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by the  
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Subject :  
POWERS AND DUTIES OF THE POLICE WITH REGARD TO DETENTION.

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INTRODUCTION

Background to the survey.

The Organisation's programme of activities adopted by the General Assembly sessions in 1965 and 1967 included an important survey, to be conducted in several stages, of the powers and duties of the police when investigating offences against criminal law.

The first part of this survey covers the powers and duties of the police with regard to the detention of persons.

Circular N° 1898-POLNA/112 was sent out on 8th April 1968 to all Interpol National Central Bureaus, enclosing a questionnaire on this subject. The circular explained that the aim of the survey was to obtain information from each affiliated country on the legal conditions in which "the police may hold for a certain time for the purposes of criminal enquiries a person who has not been charged and for whom a warrant of arrest has not been issued by a magistrate".

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We felt there was little point in dealing with arrests made by order of a magistrate with a view to bringing a person to trial, or arrests made in execution of a conviction, since the regulations governing such cases are probably of a similar nature in most countries.

We did however feel it necessary to describe the wide variety of solutions adopted by various national legislations when defining the extent to which the police may, on their own initiative, temporarily detain or hold for questioning a person suspected of having been responsible for, or an accomplice in, the commission of an offence of a certain degree of seriousness, or of having been a witness to such an offence. Consequently, we felt that the survey should concentrate on this aspect of the question.

The aim of the report is therefore to analyse the range and methods of exercising police powers in various countries with regard to the detention of persons who are neither charged nor the subject of arrest warrants issued by a magistrate. We must emphasise the aims and limitations of this report - these should be constantly borne in mind.

#### Replies received by the General Secretariat.

The National Central Bureaus obviously realised the importance of this question and the General Secretariat received replies from the following 50 countries (listed in French alphabetical order) :

ALGERIA, FEDERAL GERMANY, NETHERLANDS ANTILLES, ARGENTINA, AUSTRALIA, BELGIUM, BRAZIL, CANADA, CENTRAL AFRICAN REPUBLIC, CEYLON, CHILE, CHINA, CYPRUS, DEMOCRATIC REPUBLIC OF CONGO (KINSHASA), KOREA, DAHOMEY, DENMARK, ECUADOR, SPAIN, UNITED STATES, ETHIOPIA, FINLAND, FRANCE, INDIA, INDONESIA, IRAN, ISRAEL, ITALY, JAPAN, KENYA, LEBANON, LIBYA, LIECHTENSTEIN, LUXEMBOURG, MAURITANIA, NIGERIA, NORWAY, NEW ZEALAND, NETHERLANDS, PERU, UNITED ARAB REPUBLIC, UNITED KINGDOM, SENEGAL, SIERRA LEONE, SWEDEN, THAILAND, TUNISIA, URUGUAY, VENEZUELA, YUGOSLAVIA.

#### Difficulties encountered :

In general, the aim of the questionnaire was clearly understood. However, our question "What are the powers and duties of the police with regard to the detention of persons who have not been charged and for whom a warrant of arrest has not been issued by a magistrate ?" proved somewhat difficult to answer for those countries with English-type law or a legal system derived from this. In such countries the general rule is that the

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power to detain or hold a person for questioning is subordinate to the exercise of the power of arrest. For these countries therefore, with regard to the power of detaining a person who is not charged and for whom no arrest warrant has been issued, it was necessary to deal with the power of arrest without warrant. This in fact is what most of them did.

Certain other countries - a very small minority - confused detention decided on and carried out by the police with detention while awaiting trial ordered by a magistrate, particularly when they were describing conditions under which persons apprehended by the police may be detained. We have therefore omitted these elements when analysing the countries' replies.

We sometimes regretted the lack of information provided about the legal framework regarding police powers, particularly when certain countries referred to concepts or institutions which are peculiar to them and about which we were unable to obtain adequate information. On the other hand, when we were lucky enough to have the necessary basic literature available, we were able to explain or supplement certain replies.

#### Presentation of national systems.

Our first step was of course to study the information given by the various countries and to analyse this as accurately as possible. Wherever possible, each system has been presented in five parts :

- Police powers of detention.
- Conditions for detaining a person.
- Physical conditions of detention.
- Rights of detained persons and safeguards for these rights.
- Consequences of breaking the regulations.

#### Grouping together of certain systems.

Our next step was to group together certain systems to obtain some kind of classification.

It was possible to constitute certain groups because of the similarity between the principles of criminal law or procedure in various national systems. We were therefore able to include several countries under the same heading and draw up fairly homogeneous types of systems based on a common legal origin.

For example, Group I includes, in addition to France, several French-speaking countries which have a system very similar to that instituted by

the French Code of Criminal Procedure. Also, in Group VI we have been able to constitute Category I which comprises those countries (mostly English-speaking) whose systems are borrowed from - or at least related to - that in force in England. In both cases we have described the legal framework governing police powers of arrest without warrant and detention in countries belonging to one or other type of system.

However, it was not possible to group together all national systems in this way and we have therefore had to establish other groups of countries where police powers are laid down in widely varying legal frameworks.

#### Criteria adopted for classification.

National systems have been divided into groups and, within each group where appropriate, into categories.

Classification into the various groups and categories was carried out on the basis of the following two criteria combined :

- Whether the police may temporarily detain both suspects and witnesses, or only suspects ;
- Whether the police may themselves decide to detain suspects without immediately reporting to the legal authorities, or whether they are obliged to refer to these authorities immediately or even obtain from them the necessary authorisation to detain someone.

The groups and categories are classified in decreasing order of importance of the scope of police powers and then independence with regard to the legal authorities.

At the head of the classification we have therefore placed the group of countries and national systems which, in accordance with the two criteria mentioned above, give the police the widest powers with regard to a suspect or witness, i.e. those which allow the police to temporarily detain either without immediately reporting to the legal authorities (Group I). The last group (Group VII) includes those countries where police powers and their degree of independence with regard to the competent magistrate appeared to us to be the most limited.

Certain groups have had to be sub-divided into categories : within each group the categories are classified in the same decreasing order.

When applying the above-mentioned criteria we have sometimes had to include in the same group or category countries whose systems have no common legal origin and which are only comparable with regard to the powers and scope of action allowed the police. This has therefore resulted in some rather unexpected associations of countries.

#### Classification.

We have established seven distinct groups :

##### - GROUP I.

Countries where the police are empowered, under certain conditions, to decide on the detention prior to arrest of a suspect or witness and to detain them for a certain length of time specified by law without immediately referring the case to the legal authorities.

A/ Countries within this group (ALGERIA, DAHOMEY, FRANCE, LEBANON, MAURITANIA, SENEGAL, TUNISIA).

B/ The legal framework.

C/ Police powers with regard to detention.

##### - GROUP II.

Countries where the police may temporarily detain a suspect without immediately reporting to the legal authorities but where their powers are limited with regard to detaining or holding a witness for questioning (ARGENTINA, BELGIUM, PERU, URUGUAY).

##### - GROUP III.

Countries where the police may temporarily detain a suspect, but not a witness, and where, in certain cases, police officers above a certain rank share with magistrates the power to order the arrest and temporary detention of a suspect (FINLAND, NORWAY).

##### - GROUP IV.

Countries where the police may temporarily detain a suspect, but not a witness, and where they are not obliged to report the detention immediately to the competent legal authorities (FEDERAL GERMANY, BRAZIL, CENTRAL AFRICAN REPUBLIC, CHINA, KOREA, DENMARK, ECUADOR, SPAIN, INDONESIA, IRAN, LIBYA, U.A.R.-Egypt, VENEZUELA).

##### - GROUP V.

Countries where the police may temporarily detain a person but where the decision to detain someone must be reported to, or taken by, the legal authorities as soon as the person is apprehended by the police.

Category 1 : SWEDEN.

Category 2 : ITALY, NETHERLANDS.

- GROUP VI.

Countries where the police may only temporarily detain a suspect by exercising their power of arrest without warrant, and where they can, in principle, only hold a witness for questioning with his consent.

Category 1 :

A/ Countries classified in this category :  
(NETHERLANDS ANTILLES, AUSTRALIA, CANADA, CEYLON,  
CYPRUS, ETHIOPIA, INDIA, ISRAEL, KENYA, NIGERIA,  
NEW ZEALAND, U.K. (ENGLAND), SIERRA LEONE, THAILAND).

B/ The legal framework.

C/ The power of arrest without warrant.

Category 2 : UNITED STATES.

- GROUP VII.

Countries where persons can only be apprehended and/or held for questioning by the police in very limited cases (Category 1) or where the action taken against persons apprehended or held for questioning is subject to very strict conditions (Category 2).

Category 1 : DEMOCRATIC REPUBLIC OF CONGO, JAPAN,  
LUXEMBOURG.

Category 2 : CHILE, LIECHENSTEIN, YUGOSLAVIA.

Under the heading for each group or category is given a summary of the systems in force in those countries classified in that particular group or category.

For easy reference, the top of each page shows the number of the group and category described on that page.

In addition a table of countries (listed in French alphabetical order) shows the group and, where applicable the category, in which each country has been classified.

Finally, following this table there is a list of terminology explaining the meaning of various terms and expressions used in the report. We must stress that these explanations in no sense constitute legal "definitions".

TABLE OF COUNTRIES SHOWING THE APPROPRIATE GROUPS AND CATEGORIES

COUNTRY	GROUP	CATEGORY	COUNTRY	GROUP	CATEGORY
ALGERIA	I		IRAN	IV	
FEDERAL GERMANY	IV		ISRAEL	VI	1
NETHERLANDS ANT.	VI	1	ITALY	V	2
ARGENTINA	II		JAPAN	VII	1
AUSTRALIA	VI	1	KENYA	VI	1
BELGIUM	II		LEBANON	I	
BRAZIL	IV		LIBYA	IV	
CANADA	VI	1	LIECHTENSTEIN	VII	2
CENTRAL AFRICAN REPUBLIC	IV		LUXEMBOURG	VII	1
CEYLON	VI	1	MAURITANIA	I	
CHILE	VII	2	NIGERIA	VI	1
CHINA	IV		NORWAY	III	
CYPRUS	VI	1	NEW ZEALAND	VI	1
DEM.REP.OF CONGO	VII	1	NETHERLANDS	V	2
KOREA	IV		PERU	II	
DAHOMY	I		U.A.R.-EGYPT	IV	
DENMARK	IV		UNITED KINGDOM	VI	1
ECUADOR	IV		SENEGAL	I	
SPAIN	IV		SIERRA LEONE	VI	1
UNITED STATES	VI	2	SWEDEN	V	1
ETHIOPIA	VI	1	THAILAND	VI	1
FINLAND	III		TUNISIA	I	
FRANCE	I		URUGUAY	II	
INDIA	VI	1	VENEZUELA	IV	
INDONESIA	IV		YUGOSLAVIA	VII	2

# TERMINOLOGY

## Apprehension :

Action whereby the police, when acting without an arrest warrant, apprehend a suspect for the purposes of enquiries into an offence against criminal law.

## Arrest Warrant or Order :

A written order issued by a magistrate stipulating that a given person shall be traced and arrested because he is alleged to have committed an offence (which must also be specified).

## Holding for questioning :

Action whereby the police hold for questioning a person found in the street or some other public place in order to obtain information relating to enquiries into an offence against criminal law.

## Legal Authorities :

Various officials exercising a legal function of a repressive nature and intervening in criminal proceedings subsequent to police action, at the level of the judicial investigation, prosecution or trial.

## Magistrate :

Used loosely to mean a person responsible for the judicial investigation, prosecution or trial and before whom the arrested person must be brought by the police.

## Offence :

When this term is used without further precision, it means an offence against criminal law.

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## Police detention :

Police action involving temporary deprivation of the freedom of a person they have apprehended and whom they are keeping in custody on police or other premises :

- either for the needs of enquiries into an offence against criminal law ;
- or to prevent the impending commission of such an offence ;
- or also to put a stop to some danger constituted by the mental or physical condition of the person concerned.

## Suspect :

A person who, in view of the physical evidence and the evidence of witnesses obtained during police enquiries, can justifiably be thought to be the person responsible for, or an accomplice, in the commission of an offence against criminal law.

## Witness :

A person who, because of his presence (accidental or otherwise) at the commission of all or part of the offence, or because of what he has learned about it or about the suspect, may be able to provide useful information of assistance to police enquiries, notably in establishing the connection between the offence and the suspect.

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GROUP. I

Countries where the police are empowered, under certain conditions, to decide on the detention prior to arrest of a suspect or witness and to detain them for a certain length of time specified by law without immediately referring the case to the legal authorities.

A.- COUNTRIES WITHIN THIS GROUP :

The following countries have been included in this group : ALGERIA, DAHOMEY, FRANCE, LEBANON, MAURITANIA, SENEGAL, TUNISIA.

This group is particularly homogeneous, due to the similarity between the legal principles adopted by the countries concerned. No sub-division is necessary.

B.- THE LEGAL FRAMEWORK :

Before examining the systems in force in these countries, we should perhaps summarise the main aspects of their legal framework.

a) Classification of offences :

Offences are divided into three categories, in decreasing order of seriousness : "CRIMES", "DELITS", "CONTRAVENTIONS". Each category of offence is defined according to the nature and length of the respective punishment. There is a different type of court to deal with each category of offences : the "COUR D'ASSISES" for "crimes", the "TRIBUNAL CORRECTIONNEL" for "délits" and the "TRIBUNAL DE SIMPLE POLICE" for "contraventions".

b) Limited probative value of written police reports, etc.

In enquiries concerning offences against criminal law, the police have to keep the legal authorities informed of their activities and the results obtained. Their accounts of the case and "procès-verbaux" (official reports) are considered merely as information to be used as a basis for

subsequent action by the legal authorities in charge of the "information" or "instruction" (preliminary judicial investigation) or the trial. Written police reports are only accorded a greater probative value when the person reporting reports on what he himself has seen or heard.

c) Lack of inherent power accorded the police to arrest or charge a suspect.

