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COMMISSION ON HUMAN RIGHTS
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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART
OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT
COUNTRIES AND TERRITORIES

Summary on arbitrary executions

Report by the Special Rapporteur, Mr. S. Amos Wako, appointed
pursuant to resolution 1982/35 of 7 May 1982 of the
Economic and Social Council

CORRIGENDUM

The second sentence of paragraph 2 should read as follows:

"Subsequent to the completion of that report, further replies were received from Argentina dated 2 February, 8 February and 11 February 1983 and are reproduced in the annex to this addendum."

GE.83-17896

Annex

COMMUNICATIONS FROM GOVERNMENTS

Responses to notes verbales dated 17 September 1982,
19 November 1982 and 7 and 14 January 1983

ARGENTINA

[Original: Spanish]
[2 February 1983]

The Permanent Mission of the Argentine Republic to the International Organizations in Geneva presents its compliments to the Secretary-General of the United Nations and refers to his note G/SO 214 (33), of 17 September 1982 in which he requested information on the question of summary or arbitrary executions.

In this connection, the Permanent Mission has received from the Argentine Government the information given below, which may subsequently be amplified.

A. Criminal law

The criminal law specifies the death penalty as punishment for certain serious offences, and it may be imposed by judges in ordinary legal proceedings.

Article 5 of the Penal Code establishes the death penalty in addition to other penalties; article 5 bis describes the method for executing the death penalty as follows: "The death penalty shall be carried out by shooting at the place and by the forces designated by the Executive, within 48 hours of final judgement, except that the Executive may order a postponement not exceeding 10 days."

The Argentine Penal Code lists the offences punishable by death, as follows:

"The death penalty is prescribed exclusively as the penalty for various types of aggravated homicide: The death penalty or rigorous imprisonment for life shall be imposed on anyone who kills: (1) a member of the Executive, the Legislature or the Judiciary of the Nation or of the Provinces or the Municipalities, their Ministers and Departmental Heads, Judges, Prosecutors or Clerks of Court because or while they are performing their duties or are the victims of the attack because of their status as such, even though they are not carrying out activities related to the performance of their duties; (2) anyone who, at the time of the act, is performing an act in the service of the Armed Forces, the security police or the prison services or is the victim of the attack because of his status as a member of such forces or services, even though he is not carrying out activities related to his duties; (3) by feigning a status, occupation, employment, profession or any other circumstances designed to conceal or change his identity so that the victim is misled and thus deprived of the opportunity to defend himself as he would naturally have done if such a ruse had not been employed" (article 80 bis).

Illegal deprivation of liberty followed by death: "The death penalty or rigorous imprisonment for life shall be imposed on anyone who deprives another of his personal freedom, if the death of the victim is caused in connection with the act. The same penalty shall be imposed if the victim suffers very serious injuries and the act is committed for subversive purposes." (article 142 ter).

Homicide resulting from arson and other destructive acts:

(a) Article 186. "Anyone who, by means of arson creates a public danger to persons or property shall be liable to rigorous or ordinary imprisonment for 3 to 10 years. The term shall be: (a) 6 to 15 years of rigorous or ordinary imprisonment in the event of danger to the life of any person or of the fire spreading thereby causing explosions or destroying property of great scientific, artistic, cultural, religious, military or industrial value; (b) 8 to 20 years of rigorous or ordinary imprisonment in the event of destruction of the property mentioned in the preceding paragraph; (c) 10 to 28 years of rigorous or ordinary imprisonment if the act is the direct cause of serious or very serious injury or the death of any person; (d) death or rigorous imprisonment for life if the act is the direct cause of the death or very serious injury of any person and it is committed for subversive purposes".

(b) Article 186 bis. "Anyone who, by causing an explosion or releasing nuclear energy, creates a public danger to persons or property shall be liable to rigorous or ordinary imprisonment for 3 to 10 years. The penalty shall be: (a) 6 to 15 years of ordinary or rigorous imprisonment in the event of danger to the life of any person or danger of destruction of property of great scientific, artistic, cultural, religious, military or industrial value; (b) 8 to 20 years of rigorous or ordinary imprisonment in the event of destruction of the property referred to in the previous paragraph; (c) 10 to 25 years of rigorous or ordinary imprisonment if the crime is the direct cause of serious or very serious injury or the death of any person; (d) death or rigorous imprisonment for life if the act is the direct cause of the death or very serious injury of any person and it is committed for subversive purposes".

