수로 하고, 출석하여 투표하는 당사국 대표의 최대다수표 및 절대과반수표를 획득하는 후보가 위원으로 선출된다.

4. 최초의 선거는 본 협약의 발효일로부터 6개월 이내에 실시된다. 국제연합사무총장은 각 선거일 최소 4개월 전에 당사국에 서한을 발송하여 3개월 이내에 후보를 지명하도록 요청한다. 국제연합사무총장은 이렇게 지명된 후보자의 명단을 지명국가 표시와 함께 알파벳순으로 준비하여 당사국에 제출한다.

5. 위원회의 위원은 4년 임기로 선출된다. 모든 위원은 재지명된 경우에 재선될 수 있다. 다만, 최초의 선거에서 선출된 위원중 5인의 임기는 2년후에 종료된다. 이들 5인 위원의 명단은 최초 선거후 즉시 본 조 3항에 언급된 회의의 의장에 의하여 추첨으로 선정된다.

6. 위원회의 위원이 사망 또는 사임하거나 여타 이유로 인하여 위원회의 임무를 수행할 수 없는 경우, 동 위원을 임명한 당사국은 동인의 잔여 임기동안 근무할 수 있는 다른 전문가를 전 당사국 과반수의 동의를 조건으로 지명한다. 국제연합사무총장이 동 지명내용을 각 당사국에 통보한 후 전 당사국의 과반수가 6개월 이내에 부정적으로 답변하지 않으면 이에 동의한 것으로 간주된다.

7. 전 당사국은 위원회 위원들이 위원회 임무를 수행하는 동안 소요되는 비용에 대하여 책임을 진다.

제 18 조

1. 위원회는 임기 2년의 임원을 선출한다. 임원은 재선될 수 있다.

biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. 위원회는 자체 절차규칙을 제정하며 이 규칙은 특히 다음 사항을 규정한다.

(a) 의사정족수는 위원 6인으로 한다.

(b) 위원회의 의결은 출석위원 과반수의 투표로 한다.

3. 국제연합사무총장은 본 협약상 위원회 기능의 효과적 수행을 위하여 필요한 직원 및 시설을 제공한다.

4. 국제연합사무총장은 최초의 위원회 회의를 개최한다. 위원회는 최초 회의 이후 위원회의 절차규칙에 규정된 시기에 회의를 개최 된다.

5. 전 당사국은 본 조 3항에 따라 직원 및 시설을 위한 경비 등 국제연합이 부담한 비용을 국제연합에 변상하는 것을 포함하여 전 당사국 및 위원회 회의와 관련되어 소요되는 비용에 대하여 책임을 진다.

제 19 조

1. 전 당사국은 본 협약이 자국에 대하여 발효한 후 1년내에 본 협약에 따른 의무이행을 위하여 취하여 온 조치에 관한 보고서를 위원회에 제출한다. 그 이후 전 당사국은 자국이 취한 모든 새로운 조치에 관한 추가보고서 및 위원회가 요청하는 여타 보고서를 매 4년마다 제출한다.

2. 국제연합사무총장은 동 보고서들을 전 당사국에 송부한다.

3. 각 보고서는 위원회에 의하여 검토되며, 위원회는 보고서에 대하여 적절하다고 생각하는 일반적인 의견을 제시하며 이러한 의견들을 관련 당사국에 전달한다. 관련 당사국은 이에 대한 견해를 위원회에 제출할 수 있다.

4. 위원회는 제 24 조에 따라 작성된 연례보고서에 관련 당사국으로 부터

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia,* that:

(a) Six members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any

접수한 의견과 함께 본 조 3항에 따라 위원회가 제시한 견해를 포함시킬 것을 재량에 의하여 결정할 수 있다. 관련당사국이 요청하는 경우, 위원회는 본 조 1항에 따라 제출된 보고서의 사본을 포함시킬 수도 있다.

제 20 조

1. 위원회가 어느 당사국의 영토내에서 고문이 조직적으로 행하여지고 있다는 충분한 근거를 가진 것으로 보이는 믿을 만한 정보를 접수한 경우, 위원회는 그 당사국으로 하여금 이 정보를 조사하는데 협조토록 하며 이를 위하여 관련 정보에 관한 견해를 제시한다.
2. 위원회는 관련 당사국에 의하여 제출된 견해와 아울러 여타 입수 가능한 관련 정보를 고려하여 정당한 근거가 있다고 결정하는 경우, 비밀조사를 실시하여 그 결과를 즉각 위원회에 보고할 1인 또는 그 이상의 위원을 지명할 수 있다.
3. 본 조 2항에 따라 조사가 이루어지는 경우, 위원회는 관련 당사국의 협력을 구한다. 그러한 조사는 관련 당사국과의 합의에 의하여 관련국 영토에 대한 방문을 포함할 수 있다.
4. 위원회는 본 조 2항에 따라 제출된 위원 또는 위원들의 조사결과를 검토한 후, 동 조사결과 및 정황상 적절하다고 판단되는 의견 또는 제안을 관련 당사국에 송부한다.
5. 본 조 1항~4항에서 언급된 위원회의 모든 절차는 비밀로 이루어지며 동 절차의 모든 단계에서 당사국의 협력을 구한다. 제 2항에 따라 이루어진 조사에 관한 절차가 완결된 후 위원회는 관련 당사국과의 협의를 거쳐 제 24조에 따른 연례보고서에 동 절차의 결과에 대한 요약보고서를 포함시킬 것을 결정할 수 있다.

comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1 of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

3. If an inquiry is made in accordance with paragraph 2 of this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

제 21 조

1. 본 협약의 당사국은 타 당사국이 동 협약에 따른 의무를 이행하지 아니하고 있다고 주장하는 일 당사국의 통보를 위원회가 접수 및 심리할 권한을 인정한다는 것을 본 조에 의하여 언제든지 선언할 수 있다. 이러한 통보는 자국에 대한 위원회의 권한 인정을 선언한 당사국에 의하여 제출될 경우에만 본조에 규정된 절차에 따라 접수, 심리될 수 있다. 위원회는 그러한 선언을 행하지 아니한 당사국에 관한 통보는 접수하지 아니한다. 본 조에 접수된 통보는 다음 절차에 따라 처리된다.

(a) 일 당사국은 타 당사국이 본 협약의 규정을 이행하고 있지 아니하다고 판단하는 경우, 서면통보로써 동 문제에 관하여 그 당사국의 주의를 환기시킬 수 있다. 통보를 접수한 국가는 통보 접수 후 3개월 이내에 당해 문제를 해명하는 서면 설명서 또는 기타 진술서를 통보한 국가에 송부한다. 그러한 해명서에는 가능하고 적절한 범위 내에서, 동 국가가 당해 문제와 관련하여 이미 취하였거나, 현재 취하고 있는 또는 취할 수 있는 국내절차와 구제수단에 관한 언급이 포함된다.

(b) 통보를 접수한 국가가 최초 통보 접수후 6개월 이내에 당해 문제가 관련 당사국 쌍방에 만족스럽게 조정하지 아니할 경우, 일 당사국은 위원회와 타 당사국에 대한 통고로써 당해 문제를 위원회에 회부할 권리를 가진다.

(c) 위원회는 위원회에 회부된 문제의 처리에 있어서, 일반적으로 승인된 국제법의 원칙에 따라 모든 가능한 국내적 구제절차가 원용되고 완료되었음을 확인한 후에만 당해 문제를 처리한다. 다만, 구제수단의 적용이 부당하게 지연되거나, 본 협약 규정 위반의 피해자에 대한 효과적인 구제를 기대할 수 없는 경우에 본 규정은 적용되지 않는다.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communicatons to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure;

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) 위원회는 본 조에 의한 통보를 심사할 경우는 비공개 회의를 개최한다.

(e) "(c)" 항의 규정에 따를 것을 조건으로, 위원회는 이 협약에 규정된 의무에 대한 존중을 기초로 당해 문제를 우호적으로 해결하기 위하여 관련 당사국에게 주선을 제공한다. 이를 위하여 위원회는 적절한 경우 특별조정위원회를 설치할 수 있다.

(f) 위원회는 위원회에 회부된 여타 문제에 관하여도 "(b)" 항에 언급된 관련 당사국들에게 모든 관련정보를 제출할 것을 요청할 수 있다.

(g) "(b)" 항에서 언급된 관련 당사국은 당해 문제가 위원회에서 심의되고 있는 동안 자국의 대표를 참석시키고 구두 또는 서면으로 의견을 제출할 권리를 가진다.

(h) 위원회는 "(b)" 항에 의한 통보 접수일부터 12개월 이내에 보고서를 제출한다.

(i) "(e)" 항의 규정에 따른 해결에 도달한 경우, 위원회는 사실 관계와 동 해결에 관한 간략한 설명에만 국한하여 보고서를 작성한다.

(ii) "(e)" 항의 규정에 따른 해결에 도달하지 못한 경우, 위원회는 사실 관계에 관한 간략한 설명에만 국한하여 보고서를 작성하고, 관련 당사국이 제출한 서면 의견과 구두 의견의 기록을 동 보고서에 첨부시킨다. 모든 경우에 보고서는 관련 당사국에 통보한다.

2. 본 조의 제규정은 본 협약의 5개 당사국이 본 조 1항에 따른 선언을 하였을 때 발효한다. 당사국은 동 선언문을 국제연합사무총장에게 기탁하며, 국제연합사무총장은 선언문의 사본을 타 당사국에 송부한다. 이와 같은 선언은 국제연합사무총장에 대한 통고에 의하여 언제든지 철회될 수 있다. 이러한 철회는 본 조에 의하여 이미 송부된 통보에 따른 여하한 문제의 심의도 방해하지 아니한다. 일 당사국에 의한 추가 통보는 국제연합사무총장이 선언 철회의 통고를 접수한 후에

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up and *ad hoc* conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a breif statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicted to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notifiction to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of

는 관련 당사국이 새로운 선언을 하지 아니하는 한 접수되지 아니한다.

제 22 조

1. 본 협약 당사국은 일 당사국에 의한 협약 규정 위반의 피해자라고 주장하는 자국 관할권하의 개인들로부터의 또는 개인들을 대신한 통보를 위원회가 접수 및 심리할 권한을 인정한다는 것을 본 조에 의하여 언제든지 선언할 수 있다. 위원회는 그러한 선언을 행하지 아니한 당사국에 관한 통보는 접수하지 아니한다.
2. 위원회는 익명이거나 그러한 통보 제출권리의 남용 또는 본 협약의 규정과 양립할 수 없는 것으로 간주되는 여하한 통보도 본 조에 의해서 인정될 수 없는 것으로 간주한다.
3. 제 2 항의 규정에 따를 것을 조건으로, 위원회는 본 조에 따라 제출된 통보에 관해 제 1 항에 의해 선언을 하였으며, 동 협약 규정을 위반하고 있는 것으로 알려진 당사국의 주의를 환기시킨다. 동 당사국은 통보 접수 6개월내에 그 사건의 내용 및 구제조치를 취한 경우 그 구제 조치를 해명하는 서면 설명서 또는 진술서를 위원회에 제출한다.
4. 위원회는 개인으로부터 또는 개인을 대신하여 그리고 관련 당사국으로부터 입수 가능한 모든 정보를 고려하여 본 조에 의하여 접수된 통보를 심의한다.
5. 위원회는 아래 사항을 확인하지 않고서는 본 조에 의한 개인의 어떠한 통보도 심의하지 않는다.
   (a) 같은 문제가 어떤 다른 국제적인 조사 또는 해결절차에 의하여 심사되지 않았거나 또는 심사되고 있지 않을 것
   (b) 개인이 모든 가능한 국내 구제조치를 취하였을 것.

withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.

3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

(a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;
(b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the per-

다만, 구제조치의 적용이 부당하게 지연되거나 동 협약 위반의 피해자에 대한 효과적인 구제를 기대할 수 없는 경우, 본 규정은 적용되지 않는다.

6. 위원회는 본 조에 의해 통보를 심사할 때는 비공개회의를 개최한다.

7. 위원회는 위원회의 견해를 관련 당사국 및 개인에게 제출한다.

8. 본 조의 제규정은 본 협약의 5개 당사국이 본 조 1항에 의해 선언을 하였을 때에 발효한다. 동 선언은 당사국에 의하여 국제연합사무총장에게 기탁되며, 국제연합사무총장은 그 사본을 타 당사국들에게 송부한다. 동 선언은 국제연합사무총장에 대한 통고에 의하여 언제든지 철회될 수 있다. 동 철회는 본 조에 의하여 이미 송부된 통보에 따른 여하한 문제의 심의도 방해하지 아니한다. 개인에 의한 또는 개인을 대신한 추가 통보는 국제연합사무총장이 선언 철회의 통고를 접수한 후에는 관련 당사국이 새로운 선언을 하지 아니하는 한 접수되지 아니한다.

제 23 조

위원회의 위원과 제 21 조에 의해 임명되는 특별조정위원회의 위원은 국제연합의 특권 및 면제에 관한 협약의 관계조항에 규정된 바에 따라 국제연합을 위한 직무를 행하는 전문가로서의 편의, 특권 및 면제를 향유한다.

제 24 조

위원회는 당사국 및 국제연합총회에 본 협약에 따른 연례활동 보고서를 제출한다.

son who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the *ad hoc* conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

제 3 부

제 25 조

1. 본 협약은 모든 국가의 서명을 위하여 개방된다.
2. 본 협약은 비준되어야 한다. 비준서는 국제연합사무총장에게 기탁된다.

제 26 조

본 협약은 모든 국가들의 가입을 위하여 개방된다.

가입은 가입서를 국제연합사무총장에게 기탁함으로써 이루어진다.

제 27 조

1. 본 협약은 국제연합사무총장에게 20번째 비준서 또는 가입서가 기탁되는 날로부터 30일째 되는 날 발효한다.
2. 20번째의 비준서 또는 가입서의 기탁 후 본 협약을 비준하거나 가입하는 국가에 대하여는, 본 협약은 비준서 또는 가입서가 기탁된 날로부터 30일째 되는 날 발효한다.

