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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

Addendum

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REPLIES RECEIVED FROM GOVERNMENTS

COSTA RICA

/Original: Spanish/

/13 August 1980/

(a) In Costa Rica, are persons who have not been convicted or formally accused of an offence subjected to prolonged and often indefinite imprisonment?

1. The criminal legislation of Costa Rica consists of the Criminal Code (Act No. 4573 of 30 April 1970) and the Code of Criminal Procedure (Act. No. 5377 of 19 October 1973) which develop the basic principles of Costa Rican criminal justice as embodied in the Political Constitution.

2. The basic principles of the entire criminal legal system set forth in the Constitution are to be found in articles 39 and 35, as follows:

Article 39: "No person shall incur a penalty except for a crime or offence, quasi delict or act of negligence punishable under preexisting law, and by virtue of a definitive sentence imposed by a competent authority, after an opportunity has been given to the accused to plead his defence, and upon the necessary proof of guilt."

Article 35: "No person may be tried by a commission, court or judge specially appointed for the case; trials shall be conducted exclusively by the courts established in accordance with this Constitution."

3. These two articles are based on the fundamental principles of nullum crimen, nulla poena sine praevia lege, of legality, of a lawful judge and of innocence, principles that are essential for the protection of human dignity. The criminal legislation then develops these principles, as follows:

Criminal Code:

Article 1: "No person may be punished for an act which is not designated punishable under criminal law, or subjected to penalties or security measures other than those previously established under criminal law."

Code of Criminal Procedure:

Article 1: "No person may be convicted, except by due process of law ..."

4. The Criminal Code provides for punishment in the form of banishment, fines, deprivation of rights and imprisonment, the last-mentioned being limited to a maximum of 25 years.

5. It may be concluded from these rules that a person may be sentenced to

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imprisonment only if he has committed an offence under the law, if criminal proceedings, including all the requirements and guarantees of defence pertaining thereto, have been carried out or fulfilled and if the sentence has been imposed by a competent judge. Moreover, once the sentence has been imposed, in no case may it be extended to more than 25 years' imprisonment for each conviction.

6. In short, the general rule is that a person is subject to imprisonment only if his participation in a criminal act has been proved.

7. However, there are legal forms of temporary detention for the purpose of securing information and evidence concerning acts under investigation, but such detention is duly limited. There are two obvious forms of such detention: when the individual concerned is a fugitive from justice and when he is in flagrante delicto (in the first case he is already the subject of criminal proceedings, and in the second he will be so shortly).

8. One example worthy of special attention is detention based on a reasonable presumption that an offence has been committed; according to a juridical decision of 1965, the presumption may be either strong or weak, provided that it is reasonable.

9. The period of detention in all such cases is limited by the obligation incumbent on the official or individual responsible for the detention to bring the detainee before the competent judge within a mandatory deadline of 24 hours.

10. If the citizen concerned should consider his detention to be illegal, he has a constitutional right to apply for a writ of habeus corpus.

11. Another example is detention resulting from refusal to comply with a summons from a judicial authority to appear before it, but such detention is limited to the time necessary to carry out the court proceedings for which the individual was summoned.

12. Another exception to the general rule is detention necessitated by the fact that the accused is suffering from a mental illness or by the occurrence of such an illness during the proceedings, in which case confinement in a special institution is necessary.

13. Preventive detention, which may be prescribed prior to conviction, has been the subject of lively discussion. It operates as follows:

14. The judge may order preventive detention as part of the indictment (i.e. the decision indicating in a reasoned manner that sufficient certainty exists of an offence having been committed and that the evidence supports a presumption of guilt on the part of the accused).

15. For preventive detention to be ordered, one of two additional assumptions are necessary: first, that the offence allegedly committed by the accused is punishable by deprivation of liberty for a maximum of more than three years, and second, that release from gaol is not required by law in such cases.

