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Nineteenth session  
Item 5 of the provisional agenda

STUDY OF 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

Preliminary Report of the Committee on the Right of Everyone  
to be Free from Arbitrary Arrest, Detention and Exile

Chairman-Rapporteur: Mr. Hortencio J. Brillantes (Philippines)

1. At its seventeenth session the Commission on Human Rights, in resolution 2 (XVII), requested the Committee to undertake a study of "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", as recommended in the report of the Committee (E/CN.4/813, para. 291), and to submit a preliminary report on the study to the nineteenth session of the Commission.
2. The Committee<sup>1/</sup> discussed the method to be followed in the preparation of the study and decided to adopt in principle the same procedure as that which the Committee had followed in connexion with the study of the right of everyone to be free from arbitrary arrest, detention and exile. Country monographs would be prepared which would serve as a basis for the study. The Committee would utilize published and written statements necessary for the preparation of the study, such material to be drawn from the following sources: (i) Governments of States Members of the United Nations and the specialized agencies, (ii) the Secretary-General, (iii) specialized agencies, (iv) non-governmental organizations in consultative relationship, and (v) writings of recognized scholars and scientists.

<sup>1/</sup> A list of the members of the Committee is found in Annex I.

3. For working purposes, the Committee has tentatively adopted the following outline to serve as a basis for the preparation of the country monographs and of the study.

I. Introduction

The constitutional or other legal basis of the right to communication will be examined. An indication will be given whether under the particular legal system under study, an arrested or detained person may be kept incommunicado or under similar restrictions.

II. Content and scope of the right to communication

A study will be made of the substance of the right to communication, the conditions and limitations to which its exercise may be subject, and the grounds and reasons for such conditions and limitations. Special restrictions on the right which result from the status of incommunicado, mise au secret or other similar status shall not be dealt with in this chapter, but will be studied separately under chapter III below. The following situations will be examined under this heading:

A. The right of the arrested person to notify his relatives, counsel or any other person of his arrest and of the place of custody

Has the arrested person the right to notify anybody concerning his arrest and the place where he is kept in custody? Whom is he entitled to notify? How soon after the arrest may the person arrested be allowed to give such notification? How is the exercise of this right facilitated? For example, is the arrested person informed of the right? How may the arrested person send the notification? Are the authorities required to notify any person (e.g., relative or person enjoying the confidence of the detained person) regarding the arrest, with or without being requested to do so by the arrested person? If so, who are the authorities? Has the arrested person the right to designate the person to be notified? In case of transfer to another place of custody, are the authorities required to notify the detained person's relatives or any other person of his confidence?

B. The right to receive visits

1. Who may visit the arrested person? Is permission from any authority required before any person can visit the arrested person either at his own request or that of the visitor's? From whom and how may such permission be obtained?
2. May the right of an arrested person to receive visits be restricted? If so, who may order such restrictions and on what grounds? May visits be restricted, for example, in the interest of the investigation, for the security and good order of the place of custody, or as a form of punishment for disciplinary offences? Where visits are banned or restricted, are other forms of communication available to the arrested person?
3. Conditions under which visits may take place? Are these conditions prescribed by law or by administrative regulations? In particular, when and how often may such visits take place? What degree of supervision is exercised by the authorities over these visits? Is the arrested person allowed to talk to his visitors in private or only in the presence of or within the hearing of an official of the place of confinement or of any other authority? Are there special rules governing visits by legal counsel? For example, has counsel the unrestricted right to see the arrested person at any time? Under what conditions may interviews between counsel and the arrested person take place? In particular, is counsel allowed to interview the arrested person freely and out of the hearing of any official of the place of custody or of any other authority? Are there special rules governing visits of diplomatic and consular representatives, physicians, priests, etc.?

C. The right to send and receive communications

1. With whom may the arrested person communicate?

2. May the right of the arrested person to send or receive communications be restricted? If so, who may impose such restrictions and on what grounds? For example, may restrictions on the right to communicate be imposed in the interest of the investigation, etc., or as a disciplinary measure?
  3. Conditions under which the arrested person may send or receive communications? In particular, are such communications subject to censorship by the authorities in charge of the place of detention or by any other authority? May the police or other authority record telephone conversations without the knowledge or consent of the parties concerned or with the knowledge or consent of one of the parties only? Are there special rules governing correspondence between the arrested person and certain categories of persons or officials, e.g., counsel, prison officials, judicial officials, diplomatic and consular representatives, etc.? Are the parties concerned informed of the fact that a communication has been withheld from the arrested person or has been censored?
  4. How is the exercise of the right facilitated? For example, is the detained person allowed to use the telephone? Is he given writing material? How may he send his message or correspondence?
- D. Remedies and sanctions
1. What remedies are available to the detained person, or anyone acting in his behalf, in case his right to communication is denied arbitrarily or is subjected to arbitrary restrictions?
  2. What sanctions are provided by the law in case of abuse by the authorities concerned?

