation to report the matter to the superiors of the authorities or other persons concerned with the arrest, detention or imprisonment and, where necessary, to appropriate authorities or organs vested with reviewing or remedial powers. They shall be required to conduct impartial investigations upon complaints."

JAPAN

/Original: English/
/17 April 1980/

1. It is not exactly clear whether or not persons detained under the Immigration Control Order fall under the category of "persons under any form of detention or imprisonment". Hence, a clear identification of such persons should be established in the first place.

2. If the term "a judicial or other authority" as referred to in this draft is interpreted to imply a certain special authority which resembles "juge de l'application des peines" (judge in charge of execution of sentences), appeared in article 709-1 of French Ordonnance No. 1296 of 23 December 1958, having a wide supervisory power over the practical matters of treatment of persons under detention or imprisonment, it is questionable that such an institution should be established as a universally acceptable authority, for it cannot be the only or the best possible machinery, in the structure of the national government organization, to guarantee the proper administration of detention or imprisonment, as is the case with Japan ...

Article 6

3. It is not appropriate to prohibit by law any act contrary to the rights and duties contained in the draft. It should be up to the government of each state to determine whether such rights should be guaranteed by statutes or by practice of administrative agencies including establishment of administrative rules to secure such rights substantially.

4. It is not advisable that the persons with the knowledge of such violations should be obliged to report the matter to the superiors or other competent persons concerned.

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Article 8

5. Whether or not the authorities responsible for arresting the suspect and keeping him in detention should be distinguished from those entrusted with the investigation of the case is deeply connected with the structure of the government organization of each country which varies from country to country. In this sense it is not a very promising idea to set up such a uniform standard of distinction for universal application. Rather, the point of the question seems to rest on whether or not a concrete system is established which adequately guarantees the rights of the persons under arrest or detention.

Article 9

6. As regards paragraph 2 concerning provision of a copy of the order of detention to a detained person, we do not consider it necessary to make such a specific stipulation, since in Japan other appropriate measures are being taken to ensure that the detained persons are kept well informed of the content of such order.

Article 11

7. As regards paragraph 2 concerning provision to a detained person of a copy of the records of facts as described in paragraph 1, we do not consider it necessary to prescribe such a specific clause, since in Japan other appropriate measures are being taken to ensure that the detained persons are kept well informed of the content of such records.

Article 15

8. We do not consider it necessary to give the suspect of a crime the right to have a lawyer assigned to him by the state.

Article 16

9. The propriety of the paragraph 2 allowing of no censorship on written messages between a detained person and his counsel is questionable, since there is no reason for us to believe that such messages would not jeopardize the aim of the detention.

Article 18

10. "Convenience of the visits from family members of the detained person" is not among the important elements to be taken into consideration in determining the place of detention or the institutional facility for execution of sentence. And what is more inappropriate in this article is that such "convenience ..." should be given to the detained person "if he so requests", even though the whole body of the article is conditioned by the phrase "as far as possible".

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Article 20

11. There is no need whatever to provide for such rules, since in Japan other appropriate measures are being taken to ensure that the detained persons are kept well advised of such information as referred to in this article.

Article 22

12. Since the responsibility for the health-care of the detained or imprisoned persons rests entirely with the state, it would be incompatible with the position of the state to give these persons the right to select physicians of their own choice. However, when a detained person has previously been under the consecutive care of one of such physicians and the management of the institution considers it better for him to be examined by such a physician, it should be within the scope of the authority of the management to allow the detained person to consult such a physician.

13. We should not give the detained person who underwent a medical examination the right to have the record of such examination since the knowledge of the content of such a record has often produced adverse effects on the medical control of such a person.

Article 23

14. It is not proper to make inadmissible any evidence obtained in contravention of the Principles.

Article 25

15. If the term "a competent authority distinct from the authority responsible for the administration of the place of detention" is interpreted to mean the one other than the central supervisory office responsible for the administration of detention facilities (which function is being performed by the Ministry of Justice in Japan), this article is not agreeable to Japan, just as to other countries where the structure of government organization varies from state to state.

Article 29

16. What actual measures should be appropriate to the requirements of this article should be within the scope of the national laws of each country.

NIGER

/Original: French/
/29 January 1980/

1. These principles are all reflected in the legal codes of the Niger; the form is slightly different, but the substance remains the same.

2. Those similarities having been mentioned, we should take a closer look at some of the principles set forth in the draft body of principles. Principle 2,

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for example, raises a substantive question: which country offers the best guarantees for the protection of freedoms at the time of application of the principle? The impression given by the use of the term "any country" introduces the concept of relativity, since a particular measure taken in one country for the purpose of protecting the dignity of an imprisoned person would not necessarily be the best guarantee in another country, given the specific character of every social group. Moreover, this principle would allow the imprisoned person to demand the application, for his benefit, of what he considers to be more liberal provisions of another country. Is this possible? In our view, the law has not yet reached that stage of development; today, the principle of the territoriality of the law is still a basic tenet in State institutions. There are, of course, general legal principles concerning protection of the individual, but even those principles, which are reflected in most modern legislations, can be invoked only if they are spelt out in a State instrument. Our concern, in making these comments, is to avoid the adoption of provisions that may never be implemented. To this end, we believe that it would be better to replace the words "any of the human rights ... which are recognized or exist in any country under" by "the basic human rights ... recognized by the international community, under".

3. As regards principle 9, it would seem to us more logical to place it after principle 10.

4. Principle 27 also calls for some comment. Its application would require an objective and humane examination of the situation of two families in most cases: the family of the victim and the family of the offender. It may well be, particularly in case of a crime resulting in death, that the family more in need of material assistance is the victim's. A telling example is that of a middle-income, law-abiding citizen with a large family, murdered by a burglar who has two or three children; in such a case, it would be outrageous for State assistance to go to the burglar's family rather than the victim's. It is true that principle 27 stipulates "as far as possible", but this stipulation apparently refers only to the material aspect of the question. Then there is the phrase: "In case of need". What should that be taken to mean? Should it be interpreted as: "if it proves necessary"? How will the criteria of such necessity be determined?