(c) Article 187. "According to the circumstances, anyone who causes damage through the sinking or stranding of a ship, the collapse of a building, flooding, by a mine or any other powerful instrument of destruction shall be liable to the penalties prescribed in the preceding article".

Homicide resulting from offences against the safety of means of transport and communication:

(a) Article 190. "Anyone who deliberately commits any act which endangers the safety of a ship, a floating construction or an aircraft shall be liable to imprisonment for 2 to 8 years. If the act causes a shipwreck, stranding or air disaster, the penalty shall be ordinary or rigorous imprisonment for 6 to 15 years. If the act causes slight injury to any person, the penalty shall be ordinary or rigorous imprisonment for 6 to 15 years, and if it occasions death or serious or very serious injuries, ordinary or rigorous imprisonment for 10 to 25 years. If the act is the direct cause of the death or very serious injury of any person and it is committed for subversive purposes, the penalty shall be death or rigorous imprisonment for life. The foregoing provisions shall apply even when the act affects the person's own property, if it endangers public safety".

(b) Article 190 bis. "Anyone who knowingly carries out any act that endangers the safety of a train, cableway or any other form of public land transport shall be liable to imprisonment for 2 to 8 years. If the act causes

derailment, collision or any other serious accident, the penalty shall be rigorous or ordinary imprisonment for 6 to 15 years. If the accident causes slight injury to any person, the penalty shall be rigorous or ordinary imprisonment for 6 to 15 years, and if it occasions death or serious or very serious injury, ordinary or rigorous imprisonment for 10 to 25 years. If the act is the direct cause of the death or very serious injury of any person and it is committed for subversive purposes, the penalty shall be death or rigorous imprisonment for life. The foregoing provisions shall be applied even when the act affects the person's own property, if it endangers public safety".

Homicide resulting from acts of hijacking:

Article 199. "If the acts of violence or hostilities referred to in the preceding article occasion serious or very serious injury or the death of any person on board the ship or aircraft attacked, the penalty shall be rigorous or ordinary imprisonment for 10 to 25 years. If the act is committed for subversive purposes and occasions the death or very serious injury of any person, the penalty shall be death or rigorous or ordinary imprisonment for life".

Homicide resulting from offences against public health:

Article 200. "Anyone who, in a manner dangerous to health, poisons, contaminates or adulterates drinking water, foodstuffs or medicinal products intended for public use or for consumption by a group of persons shall be liable to rigorous or ordinary imprisonment for 3 to 10 years. If the act is followed by the death or very serious injury of any person, the penalty shall be rigorous or ordinary imprisonment for 10 to 25 years. If the act is committed for subversive purposes and occasions the death or very serious injury of any person, the penalty shall be death or rigorous or ordinary imprisonment for life".

Homicide resulting from activities related to unlawful association:

Article 210 ter. "In any of the cases covered by the foregoing article, all those taking part whether as a ring leader, instigator, perpetrator or accomplice, shall be liable to death or rigorous or ordinary imprisonment for life, if the death or serious injury of any person is caused thereby and the association has subversive aims".

Homicide caused as a result of armed attacks:

Law No. 21.634 (which replaces article 225 ter of the Penal Code)

Article 1. Article 225 ter of the Penal Code, authorized by law 21.338, is replaced by the following: "Article 225 ter. Anyone who makes an armed attack on a ship, aircraft, military barracks or establishment, or an establishment of the security, police or prison services, or on their vehicles, guard posts or personnel shall be liable to rigorous or ordinary imprisonment for 5 to 15 years. If the attack occasions the death or very serious injury of any person, the penalty shall be death or rigorous imprisonment for life. If it causes any injuries enumerated in article 90, the penalty shall be a term of rigorous or ordinary imprisonment of from 10 to 25 years.