III. Incommunicado, mise au secret or other similar restrictions on the right to communication

1. May the arrested person, while under investigation or preliminary examination, be placed under a special régime (e.g., incommunicado, mise au secret, etc.) or subjected to special measures forbidding or restricting his right to communication?
2. On what grounds may an arrested person be held incommunicado, mise au secret or placed under similar restrictions (e.g. to prevent any collusion between the arrested person, accomplices and witnesses, or the suppression of evidence, or the escape of suspects)? Are the grounds specifically laid down by law?
3. When may an arrested person be kept incommunicado or placed under similar restrictions? May he be kept incommunicado upon his arrest, while he is in police custody and prior to being brought before a magistrate or other competent authority? Can he be kept incommunicado before or after he is interrogated by the authority competent to conduct the pre-trial proceedings?
4. Who may issue the order? Have the police authority to keep the arrested person incommunicado? Must the order be issued by the authority competent to conduct the preliminary examination of the arrested person? May it be issued by any other authority (e.g., public prosecutor)?
5. Procedures. Is a formal request or application by the police or other authority necessary? Is a hearing conducted? Is the arrested person or his counsel entitled to be heard before an order is made?
6. Requisites of the order. Must the order be in writing? Must the order indicate the specific grounds which justify the measures to be taken? Is the arrested person informed of the order?
7. Extent and scope of the restrictions placed on the arrested person

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(a) The right to receive visits

Is the arrested person completely forbidden from seeing anyone? Are certain persons allowed to visit him, e.g., counsel, physician, dentist, chaplain, warden or other officials of the place of confinement, police officers, prosecuting attorney, judicial officials, etc.? If so, under what conditions?

(b) The right to send or receive communications, documents, etc.

Is he allowed to send or receive any communications, etc., to or from anybody? If so, under what conditions? For example, would he be allowed to communicate with (i) counsel; (ii) the authority in charge of the preliminary examination proceedings; (iii) officials of the place where he is kept in custody? Is he allowed to ask for and/or receive information regarding his family (e.g., health or illness of any near relative) or his business affairs? Are his relatives or persons enjoying his confidence informed of any serious illness or injury which might befall the arrested person, or in case he is transferred to another institution?

8. Duration. For how long may the arrested person be kept incommunicado or placed under similar restrictions? May such period be indefinite? Is there a maximum time-limit prescribed by law? Are extensions allowed? If so, for what period and under what conditions?
9. Termination of remand incommunicado or similar measures. Who may terminate the remand incommunicado or the special restrictive measures? May such measures be terminated at any time?
10. Is the order subject to review by an authority other than the official who has given the order?
11. Has the arrested person, or any person on his behalf, the right to challenge, lodge a complaint against or appeal from, or request termination of the order?

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IV. The right to communication of persons arrested under emergency or exceptional situations

The questions studied under II and III above will be examined in so far as they may be relevant to this topic.

The Committee might also examine the question of the right of sentenced persons to communicate, with particular reference to the problem of solitary or close confinement, whether imposed as part of the sentence or as a disciplinary measure.

4. By a note of 8 February 1962 the Secretary-General requested Governments of States Members of the United Nations and of the specialized agencies to furnish information and material for the study, using as a guide the outline prepared by the Committee.

5. By 27 December 1962 fifty-six Governments had transmitted to the Secretary-General information and material for the study, as follows:

Afghanistan	Jamaica
Albania	Lebanon
Argentina	Luxembourg
Austria	Malagasy Republic
Belgium	Monaco
Burma	Morocco
Cambodia	Nepal
Cameroon	Nicaragua
Central African Republic	Nigeria
Ceylon	Norway
China	Peru
Colombia	Philippines
Congo (Brazzaville)	Poland
Denmark	San Marino
El Salvador	Sierra Leone
Federal Republic of Germany	Somalia
Finland	South Africa
France	Spain
Ghana	Sudan
Greece	Sweden
Holy See	Switzerland
India	Togo
Indonesia	Turkey
Iraq	United Kingdom, including
Iran	Aden
Ireland	Bahamas
Israel	Barbados
Italy	Basutoland
Ivory Coast	Bechuanaland

Bermuda  
British Guiana  
British Honduras  
British Solomon Islands  
Brunei  
Dominica  
Falkland Islands  
Fiji  
Gambia  
Gibraltar  
Gilbert and Ellice  
Malta  
Mauritius

Montserrat  
Northern Rhodesia  
Nyasaland  
St. Helena  
St. Vincent  
Sarawak  
Seychelles  
Singapore  
Swaziland  
Zanzibar  
United States of America  
Venezuela  
Yugoslavia

6. The Secretary-General has also received information and material relating to the study from the following non-governmental organizations: International Committee of the Red Cross, International Council of Women, International Federation of Women in Legal Careers, International Federation of Women Lawyers, International Criminal Police Organization, International Federation for the Rights of Man, International Humanist and Ethical Union, Association internationale des Magistrats de la jeunesse.



ANNEX I

Representatives on the Committee

1961

Argentina: Mr. R.A.J. Quijano  
Netherlands: Miss J.D. Pelt  
Pakistan: Mr. B.W.W. Walke (Rapporteur)  
Philippines: Mr. F.A. Delgado (Chairman), Mr. H.J. Brillantes

1962

Argentina: Mr. R.A.J. Quijano, Mr. L.A.S. Garcia del Solar  
Netherlands: Mr. H.T. Schaapveld  
Pakistan: Mr. I.A. Akhund  
Philippines: Mr. H.J. Brillantes (Chairman-Rapporteur)

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