16. It may be concluded from these observations that persons who have been neither convicted nor formally accused of the offence are not subjected to prolonged or indefinite imprisonment in Costa Rica.

(b) Is it possible to carry out an impartial judicial investigation into illegal practices against detainees or prisoners? Does the judiciary in Costa Rica monitor detention and imprisonment practices? If so, is such monitoring effective?

17. One should start from the very important assumption that irregular practices in detention centres are prohibited by law, in accordance with article 40 of the Political Constitution:

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

18. Decisions emanating from the judicial authorities responsible for criminal matters may either dismiss the case or pronounce judgement. In the latter case, a convicted person must serve his sentence in a Centre for Social Rehabilitation. The same is true for persons who are to be detained for other legal reasons.

19. Act No. 4762 of 8 May 1971 established the Department of Social Rehabilitation under the Ministry of Justice. Its main functions are: (a) the execution of measures entailing deprivation of liberty ordered by the competent authorities; (b) the custody and treatment of defendants and convicted persons for which the Department is responsible; (c) the security of persons and property at Centres for Social Rehabilitation.

20. The preceding observations reflect the constitutional balance established between the judiciary and the executive branch: the authority to convict and the authority to enforce the penalty are not vested in the same organ; this prevents irregular practices.

21. Moreover, among the authorities specified in the Code of Criminal Procedure, the judge responsible for enforcing penalties has the following duties, inter alia:

Article 519: "The judge responsible for enforcing penalties shall visit every internment centre in the country at least once every six months and shall inform the Supreme Court of Justice or the National Institute of Criminology, as appropriate, of any irregular situations observed. He shall hear inmates when they so request and deal with their complaints, taking any action he may deem necessary; he shall also prescribe the guidelines for their treatment during internment. He shall direct the parole services and probation offices."

22. Furthermore, there is the Department for the Control of Public Authority, a subsidiary body of the Ministry of Security, whose basic function is to ensure the investigations are carried out and to enforce the penalties provided for that

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in article 16 of the Regulations to the Organic Law of the Ministry (No. 5482 of 24 December 1973), when the existence of any irregularity has been detected. The rule reads as follows:

Article 16: "Irregularities committed by police officers may be investigated and penalties imposed by a judge ex officio or in an action brought by citizens. The investigation so undertaken shall be a preliminary investigation (sumario) and must be conducted with all possible dispatch. It shall in every case include a hearing of the official concerned and the receiving of testimony and evidence supporting the action. The charges must be submitted to the appropriate Directorate-General or Executive Office, depending on the unit to which the official belongs. The Director-General, or Executive Officer as the case may be, shall carry out the preliminary interrogation. The complainant or the official shall have the right to appeal against the decision of this authority to the Minister, whose decision on the matter shall be final."

23. The foregoing shows that adequate and impartial judicial and administrative safeguards exist in Costa Rica in respect of irregular practices that may occur in detention centres.

24. Both citizens and officials have the right to request an investigation; the bodies indicated above may carry out the investigation ex officio.

25. An official found guilty of irregular practices incurs both professional and criminal liability (Criminal Code, arts. 329, 190, 191, 192, 189, which provide for imprisonment and even the absolute or special deprivation of rights).

26. The rules governing imprisonment offer various facilities that guarantee persons in custody, by correspondence, through visits by counsel and through the judge responsible for enforcing the penalty, an effective means of submitting their complaints relating to cruel régimes, disciplinary and arbitrary punishments and other situations in direct violation of his fundamental rights which are guaranteed by our Constitution.

(c) Situation of the family and relatives of detainees or prisoners

27. Even today the detention or imprisonment of a convicted person certainly has profound effects on his family and relatives, especially those who depend on him.

28. It is our view that one of the problems of greatest concern to the family is the possible uncertain legal status of the detainee or prisoner. For that reason efforts are made to ensure that the necessary facilities are available for the offender to exercise his right to defence by a lawyer or public counsel or to plead his own defence.

