TORTURE AND ILL-TREATMENT OF PRISONERS
THE RECORD SINCE 1975

Submitted by
AMNESTY INTERNATIONAL

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Agenda item 3:
Crime and the abuse of power: offences and offenders beyond the reach of the law.

Agenda item 4:
Deinstitutionalization of corrections and its implications for the residual prisoner.

Agenda item 5:
United Nations norms and guidelines in criminal justice: from standard-setting to implementation.

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I. THE CONTINUING PRACTICE OF TORTURE AND ILL-TREATMENT

1. Introduction

Five years ago, the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, at the request of the General Assembly, considered the problem of torture and other cruel, inhuman or degrading treatment or punishment. Its work culminated in a draft declaration on the matter. Subject to minor amendment, the General Assembly adopted the text in resolution 3452 (XXX) of 9 December 1975 by acclamation.

In the period since the General Assembly adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (Declaration against Torture), Amnesty International has taken action on torture as well as other cruel, inhuman or degrading treatment or punishment (“ill-treatment”) in more than 60 countries where government officials inflicted violent measures on people in custody with the deliberate intention of causing them extreme physical and mental suffering.

The techniques, institutions and patterns of torture vary widely. Torture is not confined to any particular region or political ideology. The victims include men and women, children and old people, political and ordinary criminal prisoners, people engaged in or allegedly engaged in armed conflict and people who have not used or advocated violence.

Methods of torture include beatings, mutilations and involve the use of well elaborated techniques and equipment, both ancient and modern in conception, sometimes designed to make the subsequent verification of torture difficult. Deaths under torture have been common. Torture has taken place in time of war or other emergency and in time of peace and apparent stability. Some governments, including governments which did not themselves use torture, have forcibly repatriated people to countries where they faced torture.

Most of the states where torture has been inflicted in the recent period have not only consented to the terms of the Declaration against Torture, but are also parties to international conventions forbidding it. Many have similar provisions in their domestic legislation. Virtually every government proclaims that torture is illegal. It is practically unknown for any government to defend its use, although occasionally definitions conflict as to what constitutes torture. In a number of countries legislation permits the infliction of punishments (for example, flogging, amputation, stoning) which by international standards may be regarded as torture.

A number of governments have systematically cooperated in the illegal abduction, torture and murder of real or suspected opponents by extra-governmental bodies, often combining to result in their “disappearance”. Usually the victim is arrested by uniformed personnel or other armed individuals operating with impunity and the authorities simply deny knowledge of the person’s whereabouts. Sometimes the body, often mutilated, will eventually be found. All available information suggests that the number of victims of such crimes by government agents or sympathizers has in recent years been much higher than the number of victims of similar crimes by anti-government forces.

In some countries psychiatric and medical personnel, in collaboration with police and security officials, have misused methods of psychiatric treatment in relation to people forcibly confined to psychiatric hospitals for political rather than authentic medical reasons. Powerful drugs, which are often also used to help patients in an acceptable psychiatric practice, have been administered to such inmates of psychiatric hospitals thus causing severe suffering and jeopardizing their health.

2. Purposes of torture

Prisoners have often been tortured as a form of punishment or revenge, to intimidate them or a broader public, to force them to cooperate with the authorities and, in view of the gruesome nature of recent torture techniques, for the sadistic pleasure of their captors.

However, torture is most commonly used to obtain information or statements from the victims incriminating themselves or others during the period of interrogation after arrest. In a number of countries torture of political suspects during interrogation has been and still is routine practice.

3. Absence of safeguards against torture

a) Laws permitting broad government discretion

Although in most cases national legislation proscribes torture, nevertheless it often includes provisions permitting arrest and detention procedures which facilitate the use of torture. Torture occurs most often where legislation provides for the arrest of people suspected of being or alleged to be in opposition to the government: various types of emergency legislation, laws allowing detention on the vaguest of suspicions,
laws giving broad and elastic definitions of crimes against the state—all of these have contributed to arrest by "dragnet", when torture is frequently detention incommunicado. Detention in incommunicado tends to facilitate the use of torture. Almost invariably the victims are held incommunicado. People detained incommunicado, or even a week have regularly been severely ill-treated. Normally, victims cannot resort to habeas corpus or other legal remedies whereby they might be brought quickly before an independent authority able to assess or alter their treatment by their captors. Usually there are no effective procedures for monitoring and recording the conditions and punishments, including inadequate food and medical care, lack of hygiene and danger of infection and compulsory labour prejudicial to sound health. Typical punishments include isolation, deprivation of food and the use of restraints such as fetters, handcuffs and even hoods, and the enlisting of criminal prisoners to terrorize political prisoners. These practices are clearly incompatible with the Standard Minimum Rules for the Treatment of Prisoners.

