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EXTERNAL

Amnesty International
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4934

19 January 1976

RESOLUTION 3452 (XXX)

ADOPTED BY THE GENERAL ASSEMBLY OF THE
UNITED NATIONS
ON 9 DECEMBER 1975

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Declaration on the Protection of All Persons from
being subjected to Torture and Other Cruel, Inhuman
or Degrading Treatment or Punishment

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 the human person,

Considering also the obligation of States under the Charter of the United Nations, 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 1/ and article 7 of the International Covenant on Civil and Political Rights, 2/ both of which provide that no one may be subjected to torture, or 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.

1/ Resolution 217 A (III)

2/ Resolution 2200 A (XXI), annex

ANNEXE

Declaration on the Protection of All Persons
from being subjected to Torture and Other Cruel,
Inhuman or Degrading Treatment.

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 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

Each State shall, in 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 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.

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19 January 1976

RESOLUTION 3453 (XXX)

ADOPTED BY THE GENERAL ASSEMBLY OF THE
UNITED NATIONS
ON 9 DECEMBER 1975

Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment in
Relation to Detention and Imprisonment

The General Assembly,

Reaffirming the rejection, in its resolution 3059 (XXVIII) of 2 November 1973 and 3218 (XXIX) of 6 November 1974, of any form of torture and other cruel, inhuman or degrading treatment or punishment,

Reiterating its conviction expressed in resolution 3218 (XXIX) that, because of the increase in the number of alarming reports on torture, further and sustained efforts are necessary to protect under all circumstances the basic human right to be free from torture and other cruel, inhuman or degrading treatment or punishment,

Welcoming resolution 4 (XXVIII) of 10 September 1975, adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Having considered the report of the Secretary General 3/ containing an analytical summary of the information received under paragraph 1 of its resolution 3218 (XXIX),

Recalling its request to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders that it consider steps to be taken for the protection of all persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment, and to report thereon to the General Assembly at its thirtieth session,

Noting the working paper, entitled "Health Aspects of Avoidable Maltreatment of Prisoners and Detainees," 4/ submitted by the World Health Organization to the Fifth United Nations Congress,

Noting with appreciation the report of the Secretary General, 5/

3/ A/10158 and Corr.1 and Add.1

4/ A/Conf.56/9.

5/ A/10260

Taking into account that the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders expressed the opinion that, on the matter of an International Code of Police Ethics, there should be further expert consideration,

Having adopted the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, annexed to resolution 3452 (XXX) of 9 December 1975,

Believing that further international efforts are needed to ensure adequate protection for all against torture and other cruel, inhuman or degrading treatment or punishment,

1. Expresses its appreciation to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders for the elaboration of the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
2. Requests the Commission on Human Rights at its thirty-second session to study the question of torture and take any necessary steps for :
 - a) Ensuring the effective observance of the Declaration on the Protection of All Persons from being subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - b) The formulation of a body of principles for the protection of all persons under any form of detention or imprisonment on the basis of the Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile and the draft principles attached to it; 5/
3. Further requests the Committee on Crime Prevention and Control to elaborate, on the basis of, inter alia, the proposals presented to and conclusions arrived at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, a Code of Conduct for Law Enforcement Officials and to submit this draft code to the General Assembly at its thirty-second session through the Commission for Social Development and the Economic and Social Council;
4. Invites the World Health Organization to give further attention to the study and elaboration of principles of medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment;
5. Decides to include in the provisional agenda of its thirty-first session an item entitled "Torture and other cruel, inhuman or degrading treatment or punishment" for the purpose of reviewing the progress achieved in accordance with the present resolution.

from the ruling party is to eliminate political dissent and consolidate the position of the leadership of the ruling party by weakening democratic institutions.

In particular this Conference is opposed to any amendment to Article 226 of the Constitution and to any other constitutional changes calculated to limit the scope of judicial review or to weaken the independence of the judiciary.

This conference is further of the view that the Constitution requires to be amended so as to strengthen democratic institutions in the country. In particular this Conference is of the view that :-

- (1) Article 352 should be amended so as to limit the proclamation of emergency only to cases of actual invasion or a violent civil war.
- (2) Malafide exercise of the President's power under Article 352 and 356 should be made justiciable so that a remedy may be available against patently unjustifiable proclamation of emergency or arbitrary imposition of President's rule in any State in India.
- (3) Article 358 should be deleted, and
- (4) Article 31 C should be deleted and article 31 B should be confined only to those legislative measures as are designed to serve the economic interests of the weaker sections of society.

Resolutions passed unanimously at All-India "Save the Constitution" Conference of lawyers, journalists and other public men held at Ahmedabad on 1st January 1976 under the auspices of "Citizens For Democracy, Shri V.M. Tarkunde being in the chair.

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RESOLUTIONS

I. Preconditions of amending the Constitution.

This conference has noted the statement of the Prime Minister that amendments to the Constitution should not be carried out unless they are subjected to a public debate. A free public debate, however, is not possible so long as a free discussion is not allowed through the Press and the platform, the media of mass communication remain the sole preserve of the ruling party, and political opponents of the ruling party remain under detention.

This Conference urges the Government to remove all restrictions on freedom of expression and association and to release all political prisoners before any amendments to the Constitution are taken into consideration.

II. On proposed Constitutional changes :

This Conference is greatly concerned at the proposals which are being mooted by a section of the ruling party for making basic changes in the Constitution. It is claimed that the proposed changes are required for ensuring the economic betterment of the weaker sections of our society. The Constitution, however, does not require to be amended for that purpose at all. The real aim to the amendments emanating