5. Principle 28 would conflict with the general legal principle concerning standing to sue, if any citizen could challenge a judicial decision simply because he "has a reliable knowledge of the case". Moreover, allowing such a procedure would open the door to any kind of frivolous action, with the adverse effect of overburdening the courts, which already have no easy task. In view of these two factors, we believe that the phrase "or any citizen who has a reliable knowledge of the case" should be deleted from both the paragraphs of principle 28 in which it appears.

6. The above comment can also apply to principle 29. The mere fact that a citizen knows that a detained person is being ill-treated cannot constitute an argument for allowing him to take legal proceedings. There are other courses available to a citizen who wishes to take up the cause of a detained person. For this reason, and in the light of the arguments presented in connexion with principle 28, it would be preferable to delete the phrase "or any citizen who has a reliable knowledge of the case".

NORWAY

/Original: English/
/20 May 1980/

General remarks

1. It seems unfortunate that the definition of the expression "judicial or other authority" is only included as part of principle 3. This definition should be moved up to part I where the other definitions are found together.
2. The word "detention" also seems to cover the time the person concerned is held in the custody of the police after arrest until his appearance before the examining and summary court. Norway considers it important to have clarified whether short-term periods of detention at police headquarters (up to four hours) will be covered by the provisions in the draft principles.

Principle 3

3. Under Norwegian law, a decision to make an arrest may also be taken by the prosecuting authority/police. In so far as the term "detention" also covers the time from the physical apprehension until the person concerned is brought before the court, it is doubtful whether Norwegian law is in agreement with principle 3 on this point.
4. As regards measures during imprisonment, they are decided by the prison authority. Doubts may be raised as to whether the control which is exercised by the superior prison/police/prosecuting authority fulfils the requirement as to impartial and independent control. At the central and local prisons, however, supervisory boards have been set up to supervise the institution and the treatment of inmates. One of the members of the board must be a judge. In addition, the ombudsman exercises follow-up control.

Principle 7

5. Principle 7 is acceptable as now formulated.

Principle 8

6. The Norwegian rules in this field ought not to create any problems in this connexion. There is reason to assume that also in future, arrest will in general be decided by the prosecuting authority/police who are in any case responsible for the investigations in penal cases. Norwegian law may therefore prove somewhat problematical in relation to the draft principles on this point, even if the expression "as far as possible" ought to provide the necessary flexibility.
7. As the provision is formulated now, it would appear that also the investigating authority must be "under the control of a judicial or other authority". What precisely is implied by this must be further clarified.

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Principle 9

8. In relation to this provision, the Norwegian rules on extending the period of detention in prison may prove problematical. It is up to the courts to decide whether the suspect shall appear in court when the question of extending detention in prison is dealt with.

9. According to item 3, the lawfulness and necessity of the detention shall be reviewed ex officio at regular intervals. It is not clear what scope this provision is intended to have. Explicit rules in this respect are proposed in the draft for the new Criminal Procedures Act. It is proposed, however, that such notification may be withheld in certain cases. Corresponding provisions have not been included in principle 14 and should therefore be considered in connexion with the further work on the draft principles.

10. In Norway there is no rule relating to the right of the person concerned to notify his family of transfer to another institution. In practice, however, it must be assumed that such a wish would be met.

11. Likewise, there is no duty to inform foreigners/refugees in the manner described in the principle.

Principle 16

12. Under Norwegian law the accused is only entitled to unsupervised meetings/communications with his assigned defence counsel. In the draft for the new Criminal Procedures Act it is proposed that the right to such meetings/communications be limited to defence counsels who are officially appointed.

Principle 17

13. This provision presents no difficulties in relation to Norwegian law.

Principle 18

14. In Norway detained persons are placed in local or auxiliary prisons near the place of arrest. Convicted persons serve longer sentences in central prisons, and shorter sentences in prisons near their home localities. The rules mean that deprivation of freedom largely takes place in some other prisons than the nearest to the home locality.

Principle 19

15. According to item 1 no detained person may be compelled to testify against himself. It is assumed that rules regarding the right to make a personal physical search of the suspect for the purpose of investigation are not contrary to this provision. This question ought possibly to be further examined.

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Principle 22

16. Under Norwegian law it is the prison's own doctor or the local health officer/medical officer who is responsible for the medical supervision of the inmates. The inmates cannot demand to be examined by a doctor of their own choice.

Principle 23

17. It is difficult to see how this principle is to be implemented in practice. Further clarification seems necessary.

Principle 25

18. The supervisory board and supervisors carry out these functions. It is doubtful whether this provision can be accepted by Norway as formulated at present.

Principle 27

19. In Norway there is no special support scheme for the families of detained persons. They will be covered, however, by the normal social welfare arrangements.

Principle 28

20. Under Norwegian law it is basically only the accused and his guardian (together with the defence counsel on behalf of the accused) who can claim a new review of the question of detention. Item 1 therefore does not accord with Norwegian law.

21. As regards item 2, cf. also item 3, the provisions are not clear, but appear to go further than the arrangements Norway would find acceptable.

Principle 29

22. This provision seems acceptable in all main respects from Norway's point of view. However, further consideration must be given to the question of who is entitled to make complaints.

Principle 30

23. There is no practical possibility of the disappearance of a detained or imprisoned person in Norway. In cases of death in Norwegian prisons, an official post-mortem examination will normally be held.

Principle 32

24. It should be clarified whether restrictions with a view to, for example, protecting the detained person against harming himself are covered by the expression "for the maintenance of security and good order".

PANAMA

/Original: Spanish/

/12 November 1979/

1. The revised body of principles for the protection of all persons under any form of detention or imprisonment does not contravene the provisions of the Political Constitution of the Republic of Panama; on the contrary, it is in agreement with articles 19, 21 and 22 of that Constitution.
2. The Government of Panama therefore considers that the General Assembly may adopt this draft.

