

H. Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment; Extra-legal Executions

Introduction

On the recommendation of the Fifth Congress, 1/ the Declaration on the Protection of ALL Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the General Assembly in its resolution 3452 (XXX) of 9 December 1975. The Congress had acted in pursuance of Assembly resolution 3059 (XXVIII) of 2 November 1973 and resolution 3218 (XXIX) of 6 November 1974, as well as initiatives of various non-governmental organizations.

The Declaration deals, *inter alia*, with the obligation of each State to take effective measures to prevent torture and other similar treatment or punishment from being practised within its jurisdiction; the criminalization of all acts of torture or those which constitute participation, complicity, incitement or an attempt to commit torture; the rights of persons who allege that they have been subjected to torture or similar treatment to complain to, and to have their cases impartially examined by, the competent authorities of the State concerned; redress and compensation to be afforded to victims of torture; and prohibition of using as evidence any statement made as a result of torture or of other cruel, inhuman or degrading treatment or punishment.

Based upon the Declaration, continued international concern for the topic resulted in the formulation of three United Nations instruments: first, the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the General Assembly in its resolution 37/194 of 18 December 1982; second the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment adopted by the Assembly in its resolution 39/46 of 10 December 1984; and third, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in its resolution 43/173 of 9 December 1988. 2/

The Assembly, in its resolution 36/151 of 16 December 1981, established the United Nations Voluntary Fund for Victims of Torture, which receives voluntary contributions for distribution of

humanitarian, legal and financial aid to individuals whose human rights had been severely violated as a result of torture and to relatives of such victims. 3/

On the recommendation of the Committee on Crime Prevention and Control, the Economic and Social Council, in its resolution 1989/65 of 24 May 1989, adopted the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Various United Nations and other international bodies have sought to bring a halt to the practice of extra-legal, arbitrary and summary executions, especially the Commission on Human Rights, its Special Rapporteur on this question, its Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Committee on Crime Prevention and Control and the United Nations congresses on the prevention of crime and the treatment of offenders. 4/ Cooperative efforts of United Nations bodies, intergovernmental and non-governmental organizations, especially the Minnesota Lawyers International Human Rights Committee, resulted in the formulation of these Principles.

In adopting the Principles, the Council recommended that they should be taken into account and respected by Governments within the framework of their national legislation and practices. They should also be brought to the attention of law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of Governments and the public in general.

The Principles stipulate that Governments prohibit by law all extra-legal, arbitrary and summary executions. No one should be extradited to a country where he or she may become a victim of such executions. The Principles further call for prompt, through and impartial investigation of all suspected cases, to be undertaken by offices or independent commissions set up to carry out such inquiries. Specific procedures and guidelines are set out for the conduct of these investigations. Those who participate in such executions should be brought to justice, and the families of victims should be entitled to fair compensation.

The United Nations Secretariat prepared a Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, which developed the application of the above Principles in a technical manner. 5/ The Manual was elaborated in close cooperation with experts in this field and interested non-governmental organizations.

NOTES

- 1/ For the consideration at the Fifth Congress see the report of the Congress (A/CONF.56/10) and "Torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment", analytical summary by the Secretary-General (A/10158 and Corr.1 and Add.1).
- 2/ For these instruments, see Part II of this Compendium.
- 3/ The Fund was developed from the United Nations Trust Fund for Chile, which was established by the General Assembly in its resolution 33/134 of 20 December 1978.
- 4/ For the activities of the congresses and the Committee on Crime Prevention and Control, see E/AC.57/1884/16, A/CONF.121/21 and E/AC.57/1988/5. For the activities of the Centre for Human Rights, especially its Special Rapporteur, see E/CN.4/1983/16 Add.1 and Add.1/Corr.1, E/CN.4/1984/29, E/CN.4/1985/17, E/CN.4/1986/21, E/CN.4/1987/20 and E/CN.4/1988/22 Add.1 and 2.
- 5/ ST/CSDHA/12.

[37] **Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Adopted by the General Assembly of the United Nations on 9 December 1975 (resolution 3452 (XXX))

The General Assembly,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Considering that these rights derive from

the inherent dignity of human person,

Considering also the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Adopts the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the text of which is annexed to the present resolution, as a guideline for all States and other entities exercising effective power.

ANNEX

Declaration On The Protection Of All Persons From Being Subjected To Torture And Other Cruel, Inhuman Or Degrading Treatment Or Punishment

Article 1

1. For the purpose of this Declaration, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners.

2. Torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment.

Article 2

Any act of torture or other cruel, inhuman or degrading treatment or punishment is an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and

fundamental freedoms proclaimed in the Universal Declaration of Human Rights.

Article 3

No state may permit or tolerate torture or other cruel, inhuman or degrading treatment or punishment. Exceptional circumstances such as a state of war or a threat of war, internal political instability or any other public emergency may not be invoked as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 4

accordance with the provisions of this Declaration, take effective measures to prevent torture and other cruel, inhuman or degrading treatment or punishment from being practised within its jurisdiction.

Article 5

The training of law enforcement personnel and of other public officials who may be responsible for persons deprived of their liberty shall ensure that full account is taken of the prohibition against torture and other cruel, inhuman or degrading treatment or punishment. This prohibition shall also, where appropriate, be included in such general rules or instructions as are issued in regard to the duties and functions of anyone who may be involved in the custody or treatment of such persons.