제 28 조

1. 각 당사국은 본 협약의 서명, 비준 또는 가입시에 제 20 조에 따라 부여된 위원회의 권한을 인정하지 않음을 선언할 수 있다.
2. 본 조 1항에 따라 유보를 행한 당사국은 국제연합사무총장에 통고함으로써 언제든지 동 유보를 철회할 수 있다.

제 29 조

1. 본 협약의 당사국은 개정안을 제안하고 이를 국제연합사무총장에게 제

PART III

Article 25

1. This Convention is open for signature by all States.

2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratifiction or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.

2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amend-

출할 수 있다. 국제연합사무총장은 개정안을 접수하는대로, 각 당사국에게 동 제안을 심의하고 표결에 회부하기 위한 당사국 회의 개최 찬성여부에 관한 의견을 국제연합사무총장에게 통고하여 줄 것을 요청하는 것과 함께 개정안을 본 협약의 각 당사국에게 통보한다.

동 통보접수후 4개월 이내에 당사국의 3분의 1이상이 당사국 회의 개최에 찬성하는 경우, 국제연합사무총장은 국제연합 주관하에 동 회의를 소집한다. 동 회의에 출석하고 표결한 당사국의 과반수에 의하여 채택된 개정안은 국제연합사무총장에 의하여 그 승인을 위하여 모든 당사국에 송부한다.

2. 본 조 1항에 따라 채택된 개정안은 본 협약 당사국의 3분의 2가 각 당사국의 헌법상 절차에 따라 이를 수락하였음을 국제연합사무총장에게 통보하였을 때 발효한다.

3. 개정안은 발효시 이를 수락한 당사국을 구속한다. 여타 당사국은 계속하여 본 협약의 규정 및 이미 수락한 그 이전의 모든 개정안에 의하여 구속된다.

제 30 조

1. 2개 또는 그 이상의 당사국간의 직접 교섭에 의하여 해결될 수 없는 본 협약의 해석 또는 적용에 관한 분쟁은 그들 중 1개국의 요청이 있으면 중재재판에 회부되어야 한다. 중재재판 요구일로 부터 6개월내에 당사국이 중재재판의 구성에 합의하지 못하면 동 당사국중 일방은 국제사법재판소 규정에 따른 요청으로 동 분쟁을 국제사법재판소에 회부할 수 있다.

2. 각 당사국은 본 협약의 서명, 비준 또는 가입시에 자국이 본 조 1항에 구속되는 것으로 보지 않는다고 선언할 수 있다. 타 당사국은 그

ment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph 1 of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accpeted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party

러한 유보를 행한 당사국과의 관계에서는 본 조 1항의 구속을 받지 아니한다.

3. 본 조 2항에 따라 유보를 행한 당사국은 국제연합사무총장에 통고함으로써 언제든지 동 유보를 철회할 수 있다.

제 31 조

1. 일 당사국은 국제연합사무총장에 대한 서면통고로써 본 협약을 폐기할 수 있다. 폐기는 국제연합사무총장이 통고를 접수한지 1년 후에 유효하게 된다.
2. 동 폐기는 그것이 유효하기 전에 발생한 어떠한 작위 또는 부작위에 관한 협약상의 의무로부터 당사국을 면제시키는 효과를 가지지 아니하며, 또한 동 폐기가 유효하기 전에 이미 위원회에 의하여 심사되고 있는 여하한 문제의 계속적인 심사를 방해하지 아니한다.
3. 위원회는 일 당사국의 폐기가 유효하게 된 날 이후에는 그 국가에 대한 여하한 새로운 문제의 심사도 개시하지 않는다.

제 32 조

국제연합사무총장은 모든 국제연합회원국과 본 협약에 서명 또는 가입한 모든 국가에 다음을 통보한다.

(a) 제 25 조 및 제 26 조에 의한 서명, 비준 및 가입
(b) 제 27 조에 의한 본 협약의 발효일자 및 제 29 조에 의한 개정안의 발효일자
(c) 제 31 조에 의한 폐기

having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(a) Signatures, ratifications and accessions under articles 25 and 26;
(b) The date of entry into force of this Convention under aticle 27 and the date of the entry into force of any amendments under article 29;
(c) Denunciations under article 31.

제 33 조

1. 본 협약은 아랍어, 중국어, 영어, 불어, 러시아어 및 서반아어본이 동등히 정본이며, 국제연합사무총장에게 기탁된다.
2. 국제연합사무총장은 본 협약의 인증등본을 모든 국가들에게 송부한다.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

C. 고문 및 기타 잔혹한, 비인도적 또는 굴욕적 처우나 형벌금지협약의 제 19 조 1 항에 따라 당사국이 제출할 최초 보고서의 형식과 내용에 관한 일반지침

1. 고문 및 기타 잔혹한, 비인도적 또는 굴욕적 처우나 형벌금지협약의 제 19조 1 항에 따라 "전 당사국은 본 협약이 자국에 대하여 발효한 후 1 년내에 본 협약에 따른 의무이행을 위하여 취하여 온 조치에 관한 보고서를 위원회에 제출한다. 그 이후 전 당사국은 자국이 취한 모든 새로운 조치에 관한 추가보고서 및 위원회가 요청하는 여타 보고서를 매 4년마다 제출한다."

2. 아래에 열거된 일반지침은 당사국들의 최초 보고서 작성을 지원하기 위한 목적으로 1988년 4월 20일 고문방지위원회에 의하여 잠정 채택되었다. 이 지침의 준수는 최초 보고서가 통일된 형태로 제출되도록 하여 협약 제 19조에 따라 고문방지위원회에 부여된 임무의 수행을 지원하는데 도움을 줄 것이다.

3. 당사국들의 최초 보고서는 아래와 같이 두 부분으로 구분되어 제출되어야 한다 :

제 1 부 : 일반적 사항

제 1부는 다음 사항을 포함하여야 한다 :

(a) 협약 제 1조 1항에 정의된 고문뿐만이 아니라 기타 잔혹한, 비인도적 또는 굴욕적 처우나 형벌이 보고하는 국가내에서 금지되어 있

GENERAL GUIDELINES REGARDING THE FORM AND CONTENTS OF INITIAL REPORTS TO BE SUBMITTED BY STATES PARTIES UNDER ARTICLE 19, PARAGRAPH 1, OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

provisionally adopted by the Committee at its first session on 20 April 1988

1. Under article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "the States Parties shall submit to the Committee against Torture, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request."

2. The general guidelines, appearing below were provisionally adopted by the Committee against Torture at its first session on 20 April 1988, with a view to assisting the States parties with the preparation of their initial reports. Compliance with the guidelines would help to ensure that initial reports are presented in a uniform manner and assist the Committee against Torture to fulfil the tasks entrusted to it pursuant to article 19 of the Convention.

3. Initial reports by States parties should be presented in two parts as follows:

Part I: Information of general nature

This part should:

(a) Describe briefly the general legal framework within which torture as defined in article 1, paragraph 1, of the Convention as well as other cruel, inhuman or degrading treatment or punishment are pro-

는지 및 배제되어 있는지에 대한 일반적 법률제도의 간략한 서술;

(b) 보고하는 국가가 고문방지협약에 비해 보다 광범위하게 적용되는 규정을 가진 국내법을 가지고 있는지 혹은 국제적 문서의 당사국인지 여부의 지적;

(c) 고문방지협약의 내용이 원용되고 법원, 다른 재판기관 혹은 행정기관들에 의하여 직접 실행되는지 또는 소관기관에 의하여 실행되기 위하여 국내법이나 행정규칙 등의 형태로 변형되어야 하는지에 대한 지적;

(d) 협약과 관련된 문제에 대하여 사법, 행정 혹은 다른 관계당사국들이 관할권을 갖는지에 대한 지적;

(e) 고문 및 기타 잔혹한, 비인도적 또는 굴욕적 처우나 형벌의 피해자임을 주장하는 개인에게 어떤 구제조치가 가능한지;

(f) 보고하는 국가내에서 협약의 실질적 이행 현황에 대한 간략한 서술 및 협약에 따라 보고하는 국가의 의무이행 정도에 영향을 주는 요소 및 문제점 지적.

제2부 : 협약 제1부의 각 조항들과 관련한 정보

제2부는 협약 제2-16조의 이행에 관련된 특별한 정보를 각 조 및 항의 순서에 따라 제시하여야 한다. 각 조의 항과 관련하여 다음사항을 포함하여야 한다:

(a) 상기 조항들의 이행을 위한 입법, 사법, 행정 혹은 기타 조치내용;

(b) 상기 조항들의 실질적 이행에 영향을 미치는 요소 혹은 문제점들;

(c) 상기 조항들의 이행을 위한 조치상황 및 구체적 사례에 대한 모든 정보.

이 보고서 제출시에는 동 보고서에 언급된 주요한 법률등의 원문의

hibited and eliminated in the reporting State;

(b) Indicate whether the reporting State is a party to an international instrument or it has national legislation which does or may contain provisions of wider application than those provided for under the Convention;

(c) Indicate whether the provisions of the Convention can be invoked before and directly enforced by the courts, other tribunals or administrative authorities or whether they have to be transformed into internal laws or administrative regulations to be enforced by the authorities concerned;

(d) Indicate what judicial, administrative or other competent authorities have jurisdictions over matters dealt with in the Convention;

(e) What remedies are available to an individual who claims to have been a victim of torture or other cruel, inhuman or degrading treatment or punishment;

(f) Describe briefly the actual situation as regards the practical implementation of the Convention in the reporting State and indicate any factors and difficulties affecting the degree of fulfilment of the obligations of the reporting State under the Convention.

Part II: Information in relation to each of the articles in Part I of the Convention

This part should provide specific information in relation to the implementation by the reporting State of articles 2 to 16 of the Convention, in accordance with the sequence of those articles and their respective provisions. It should describe in relation to the provisions of each article:

(a) The legislative, judicial, administrative or other measures in force which give effect to those provisions;

(b) Any factors or difficulties affecting the practical implementation of those provisions;

(c) Any information on concrete cases and situations where measures giving effect to those provisions have been enforced.

The report should be accompanied by sufficient copies in one of

사본을 공용어(영어, 불어, 러시아어 또는 스페인어)중 1개 언어로 작성하여 충분히 제출하여야 한다. 이러한 사본들은 고문방지위원회의 위원들에 의하여 이용될 수 있다. 그러나, 이 사본들은 보고서와 함께 일반적인 배포를 위하여 복사되지 않을 것임에 유의하여야 한다. 따라서 법률등의 원문이 실제로 보고서에 인용되지 않았거나 보고서 자체에 첨부되지 않았을 때에는 그러한 것을 언급하지 않고도 이해할 수 있는 충분한 정보를 보고서에 포함시키는 것이 바람직하다.

the working languages (English, French, Russian or Spanish) of the principal legislative and other texts referred to in the report. These will be made available to members of the Committee. It should be noted, however, that they will not be reproduced for general distribution with the report. It is desirable therefore that, when a text is not actually quoted in or annexed to the report itself, the report should contain sufficient information to be understood without reference to it.

D. CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

NORWAY*

[21 July 1988]

1. In order to facilitate its examination, the report is as far as possible drawn up in accordance with the draft provisional quidelines prepared by the Secretary-General of the United Nations.

PART I: GENERAL INFORMATION

2. Norawy ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 9 July 1986. No amendment of internal legislation was necessary before its ratification.

3. Article 96 of the Norwegian Constitution includes a prohibition of torture. The article reads as follows:

> "No one may be convicted except according to law, or be punished except according to judicial sentence. Interrogation by torture must not take place."

4. The term "torture or cruel, inhuman or degrading treatment or punishment" is not employed as such in Norwegian legislation. However, the general provisions of the Penal Code of 22 May 1902 are applicable also to acts which fall under the scope of article 1, paragraph

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* 고문방지협약 제19조에 따른 노르웨이의 제1차 보고서 내용으로 제1부 일반적 사항, 제2부 각 조항과 관련된 사항으로 이루어져 있다.

1, of the Convention. A more detailed reference to the relevant provisions of the Penal Code is made under the comments on article 4 below.

5. In addition to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Norway has ratified the International Covenant on Civil and Political Rights and the European Convention on Human Rights, and has signed the European Convention for the prevention of torture and inhuman or degrading treatment or punishment.

6. According to traditional Norwegian doctrine, an international convention does not formally become part of the domestic legal system unless it is transformed into internal law. In legal theory it has nevertheless been discussed whether international law sets aside domestic law in possible cases of conflict, or whether the internal law has priority. The discussion is, however, from a practical point of view, not very interesting, because the Norwegian courts have given considerable weight to international law in the interpretation of domestic rules, even when the international law is not formally incorporated into domestic law. According to doctrine, Norwegian courts shall in such cases apply a so-called "principle of presumption", whereby domestic statutes are interpreted with the aim of avoiding possible conflicts with international law. Thus, the Supreme Court of Norway has never set aside a domestic statute by reason of conflict with human rights conventions. The possible conflicts have always been solved by interpretation of the relevant domestic and international norms.

7. Cases of alleged acts of torture are tried by the courts as ordinary criminal suits according to Act No. 25 of 22 May 1981 (Act on Criminal Procedure). The same Act claims fair treatment in the questioning of suspects before court and in police custody. Questioning by the police is also regulated by formal instructions.

8. A recent amendment to the Code of Criminal Procedure relates to the provisions on the handling of criminal charges against policemen and public prosecutors. Earlier such charges were investigated by the police itself, though usually by police investigators working in a different police district from the reported police officer. The amendment prescribes that investigation of cases concerning alleged offences by a police officer or public prosecutor shall be carried out by special boards

outside the police force. The purpose is to guarantee a full and objective investigation in such cases. The special investigation boards shall consist of three members: a well-qualified lawyer (normally a judge), an advocate with experience as a defence counsel and a person with experience from police investigation. When the board has finished its investigation, the case shall be forwarded with a recommendation to the District Public Prosecutor who decides whether the accused shall be put on trial.