When he does not have a "mandat" (arrest warrant issued by a magistrate), the "officier de police" (police officer), whatever his rank, has no legal power to arrest someone even when he has definite proof against that person. If he apprehends this person and/or holds him for questioning for the needs of an enquiry into a "crime" or "délit" (as the law allows him to do), he can be said to have apprehended that person or kept him in custody but not that he has arrested him. Furthermore, the "officier de police" - unlike his counterpart in England, for example - has no power to take part in criminal proceedings (set the prosecution in motion) or to charge a person as a result of his personal enquiries, even before a lower court. The functions of police investigation, "instruction" and charging are quite separate and each is the responsibility of a different body. The only exception in this system is that a "Commissaire de police" can be responsible for the prosecution and uphold the charge before the "Tribunal de simple police" with regard to "contraventions" coming within the jurisdiction of this court.

d) Control of criminal enquiries and of the officers put in charge of them by the legal authorities responsible for the prosecution.

When making enquiries into an offence against criminal law the police come under the control of the magistrates responsible for the prosecution, and more particularly under the direction of the "Procureur de la République" (Attorney General) (1). This magistrate is responsible for carrying out - or arranging to have carried out - all necessary action regarding the investigation and the prosecution of offences against criminal law. All these activities are grouped under the heading "Police judiciaire". The "Procureur de la République" has strict control over all police activities regarding "crimes" and "délits".

Any person apprehended and/or held by the police in connection with a "crime" or "délit" must be brought before the "Procureur de la République" within a certain specified time-limit.

(1) under the direction of the "Procureur général" in Lebanon.

e) Exercise of the "police judiciaire" by various categories of officers with distinct powers.

The aim of "Police judiciaire" work is "to detect offences against criminal law, to collect evidence and search for the offenders ...".

The "Police judiciaire" may be considered as a body of officers carrying out special work on behalf of the community and is made up of various categories of personnel including :

- "Officiers de police judiciaire" or "OPJ" (mayors and their deputies, "officiers", "sous-officiers" of the "gendarmerie" and specially appointed "gendarmes" - "commissaires de police", "officiers de police").
- "Agents de police judiciaire" ("gendarmes" who are not "OPJ" - "officiers de police adjoints").
- Certain civil servants and other government employees who have certain "Police judiciaire" powers in a limited field (eg. civil servants employed by the Forestry Commission, etc.).

The "Officiers de police judiciaire" (OPJ) carry out the most important activities connected with criminal enquiries. "Agents de police judiciaire" (APJ) can only perform certain specific activities (reporting offences of all kinds, taking statements from witnesses etc.) or act as assistants to the "OPJs".

f) Magistrate in charge of the "instruction".

This system provides for a specialised magistrate, the "juge d'instruction" (examining magistrate) who constitutes the lower jurisdiction of the "instruction" procedure. When ordered to do so by the "Procureur de la République" - this is compulsory when the offence is a "crime" - the "juge d'instruction" must conduct an "instruction" (or "information") prior to the "procès-verbal". The "instruction" is written down and, to a certain extent, secret and cross-examination is not possible. Its objective is to do "everything necessary to establish the truth". The "juge d'instruction" usually accepts the findings and physical evidence collected during the police enquiries. But he hears again evidence already taken by the "officier de police" and also interviews any other person whom he feels might have useful information to give. He first administers an oath whereby the witnesses swear to tell nothing but the truth. He can also visit the scene of crimes and there make any enquiries or searches he deems necessary.

The "juge d'instruction's fundamental role is to decide whether there are charges against the accused constituting an offence against criminal law. If he feels that there is such an offence and that it is quite certain who committed that offence, he issues a "mandat" stipulating (depending on the case in question) that the accused shall be brought before him, or imprisoned, or arrested. At the end of the "information", the "juge d'instruction" takes the necessary steps to commit the case to the court competent to deal with the particular offence in question.

The "juge d'instruction" can give the police orders or "Commissions rogatoires" to collect information or statements from witnesses or to carry out certain operations (investigations, searches, seizures). These "commissions rogatoires" must be executed by an "officier de police judiciaire" who is then acting with authority delegated to him by the "juge d'instruction" and according to the regulations laid down by the latter (for example, witnesses must take the oath, etc.).

The "Procureur de la République" must be notified of all decisions taken by the "juge d'instruction".

The upper jurisdiction of the "instruction" procedure is the "Chambre d'accusation".

g) Regulations governing police enquiries depending on whether or not the offence is flagrant.

The powers of the "officier de police" and the way he carries out his enquiries vary depending on whether or not the offence is flagrant. When the "crime" or "délit" is flagrant special regulations apply which give the police wide enough powers and subject them to sufficiently flexible rules to enable them to take immediate action. In other cases, police enquiries must conform to the procedure of the "enquête préliminaire" (preliminary enquiries).

The "procédure d'infraction flagrante" (the procedure in cases of flagrant offences) which must be followed by the "officier de police judiciaire" only applies when the offence concerned is a flagrant "crime" or "délit" punishable by imprisonment. However, it can also be used in cases of attempted offences under these two categories when the attempt itself is punishable.

A "crime" or "délit" is said to be flagrant when it is in the process of being committed or has just been committed. A "crime" or "délit" is also considered to be flagrant when, within a very short time after its commission, the suspected offender is pursued by public outcry or is found in possession of articles, or bears marks and traces, which give reason to believe that he has been involved in the "crime" or "délit". Finally, the law associates with flagrant "crime" or "délit" any "crime" or "délit" committed in a house, the head of which asks the "Procureur de la République" or an "officier de police judiciaire" to investigate it.

In all the above-mentioned cases of actual or associated flagrancy, the "officier de police judiciaire" (OPJ) has the duty and power to act as soon as he is notified of the facts without being instructed to do so by a magistrate. The facts give him the full right to act.

As soon as the offence is reported to him, the OPJ must inform the "Procureur de la République" and then go to the scene of the crime. If he arrives there first, the OPJ can :



- make all necessary enquiries and instruct any qualified person to assist him (expert, doctor, etc.) ;
- take the necessary steps to preserve any physical evidence ;
- seize any weapons or instruments used in committing, or attempting to commit, the offence, also the subject of the offence ;
- carry out searches and seizures at the homes of persons who appear to have taken part in the offence or to be in possession of papers, documents or articles related to the offence ;
- summon and interview any person likely to provide information and, should they refuse to attend, notify the "Procureur de la République" who will then force them to appear ;
- forbid any person to leave the scene of the crime until the officer has finished making his enquiries ;
- check the identity of any person involved in the enquiries ;
- garder à vue (detain) : any witnesses ; any person found at the scene or any person whose identity it seems advisable to establish or check ; any person against whom there is strong corroborative evidence which might result in his being charged ;
- apprehend the offender (as anyone can do).

When an "officier de police judiciaire" is following the "procédure de flagrante", the enquiry passes out of his hands once the "Procureur de la République" arrives at the scene. But when he is present, the "juge d'instruction" is the only person competent. However, both the "Procureur de la République" and the "juge d'instruction" can authorise the "officier de police judiciaire" to continue his enquiries. This in fact is the normal practice.

The "procédure d'enquête préliminaire" (1) is a simple procedure which gives the "officier de police" limited powers.

It is instigated either on the instructions of the "Procureur de la République" or by the police themselves following information, complaints or accusations they receive directly.

Its use is compulsory when the "crime" or serious "délit" concerned is not flagrant and when the offence is a "contravention". In cases of a "crime" or serious "délit", it sometimes precedes an "information", which is carried out by the "juge d'instruction" after examination of the police report.

(1) In English criminal law there is a legal procedure called "preliminary investigation" or "preliminary enquiry" which applies in cases of indictable offences before the Magistrates' Courts, whose magistrates then act as "examining justices". The two procedures should not be confused.

During the "enquête préliminaire" the "officiers de police judiciaire" and the "agents de police judiciaire" (1) can :

- receive complaints and accusations ;
- interview witnesses and suspects.

However, only "officiers de police judiciaire" can also :

- visit premises with the express consent of the owners ;
- decide whether a person should be detained temporarily, i.e. "gardé à vue" by the police for the purposes of their enquiries.

#### C.- POLICE POWERS WITH REGARD TO DETENTION - THE "GARDE A VUE".

Under this system, the law empowers an "officier de police judiciaire" (OPJ) to detain a witness or suspect for a period of 24 hours for the purposes of enquiries into an offence against criminal law. A suspect is "a person against whom there is strong corroborative evidence which might result in his being charged" and is therefore not an accused person, nor the subject of a warrant issued by a magistrate.

This temporary detention of a person by the police is called the "garde à vue". It can only take place when justified by the requirements of enquiries into a "crime" or "délit" punishable by imprisonment. Consequently, it does not apply in cases of "contraventions".

In principle, the "garde à vue" is limited to 24 hours, but this can be extended in certain cases for a further 24 hours (2).

The following may be kept under the "garde à vue" for 24 hours : witnesses in all cases (whether or not the offence is flagrant) and, in cases of flagrant "crime" or "délit", persons found at the scene of the crime or those whose identity it appears necessary to establish or check when, after evidence or explanations have been taken or checks made, it proves that those persons have not taken part in the offence.

(1) See foregoing for distinction between the two categories of officer.

(2) In several countries included in this group, the normal length of the "garde à vue" is 8 hours. This can be extended depending on whether or not the person detained is a suspect and according to the distance between the place where the suspect was apprehended and the place where the magistrate (before whom the suspect must be brought) sits - see countries in Group I.



The normal time-limit for the "garde à vue" of a suspect can be extended on the written authorisation of :

- the "Procureur de la République" or the "juge d'instruction" in cases of flagrant "crime" or "délit" ;
- the "Procureur de la République" in cases involving the "procédure d'enquête préliminaire".

When an "officier de police judiciaire", acting under a commission (i.e. carrying out enquiries ordered by a "juge d'instruction", has to hold a person for questioning, he must comply with the legal time-limit for the "garde à vue" and, if he feels it necessary to extend this, must apply for written authorisation from the "juge d'instruction" concerned.

The initial decision to order a "garde à vue" must be taken by the "officier de police judiciaire" in charge of the enquiries.

The person kept under the "garde à vue" can be released by the police. If he is not released after 24 hours (1), he must be brought before the competent magistrate (the "Procureur de la République" or "juge d'instruction", as appropriate) and if the period is extended the person must again be brought before the magistrate at the end of this extended period.

It is in fact up to the legal authorities to charge a person or not, and to decide whether or not to arrest him.

When a "crime" or "délit" against State security is involved, the "garde à vue" is for a longer period.

#### ALGERIA :

##### - Police powers of detention prior to arrest ("garde à vue") :

Articles 50 et seq. of the Algerian Code of Criminal Procedure define and govern the "garde à vue". In their main points there is a certain similarity with Articles 63 et seq. of the French Code of Criminal Procedure.

##### - Conditions for detaining a person prior to arrest :

If, for the needs of the investigation, the "officier de police judiciaire" is led to detain one or more of the persons covered by Article 50 (text not given), the "garde à vue" cannot exceed 48 hours.

(1) or after 48 hours in those countries where this is the normal period of detention.

If there is strong corroborative evidence against someone which might result in his being charged, the "officier de police judiciaire" must bring him before the "Procureur de la République", within 48 hours at the latest.

"Officiers de police judiciaire" are empowered to order this type of "garde à vue", which is applicable in the case of a flagrant offence punishable by imprisonment.

##### - Physical Conditions of Detention :

The normal period of detention is 48 hours; it is twice as much (96 hours) when there is a threat to State security.

Under ordinary criminal law this period of 48 hours can be extended for up to 96 hours on the written authorisation of the "Procureur de la République" after he has examined the file on the case.

The "garde à vue" ends either when the detained person is released by the "officier de police judiciaire" or when he is brought before the competent magistrate.

##### - Rights of persons detained prior to arrest and safeguards for those rights.

The "officier de police judiciaire" must note - in his "procès-verbal" about his interviews with any person kept under the "garde à vue" - the length of time spent interrogating the detained person and the rest-periods between each interrogation, the day and time at which the detained person was either released or brought before the competent magistrate. These notes, which must compulsorily give the reasons for the "garde à vue", are initiated by the detained person.

Furthermore, a special register which can be checked by the legal authorities, is kept on all police or "gendarmerie" premises.

At the end of the normal period of the "garde à vue", the detained person can be medically examined if he so requests and he is informed of this. If he feels it necessary, the "Procureur de la République" can officially or at the request of a member of the detained person's family, appoint a doctor to examine the detained person at any time during the "garde à vue".

##### - Consequences of breaking the regulations :

The Democratic People's Republic of Algeria gave no information on this point.

DAHOMY :- Police powers of detention prior to arrest ("garde à vue"):

Under the 1967 Dahomey Code of Criminal Procedure, the police have the power to detain persons prior to arrest (the "garde à vue").

- Conditions for detaining a person prior to arrest :

All offences under criminal law, but more specifically "délits" and "crimes", can give rise to the "garde à vue". It can be applied as a preventive measure, for the protection of the public.

Persons empowered to order a "garde à vue" are "officiers de police judiciaire" and officers of the "gendarmerie" and the "service judiciaire", the heads of "arrondissements" and villages (in some cases), certain officials of the Customs Authorities, and of the Fraud and Fiscal Authorities with "police judiciaire" powers.

A person is considered to be a suspect when there is strong corroborative evidence pointing to his guilt.

The "garde à vue" can be applied to a witness, a minor or any other person who might be able to help the police in their enquiries, in the following cases : "procédure d'enquête préliminaire", a flagrant "délit", the execution of a "commission rogatoire" issued by a "juge d'instruction", or enquiries into cases involving State security (see FRANCE).

- Physical Conditions of Detention :

The normal period of detention is 24 hours if enquiries are carried out in the place where the "officier de police judiciaire" resides and, when the scene of the crime is further away, can vary from 48 to 72 hours, depending on the distance involved.

The period of detention varies depending on whether the person concerned is a suspect or witness, and also on the distance involved (mentioned above).

It can be extended by 48 hours in the case of suspects, on the written authorisation of the "Procureur de la République" or the "juge d'instruction" (when a "commission rogatoire" is being executed).

The "garde à vue" begins from the point when the detained person would not be allowed to leave if he expressed his intention of doing so. It ends when the detained person is brought before the magistrate or when he is released by the police.