Article 2. The above shall be published etc.".

Homicide committed by misrepresentation of authority, credentials or honours:

Article 247 quater. "In the cases prescribed in the foregoing article, the penalties shall be the following: If the offence is punishable by death or rigorous or ordinary imprisonment for life, the penalty shall be death or rigorous or ordinary imprisonment for life. If the offence is punishable by a specified term of rigorous or ordinary imprisonment, the minimum penalty applicable shall be the maximum penalty prescribed for the offence and the maximum shall be rigorous or ordinary imprisonment for life. Persons preparing or facilitating the act shall incur the same penalty as the perpetrator, if the crime is attempted or committed".

B. Competence of the Executive

1. Ordinary powers: There are no powers that permit the National Executive to carry out summary or arbitrary execution;

2. Presidential powers while a state of siege is in force: While a state of siege is in force, the Executive cannot on its own account pronounce judgement or inflict penalties. Article 23 of the Argentine Constitution states: "In the event of internal unrest or external attack endangering the observance of this Constitution and the exercise of the authorities created by it, the province or territory in which the disturbance occurs shall be declared as being in a state of siege and the constitutional guarantees shall be suspended therein. But during such suspension, the President of the Republic may not on his own account either pronounce judgement or inflict penalties. In such a case, his powers in respect of individuals shall be confined to arresting them or transferring them from one place to another on national territory unless they prefer to leave Argentine territory".

C. Remedy of habeas corpus

In article 18, the Argentine Constitution states that "no one may be arrested except on a written order from a competent authority", and has thus been interpreted as a tacit recognition of habeas corpus.

Characteristics

1. It is a guarantee limited to physical liberty and excludes the protection of other rights (Supreme Court, Bertotto, José v. the Head of the Post Office).

2. It is granted to remedy the deprivation of physical liberty by acts of the State and not by private individuals.

3. It may also be used against the threat of deprivation or restriction of liberty (Supreme Court, Codovilla, Vicente, 20 April 1950).

Joaquín V. González, the eminent Argentine jurist, says: "In law, a writ for habeas corpus, as it is called in our constitutional language, means that when an individual complains that he has been illegally arrested or deprived of his liberty, he must be brought without delay before the appropriate judge or court so that the reason for his detention may be examined and he may be set at liberty if it is found that his detention was arbitrary".

Germán Bidart Campos, another well-known constitutional expert, summarizes the subject in the following way: "In fact, habeas corpus is an action and not a remedy and as such the application must be lodged by the person himself or by a third person: every facility must be given for him to act through a representative, if he has been deprived of his physical liberty. Proceedings may be heard by any judge, untrammelled by rigorous formalities. It must be broadly interpreted, always in favour of release, both when the deprivation of liberty is potential and when it is effective. The case must be decided very promptly in summary proceedings. Finally, it should not be confined to acts by the State but should also apply to those by private individuals".

Legislation

The Code of Criminal Procedure of the Federal Capital:

Article 617. "The remedy of amparo lies before the competent magistrate against any order or act by a public official which unlawfully limits a person's freedom".

An action for habeas corpus may also be brought when a provincial authority has imprisoned a member of Congress or any other person acting on a commission from, or employed by, the Government of the Nation.

Law 48

"Article 20. Where a person is arrested or imprisoned by a national authority, or is so held at the disposal of a national authority, or under an order issued by a national authority, or where a provincial authority has imprisoned a member of Congress or any other person acting on a commission from the Government of the Nation, the Supreme Court or the magistrates of the section may, on the application of the prisoner, or of his relatives or friends, investigate the origin of the imprisonment, and if it has been ordered by an authority or person who is not so authorized by the law, the Court or the magistrates shall direct that the prisoner be set free immediately".

The Permanent Mission of the Republic of Argentina to the International Organizations in Geneva renews the expression of its high consideration.

[Original: Spanish]

[8 February 1983]

I have the honour to refer to your note G/SO 214/33, of 19 November 1982, relating to Economic and Social Council resolution 1982/32, entitled "Summary or arbitrary executions".