9. An individual who claims to have been a victim of torture or other cruel, inhuman or degrading treatment or punishment may report the case to the police, who shall instigate investigations with a view to bringing possible criminal charges against the alleged offender. The victim may also claim compensation from the offender; such claims may be dealt with by the courts either in the penal proceedings instigated against the offender or in an ordinary civil suit brought by the victim against the offender. As part of the legal framework concerning possible victims of torture, one can also mention that victims who have suffered physical damage, can apply for financial compensation from the authorities.

10. So far the Norwegian authorities have not registered any serious difficulties as regards the practical implementation of the Convention. Alleged cases of torture occur from time to time, mainly in the form of accusations of violence performed by police officers. These cases are dealt with by the courts as ordinary criminal cases. By way of illustration, mention may be made of the Supreme Court judgement of 4 May 1984 (Norsk Retstidende, 1984, pp. 581 ff.), according to which a policeman was given a fine of NKr 1,000 under sections 228 (assault) and 325, subsection 3 (improper conduct of a civil servant during the performance of his duty). He had, while in charge of the police station, struck a person in custody four or five times after the latter had spat in his face.

11. It can also be mentioned that a recent complaint on Norway to the European Court of Human Rights among other things alleged that the Norwegian authorities violated article 3 of the European Convention on Human Rights (Application No. 11701/85 by Steinar Eriksen against Norway and Decision of the Commission of 7 March 1988).

Article 3 reads: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment". The applicant complained that his conditions during detention and treatment in prison from 1978 to 1988 amounted to a breach of article 3. The Commission, however, found this part of the application manifestly ill-founded within the meaning of article 27, paragraph 2, of the Convention, and thus not admissible.

PART II: INFORMATION IN RELATION TO EACH OF THE ARTICLES

Article 2

12. The legislative measures taken to prevent acts of torture primarily concern the criminalization of all kinds of torture. The relevant provisions of the Penal Code are referred to under the comments on article 4 below. As concerns administrative measures, referral is again made to the establishment of special investigation boards described in paragraph 8 above. Rules concerning interrogation of suspects of criminal offences are given in the Code of Criminal Procedure and in interrogation instructions to the police forces. For the treatment of prisoners, rules are given in the Prison Act.

13. The prohibition of torture in the Constitution and in the Penal Code applies in all situations, including times of war, threat of war, internal political instability and other situations of public emergency. It can be mentioned that section 108 of the Military Penal Code penalizes any violation of the four Geneva Conventions of 1949 and their Additional Protocols of 1977, and includes the prohibitions of torture embodied in those instruments.

14. According to Norwegian penal law, superior orders cannot lead to acquittal of the accused. This is expressly stated in section 24 of the Military Penal Code, but the same principle also applies in cases tried under the ordinary Penal Code. The person who has given the unlawful order will himself be considered as an accomplice to the criminal act.

Article 3

15. The rules of article 3 are already incorporated in Norwegian legislation. As regards extradition, the Act of 13 June 1975 relating to extradition of offenders contains the following provisions:

"Section 6. Extradition shall not be granted where, on account of race, religion, nationality, political belief or other political circumstances there would presumably be a grave risk of the person in question being subjected to persecution with regard to his life or liberty or which otherwise is of a serious character.

Section 7. Extradition shall not be granted where it would be in conflict with fundamental humanitarian considerations, especially on account of the age, health condition or other private circumstances of the person concerned".

16. In a new Aliens Act, adopted by Parliament (Storting) in June 1988, similar rules are made concerning expulsion and return. Section 15 of the new Act reads as follows:

"Protection against persecution.

An alien must not according to this Act be expelled to any area where he may fear persecution such that would again give reason to consider him as a refugee, or to any area from where he might be sent further to an area where he might fear this kind of persecution. Aliens who, for similar reasons to those contained in the definition of a refugee, would be in danger of being executed or of other inhuman treatment shall have the same protection.

An alien who on reasonable grounds is considered as a threat to national security, or has been convicted of a serious crime and therefore is considered a threat to public safety, is not protected by this provision."

The general rules on extradition as mentioned will limit the last provision accordingly.

Article 4

17. As mentioned earlier, acts of torture as described in the Convention are dealt with in the general Penal Code of 22 May 1902.

18. The central provision is section 228, which reads:

"Anyone who commits violence against another or otherwise injures him bodily, or is accessory thereto, shall be punished for assault with fines or imprisonment up to 6 months.

If the assault has caused injury to body or health or considerable pain, up to three years' imprisonment may be imposed, but up to five years if death or serious injury results."

19. Wilful inflicting of injury is covered by section 229, which reads:

"Anyone who injures another in body or health, or puts another in a state of feebleness, unconsciousness or similar condition, or is accessory thereto, shall be punished for inflicting bodily injury with up to three years' imprisonment, but up to six years if the act has resulted in illness or inability to work which has lasted more than two weeks, or any incurable defect or injury, and up to eight years if it has resulted in death or serious injury to body or health."

20. Sections 222 and 223 are also of relevance to acts of torture:

"Section 222. Anyone who, by unlawful conduct or by threat of such, forces another person to do, omit or suffer something, or is accessory thereto, shall be punished with fines or up to three years' imprisonment.

Section 223. Anyone who unlawfully deprives another of his liberty, or is accessory to such deprivation of liberty, shall be punished with up to five years' imprisonment.

If the deprivation of liberty has lasted for more than one month, or if it has caused unusual suffering or serious injury to body or health or death, the punishment shall be imprisonment for at least one year."

21. Attempts are covered by a general provision in section 49.

Article 5

22. The teritorial application of the Penal Code is regulated in its section 12, which to a large extent applies the principle of universality. Violations of the provisions referred to above may be tried by Nor-

wegian courts even when the offence is committed by a foreigner abroad.

Articles 6 and 7

23. These articles are based on similar provisions of earlier conventions establishing the system of aut dedere aut judicare. Norway has ratified a number of such conventions and has ascertained that legislation and practice is in conformity with these obligations.

Article 8

24. The Act of 13 June 1975 relating to extradition of offenders does not make extradition conditional on the existence of a treaty. Section 3 of the Act permits extradition for any offence that may involve imprisonment for more than one year.

Article 9

25. Section 24 of the Act relating to extradition regulates mutual assistance in criminal matters. In general, such assistance can be afforded to the same extent and under the same conditions as extradition.

Article 10

26. Education in human rights, including the prohibition of torture, is now part of the training and education of police officers, prison personnel and military officers. The Council of Europe has drafted a handbook on police and human rights, which is being translated into Norwegian.

Article 11

27. Interrogation of suspects and other is regulated in the Act on Criminal Procedure of 22 May 1981 (No. 25), chapter 18. Under section 226, an interrogation shall be carried out as fast as possible to prevent anyone indicated as a suspect from being exposed to unnecessary suspicion or inconvenience. A suspect can refuse interrogation by the police, forcing the prosecutor to demand interrogation by the police, forcing the prosecutor to demand interrogation by court. The suspect shall also be told of his right to remain silent.

28. The police are also given general instructions on how to perform interrogations. The officer who interrogates the suspect shall, under section 8-2 of the general instructions, act calmly and considerately towards the suspect. Promises, false information, threats or force must not be used. The suspect shall be given ordinary meals and necessary rest, and his lawyer may attend the interrogation.

Article 12

29. Investigation of allegations of torture in Norway will follow the ordinary procedures for criminal cases, except in cases brought against police officers, where a special investigation board, as mentioned earlier, will have responsibility for the investigation.

30. In special cases the Government may set up a special inquiry commission to investigate allegations of torture. This was done some years ago, when two independent researchers made public allegations of large-scale police brutality in the city of Bergen. In this case a commission consisting of two members, a university professor and an independent lawyer, was set up. Later a public prosecutor and a team of police investigators from Oslo was sent to Bergen to investigate concrete allegations of violence by the Bergan police against arrested suspects. The investigation is not yet concluded, but in general evidence has not been found of any mass-scale practice of police brutality. A few cases have been brought to the courts for trial, but have led to acquittal of the accused. As a result of the investigation, some persons have also been accused of making false accusations against police officers.

Article 13

31. As mentioned earlier, torture is a criminal act under the Penal Code, and an allegation of torture is subsequently investigated by the prosecuting authorities as described above.

32. In accordance with the Prison Act of 12 December 1958 (No. 7) prisoners have a right to submit complaints to the Prison Board. The prisoners may complain about the working or living conditions in the prison, or of other kinds of treatment.

Article 14

33. A victim of violence can claim financial compensation from the offender under the Compensation for Damage Act of 13 June 1969 (No. 26). Also, all victims of violence who have suffered physical or mental damage can apply for financial compensation granted by the authorities (see Royal Decree of 11 March 1976). This kind of compensation can be granted when the damage is caused by a wilful violation of another or by other criminal action, inflicted with force or violence. Damage other than financial is, as a general rule, not compensated under this scheme.

Article 15

34. The Act on Criminal Procedure does not contain any rules for judgement of evidence. The courts are, as a general rule, free to judge the validity of any evidence. However, it is the general opinion both in legal practice and doctrine that the court shall not use or give any weight to evidence illegally enforced, if the illegality is grave.

Article 16

35. The acts described in article 16 will to a large extent be criminal acts under different provisions of the Penal Code; some have already been referred to above and there are others, such as section 135 a concerning discrimination on grounds of race, sex, etc. Such complaints will be investigated and prosecuted as ordinary criminal acts in conformity with the Act on Criminal Procedure.

36. As for the application of articles 10, 11, 12 and 13 to acts referred to in article 16, it can be said in general that the information given relating to these articles above also applies equally to other acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

SWEDEN*

[23 June 1988]

PART I: INFORMATION OF A GENERAL NATURE

A. Introduction

1. The Swedish Government signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 4 February 1985 and the Swedish instrument of ratification was deposited on 8 January 1986. The Convention entered into force with respect to Sweden on 26 June 1987.

2. The Swedish ratification did not require the enactment of new legislation.

3. Upon ratification Sweden recognized the competence of the Committee against Torture to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Convention, as well as communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention.

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* 고문방지협약 제19조에 따른 스웨덴의 제1차보고서 내용으로 제1부 일반적 사항, 제2부 각 조항과 관련된 사항으로 이루어져 있다.

B. General legal framework

4. The basic provision relating to the prorection from tourture and other cruel, inhuman or degrading treatment or punishment is to be found in chapter 2, section 5, of the Constitution, which reads:

> "Every citizen shall be protected against corporal punishment. Furthermore, he shall be protected against torture and against medical influence or encroachment for the purpose of extorting or preventing statements."

5. Pursuant to section 20 of the same chapter, aliens in Sweden have the same status as Swedish citizens with regard to the protection offered by section 5.

6. Protection from torture and other cruel, inhuman or degrading treatment or punishment is also offered by certain provisions of the Penal Code, in particular the provisions relating to assault and battery (chap. 3, sects. 5 and 6), unlawful coercion (chap. 4, sect. 4) and unlawful threat (chap. 4, sect. 5).

7. In addition to these provisions of a basic and general nature, there are also provisions of a certain relevance, inter alia, in the 1974 Act concerning Institutional Treatment of Offenders and the 1976 Act concerning the Treatment of Detained and Arrested Persons and Others. Pursuant to these Acts a detained person shall be treated in such a way as to avoid harmful effects of the deprivation of liberty, and a convicted prisoner shall be treated with respect for his human dignity.

C. Other treaty commitments

8. Sweden is party, inter alia, to the International Covenant on Civil and Political Rights and the Optional Protocol to the Covenant, the European Convention on Human Rights and the Sixth Additional Protocol to the European Convention concerning the Abolition of the Death Penalty, the 1949 Geneva Conventions and the two additional protocols of 1977. The European Convention for the prevention of torture and inhuman or degrading treatment or punishment was ratified by Sweden on 9 June 1988 and the instruments of ratification were deposited on 21 June 1988.

D. Incorporation

9. Sweden basically adheres to the principle of incorporation, i.e. international treaties do not automatically become part of Swedish law but have to be transformed or formally incorporated into the Swedish statutes. This also applies to the United Nations Convention against Torture.

10. The traditional method used in Sweden to implement an international treaty is to enact equivalent provisions in an existing or a new Swedish statute. However, this is not necessary in cases where Swedish law already contains provisions which satisfy the requirements of the treaty. As regards the rights contained in the Convention, the Swedish Government, when submitting the Convention to the Parliament for approval, took the view that existing Swedish law was in full accord with the obligations which were to be assumed by Sweden under the Convention. This view was shared by the Parliament. Thus, the Convention could be ratified without the enactment of new legislation.

11. In this connection, it should also be noted that, under chapter 8, section 3, of the Constitution, provisions concerning the relationship between private individuals and the Government or public authorities in respect of obligations incumbent upon private persons or which otherwise interfere in the personal or economic affairs of private persons shall be laid down by law. This applies, inter alia, to the provisions on criminal offences and the legal effects of criminal acts.

E. Remedies

12. The Swedish court system for general matters consists of district courts, courts of appeal and the Supreme Court. For administrative matters there are regional administrative courts, general administrative courts of appeal and the Supreme Administrative Court.

13. If a person alleges that he has been subjected to illegal practices, his allegations can be submitted to a public prosecutor for an investigation. However, the public prosecutor is also as a rule obliged to undertake such an investigation ex officio if there are reasonable grounds to believe that an offence has been committed. If the public prosecutor arrives at the conclusion that an offence has been committed, he will normally institute criminal proceedings before a court. If he decides

not to prosecute, the alleged victim is free to institute criminal proceedings on his own.