SWEDEN

/Original: English/

/23 January 1980/

1. To a large extent, these draft principles reproduce, although often in an amended form, principles which can already be found in other human rights instruments. Where no modification of the substance of these previous principles is intended, it is desirable to follow as closely as possible the actual wording of these principles. In order to avoid any ambiguity as to the relations between the principles and other human rights instruments, it may also be desirable to add, at the end of the draft principles, a general provision to the effect that these principles shall in no way be interpreted as affecting the rights and freedoms which a detained or imprisoned person may enjoy under other international instruments.
2. As regards the definitions contained in Part I, the Swedish Government has noted that the term "arrest" as defined in this part of the text may include the apprehension of persons for purposes other than bringing them to trial or making them serve a penal sentence. It may, for instance, include the apprehension of a person for the purpose of treatment in a mental hospital or in an institution for alcoholics, or the apprehension of an alien for the purpose of his expulsion or extradition. On the other hand, it seems that the articles included in Part II of the text are not intended to apply to such cases. Consequently, the definition of "arrest" ought to be reviewed.
3. While the terms "detention" and "imprisonment" are defined in Part I, there is no definition of the terms "detained person" and "imprisoned person", which frequently appear in the principles. It would be an improvement of the text, if these terms were also defined.
4. Principle 3 provides, inter alia, that "Any form of detention or imprisonment ... shall be ordered by or be under the effective control of a judicial or other authority". It ought to be made clear that this only refers

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to the conditions to which a person is subjected during his detention or imprisonment, but not to the lawfulness of the detention or imprisonment, since the control over the lawfulness is a different problem, which is dealt with in principle 28.

5. In principle 4, paragraph 1, a number of grounds for discrimination are enumerated. In the opinion of the Swedish Government, it would be preferable to make this list of grounds identical to the one which appears in article 2 of the Universal Declaration of Human Rights and in article 2, paragraph 1, of the International Covenant on Civil and Political Rights.

6. Paragraph 2 of principle 6 ought to be revised so as to conform to article 8, paragraph 2, of the Code of Conduct for Law Enforcement Officials ... In particular, the duty to report about violations should only be incumbent on public officials, but not on private persons.

7. The drafting of principle 7 does not seem satisfactory. According to the definitions, "detention" relates only to the period before the final conviction, whereas the term "imprisonment" is used to indicate deprivation of freedom after a final conviction. In a number of principles the same distinction has apparently been made between the terms "detained" and "imprisoned". Consequently it does not seem logical, in principle 7, to speak of "other detained persons", i.e. detained persons other than those convicted of criminal offences, since convicted persons are not to be considered as "detained persons" according to the terminology used in most of the principles.

8. As regards principle 8, the Swedish Government has some doubts as to whether it is necessary to require a complete distinction to be made between the authorities responsible for the arrest and those entrusted with the investigation of the crime.

9. As regards principle 9, paragraph 1, it is doubtful whether it can reasonably be required that the person concerned should be given an opportunity to be heard before an order of detention is issued. In practice, an order of detention is frequently issued before the arrest and if the person concerned was convened, at that stage, to a hearing concerning his proposed detention, he would often take the chance to abscond. It therefore seems more realistic to require that a hearing shall take place before or immediately after his arrest.

10. Another important point is, in the view of the Swedish Government, that any prolonged detention should be subject to the continuous control of a court. It is therefore not sufficient to require a review "by a judicial or other authority", as has been done in paragraph 3 of principle 9, but the words "or other" ought to be deleted.

11. Principle 10 is based on article 9, paragraph 2, of the International Covenant on Civil and Political Rights, but the words "or the grounds for his detention" have been added. However, it is not sufficient to inform the arrested person of either the charges against him or the grounds for his detention, but the

information should include both these matters. It is therefore suggested that the word "or" should be replaced by "and".

12. The second sentence of principle 13 allows for an exception to the general rule about the right of a detained person to have the free assistance of an interpreter in any proceedings in which he is involved. However, no such exception is permitted under article 14, paragraph 3 (f), the International Covenant on Civil and Political Rights as regards the trial against an accused person. It is important that the rule in principle 13 should not be more restrictive than the Covenant on this point.

13. The right to the free assistance of an interpreter should presumably only apply to proceedings directly connected with the detention or the criminal charges against the detained person. This should perhaps be made clear in the first sentence of principle 13.

14. Principle 15 deals with legal assistance of the detained person's own choosing as well as with the lawyer assigned to him by the authorities. It is suggested that one further sentence be added to the effect that a detained person shall be entitled to communicate with a lawyer assigned to him by the authorities immediately after the assignment has been made. In order to avoid delays in the assignment of the lawyer, it may also be advisable to add in paragraph 2 of principle 15 the word "promptly" before the word "assigned".

15. Paragraph 3 of principle 19 contains a prohibition against medical or scientific experimentation which may be detrimental to the health of the detained or imprisoned person. It is suggested that the present provision of principle 19, paragraph 3, should be replaced by two sentences. The first sentence should be modelled on article 7 of the Covenant and provide that no detained or imprisoned person shall be subjected without his free consent to medical or scientific experimentation. The second sentence should provide that he shall not even with his consent be subjected to any such experimentation which may be detrimental to his health.

16. As regards principle 21, it is suggested that the first sentence should be extended so as to reflect more fully the contents of rules 24 and 25 of the Standard Minimum Rules for the Treatment of Prisoners. Moreover, the second sentence of principle 21 should be brought more into line with article 6 of the Code of Conduct for Law Enforcement Officials.

17. A provision along the lines of principle 23 may create difficulties in many countries, where the court is free to assess the value of the evidence in each particular case. In such countries, there are no rules which declare certain evidence to be inadmissible, but the court decides, in view of all the circumstances of the case, what weight should be given to the evidence.

18. The obligation under principle 27 to endeavour to ensure the minimum level of support to family members should apply not only to family members of detained persons, but also to family members of imprisoned persons.

19. Principle 28, paragraph 1, is based on article 9, paragraph 4 of the International Covenant on Civil and Political Rights. There is, however, an important difference between the two provisions in so far as article 9 of the Covenant gives the detained person a right to take proceedings before a court, whereas principle 28 refers to proceedings before a judicial or other authority. In the opinion of the Swedish Government, it is essential to uphold the requirement that a court shall examine the lawfulness of the detention, and it is therefore suggested that the words "or other" be deleted before the word "authority".

20. Principle 31 raises the question as to whether, in the event of the death of the detained or imprisoned person, his dependents shall be entitled to compensation for the damage he had suffered. It should be recalled that the same problem has arisen in connexion with the drafting, within the United Nations Commission on Human Rights, of a Convention against torture. The solution which will eventually be found in that context may probably serve as a guideline also for principle 31.