II. RECOMMENDATIONS OF AMNESTY INTERNATIONAL

In the submission of Amnesty International the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders can act to inhibit if not end the practices described in Part I by promoting the implementation of the Declaration against Torture. Amnesty International therefore suggests that the Congress consider favourably the following recommendations:

1. Speedy adoption of the Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment at the 35th Session of the General Assembly (Agenda items 3 and 5). As Part I of this document shows, the situation of maximum danger for anyone apprehended by the authorities is when that person is under the exclusive control, and thus at the mercy of, the capturing body. Once an arrested person has access to family and to legal advice and is brought before a court, the likelihood of ill-treatment is significantly curtailed. In other words, arbitrary arrest and detention are a principal condition for torture and other cruel, inhuman or degrading treatment. The General Assembly has before it a Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. This constitutes a major compilation of international standards that would, if observed, do much to reduce arbitrary arrest and detention. It would be desirable if the Assembly were aware that this Congress supports adoption of the Draft Body of Principles.

2. The speedy adoption by the United Nations of a convention against torture and cruel, inhuman or degrading treatment or punishment (Agenda items 3 and 5). In 1977, the General Assembly, in resolution 32/62 of 8 December 1977, requested the Commission on Human Rights to draft a convention that would be based on the Declaration against Torture. Amnesty International considers it necessary for the convention to indicate that torture in all its forms, including the widespread practice of "dis-
appeal", is manifestly a grave criminal offence which must be treated as such at the international level, and the effective convention should include provision for:

a) an obligation to establish national jurisdiction over suspected torturers on the basis of the principle of universality of jurisdiction, and to try such individuals if they do not extradite them;

b) an obligation not to extradite those accused of any offence to a country where they might face torture or cruel, inhuman or degrading treatment or punishment;

c) an obligation to make reparation to victims of torture or other cruel, inhuman or degrading treatment or to their dependents, including financial compensation as well as medical treatment and all other means of rehabilitation to restore the victim to his or her previous condition;

d) an obligation to take effective measures to repress torture and other acts of cruel, inhuman or degrading treatment or punishment;

e) an obligation to establish mechanisms to ensure the effective implementation of the convention.

3. Promotion of internationally acceptable standards for rehabilitation of and compensation for victims of torture (Agenda item 5).

The effects of torture do not end when the torture stops. Doctors who have examined and treated former victims have been able to identify enduring sequelae of torture. These victims require and deserve treatment and restitution for their suffering. This should be a clear governmental responsibility arising from the original responsibility of government officials for the torture. The principle of compensation is contained in the Declaration against Torture.

In recognition of this need, an international seminar of doctors and lawyers, convened by Amnesty International in Geneva in June 1979, recommended that, in addition to the principle reflected in recommendation 2c above, a number of specific provisions should be included in or annexed to the proposed Convention on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These are:

a) The States parties to the Convention agree that torture and other cruel, inhuman or degrading treatment or punishment as defined by the Convention constitutes not only a serious criminal act, but also a separate legal ground for a claim for restitution against the State;

b) The fact that torture takes place in a public building or compound, regardless of the capacity of the torturer (public official or private person), is prima facie evidence that torture was committed or instigated by a public official, thus creating liability for the State.

c) Restitution includes:

i) substantial compensation for the pain and suffering that the victim has experienced;

ii) expenses for medical treatment and rehabilitation necessary for restoring the physical and mental health and the working capacity of the victim to a state in which the one enjoyed before the arrest, preferably in the form of special programs initiated by the State;

iii) in the case of a death, the relatives of the victim will be entitled to substantial compensation,

d) the above-mentioned claims should not be frustrated by a domestic Statute of Limitations as long as the claiming party has no substantial or procedural possibility whatsoever to raise a claim before a competent court.

e) The findings of authorized United Nations bodies ascertaining acts of torture shall be taken full account of in proceedings concerning claims for reparation.