14. A person who considers that he has been subjected to illegal practices by a public official can also submit a complaint to the Parliamentary Ombudsman, who will then investigate the matter and, if need be, take appropriate action against the official concerned, including the institution of criminal proceedings. He may also, inter alia, propose settlement of a claim for damages. Complaints may likewise be submitted to the Chancellor of Justice, who is appointed by the Government but whose functions are in this respect similar to those of the Parliamentary Ombudsman. In certain cases an individual can complain to a disciplinary board which examines questions of disciplinary liability (see para. 87).

15. Pursuant to chapter 22, section 1, of the Code of Judicial Procedure, an individual may bring an action for damages resulting from an offence in connection with criminal proceedings with regard to the offence. If the individual claim for damages relates to an offence for which the public prosecutor makes an investigation ex officio, the prosecutor is obliged — at the request of the party concerned — to prepare and present the claim to the court, provided that this can be done without inconvenience and the claim is not considered manifestly ill-founded (sect. 2).

16. If a claim for damages can be made in connection with an offence, the investigating police officer or the public prosecutor shall inform the party concerned about this well in advance of the bringing of criminal charges against the suspect (sect. 2). If the action for damages is not taken up together with the criminal proceedings, either because the public prosecutor decides not to sue for damages or because the court decides that the matter should be dealt with separately, the party concerned can make a civil claim on his own. The civil claim shall be dealt with in accordance with the rules governing civil proceedings (sects. 1 and 5). If such a separate action for damages is brought against the suspect in the criminal proceedings, the court may, on the other hand, decide that the civil and criminal proceedings be joined together (sect. 3).

F. General conclusion

17. Sweden has not encountered any difficulties with respect to the fulfilment of its obligations under the Convention. As has been stated above and will be discussed in more detail in Part II the Swedish law contains provisions which make acts prohibited under the Convention punishable as offences. Such offences are generally subject to public prosecution. Sweden has a well elaborated system for the protection of individuals against offences and a judicial system which protects those who have been victims of offences.

PART II: INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

18. The following comments deal with the manner in which Swedish law ensures the implementation of articles 2 to 16 of the Convention.

Article 2

19. In accordance with the Swedish Constitution (chap. 2, sect. 5), every subject is protected against corporal punishment as well as torture and medical influence of encroachment for the purpose of extorting or preventing statements. This protection also applies to aliens residing in Sweden.

20. Corporal punishment within the meaning of this provision in the Constitution (see para. 4 above) refers to a penalty whose purpose is to inflict physical suffering on the person punished, e.g. flogging or mutilation. The term torture refers primarily to the use of physical violence or mental terror to extort information during interrogations. It does not, however, refer to measures such as putting handcuffs on a person for the purpose of maintaining law and order or for reasons of security. Nor is deprivation of liberty regarded as torture, even if it involves the isolation of the prisoner.

21. The prohibition against medical influence for the purpose of extorting or preventing statements is to be regarded as a complement

to the prohibition against torture. Normal medical treatment naturally falls outside the scope of prohibition.

22. The protection against the actions mentioned is absolute and cannot be limited by law. As a consequence, it is not possible in Swedish law to empower public officals to resort to such measures. Public officials and other representatives of public authorities are thus subject to the general penalty provisions applying to actions involving the infliction of pain or suffering. Should the purpose of such actions be the one stated in article 1 of the Convention, i.e. to obtain information or a confession, the applicability of the general penalty provisions is in no way restricted.

23. The Constitution also contains provisions prohibiting various kinds of discrimination. The limitation by law of certain rights and freedoms which is provided by the Constitution under certain specified conditions may never be made solely on the grounds of political, religious, cultural or other such beliefs (Constitution, chap. 2, sect. 12). No law or regulation may imply discrimination against any subject because he belongs to a minority on account of his race, colour or ethnic origin (Constitution, chap. 2, sect. 15). The Constitution also contains a provision prohibiting discrimination on the grounds of a person's sex (chap. 2, sect. 16). The provisions of the Constitution against discrimination, like those banning torture, apply equally to Swedish citizens and to aliens.

24. As regards the possibility of punishing acts of torture, the Penal Code contains various provisions which together adequately cover acts such as those referred to in article 1. These provisions are discussed in detail in conjunction with the comments on article 4.

25. As an example of a case similar to those envisaged in article 1 which has been the subject of legal proceedings in Sweden, a Supreme Court sentence (NJA 1987, p.655) could be mentioned. On evening, a group of police officers forced a person into their police bus, although there were no legal grounds for this and drove him to a rather desolate place where they left him. The driver of the bus and one of the police officers were sentenced by the Supreme Court to a fine for unlawful coercion, despite the fact that neither of them was in a supervisory position.

26. Pursuant to a provision of the Penal Code (chap. 24, sect. 6), an act committed by someone on the order of a person whom he has a duty to obey shall not entail criminal liability if, with regard to the nature of his duty to obey, the nature of the act and the circumstances in general, he was compelled to obey the order. However, as regards acts of torture, it is obvious – because of the nature of such acts – that the above provision could never be invoked to exonerate a person from liability for such an act.

Article 3

27. Provisions relating to the right of asylum are contained in the 1980 Aliens Act. Section 3 of this Act reads as follows:

> "Unless extraordinary reasons exist a refugee shall not be refused asylum in Sweden if he has need of such protection.
>
> "For the purposes of this Act, a refugee is a person who is outside the country of which he is a national owing to a well-founded fear of being persecuted for reasons of race, nationality, membership of a particular social group, or religious or political opinion, and who is unable or, owing to such fear, is unwilling to avail himself of the protection of that country. A stateless person who for the same reason is outside the country of his former habitual residence and who is unable or, owing to such fear, is unwilling to return to that country, shall also be deemed a refugee.
>
> "For the purposes of this Act, persecution is defined as indicated in subsection 2 of this section when directed against the life or liberty of the alien or otherwise of a severe nature (political persecution)."

28. Section 6 of the Act mentioned above contains the following provision:

> "An alien who, although not a refugee, is unwilling to return to his home country on account of the political situation there, and is able to plead very strong grounds in support of this reluctance, shall not be refused permission to stay in this

country if he is in need of protection here, unless there are special reasons for such refusal."

29. Sections 77, 78 and 80 of the Aliens Act contain the following provisions concerning the enforcement of expulsion orders:

Section 77

"When a refusal-of-entry order or an expulsion order is enforced, the alien may not be sent to a country where he risks political persecution. Nor may the alien be sent to a country where he is not protected against being sent to a country where he risks such persecution."

Section 78

"Notwithstanding the provisions of section 77, an alien may be sent to a country as referred to in that section if he cannot be sent to any other country and if he has shown, by committing a particularly serious criminal offence, that public order and security would be seriously endangered if he were allowed to remain in this country, and if the persecution which he is liable to suffer in that country does not involve danger to his life and is not of a particularly severe nature in any other respect.

"If an alien has engaged, in Sweden or elsewhere, in activities endangering the national security of the Realm, and if there is reason to suppose that he would continue to engage in such activities in this country, he may be sent to a country as referred to in section 77 if he cannot be sent to any other country."

The second subsection of section 78 has not been applied in practice during the last decades.

Section 80

"An alien referred to in section 6 who pleads special reasons for not being sent to his home country may not, when a refusal-of-entry order or an expulsion order is enforced be sent to that country or to a country from which he risks being sent on to his home country."

30. Pursuant to the 1957 Act concerning Extradition for Offences (sect. 7), a person may not be extradited to another State if – owing to his origin, membership of a particular social group, religious or political beliefs, or otherwise on account of political conditions – he risks persecution in that State directed against his life or liberty, or otherwise of a serious nature, and also if he is not protected there against being sent to a country where he is exposed to such a risk. (See also the comments below regarding art. 8).

Article 4

31. Pursuant to chapter 3, section 5, of the Penal Code, an act involving the conscious infliction on a person of severe pain or suffering, whether physical or mental, constitutes assault and battery. The section reads as follows:

"A person who inflicts bodily injury, illness or pain upon another or renders him unconscious or otherwise similarly helpless, shall be liable to imprisonment, for assault and battery, for not more than two years or, if the crime was petty, to payment of a fine."

32. Chapter 3, section 6, of the Penal Code contains the following provision concerning cases of aggravated assault and battery:

"If the offence mentioned in section 5 is considered serious, the offender shall be liable to imprisonment, for aggravated assault and battery, for not less than one and not more than ten years."

"In judging the seriousness of the offence, special consideration shall be given to whether the deed involved mortal danger or whether the offender inflicted serious bodily injury or severe illness or otherwise showed great ruthlessness or brutality."

33. For acts which involve the infliction of bodily injury, illness or pain upon another person, or render him unconscious or otherwise similarly helpless, the offender is thus liable to punishment for assault and battery. "Bodily injury" in this context does not only include typical injuries, such as wounds, swellings, fractures and injuries to the joints, but also various kinds of functional disturbances, e.g. paralyses

and injuries to vision or hearing. Shaving off a woman's hair, for example, is also regarded as a bodily injury. "Illness" also includes mental illness and invalidity, as well as mental suffering which entails medically demonstrable effects, e.g. mental shock. "Pain" means physical suffering that is not slight.

34. Rendering a person unconscious or similarly helpless thus also constitutes assault and battery. The expression "similarly helpless" means, for example, complete or partial paralysis or stupor.

35. With respect to aggravated assault and battery, it may be mentioned that "serious bodily injury" includes loss of the power of speech, vision or hearing, serious disabilities and other serious physical defects. Serious bodily injury or severe illness shall be considered to have been inflicted if, for example, a person who is deprived of liberty is battered by a prison official who omits to arrange for necessary medical treatment of the victim.

36. Apart from the provisions relating to assault and battery, there is a provision, which does not prescribe any penalty, in the Children and Parents Code (chap. 6, sect. 1) prohibiting the infliction of corporal punishment on or other humiliating treatment of children. This provision relates to violence used against children for something they have done or because they have not done something. The purpose of the provision is that, in so far as it applies to conduct which is not punishable, it should provide pedagogical support in the efforts to convince parents and others that no form of violence should be used in bringing up children.

37. Chapter 4, section 7, of the Penal Code contains a penalty provision relating to molestation which does not constitute assault. It reads as follows:

> "A person who physically molests or, by discharge of a firearm, throwing stones, making loud noise or other heedless conduct, harasses another, shall be liable to payment of a fine for molestation or to imprisonment for not more than six months."

38. For example, spilling a bucket of water over a person, spitting at or pushing someone, tearing at a person's clothes or tripping them up would probably be considered molestation, if not assault and battery.

The same applies to mental states provoked by psychological means, for example certain cases of frightening a person.

39. Apart from the above-mentioned penalty provisions, the Penal Code contains a number of provisions relating to acts involving the infliction of such severe pain or suffering, whether physical or mental, that these offences constitute torture within the meaning of article 1, provided they are committed for any of the reasons mentioned there. The following are some examples: kidnapping (chap. 4, sect. 1), unlawful deprivation of liberty (chap. 4, sect. 2), unlawful coercion (chap. 4, sect. 4), unlawful threat (chap. 4, sect. 5), violation of domicile and unlawful intrusion (chap. 4, sect. 6), insult (chap. 5, sect. 3), rape (chap. 6, sect. 1), sexual coercion (chap. 6, sect. 2), sexual molestation (chap. 6, sect. 7) and interference in a judicial matter (chap. 17, sect. 10).

40. Chapter 16, section 9, contains provisions relating to unlawful discrimination. They provide, inter alia, that a public official who has dealings with the public may be liable for unlawful discrimination if, in the exercise of his duties, he discriminates against someone on the grounds of that person's race, colour, national or ethnic origin, creed or homosexual inclination by refusing to treat him under the same conditions as he treats others in the exercise of his duties.

41. Chapter 20, section 1, contains provisions relating to misuse of authority and negligent misuse of authority. They read as follows:

> "A person who, in the exercise of authority, disregards what is laid down in law or other statutory instruments concerning exercise of this authority shall, if the act causes detriment or improper benefit that is not slight to the public or to an individual be liable to payment of a fine for misuse of authority or to imprisonment for not more than two years. If the offence is serious the offender shall be liable to imprisonment for not more than six years."
>
> "A person who commits an offence referred to in subsection 1 above through gross negligence shall be liable to payment of a fine for negligent misuse of authority or to imprisonment for not more than one year."

"A person who is a member of a decision-making central, regional or local government assembly shall not, for any measure he may take in this capacity, be liable pursuant to the provisions of subsections 1 and 2 above."

"Nor shall the provisions of subsections 1 and 2 above be applicable if the act involves criminal liability pursuant to other provisions or provisions."

42. As will be seen from the last subsection above, these provisions are subsidiary to other provisions. However, they provide for punishment of a public official who, without committing any other criminal offence, subjects a person to inconvenience, for example for the purpose of harassment, by contacting him without due cause to make checks, demand information, etc. When the purpose of more drastic measures is not legitimate, this generally constitutes an ordinary offence. An example of this is if a police officer takes a person into custody without due cause. Such an act constitutes unlawful deprivation of liberty (chap. 4, sect. 2).

43. Pursuant to chpter 23, section 4, of the Penal Code, the penalty provided in the Code for an unlawful act shall not only be inflicted on a person who commits that act, but also on anyone who furthers such an act by advice or deed.

44. If a person has begun to commit but not completed an offence, such as assault and battery if the crime is not petty, kidnapping, unlawful deprivation of liberty, rape or sexual coercion, he shall be liable for an attempted offence if there was a risk that the act would have led to the completion of the offence. The same applies if such a risk did not exist only because of accidental circumstances (Penal Code, chap. 23, sect. 1).

45. The panalty for an attempted offence shall not be greater than that applying to an offence actually committed nor less than imprisonment if the minimum penalty for an offence committed is imprisonment for two years or more (Penal Code, chap. 23, sect. 1).

Article 5

46. Chapter 2 of the Penal Code contains, inter alia, the following provisions relating to the applicability of Swedish law:

Section 1

"A person who has committed a crime within this Realm shall be tried according to Swedish law and in a Swedish court. The same shall apply when it is uncertain where the crime was committed but there is reason to assume that it was committed within the Realm."