In this connection, the police cannot release a detained person on bail.

A person can be kept under the "garde à vue" anywhere, but normally is detained on police premises. The use of cells is only recommended when temporarily detaining dangerous persons ; these cells have to comply with certain standards of security, hygiene and comfort. The detained person is searched at the outset and promiscuity between persons of different sexes is avoided.

- Rights of persons detained prior to arrest and safeguards for these rights :

The detained person has certain rights : he must be informed of the reason for his detention, his family and lawyer must be notified, he must be allowed to communicate with other persons if this is not contrary to the interests of the enquiry. Also, food may be provided free-of-charge or not, depending on the case. A doctor can be brought in at any time during the "garde à vue".

As soon as a person is put under the "garde à vue", he is informed of these rights and the "Procureur de la République" or the "juge d'instruction" keep a check on the length of the detention period, interrogation and rest periods, medical examination, etc. These checks are made on the basis of the notes which must be included in the "procès-verbaux" of the enquiry.

- Consequences of breaking the regulations :

Any non-respect or abuse of the regulations can lead to the case being dismissed and disciplinary action being taken against the police officer responsible ; civil damages can even be awarded, to be paid by this officer.

FRANCE :- Police powers of detention prior to arrest ("garde à vue"):

Under the Code of Criminal Procedure, an "officier de police judiciaire" may, for the purposes of criminal enquiries detain a person for whom no arrest warrant has been issued (Articles 63, 77 and 154 of the C.C.P.).

- Conditions for detaining a person prior to arrest :

In principle, all offences may give rise to the "garde à vue" when the "necessities of the enquiry require it", but it is only used in very exceptional cases with regard to minor offences or "contraventions".

Distinction is made between :

- the "garde à vue" in cases of flagrant "crime" or "délit" (Article 63) ;

- the "garde à vue" in cases of non-flagrant "crime" or "délit" and of "contravention" (Article 77) ;
- the "garde à vue" in enquiries carried out under orders ("Commission rogatoire") from a "juge d'instruction" (Article 154) ;
- the "garde à vue" in cases where State security is threatened : this is governed by special regulations ; different authorities decide on the "garde à vue" and its length is not the same.

No text allows the "garde à vue" as a preventive measure ; there can only be a "garde à vue" when there is a "commencement d'exécution" (the start of the commission of an offence) which constitutes the attempt in cases where this is punishable.

Police officers empowered to order a "garde à vue" are *officiers de police judiciaire* and members of the "Gendarmerie nationale", who are so empowered by the "Procureur général".

The term "suspect" is not defined.

Any person - whether adult or minor - who is likely, either as a witness or suspect, to be able to "provide information about the offence or about articles and documents seized" can be the subject of a "garde à vue".

#### - Physical Conditions of Detention :

The normal period of detention is 24 hours. A witness cannot be kept under the "garde à vue" longer than this. For suspects, the period can be extended to up to 48 hours by the "Procureur de la République" or the "juge d'instruction" (where a "commission rogatoire" is being executed).

With regard to "crimes" and "délits" against State security, the normal period is 48 hours, but this can be extended for 10 days in all (2 days + 5 days + 3 days) by the "Procureur général" attached to the "Cour de Sécurité de l'Etat" or by the "juge d'instruction" of the "Cour de Sécurité de l'Etat" (if the police are making enquiries under a "commission rogatoire" issued by the latter).

Any extension requires the written authorisation of the magistrate.

In principle in the "enquête préliminaire" (non-flagrant "crimes" and "délits" and "contraventions") the detained person must be brought before the "Procureur de la République" before the end of the first detention period of 24 hours. He may then authorise an extension. In exceptional cases, this extension can be authorised by virtue of a decision taken without the detained person being brought before the "Parquet" (the Public Prosecutor's Office).

This also applies in the case of the execution of a "commission rogatoire", but in such cases the "juge d'instruction" is competent to authorise an extension of the "garde à vue" if necessary.

The "garde à vue" begins from the moment when the person is provisionally deprived of his freedom by the police or at the beginning of police interrogations. It ends either when the detained person is released or when he is brought before the competent magistrate if there is strong corroborative evidence which might result in his being charged.

A person kept under the "garde à vue" can be held on any premises necessitated by the enquiries, but a witness is never kept in a cell.

Cells are designed to prevent escapes and suicides and normally comprise the minimum requirements : wash-basin, lavatory, heating, etc. The detained person is searched before he is locked in. Promiscuity is avoided between persons of different sex or between minors and adults.

#### - Rights of persons detained prior to arrest and safeguards for these rights :

The "officier de police judiciaire" has to include in his "procès-verbal" everything relating to the "garde à vue" (including the reason for it) and have this approved by the detained person. No regulation stipulates that the detained person's family or next-of-kin must be informed. He is not allowed to receive a visit or help from a lawyer. Any visits must take place in the presence of the investigating officer ; they must not be contrary to the interests of the enquiries.

Food is provided free-of-charge. The detained person has the right to be medically examined after 24 hours of "garde à vue" ; in fact, this is allowed at any point of the detention. The detained person cannot appear before a magistrate to challenge the legality of his detention. The "officier de police judiciaire" must inform the detained person of his right to be medically examined. Article C.117 of the Code of Criminal Procedure stipulates that "the detained person must receive decent treatment, both physical and mental".

The legal authorities check that all the regulations applicable to the "garde à vue" are respected and control the overall police procedure ; they do this from the "garde à vue" register and the notes on the enquiry procedure which mention notably the request for a medical examination and the resulting action taken.

#### - Consequences of breaking the regulations :

The "Chambre d'Accusation" of the "Cour d'Appel" decides in this case whether the police enquiries should be cancelled and if this cancellation should apply to the unlawful detention or to all or part of the police investigation procedure.

The "officier de police" responsible can be the subject of legal and administrative punishment. He can also be obliged to pay damages to the victim, following a legal action called "prise à partie".

- Miscellaneous :

The following modifications would be desirable :

- abolition of the right to a medical examination after 24 hours, but the detained person and the investigator should be given the right to have this carried out at any time ;

-- extension of the "garde à vue" period for certain "crimes" and "délits" committed by gangs of offenders.

LEBANON :- Police powers of detention prior to arrest ("garde à vue") :

In the Lebanese Republic, legislation empowers the police to exercise the "garde à vue" : Articles 29 and 44 of the Code of Criminal Procedure, Article 197 and 199 of Order-in-Council of 5th August 1967 on the organisation of the "Forces de Sécurité Intérieure" (F.S.I.). Case-law has extended these powers to cover the "enquête officieuse" (unofficial enquiries - see below).

- Conditions for detaining a person prior to arrest ;

The "officier de police judiciaire" can decide, for the purposes of the enquiries, to forbid persons present at the scene of the crime to leave until his work there is finished. Anyone who does not comply with this order can be put in a cell and brought before the "juge d'instruction" to be sentenced by him, on the findings of the "Procureur général" (1-10 days' imprisonment and a fine of 1-10 Lebanese pounds - Article 29 of the Code of Criminal Procedure).

Offences and circumstances which may give rise to the "garde à vue" are : flagrant "crimes", flagrant "délits" liable to be punished by a term of imprisonment, and "crimes" and "délits" (flagrant or not) which are committed inside a house the head of which calls in the police.

As a preventive measure, the police can subject any person who is obviously drunk or mentally unfit to the "garde à vue".

The following may order "garde à vue" : the "directeur", "officiers", "commissaires" and "chefs des postes" of the F.S.I.; the "sous-officiers" of the "police judiciaire" ; the "sous-officiers" attached to the regional stations of the Beirut Police ; also, the "Mouhafez" (prefets) ; "Caimacams" (sub-prefets), "Moukhtars" (mayors), the "directeur" and "commissaires" of the "Sûreté Générale" ; captains of ships and aircraft (Article 12 of the Code of Criminal Procedure).

A suspect is a person who comes between a witness and the person who may be charged.

A witness can be detained by the police when found at the scene of a "crime" or "délit", when the head of a household has called in the police in the case of a non-flagrant "crime" or "délit", and when a "commission rogatoire" is being executed (during an investigation ordered by a "juge d'instruction").

Only minors aged 7 and over can be subject to the "garde à vue" as a witness or suspect.

Finally, any person whose identity has to be checked may also be subject to the "garde à vue".

- Physical Conditions of Detention :

The period of detention is 24 hours. This can be renewed once on the authorisation of the "Procureur général". In the case of a flagrant offence, the period begins from the moment when the "officier de police judiciaire" arrives at the scene and lasts until the end of his work. In other cases, it begins from the moment when the person concerned is brought to this "officier de police judiciaire".

The "garde à vue" ends either when the detained person is released by the police or when he is handed to the magistrato. The police have no powers to release someone on bail. The "garde à vue" can take place at the scene of enquiries, in police offices or, in certain cases, in a cell which complies with normal standards of security and hygiene.

The power of arrest is accorded to the "Procureur général" and to the "juge d'instruction" only ; it is the latter who decides whether or not a person should be charged.

A search of the detained person is compulsory and promiscuity between detained persons of different sexes or between minors and adults is forbidden.

- Rights of persons detained prior to arrest and safeguards for those rights :

The detained person is informed of the reason for his detention. If the police officer agrees, his family is notified. He is provided with food. He has the right - after requesting and receiving the authorisation of the "Procureur général" - to be examined by a doctor. The treatment currently received by detained persons conforms to the "minimum rules" in respect of medical services, hygiene, food, religion, etc.

The "Procureur général" and the "juge d'instruction", together with higher-ranking officers, are responsible for checking that the detained person's rights are respected. This check covers the legality of the reason for the detention, its length and the treatment given the detained person, and is based on the special "garde à vue" register and the notes in the "procès-verbal" drawn up by the "officier de police judiciaire".

- Consequences of breaking the regulations :

Non-respect of the regulations can result in the case being dismissed, serious disciplinary and penal sanctions against the police officer responsible, and even civil damages which have to be paid by him.

- Miscellaneous :

Caso-law allows the exercise of the "garde à vue" during the carrying out of an "enquête officieuse", either on the initiative of the "officier de police judiciaire" (following a complaint or accusation) or on the orders of the "Procureur général". This allows the magistrate to screen complaints and accusations, to relieve busy "instruction" services and to safeguard the interests of the detained persons themselves.

MAURITANIA :

- Police powers of detention prior to arrest ("garde à vue") :

The Code of Criminal Procedure of the Islamic Republic of Mauritania governs the "garde à vue".

- Conditions for detaining a person prior to arrest :

All "crimes" and "délits" can give rise to the "garde à vue" ; it can also be ordered as a preventive measure.

The competent officials are the "officiers de police judiciaire" and civil servants with the rank of "officier de police judiciaire" ("commandants de cercles", mayors, chairmen of rural councils, commanders of Army patrols, etc ...).

A witness can be subjected to the "garde à vue" if enquiries make this necessary, for a maximum period of 48 hours ; this also applies in the case of minors and other categories of persons.

- Physical Conditions of Detention :

The normal period of the "garde à vue" is 48 hours, excluding Sundays and public holidays. This applies for both suspects or witnesses, but in the case of matters endangering State security, it can be extended to a maximum of 30 days on the written orders of the "Commissaire du Gouvernement" attached to the "Cour de Sécurité de l'Etat", of the "Procureur de la République" or of the "juge d'instruction".

The normal period, under ordinary criminal law, can be extended by 48 hours on the authorisation of the "Procureur de la République" or of the "juge d'instruction". But when the person concerned is apprehended

some considerable distance from the seat of the competent jurisdiction the period may automatically be extended by one day for every 50 kms involved ; however, it must not exceed a maximum of 8 days in all.

In general, the "garde à vue" is calculated either from the moment when the person concerned is first interviewed or when he is apprehended. It ends when the detained person is brought before a magistrate or released.

It takes place in police stations or the offices of the "Direction de la Sécurité Nationale" and it is always possible to put the suspect in a cell ; this cell must comply with certain standards of security and hygiene.

Precautions are taken to prevent suicide, and to avoid promiscuity between persons of different sexes.

- Rights of persons detained prior to arrest and safeguards for those rights :

The detained person has several rights. Once he has been brought before the competent magistrate he has the right to be medically examined.

Article 57 of the Mauritanian Code of Criminal Procedure stipulates that "in all cases of "garde à vue", whatever its length, the "officier de police judiciaire" must justify the measures he has taken to the competent magistrate. Notes are made in the "procès-verbal" of the interviews.

- Consequences of breaking the regulations:

A complaint can be made to the competent magistrate about any non-respect of the regulations.

(The actual consequences of any non-respect of the regulations covering the "garde à vue" were not specified).

SENEGAL :

- Police powers of detention prior to arrest (garde à vue):

Articles 53 to 55 and 69 to 146 of Law N° 65-61 of 21st July 1965, which constitutes the Senegalese Code of Criminal Procedure, define the powers and duties of the police with regard to the "garde à vue".

- Conditions of detaining a person prior to arrest :

When a "crime" or "délit" has been committed, the "garde à vue" can be applied to any person if, during the enquiries, it appears necessary to establish or check their identity ; it can also apply to any person likely

to be able to provide information about the offence or about the articles or documents seized, and finally, to any person who is found at the scene of the crime.

The police may keep a person under the "garde à vue" as a preventive measure.

In addition to "officiers de police judiciaire", certain civil servants or officials of the Customs, Tax, Registry and Forestry Commission Authorities can order a "garde à vue".

Regional governors and Prefets are, in certain special circumstances, empowered to investigate or have investigated by "officiers de police judiciaire", "crimes", "délits" and "contraventions".

A witness can be kept under the "garde à vue" in all cases where the evidence needed to establish the truth requires detailed enquiries. This also applies in the case of a minor.

#### - Physical Conditions of Detention :

The normal detention period is 24 hours. But in the case of a suspect it is 48 hours, excluding the time taken to convey the suspect, plus a further 48 hours on the written authorisation of the "Procureur de la République". For a witness the detention period is 24 hours and cannot be extended.

Also, in the case of a flagrant offence, the "garde à vue" can be for 24 or 48 hours ; in the case of a non-flagrant offence it can only be applied to persons against whom there is strong evidence of guilt ; it is then for 48 hours.