4. The speedy elaboration and adoption of principles restricting compulsory detention on grounds of mental ill-health (Agenda items 3 and 5).

Amnesty International has found that in many countries the situation of people detained on psychiatric grounds amounts to cruel, inhuman or degrading treatment. When such treatment is meted out to those who do not, or should not, go to treatment to themselves or others and may even be perfectly willing for the treatment to well amount to torture. This is clearly the case where the apparent reason for the detention and the "treatment" of the person is not a mental illness.

The importance of drafting principles to deal with this matter was recognized by the General Assembly in its resolution 32/62 of 8 December 1977. The Commission on Human Rights was given the task of examining the problem and drafting possible principles, and it sought the advice of the Sub-Commission on Prevention of Discrimination and Protection of Minorities which is at present examining the matter.

5. Support for the principle of international visits to places of arrest, detention and imprisonment for possible incorporation in or annexation to the proposed convention against torture (Agenda item 5).

Experience has shown that on the rare occasions when humanitarian bodies have had free access to places where people were being held by the authorities, the number of allegations of torture and ill-treatment has diminished significantly. This has led to considerable international support for a proposal from the International Committee of Jurists and the Swiss Committee against Torture. This proposal, based on a draft prepared by a meeting of international experts in Geneva in 1977, envisages the conclusion of an Optional Protocol to the proposed Convention on the Protection of All Persons from Being Subjected to Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment. By this Optional Protocol an international committee would be created to organize visits to places of detention.

6. Support for the creation of machinery within the United Nations to take effective action against violations of human rights and, in particular, to take emergency action on behalf of people arrested or detained in circumstances giving rise to fear for their life or safety (Agenda item 5).

In cases of torture, "disappearances" and unlawful killings, it is often in the period directly after arrest that a person's life or physical well-being is threatened. The sooner international awareness of someone's plight can be communicated to the authorities, the greater the chances of rescuing the victim. International concern about enforced or involuntary disappearances has already led to the establishment of a group of experts of the United Nations Commission on Human Rights charged with examining questions relevant to the matter and with performing its functions in an effective and expeditious manner. It is important that such a body be able to take emergency action and deal not just with disappearances but also with threats to the life or security of those in detention. It would be valuable if the Congress supported the creation and operation of appropriate machinery that could constitute an international "hotline" for the detainer.

The goal is to create a United Nations machinery designed to perform functions in an effective and expeditious manner. It is the responsibility of the Secretariat-General to see that this machinery is established, and that the machinery is provided with adequate facilities and resources. The machinery should have specific functions, the first of which should be:-

a) to consider complaints about the occurrence of torture or other cruel, inhuman or degrading treatment in circumstances giving rise to fear for the life or safety of the victim;

b) to initiate an investigation of such complaints;

c) to prepare for and carry out such investigations;

d) to pronounce on findings of investigations;

e) to allocate financial compensation and medical rehabilitation necessary for restoring the physical and mental health and the working capacity of the victim to a state in which the one enjoyed before the arrest, preferably in the form of special programs initiated by the State;

f) to ensure that the claims of the victims of torture or other cruel, inhuman or degrading treatment are examined not only by the competent government authorities, but also by the United Nations machinery.

7. Initiating a study by an appropriate United Nations body on maximum security detention practices (Agenda item 4).

The issue of maximum security detention cannot be ignored. Isolation, in particular, is an aspect of many present forms of high security detention. At its worst this involves prolonged solitary confinement, sometimes with aggravating features (bare cells), or as part of a special programme for behaviour modification. On the basis of its own research Amnesty International has concluded that other forms of isolation in high security detention can also seriously affect the health of prisoners and that the effects of isolation militate against reform and rehabilitation.

In 1976, the United Nations Social Defence Research Institute (UNSDRI) embarked on a study of such practices. It is understood that UNSDRI was unable to pursue its project for various reasons. The Congress should express itself in favour of UNSDRI resuming this work.