Section 2

"A person who has committed a crime outside the Realm shall be tried according to Swedish law and in a Swedish court if the person is:

1. A Swedish subject or an alien habitually resident in Sweden;
2. An alien not habitually resident in Sweden who, after having committed the crime, has become a Swedish citizen or has become habitually resident in the Realm or who is a Danish, Finnish, Icelandic or Norwegian citizen and is present here; or
3. Any other alien who is present in the Realm, if the crime is punishable according to Swedish law by imprisonment for more than six months.

"Subsection 1 above shall not apply if the act is not punishable according to the laws of the place where it was committed, or if it was committed in an area not belonging to any State and, according to Swedish law, the penalty for the act cannot be more severe than a fine."

"In the cases mentioned in this section, a sanction may not be imposed which is to be regarded as more severe than the most severe penalty prescribed for the offence according to the law of the place where the crime was committed."

Section 3

"Even in cases other than those mentioned in section 2, a person who has committed a crime outside the Realm shall be

tried in accordance with Swedish law and in a Swedish court:

1. If he committed the crime on board a Swedish vessel or aircraft, or if he was a commanding officer or belonged to the crew of such vessel or aircraft and committed the crime while in that capacity;
2. If the crime was committed by a member of the armed forces in an area where a detachment of armed forces was present or by someone else in such an area if the detachment was there for other than training purposes;
3. If the crime was committed during service abroad by a person employed in a Swedish emergency force in the service of the United Nations;
4. If the crime was committed against Sweden, a Swedish municipality or other corporate body or a Swedish public institution;
5. If the crime was committed in an area not belonging to any State and was perpetrated against a Swedish citizen, a Swedish association or private institution or against an alien habitually resident in Sweden;
6. If the crime is hijacking of an aircraft or sabotage against air traffic or violation of international law or attempted hijacking of an aircraft or sabotage of air traffic; or
7. If the minimum penalty for the crime provided by Swedish law is imprisonment for four years or more."

47. With respect to subparagraph 1 (c) of article 5, it may also be mentioned that, in the case of an offence under the laws of another country, legal proceedings can be transferred from that country in accordance with the provisions of the 1976 Act concerning International Co-operation regarding Legal Proceedings in Criminal Cases. This Act is applicable to the transfer of legal proceedings in criminal cases to or from a State that is party to the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972.

48. The provisions referred to above reflect a level that Sweden considers reasonable as regards legal proceedings in this country in respect of offences committed abroad against Swedish victims. These provisions do not, it is true, guarantee the possibility of bringing an

action in this country in every individual case of an offence against a Swedish victim abroad. However, in view of the possibility mentioned in subparagraph 1 (c) of article 5 depending on the appropriateness of prosecution, a situation can hardly arise where Sweden would be unable to comply with the Convention.

49. The provisions of chapter 2 of the Penal Code give the Swedish courts wide powers in the cases referred to in paragraph 2 of article 5 of the Convention. In practice, therefore, a situation where Swedish courts have no jurisdiction can hardly occur.

Article 6.

50. As regards offences falling within the jurisdiction of Swedish courts, the rules of the Code of Judicial Procedure with respect to criminal procedure are applicable. This means, inter alia, that a court can detain a suspect or take other action to ensure his presence providing the normal conditions applying to such measures are fulfilled.

51. The above-mentioned coercive measures may also be taken in connection with extradition. The legislation applying to such cases provides the possibility of taking such measures even before a petition for extradition has been submitted.

52. Pursuant to chapter 23, section 1, of the Code of Judicial Procedure, a preliminary investigation shall be commenced as soon as there is cause to believe that an offence falling within the domain of public prosecution has been committed.

53. In the case of an offence in respect of which extradition may take place, the Prosecutor-General shall, pursuant to the 1957 Act concerning Extradition for Offences, undertake the necessary investigation following submission of a petition for extradition. At an earlier stage of the extradition process, when another State has requested coercive measures in respect of the suspect, a preliminary investigation of the facts is made following a court order to that effect.

54. Sweden is party to the Vienna Convention on Consular Relations. In accordance with article 36, paragraph 1 (b) of that Convention, the competent authorities of a State party shall inform the relevant consular post if a national of another State is detained, if he so

requests. Furthermore, it is the intention of the Government to propose legislation to be enacted in the course of 1988 concerning the obligation to notify another State in the event of the deprivation of liberty of a national of that State.

Article 7

55. The Penal Code and the Code of Judicial Procedure contain provisions to the effect that the Swedish authorities shall take measures to prosecute in the case of criminal offences which fall within the jurisdiction of Swedish courts. Cases referred to in paragraph 1 of article 7 will therefore be submitted to these authorities for the purpose of prosecution, if the person concerned is not extradited.

56. Pursuant to paragraph 2 of article 7, the competent authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature. Swedish law corresponds to this provision since it does not provide for special rules concerning prosecution and conviction for certain offences of the kind mentioned in this article.

57. A person against whome proceedings are brought for an offence referred to in article 4 is treated in the same way as other offenders. He is consequently guaranteed fair treatment by the general provisions on legal proceedings in criminal cases.

Article 8

58. This article concerns obligations relating to extradition for the offences referred to in the Convention.

59. Pursuant to paragraph 1 all offences referred to in article 4 shall be deemed extraditable. As mentioned earlier, the provisions of Swedish law relating to penalties for acts of torture are to be found mainly in chapters 3 and 4 of the Penal Code.

60. Extradition is regulated by Sweden by the 1957 Act concerning Extradition for Offences (the General Extradition Act), the 1959 Act concerning Extradition for Offences to Denmark, Finland, Iceland and Norway (the Nordic Extradition Act) and by multilateral or bilateral agreements. One such agreement is the European Convention on

Extradition, to which Sweden became party in 1959. Special agreements are in force with Belgium, the United States of America, the United Kingdom of Great Britain and Northern Ireland, Australia and Canada.

61. Section 4 of the General Extradition Act specifies certain conditions for offences in respect of which extradition is requested; they must be punishable under Swedish law by more than one year's imprisonment; if a person has been convicted, the penalty must be not less than four months' imprisonment. If extradition is requested for several offences, it is sufficient if one of the offences satisfies these requirements. The Nordic Extradition Act provides that it is sufficient if one offence satisfies these requirements.

62. The special agreements mainly consist of a list of extraditable offences, in some cases with an additional obligation to extradite in the case of all offences for which the scale of penalties is sufficiently high (i.e. more than one year's imprisonment, in a few cases two years). These agreements are, however, of minor interest in this connection, since Sweden regularly extradites even in the absence of an extradition agreement. The extradition legislation is, of course, also applied in such cases.

63. Torture normally comes under those offences whose scales of penalties, as laid down in the Penal Code, are sufficient to satisfy the requirements of the General Extradition Act and which are thus extraditable under Swedish law.

64. Paragraph 1 of article 8 only states that the offences referred to shall be deemed extraditable. Paragraphs 2 and 3 specify that extradition shall be subject to the conditions provided by the law of the requested State. In Swedish legislation the right is reserved to refuse extradition if an offence is of a political nature, if the offender risks persecution which is directed against his life or health, or on humanitarian grounds. Such impediments are considered by both the Supreme Court and the Government. If the Supreme Court finds that such an impediment exists, the Government is bound by this decision. In certain cases, moreover, extradition is only executed if reliable guarantees have been received that the death penalty will not be carried out.

65. Paragraph 2 is not applicable to Sweden since, as already mentioned, Sweden alllows extradition regardless of whether there exists an agreement with the requesting State or not.

66. Paragraph 4 of article 8 raises the issue of jurisdiction and refers to article 5, paragraph 1. Swedish law contains a large number of provisions enabling the competent authorities to prosecute (see the comments above regarding art. 5).

67. Lastly, it may be noted that Sweden has not yet – after ratifying the Convention – received any request for extradition relating to offences involving torture.

Article 9

68. Sweden affords a great measure of assistance of various kinds to other States in connection with criminal proceedings. In general, assistance can be given to a foreign State irrespective of whether an agreement on mutual judicial assistance has been concluded with that State or not.

69. Pursuant to the 1946 Act concerning the Taking of Evidence at the Request of Foreign Courts, a Swedish court may, at the request of a foreign court, take various measures necessary for the preliminary investigation or trial in the foreign State, e.g. hearing the parties, witnesses and experts, as well as procuring written evidence.

70. Pursuant to the 1975 Act concerning the Use of Certain Coercive Measures at the Request of a Foreign State, objects and written documents may be seized and delivered to a State if there is reason to assume that they are of significance to the criminal investigation taking place there.

71. A special decree contains provisions concerning the service of documents on persons who are in Sweden at the request of a foreign authority.

72. All these statutes are applicable without any requirement for reciprocity.

73. Sweden is party to the European Convention on Mutual Assistance in Criminal Matters of 1959.

Article 10

Paragraph 1

74. The training of police officers includes thorough education concerning the rules governing the examination of suspects. These rules clearly restrict the coercive measures that can be applied as laid down in chapters 24 to 28 of the Code of Judicial Procedure. Education is also given in constitutional law. (Constitution, chap. 2, Fundamental Freedoms and Rights) and concerning the conventions ratified by Sweden in this area.

75. The 12-week basic course for prison officers also contains education in the above-mentioned areas, especially the United Nations Standard Minimum Rules for the Treatment of Offenders and the Code of Conduct for Law Enforcement Officials. The basis of the education is section 9 of the 1974 Act on Correctional Treatment in Institutions which states: "Inmates shall be treated with respect for their human dignity."

76. All military personnel are given education in international humanitarian law, such as the Geneva Conventions, including the prohibition of torture. The armed forces have no role in law enforcement in Sweden. The protection of public order and security is carried out by the police.

77. In the education of employees of the public health service and the social service it is emphasized that the patients/clients shall be treated well and with respect of their right of self-determination and their integrity.

Paragraph 2

78. The rules or instructions issued with regard to the duties of the persons concerned will be discussed under article 16.

Article 11

79. The reviews referred to in this article are made continuously in the framework of the normal activities of the authorities concerned. These authorities have the task of reviewing their own methods and practices, etc., so as to prevent any case of torture. The work of the

Parliamentary Ombudsman, among others, means that attention is called to any abuses discovered in the treatment of persons deprived of their liberty, and this leads to measures to prevent recurrence.

Article 12

80. Pursuant to chapter 23 of the Code of Judicial Procedure a preliminary investigation shall be initiated as soon as, on the grounds of an accusation or for other reasons, there is cause to believe that an offence falling under public prosecution has been committed. The preliminary investigation shall be initiated either by a police authority or by the public prosecutor. The preliminary investigation shall not only take into account circumstances pointing to the guilt of the suspect, but also those favourable to him shall be considered. The preliminary investigation shall be conducted as speedily as the circumstances permit.

Article 13

81. A person who alleges that he has been subjected to acts such as those referred to in article 1 of the Convention can apply to various authorities and can avail himself of various remedies to obtain redress or ensure that action is taken against the perpetrator or perpetrators of the acts of torture. The same applies if a person has been subjected to other cruel, inhuman or degrading treatment or punishment.

82. With respect to criminal acts, an individual can report them to the police or to a prosecutor. A report concerning a public official is investigated in the same way as in other cases. Reports concerning police officers are, however, the subject of special examinations. Unlike other cases, such investigation is always conducted by a prosecutor from the start. The decision to commence or suspend such investigation is always made by a prosecutor. Special rules also apply to the choice of police staff to assist the prosecutor in the prreliminary investigation in such cases.

83. If a prosecutor brings an action against a public official for an act of this kind, the case is examined by a court of general jurisdiction. In the case of offences committed by a judge or another high

official of the judicial system in the exercise of his office, the case is examined by a court of appeal or the Supreme Court.

84. If the public official is found guilty, he is sentenced in the normal way. The complainant may be awarded damages to be paid by the public official under the provisions of the Tort Liability Act of 1972.

85. A person who has been subjected to torture may also receive damages from the official's employer, e.g. the Government or the relevant county council or municipality. (This is dealt with in greater detail under article 14).

86. Apart from the possibility of bringing an action before a court, a person who considers himself to have been subjected to acts such as those referred to in article 1 can, of course, complain to superior authorities. This may lead to dsciplinary measures being taken against the public official pursuant to the provisions of the 1976 Act concerning Public Employment. The latter may be given a warning or a deduction may be made from his salary. Special rules apply to disciplinary offences committed by members of the armed forces and employees of the public health service, among others. A public official who is convicted of a criminal offence may be dismissed (apart from being punished for the offence).

87. In certain spheres, such as the public health service and the police force, as well as with respect to high-ranking public officials, for example prosecutors and judges, there exist special disciplinary boards which examine questions of disciplinary liability. An individual who has a complaint to make about a public official can in certain cases apply directly to the body which is responsible for examining disciplinary matters, for example with regard to the public health service, and in other cases to the authority where the official is employed.

88. The Parliamentary Ombudsman and the Chancellor of Justice, who exercise general supervision of public administration, are also authorized to review matters of disciplinary liability and prosecution of public officials. Individuals can therefore always complain to one of these in the cases under discussion. Such complaints may then result in the Parliamentary Ombudsman or Chancellor of Justice taking legal action against the public official.

89. With regard to acts of ethnic discrimination, it may be noted that there now exists a special Discrimination Ombudsman to whom an individual can bring such complaints.

90. The penalty provision concerning interference in a judicial matter (Penal Code, chap. 17, sect. 10) provides protection in law against interference and threats. It reads as follows:

> "A person who, violently or with the threat of violence, attacks someone for having filed a complaint, brought an action, given testimony or otherwise made a statement at a hearing before a court or other authority, or for the purpose of preventing him from so doing, shall be sentenced for interference in a judicial matter to payment of a fine or to imprisonment for not more than two years. The same shall apply if a person by some other act which causes suffering, injury or inconvenience, or by the threat of such act, attacks someone for having given testimony or otherwise made a statement at an official hearing, or for the purpose of preventing him from making such a statement."
>
> "If the offence is serious, he shall be sentenced to imprisonment for not more than four years."