In the case of "crimes" and "délits" against State security, the detention period is doubled ; this is also the case in a state of siege, a state of emergency or, when government is threatened, if the President of the Republic so orders.

Under ordinary criminal law, an extension of the "garde à vue" is granted on the written authorisation of the "Procureur de la République", the competent "juge de paix" or the "juge d'instruction" when the latter is in charge of the case.

The detention period is calculated either from the moment the detained person appears before the "officier de police judiciaire", or from the beginning of the interview with the witness or from the point at which the suspect is actually deprived of his freedom of action.

The "garde à vue" ends when the detained person is released by the police or when he is brought before the "Procureur de la République", which is compulsory if there is strong corroborative evidence of guilt.

The police cannot release a person on bail (in the sense of a sum of money) in Senegal.

A person can be kept under the "garde à vue" on any premises which fulfil conditions of isolation, security and hygiene ; cells must of course fulfil such conditions. In addition, the detained person is searched prior to the beginning of the detention period to avoid the possibility of his committing suicide or injuring himself. Women are kept apart from men, and minors from adults.

#### - Rights of persons detained prior to arrest and safeguards for these rights :

The following are some of the detained person's rights : to be informed of the reason for the "garde à vue", to have his family notified, to receive a visit from a lawyer or other persons, to obtain food, to be examined by a doctor, either at any time on the instructions of the "Procureur de la République" or after 48 hours at his own request.

The detained person is informed of his rights as soon as he is detained. A check to ensure that these rights are respected is carried out by the "Procureur de la République", the "juge d'instruction" and, in the last resort, by the "Premier Président de la Cour Suprême" (First President of the Supreme Court). This check is carried out on the basis of the "garde à vue" register and from the notes in the "procès-verbal" initialed by the detained person.

#### - Consequences of breaking the regulations :

If the regulations are not respected, the case can be dismissed and disciplinary action taken against the officer responsible.

#### - Miscellaneous :

These regulations - which are inspired by the French Code of Criminal Procedure - prove satisfactory.

#### TUNISIA :

#### - Police powers of detention prior to arrest ("garde à vue") :

Articles 84 and 85 of the Tunisian Code of Criminal Procedure define the powers and duties of the police with regard to the "garde à vue".

#### - Conditions for detaining a person prior to arrest :

"Crimes" and "délits" can give rise to the "garde à vue". Also, the police can keep a person under the "garde à vue" as a preventive measure.



Persons empowered to order a "garde à vue" are police officers with the rank of "officier de police judiciaire", also members of the Customs and Economics Authorities.

A witness can be kept under the "garde à vue" to prevent him leaving the place where enquiries are being carried out, or to avoid any reprisals from those who might be implicated as a result of his evidence. This also applies to any person involved in cases of "crime" or "délit", with the exception of members of parliament and diplomats, for whom there is a special procedure.

- Physical Conditions of Detention :

The normal detention period is 48 hours. This can be extended, by the "Procureur de la République", by 24 hours, which can be renewed once only in cases where several connected "délits" are concerned or where several persons are involved.

The "garde à vue" begins from the moment when the detained person arrives on police premises ; it ends when he is brought before the "Procureur de la République" or when he is released by the police. The Tunisian police cannot release a detained person on bail.

A person may be kept under the "garde à vue" on police premises and, in exceptional cases and as a security measure, in a cell which must comply with certain standards of security and hygiene.

The detained person is thoroughly searched before being locked up. Promiscuity between persons of different sexes is avoided.

During the enquiries, minors are handed over to their parents or sent to rehabilitation centres.

- Rights of persons detained prior to arrest and safeguards for these rights :

The detained person has the right to be informed of the reason for the "garde à vue", to have his family notified, to communicate with other persons, on condition that this does not hamper enquiries, to obtain food (free-of-charge or at his own expense) and to be examined at any time by a doctor.

The treatment of persons who are kept under the "garde à vue" conforme to the United Nations "Standard Minimum Rules for the Treatment of Prisoners".

A check is made of the length of the "garde à vue", the absence of cruelty, notification of the measure, etc... by the "Direction de la Police Judiciaire" on the basis of the "garde à vue" register.

- Consequence of breaking the regulations :

No provision is made for the case being dismissed, but the police officer responsible for any non-respect or abuse of the regulations can be punished. Any damages awarded the victim have to be paid personally by the "officier de police judiciaire".

.../...

GROUP II

Countries where the police may temporarily detain a suspect without immediately reporting to the legal authorities but where their powers are limited with regard to detaining or holding a witness for questioning.

These countries are : ARGENTINA, BELGIUM, PERU, URUGUAY.

In these four countries witnesses can only be detained or held for questioning in certain circumstances which vary from country to country (for example, when a witness is found at the scene of a flagrant offence, when it is feared that a witness will abscond, when the witness refuses to report to the police).

In Belgium, the main aim of police detention of a person after his apprehension or "saisie provisoire" (provisional seizure, is to bring this person before the competent magistrate.

In Argentina, Peru and Uruguay, "detencion", when applied to the suspect, is a legal concept which covers both the idea of "apprehension" and "detention" during the police stage of operations. The power of "detencion" exercised by the police is more or less associated with the judicial investigation process.

ARGENTINA :- Police powers of detention :

Articles 5 and 6 of Order-in-Council N° 333/58 and the Code of Criminal Procedure of the Federal Capital define the powers and duties of the police with regard to detention, in accordance with the Constitution.

- Conditions for detaining a person :

In principle, all types of offence (i.e. "delito" and "contravención") can give rise to detention, whatever the sentences involved.

Under the Code of Procedure of the Federal Capital, the decision to detain a person can be taken.:

- a) by the Chief of Police of the capital and by his officers in the case of persons they catch in the process of committing an offence, or of persons against whom there is strong evidence or a "semiplena prueba" (incomplete proof allowing a strong presumption) of guilt (Article 4) ;
- b) by police officers, in the same cases, when "delitos públicos" are involved and when there is a suspected offender (Article 184, para.4) ;
- c) when, in the case of a "delito" which has been committed or which is presumed to have been committed, it is not possible to determine immediately who is the guilty person among two or more persons who are apparently involved (Article 364, para. 1) ;
- d) when the authorities responsible for the judicial investigation or for the "prevención del sumario" feel that none of the persons present at the scene of the "delito" should be allowed to go away before the end of all police enquiries (Article 364, para. 2).

Article 5 of Order-in-Council N° 333/58 on the Federal Police allows the police to detain, as a preventive measure and for a period of not more than 24 hours when circumstances justify it, any person about whose previous history they need information.

Apart from this case, detention cannot be legally justified if there has been no preparatory action for committing an offence or if there is no reason to presume that an attempt to commit an offence has been made.

Any officer with the status of police officer can order a person to be detained, except in the case of a woman guilty of an offence against the "Edicto de escándalo".

Other administrative bodies whose officials are empowered to order someone to be detained include the Port Authorities, the National Gendarmerie, the Immigration Authorities, captains of boats and aircraft.

The law does not define a suspect.

A witness can be ordered to be detained :

- when enquiries into a "delito" require evidence from a witness who refuses to provide it (Article 364, para 3) ;
- when there is reason to believe that a witness will abscond, when his evidence is necessary to clarify the matter and identify the guilty person(s) (Article 364, para 4).

A minor can be detained, provided that the provisions concerning minors are complied with.

Any person may be detained, with the exception of State and Government officials.

- Physical Conditions of Detention :

Under Article 5, para. 1, of the Organic Law of the Federal Police, the normal period of detention is 24 hours ; when acting as "autoridad de prevencion", the Federal Police must immediately bring the detained person before a magistrate.

In the case provided for in Article 364, para. 1 (cf. (c) above), the person can only be detained while the "sumario" investigations or the "prevencion" proceedings are being carried out; in any case, simple detention cannot last for more than 48 hours in this case.

In the case provided for in Article 364, para. 2 (cf. (d) above), detention must end as soon as the detained person's statement has been recorded, unless he proves to be implicated in the "delito".

The temporary detention of a witness (cases provided for in Article 364, paras. 3 and 4) must be limited to the time necessary to obtain the detained person's statement or the information required.

In cases where it is possible to extend the period of detention, this must be authorised by the magistrate.

The Federal Police can only end the detention of a person in cases of identification (24 hours) and "contravencions". When a magistrate is involved in the case, he has to take this decision.

With regard to the physical conditions of detention, the Federal Police comply with the standards of the Regulations on the Treatment of Detained Persons (Decree 13486/46).

The reason for the detention of each detained person is verified ; various notes are made in a register. There is a room/hall for detained persons, who are separated according to the categories of offence. As a security measure, all persons apprehended are searched. Conditions of hygiene are respected.

- Rights of detained persons and safeguards for these rights :

The National Constitution gives detained persons certain rights but they do not have to be informed of these rights by the police.

Argentina has ratified the recommendations of the United Nations "Minimum Rules for the Treatment of Prisoners".

A check to see that these rights are respected is made by the legal or administrative authorities ; this covers all points specified in the regulations on the treatment of detained persons.

- Consequences of breaking the regulations :

Any non-respect or abuse of the regulations regarding detention can lead to disciplinary or penal action being taken against the person responsible (Article 634 of the Code of Criminal Procedure) and even to civil damages, which are paid out of public and government funds.

BELGIUM :

- Police powers of detention :

In Belgium, the police have the right - if enquiries so require - to temporarily hold a person who is not charged and for whom no arrest warrant has been issued. The main aim of this detention, called "saisie provisoire", is to bring the apprehended person before the competent magistrate.

The relevant texts are the Belgian Constitution (Article 7), the Code of Criminal Procedure (Articles 93, 16, 40, 49, 50 and 106), the Law of 2nd December 1957 (Articles 23 and 24) and various court rulings.

- Conditions for detaining a person prior to arrest ("saisie provisoire") :

The Code of Criminal Procedure only gives the police the power of "saisie provisoire" in cases of flagrant "crime". Furthermore, any police officer or private individual is responsible for apprehending a person caught committing a flagrant or associated "crime" and for bringing him before the "Procureur du Roi" ; no warrant is needed for this.

However, court rulings have extended the police authorities' power of "saisie provisoire", even when cases of flagrant "crime" are not involved, to all offences which might be punished by some form of detention while awaiting trial, i.e. those punishable by a term of 3 months' imprisonment or more. The aim of this is to hand the offender over to the legal authorities, provided that a warrant is issued within 24 hours.

Persons who may order a "saisie provisoire" are all those with the rank of "officier" or "agent de police judiciaire", within the limits of their own competence (forest rangers, maritime police, railway inspectors, etc.).

The police have certain powers with regard to preventive measures : for example, they may detain a drunken person until he sobers up, or any person taking part in a brawl in order to put an end to this. These are administrative safety measures. Also, "agents de police judiciaire" and "gendarmes" can bring before "officiers de police" any persons of suspicious appearance whose identity needs to be established.

To define a suspect - apart from cases of "flagrant délit" - the texts speak of "the person presumably responsible for a "délit" or "crime", against whom there is strong evidence of guilt".

In cases of "flagrant délit", all witnesses can be detained by the police; in such cases all "officiers de police judiciaire", who are auxiliaries of the "Procureur du Roi", have the same competence as the "Procureur" until he arrives at the scene. Apart from this case, it is only possible to detain a witness for whom a warrant has been issued by a magistrate compelling him to appear.

Minors are subject to the same regulations but, when a minor is apprehended the police get in touch with a juvenile magistrate as soon as possible.

Other categories of persons include those who are temporarily held for questioning as an administrative police measure and those whose identity has not been established.

#### - Physical Conditions of Detention :

The "saisie provisoire" may be upheld provided that an arrest warrant is issued within 24 hours and that the detained person is notified of this warrant within the same time-limit. An extension is only possible in the cases of witnesses who are subjects of warrants compelling them to appear.

The detention period begins from the moment when the person concerned is actually deprived of his freedom, and ends either when he becomes the subject of an arrest warrant issued by the "juge d'instruction", or when he is released within 24 hours of his detention. The legal authorities decide whether a detained person should be released, after interrogating him.

Police detention can take place on any premises, mainly in police stations, and even in a cell, which must comply with certain standards of security, hygiene and comfort. The detained person is searched beforehand and promiscuity between persons of different sexes and between minors and adults is avoided.

#### - Rights of persons detained prior to arrest and safeguards for these rights :

The detained person has certain rights, in accordance with the regulations of the Convention to Safeguard Human Rights and the fundamental liberties : food, medical examination if necessary, etc. But no visits are allowed. In practice, the investigators inform the detained person that he is being held in order to be brought before a magistrate within 24 hours. Once he has been brought before the magistrate, the detained person may exercise his right to lodge a complaint against the police authorities if he feels they have detained him illegally. The legal authorities carry out a check on the length of the police detention and on the treatment received by the detained person during this period.

#### - Consequences of breaking the regulations :

Non-respect or abuse of the regulations can lead to the case being dismissed, disciplinary action against the police officer responsible and payment of civil damages, either from public funds or by the officer responsible.

#### - Miscellaneous :

It would be desirable for a legal text to expressly empower the police to detain persons in cases other than those of "crime flagrant".

Also, in view of the present crime situation, the law should allow the "juge d'instruction" or the "Procureur du Roi" to authorise an extension of the police detention period in certain cases.

Finally, with a view to preventing the commission of an offence, it would be useful to have a text allowing, where necessary, a person to be kept under surveillance at his home and/or forbidden to leave a specific place without prior authorisation of the magistrate.

#### PERU :

#### - Police powers of detention :

In Peru the police have the right to make arrests and order detentions ("detención").

The relevant texts are the Constitution (Articles 56 and 55, 61, 66 and 105), the Code of Criminal Procedure (Articles 52, 63, 64, 81 and 336) and the General Regulations of the "Policia de Investigaciones" (Articles 348 and 349).

#### - Conditions for detaining a person :

The following may give rise to arrest and detention :

- "delitos de acción pública", i.e. serious offences provided for by the Criminal Code or by special laws, and which must be prosecuted automatically.

- flagrant or related "delitos" ;

- acts constituting "faltas", on condition that they are detected when committed or immediately afterwards ;

- offences of all kinds when the requirements of police enquiries make it necessary.

