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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED
TO ANY FORM OF DETENTION OR IMPRISONMENT

TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT
OR PUNISHMENT

Report by the Special Rapporteur, Mr. P. Kooijmans, pursuant to
Commission on Human Rights resolution 1987/29

Addendum

Visit by the Special Rapporteur to Argentina, Colombia and Uruguay

Introduction

1. Pursuant to Commission on Human Rights resolution 1987/29 the Special Rapporteur held consultations in Geneva during the months of June and September 1987 with the Governments of Argentina, Colombia, Peru and Uruguay with a view to exploring the possibility of carrying out on-site consultations on measures to prevent the phenomenon of torture.
2. The Special Rapporteur received a favourable reaction from the above-mentioned Governments and proposed, after official confirmation was received, to visit those countries from 9 to 18 December 1987. All agreed to the proposed dates except Peru which preferred to postpone the visit to a later stage and requested the Special Rapporteur to provide an alternative schedule.
3. The Special Rapporteur visited Colombia from 9 to 13 December 1987, Argentina from 13 to 16 December 1987, and Uruguay from 16 to 18 December 1987.

4. In the course of his visit to Colombia, the Special Rapporteur met the following authorities: the President of the Supreme Court, Mr. Juan Hernández Saenz; the Minister of Justice, Mr. Enrique Low Murtra; the Attorney-General, Mr. Carlos Mauro Hoyos Jiménez; the Director of the National Police, Gen. José Guillermo Medina; the Secretary-General and the Under-Director of the Administrative Department of Security "DAS", Mr. Gabriel Gutiérrez and Mr. Alberto Romero; the Presidential Adviser for the Protection and Promotion of Human Rights, Mr. Alvaro Tirado Mejía; the Minister in Charge for Foreign Affairs, Mr. Fernando Cepeda Ulloa, and the Minister of Government, Mr. César Gaviria Trujillo.

5. In Argentina he met: the President of the Supreme Court, Mr. Severo Caballero; the Secretary of Justice, Mr. Enrique Paixao; the Minister of Education and Justice, Mr. Jorge Sabato; the Attorney-General, Mr. Andrés D'Alessio; the Secretary of the Interior, Mr. Juan Octavio Gauna; the Under-Secretary of the Ministry of Foreign Affairs in charge of Human Rights, Ms. Mariá Teresa Merciadri de Morini; with the Under-Secretary for Foreign Policy, Mr. Jorge Mauhourat; the President of the Permanent Assembly for Human Rights, Mr. Alfredo Bravo and representatives of the group of relatives of missing persons known as the "Abuelas de la Plaza de Mayo".

6. Finally in Uruguay he was received by the Minister for Foreign Affairs, Mr. Enrique Iglesias; the Minister of the Interior, Mr. Antonio Marquesano; the Attorney-General, Mr. Rafael Robato Calcaño; the Minister of Education and Culture, Ms. Adela Reta and the Minister of the Supreme Court, Ms. Jacinta Balvuela.

7. The Special Rapporteur deemed these visits extremely useful for carrying out his mandate, since they have enabled him to analyse more thoroughly the factors which contribute to a situation where torture may occur and actually did occur and to get a clearer insight into measures which can be taken to eradicate this evil and prevent its recurrence. Although each situation requires its own measures, a certain common pattern can be recognized in the preventive measures which have been taken in the respective countries; the difficulties which have to be overcome also have similar characteristics. All three countries have governments which solemnly declared that they will respect and guarantee human rights; all three unreservedly condemn the practice of torture and have become parties to the United Nations Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment.

Colombia

8. The Special Rapporteur had consultations with the authorities of Colombia on 10 and 11 December 1987. The situation in that country is a matter of serious concern to the Government; civil strife, together with actions taken by organized crime dealing with narcotics, have led to a situation of violence and lawlessness, where syndicates of hired killers (sicarios) and people who kidnap for ransom flourish. This situation is compounded by strong political controversies and the existence of an armed guerrilla. Certain links are said to exist between organized crime and political factions of the extreme left and right. The Special Rapporteur had received many allegations of torture, generally coinciding with kidnappings and wanton killings. According to the Attorney-General (Procurador General de la Nación), who himself became the victim of violence in January 1988 when he was shot by representatives of organized crime, reforms in the economic, social and political sphere are desperately needed to remove the causes of insecurity and violence, since