29. Our country recognizes the importance of contact between the accused or convicted person and his family. His family is therefore allowed to visit him; he sends out and receives correspondence; and he is also allowed conjugal visits.

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30. By the same token, persons serving sentences under the national prison system and their families are covered by the health and maternity insurance of the Costa Rican Social Security Fund. This arrangement exists by virtue of the agreement to that effect signed between the Fund and the Ministry of Justice on 17 May 1979.

31. Another method of commuting a sentence is the so-called "Benefit" accorded under article 55 of the Criminal Code, which provides as follows:

Article 55: "The Institute of Criminology, following a study of the prisoner's psychological, psychiatric and social characteristics, may authorize the convicted or accused person to pay all or part of the fine or serve all or part of the sentence, whether already imposed or to be imposed, in the form of labour for the public authorities, autonomous or semi-autonomous state institutions and corporations or private enterprise. For this purpose, one day of regular labour shall be equivalent to one day's fine and two days of regular labour shall be equivalent to one day's imprisonment. Labour of any kind carried out at the Centre for Social Rehabilitation or outside the Centre shall be counted in the same manner. The wages so earned shall be used in whole or in part to pay the fine imposed. The prisoner shall enjoy the benefits granted by the State and its institutions to workers, although no labour relationship shall exist between the employer and the employed prisoner."

32. Finally, the Joint Institute for Social Welfare provides assistance to his family at the prisoner's request.

(d) How is the question of the human rights of persons subjected to any form of detention or imprisonment handled in Costa Rica in public emergencies or states of siege?

33. In Costa Rica both the Legislative Assembly and the executive branch are authorized, in cases of obvious public emergency, to suspend individual guarantees.

34. Article 121, paragraph (7) of the Constitution specifies which guarantees may be suspended: freedom of movement or of sojourn in any place inside or outside the Republic; the inviolability of the home; the inviolability of private documents and written or oral communications; the freedom of assembly; the freedom to express opinions; the oral or written communication of opinions; freedom of access to the information of administrative departments on matters of public interest; the right not to be detained without firm evidence of having committed an offence and without a written warrant from a judge or other law enforcement authority.

35. This suspension may apply to all or some of the rights mentioned, for all or part of the national territory.

36. There is also a time-limit, since the suspension may be applied only for a maximum of 30 days.

37. For the Assembly to suspend the guarantees a vote of no less than two thirds of its membership is required. Between sessions of the Assembly the suspension may be decreed by the executive branch and such a decree is equivalent ipso facto to a notice to the Assembly to convene in order to confirm the decree, in which case, the Assembly must meet within 48 hours and, if there is no quorum, it must meet on the following day and the decree must be approved by two thirds of those present. If the Assembly does not confirm the decree, the guarantees are considered to have been re-established. The executive branch may decree a suspension within the limits referred to above.

38. Furthermore, during the suspension of the guarantees, the executive branch may order the detention of individuals only in establishments not intended for common criminals or order confinement in inhabited premises.

39. Every person has jurisdictional channels through which to seek redress for damages in the event of any arbitrary acts committed by the executive branch in carrying out the actions described above.

(e) Study of problems related to the rights of women detainees or prisoners

40. Costa Rica has a Centre for Social Rehabilitation, "El Buen Pastor", where adult female detainees or prisoners are lodged, and a Re-education Centre for Minors (17 years and under).

41. According to the latest census figure for women prisoners, there are currently some 150 internees in the centre for adult women, approximately 6.5 per cent of the total prison population throughout the nation.

42. Most of the women internees come from broken homes and have problems connected with alcoholism and prostitution and a very low level of education.

43. The ages of the internees range from 18 to 40 years. That makes the situation worse because these are physiologically the years of full productivity or fertility, the result being that most of them have children or are pregnant.

44. The Centre is equipped with crèches and day-care facilities to enable the children to remain with their mothers up to the age of five years.