21. Principle 33 provides that a detained person suspected or accused of a criminal offence shall be brought before a judicial or other authority promptly after his arrest. Since the draft principles only deal with such detained persons as are suspected or accused of a criminal offence, it would be sufficient to indicate suspicion or accusation as an element in the definition of the term "detained person", and to refer merely to detained persons in the different principles. In addition to this drafting point, a more substantive remark should be made in regard to principle 33.

22. The Swedish Government would favour the deletion, in principle 33, of the words "or other" before "authority", on the understanding that the term "judicial authority" corresponds to the expression "judge or other officer authorized by law to exercise judicial power", which appears in the Covenant.

23. In principles 34 and 35 it would be sufficient merely to refer to "a detained person" - to the exclusion of the words "on a criminal charge" in principle 34 and "suspected or accused of a criminal offence" in principle 35 - if the term "detained person" is explained among the definitions as meaning a person who is in detention as suspected or accused of a criminal offence.

SWITZERLAND

/Original: French/

/1 February 1980/

1. The draft body of principles for the protection of all persons under any form of detention or imprisonment is deserving of attention.

2. The Government of Switzerland is desirous that the progressive development of norms relating to human rights - whether through non-binding declarations and

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codes of conduct or through international conventions - should as far as possible be carried out harmoniously and homogeneously, without reiterating existing rules which, being open to misinterpretation because of their fragmentary nature or as a result of the use of new terminology, may lead to a weakening of the law now in force.

3. The main focus of the draft principles is, of course, on the reaffirmation of norms governing the impartial and equitable administration of justice and of rules protecting persons deprived of liberty against arbitrary acts by the detaining authorities.

4. The prohibition of the use of torture and cruel, inhuman or degrading treatment embodied in such instruments as the International Covenant on Civil and Political Rights of 16 December 1966 (art. 7) will be appreciably strengthened by the conclusion - we hope in the near future - of a convention on the prevention and punishment of such acts. It would therefore be highly desirable for the draft principles to take into account, in the wording of principle 19, paragraphs 2 and 3, and principle 28, paragraphs 2 and 3, the provisions of the future convention now being drafted by the Commission on Human Rights.

5. Similarly, the draft principles dealing with conditions of detention (principles 17, 18, 21, 22, 24 and 25) should reflect whatever conclusions concerning the Standard Minimum Rules for the Treatment of Prisoners may be reached by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which will be held at Caracas in August 1980.

6. In addition, the importance of studying the implications for human rights of states of siege or states of emergency cannot be underestimated.

7. It is of the greatest importance to take into account the results of the work referred to above; nor should the adoption of the draft body of principles be allowed to delay the completion of that work or lead to its abandonment. For this reason, the Government of Switzerland proposes that the adoption of the draft principles should be deferred until the texts have been co-ordinated within the framework of the Commission on Human Rights. In the meantime it would be useful to try to improve the wording of the principles.

TUNISIA

/Original: French/
/16 October 1979/

The body of principles causes no objection on the part of the Tunisian Government which subscribes to it without reserve, given that these principles have inspired the legislator in Tunisia during the elaboration of fundamental texts of Tunisian law.

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UKRAINIAN SOVIET SOCIALIST REPUBLIC

/Original: Russian/

/12 May 1980/

I. Definitions

1. In paragraph (a) it is suggested that the text should more clearly specify the legal grounds for arrest, in the following way:

"The word 'arrest' means the act of apprehending a person strictly in accordance with the provisions of the law and only by competent officials authorized for that purpose".

2. In paragraph (b) and (c), the meaning of the terms "arrest", "detention" and "imprisonment" should be more precisely defined since they have a different significance in different legal systems. Thus, in the legislation of the Ukrainian SSR, arrest is understood to mean the holding of a person in custody as a preventive measure pending trial or until a sentence takes effect whereas detention is understood to mean a temporary deprivation of liberty for a period not exceeding 72 hours (art. 106 of the Ukrainian Code of Criminal Procedure). It should be noted that, unlike imprisonment, arrest and detention are preventive measures which may be carried out by the investigating authorities and their lawfulness and justification are verified by the procurator. Imprisonment, however, as a form of punishment, can be applied only as a result of sentencing by a court for the commitment specific offences. In so far as in practice persons sentenced to deprivation of liberty may be confined, not only in prisons, but also in other places of deprivation of liberty, the term "imprisonment" used in the draft should cover all types of places of confinement.

II. General principles

Principle 1

3. We would suggest that this principle should stress the inadmissibility of any illegal deprivation of liberty.

Principle 4

4. It would be desirable to specify that the provisions of this instrument apply both to citizens - whether by birth or by naturalization - and to non-citizens.

Principle 5

5. We consider that it would be advisable to explain the import of the expression "cruel, inhuman or degrading treatment or punishment".

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Principle 7

6. The exact meaning of the words "exceptional circumstances" should be made clear.

Principle 8

7. We would suggest that the opening words of the first sentence should be amended to read as follows: "The administration and staff of places of deprivation of liberty, who are responsible for keeping the suspect in detention ..." etc.

Principle 9, paragraphs 1 and 2

8. It should be made clear that under the legislation of a number of countries, counsel is permitted to participate in the proceedings as a rule only after completion of the preliminary investigation, and his involvement in the case, from the moment of the presentation of the charge, is possible only (apart from certain categories of case) by decision of the procurator. We would also propose the deletion of the second sentence in paragraph 2 since the keeping of records concerning detention is certainly not a practice provided for by the legislations of all countries. In /the Russian text/ paragraph 5 of this principle the words "or other" should be inserted between "judicial" and "authority". This will make for uniformity in the terminology used in the draft (for example, this formulation is used in the text of principle 3) and will also more closely reflect the practice of a number of States.

Principle 11

9. It is suggested that paragraph 2 should be deleted, for the reasons given with respect to principle 9, paragraph 2.

Principle 13

10. We propose that the second sentence should be deleted because the services of an interpreter should be provided by the State in all cases, as this is one of the most important guarantees of the exercise of the right to defence.

Principle 15, paragraphs 1 and 2

11. It would be desirable to clarify the meaning of the words "legal assistance", bearing in mind the observations made with respect to principle 9.

Principle 16, paragraph 2

12. This paragraph should be amended, bearing in mind the observations made with reference to principle 9, concerning the participation of counsel. A provision should be inserted prohibiting unsupervised contacts between the detained person and his counsel, since advantage could be taken of these to conceal the traces

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of a criminal offence, thus making it more difficult to establish the truth, and substantially obstructing the administration of justice.