The police - whose role is to prevent the commission of offences - may, as a preventive measure, detain a person who has committed some action in preparation of a crime.

The following may order an arrest or detention : the Director General and Heads of the "Reparticiones Operativas", and all police officers.

Also competent are the legal and political authorities in specific circumstances and in cases endangering public order.

A witness can be detained if he refuses to attend when summoned.

A minor - suspect or witness - can also be detained, provided that he is accompanied by his parents and that the juvenile magistrate has been notified.

#### - Physical Conditions of Detention :

The normal period of "detención" is 24 hours. Particular time-limits are provided for by special laws (on drug traffic, gambling etc.) ; in the latter cases a writ of Habeas corpus cannot be applied for.

In cases where the nature of the enquiries requires it, the period of "detención" can be extended for a reasonable period of time, at the request of the police, by written authorisation of the legal authorities.

"Detención" begins from the moment when the name of the arrested person is written in the register of detained persons. It ends, either when the detained person is brought before the legal authorities or when he is released.

"Detención" takes place on police premises or in cells when the detained person is considered to be dangerous. Standards of hygiene, security and comfort are respected. Precautions are taken to prevent escapes, injuries, suicides and to preserve the secrecy of the investigation. Persons of different sexes and ages are kept apart from each other during their detention.

#### - Rights of detained persons and safeguards of these rights :

Persons arrested and detained have the following rights :

- the right to be informed of the reason for the "detención" ;
- the right to have their family notified ;
- the right to be visited by a lawyer ;
- the right to be examined by a doctor ;
- the right to obtain food.

Persons detained by the police are informed of their rights at the beginning of the "detención" period.

In practice the United Nations "Minimum Rules" are observed.

Officials and "gaolers" are responsible for ensuring that the regulations concerning detained persons are applied. There is a register giving details of the detained persons' case. The legal authorities and commanding police officers also carry out checks.

#### - Consequences of breaking the regulations :

Non-respect and abuses with regard to "detención" can lead to punishment of the official responsible. He can be sentenced to pay civil damages to the victim.

In most cases, a writ <sup>of</sup> Habeas Corpus can be applied for.

#### - Miscellaneous :

The police should be given the possibility in law of extending the period of "detención" themselves and the police should also be allowed to release a detained person on bail.

### URUGUAY :

#### - Police powers of detention :

In the opinion of some jurists, Article 15 of the Constitution would appear to justify the "presumario", i.e. police action prior to court proceedings.

Police powers and duties with regard to detention are laid down in the Constitution, the Code of Criminal Procedure, the Juvenile Code, the Code of Civil Procedure, the Trade Code and various fiscal laws.

#### - Conditions for detaining a person :

"Delitos" and "faltas" can give rise to detention by the police. If a person is caught while committing a "delito" or "falta", or if there is "semiplena prueba" (strong though incomplete evidence of guilt) this person can be arrested and detained.

Also, if there is a "case of absolute necessity" ; the majority of jurists allow the possibility of detaining a person as a preventive measure.

Decisions to detain a person are taken by Chiefs of Police, and, depending on the circumstances, by all those who have the status of a police officer ; also by the Director General of the Customs Authorities.

In the absence of any specific definition, the police consider a suspect to be a person who, from the evidence, would seem a priori to be guilty of the offence.

A witness who refuses to come forward and/or give evidence, or one who is about to go away can be detained for a period of up to 6 hours (Article 382 of the Code of Civil Procedure and Code of Criminal Procedure.)

Minors aged between 18 and 21 benefit from extenuating circumstances, but a minor under 18 can be arrested if caught committing an offence; he is then handed over to the jurisdiction of the juvenile magistrate (Article 130 of the Juvenile Code).

Article 1578 of the Trade Code provides for the arrest of bankrupts who have not fulfilled certain obligations.

#### - Physical Conditions of Detention :

The normal length of the detention period is 24 hours (Article 16 of the Constitution).

When the person concerned is a suspect, this period is 24 hours to obtain his evidence and 48 hours to begin the "sumario".

When the person concerned is a witness, the period includes the time necessary to bring him in and take his statement (Article 16 of the Constitution). If he refuses to make a statement he is arrested until various checks have been made. When the person concerned is a bankrupt, the detention period can be extended until a check has been made that no fraud is involved, but he can be released on bail even if there has been a fraud.

An extension can be authorised by a magistrate in cases where the laws allow him room for manoeuvre, for example with regard to "arrestos" (minor arrests).

The detention period starts from the moment when the interrogation begins on the premises indicated. It ends either when the police have made the necessary checks and taken the appropriate steps, or on the orders of a magistrate.

Detention usually takes place in police stations, at the Criminal Police Headquarters or in the central police prison. Special rooms are provided for this, also "cells", which fulfil normal conditions of security, hygiene and comfort. Inspections are made frequently at regular intervals.

Minors are dealt with quite differently.

#### - Rights of detained persons and safeguards for these rights :

The rights of detained persons include :

- the right to call in a lawyer, with legal authorisation, once the rule of secrecy ("incomunicación") - if imposed - has been lifted ;
- the right to obtain food ;
- the constitutional right to apply for a writ of Habeas Corpus if the detained person has not been brought before a magistrate within 24 hours or if the judicial investigation ("el sumario") has not begun within

48 hours (Article 17 of the Constitution). The legal authorities check all points relating to detention and the treatment given detained persons. For this purpose a detention register is kept in all police stations.

#### - Consequences of breaking the regulations :

Any non-respect or abuses with regard to detention can lead to severe disciplinary action against the officers responsible.

The Constitution provides the possibility for the victim to obtain civil damages from the State which can in turn take action against the officer responsible in cases of serious misconduct.

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GROUP . III

Countries where the police may temporarily detain a suspect but not a witness and where, in certain cases, police officers above a certain rank share with magistrates the power to order the arrest and temporary detention of a suspect.

This Group consists of two countries : FINLAND and NORWAY.

In Finland, the normal detention period for a suspect (72 hours) can be extended by any police officer empowered to issue an arrest warrant.

In Norway, senior police officers form part of the authorities responsible for prosecution (1). They are empowered to order the detention of a suspect for a maximum period of 24 hours.

FINLAND :- Police powers of detention :

In Finland, the police have the right to detain a person in cases covered by the Criminal Law and the Police Law.

However, it should be noted that the police officer himself may issue an arrest warrant.

- Conditions for detaining a person :

Persons may be detained by the police without being charged in the following cases :

- a) a person suspected of having committed an offence punishable by a term of 2 years' imprisonment or more ;

(1) There is a comparable system in the NETHERLANDS where certain police officers of the Royal Constabulary are "Auxiliary Public Prosecutors of the Queen".

- b) a suspect who is liable to abscond, to interfere with the evidence or continue his criminal activities ;
- c) a person suspected of having committed an offence punishable by a term of imprisonment when he has no fixed place of residence and it is thought that he might abscond ;
- d) a person who, whatever the offence involved, does not give his true identity or who has no fixed place of residence and is likely to leave Finland ;
- e) any unidentified person whose identity the police officer wishes to check.

Finally, as a preventive measure, a police officer has the right to temporarily detain a person who, because of his threats or behaviour, can be considered guilty of a serious offence. The police can also temporarily "take care" of a person or keep him under surveillance to protect him from any threats to his life or health.

Persons empowered to order detention are the Police Chief and certain of his colleagues, the Chief of the Central Criminal Police and some of his subordinates. With regard to maintaining order, lower-ranking police officers have more limited powers of detention.

Public Prosecutors are also so empowered, as are certain ranks of the Customs Authorities and, in certain cases, persons authorised by the Ministry of the Interior or the Chancellor of Justice.

A witness cannot be detained, but a minor suspect over 15 years of age may be detained.

- Physical Conditions of Detention :

The normal period of police detention is 3 days and 3 nights, or 72 hours, not including the time needed to take the person concerned to the police, which can be 4 days and 4 nights extra.

If enquiries require it, the usual period of detention (72 hours) can be extended by 14 days by the authorities who have the power of arrest. Consequently, in this case, the total length of the detention period will be 17 days, plus 4 days for travelling if necessary.

This extension is noted in the detained persons' register.

The detention period begins either at the moment when the police officer decides that the suspect should be detained, or when the note about the detention is recorded.

At the end of the legal period of detention, the police must either release the detained person or issue an arrest warrant against him and send him to the county prison.

It should be noted that, in certain cases, the police may detain someone for one day and one night ; if during this period suspicion is aroused, the detention continues as detention of a suspect.

There is no provision for the police to release a detained person on bail (however, this possibility does exist in relation to customs offences).

Detained persons are kept in a police prison or, where there are no such premises, in specially adapted cells where the person is detained until he is arrested and sent to the county prison or until he is released. These cells fulfil certain conditions of security, hygiene and comfort. The suspect is searched before being put in the cell. Men and women, and adults and minors, are kept apart during detention.

- Rights of detained persons and safeguards for these rights :

The detained person must be informed of the reason for his detention; his family is notified and may visit him. He is fed and if necessary given medical attention. Sometimes a lawyer is allowed to visit him. While the detained person has not been arrested he cannot appear before a magistrate to contest the legality of his detention. Checks are made on all matters relating to detention by the Chancellor of Justice, the Solicitor-General of the Parliament, County Superintendents and the chiefs of police districts.

- Consequences of breaking the regulations :

Any non-respect or abuse of the regulations by the police officer can lead to disciplinary action and legal proceedings.

If a person is detained for an offence which he has not committed, he receives compensation paid by the State.

NORWAY :

- Police powers of detention :

The main provisions concerning detention are contained in the Law on Legal Procedure in Criminal Cases.

In principle, a decision by a magistrate is required before a person may be detained, but if waiting for this decision entails some kind of risk, an order can be made by the public prosecution authorities, which include senior police officers.

- Conditions for detaining a person :

If a person is to be apprehended and detained he must be suspected of having committed an offence punishable by a term of 6 months' imprisonment or more.

Also, any person who is caught committing an offence - whatever the severity of the punishment provided for that offence - may be apprehended and detained, together with any person who, having committed an offence, is likely to escape, interfere with the evidence or commit another punishable offence.

Only senior police officers can order a person to be apprehended and detained instead of the magistrate, but if there is any risk involved in awaiting this decision any other police officer can, on his own initiative, order a person to be detained. In cases when the person concerned is apprehended (while committing an offence) by a private citizen, the suspect must immediately be handed over to the nearest police authority.

Only suspects can be detained. Detention of suspects under 16 years of age should be avoided as far as possible.

- Physical Conditions of Detention :

The detained person must be brought before a magistrate as soon as possible, and in any case no later than 24 hours after being apprehended. The magistrate will then decide whether he should be released or imprisoned. But the detained person can be released by the police before being brought before the magistrate. In fact, the police - the public prosecution - can release a suspect if he promises to report to the police on certain dates and at certain times. On the order of the magistrate, the suspect can be released on bail, but this is rare.

The detained person is put in a cell as soon as possible; this complies with certain standards of hygiene, comfort and security.

- Rights of detained persons and safeguards for these rights :

The detained person has the same rights as if he had been charged : the right to be informed immediately of the reason for his detention, to have his family notified, to call in a lawyer, to contact other persons if there is nothing against this. He also obtains food and can be examined by a doctor if he so requests. Finally, he must be brought before a magistrate within 24 hours.

The detained person is informed of his rights, even though there is no formal provision to this effect.

The detained person has the right to complain to the superior public prosecution authority, to the court and to the Ombudsman for the Administration, who check that the rights of detained persons are respected.

- Consequences of breaking the regulations :

In cases of non-respect or abuse of the regulations, disciplinary action may be taken against the police officer responsible. Civil damages can be granted to the victim of unlawful detention ; these are paid either by the police officer or by the government.

- Miscellaneous :

There is no legal text authorising the police - for needs of the investigation - to take a person to the police station when there is no reasonable cause to suspect him of having committed a punishable act.

In 1968, the law was revised :

- to give more legal powers to police officers belonging to the public prosecution authority ;

- to allow a police officer in certain cases, to hold for questioning for 4 hours a person found at the scene of a crime ;

- to compel a person who has been apprehended and then released to report to the police station, for example by allowing members of the police belonging to the public prosecution authority to confiscate his passport, driving licence, etc.

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GROUP IV

Countries where the police may temporarily detain a suspect, but not a witness, and where they are not obliged to report the detention immediately to the competent legal authorities.

We have included the following 13 countries (listed in French alphabetical order) in this group : FEDERAL GERMANY, BRAZIL, CENTRAL AFRICAN REPUBLIC, CHINA, KOREA, DENMARK, ECUADOR, SPAIN, INDONESIA, IRAN, LIBYA, UNITED ARAB REPUBLIC (EGYPT), VENEZUELA.

The countries in this group have legal structures and systems which are sometimes very different and are grouped together here solely as a result of the application of the two criteria we have followed (cf. Introduction).

FEDERAL GERMANY :

- Police powers of detention ("arrestation provisoire") :

In Federal Germany "arrestation provisoire" (vorläufige Festnahme, provisional arrest) is a measure which applies in cases involving an offence punishable by law.

Any police officer can order and carry out an "arrestation provisoire" in cases covered by the Code of Criminal Procedure (Articles 127-I, 127-II, 164), by the law governing "infractions au règlement" (offences against the regulations) which came into force on 1st October 1968, and by the various provisions of maritime and aviation laws, etc.

- Conditions for detaining a person :

An "arrestation provisoire" can be made in the case of all categories of offences against criminal law and against the "règlement". However, there are certain restrictions for cases involving minor offences.

Under Article 127-I of the Code of Criminal Procedure, any private citizen - and therefore any police officer - is empowered to arrest a person if he is caught while committing, or just after committing, an offence, if there is a risk that he will escape or if he cannot be identified immediately.

Article 127-II gives the police officer a special power of arrest in cases of emergency, if the person concerned is strongly suspected of having committed an offence and if there are reasons to arrest him (likelihood of his escaping or interfering with the evidence).

Under the law on the "infractions au règlement", the police can arrest a person who has committed not an offence against criminal law, but merely an "infraction au règlement" (punishable by an administrative fine) when the identity of the person cannot be established immediately.