45. The Centre is administered and run by nuns almost completely independently of the regulations imposed by the Department of Social Rehabilitation. But it is expected that it will shortly be completely integrated into the national prison system.

46. The treatment clearly suffers from certain technical short-comings at present, and an effort must be made to improve psychiatric, medical, social and moral care as much as possible to enable the internees to be fully rehabilitated.

47. The treatment available to the internees includes: pre-natal services, the promotion of respectful relationships to ensure decent conditions for the girls, efforts to ensure that they lead as normal a life as possible in keeping with their

status as internees, clothing, food, clean premises, ventilation, working and study hours, rest, health services, running water.

48. Where a woman is about to give birth, the serving of her sentence may be postponed until after the birth.

49. No distinction either in form or in substance is made between the rights of defence for women and for men, nor indeed in any other procedural aspects, far less with regard to their human rights.

(f) Is there a secret police in Costa Rica? Are there any paramilitary organizations? What juridical or administrative supervision is exercised over the actions of the secret police and other police and paramilitary authorities in respect of detention, interrogation and imprisonment?

50. There are no secret police or paramilitary organizations in Costa Rica. Responsibility for the nation's defence and internal security is vested in the civil police.

51. The Directorate of Intelligence and National Security was set up under the Ministry of Public Security pursuant to the Declaration of Central America of 19 March 1963.

52. Its functions include the implementation of policies for co-ordinating defence and internal security, which enables effective and rational use to be made of national resources.

53. This Directorate forms part of a whole programme of defence and internal security and, as part of that programme, it is responsible for carrying out special investigations concerning the nation's internal security. On matters of external security it works closely with international organizations.

54. The Directorate's functions extend to safeguarding the stability of the democratic régime, its Constitution and laws. Its activities have therefore been developed in co-ordination with various government offices such as the Directorate-General of Criminal Investigation, the National Migration Council, the Directorate of the Rural Assistance Guard and others for the purpose of monitoring acts which might lead to breaches of the peace or to subversion.

55. The judicial and real control over its activities is the same as that applying to all public authorities.

UNITED STATES OF AMERICA

/Original: English/

/25 September 1980/

1. The Government of the United States wishes to request the inclusion of an additional principle which addresses the situation in States with a federal system of government. In such States, including the United States, the governmental authorities of the constituent units frequently administer separate judicial systems and exercise jurisdiction over places of detention or imprisonment with little or, in many respects, no control by the national government. In order to avoid a time-consuming discussion of this issue in connexion with each individual principle and to ensure that the body of principles as ultimately adopted will call upon States with a federal system of government to encourage their constituent units to comply with the principles, the United States recommends adoption of the following principle:

"In States with a federal system of government, the national government shall be responsible for adherence to the provisions of these principles with respect to detained or imprisoned persons over whom it exercises jurisdiction. With respect to detained or imprisoned persons under the jurisdiction of the constituent units of the federal State, the national government shall take suitable measures, in accordance with its constitution and its domestic laws, to encourage compliance with these principles by the competent authorities of the constituent units."

2. In the definitions set forth in section I of the draft principles, the United States suggests the inclusion of a definition of "judicial or other authority". This phrase appears in several of the principles and should be defined with precision at the outset rather than as an afterthought in draft principle 3. The United States recommends that the following definition be employed:

"(d) The term 'judicial or other authority' means an individual or body with authority under the law, whose status and tenure affords the strongest possible guarantee of competence, impartiality, and independence."

Draft principle 2.

3. The United States fully agrees with the concept that the principles should not diminish or adversely affect in any way the application of laws, regulations, or practices in a particular State which provide greater protection than the principles. However, this concept can be more clearly stated by revising draft principle 2 as follows:

"Nothing in these principles shall diminish in a particular State any greater protection of the human rights of persons under any form of detention or imprisonment which may be provided by the domestic laws, regulations, or customs of that State or by any international convention, treaty or agreement in force for that State."