8. Consideration of how national mechanisms for the protection of human rights could be strengthened (Agenda item 5).

Virtually all national legislations include safeguards against violations of human rights, certain standards for the treatment of detainees and specific rights for the defendant in the legal proceedings. Such provisions are: prohibition of torture; habeas corpus; the limitation on the length of time the defendant is in prison; the right to retraction of confession if made under torture. It is well known that these provisions are often ignored by law enforcement agencies and even by the courts. Police or armed forces do not respect the time limit for handing over to the judge; the arrested person is held incommunicado for lengthy periods and tortured; the judge's request to see a detainees is met with blatant denial that the latter is held by the agency in question; the court does not accept the retraction of confession, nor investigate the alleged torture. The state prosecution office does not initiate investigation or legal proceedings against officials who are alleged to have ill-treated detainees. These basic safeguards are essential for maintaining the rule of law in any country, and are the responsibility of various
The first prerequisite for upholding these safeguards is the citizen's own knowledge of his or her rights under the law. The Congress could consider ways of including basic instruction about citizens' constitutional and other legal rights in the educational curriculum at all levels, including adult education.

However, in order to spread knowledge and raise awareness among all sections of the population, sustained and concerted efforts are needed not only by national and local governments but also by mass media, bar associations, other professional organizations, youth movements, trade unions, churches and women's associations. Such groups are in the best position to advise the victims on international complaints machinery and represent them at international bodies. They can also monitor a national government's adherence to international commitments in the field of human rights, assess the effectiveness of the international petition system and suggest reforms. Education in human rights by UNESCO and regional inter-governmental organizations could be valuable undertaken.

Further important steps are the proper training of personnel of law enforcement agencies and instruction in their obligations under national and international law. The implications of the Nuremberg principles should be explained to them. The Congress could consider arranging compulsory national and international courses for such personnel.

The practice in many countries of identifying the defence lawyer with the political views or even activities of his or her client makes effective legal defence and consequently detection and prevention of torture in political cases virtually impossible. In recent times it has also led to the imprisonment or exile of the lawyers themselves. The Congress could consider how to counter such dangerous tendencies.

The proper functioning of habeas corpus is indispensable to the safeguarding of a detainee's physical integrity and subsequent fair trial. The Congress could consider how the legal profession, the judiciary and civil liberties bodies can help to strengthen this legal procedure and to penalize any agency that falsely denies detaining an individual, thus defying the authority of the judiciary.

Emphasis should be given by the Congress to other measures governments might take at the national level to prevent the crime of torture.
AMNESTY INTERNATIONAL is a worldwide movement which is independent of any government, political grouping, ideology, economic interest or religious creed. It plays a specific role within the overall spectrum of human rights work. The activities of the organization focus strictly on prisoners:

- It seeks the release of men and women detained anywhere for their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence. These are termed "prisoners of conscience".
- It advocates fair and early trials for all political prisoners and works on behalf of such persons detained without charge or without trial.
- It opposes the death penalty and torture or other cruel, inhuman or degrading treatment or punishment of all prisoners without reservation.

AMNESTY INTERNATIONAL acts on the basis of the United Nations Universal Declaration of Human Rights and other international instruments. Through practical work for prisoners within its mandate, Amnesty International participates in the wider promotion and protection of human rights in the civil, political, economic, social and cultural spheres.

AMNESTY INTERNATIONAL has over 2,000 adoption groups and national sections in 39 countries in Africa, Asia, Europe, the Americas and the Middle East, and individual members, subscribers and supporters in a further 86 countries. Each adoption group works on behalf of at least two prisoners of conscience in countries other than its own. These countries are balanced geographically and politically to ensure impartiality. Information about prisoners and human rights violations emanates from Amnesty International's Research Department in London.

AMNESTY INTERNATIONAL has consultative status with the United Nations (ECOSOC), UNESCO and the Council of Europe, has cooperative relations with the Inter-American Commission on Human Rights of the Organization of American States and is a member of the Coordinating Committee of the Bureau for the Placement and Education of African Refugees of the Organization of African Unity.

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