A witness cannot be detained or held for questioning.

Under the Code of Criminal Procedure, a person cannot be held for questioning as a preventive measure.

#### - Physical Conditions of Detention :

A person who has been provisionally arrested by the police for an offence, must be brought before the competent magistrate without any unreasonable delay, and at the latest the day following his arrest, unless he is released by the police.

If the person concerned has no permanent place of residence and if there is an arrest warrant for him only because of the risk that he might escape, the police can (Article 127 of the Code of Criminal Procedure) decide not to order or continue his detention provided that the act committed is not punishable by a sentence involving deprivation of freedom and that the person pays an appropriate sum as bail.

Detention can be carried out on any premises, but the person is only placed in a cell if police objectives cannot otherwise be achieved.

Premises used for police detention comply with standards of security, comfort and hygiene. Precautions are taken to avoid detained persons committing suicide or wounding themselves. They are searched at the outset and persons of different sexes are detained separately.

#### - Rights of detained persons and safeguards for these rights :

The rights of persons kept under "arrestation provisoire" include :

- the right to know the reason for the detention ;
- the right to notify their family and a lawyer ;
- the right to be fed and to be examined by a doctor at any time.

Checks are carried out by senior police officers, by the "Ministère Public" (Public Prosecutor) and by the courts.

#### - Consequences of breaking the regulations :

Any faults committed by police officers can lead to disciplinary action being taken against them and possibly criminal proceedings in cases of unlawful imprisonment or assault.

Also, a civil action can be taken to obtain damages, which are payable by the police officer or official responsible.

#### - Miscellaneous :

It should be noted that in Federal Germany, the police have the power to keep a person "en dépôt" ("Verwahrung" or "Gewahrsam", i.e. in custody) in the interests of public safety or order. This measure is taken - in application of the administrative police law in each State - without it being necessary for an offence against criminal law to have been committed.

The following are examples of such laws :

- the Police Law for Baden-Württemberg (1955) ;
- the Bavarian Law on Police Activities (1955) ;
- the Prussian Police Administrative Law (1931) ;
- the Hamburg Law on safety and order (1966) ;
- the Hessian Law on public safety and order (1964).
- etc.

A police officer on active duty, with local competence, can only order someone to be kept "en dépôt" provided that this is in the public interest - for example, to protect a person or to prevent him from committing suicide, to suppress or prevent any disturbance to public safety and order, to prevent or suppress a punishable act or one which, while not punishable, is forbidden under constitutional law, etc. Within the framework of this legislation of public order and safety, no witness can be held for questioning and the concept of "suspect" does not exist. A "dépôt" measure can be ordered with regard to the mentally unfit and drug addicts.

As soon as the reason for keeping a person "en dépôt" no longer exists or when police objectives are attained, the person is released immediately or in any case no later than the end of the following day.

Physical conditions of detention are the same as in the case of an "arrestation provisoire". The detained person's rights are the same as those mentioned above. Checks are made by senior police officers.

However the regulations governing the "dépôt" are not absolutely identical in all the States (Länder) of Federal Germany, or even within the various districts of each State.

BRAZIL :- Police powers of detention :

Under the extremely strict rules of Brazilian Law, the police cannot arrest and detain a person. However, certain jurists feel that by virtue of their statutory powers the police have the right to apprehend a person and submit him to a period of detention which is considered to be a security measure as covered by Article 351 in fine of the Criminal Code.

- Conditions for detaining a person :

Only those offences covered by the Criminal Code and which may result in the detained person's being released on bail ("crimes afiançáveis") can give rise to apprehension and detention which are ordered by certain police authorities: "Dologados", "Inspetores", "Comissários de Polícia".

The police may detain suspects for a reasonable length of time - which must never exceed 24 hours - in order to question them and carry out enquiries.

Minors are immediately brought before the competent legal authorities.

- Physical Conditions of Detention :

The period of detention never exceeds the legal one of 24 hours, whether or not the offence is flagrant. If it is established that the offender is guilty and if notification of the reason for the arrest is made within 24 hours, the detention period can be extended until a legal decision intervenes; the detention must be reported to the competent magistrate and the detained person is handed over to him.

From the police point of view, the detention period begins from the moment when the police officer asks the person concerned to accompany him to the police station. From the legal authorities' point of view, it begins from the time of notification of the reason for the arrest.

When a person is arrested while committing a crime and the magistrate is informed, the detention ends on the magistrate's decision. In cases where there is no further justification to detain the person, he is released. This also applies to for which bail may be granted, once the bail has been paid.

Premises used for detention are prisons and detention centres. When the detained person cannot be transferred immediately to the appropriate detention centre, he is put in a cell.

The various places of detention conform to rules of security, hygiene and comfort. Promiscuity is avoided between persons of different sexes and age. Detained persons are searched to prevent them committing suicide or injuring themselves.

- Rights of detained persons and safeguards for those rights :

Detained persons have several rights; they have the right to apply for a writ of Habeas Corpus.

They are informed of their rights at the beginning of the detention period.

Checks are carried out by the government authorities under the direction of the Ministry of Justice. Places of detention are inspected.

- Consequences of breaking the regulations:

Any abuse or non-respect of the detention regulations can lead to disciplinary action or criminal proceedings being taken against the officer responsible. He can also be sentenced to pay the victim damages.

- Miscellaneous :

Plans are now in hand to modify the Criminal Code, the Code of Criminal Procedure and the Penitentiary Code, which should make the provisions in force more satisfactory.

CENTRAL AFRICAN REPUBLIC :- Police powers of detention prior to arrest ("gardo à vue") :

In the Central African Republic, Articles 35A and B and 40C of the Code of Criminal Procedure define the powers and duties of the police with respect to the "gardo à vue" (1).

- Conditions for detaining a person prior to arrest :

All "crimes" and "délits" can give rise to temporary police detention. This can be used in cases of enquiries into a flagrant offence or in the case of an "enquête préliminaire".

In addition, it is customary - in the interests of security - for the police to detain a person to prevent him committing a serious offence when there is reason to believe that he is about to commit such an offence.

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(1) This type of "gardo à vue" is comparable to that studied for the countries in Group I but differs in that it is not applicable to witnesses.

Only "officiers de police judiciaire" are empowered to order a "garde à vue" for persons suspected of having taken part in an offence. The Code of Criminal Procedure does not allow the "garde à vue" of witnesses. There is no special provision covering the case of minors who commit a "crime" or "délit".

- Physical Conditions of Detention :

The normal period of the "garde à vue" is 48 hours, whatever the nature of the offence. But when this measure is ordered outside the place of residence of a magistrate of the "Ministère public", this period can be extended (Article 35B of the Code of Criminal Procedure). But wherever the "garde à vue" takes place, it can be extended to 8 days on the orders of a magistrate of the "Ministère Public" in cases of "crime" or flagrant "délit".

The "garde à vue" begins from the moment when the person responsible for a "crime" or "délit" is apprehended, or from the beginning of a suspect's interrogation.

It ends when the stipulated period has expired or when the detained person is handed over to the "Procureur de la République".

Police detention takes place at police stations, "gendarmerie" stations or other places ("Préfectures", town halls, etc.).

Clean, well-ventilated cells, specially equipped to prevent escapes, are used for detained persons who, in view of the distance involved, are in the process of being brought before a magistrate. The detained person is searched at the outset.

Promiscuity between persons of different sexes and between minors and adults is avoided.

- Rights of persons detained prior to arrest and safeguards for these rights :

The fundamental rights are generally accorded the detained person, provided that they do not hamper enquiries : he can be informed of the reason for the "garde à vue", have his family notified, receive food at his own expense, be examined by a doctor if he so requests.

The legal authorities carry out checks from the notes in the "garde à vue" register, the report of enquiries and the "procès-verbaux". These checks cover the treatment received by the detained person, the respect of his rights, the length of the "garde à vue", the absence of cruelty, medical examination.

- Consequences of breaking the regulations :

Any non-respect or abuse of the regulations does not lead to the case being dismissed, but disciplinary action may be taken against the "officier de police judiciaire" responsible. When a victim is awarded damages these are paid by the police officer personally responsible.

CHINA :

- Police powers of detention :

Article 8 of the Constitution and Article 229 of the Code of Criminal Procedure stipulate that the police have the power to detain a person without a warrant.

- Conditions for detaining a person :

The following may be detained without a warrant :

(1) Any person : caught committing an offence; chased by members of the public ; found in possession of weapons or property ; showing traces which give cause to suspect him.

(2) Any person strongly suspected of having committed an offence; who has no fixed place of residence ; who has absconded or who might abscond ; who may interfere with the evidence and/or get in touch with an accomplice or witness ; who has committed an offence punishable by at least 5 years' imprisonment ; who is the subject of a wanted circular ; who is denounced as an accomplice by a person arrested for a flagrant military offence.

Persons competent to order police detention are all those who act as "judicial police officers" and assist the "Public Prosecutor" : a county magistrate or mayor, the head of a police department, commissioner of police, commissioner of public safety, a military police officer, customs officer, etc.

"Suspect" is taken to mean a person caught while committing an offence or involved in an associated case, or a person who is the subject of investigation.

A witness cannot be detained, but a minor suspect can be detained.

- Physical Conditions of Detention :

The normal period of police detention is 24 hours and this can never vary. It is calculated from the moment when the suspect arrives at the police station and is deprived of his freedom of action. The detention period ends when there appears to be no further reason for detaining the suspect or when he is released on bail or taken before the Public Prosecutor.

If necessary, the suspect may be put in a cell, which fulfils conditions of security, hygiene and comfort. He has the right to receive food, medical attention and visitors. Precautions are taken to prevent a detained person from committing suicide or injuring himself. Men, women and children are detained separately.



- Rights of detained persons and safeguards for those rights :

A detained person has the right to know the reason for his detention, to have his family informed, to notify a lawyer and be visited by him, to contact other persons and even to appear before a magistrate, if he so requests, to contest the legality of his detention.

The detained person is informed of his rights.

His treatment conforms to the Minimum Rules drawn up under the auspices of the United Nations.

Checks can be made at any time by senior police officials, inspectors or public prosecutors, notably on the reason for and length of the "garde à vue" and the health of the detained person.

- Consequences of breaking the regulations :

Any non-respect or abuse of the regulations can lead to the case being dismissed, criminal proceedings being taken against the officer responsible, and the award of damages to the victim, paid by the government.

- Miscellaneous :

Article 8 of the Constitution of the Republic of China allows any person who is illegally detained, or any person whatsoever, to apply to the competent Court for an order to be made within 24 hours to have himself or the person concerned brought before a court (writ of Habeas Corpus).

KOREA :

- Police powers of detention :

In Korea, the police have the right to temporarily detain a suspected person, in accordance with the provisions of the Code of Criminal Procedure (Articles 206 and 207), the Regulations on Judicial Police Officers' Duties (Article 24) and the Standard of Criminal Investigation (Articles 126-128).

- Conditions for detaining a person prior to arrest :

The following persons may be detained by a judicial police officer :

(1) Any persons caught while committing an offence. However, if the flagrant offence is only punishable by a fine not exceeding 4,500 won (approximately US \$20) or by a term of detention, the offender can only be detained by the police if he has no fixed place of residence.

(2) Any persons considered "quasi-flagrant offenders", i.e. suspected persons who are chased by the public after an offence has been committed, or found in possession of suspicious articles, or who bear obvious traces of a crime or who try to escape.

(3) Any persons who are suspected, with valid reason, of having committed an offence punishable by a term of imprisonment of 3 years and over, if they are likely to interfere with the evidence or if they try to escape or are likely to escape and if, in addition - in view of the urgency of the matter - a warrant of arrest cannot first be obtained from a magistrate.

Judicial police officers of and above the rank of Police Lieutenant and certain officials of various authorities (Immigration, Customs, Narcotic Drugs, etc.) are empowered to order the detention.

Only adult suspects can be detained by the police.

- Physical Conditions of Detention :

The judicial police officer must obtain an arrest warrant within 48 hours of the start of the detention period when he is in a place where there is a magistrate of a district court, or within 72 hours when there is no such magistrate. If this is impossible, he must release the detained person immediately.

In the case of serious offences - committed or likely to be committed - listed in Article 11 of the Report on Investigation (offences connected with disturbances of a domestic or international nature, offences involving public order, currency, taxes, arson, murder, etc.), the judicial police officer must report immediately to the competent Chief Prosecutor.

The police can decide to release a suspect who is not likely to try to escape or interfere with the evidence.

Suspects are kept in detention rooms or cells which fulfil the necessary conditions of security, hygiene and comfort.

- Rights of persons detained prior to arrest and safeguards for these rights :

The detained person has the right to be informed of the reason for his detention, to notify his family, to be visited by a lawyer, to obtain food and even to request a court hearing to challenge the legality of his detention.

Checks are made by the competent Public Prosecutors and are based on the statements of the detained persons and on the documents which have to be made out by the police (for example, the "writ of urgent detention").

- Consequences of breaking the regulations :

Any non-respect or abuse of the regulations may lead to the case being dismissed or disciplinary action being taken against the police officer responsible.

- Miscellaneous :

Victims of unlawful detention should have the right to claim civil damages, which is not the case at present.

DENMARK :- Police powers of detention :

In principle, any decision about arrest must be made by the courts at the request of the police. However, the police are empowered to make arrests in certain cases (Chapter 71, Sections 771 and 774 of the Danish Administration of Justice Act).

- Conditions for detaining a person :

If there is reason to fear that the purpose of the operation will not be achieved by waiting for an arrest warrant, the police are empowered to arrest :

(1) Any person caught while committing a punishable act.

(2) Any person suspected of having committed an act subject to public prosecution, when he is without visible means of support or a fixed place of residence, or when there is some doubt about the identity or address he gives.

(3) Any person suspected of having committed an act punishable by imprisonment.

In addition, the police are empowered to make arrests in cases of offences against the State, murder or grievous bodily harm in which several persons have participated in rather obscure circumstances.

The police are only empowered to make arrests when it is considered necessary to ensure the temporary presence of a suspect during the time required for enquiries to be made - which must not exceed 24 hours - after which the suspect is either released or brought before a magistrate.