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Draft principle 3.

4. If the phrase "judicial or other authority" is defined in section I, that definition does not have to be repeated in this draft principle. Accordingly, the language from the words "under the law" through the end of the draft principle should be deleted.

Draft principle 4.

5. Although the United States agrees that essential special protections for the categories of persons listed in paragraph 2 of this draft principle should not be deemed to be discriminatory, principle 4 should also expressly recognize and caution against the possible imposition of unnecessary protective measures which may serve to exclude the categories of persons covered by such measures from vocational training, work-release plans, rehabilitation activities, and other beneficial programmes. This can be accomplished by inserting the following sentence after the first sentence in paragraph 2 of this principle:

"Unless determined by judicial or other authority to be essential to the health or welfare of the persons concerned, such measures shall not be applied in a manner which excludes certain categories of persons from educational, vocational, employment, rehabilitation, or other beneficial programs or activities."

Draft principle 5.

6. In this draft principle, the phrase "cruel, inhuman or degrading treatment" requires clarification, particularly with regard to the word "degrading". What would constitute "degrading" treatment? For example, would full body searches for concealed weapons, solitary confinement pursuant to lawful disciplinary proceedings, or withdrawal of certain privileges as an administrative punishment for misconduct be considered "degrading" treatment under principle 5 as drafted?

Draft principle 6.

7. In paragraph 2 of this draft principle, the word "violation" should be changed to "act" to conform with the language of paragraph 1. In addition, the word "person" should be changed to "law enforcement officer or correctional officer" to improve the chances for enactment of an enforcement mechanism for this principle in most States. Failure by a private citizen to report acts prohibited by the draft principles is unlikely to be made a punishable offense in most States, whereas a reasonable possibility exists that many States will implement appropriate measures to deal with such failures by law enforcement or correctional personnel.

Draft principle 7.

8. In this draft principle, the United States urges that the phrase "whenever possible" be substituted for "save in exceptional circumstances" and that the word "other" be deleted from the phrase "other detained persons". With regard to the

first point, the suggested revision would more realistically cover small, local jails in most countries and prisons administered exclusively by the constituent units of federal States. As to the second point, the distinction should only be between convicted and detained persons, not "other detained persons", because a convicted person is no longer "detained" according to the definitions in section I.

Draft principle 8.

9. The United States suggests that the distinction in this draft principle should be made between the arresting and detaining authorities and those entrusted with the prosecution of the case, not the investigation of the case. In most law enforcement situations, an investigation precedes an arrest and may continue thereafter, but the same authorities will normally be responsible for both functions, whereas prosecuting authorities are normally administratively and institutionally separate.

Draft principle 9.

10. Paragraph 1 of this draft principle provides that before an "order of detention" (presumably the same as an arrest warrant) is issued, the person concerned shall have the opportunity to be heard. In the view of the United States, this reverses the logical sequence of events, and the hearing should therefore be held promptly after the order of detention or arrest warrant is executed, at which time the detainee should be informed of his rights and should be permitted to challenge the lawfulness and necessity of his detention.

11. Paragraph 3 of this draft principle declares that there shall be a legal review of each detention at regular intervals, which indicates that the detaining authorities should automatically initiate such reviews. The United States believes that the initiative in this matter should rest with the individual detainee. Accordingly, paragraph 3 should be revised as follows:

"Every detained person shall enjoy the right of amparo, habeas corpus, or other legal remedy to the same effect and shall be entitled to initiate proceedings thereunder."

Draft principle 11.

12. The records described in paragraph 1 of this draft principle are not usually provided automatically to a detained person and his counsel as called for in paragraph 2 under current practice in the United States and, perhaps, in other countries. Accordingly, the United States suggests that paragraph 2 be amended by adding the words "upon request" at the end of the present wording.

Draft principle 12.