glaring contrasts in wealth and social circumstances contribute to the political crisis. The Government is well aware of the seriousness of the situation and has taken various measures to strengthen the protection of human rights. The President has appointed a special adviser for the defence, promotion and protection of human rights whose task is, inter alia, to co-ordinate the activities of the various ministries in matters relating to human rights. Another important step which has been taken is the establishment of a criminal police. In Colombia by law the police and the military must report every arrest within 24 hours to the competent judge who decides whether the detainee will be kept in preventive custody or released. Criminal investigation is the prerogative of the judiciary (Colombia has an inquisitorial system) and used to be carried out by the bench itself; in June 1987 the law was changed and criminal investigation is now entrusted to a "juez de instruccion" (examining magistrate). Until recently, however, the judiciary did not have at its disposal the means to carry out such investigation on its own. For historical reasons the national police is a branch of the Ministry of Defence; criminal investigations were therefore carried out by the Department of Security (Departamento Administrativo de Seguridad), whose main function is intelligence for the security of the State. Recently it was decided to provide the judiciary with its own police force, the criminal police, in order to enable it to carry out criminal investigations independently. According to the Minister of Justice this strengthening of the independence of the judiciary is essential to uphold the rule of law. Preparations are now being made to implement this law. It was stressed, however, by the Minister of Justice that, for the creation of this judicial police and its effective operation, much expertise is needed which is not available in the country. International assistance is, therefore, necessary.

9. Even if an effective and well-trained criminal police force is established, some questions, in the opinion of the Special Rapporteur, must be solved before it can be said that the structure for the protection of human rights is fully satisfactory. According to the information he received, investigations into matters which are related to national security, will continue to be carried out by the Department of Security. Moreover, military personnel accused of criminal violations of human rights will be tried by military tribunals if the offence concerns military functions. It is a matter of controversy whether offences mentioned in the Penal Code should always be tried by civil courts, irrespective of whether they are committed by civilians or the military, whereas the military tribunals should only be competent with regard to offences mentioned in the Military Penal Code.

10. These ambiguities should be solved as soon as possible. Since some of the allegations received by the Special Rapporteur deal with alleged human rights violations by paramilitary forces, it is essential that such allegations can be examined and, if necessary, brought before completely independent authorities. If that were the case, the creation of a criminal police force would be a highly meaningful contribution to the protection of human rights, all the more so if that force also had the capacity to make inquiries in the case of an appeal for habeas corpus. It was openly admitted by the authorities that at present the judiciary is not in a position to carry out the necessary investigations.

11. Another legislative measure which is at present envisaged is heavier penalties for the serious human rights violations, such as torture and kidnapping.

12. The Government of Colombia is to be commended for the interest it has shown in strengthening the protection of human rights in a period when national stability is seriously threatened. It deserves the support of all other States in reaching the goals it has set itself. In a country where human rights are violated in a horrifying way by groups of a non-Statal nature, it is vitally necessary that the authorities in fighting this evil keep strictly to the rules and act in accordance with the law and that breaches of these rules be severely punished. Only in this way can respect for the rule of law be restored.

Argentina

13. The Special Rapporteur had consultations with the Government of Argentina and with some non-governmental organizations on 14 and 15 December. It is all too well-known that Argentina has gone through a long and dark period of seven years when disappearances, torture and killings became endemic. It was pointed out to the Special Rapporteur that it took more than four years before the general public became aware of the terrifying dimensions of the human rights violations. According to the authorities, the general revulsion prevalent throughout the country about what happened during that period is the best and most effective guarantee that a recurrence of such human rights violations will not be tolerated. The military take-over of 1976 and all that it entailed was the direct consequence of the civil strife and domestic chaos which existed in the country during the previous years. The sad experiences of the last decade have also been a maturing process and have contributed to a greater sense of responsibility among the various political parties and groups. It was also pointed out to the Special Rapporteur that the excesses which occurred during the 1970s and the early 1980s had their roots in the harsh treatment which had already been applied to detainees for a very long time. For decades it had been common practice to extort confessions under duress during criminal investigations. When a suspect who appeared before an examining magistrate (juez de instrucción) contended that his confession had been obtained by torture, the law provided that the burden of proof lay with the suspect. Such a legal system is highly conducive to the practice of torture and, consequently, this legal provision has now been abolished. The law now states that only a statement made before the examining magistrate has evidential value. This provision and the replacement of the previous largely written criminal procedure by a preponderantly oral procedure has made the use of torture as a means of gathering evidence less probable. Moreover, torture now carries the same penalty in the Penal Code as homicide.

14. The Special Rapporteur was told by the Chief of the Federal Police that no specific new training programmes for the police force or new investigation techniques had been introduced. During instruction and daily practice the main emphasis was laid on the need to create mutual trust between the police and citizens. Policemen should be aware that they were there to serve the public not to be their masters. Moreover, it must be made crystal clear that any abuse of power by the police would be severely punished.

15. The Special Rapporteur was impressed by the firm decision of the authorities not to allow any recurrence of past practices and their trust in the maturity of the population. He feels, however, that the continued awareness that respect for human rights should be given the highest priority could be strengthened by introducing training programmes for security personnel. Such programmes should emphasize how to treat people entrusted to

security personnel in a way which is effective from the viewpoint of criminal investigation and the discipline necessary in penal institutions, while at the same time respecting the dignity and basic rights of the human being. Such an attitude is not merely the result of a given mentality but also of technical skills and expertise.