In its note No. 25, of 2 February 1983, this Permanent Mission forwarded to the Secretariat preliminary information on the subject, in compliance with the request in note G/SO 214(33), of 17 September 1982.

The present note contains observations about the material annexed to the second of the two notes received, consisting of two communications from the organization "Amnesty International" from its London headquarters, the first dated 27 February 1980 and the second dated 12 October 1982.

With respect to the first-mentioned communication, it should be pointed out that the text was already transmitted to the Argentine Government some years ago by the Secretary-General of the United Nations (note G/SO 215/1 ARGEN, of 17 July 1980), in relation to an Amnesty International communication of 30 May 1980. The transmittal was effected under the confidential procedure of Economic and Social Council resolution 1503 (XLVIII) and the reply from this Permanent Mission was submitted in note 225/81, of 5 August 1981.

It is not the intention of this Permanent Mission to reproduce in the present note the terms of the reply deserved by the Amnesty International communication, or even to make a general reference to the main concepts referred to therein. That would be in breach of the applicable procedures, which should be scrupulously respected not only by countries members of the system but also, and particularly, by international organizations. The communication and the reply thereto were, in their time, the subject of the procedure provided for by the rules in force for such cases, and it is therefore in no way fitting to repeat the exercise by a means for which neither the Commission nor any other United Nations organ has given authorization or made provision. Had the Commission desired to put an end, through the mission of the Special Rapporteur for summary or arbitrary executions, to the confidential procedure with respect to communications, that would have been done expressly and not through the granting of a mandate for the investigation of a phenomenon the scope of which, as in the case of many others considered by the Commission, remains to be identified.

The Argentine Government also notes that the Special Rapporteur sees fit to receive and transmit an allegation concerning events that presumably occurred several years ago, when the Economic and Social Council's request to the Special Rapporteur was for a report "on the occurrence and extent of the practice of such executions ..." (Economic and Social Council resolution 1982/35, paragraph 5).

The allegations transmitted by Amnesty International in May 1980 concern imaginary events reported to have occurred up to the beginning of 1979, or some four years ago. It is difficult in such a case to refer to the "occurrence of [a] practice".

For the reasons explained above, this Permanent Mission does not propose to reply to Amnesty International's second pamphlet, of 12 October 1982. It cannot, however, refrain from remarking how curious it is that the Special Rapporteur should have repeated reports of two cases which clearly belong to a country's police records and which are under investigation by the Argentine Judiciary, with the full co-operation of the authorities and the police. Moreover, the very organization from which the information emanated refrained from making specific allegations and merely hinted at certain indirect suppositions that deserve no credence whatsoever. On the contrary, the pamphlet in question gave an account of the deserved condemnation by the President of the Nation of one of the acts with regard to which the Minister of the Interior himself called for the appearance of witnesses.

It is also curious that the Special Rapporteur should have transmitted these police reports, which were not obtained through any of the many other bodies or procedures which the United Nations places at the disposal of persons

or organizations wishing to report an alleged violation of human rights in any country of the world. In fact, the Special Rapporteur has, in his good faith, been taken unawares by persons desirous of prolonging an international campaign to discredit the Argentine Republic. These elements have already exhausted the possible means of seeking to destabilize the country, with no practical results, since all citizens are moving towards the restoration of democratic institutions through the national elections to be held this year in accordance with the guidelines established by the Argentine Government.

The Secretariat has been, and is, a witness to the Argentine Government's efforts to co-operate with the international organizations concerned with the defence of human rights. In this spirit, the Government has always been prepared to provide any kind of information or comments required of it, in respect for international law and United Nations rules and practices. The present note cannot, therefore, be interpreted as indicative of a lack of interest on the Government's part concerning the allegations of which it has been informed, but must be viewed in the context of the rules in force and of the steadfast attitude of co-operation shown by the national authorities.

For the above reasons, the Special Rapporteur can only reject forthwith the allegations placed before him, thus preventing the attachment of any importance to politically-motivated accusations.

I take this opportunity to renew to the Secretary-General the assurances of my highest consideration.