If the police have reliable information that a person intends to commit a crime, they must prevent the crime being committed, if necessary by detaining him under the provisions of the Penal Code.

All police officers are empowered to make arrests ; in addition, all private citizens have the same right with regard to persons caught while committing an offence : they must hand such persons over to the police immediately.

A witness cannot be obliged to report to the police or make a statement and he cannot be arrested if he refuses to do either.

For offenders under 15 years of age, the appropriate measures are taken by the child welfare authorities.

- Physical Conditions of Detention :

An arrested person must either be brought before a magistrate within 24 hours of his arrest or be released by the police before the end of this period.

The magistrate can extend the detention period up to 3 times 24 hours, if the investigations so require.

The detention period begins from the exact moment the police arrest the person concerned.

There are no cells as such. Sometimes, while waiting to be brought before the magistrate (within 24 hours), a detained person accused of an offence punishable by imprisonment is taken to prison.

In premises used for police detention, minors under 18 years of age are kept apart from adults, as are men from women. Precautions are taken to avoid detained persons escaping or injuring themselves.

- Rights of detained persons and safeguards for these rights :

The arrested person must be brought before a magistrate within 24 hours, unless released. His lawyer can be present during police interrogations. He is informed of the reasons for his arrest and of his rights. His family is notified. He has the right to be examined by a doctor and is informed that he is not obliged to make a statement to the police.

The courts carry out checks. Any complaints against the police can be made to the courts, the Ministry of Justice or, as a last resort, the Ombudsman (Parliamentary Commissioner).

- Consequences of breaking the regulations :

In serious cases of abuse or non-respect of the regulations a police officer can be charged with violating the relevant regulations of the Danish Penal Code. Any civil damages are paid by the State.

ECUADOR :- Police powers of detention :

The police can order the "preventivo" or provisional detention of a person who has committed an offence.

A distinction is made between the ordinary "delitos" and "contravenciones" under the Criminal Code and those under the Road Traffic Regulations.

"Delitos" include :

- those offences which are tried automatically ; these are sub-divided into "delitos" punishable by "reclusión" for which arrest and detention are compulsory, and "delitos" punishable only by "prisión" for which the offender can be released on bail ;

- those which can be tried on private action (acción particular) for which arrest only takes place in execution of a conviction pronounced by a magistrate.

In general, arrest and detention are only ordered if there are strong grounds for believing that a person has committed a criminal offence punishable by imprisonment (Article 150 of the Code of Criminal procedure).

There are two kinds of "detención" :

- "detención" ordered by the examining magistrate or resulting from a court sentence ;
- "detención preventiva" decided by the police.

- Conditions for detaining a person :

A person who drives a vehicle without the necessary papers or who drives while drunk can be detained in order to be brought before the competent authorities.

In the case of ordinary "contravenciones" against the Criminal Code or of minor traffic offences, the police can either arrest the offender and hand him over to the competent authorities or serve him with a summons.

When the police arrest someone responsible for a flagrant "delito" or when enquiries by the S.I.C. (i.e. Criminal Investigation Service) lead to the arrest of a person responsible for an offence, the person concerned is handed over to the competent magistrate.

It is possible to detain a person in order to prevent him committing a "delito".

The Police Examining Magistrates, i.e. the "Intendentes" and "Subintendentes", the "Comisarios" and "Tenientes Políticos", can order a "detención". Officers of the S.I.C. also have this power when acting within their respective jurisdictions on the orders of the Chief of the S.I.C., and certain other officials.

Officials of the Customs and Fiscal Authorities, the Municipal Police and the Immigration Police can also arrest and detain persons in certain cases.

Only a magistrate is competent to order that a witness be detained.

Minors under 18 years of age who have committed a criminal offence are immediately handed over to the Juvenile Court.

- Physical Conditions of detention :

When the arrest is made for investigation purposes, the detention period cannot exceed 48 hours, during which time the police must carry out all necessary enquiries in order to hand the person concerned and the case file to the magistrate who is, or will be, in charge of the case.

The "detención" begins from the moment when the person is deprived of his freedom. It ends either on the decision of the authorities who ordered the detention (when there is insufficient evidence) or when the detained person is brought before a magistrate.

In some towns in Ecuador in the case of minor offences, the Chiefs of the Criminal Investigation Service can sometimes decide to release a detained person on bail. This also applies to cases of "contravenciones".

Detained persons are kept on police premises and sometimes in cells, which comply with regulations on security, hygiene and comfort.

The detained person is searched at the beginning of the detention period.

- Rights of detained persons and safeguards for these rights :

The arrested and detained person has certain rights. He is informed of the reason for his "detención". He can notify his family and receive visitors once the period during which he is kept incommunicado ("incomunicación") - maximum 24 hours - has elapsed. He can then be visited by his lawyer. He is provided with food. A doctor can be called in at any time to examine him. In order to obtain his release, two forms of Habeas Corpus are available : one is fixed by the Constitution (appeal to the Chairman of the Canton Council) ; the other is judicial.

The detained person is informed of his rights when he is first detained and then again when he makes his formal statement to the competent authorities.

The treatment given detained persons conforms to the United Nations "Minimum Rules".

"Inspectores" check that these rights are respected.

- Consequences of breaking the regulations :

Any irregularity with regard to "detención" can lead to various disciplinary measures being taken against the officer responsible and even prosecution. Also, civil damages can be awarded; these are paid by the officer responsible.

SPAIN :- Police powers of detention :

The Law of Criminal Procedure, the Law of Public Order, the Criminal Code and various other texts define the powers and duties of the police. They can detain a person when there are reasons to suspect that he has taken part in the commission of a "delito" or, as a preventive measure, when there is reason to believe that he is about to take part in a "delito".

- Conditions for detaining a person :

Only "delitos" can give rise to "detención" (deprivation of freedom by the police) but not "faltas", except in the case provided for in Article 495 of the Law of Criminal Procedure, i.e. when the person thought to be responsible for a "falta" has no known place of residence and cannot give satisfactory guarantees.

In addition, persons responsible for acts against public order can be apprehended by the police.

Article 490 of the Law of Criminal Procedure stipulates that anyone may apprehend :

- a person who attempts to commit a "delito" ;
- a person who is caught while committing a "delito" ;
- a person who has escaped from a prison before or while being transferred.

Article 492 compels the authorities or the police officer to arrest :

- any person mentioned in Article 490 above ;
- any person who is not charged, when the authorities or police officer have reasonable grounds to believe that he has taken part in a punishable act or "delito".

Chiefs of Police are empowered to order a "detención" or, in their absence, the "inspector" on duty, as are members of the staff of the fiscal Authorities ("vigilancia fiscal") and mayors.

A witness cannot be detained. A minor suspect of 16 years or under may be detained on condition that certain regulations are complied with : he must not be shut up, there must be no publicity, etc.

- Physical Conditions of Detention :

The maximum period of "detención" is 72 hours.

In principle, the period of "detención" starts from the moment when the police apprehend the person concerned, and ends either when he is released or when he is handed over to the legal authorities.

"Detención" can be carried out either on police premises or in the special wing of a prison. Cells are only used in special circumstances.

Normal conditions of security and hygiene are respected. Promiscuity between persons of different sexes and ages is avoided.

- Rights of detained persons and safeguards for these rights :

The rights of detained persons include the right to be informed of the reason for his "detención", the right to have his family notified, to contact a lawyer, to be examined by a doctor, to be visited by a minister of religion, provided that this does not in any way hamper the police enquiries or the "sumario" (judicial investigation).

The detained person is supposed to know of all these rights but he is reminded of them. However, he must be informed of his right to say nothing which might incriminate him.

Checks are made by the legal authorities. In addition, prisons are visited regularly by the examining magistrate, the president of the court or a magistrate.

- Consequences of breaking the regulations :

All police enquiries must be approved by the magistrate if they are to be legal.

In cases of non-respect or abuse of the regulations, disciplinary action can be taken against the police officer and the victim can be awarded civil damages to be paid by the State or the police officer responsible for serious negligence.

INDONESIA :- Police powers of detention :

In Indonesia, Law No 13 of 1961 on Principal Provisions of the State Police, the Code of Criminal Procedure and the Penal Code define the powers and duties of the police with regard to detention.

- Conditions for detaining a person :

Detention can be applied in cases of those offences punishable by a term of imprisonment of 5 years or more listed in Article 62 of the Code of Criminal Procedure, and the violation of certain articles of the Penal Code with regard to firearms, narcotic drugs, etc.

Under no circumstances can a person be detained as a preventive measure.

Persons empowered to order the detention of a suspect (adult or minor) are heads of local police stations of or above the rank of Police Lieutenant (Second Class), Public Prosecutors, Immigration and Customs officials.

A witness may not be detained by the police.

- Physical Conditions of Police Detention :

The normal period of detention is 24 hours. This can be extended :

- for 8 days by the police for summary procedures ;
- for 20 days by the police on a detention order, by 30 extra days by the Public Prosecutor and subsequently by further periods of 30 days by the magistrate, until the "preliminary interrogation" is finished.

After the 20-days period the police ask the Public Prosecutor for an extension of 30 days. If after these 50 days the "preliminary interrogation" is not completed, a new application for a 30-day extension is made by the police to the magistrate through the Public Prosecutor, and so on.

Of course the Public Prosecutor and/or the magistrate may refuse the police request for extension when they feel that the suspect should not be detained any longer.

The detention period begins from the moment when the suspect is placed on the detention premises. It ends when the investigator has no further reason to detain the person concerned. Release on bail can only be ordered by the magistrate. Detention takes place either in police office premises or in cells which comply with standards of security and hygiene. Precautions are taken to prevent detained persons committing suicide or injuring themselves. Men and women, adults and minors, are detained separately.

- Rights of detained persons and safeguards for those rights :

The detained person's rights are : the right to be informed of the reason for his detention, to have his family notified, to be visited by them and other persons, to obtain food, to request a medical examination twice a week.

The detained person is not informed of his rights. It is only during the trial that the magistrate reminds the person charged of his rights.

The magistrate checks that these rights are respected by examining the reason for the detention, its length etc. as noted in the police report

- Consequences of breaking the regulations :

Any non-respect or abuse of the regulations does not lead to the case being dismissed, but disciplinary action may be taken and civil damages awarded the victim; these are paid by the State.

- Miscellaneous :

The present legislation on police detention should be revised. A seminar on "The Indonesian National Laws" was held in December 1968.

IRAN :

- Police powers of detention :

Article 20 of the Criminal Procedure Code stipulates that the police must notify the Public Prosecutor as soon as they receive a report that a "treason" or "felony" has been committed.

In the case of less serious offences, the police simply have to report the results of their enquiries, to the Public Prosecutor in the case of a "misdemeanour" or to the Justice of the Peace in the case of a "minor offence".

The law does not expressly allow suspected persons to be detained without a warrant issued by a magistrate.

However, the Criminal Procedure Code orders the police to "do everything necessary to prevent the disappearance of evidence of a "crime" and the escape of the suspect (Criminal Procedure Code, Military Government Act and Jurisprudence.)

- Conditions for detaining a person :

Under this system, the police may detain a suspect for 24 hours -- without having to arrest him previously and without a magistrate's authorisation in all cases of flagrant and associated offences. A witness cannot be detained or held for questioning.

The power of detention can also be exercised as a preventive measure, where there are strong reasons for believing that a person is about to commit a serious offence.

Commissioners of Police (i.e. heads of police stations and their deputies) are empowered to detain a suspect.

Qualified members of the Customs Authorities, Railway Police, and the Navy are also empowered to detain persons within the framework of a criminal investigation.

- Physical Conditions of Detention :

The period of detention is 24 hours. An extension of this period is only possible on the orders of the Public Investigator. The detention period begins as soon as the suspect is taken into custody by the police and ends when the suspect is released (if his innocence has been proved) or when he is brought before the Deputy Public Prosecutor, who then asks the Public Investigator to issue a warrant of arrest against him.

Except in the case of flagrant offences, the police are empowered to release a suspect on bail. Suspects are kept on police premises where there are special cells for this purpose.

There are two categories of cells : those where suspects are kept for a few hours only while awaiting the end of the enquiries ; and those which are reserved for persons suspected of having committed serious offences and who may well be charged. Only cells of the second category are equipped with security devices and sanitation. Detained persons are kept under constant surveillance and persons of different sexes, and adults and minors, are kept apart.

- Rights of detained persons and safeguards for those rights :

Under Principle 10 of the Constitutional Law, a person who is arrested must be informed immediately, or within 24 hours at the latest, of the offence with which he is charged.

The detained person has the right to be visited by a lawyer. He is given food. At his request, he can be examined at any time by a doctor.

He has the right to challenge the legality of his detention before a magistrate.

The treatment he receives conforms to the United Nations "Standard Minimum Rules for the Treatment of Prisoners".

Checks to ensure that the rights of detained persons are respected are carried out by the Deputies of the Public Prosecutor and by the Police Inspection General Office and the Imperial Inspection Organisation. A register is kept for this purpose on all premises used for detention.

- Consequences of breaking the regulations :

Any non-respect or abuse of the regulations with regard to detention can lead to disciplinary action - and even prosecution - against the police officer responsible. The victim can also be awarded damages by instituting a civil action against the police officer.

- Miscellaneous :

A Draft Law establishing a new organisation for the criminal police will shortly be submitted to Parliament. The aim of this Law is to ensure a better balance between the respect of individual freedom and the requirements of law enforcement.

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LIBYA :

- Police powers of detention :

The Code of Criminal Procedure (notably Article 24) empowers the police in certain cases to detain a person who has been apprehended and who is liable to be charged.

- Conditions for detaining a person :

The police may detain any person :

- (a) suspected of having committed a "crime" ;
- (b) caught while committing an offence punishable by a term of imprisonment of more than 3 months ;
- (c) suspected of having committed a "misdemeanour" and without a fixed place of residence and under police surveillance ;
- (d) suspected of having committed a theft, a fraud, serious assault, resisting a public official with force, or being engaged in traffic in women and children or in drugs.

Any police officer of and above the rank of "sergoant" can order a suspect to be detained. Police detention can be applied in cases of flagrant offences and where there is a danger that a crime is about to be committed.