Principle 19, paragraph 1

13. The words "... or against other persons" should be added at the end of this provision.

Principle 20, paragraph 1

14. The text should make clear what kinds of interrogation are referred to. In paragraph 2 it should be specified that a detained person should have access to the records of his interrogation, and that he should be shown the record immediately after the interrogation and should sign it.

Principle 22, paragraph 1

15. The text should stress the duty of the State to provide such persons with free medical assistance, while not establishing for them any particular advantages. Paragraph 2 appears superfluous.

Principle 24

16. The text should specify at whose cost the educational and other materials are to be acquired.

Principle 25, paragraph 1

17. The purpose of the visits to places of detention should be spelled out, and the range of the visitors more clearly defined.

Principle 26

18. This paragraph should indicate that an appeal against disciplinary measures shall not have the effect of suspending their application.

Principle 27

19. This principle is not in accordance with the legislative practice of a number of States. The mere fact that a person is in custody ought not automatically to create for his dependents the right to material assistance, apart from the provision of assistance to minor children left without parental supervision.

Principle 33

20. As in principle 3 and as recommended with respect to /the Russian text/ principle 9, the expression "judicial or other authority" should be used. /in the Russian text/

Principle 35

21. It would be desirable to state that the provisional release of a detained person suspected of a criminal offence is a right, and not a matter within the responsibility of the officials on whose initiative the person was detained. /...

UNION OF SOVIET SOCIALIST REPUBLICS

/Original: Russian/

/24 March 1980/

Definitions

1. It is suggested that in paragraph (a) emphasis should be laid on the need for legal grounds for arrest. To this end, the paragraph should read as follows:
"The word 'arrest' means the act of apprehending a person strictly in accordance with the provisions of the law and only by competent officials authorized for that purpose". In paragraph (b) a clear distinction should be drawn between the meanings of the terms "arrest" and "detention".
2. In Soviet legislation, arrest is understood to mean taking into custody as a means of preventive restriction prior to trial or to the entry into legal force of the sentence (arts. 33 and 34 of the Fundamentals of Criminal Legal Procedure of the USSR and the Union republics; Provision on Preliminary Arrest approved by the Supreme Soviet of the USSR on 11 July 1969), whereas detention means deprivation of liberty for a short period not exceeding 72 hours (art. 122 of the Code of Criminal Procedure of the RSFSR and corresponding articles of the Codes of Criminal Procedure of the other Union republics).
3. In paragraph (c), a clearer distinction should be drawn between the meanings of the terms "imprisonment" and the terms "arrest and detention". Whereas detention and arrest are measures of preventive restriction which can be applied by organs of investigation, imprisonment as a form of punishment can be applied only as a result of conviction by the court of a particular crime.

Principle 1

4. It is thought essential that this principle should emphasize the inadmissibility of any illegal deprivation of liberty.

Principle 4

5. In paragraph 1 it would be desirable to specify that the provisions of the document under consideration apply both to persons in possession of citizenship or having the status of subjects and to non-citizens.

Principle 5

6. Here it would be desirable to clarify the meaning of the expression "cruel, inhuman or degrading treatment or punishment" by drawing a distinction between forms of treatment and forms of punishment. Furthermore, the principle should be supplemented with a reference to the inadmissibility of the application of physical force to persons under detention or imprisonment.

Principle 6

7. Paragraph 2 should clearly refer not to "a person" but to "an official".

Principle 7

8. The exact meaning of the words "exceptional circumstances" should be made clear.

Principle 8

9. Principle 8 should be drafted as follows: "The administration and staff of places of deprivation of liberty, who are responsible for keeping the suspect in detention, should as far as possible be distinct from those entrusted with the investigation of the case. Both authorities shall be under the control of a judicial or other authority".

Principle 9

10. In paragraphs 1 and 2, account should be taken of the fact that under the laws of a number of States counsel is permitted to intervene in the case, as a rule, upon the termination of the preliminary enquiry, and his involvement in the case from the moment of presentation of the charge is possible (with the exception of a few categories of cases) only upon a ruling by the procurator.

11. In paragraph 2, the second sentence referring to a copy of the records being provided to the detained person and his counsel should be deleted, as the legislation of many countries do not provide for the keeping of such records.

12. In the Russian text of paragraph 3, the words "judicial or other authority" should be used as in principle 3. This wording corresponds more closely to the practice of a number of States in which the functions of verification of the lawfulness and necessity of detention are borne not only by the courts but also by other authorities.

Principle 11

13. It appears desirable to delete paragraph 2, as the keeping of records referred to in this paragraph is not provided for in the laws of all countries.

Principle 13

14. The second sentence, which absolves the State from the obligation to provide the detained person with the assistance of an interpreter, should be deleted. The State is obliged in all cases to provide the arrested person with such assistance, as this is one of the most important guarantees of the exercise of the right to defence.

Principle 15

15. The meaning of the term "legal assistance" used in paragraphs 1 and 2 should be spelled out (participation of counsel or a wider range of activities on the part of other persons). In this connexion, the comments made on principle 9 should be taken into account.

Principle 16

16. Paragraph 2 should be redrafted, bearing in mind the comments made in connexion with principle 9, and also in the light of the need to preclude the possibility of the detained person's making use of uncontrolled communication with his counsel to conceal the traces of a crime, hamper the establishment of the truth and interfere substantially with the course of justice. Paragraph 5 should specify exactly what communications between a detained person and his counsel are to be deemed privileged.

Principle 19

17. It is suggested that paragraph 1 should be drafted as follows: "No detained person shall be compelled to testify against himself or against other persons".

Principle 20

18. Paragraph 1 should specify the categories of persons whose interrogation is referred to. In paragraph 2 it should be explained whether access shall be had only to records of the interrogation of the detained person himself, or whether records of interrogations of other persons are also meant. It is also important to determine the point in time at which the record may be studied. Perusal of the record by the person in question should take place directly after the interrogation and should be certified by his signature. On the other hand, all the materials in a criminal case should be made available to the accused person for study, as a general rule, after the termination of the investigation, as any other approach will render difficult, or, in a number of cases, impossible the successful conduct of the inquiry.