13. In this draft principle, the United States is uncertain precisely what the drafters had in mind with regard to the "obligations" of a detained or imprisoned person. In addition, although an initial and basic explanation of a detained or

imprisoned person's rights should be made by the arresting authorities (as with the Miranda warnings in the United States), all detailed explanations and discussions concerning an individual's rights should be provided by his counsel.

Draft principle 13.

14. In this draft principle, the United States notes that the first sentence, which grants detained persons an absolute entitlement to the free services of an interpreter during official proceedings, is inconsistent with the second sentence, which provides that a detained or imprisoned person shall have the right to hire or otherwise obtain his own interpreter if "insurmountable technical or financial difficulties" prevent the responsible government authorities from supplying one free. The Government of the United States believes that the services of an interpreter should be provided at no cost to a detained person who does not understand or speak the language used in proceedings at which he is present. In addition, the first sentence mentions only detained persons and should cover imprisoned persons as well.

Draft principle 14.

15. In the first sentence of this draft principle, two references to imprisonment should be added, so that it reads as follows:

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

Draft principle 15.

16. Paragraph 2 of this draft principle declares that an indigent detainee shall be entitled to have a lawyer assigned to him by judicial or other authority. In this regard, the position of the United States is that a distinction must be made between detainees who face the possibility of being sentenced to a term of imprisonment if found guilty of the offenses charged and those who are not in such jeopardy. To make this distinction clear, the United States suggests the following revision of paragraph 2 of this draft principle:

"2. A detained person shall not be sentenced to a term of imprisonment unless a lawyer has been assigned to him by a judicial or other authority, without payment by him if he does not have sufficient means to pay."

Draft principle 16.

17. Throughout this draft principle, the United States would suggest that "detained person" be amended to read "detained or imprisoned person". Paragraph 4 should also be amended to make clear that "law or lawful regulations" shall specify the

circumstances in which the right of a detained or imprisoned person to consult with counsel in general may be restricted (e.g., limited to designated visiting hours) and the right to consult with a particular counsel may be suspended for cause, such as misconduct of the attorney involved (e.g., smuggling weapons or escape tools to clients).

Draft principle 17.

18. In many countries, routine administrative matters such as the manner in which detained or imprisoned persons may communicate with the outside world are governed by rules or regulations rather than formal legislation. Accordingly, the United States recommends that this draft principle state that conditions and restrictions in this area shall be specified "by law or lawful regulations". At the end of this draft principle, the words "or imprisonment" should be added.

Draft principle 18.

19. The United States fully supports the concept that requests by detained or imprisoned persons to remain close to their normal residence should be considered by the cognizant authorities. However, penal or correctional considerations must be the overriding factor in deciding whether or not to grant such requests. Consequently, the United States proposes the following revision of this draft principle:

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

Draft principle 19.

20. Paragraph 3 of this draft principle prohibits any medical or scientific experimentation on a detained or imprisoned person, with or without his consent. The Government of the United States supports this proposed prohibition but believes that it should be clarified to ensure that detained or imprisoned persons are not deprived of the opportunity to benefit from experimental medical techniques which have gained wide acceptance by the medical profession and are generally available to members of the community. Consequently, the United States recommends that this draft principle acknowledge the need to ensure that such individuals are fully aware of the medical options available to them and the possible adverse consequences of certain types of treatment. Thus, the United States suggests that the following sentence be added to paragraph 3 of this draft principle:

"No detained or imprisoned person shall, even with his consent, undergo medical treatment which, although widely accepted by the medical profession and generally available to the public, remains essentially experimental in nature, unless he has been afforded an opportunity to consult with disinterested medical personnel and his counsel."

Draft principle 20.

21. In the view of the United States, paragraph 2 of this draft principle should grant access to interrogation records to a "detained or imprisoned person".

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Draft principle 21.

22. In both sentences of this draft principle, the United States notes that the phrase "detention or imprisonment" should replace the word "detention".