91. It may also be mentioned that the Code of Judical Procedure contains provisions (chap. 36, sect. 18, chap. 37, sect. 3) to the effect that the court can decide that a party or a member of the audience may not be present at a hearing of a witness or a complainant. This is the case if there is reason to believe that a witness or a complainant will not, for fear or some other reason, freely tell the truth because of the presence of a party in the case or of a member of the audience. The same applies if a party or a member of the audience hinders a witness or a complainant from making his statement by interrupting him or in some other way.

Article 14

92. Swedish law contains, inter alia, the following provisions with regard to compensation and damages.

93. Compensation shall be paid by the offender for bodily injury and material damage caused wilfully or through negligence (Tort Liability Act, chap. 2, sect. 1). Compensation shall be paid for loss of capital assets due to a criminal act (Tort Liability Act, chap. 2, sect. 4). The same applies to indirect compensation for damages for suffering caused by violation of personal liberty (Tort Liability Act, chap. 1, sect. 3). If a bodily injury results in death, the surviving dependants are entitled to compensation for loss of maintenance.

94. The employer — State, county council or municipality — has extensive liability for damages for errors or omissions committed by an official in the exercise of his duties (Tort Liability Act, chap. 3). If, for example, an act of torture has been committed by a government official, the victim can claim damages directly from the State.

95. Lastly, the Criminal Injuries Act of 1978 provides for the payment of compensation out of public funds for certain types of damage or injury resulting from criminal acts. Such compensation is paid in cases of personal injury. Compensation is also paid for property damage and financial loss, to the extent that the claimant's ability to support himself is seriously jeopardized as a result of the damage or where the need for compensation appears specially pressing with regard to the claimant's economic and other circumstances.

Article 15

96. The Swedish rules of evidence are based on the principle of free examination of evidence. This freedom extends both to the production and evaluation of evidence.

97. Consequently, there are no limitations or prohibitions with respect to the kind of evidence that can be produced in court (unnecessary evidence is, however, to be rejected by the court pursuant to the Code of Judicial Procedure, chap. 35, sect. 7). The court is not bound by any directions provided by law in assessing the value of the evidence produced (Code of Judicial Procedure, chap. 35, sect. 1).

98. The Swedish judicial procedure is based on the principles of oral proceedings and immediateness. That means that the judgement can be based only on what has occurred during the main hearing (the trial).

99. The plaintiff and the various witnesses are normally heared before the court. Statements made during the preliminary investigation may be quoted, i.e. read aloud at the trial, only if a person gives testimony that is at variance with his previous statement, or if he refuses to testify (Code of Judicial Procedure, chap. 36, sect. 16, and chap. 37, sect. 3).

100. There are, therefore, no rules prohibiting reference to statements such as those mentioned in this article at a trial. However, the court has to determine to what extent the facts have been proved, by a conscientious examination of everything that has occurred in the course of the main hearing. The requirements of the Convention are satisfied with respect to a statement made during a preliminary investigation which is referred to during the main hearing, in that such a statement, if made under duress, is given no value as evidence.

Article 16

101. Regarding the penalization of acts which constitute cruel, inhuman or degrading treatment or punishment, see comments with regard to article 4. Concerning remedies to obtain redress or ensure that action is taken against perpetrators of such acts, see comments under article 13.

102. As regards the public officials with functions in the judicial system, mention may be made of the following statutory provisions which provide protection against such acts as those referred to in this article.

103. One of the rules applying to police officers and prosecutors (Code of Judicial Procedure, chap. 23, sect. 12) reads as follows:

> "During examination, the use of information that is known to be incorrrect, promises or hints of special privileges, threats, force, exhaustion or other improper measures for the purpose of extracting a confession or a tendentious statement is not permitted. The person examined may not be denied customary meals or prevented from enjoying necessary rest."

104. Prison staff must comply with a provision of the 1976 Act concerning the Treatment of Detained Persons (sect. 1) under which a

person who is under arrest (i.e. detained, remanded in custody or apprehended) shall be treated in such a way as to counteract the detrimental efffects of deprivation of liberty.

105. Inmates of correctional institutions shall be treated with respect for their human dignity (1974 Act concerning Correctional Treatment in Institutions, sect. 9).

106. Swedish legislation contains provisions regarding administrative detention of aliens, disciplinary measures for members of the armed forces and public health service personnel and restrictive measures within the medical-social system. For this reason a survey of the relevant legislation is given below.

107. Pursuant to the 1980 Aliens Act, an alien may be detained if there is probable cause for refusal of entry or expulsion or if the question of enforcement of such a measure arises. A detention order may only be made, however, if the personal circumstances of the alien or other circumstances give cause for fearing that he will conceal himself or engage in criminal activities in the country, or if his identity cannot be established.

108. The 1986 Act concerning Disciplinary Offences Committed by Members of the Armed Forces contains provisions making it possible to impose disciplinary penalties on members of the armed forces for certain offences. These disciplinary penalties consist, inter alia, of extra duties and confinement to quarters. The extra duties are restricted to not more than five occasions lasting not longer than four hours each. Confinement to quarters may not be made for a period of more than 15 days. In certain circumstances, a member of the armed forces may be taken into custody. He must in that case be released as soon as possible and as sooon as there is no longer any reason to keep him in custody, and within eight hours at most.

109. Employees of the public health service shall, pursuant to section 5 of the 1980 Act concerning Suprvision of Public Health Employees, make every effort to provide patients with expert and attentive care. The staff shall show patients consideration and respect. As far as possible, care shall be planned and given in consultation with the individual patient.

110. The National Board of Health and Welfare supervises the public health service and its employees. In exercising this supervision the Board has the right to undertake inspections.

111. If, deliberately or through negligence, a public health service employee disregards his obligations in the performance of his profession, and the fault is not slight, the Public Health Service Commission may impose a disciplinary penalty in the form of a caution or warning. Persons who need a licence to practise in certain fields of the public health service, for example physicians, may have their licences withdrawn.

112. Deprivation of liberty occurs within the public health service under the 1966 Act concerning Institutional Psychiatric Care in Certain Cases and the 1968 Act concerning Protection against Communicable Diseases.

113. A person who suffers from a mental illness may, irrespective of whether he gives his consent, be given institutional psychiatric care under certain conditions specified in the 1966 Act concerning Institutional Psychiatric Care. A person who has been admitted to hospital pursuant to this Act may be prevented from leaving it and may in other respects be subjected to such coercive measures as are consistent with the purpose of the treatment given, or to protect him or other people in his surroundings. The number of people admitted for compulsory care has in recent years fallen greatly, from over 20,000 in 1968 to 3,200 in 1985. One of the reasons for this is the change which has taken place in the views about persons with mental disturbances and their treatment.

114. Pursuant to the 1968 Act concerning Protection against Communicable Diseases, a person who suffers from a disease constituting a public danger or who is a carrier of the infection causing such a disease or who is suspected by a physician to be suffering from or to be a carrier of the infection causing such a disease, shall be obliged, if so requested by certain physicians, to let himself be admitted for hospital treatment if, because of the risk of spreading the infection, he cannot be treated outside hospital. If the person to whom such a decision applies so requests, the decision shall be submitted to a county administrative court for examination.

115. A person who has reason to believe that he is suffering from a venereal disease is obliged to consult a physician and submit to such examination and treatment as is deemed necessary. A person who fails to fulfil this obligation can, if there are reasonable grounds for assuming that he may spread the infection, be requested to let himself be admitted to hospital. If a person fails to comply with such a request, a county administrative court may order that he be admitted to hospital if there are e reasonable grounds for believing that he may spread the infection.

116. In 1985, human immunodeficiency virus (HIV) infection was classed among the venereal diseases to which the Act concerning Protection against Communicable Diseases was applicable. Since then, a total of five persons have been committed to compulsory isolation under the Act. All these were misusers of injected drugs. Apart from this, it has seldom been necessary to apply the coercive provisions of the Act concerning Protection against Communicable Diseases.

117. Deprivation of liberty is possible in the area of social services under two Acts, i.e. the 1980 Act containing Special Provisions Relating to Care of Young People and the 1981 Act concerning the Treatment of Misusers * in Certain Cases. (During a transitional period there still also exist some possibilities for compulsory hospital care for mentally retarded adults if there are serious reasons for such care). The social services are based on the principle of respect for the self-determination and integrity of each individual.

118. Compulsory care under the first of the above-mentioned Acts can be considered in two cases. First, such care shall be provided if a child's health or development is at risk due to neglect or other conditions in the home. Second, care shall be provided in the case of young people who, as a result of drug abuse, criminal behaviour, etc., expose their own health or development to serious risk.

119. The 1981 Act concerning the Treatment of Misusers in Certain Cases was passed to provide treatment for adult misusers of drugs who cannot be persuaded to participate in voluntary treatment under the Social Services Act of 1980.

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* The term "misusers" refers to drug addicts and alcoholics.

120. The necessary conditions for compulsory treatment under this Act are, inter alia, that the misuser, owing to the continued misuse of alcohol or drugs, is in urgent need of treatment to enable him to give up his misuse and that his need for treatment cannot be met under any other law.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

DENMARK*

[12 July 1988]

PART I: GENERAL COMMENTS

1. In Denmark the principal instrument of protection against violations included in the concept of "torture" as defined in article 1 of the Convention, as well as the additional acts covered by article 16 of the Convention, is the Criminal Code. Relevant provisions will be discussed in detail together with article 4 of the Convention.

2. The Administration of Justice Act also includes rules regulating police investigation and provisions on the procedure applicable to interrogations, for example, those prohibiting the use of threats, coercion or blandishment to make a person under interrogation deliver a specific testimony to the police. Please refer to the comments on article 11, below.

3. In general, the legal remedies available to individuals considering themselves to have suffered at the hands of law enforcers are covered by the comments relating to articles 12 and 13 of the Convention on the principal complaint options and on the local ad hoc boards charged with investigating complaints against the police.

4. Where there is proof of punishable conduct, a criminal charge will be preferred in conformity with standing legal procedure. Such cases will usually also affect the job of the public employees involved.

5. An individual having been the victim of the misconduct dealt

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* 고문방지협약 제 19 조에 따른 덴마크의 제 1 차보고서 내용으로 제 1 부 일반적 설명, 제 2 부 개별 조항에 관한 설명, 부속서로 이루어져 있다.

with in the Convention shall bc entitled to compensation from the treasury for both financial and indirect damage (see art. 14 below).

6. Hence, Danish legislation all in all fully meets the requirements of the Convention in respect of:

(a) Prevention of torture;
(b) Efficient procedures aimed at investigating cases of alleged torture;
(c) Prosecution of individuals guilty of torture;
(d) Rehabilitation of individuals who have been subjected to torture.

7. In many areas Danish law provides wider protection than the Convention. For instance, abuse of public powers is considered a criminal offence to a far greater degree than provided for in article 4 of the Convention (compare art. 1). Capital punishment, moreover, does not exist in Denmark, nor do punishments involving physical suffering or pain.

8. Denmark has also ratified the European Convention on Human Rights which prohibits torture and inhuman or degrading treatment or punishment. In this context Denmark has recognized the competence of the European Commission of Human Rights to receive individual complaints. The European Convention for the prevention of torture and inhuman or degrading treatment or punishment is currently being ratified in Denmark.

9. Under Danish constitutional law the provisions of a convention acceded to by Denmark cannot be invoked before and enforced by the courts or administrative authorities unless the have been transformed into internal laws or administrative regulations. This also goes for the provisions contained in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Danish legislation, however, is in full conformity with the provisions of the Convention.

10. The Danish Government supports the International Rehabilitation and Research Centre for Torture Victims (RCT), which is established in Copenhagen in order to help victims of torture and to contribute to the prevention of torture. Comments from RCT are annexed to this report.

PART II: COMMENTS ON INDIVIDUAL ARTICLES

Article 2

11. Among the factors which, in addition to the threat of criminal and disciplinary responses, are likely to have a preventive effect on the incidence not only of torture, but of other types of abuse of power as well, are a well-educated and incorruptible civil service corps and public oversight of the way in which said corps administers the powers vested in it.

12. In this respect, the public administration reform in Denmark is important. It grants citizens extensive access to acquaint themselves with cases handled by the public administration. The free press also makes an important contribution to the transparency of society, including the activities of public authorities.

Article 3

13. The obligation under article 3 of the Convention to avoid expulsion, return or extradition of a person to another State when there are substantial grounds for believing that he would be in danger of being subjected to torture has been met by the provisions of sections 7 and 8 of the Aliens Act regarding legal claims for a residence permit for "Convention refugees" and spontaneous refugees, and by the rules of section 26, No. 5, of the Aliens Act and section 7 of the Extradition Act.

Article 4

14. The offences referred to in article 1 of the Convention are above all covered by section 244 of the Criminal Code under which all types of wilful bodily injury are punishable acts. In the provision, maltreatment is explicitly defined as a circumstance carrying an attenuated penalty. Where torture is committed with intent to inflict bodily or grievous bodily harm, section 245 of the Criminal Code (imprisonment for any term not exceeding eight years), or section 246 (imprisonment for any term not exceeding 12 years), shall apply. These provisions shall also apply in the case of public servants using violence in so far as the limits of lawful law enforcement are transgressed.

15. Section 261 of the Criminal Code, which deals with unlawful deprivation of liberty, may also be applied if warranted by circumstances. This provision shall also be applicable to public servants ordering unlawful deprivation of liberty. In addition, chapter 16 of the Criminal Code on offences committed by persons exercising a public office or function may apply.

16. Special note should be taken of section 154, under which the penalty, inter alia, for physical assault and deprivation of liberty may be increased by not more than 50 per cent if th offence was committed in the discharge of public office or function.