Article 6

Each State shall keep under systematic review interrogation methods and practices as well as arrangements for the custody and treatment of persons deprived of their liberty in its territory, with a view to preventing any cases of torture or other cruel, inhuman or degrading treatment or punishment.

Article 7

Each State shall ensure that all acts of torture as defined in article 1 are offences under its criminal law. The same shall apply in regard to acts which constitute participation in, complicity in,

incitement to or an attempt to commit torture.

Article 8

Any person who alleges that he has been subjected to torture or other cruel, inhuman or degrading treatment or punishment by or at the instigation of a public official shall have the right to complain to, and to have his case impartially examined by, the competent authorities of the State concerned.

Article 9

Wherever there is reasonable ground to believe that an act of torture as defined in article 1 has been committed, the competent authorities of the State concerned shall promptly proceed to an impartial investigation even if there has been no formal complaint.

Article 10

If an investigation under article 8 or article 9 establishes that an act of torture as defined in article 1 appears to have been committed, criminal proceedings shall be instituted against the alleged offender or offenders in accordance with national law. If an allegation of other forms of cruel, inhuman or degrading treatment or punishment is considered to be well founded, the alleged offender or offenders shall be subject to criminal, disciplinary or other appropriate proceedings.

Article 11

Where it is proved that an act of torture or other cruel, inhuman or degrading treatment or punishment has been committed by or at the instigation of a public official, the victim shall be afforded redress and compensation in accordance with national law.

Article 12

Any statement which is established to have been made as a result of torture or other cruel, inhuman or degrading treatment or punishment may not be invoked as evidence against the person concerned or against any other person in any proceedings.

[38]1989/65. **Effective prevention and investigation of extra-legal, arbitrary and summary executions.**

The Economic and Social Council,

Recalling that article 3 of the Universal Declaration of Human Rights¹⁰⁶ proclaims that everyone has the right to life, liberty and security of person,

Bearing in mind that paragraph 1 of article 6 of the International Covenant on Civil and Political Rights¹⁰⁷ states that every human being has the inherent right to life, that right shall be protected by law and that no one shall be arbitrarily deprived of his or her life,

Also bearing in mind the general comments of the Human Rights Committee on the right to life as enunciated in article 6 of the International Covenant on Civil and Political Rights,

Stressing that the extra-legal, arbitrary and summary executions contravene the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights,

Mindful that the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 11 on extra-legal, arbitrary and summary executions,⁹⁰ called upon all Governments to take urgent and incisive action to investigate such acts, wherever they may occur, to punish those found guilty and to take all other measures necessary to prevent those practices,

Mindful also that in its resolution 1986/10, section VI, of 21 May 1986, it requested the committee on Crime Prevention and Control to consider at its tenth session the question of extra-legal, arbitrary and summary executions with a view to elaborating principles on the effective prevention and investigation of such practices,

Recalling that the General Assembly in its resolution 33/173 of 20 December 1978 expressed its deep concern about reports from various parts of the world relating to enforced or involuntary disappearances and called upon Governments, in the event of such reports, to take appropriate measures to search for such persons and to undertake speedy and impartial investigations,

Noting with appreciation the efforts of non-governmental organizations to develop standards for investigations,¹¹²

Emphasizing that the General Assembly, in its resolution 42/141 of 7 December 1987, strongly condemned once again the large number of summary or arbitrary executions, including extra-legal executions, that continued to take place in various parts of the world,

Noting that in the same resolution the General Assembly recognized the need for closer co-operation between the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs of the

¹¹² See E/AC.57/1988/NGO/4.

Secretariat and the Committee on Crime Prevention and Control in efforts to bring to an end summary or arbitrary executions,

Aware that effective prevention and investigation of extra-legal, arbitrary and summary executions requires the provision of adequate financial and technical resources,

1. Recommends that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions annexed to the present resolution should be taken into account and respected by Governments within the framework of their national legislation and practices, and should be brought to the attention of law enforcement and criminal justice officials, military personnel, lawyers, members of the executive and legislative bodies of the Governments and the public in general;

2. Requests the Committee on Crime Prevention and Control to keep the above recommendations under constant review, taking into account the various socio-economic, political and cultural circumstances in which extra-legal, arbitrary and summary executions occur;

3. Invites Member States that have not yet ratified or acceded to international instruments that prohibit extra-legal, arbitrary and summary executions, including the International Covenant on Civil and Political Rights,¹⁰⁷ the Optional Protocol to the International Covenant on Civil and Political

Rights¹⁰⁷ and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,¹¹³ to become parties to these instruments;

4. Requests the Secretary-General to include the Principles in the United Nations publication entitled Human Rights: A Compilation of International Instruments; regional and interregional institutes for the prevention of crime and the treatment of offenders to give special attention in their research and training programmes to the Principles, and to the International Covenant on

¹¹³ General Assembly resolution 39/46, annex.

Civil and Political Rights, the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Code of Conduct for Law Enforcement Officials,¹⁰² the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power¹⁰⁰ and other international instruments relevant to the question of extra-legal, arbitrary and summary executions.

**15th plenary meeting
24 May 1989**

ANNEX

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions. Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or

with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

3.

Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall

be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall co-operate fully in international investigations on the subject.

Investigation

9. There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved, and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for

under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be

informed immediately. the body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal Proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or co-operate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.