Draft principle 22.

23. Paragraph 1 of this draft principle provides that a detained or imprisoned person shall have the right to be examined by a physician of his own choice. In the United States, this is not a matter of right in the federal prison system. Although an individual detainee or prisoner in the United States has the right to petition the courts or to make an administrative request for medical care by a physician of his own choice, free medical care is supplied by prison authorities. This may also be the case in other countries, and the United States believes that this draft principle should be revised as follows:

"A detained or imprisoned person, his counsel, or a member of his family shall also have the right to request or petition judicial or other authority for a medical examination by a physician of his own choice available under the existing general system of health care, subject only to reasonable conditions to ensure security and good order in the place of detention and to avoid undue delay in the investigation."

24. With regard to paragraph 2 of this draft principle, the United States maintains that guaranteed access to the medical records of a detained or imprisoned person may result in an invasion of that person's privacy. Hence, paragraph 2 should state that such records will be safeguarded to protect the privacy of those concerned and will be made available either with the consent of the detained or imprisoned person or pursuant to a specific request establishing the necessity of disregarding those safeguards in a particular case.

Draft principle 23.

25. In the opinion of the United States, the total exclusion of any evidence obtained in violation of these principles from any proceedings brought against a detained or imprisoned person is too broad. As presently drafted, this principle does not limit the exclusion to legal proceedings brought against the person whose rights under the principles were violated. In some legal systems, the testimony of a witness may be impeached with otherwise inadmissible evidence. The United States would thus suggest the following revision of this draft principle:

"Any evidence obtained in contravention of the rights of a detained or imprisoned person under these principles shall not be admissible as evidence of the crime(s) charged in any proceedings against that detained or imprisoned person."

Draft principle 24.

26. The words "or imprisonment" should be added at the end of this draft principle.

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Draft principle 25.

27. This draft principle would create a system whereby qualified and experienced persons independent of the authorities responsible for places of detention or imprisonment would regularly visit them and talk to detained and imprisoned persons outside the presence of the official staff. In the United States, there is no federal statutory authority for such an official, institutionalized visitation programme, although interested United States citizens frequently and interested foreigners occasionally visit United States prisons in accordance with the regulations protecting the security and good order of each institution and its inmates and staff. However, many of the purposes of a formal visitation program are accomplished in federal and state facilities in the United States by administrative remedies which provide a complaint mechanism, the use of ombudsmen, and other approaches to dealing with real or perceived grievances. In the United States and other countries with effective grievance procedures, the visitation system proposed in paragraph 1 of this draft principle may be unnecessary. Accordingly, the requirement in paragraph 1 should be qualified with an introductory phrase such as "If detained or imprisoned persons in a State do not otherwise enjoy an effective mechanism for redress of grievances or there have been well-substantiated reports of violations of these Principles, ..."

28. Concerning paragraph 2, the United States maintains that visual monitoring of detainees or prisoners with their visitors is a prudent and widely accepted practice. Paragraph 2 should therefore be revised by substituting "outside the hearing of the staff of the institution" for "without the staff of the institution being present". Finally, "place of detention" should be amended to read "place of detention or imprisonment".

Draft principle 27.

29. To avoid any confusion which might be caused by this draft principle, a clear distinction should be made between correctional authorities and the social welfare or other authorities attempting to ensure a minimum level of support for the dependent members of the detained or imprisoned person's family. The United States recommends that this be accomplished by referring to "appropriate government authorities" instead of "the competent authorities".

Draft principle 28.

30. With regard to paragraph 3 of this draft principle, the position of the United States is that the proceedings sanctioned by paragraphs 1 and 2 should be at no cost only if the complainant is indigent. In addition, although the presence of the complainant will normally be essential to the fair and equitable conduct of such proceedings, the United States does not believe that a detained or imprisoned complainant has an absolute right to be present at appellate or other proceedings dealing exclusively with questions of law and not with questions of fact. Nevertheless, all requests to be present at such proceedings should be promptly reviewed and answered by the competent authorities. In paragraph 2, the phrase "cruel, inhuman or degrading treatment" requires clarification. In paragraph 1, the phrases "detained or imprisoned" and "detention or imprisonment" should replace, respectively, "detained" and "detention".