Principle 22

19. Paragraph 1 grants unjustified privileges to detained or imprisoned persons in respect of the choice of a physician. Here it is appropriate to proclaim the State's obligation to provide such persons with free medical assistance without their being granted any special advantages. The provisions of paragraph 2, to the effect that records of the fact that a medical examination has taken place and of the results of the examination shall be made available to the person examined, his counsel or a member of his family, also appear superfluous.

20. Principle 22 as a whole is at variance with principle 21.

Principle 24

21. It should be specified at whose cost - that of the detained or imprisoned person or that of the institution in which that person is confined - the educational and other materials are to be acquired.

Principle 25

22. In paragraph 1 there should be a clear indication of the purpose of visits to places of detention (investigating the conditions of detention, ascertaining the lawfulness of the arrest, explaining his rights to the detained person, etc.) and, in accordance with this, a more precise definition of the range of "qualified and experienced persons" visiting such places.

Principle 26

23. It would be desirable to indicate that appealing against a disciplinary action does not delay its application.

Principle 27

24. Imposing upon the competent authorities the obligation to ensure, as far as possible, the minimum level of support to dependent members of the families of detained persons does not correspond to the legislative practice of a number of States. Such an obligation devolves upon the State in respect of all minor children, without exception, who are left without supervision.

25. In all other cases the mere fact of the detention of a person does not automatically create for his dependents any rights to receive material assistance from the State.

Principle 31

26. Paragraph 2 should be brought into line with the amended wording of principles 20 (2) and 22 (2).

Principle 33

27. The term "judicial or other authority" should be used in the /Russian text of/ this principle, as is done in principle 3.

Principle 35

28. This principle should be drafted in such a way as to make it clear that the provisional release of a detained person suspected of a criminal offence is a right and not a matter within the responsibility of the officials on whose initiative the person was detained. Such a wording of this principle would be closer to the provisions of article 9, paragraph 3, of the International Covenant on Civil and Political Rights.

29. The Russian text of the draft, as a whole, requires more careful drafting.

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UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

/Original: English/

/28 May 1980/

Principle 3

1. The requirement that all measures affecting the human rights of a person under any form of detention or imprisonment shall be subject to judicial control recognizes the need for effective safeguards against the ill treatment of persons deprived of their liberty. It has also to be borne in mind, however, that most Governments find it necessary to apply to persons lawfully detained in penal establishments such laws, procedures and restrictions as are necessary for the preservation of custodial discipline ...

2. It is suggested that the third line of the Principle should be amended to read "be ordered by, or be subject to the control of a judicial or other ...".

Principle 4, paragraph 2

3. Please see the preceding remarks as to laws and procedures applied to persons in penal establishments ...

Principle 6

Paragraph 1

4. An obligation on States to enact legislation in order to comply with the Principles is incompatible with the informal and advisory nature of United Nations guidelines; such guidelines, though designed inter alia to assist States in the implementation of their obligations under other international instruments, must necessarily cover a wide variety of legal and constitutional systems and are therefore unlikely to be capable of application in the precise manner suggested in all places at all times. It might be preferable to say that States should be guided by the Principles in the preparation of domestic law concerned with the rights of arrested, imprisoned and detained persons and the duties of those responsible for them.

Paragraph 2

5. It is questionable whether it is practicable to require a person who has knowledge of violations to report the matter. It might be better to say that they should be encouraged to do so, or should have the opportunity to do so.

Principle 7

6. This provision is adequately covered in Parts I and II of the Standard Minimum Rules for the Treatment of Prisoners.

Principle 8

7. Although all authorities in the United Kingdom concerned with the arrest and detention of a suspect and the investigation of the case against him are accountable to the judiciary for the lawfulness of their actions, the police in England, Wales and Northern Ireland are at present responsible for both the apprehension of suspects and the investigation of cases. To this extent, therefore, the United Kingdom would not be able to adopt the practice recommended in this article.

Principle 9

8. It is assumed that the requirements in paragraph 1 are to be read in conjunction with Principle 3 and that "an order of detention" means an order issued by a judicial authority for the continued detention of a person who has already been arrested. If, on the contrary it is intended to include procedures prior to arrest, the use of the word "defend" does not seem to be appropriate.

Principle 11

9. At the end of paragraph 1 add "or by regulations made under law". In paragraph 2 insert after "provided", the words "upon request".

Principle 12

10. Delete "immediately" in the first line and insert at the beginning "At the moment of his arrest or as soon as possible thereafter ...".

Principle 13

11. This principle appears to go further than article 14(3)(f) of the International Covenant on Civil and Political Rights in that it recommends the free assistance of an interpreter at stages earlier than the appearance of the defendant before a court.

Principle 14

12. In England and Wales this provision is substantially met by Section 62 of the Criminal Law Act 1977 which provides that an arrested person shall be entitled to have intimation of his arrest and of the place where he is being held sent to one reasonably named person without delay.

13. In view of widespread concern throughout the world about the welfare of children, mentally handicapped persons and others who may be particularly vulnerable there ought to be a requirement on the arresting or detaining authority themselves to notify the parents, relatives etc. of the arrest of such persons. It is suggested, therefore, that after the word "custody" in line 4 a new sentence should be inserted as follows: "In the case of a child, young person or anyone incapable of understanding his entitlement under this provision the authority should notify a relative or other responsible person of his arrest etc. and whereabouts".

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Principles 15 and 16

14. The provisions of these two principles are substantially secured by the Standard Minimum Rules for the treatment of prisoners Section C of Part II of which is applied (by operation of Rule 95) to persons arrested or imprisoned without charge and it is for consideration whether they need to be repeated here.

Principle 17

15. Add at the end "and in the interests of the administration of justice".

Principle 20

16. Add at the end of paragraph 1 "or by regulations made under law".

Principle 21

17. This principle takes no account of the wishes of the arrested person. It might be better to replace "examine" in line 1 with "offer an examination to".

Principle 22

18. In the United Kingdom responsibility for the medical treatment of a convicted prisoner rests with the Prison Medical Officer who in accordance with the normal ethics of his profession is accountable for the treatment he orders. A convicted prisoner has no right to consult a physician of his own choice, nor has he the right of access to medical records, although with the consent of the medical officer concerned reasonable requests for relevant information would be met.