16. During the Special Rapporteur's visit, the recent enactment of legal measures bringing to an end the possibility of prosecuting suspected violators of human rights for acts committed during the military régime and recognizing the principle of "due obedience" were still being hotly debated in the country. In his discussions with the authorities it was made clear that these legal measures had only been taken in view of the domestic situation which had not yet fully stabilized. The measures deal with situations which occurred under the military Government, but they in no way affect the regulations established by the constitutional Government which severely punish those responsible for torture, who will never be able, either now or in the future, to invoke superior orders to justify their acts. It is not within the Special Rapporteur's mandate to comment on the compatibility of the law on due obedience with the Convention against Torture to which Argentina is a party.

Uruguay

17. The Special Rapporteur had consultations with the authorities of Uruguay on 16 and 17 December. The recent history of Uruguay is similar to that of Argentina. In Uruguay the military usurped power after prolonged civil strife and unrest in 1973 and abdicated to a civilian government in March 1985. Under the military régime the Constitution was suspended and human rights were widely violated. Torture was a common phenomenon. As in Argentina the history of brutal treatment of detainees to extract confessions is a long one. Although in Uruguayan penal procedure confession alone never constitutes full proof but has to be complemented by other elements, the authorities deem it important to decrease the role of confessions as evidence. In order to achieve this goal it is necessary to provide the police with other techniques to collect evidence. The expertise and equipment necessary to introduce these techniques, however, are not available in Uruguay. The Minister of the Interior, therefore, expressed the hope that assistance in this field could be obtained through the channels of the United Nations, since the introduction of sophisticated techniques for the collection of evidence and the ensuing decline in the importance of confessions in penal procedure would be an important element in efforts to prevent the recurrence of torture. For the moment instruction programmes for police and prison personnel concentrate on mentality training and a continuing awareness of the necessity to respect human rights.

18. In Uruguay, too, a change from the present, preponderantly written, criminal process to a largely oral system is under consideration. One of the difficulties is that introduction of this system calls for new infrastructure, such as hearing rooms, rooms for defence counsel, administrative staff to make records; also the number of judges will have to be increased and special training courses for the judiciary are required. The President of the Supreme Court expressed the view that introduction of such a system could contribute considerably to a better protection of human rights if it were applied by well trained judges.

19. The Special Rapporteur was told that one of the reasons why during the military dictatorship the civilian judges were often powerless to defend the human rights of citizens was that "crimes" that were considered to be connected with internal security were brought under the jurisdiction of the military tribunals.

20. After the return to democracy and the re-enactment of the Constitution, the Supreme Court restored the old rule according to which all offences mentioned in the common Penal Code are brought to the civil courts, irrespective of whether they are committed by civilians or the military, whereas the competence of the military courts is confined to typically military offences.

Concluding remarks

21. The visits paid to Colombia, Argentina and Uruguay have greatly expanded the Special Rapporteur's insight into the roots and causes of torture. Both in Uruguay and in Argentina, he was told that the widespread practice of torture during the military régime was facilitated by the already existing tradition of brutal treatment of detainees by the police; the important role of confession in criminal procedure had been instrumental in this tradition. In both countries it was stressed that the use of torture as a means of extortion and terror was passed from the police to the military not the other way round as is sometimes believed.

22. Common criminal procedures and the means by which evidence is collected therefore deserve much more attention than they usually get. Torture is very often seen mainly in the context of political controversies as a means of suppressing political opponents - and correctly so. But this focus on situations of political strife may lead us to close our eyes to the fact that the seeds of the use of torture for this particular end are often sown elsewhere and that, therefore, practical measures to prevent torture should also be taken elsewhere.

23. Another element which seems to be extremely relevant is that, although mentality training is undoubtedly very important, it is clearly not sufficient. The existence of technical expertise and technical equipment is also of vital significance. It is noteworthy that in two of the three countries visited members of the Government made an explicit appeal for assistance by the international community. In the whole concept of international co-operation economic and social development until now have played a preponderant role. This is logical and to the point since in large areas of the world economic and social human rights cannot be guaranteed without the combined efforts of the international community as a whole. The international community has been much less aware that the realization of political and civil rights may also be dependent upon international co-operation. This may be partly due to the fact that political and civil rights are usually seen as obligations for the State to abstain from interfering in the private sphere of the individual. However, for the full enjoyment of those rights, a certain infrastructure is essential. Up till now, hardly any funds have been set aside to comply with requests for assistance in this field. The programme of advisory services of the Centre for Human Rights - useful as it may be, in particular for the near future - will clearly be insufficient if awareness of the possibilities of international co-operation and assistance for the realization of civil and political human rights increases. The Special Rapporteur is of the opinion

that the implications of requests for assistance from individual governments better to guarantee civil and political rights should be a matter for reflection in the Commission on Human Rights. Condemnation of systematic violations of human rights are certainly called for in quite a few cases. However, the Commission, whose task it is to promote respect for human rights, would only be doing half its work if it turned a deaf ear to a government which asked the international community to help it better to fulfil its commitment to guarantee respect for human rights.