



Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment UN LIBRARY

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COMMITTEE AGAINST 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]

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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.

B. General legal framework

4. The basic provision relating to the protection from torture 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 or 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 officials 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. One 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. paralyzes 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 provision 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 chapter 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 penalty 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 whom 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 allows 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 preliminary 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 disciplinary 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 Judicial 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 heard 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 incorrect, 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 effects 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 soon 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 Supervision 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 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 <sup>\*</sup>/ 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.

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.

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<sup>\*</sup>/ The term "misusers" refers to drug addicts and alcoholics.