17. Special note should also be taken of section 147, in accordance with which any person whose duty it is to enforce the punitive power of the State and who, for that purpose, applies unlawful means in order to obtain a confession or evidence, or who undertakes any unlawful arrest, imprisonment search or seizure shall be liable to punishment.

18. Moreover, sections 250 (rendering a person helpless), 252 (direct exposure to danger), 260 (unlawful coercion) and section 266 (threats) of the Criminal Code are also of relevance. These provisions shall also apply to public servants. Attempts to violate, and complicity in violation of the sections referred to above shall be punishable under sections 21 and 23.

Article 5

19. By Act No. 322 of 4 June 1986 Denmark has, in fulfilment of the requirements as to jurisdiction flowing from article 5, established jurisdiction on the principle of aut dedere aut judicare. Accordingly, Danish criminal jurisdiction can, under section 8 (1) (5), be exercised in respect of offences committed outside Danish territory, regardless of the offender's nationality, where the act is recognized by an international convention in pursuance of which Denmark is under obligation to institute legal proceedings. This provision establishes, inter alia, Danish jurisdiction in torture cases regardless of where the act was committed and irrespective of the offender's nationality.

Article 6

20. Under the provisions of sections 762 and 765 of the Administration of Justice Act on pre-trial detention or substitute forms of custody, persons may be taken into custody, or other less severe measures against them may be adopted, for instance when there is reason to suspect them of having committed offences calling for public prosecution, provided the offence may carry a statutory prison term of 18 months or more if there is moreover risk of escape and recidivism or of obstruction of justice on the part of the offender.

21. Torture is an offence so serious that it is governed by provisions of the Criminal Code prescribing penalties which allow pre-trial detention under section 762 of the Administration of Justice Act, or measures under section 765 with a view either to prosecution in Denmark or extradition for prosecution abroad (cf. sect. 13 of the Extradition Act).

22. Hence the provisions cited fulfil the obligations imposed on the States parties by article 6, paragraph 1, of the Convention against Torture.

23. Under section 742 (2) of the Administration of Justice Act, the police shall conduct an investigation whenever it may reasonably be assumed that an indictable offence liable to public prosecution has been committed. This provision complies with the requirements imposed on States parties by article 6, paragraph 2.

24. Alien detainees in Denmark are informed of the possibility of being put into contact with the local diplomatic representatives of their native country. The contact will then be established unless the detainee opposes such action (cf. Vienna Convention on Consular Relations, art. 36). This scheme satisfies the requirements of article 6, paragraph 3.

Article 8

25. The offences referred to in article 4 are so grave that it will be possible to extradite the offenders in pursuance of article 8, paragraph 1 (cf. Extradition Act, sect. 3).

26. The Extradition Act also envisages compliance with the obligations set out in article 8, paragraphs 2 and 4.

Article 9

27. Denmark is a party to the European Convention on Mutual Assistance in Criminal Matters. Based on a case-by-case evaluation Denmark may provide legal assitance even where she is not bound by any treaty to do so.

Article 10

28. By Danish standards the obligation to inform public servants during training and in instructions about the prohibition against torture is taken so much for granted that it will in most cases be fulfilled by virtue of the far more comprehensive duties frequently specified in job descriptions. The prohibition of torture is considered self-evident.

Article 11

29. In its interrogations the police shall not order any person to give evidence nor shall coercion be used to secure testimony (Administration of Justice Act, sect. 750).

30. To ensure adherence to this practice the police shall in a criminal case explicitly inform the accused of the charge and that he is under no obligation to give evidence. Promises, false pretences or threats shall not be applied nor shall an interrogation be extended for the sole purpose of obtaining a confession. Except for very brief interrogations, police records shall state the hour at which the interrogation began and ended.

31. Oral proceedings and public administration of justice are observed to the widest extent possible. Counsel for the defence is appointed in all regular criminal cases. Thus defence counsel is allowed to sit in on all police interrogations of the defendant (cf. Administration of Justice Act, sect. 745 (2)).

Articles 12 and 13

32. Under section 115 of the Administration of Justice Act special local boards have been set up in all police districts. Their job is to decide whether the behaviour of the police in the line of duty calls for scrutiny. When dealing with complaints a board will consist of members appointed by the relevant local authority, the General Council of the Bar Association, and the police. In addition to dealing with complaints, boards may of their own accord call for an investigation if the public has an interest in clarification of the circumstances attendant upon police operations on a given occasion.

33. Complaints about the police shall be filed either with the board or the police. Complaints about malfeasance committed by the police in the course of a criminal case may also be submitted orally to the records of the court while the criminal case is pending. The rules governing the procedure on how to deal with complaints about the police are laid down in chapter 93 (b) of the Administration of Justice Act.

34. Under section 778 of the Administration of Justice Act, detainees may file complaints about the conduct of the prison staff to the warden or the Directorate of Prisons and Probation. If the complaint is overruled or a final decision has not been made within two weeks from the filing of the complaint the latter may be brought before the court situated where the prison is.

35. Inmates' complaints about prison staff are dealt with by the Directorate of Prisons and Probabtion.

36. Complaints may also be submitted to the ombudsman, an independent institution appointed by parliament (Folketing). The ombudsman may also conduct his own investigations ex officio.

Article 14

37. Danish compensation rules, including the Act on compensation from the treasury to crime victims and Danish legislation on health and social welfare, fully meet the requirements of article 14 for compensation to the victim or his dependants and for providing him with the maximum available rehabilitation.

Article 15

38. The right of the prosecution to cite in a criminal case a statement made to the police by an accused person will ordinarily be modified by the practice which attaches more importance to statements made in court by the accused. If it is established that statements, and confessions, to the police or others have been made under torture it will be a matter of course and consistent with the standard rule of Danish law on the freedom of evaluation of evidence that such statements shall be entirely devoid of any evidentiary value. The prosecuting authority shall be under obligation not to cite such evidence, and, in the event, the courts will be assumed to refuse such testimony entirely on grounds of inadmissibility.

Article 16

39. It will be seen that the Danish rules for protection against abuse of authority are not restricted to offences classified as torture. Criminalization, special investigative and appellate procedures, together with legal remedies, apply also to offences of a much less severe nature than those designated as torture or other cruel, inhuman or degrading treatment or punishment.

40. An English version of the Danish Criminal Code is annexed for reference.*

* This document is available for consultation in the files of the Centre for Human Rights of the United Nations, as received from the Government of Denmark in English.

Annex

COMMENTS FROM THE INTERNATIONAL REHABILITATION AND RESEARCH CENTRE FOR TORTURE VICTIMS

PART I: GENERAL INFORMATION

1. A number of personnel categories should have:

(a) Knowledge of torture methods currently in use.

(b) Knowledge of the after-effects of the various methods, thereby making it possible to identify persons, who have been subjected to torture, physical or mental;

(c) Knowledge of the fact that treatment of persons who have been victims of torture may be successful;

(d) Knowledge of the importance of punishing the torturer, not only for the public morale, but also to enhance the possibilities for recovery for survivors after torture.

2. The establishment and mediation of such knowledge to the right persons is of decisive importance for the practical implementation of the Convention against Torture.

3. Carrying out such investigation and information work is a difficult task which requies resources and can hardly be accomplished at a sufficiently high level without a staff of persons who continually maintain and extend their knowledge.

4. This is achieved by creating a centre for the treatment of victims of torture, a centre in which at the same time research is carried out on the after-effects of torture, and where – based on the treatment, the results thereof and the research – adequate teaching can be given on torture in all its forms, and furthermore at the same time documentary activity can be carried on. Such activity contributes to the global transparency which is an important element of the international efforts to combat torture.

5. The Danish Government supports such a centre, the Interna-

tional Rehabilitation and Research Centre for Torture Victims (RCT), Juliane Maries Vej 34, DK-2100 Copenhagen 0, as a link in its efforts for practical implementation of the Convention.

6. The RCT, the first centre of its kind in the world, was established in 1982. The work at the Centre is multi-disciplinary, based on co-operation between dentists, doctors, neurologists, nurses, paediatrists, physiatrists, physiotherapists, psychiatrists, psychologists, social workers employed full-time or part-time, for the time being the staff accounts for the equivalent of 29.4 full-time jobs (including librarians, administrative staff and interpreters).

7. The Centre treats around 100 victims and their families per annum. The Danish Government's contribution for 1988 is DKr 6.6 million; the Centre's total expenses are DKr 11 million.

8. In Part II, referring to articles 10 and 14, more specific information is given about the work, also with brief reference to articles 3, 5, 7 and 11.

PART II; "INFORMATION IN RELATION TO EACH OF THE ARTICLES IN PART I OF THE CONVENTION"

Article 3, paragraphs 1 and 2

9. In countries which receive many refugees and which do not give all refugees immediate access this article is of great importance.

10. One of the conditions is mentioned in article 3, paragraph 2. It is essential, however, to ascertain whether the person in question has been subjected to torture. Thus, it is of decisive importance that persons who receive refugees (in Denmark, police authorities, the Danish Refugee Council and Danish Red Cross staff) have a knowledge of torture as outlined in part I.

11. The RCT provides such information, especially to the police authorities at points of entry into the country, to the staff of the Danish Refugee Council and to the staff of the Danish Red Cross. The RCT spends much of its resources on this work.

Articles 5, paragraph 1 (a), 6, paragraph 2, and 7, paragraph 1

12. In accordance with these articles, all relevant persons – police authorities, lawyers, staff within the prison administration and justicial system – should be informed about torture, the concept, after-effects, etc., as described in Part I. Without such information they would not be able to carry out the work expected of them in accordance with the Convention.

Article 10

13. The education, outlined with reference to articles 3, 5 (a), and 7, is specifically requested of the States parties in article 10.

14. Article 10 also requests the State parties to teach medical personnel or health personnel about torture.

15. The RCT has written parts of textbooks for dentists, doctors and physiotherapists and a whole textbook on the subject for nurses. Medical students receive pre-graduate training under the subject of forensic medicine; dentist students receive 10 hours of teaching and physiotherapists and nurses are trained using the textbook mentioned.

16. For post-graduates, the RCT gives considerably extended training to those groups of health personnel most likely to come into contact with torture victims – persons who examine or treat refugees. The education consists partly of seminars, of one or more days' duration, partly of educational films and written teaching material, also in English. Quite a large proportion of resources are used for this work.

17. Furthermore, general awareness of the problem is created within the Danish population and world-wide by means of television interviews, broadcasts and wide press coverage. Without this support from the public, based on concrete knowledge, prevention of torture would hardly stand any chance of being successful.

18. The textbooks mentioned are about to appear in English as well, and could be made available upon request.

Article 14

19. To give a torture victim "as full rehabilitation as possible" is a difficult task. In Denmark work has been continuing on these problems since 1979, and the RCT has now developed clarified principles of treatment.

20. In order to give proper treatment it is important to understand that torture nowadays is carried out not to get information, as in the past, but to break down the person. This should be taken into consideration in the interpretation of the definition of the concept of "torture" in article 1 of the Convention. Thus, it is not surprising that modern torture often has severe after-effects. Practically all victims have been tortured both physically and mentally, and treatment must therefore involve both physical and mental measures. Treatment is difficult and takes a long time. The RCT has demonstrated, however, that treatment helps. It is therefore of paramount importance to create means for as full rehabilitation as possible. Treatment is possible.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

EGYPT *

[26 July 1988]

Introduction

1. In 1985 the United Nations adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Egypt hastened to accede and which it subsequently ratified on 25 June 1986. Through that ratification, the Convention became part of the domestic law of the Arab Republic of Egypt in accordance with article 151 of its Constitution.

2. Article 19 of the Convention stipulates that the States parties shall submit to the Committee against Torture reports on the measures they have taken to give effect to their undertakings under the Convention, within one year after its entry into force. In accordance with the provisions of that article, we are transmitting the following report on the measures taken by Egypt to give effect to the Convention, in the light of the model proposed by the Secretary-General of the United Nations.

3. **Measures**

In this connection it should be noted first of all that the Permanent Constitution of Egypt, which was promulgated in 1971, attaches considerable importance to human rights. In fact the preamble to the Constitution states that: "The dignity of the individual is a natural reflection of the dignity of the nation, since the individual is the cornerstone in the structure of the nation, which derives its status, strength

* 고문방지협약 제 19조에 따른 이집트의 제 1 차보고서 내용이다.

and prestige from the value, work and dignity of its individual members." The Constitution makes provision for numerous rights and public freedoms. For example, article 40 stipulates that: "All citizens are equal before the law and in regard to their rights and duties, without distinction as to sex, origin, language, religion or belief." Article 41 stipulates that: "Individual freedom is a natural and inviolable right that shall be protected. Except in cases of flagrante delicto, no one shall be arrested, searched, detained or subjected to any restriction of freedom or movement unless, in the interests of an investigation or the maintenance of public security, such is required under the terms of an order issued by the competent judge or the Office of Public Prosecutions in accordance with the provisions of the law. The duration of preventive detention shall be prescribed by law." Under the terms of article 42, "Any citizen who is arrested or imprisoned or whose freedom is in any way restricted shall be treated in a manner conducive to the preservation of his human dignity. He shall not be harmed physically or mentally, nor shall he be detained or imprisoned in places other than those which are subject to the laws governing prisons. Any statement which is proved to have been made by a citizen under the influence or threat of anything of the above-mentioned nature shall be considered null and void."

4. The provisions contained in volume II, chapter 6, of the Egyptian Penal Code designate as an offence any form of coercion or ill-treatment of individuals by public officials.

5. Torture is one of the most serious of these offences. Under the terms of article 126 of the Penal Code, "Any public servant or official who orders, or participates in, the torture of an accused person with a view to inducing the said person to make a confession shall be liable to hard labour or imprisonment for a period of 3 to 10 years. If the victim dies, the penalty shall be that prescribed for murder."