31. In connexion with the proceedings already contemplated by paragraphs 1 and 2 of this draft principle, the United States recommends that two additional paragraphs be added for the purpose of establishing as an internationally recognized principle that government authorities holding a person incommunicado assume the burden of justifying such treatment and of proving that all reasonable measures were taken to prevent that person's illness, injury, disappearance, death, or other harmful experiences while detained or imprisoned in such a manner. To accomplish this, the United States submits new paragraphs 4 and 5:

"4. In any such proceedings initiated with respect to a detained or imprisoned person, the authorities having custody of that person shall be required to establish either (a) that all rights of communication and access recognized by these Principles have been accorded to that person or (b) that the facts warrant a departure from these Principles in accordance with exceptions expressly identified in the Principles and that the departure is not otherwise inconsistent with international law.

"5. In the event of any departure, and whether or not such derogations may be established as permissible, the authorities concerned shall, in any forum in which the issue of actual or possible harm is raised, establish by substantial evidence that during any period of curtailed communication or access, utmost care was exercised to prevent any accident, injury, illness, or other harm befalling the detained or imprisoned person concerned."

Draft principle 30.

32. With regard to official actions following the disappearance of a detained or imprisoned person shortly after release, the United States suggests that this draft principle should be clarified to acknowledge the acceptability of investigating authorities separate from the detaining or imprisoning authorities handling the matter as a missing person investigation. Furthermore, the United States believes that this draft principle should provide for public release of the findings or report of such an investigation or inquiry, unless an ongoing criminal investigation (e.g., grand jury proceedings) would be jeopardized thereby. In light of the foregoing considerations, the United States submits a revision of draft principle 30 as follows:

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

Draft principle 31.

33. Paragraph 1 of this draft principle would accord "an enforceable right to compensation" to a detained or imprisoned person or dependent members of his family for damages resulting from acts contrary to the rights contained in the principles as ultimately adopted. In the opinion of the United States, liability is a matter to be determined in each individual case by judicial or other authority based upon the relevant facts and circumstances, as well as the applicable law. As drafted, therefore, paragraph 1 prejudices the issue of entitlement to compensation. In addition, potential liability should cover only official acts. To eliminate these difficulties, the United States proposes the following revision of the latter part of this draft principle:

" . . . who suffer damage as the result of official acts contrary to the rights contained in these Principles shall have a right of action for damages before judicial or other authority".

34. With regard to paragraph 2 of this draft principle and its grant of the same rights enjoyed under draft principle 22 (2) to a dependent family member or lawyer of a detained or imprisoned person, the United States would refer to its comments pertaining to draft principle 22 (2). Also, in paragraph 2, the phrase "detained or imprisoned" should be substituted for "detained".

Draft principle 32.

35. In the second sentence of this draft principle, the United States would suggest that the words "carried out" should be substituted for the word "used" as more appropriate and less ambiguous.

Draft principle 35.

36. In view of the fact that this draft principle addresses the subject or provisional release of detained persons, the United States believes that the reasonable possibility of the person concerned fleeing from the jurisdiction of the competent authorities should be specifically set forth as a basis for denying provisional release. In addition, an individual who is provisionally released should potentially be subject to both financial guarantees and other reasonable conditions. Consequently, the United States urges that the first sentence of this draft principle be revised in the following manner:

"A detained person suspected or accused of a criminal offense shall, except in serious cases provided for by law or when determined necessary by judicial or other authority to ensure his presence at future legal proceedings, be given an early opportunity to obtain his provisional release, with or without financial guarantee and subject to other reasonable conditions."