[Original: Spanish]

[11 February 1983]

I have the honour to refer to your note G/SO 214/33, of 17 September 1982, in which you requested information on the question of summary or arbitrary executions.

In note No. 25/83, of 2 February 1983, this Permanent Mission transmitted to the Secretariat preliminary information on the subject, received from the Argentine Government. The present note amplifies that information on the basis of new evidence furnished by my Government, which I give below.

Guarantees against unlawful or arbitrary detention

Article 142 of the Argentine Penal Code stipulates a penalty of rigorous imprisonment of for 3 to 15 years for anyone who "deprives another of his personal freedom in any of the following circumstances ... (4) If the act is committed by misrepresentation of public authority or an order from such authority".

Under article 141 of the Penal Code, anyone who unlawfully "deprives another of his freedom" is liable to rigorous or ordinary imprisonment for 1 to 6 years, and the act of "misrepresentation of public authority" or "an order" from such an authority aggravates the offence since a more severe penalty is prescribed. It should be noted that the penalty is more severe because the minimum penalty fixed is more severe (the graduation of penalties is reckoned from the minimum penalty). Legal theorists interpret this article in the sense that it refers,

not to acts committed by the public authority but to those of persons who, not forming part of such an authority, feign such status. Misrepresentation of authority must display the elements of a stratagem to mislead the victim about the status of the perpetrator of the act.

As was stated in our earlier note to the Secretary-General, article 142 ter states that the act is aggravated if in connection with "the act (depriving another of his personal freedom), the death of the victim is caused". In this case, the penalty prescribed is death or rigorous imprisonment for life.

If very serious injury is caused and the act is committed for subversive purposes, the penalty is the same.

The Penal Code also deals with "unlawful detention" (article 144 bis (1)), which it defines as "the conduct of a public official who, in abuse of his office or without the formalities prescribed by law" deprives "anyone of his personal freedom".

This concept also covers unlawful prolongation of detention and the admittance of prisoners without fulfilment of the legal formalities. In general terms, it may be said that individuals must be detained in accordance with the rules contained in the Codes of Criminal Procedure. These Codes are local laws in each jurisdiction: the Federal Capital and the provinces.

The offence of unlawfully detaining a prisoner, covered by article 143 (1) of the Penal Code, involves two cases: that of an official who is competent to decide the release of a prisoner but does not do so, contrary to the law, and that of an official who is responsible for giving effect to an order of release from a competent authority but retains the prisoner.

Improper prolongation of detention is defined in article 143 (2) as follows: "An official who improperly prolongs the detention of an individual without placing him at the disposal of the competent judge". The Codes of Criminal Procedure prescribe the period of time within which the accused or arrested person must be placed at the disposal of the competent judge.

Irregular admittance of prisoners

(a) Article 143 (4): "A governor of a prison or other penal establishment, or his deputy, who admits any convicted person without evidence of the executable sentence which has been imposed on him or who places such a person in parts of the establishment which are not those appointed for that purpose".

(b) Another case provided for is irregular admittance of prisoners. Article 143 (5) of the Penal Code prescribes penalties for "a prison governor or officer who admits a prisoner without an order from the competent authority, except in cases of flagrante delicto".

Failure to terminate detention or delay in so doing: Covered by article 143 (6):
"A competent official who, having notice of an unlawful detention, neglects, postpones or rejects termination thereof or reporting thereon to the authority that should take the decision".

The aggravating circumstances in the case of article 143 are covered by article 144, which increases the maximum penalty by up to 5 years in any of the following circumstances:

1. If the act is committed with violence or threats or for religious or racial reasons or from vengeance.
2. If the act is committed against an ascendant, a sibling, a spouse or any other individual to whom particular respect is due.
3. If it results in serious harm to the person, the health or the business affairs of the victim, provided that the act does not constitute another offence for which the law imposes a greater penalty.
4. If the deprivation of liberty lasts more than one month.
5. If the act is committed in order to compel the victim or another person to do, not to do or to tolerate something which is not incumbent upon him.

I trust this information will prove useful to the Secretary-General.