6. The inclusion of this offence in the chapter entitled "Coercion and ill-treatment of individuals by public officials", even though the offence actually involves an act of assault, clearly indicates the Egyptian legislature's desire to emphasize the heinous nature of this offence, as well as the threat that it presents to the public interest. Article 127 of the Penal Code stipulates that: "Any public servant or official who

imposes, or orders others to impose, on a convicted person a punishment more severe than that to which the said person has been legally sentenced, or a punishment to which he has not been sentenced, shall be liable to imprisonment." Moreover, under the terms of article 128 thereof, "Any official, Government employee or public servant who, in his capacity as such, enters the home of any citizen without permission, except in the circumstances provided by law, or without observing the proper procedure prescribed therefor, shall be liable to imprisonment or a fine of not more than 200 Egyptian pounds."

7. Article 129 of the Penal Code stipulates that: "Any official, Government employee or public servant who, in his capacity as such, treats people in such a harsh manner as to cause them dishonour or physical pain, shall be liable to imprisonment for a period of not more than one year or a fine not exceeding 200 Egyptian pounds."

8. Under the Egyptian Constitution and legislation, any person who has been subjected to torture or to any form of cruel or inhuman treatment has the right to lodge a complaint with the Office of Public Prosecutions, in its capacity as the community representative appointed to investigate and prosecute all offences, so that it can look into the complaint submitted to it in this regard, take action in the light of the outcome of its investigation of the validity of the complaint and bring charges against the persons accused. In its capacity as the guardian of the public interest and the community representative vested with power to prosecute persons who break the laws in force, the Office of Public Prosecutions is also responsible for supervising all types of prisons, ensuring that the penalties imposed are executed therein in the legally prescribed manner without undue severity, investigating complaints of any form of torture or inhuman treatment in prisons and taking action in that connection in the manner already indicated.

9. As a further guarantee of legal protection for victims of torture, article 57 of the Egyptian Constitution explicitly stipulates that: "Any infringement of the personal freedom or privacy of citizens or of the other rights and public freedoms guaranteed by the Constitution and the law shall constitute an offence, and criminal or civil proceedings in connection therewith shall not be subject to any statute of limitations. The State guarantees fair compensation for any person who is the victim of such an offence."

10. In accordance with the above, the Office of Public Prosecutions has been discharging its task of investigating complaints of torture submitted by individuals. About 450 such complaints have been received in the last five years. In the light of the outcome of its investigations, the Office has instituted criminal proceedings against the persons responsible for the reported occurrences. This confirms Egypt's commitment, under its legal system, to the prohibition of all forms of torture and inhuman treatment even before its accession to the Convention against Torture, in accordance with the provisions of the Constitution and the laws in force; the Convention against Torture acquired the force of law after its ratification and publication, which made it binding on all the authorities in the State in accordance with the provisions of article 151 of the Constitution.

Other comments

In this connection it should be noted that the sovereignty of the law and the independence of the judiciary constitute important guarantees of the protection of human rights. Article 65 of the Egyptian Constitution therefore makes provision for the sovereignty of the law and the independence of the judiciary and article 68 recognizes the right to legal redress.

The judgements delivered by Egyptian courts show that the judiciary is not negligent in dealing with complaints of torture, the investigation of which is further guaranteed by Egypt's democratic political system.

Conclusion

We wish to point out that this report contains the basic information in this connection. Any additional information that is required on this subject will be included in Egypt's future reports.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1988

Addendum

PHILIPPINES*

[26 July 1988]

1. Cognizant of the provisions of the Universal Declaration of Human Rights, the Philippines has incorporated in its legal system provisions of law that have for their objective the prohibition and/or elimination of torture and other cruel, inhuman or degrading treatment or punishment. Fundamental provisions bearing on this subject have been inserted in the present Constitution of the Philippines which was drafted by a Constitutional Commission created in 1986 by President Corazon C. Aquino.

2. In article II of the Philippine Constitution entitled "Declaration of Principles and State Policies,", it is expressly provided that the generally accepted principles of international law are made part of the law of the land. Upon this premise, acts of torture and other acts similar thereto may not be inflicted upon foreigners, including prisoners of war, while residing or even temporarily sojourning in any part of the Philippines.

3. Under article III, entitled "Bill of Rights", of the Philippine Constitution, it is guaranteed to every person, irrespective of race, sex, colour, religion or political persuasion, that "no torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him"; and that "secret detention places, solitary, incommunicado or other similar forms of detention are prohibited". Under section 19 of the same Bill of Rights it is also expressly provided that:

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* 고문방지협약 제 19 조에 따른 필리핀의 제 1 차 보고서 내용이다.

"Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua."

4. One significant innovation incorporated in the present Philippine Constitution is the creation of the so-called Commission on Human Rights, which is dealt with under sections 17, 18 and 19 of Article XIII of the Constitution. So far, this Commission has come out with the following important issuances:

(a) A paper entitled "Statement on Human Rights", issued on 6 May 1988, which in part reads:

"A person may not be detailed unlawfully. During his detention, the following are prohibited:

1. The use of torture, force, violence, threat or any means that vitiate his free will;
2. The use of secret detention places, solitary, incommunicado and other similar forms of detention;
3. The employment of physical, psychological or degrading punishment or the use of inhuman facilities."

"Every Filipino, regardless of whether he is a member of the military force or the police organization, a civilian, or an insurgent, and even a foreigner residing in or visiting the country, is guaranteed these rights."

(b) Also issued on 6 May 1988, by the said Commission are the "Guidelines on Visitation and the Conduct of Investigation, Arrest, Detention and Related Operations." Quoted and enumerated under the guidelines are some of the constitutional powers and functions of the Commission on Human Rights, namely:

"1. Investigate, on its own or on complaint by any party, all forms of human rights violations involving civil and political rights;
2. Protest the rights of Filipinos in the Philippines and overseas;

3. Exercise visitorial powers over gaols, prisons, detention facilities; and
4. Request the assistance of any department, bureau, office or agency in the performance of its functions."

5. Since the above statement and guidelines issued by the Commission are addressed primarily to the law enforcement agencies, the Secretary of National Defence, the Chief of the Staff of the Armed Forces of the Philippines, the Chairman of the National Police Commission, and the Chief of the Philippine Constabulary (concurrently Director of the Integrated National Police) issued on 6 May 1988, a Joint Declaration of Undertaking for them to observe and strictly implement the above statement and guidelines of the Commission on Human Rights. In view of the Joint Declaration of Undertaking that was signed, all enforcement agencies of the country are now in the process of implementing the following guidelines promulgated by the Commission:

"The Heads of the various law enforcement agencies shall be responsible for promulgating the rules and regulations to be disseminated to all members of their units or agencies to ensure observance of the rights guaranteed in the Constitution, especially those enumerated in the Commission on Human Rights statement promulgated 6 May 1988, which are incorporated by reference.

Commanders and elements of all units under their command shall extend maximum co-operation and courtesy to members of the Commission on Human Rights and/or their authorized representatives in the exercise of their constitutional authority and functions.

Recognizing the crucial role of complainants and witnesses in human rights cases, commanders and elements of all units under their command are responsible for their safety and security from potentially adverse or hostile actions.

Immediate members of the family, extended members of the family, legal counsel and spiritual advisers shall have free access to detained persons, subject to the provisions of applicable laws, rules and regulations."

6. Apart from the constitutional provisions as mentioned above, there is a long-standing provision of national legislation prohibiting public officers from maltreating prisoners under their charge. Under article 235 of the Philippine Revised Penal Code, it is made a crime for them to impose punishment not authorized by the regulations or to inflict such punishment in a cruel and humiliating manner.

7. With the return of the country to normalcy under the present regime, the new Congress is expected to pass new laws providing penal and civil sanctions for acts of torture or similar practices, as well as compensation to and rehabilitation of victims of such acts or practices and their families, as mandated under article III, section 12, paragraph 4, of the Philippine Constitution.

8. Aside from the Universal Declaration of Human Rights already referred to above, there are other international instruments to which the Philippines is a party, and the Philippines is likewise committed to the principles of such instruments, which are the following:

(a) Declaration of the Rights of the Child;

(b) International Covenant on Civil and Political Rights;

(c) International Covenant on Economic, Social and Cultural Rights;

(d) Protocol additional to the Geneva Conventions of 12 August 1949 and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II);

(e) Convention against Torture, Cruel, Inhuman or Degrading Treatment or Punishment.

9. Moreover, the Philippines has a standing national legislation namely its Revised Penal Code which pertinently provides that, except as provided in the treatise and laws of preferential application, the provisions of the Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zones, but also outside its jurisdiction, against those who, among others, commit an offence while on a Philippine ship or aircraft, or, while being public officers or employees, commit an offence in the exercise of their functions, or commit any of the crimes against national security and the law of nations, these being treason, espionage, piracy, and mutiny on the high seas.

10. In the Philippines, the provisions of the Convention can be invoked before, and directly enforced by, the courts and administrative authorities by virture of the constitutional provision which states that the Philippines adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, co-operation and amity with all nations. This constitutional provision is complemented by another which specifies the powers and functions of the National Commission on Human Rights as already quoted above, thereby making the said Commission a distinct forum, in addition to the regular courts of justice, for the redress of such wrongs as amount to torture or similar practices.

11. An individual, be he a citizen or a foreigner, who claims to have been a victim of torture or other cruel, inhuman or degrading treatment or punishment may obtain redress by bringing his case to the Commission on Human Rights or to the usual courts of justice. He may file a criminal action against the offender in accordance with the Philippine penal laws and criminal procedure. The victim may also avail himself of civil remedies under the applicable provisions of the Civil Code of the Philippines, particularly under article 32, and also under the pertinent provisions of title XVIII (Damages), of the Code. Moreover, he may file an administrative case against the offending public officer or employee under the Revised Administrative Code and applicable special laws of the Philippines, with such agencies as the National Police Commission, the Philippine Constabulary, and the Office of the Judge Advocate-General of the Philippine Armed Forces.

12. An evaluation of the practical impiementation of the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment shows that, with the promulgation of the new Constitution of the Philippines in 1987, prospective violators of the provisions of the Convention are being made to realize that torture and other cruel inhuman, or degrading treatment or punishment are a crime against humanity, and not merely a crime against specific individuals. There is an increasing awareness among the citizenry that respect for the rights of all members of the human race is a necessary condition for the attainment of the fullest freedom, justice and peace in the world. At

the same time, even soon after the return of the country to democracy as a result of the February 1986 revolution, the awakened citizenry has been emboldened to come out and to seek redress of human rights violations, which certainly include cases of torture or similar practices. President Aquino created the Presidential Commission on Human Rights, which is a creation of the 1987 Philippine Constitution. A great number of cases involving human rights violations have already been filed with the Commission. Statistics furnished by the Commission show that the number of cases filed as of 31 December 1987, was 1,463. Although the statistics gathered do not segregate the cases of torture or similar practices from the other cases of human rights violations, it can be fairly assumed that a sizeable number of cases of torture and similar practices form part of the total figure furnished by the Commission.

13. The filing of cases of this nature with the Commission and with other agencies has not stopped, however, there remain certain difficulties affecting the degree of fulfilment of the Convention by the Philippines.

14. Before the February 1986 revolution, the concept of human rights had not yet been properly articulated, much less expressly incorporated, in the earlier versions of the Constitution of the country, so that, before the promulgation of the present Philippine Constitution, there was no express constitutional provision mandating the national legislature to pass laws expressly for the benefit of victims of torture or similar practices and their families. In the light of the new Declaration of Principles and State Policies in the 1987 Constitution, it is keenly felt that there have to be specific new measures on torture for implementation truly to fulfil the country's obligation to respect the inherent human dignity of a person. Although judicial as well as administrative remedies are available to victims under existing laws which prescribe specific acts as criminal once torture has been committed, new legislative enactments are still necessary to deter what may be considered as torture within the meaning of article 1 of the Convention. In particular, the present adjective laws of the Philippines are frankly not up-to-date in this regard. Such technical scientific methods of tracing evidence of torture and similar practices as have become possible with present advances in science and technology are

yet to have a definite place in the statute books, so as to make them completely acceptable as legal means to establish a corpus delicti.

15. So far as the Philippines is concerned there is as yet no clear set of preventive measures against torture within its territorial jurisidiction. Its existing laws, however, do not mention any exceptional circumstances that may be invoked as a justification of torture. The Revised Penal Code of the Philippines, in particular, contains express provision to the effect that any person who acts in obedience to an order issued by a superior for some lawful purpose does not incur criminal liability (Revised Penal Code, art. XI). It is thus clear that under Philippine jurisdiction no mere order from a superior officer or a public authority may be invoked as a justification of torture. The Philippines, during its existence as a sovereign State over the past four decades, has yet to encounter a celebrated case calling for the application of article 3 of the Convention. In the light of its commitment to abide by the provisions of the existing international instruments to which it is a party, the pertinent provisions of the Convention (i.e., art. 3) may be invoked by the affected individual and be enforced directly by the authorities concerned.

16. As explained in the earlier part of this report, more specific legislative measures dealing with torture or similar practices are still to be enacted, in further elaboration of articles 4 to 16 of the Convention. In so far as existing laws on the matter are concerned, there is one legal issuance from President Aquino herself on the subject: this is Executive Order No. 62 which provides for higher penalties for maltreatment of prisoners. For the present, the Statement on Human Rights and corresponding Guidelines on Visitation and the Conduct of Investigation, Arrest, Detention and Related Operations recently issued by the National Commission on Human Rights (see para. 4) constitute the latest elaboration of the subject.

17. In the practical implementation of the provisions of the present Convention, certain difficulties could not be avoided, and these arise from the fact that the Philippines, as a newly restored democracy, is at present going through a transitional period. The vestiges of the political machinery of the preceding regime which tore down the walls that used to separate the executive from the legislative departments,

and which also managed to water down the independence of the judiciary, have made it difficult for the new dispensation to restore that machinery completely to its former normal condition. It is foreseen that this situation may continue for some time, given the lingering effect of certain adverse factors, such as the foreign debt burden and the insurgency problem in this reporting State.

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