Principle 23

19. The admissibility of evidence is a matter for the court to determine in accordance with the rules of evidence.

Principle 30

20. In England and Wales all deaths in custody are reported to the coroner who must hold an inquest (judicial enquiry) if there is reasonable cause to suspect the death was violent. As the law stands, if the death was a sudden one of unknown cause he may dispense with an inquest, unless the death occurred in prison, if a post-mortem shows it to have been due to natural causes. The recommendation that deaths following discharge should be the subject of an inquest may give rise to practical difficulties, one of which is that in the interests of his rehabilitation a prisoner has the right not to be labelled as an ex-prisoner.

Principle 32

21. After the word "detention" in the last line insert "... or to prevent hindrance to the process of investigation or the administration of justice".

ANNEX

Draft body of principles for the protection of all persons
under any form of detention or imprisonment a/

/PREAMBLE/

I. DEFINITIONS

In 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 offence, or released;

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

II. GENERAL PRINCIPLES

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.

/Covenant, art. 10./

a/ The abbreviations used in the references to other instruments are as follows:

Universal Declaration	Universal Declaration of Human Rights
Covenant	International Covenant on Civil and Political Rights
Torture Declaration	Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
Standard Minimum Rules	Standard Minimum Rules for the Treatment of Prisoners
Draft Principles	Draft Principles on Freedom from Arbitrary Arrest and Detention
Consular Convention	Vienna Convention on Consular Relations

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Principle 2

No restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment which are recognized or exist in any country under domestic law, regulations, customs or international conventions shall be allowed on the ground that such rights are not recognized, or are recognized to a lesser extent, in these Principles.

/Covenant, art. 5, para. 2; Draft Principles, art. 41./

Principle 3

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 under the effective control of a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence, hereinafter referred to as a "judicial or other authority".

/Universal Declaration, art. 10; Covenant, art. 14, para. 1; Draft principles on equality in the administration of justice./

Principle 4

1. These Principles shall be applied to all persons 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 young, 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.

/Universal Declaration, art. 2; Covenant, art. 2; Draft principles on equality in the administration of justice, principles 16 and 26./

Principle 5

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.

/Universal Declaration, art. 5; Covenant, arts. 4 and 7; Torture Declaration, art. 3./

Principle 6

1. States shall 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.
2. A person who has reliable knowledge of any such violation shall report the matter to the superiors of the authorities or other persons concerned with the arrest, detention or imprisonment and, where necessary, to appropriate authorities or organs vested with reviewing or remedial powers.

/Draft Code of Conduct for Law Enforcement Officials, art. 8./

Principle 7

Persons convicted of a criminal offence shall, save in exceptional circumstances, be segregated from all other detained persons, who shall be subject to separate treatment appropriate to their status as unconvicted persons.

/Covenant, art. 10, para. 2./

Principle 8

The authorities responsible for arresting the suspect and keeping him in detention shall as far as possible be distinct from those entrusted with the investigation of the case. Both authorities shall be under the control of a judicial or other authority.

/Draft Principles, art. 26./

Principle 9

1. Before an order of detention is issued, the person concerned shall be given an opportunity to be heard. He shall have the right to defend himself or be assisted by counsel as prescribed by law.
2. The order of detention, together with the reasons therefor, shall be communicated promptly to a detained person and to his counsel, if any. A copy of such records shall be provided to the detained person and his counsel.
3. There shall be a review of the lawfulness and necessity of the detention by a judicial or other authority ex officio at regular intervals.

/Covenant, art. 9, para. 3; Draft Principles, arts. 10, 13 and 15./

Principle 10

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 or the grounds for his detention.

/Covenant, art. 9, para. 2 and art. 14, para. 3; Draft Principles, art. 9./

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Principle 11

1. The reasons for and 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, together with the names of the law enforcement officials concerned and the identification of the place of custody, shall be duly recorded in such form as may be prescribed by law.

2. A copy of such records shall be provided to the detained person and his counsel.

Principle 12

A detained or imprisoned person shall immediately be provided, by the authority responsible for his arrest, detention or imprisonment, with information as to and an explanation of his rights and obligations relating to his arrest, detention or imprisonment and how to avail himself of his rights.

/Draft Principles, art. 17./

Principle 13

From the moment of his arrest or as soon as possible thereafter, a detained person who does not adequately understand or speak the language used in proceedings at which he is present is entitled to have the free assistance of an interpreter. If the furnishing of free assistance of an interpreter meets with insurmountable technical or financial difficulties in a given State, provision shall be made to enable a detained or imprisoned person to avail himself of the services of an interpreter.

/Covenant, art. 14, para. 3; Draft Principles, art. 23./

Principle 14

Immediately after arrest and after each transfer from one place of detention to another, a detained or imprisoned person shall be entitled to notify or to require the authority concerned to notify members of his family of his arrest or detention or of the transfer and of the place where he is kept in custody. If a detained or imprisoned person is a foreigner or a refugee he shall be informed without delay of his right to notify or to require the authority concerned to notify a consular post or the diplomatic mission of his country, or the office of the competent intergovernmental organization. Any such communication so addressed shall be forwarded by the said authorities without delay.

/Draft Principles, arts. 18 and 19; Consular Convention, art. 36./

Principle 15

1. A detained person shall be entitled to have legal assistance as soon as possible after the moment of arrest.

2. If a detained person does not have legal assistance he shall be entitled to have a lawyer assigned to him by a judicial or other authority, without payment by him if he does not have sufficient means to pay.

3. A detained person shall be entitled to communicate with a lawyer of his own choice within the shortest possible period after arrest.

/Covenant, art. 14, para. 3; Draft Principles, art. 20./

Principle 16

1. A detained person shall be allowed ample opportunity for consultations with his counsel.

2. Written messages between a detained person and his counsel shall not be censored, nor shall the transmittal thereof be delayed.

3. Interviews between a detained person and his counsel may be within sight, but not within the hearing, of a police or other law enforcement official.

4. The right of a detained person to be visited by and to communicate with his counsel may not be suspended or restricted save in exceptional circumstances, to be specified by law, when it is considered indispensable by the judicial or other authority in order to maintain security and good order in the place of detention.

5. The communications between a detained person and his counsel mentioned in this principle shall be deemed privileged.

/Covenant, art. 14, para. 3; Draft Principles, art. 21./

Principle 17

A detained or imprisoned person shall be given reasonable opportunity to communicate with the outside world, and in particular to be visited by and to correspond with members of his family, subject to conditions and restrictions to be specified by law for the purposes of detention and for the maintenance of security and good order in the place of detention.

