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COMMISSION ON HUMAN RIGHTS  
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of Minorities  
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Agenda item 8

QUESTION OF THE HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM  
OF DETENTION OR IMPRISONMENT

Written statement submitted by the Procedural Aspects of  
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The protections granted to detainees under international law are clear; no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Anyone deprived of liberty is to be brought promptly before a judicial authority and may challenge his or her detention before a court. The Standard Minimum Rules for the Treatment of Prisoners state that an untried prisoner or prisoner detained without charge must be permitted to be visited by a doctor of the detainee's choice (Rule 91) and that the detainee be allowed to inform immediately his or her family of the detention and be given all reasonable facilities for communicating with family and friends and for receiving visits from them (Rule 92).

Less clear are the means by which these protections may be implemented, given the total control over a detainee or prisoner which is exercised by the government responsible for the detention. If this total control excludes any communication between the detainee and the outside world, there are no means of verifying whether that detainee is being tortured or whether rights to be presumed innocent and not to be compelled to testify against oneself are being violated. Perhaps because it makes proof of ill-treatment or intimidation practically impossible, the practice of holding detainees incommunicado is becoming increasingly common and raises grave fears for the safety of such persons.

In many cases, it is incommunicado detention which makes possible gross violations of the human rights of detainees, as denial of access by a prisoner to relatives, doctors, lawyers, or other outside persons leaves the prisoner at the mercy of jailers and interrogators. Yet governments seem to view the use of incommunicado detention as a common and acceptable tool of their police power, free to be utilized without any special justification. A closer examination of this practice, however, fails to reveal any justification for its use, and the practice of incommunicado detention for any period beyond that necessary for the orderly processing of an arrestee (which in no event should exceed 24 hours) should be condemned.

While a government may derogate from such normally available protections as the writs of habeas corpus or amparo in time of emergency, this does not legalize the practice of incommunicado detention. Derogations must be strictly limited to the exigencies of the situation, and isolating a prisoner from the outside cannot be justified on any reasonable grounds of national security or prevention of crime. While a "round-up" of several members of, for example, a criminal organization or a terrorist group, may require secrecy for a few hours while the police effectuate the arrests, detention of one of the gang members will soon become known to those not yet arrested. Beyond this extremely limited instance, one must ask what purpose is served or what legitimate state interest is advanced by refusing to permit any communication between a prisoner and a doctor or lawyer or family member. It is apparent that the only purposes of holding a detainee incommunicado are to increase his or her fears and apprehensions and to permit the authorities to threaten, pressure, or torture the detainee without fear of discovery.

Halting the practice of incommunicado detention would require the adoption of no new declarations or conventions, nor would it require the expenditure of great amounts of time or money. Whether or not reasonable access to a prisoner is permitted is an easily verifiable fact, once a demand is made for such access. Ensuring that a detainee's place of imprisonment is known and that any evidence of ill-treatment will be discovered in the course of communications between the detainee and the outside world could contribute immensely to the effective protection of the human rights of detainees.

The practice of incommunicado detention should be declared to be a prima facie violation of human rights, as its use can never be justified by any legitimate state purpose except in extraordinary circumstances. Whenever a detainee is held incommunicado for longer than 24 hours, the burden should be on the government to show that such isolation is absolutely required in the particular situation and with respect to that particular detainee. No general proclamations of an emergency or vague references to national security are acceptable. Even if national security may, in extreme instances, require the detention of a person without the normal protections against deprivation of liberty, this does not justify the total seclusion of a detainee from the outside world through the practice of incommunicado detention. It is respectfully suggested that the Sub-Commissioner examine more fully at its thirty-fifth session the implications for human rights of this practice.