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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

Note by the Secretary-General

1. In paragraph 2 of its resolution 3453 (XXX), adopted on 9 December 1975, the General Assembly requested the Commission on Human Rights at its thirty-second session to study, inter alia, any necessary steps for the formulation of a body of principles for the protection of all persons under any form of detention or imprisonment on the basis of the Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile and the draft principles on freedom from arbitrary arrest and detention contained therein. 1/
2. On 5 March 1976, the Commission on Human Rights, in paragraph 4 of its resolution 10 B (XXXII), asked the Sub-Commission on Prevention of Discrimination and Protection of Minorities to draw up, at its twenty-ninth session, a body of principles for the protection of all persons under any form of detention or imprisonment, on the basis of the Study of the Right to Everyone to be Free from Arbitrary Arrest, Detention and Exile, the draft principles on freedom from arbitrary arrest and detention, the study on the right of arrested persons to communicate with those whom it is necessary for them to consult in order to ensure their defence or to protect their essential interests (E/CN.4/996) and other relevant documents and reports submitted to the General Assembly, the Economic and Social Council and the Commission on Human Rights at its thirty-second session. The Sub-Commission was requested to transmit this body of principles to the Commission on Human Rights for consideration at its thirty-third session, in 1977.
3. The Economic and Social Council, in paragraph 3 of its resolution 1993 (LX)

* A/34/150.

1/ United Nations publication, Sales No. 65.XIV.2.

of 12 May 1976, urged the Sub-Commission on Prevention of Discrimination and Protection of Minorities to give adequate attention to the task entrusted to it in resolution 10 (XXXII) of the Commission on Human Rights and to formulate a body of principles for the protection of all persons under any form of detention or imprisonment.

4. At its twenty-ninth session, the Sub-Commission, by its decision 2 (XXIX), appointed Mr. Erik Nettel as Rapporteur to formulate the first draft of a body of principles for the protection of all persons under any form of detention or imprisonment, for consideration by the Sub-Commission at its thirtieth session.

5. Subsequently, by resolution 31/85 of 13 December 1976, the General Assembly requested the Commission on Human Rights, through the Economic and Social Council, to submit to it at its thirty-third session a comprehensive report on the elaboration of a body of principles for the protection of all persons under any form of detention or imprisonment. The Commission on Human Rights, in paragraph 3 of its resolution 8 (XXXIII) of 4 March 1977, requested the Sub-Commission to present to it at its thirty-fourth session in 1978 a comprehensive report on the elaboration of a body of principles for the protection of all persons under any form of detention or imprisonment, to be submitted to the General Assembly at its thirty-third session, in accordance with Assembly resolution 31/85.

6. At its thirtieth session, the Sub-Commission on Prevention of Discrimination and Protection of Minorities considered a first draft prepared by its Rapporteur (E/CN.4/Sub.2/395). On the recommendation of the Sub-Commission (resolution 8 (XXX) of 31 August 1977), approved by the Commission (resolution 9 (XXXIV) of 7 March 1978), the Economic and Social Council, by its resolution 1978/17 of 5 May 1978, authorized the Chairman of the Sub-Commission to appoint a working group of five members to prepare a revised draft body of principles for consideration by the Sub-Commission at its thirty-first session and requested the Sub-Commission to submit a comprehensive report on the draft body of principles to the Commission at its thirty-fifth session.

7. At its thirty-first session, in 1978, the Sub-Commission considered article by article the revised draft body of principles prepared and approved by its working group (E/CN.4/Sub.2/406). The Sub-Commission adopted the draft with a few amendments and, by its resolution 5C (XXXI) of 13 September 1978, submitted it to the Commission on Human Rights for consideration and recommended its adoption (E/CN.4/1296, para. 109).

8. 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 revised body of principles for the protection of all persons under any form of detention and imprisonment, as contained in paragraph 109 of E/CN.4/1296, to solicit their comments and to report to the General Assembly at its thirty-fifth session, so that the General Assembly can consider their adoption. Accordingly, the Secretary-General, by a note verbale of 15 June 1979, transmitted to all Governments, for comments, the revised draft body of principles annexed thereto.

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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.

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

Universal Declaration	Universal Declaration of Human Rights (General Assembly resolution 217 A (III))
Covenant	International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex)
Torture Declaration	Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX), annex)
Standard Minimum Rules	Standard Minimum Rules for the Treatment of Prisoners (United Nations publication, Sales No. 1956.IV.4, annex I.A)
Draft Principles	Draft principles on freedom from arbitrary arrest and detention (see United Nations publication, Sales No. 65/XIV.2)
Consular Convention	Vienna Convention on Consular Relations (United Nations, <u>Treaty Series</u> , vol. 596, No. 8638, p. 261)

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II. GENERAL PRINCIPLES

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./

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./

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./

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./

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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/

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/

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/

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/

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.

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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.]

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.]

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.

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.]

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

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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.]

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.]

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.]

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,

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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./

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./

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.

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./

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.

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2. A detained person and his counsel shall have access to these records.

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.]

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.

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.]

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.

25

1. Places of detention shall be visited regularly by qualified and

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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.]

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.]

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.

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 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.]

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./

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.

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./

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

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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./

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./

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./

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./