/Draft Principles, art. 19, para. 3./

Principle 18

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

Principle 19

1. No detained person shall be compelled to testify against himself.
2. No detained person while being interrogated shall be subjected to violence, threats or methods of interrogation which impair his freedom of decision or his judgement.
3. 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.

/Covenant, arts. 7 and 14, para. 3; Draft Principles, arts. 24 and 25./

Principle 20

1. The duration of any interrogation and of the intervals between interrogations as well as the names of the officials who conducted the interrogation and of other persons present, shall be duly recorded in such form as may be prescribed by law.
2. A detained person and his counsel shall have access to these records.

Principle 21

The medical officer at the place of detention shall see and examine a detained or imprisoned person promptly after his admission and thereafter as often as necessary. The official responsible for supervising the detention of a person needing medical care shall take immediate action to meet the needs of the person in custody for medical attention.

/Standard Minimum Rules, rules 24 and 25; Draft Code of Conduct for Law Enforcement Officials, art. 6./

Principle 22

1. A detained or imprisoned person shall also have the right to be examined by a physician of his own choice available under the existing general system of health care, at his request or at the request of his counsel or of a member of his family, subject only to reasonable conditions to ensure security and good order in the place of detention and to avoid undue delay in the investigation.
2. The fact that a detained or imprisoned person underwent a medical examination, the name of the physician and the results of such examination shall be duly recorded, and such records shall be made available promptly to the person examined, his counsel or a member of his family.

Principle 23

Any evidence obtained in contravention of these Principles shall not be admissible in any proceedings against a detained or imprisoned person.

/Draft Principles, art. 24./

Principle 24

A detained or imprisoned person shall have the right to request and receive reasonable quantities of educational and other material necessary for his education and development subject to available resources and subject to the conditions required for the purpose of maintaining security and good order in the place of detention.

Principle 25

1. Places of detention shall be visited regularly by qualified and experienced persons appointed by a competent authority distinct from the authority responsible for the administration of the place of detention.

2. A detained or imprisoned person shall have the right to talk with the persons who visit the place of detention in accordance with paragraph 1 without the staff of the institution being present, subject to the conditions required for the maintenance of security and good order in the place of detention.

/Standard Minimum Rules, rule 36; Draft Principles, art. 27, para. 3./

Principle 26

The types of conduct that constitute disciplinary offences during detention or imprisonment, the types and duration of disciplinary punishment that may be inflicted, and the authorities competent to impose such punishment shall be determined by law or by regulations made under law and duly published. A detained or imprisoned person shall have the right to be heard before disciplinary action is taken and he shall have the right to appeal to higher authorities against such measures.

/Standard Minimum Rules, rule 29./

Principle 27

In case of need, the competent authorities shall endeavour to ensure, as far as possible, the minimum level of support to dependent members of the families of detained persons.

Principle 28

1. A detained person, his counsel, or, if the detained person is unable to do it himself, a member of his family or any citizen who has a reliable knowledge of the case shall be entitled at any time to take proceedings before a judicial or other authority to challenge the lawfulness or necessity of his detention and to obtain his release without delay if it is unlawful.

2. A detained or imprisoned person, his counsel, or, if the detained or imprisoned person is unable to do it himself, a member of his family or any citizen

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who has a reliable knowledge of the case shall be entitled at any time to take proceedings before a judicial or other authority to prove that he has been subjected to torture or other cruel, inhuman or degrading treatment, or that he has been denied any other right contained in these Principles, and to seek relief.

3. The proceedings before the authority referred to in paragraphs 1 and 2 shall be simple, expeditious and at no cost. The authority concerned must without delay produce the detained or imprisoned person before the reviewing authority.

/Covenant, art. 9, para. 4; Draft Principles, art. 38./

Principle 29

1. A detained or imprisoned person, his counsel, or, if the detained or imprisoned person is unable to do it himself, a member of his family or any citizen who has a reliable knowledge of the case shall have the right to make directly and in confidence a request or complaint regarding his treatment to the authorities responsible for the administration of the place of detention and to higher authorities.

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 seek redress from a judicial or other authority.

/Standard Minimum Rules, rule 36./

Principle 30

Whenever the death or disappearance of a detained or imprisoned person occurs during or shortly after the termination of his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either of its own motion or at the instance of a member of the family of such a person or any citizen who has a reliable knowledge of the case.

Principle 31

1. A detained or imprisoned person or, in the event of death, the dependent members of the family of such person who suffer damage as the result of acts contrary to the rights contained in these Principles shall have an enforceable right to compensation.

2. In a claim for compensation under this principle the dependant or his lawyer shall have the same rights as are enjoyed by the detained person under principles 20 (2) and 22 (2) respectively.

/Covenant, art. 9, para. 5; Torture Declaration, art. 11; Draft Principles, art. 40./

Principle 32

A detained person suspected or accused of a criminal offence shall have the right to be presumed innocent until finally proved guilty according to law and shall be treated as such by all concerned. The arrest and detention of such a person pending investigation and trial shall be used only for the necessities of the administration of justice on grounds and under conditions specified by law. The imposition of any restrictions upon a person so detained which are not strictly required for the purposes of the detention or for the maintenance of security and good order in the place of detention shall be forbidden.

/Universal Declaration, art. 11, para. 1; Covenant, art. 14, para. 2; Draft Principles, arts. 2, 3 and 27, para. 1./

Principle 33

A detained person suspected or accused of a criminal offence shall be brought before a judicial or other authority promptly after his arrest. Such a person shall have the right to make a statement before such an authority concerning the treatment received by him while in custody. The authority before which the arrested person is brought 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 a judicial or other authority.

/Covenant, art. 9, para. 3; Draft Principles, arts. 10, 13 and 15./

Principle 34

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

/Covenant, art. 9, para. 3./

Principle 35

A detained person suspected or accused of a criminal offence shall, except in serious cases provided for by law, be given an early opportunity to obtain his provisional release, with or without financial guarantee or subject to other reasonable conditions. No detained person shall be denied the possibility of obtaining provisional release solely on account of lack of financial guarantee.

/Covenant, art. 9, para. 3; Draft Principles, art. 16./