In addition to the police, members of the Customs Authorities, the Municipal Guards and the Immigration Authorities have the power to detain persons.

The term "suspect" is not defined. Under a special law (the Flagrancy and Suspects Law) it is also taken to mean an habitual offender or someone already known to the police).

- Physical Conditions of Detention :

The detention period cannot exceed 48 hours. At the end of this period the detained person must either be brought before the magistrate in charge of the "prosecution" or released.

Detention ends when the suspect proves his innocence or when the magistrate in charge of the "prosecution" issues an arrest warrant against him.

Detained persons are kept on police premises. Cells are equipped with security devices. Precautions are taken to prevent the detained persons escaping or committing suicide.

Persons of different sexes are kept apart from each other, as are adults and minors.



- Rights of detained persons and safeguards for these rights :

The detained person has the right to be informed of the reason for his detention and to be visited by a lawyer. Food is provided free of charge or, if he so requests, at his own expense. The detained person can ask to be examined by a doctor at any time during his detention. He is not informed of all his rights since everyone is supposed to know what they are. The treatment received by detained persons conforms with the principles laid down in the United Nations Declaration of Human Rights.

Checks to see that the detained person's rights are respected are carried out on the one hand by the Attorney General and his assistants and on the other hand by the magistrates.

- Consequences of breaking the regulations :

Any abuse of authority by a police officer is punished either by disciplinary action or by proceedings being taken against him ; the latter are only taken if this abuse constitutes an offence under Criminal Law. Any person who has suffered from unlawful detention can obtain civil damages, paid by the police officer responsible.

UNITED ARAB REPUBLIC (EGYPT):

- Police powers of detention ("provisional arrest"):

The police have the right, for the purposes of an investigation, to detain suspects who have not been charged and for whom no arrest warrant has been issued by a magistrate. (Egyptian Law n° 98 of 1945).

This detention is called "provisional arrest".

- Conditions for detaining a person :

Police officers are empowered to order the "provisional arrest" of a person suspected of having participated in a crime or offence, whether flagrant or not.

However, they cannot provisionally arrest someone as a preventive measure.

Persons empowered to order the provisional arrest of a suspect are judicial police officers (Article 23 of the Law of Criminal Procedure), magistrates, the Attorney General and his assistants.

Only adult suspects may be detained by the police.

- Physical Conditions of Detention :

The normal detention period is 24 hours ; during this time the police search for evidence and interrogate the suspect.

This can be extended by a further 24 hours by a member of the Public Prosecutor's Office (1) to allow the police to finish the enquiries being carried out or to continue the investigation into a serious offence.

At the end of the police detention the suspect is brought before one of the members of the Public Prosecutor's Office, who can decide either to detain the suspect provisionally or to release him.

The police are not empowered to decide whether a provisionally arrested person shall be released on bail.

Suspects cannot be placed in cells.

During police detention, precautions are taken to prevent the detained persons committing suicide or injuring themselves. They are searched at the outset. Persons of different ages are kept apart from each other.

- Rights of detained persons and safeguards for these rights :

The "provisionally arrested" person has the rights :

- to be informed of the reason for his arrest ;
- to have his family notified ;
- to contact a lawyer and be visited by him ;
- to contact other persons, if the investigation permits ;
- to obtain food free-of-charge ;
- to be examined by a doctor at any time, at his request ;
- to appear before a magistrate to challenge the legality of his detention and to apply for his release.

All detained persons are supposed to know about these rights. The treatment they receive conforms to the regulations governing the treatment of prisoners.

A check that the legal obligations are respected is carried out by the competent magistrate, by the Attorney General and his assistants and by the competent police officers. They are based on systematic inspections and police reports.

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(1) The Public Prosecutor's Office comprises the Attorney General, Advocates General, Public Prosecutors, and the Attorney General's assistants, etc. In the United Arab Republic the Public Prosecutor's Office controls criminal proceedings as well as the judicial investigation in criminal cases. (cf. "Le rôle des organes de poursuite dans le procès pénal en Egypte" by Prof. Raouf TBEID, in the "Revue internationale de droit pénal", n° 3-4 of 1964, pp. 41 et seq.)

- Consequences of breaking the regulations :

Any irregularities with regard to police detention do not lead to the case being dismissed, but can lead to disciplinary action being taken against the officer responsible.

VENEZUELA :

- Police powers of detention :

The criminal police can carry out the "provisional arrest" of a person for whom no arrest warrant has been issued by a magistrate when they consider that there is sufficient evidence against him indicating that he has committed a "delito de acción pública". Such an offence is the "delito" which is tried automatically without the complaint (acusación) of the victim being necessary.

The criminal police come under the authority of the examining magistrates. The police carry out enquiries into "delitos", have to identify and apprehend the presumed offenders and obtain the necessary evidence to apply the law.

As soon as a criminal police officer knows of a "delito de acción pública", he must report it to the magistrate, visit the scene of the crime, ensure that physical evidence found there is protected and seize any property connected with the commission of the "delito" (Article 75C of the Code of Criminal Procedure).

He takes the "declaración informativa" of the presumed offender (Article 75D).

He immediately gives the competent magistrate his reports, and any weapons or other objects seized ; the apprehended person is brought before the examining magistrate within the legal time-limit (Article 75H).

The main sources of the above are the Constitution, the Law, the Code of Criminal Procedure and Court Rulings.

- Conditions for detaining a person :

Offences which can give rise to "detención preventiva" are those considered under the Criminal Code to be "delitos de acción pública".

It should be noted that the procedure of the "investigación sumarial" can be instigated either automatically or on the complaint or accusation of any person (whether or not he is the victim concerned).

Apart from cases where it is ordered by the examining magistrate, detention is possible when a person is caught while committing a "delito"

punishable by imprisonment (Article 183 of the Code of Criminal Procedure). Article 184 specifies cases of flagrant "delito":

- an offence which is being, or has just been, committed ;
- an offence for which the offender is chased by the police, by the victim or by the general public ;
- an offence where the person is found to be carrying weapons, instruments or other objects which give reason to believe that he has committed the "delito".

Anyone arresting a person caught "in fraganti" must immediately hand him over to the nearest police authority or examining magistrate.

If a police officer is a direct witness of the commission of a "delito" or "contravención", he must immediately hand the arrested person to the competent "superior" (1).

As a preventive measure, the police can detain a person to prevent a "delito" being committed.

Heads of police and heads of division are competent to order police detention, also members of the Technical Corps of the Criminal Police, the Armed Forces and the Traffic Police.

There is no definition of the term "suspect". A suspect can be said to be someone against whom there is reasonable evidence of guilt.

A minor suspect can be detained, provided that the regulations covering minors are respected.

- Physical Conditions of Detention :

"Detención preventiva" can last for a maximum of 8 days. It begins from the moment when the detained person's name is recorded in the appropriate register and ends either when he is released (when there is insufficient evidence) or when he is brought before a court.

The law does not allow the police to release a detained person on bail.

Detained persons are kept in special detention premises, but are not kept in cells.

Conditions of security, hygiene and comfort are respected ; precautions are taken to prevent detained persons committing suicide or injuring themselves. Persons of different ages and different sexes are kept apart from each other.

(1) "Doctrina y acción del Cuerpo Técnico de Policía Judicial", by Rodolfo Plaza Marquez, p. 57.

- Rights of the detained person and safeguards for those rights :

The detained person has the right :

- to be informed of the reason for his "detención" ;
- to have his family or next-of-kin notified ;
- to contact a lawyer and be visited by him every day ;
- to be visited by other persons at certain times ;
- to receive food free-of-charge ;
- to be examined by a court doctor when the state of his health

requires it.

The detained person is informed of his rights when he is informed of the reason for his detention.

Checks are made by various departments, notably the "Inspectoria Nacional" Police Department. They can be made at any time. A register of detained persons is kept.

- Consequences of breaking the regulations :

In cases of non-respect or abuse of the regulations, a complaint can be made to an official of the Public Prosecutor's Office, and this can lead to the case being dismissed, to disciplinary action or proceedings being taken against the officer responsible and civil damages being awarded (paid by the officer concerned).

The Public Prosecutor's Office controls the activities of police officers and can instigate proceedings against the police officer.

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GROUP V

Countries where the police may temporarily detain a person but where the decision to detain someone must be reported to, or taken by, the legal authorities as soon as the person is apprehended by the police.

We have included three countries in this Group, which we have sub-divided into two categories :

- Category 1 : SWEDEN (the situation in this country differs from the other two in that a witness may be held for questioning by the police for a very limited period).
- Category 2 : ITALY, NETHERLANDS (in these two countries the police have no power to hold a witness for questioning).

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Category 1

Country (SWEDEN) where the police may temporarily detain a suspect provided that they immediately inform the magistrate who will subsequently decide whether the detention should be continued, and where a witness can only be held for questioning for a very limited period.

SWEDEN :- Police powers of detention :

The Swedish Code of Criminal Procedure defines the rules governing police powers of detention.

- Conditions for detaining a person :

The police may detain a person in several cases :

(a) if he is strongly suspected of having committed an offence punishable by 2 years' imprisonment or more ;

(b) if he is strongly suspected of having committed an offence punishable by a term of 12 months' imprisonment where it is feared that he will abscond or hamper enquiries or continue his criminal activities ;

(c) if he is strongly suspected of having committed a less serious offence, punishable by a term of imprisonment, when he has no fixed place of residence in Sweden and it is feared that he might abscond ;

(d) if he refuses to give his identity particulars and address or if he appears to have given false information about this or if it is feared that he will leave Sweden to escape trial ;

(e) if he is caught while committing, or is escaping after having committed, an offence punishable by a term of imprisonment ;

(f) also, as a preventive measure, the police may detain any person who has carried out any preparatory action for committing an offence, the preparatory stage of which is punishable, or to prevent him from committing an offence if this is the only means of preventing him.

Police officers of all ranks are empowered to order a person to be detained, as are Customs officials in cases of smuggling.

There is no definition of the term "suspect" but the Code of Criminal Procedure refers to the "suspected person", "strongly suspected" or "suspected on reasonable grounds".

It is the duty of a witness to go to the police station to be questioned and he can be held there for questioning for a period not exceeding six hours, even if he is a minor aged 15 and over.

A suspect or witness found at the scene of an offence is obliged to go to the police station or can be taken there for a maximum period of 6 hours. In cases of "special importance" for the enquiries and if the person concerned may be charged with the offence, this period can be extended to 12 hours in all.

- Physical Conditions of Detention :

As soon as a suspect is apprehended, the "procureur public" must be informed. He questions this person, or has him questioned by a police officer. Immediately after the interrogation, the "procureur public" has to decide whether or not to release the suspect. If he decides not to release him, the next day at the latest (or in certain cases on the 5th day at the latest) he must ask the court to issue an arrest warrant against the person charged.

The detention period begins when the suspect arrives at the police station or from the time he is apprehended.

In Sweden, the police cannot release a suspect on bail.

A person suspected of having committed an offence cannot be put in a cell ; these are only used for arrested persons.

Those cells conform with the minimum standards of security, hygiene and comfort. Men and women are detained separately, as are adults and minors.

- Rights of detained persons and safeguards for those rights :

The suspect is informed of the grounds for suspicion which cause his detention. His family is notified ; he can receive visitors. He is informed of his right to contact a lawyer, who can be appointed by the court. He is fed. If he is ill, he has the right to be examined by a doctor. In principle, he has the right to ask for an interview with the "procureur" (but not with the magistrate) to challenge the reason for, or legality of, his detention.

The minimum rules drawn up by the United Nations are applicable to persons detained under the law of 25th April 1958.

The court checks to ensure that the preliminary enquiries conform to the rules in force. The official reports on enquiries and the registers of arrests are examined every three months by the district "procureur".

An appeal may be made to the "Procureur parlementaire près de l'Administration judiciaire et civile ("Justice ombudsman")".

- Consequences of breaking the regulations :

Any non-respect of the regulations by a police officer can lead to a new preliminary enquiry being ordered and disciplinary action against the officer (loss of salary, fine, imprisonment, etc.). The victim of unlawful detention for more than 24 hours can obtain a court order for damages, which are paid by the State which may then take action against the police officer responsible.

- Miscellaneous :

Certain laws covering specific fields (for example, the aliens' regulations) empower the police to detain persons in appropriate cases.

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Category 2

This category comprises two countries (ITALY, NETHERLANDS) where the police may detain a suspect - but not a witness - on condition that the legal authorities (after interrogation and confirmation of the police action in apprehending a person) permit - or, where appropriate, order - police detention.

In these two countries, the legal authorities must be informed of the suspect's apprehension as soon as possible, but when they have authorised or ordered police detention, this detention period can be extended for a fairly long time under the cover of a kind of "police detention order" issued by the magistrate.

ITALY :

- Police powers of detention :

In accordance with the Constitution of the Italian Republic (Article 13) and the Code of Criminal Procedure (Articles 235, 236, 238 and 253), the police are empowered to detain persons.

- Conditions for detaining persons :

Detention is provided for in two cases :

(1) when a person is caught committing an offence punishable by more than 3 years' imprisonment (here arrest is compulsory) or by more than 2 years' imprisonment (here arrest is optional) ;

(2) in the case of persons against whom there are "indicios graves (strong evidence) de délit ou de crime" ; here an order or "mandat de capture" has to be issued by a magistrate. As soon as the person is apprehended, the magistrate must be informed and he then immediately questions the detained person.

- If the magistrate ratifies the apprehension (after checking), he can, at the request of the police, extend the detention period to the 7th day. At the end of the 7th day, the person apprehended must be arrested on the order of the magistrate or released.

- If the magistrate does not ratify the apprehension, he immediately orders that the detained person be released.

It should be noted that police detention is not necessary in cases of flagrant offences. The police arrest the offender straightaway - since proof of his guilt lies in the fact that he was caught while committing the offence - and bring him before the legal authorities.

Police action can only be taken where an attempt to commit an offence is punishable; it may also take the form of a warning to the person "grevé d'indicos" to change his behaviour. Detention is ordered by "officier" and "agents" of the "police judiciaire". A witness cannot be held for questioning. Only a magistrate can get the police to order a witness to appear.

#### - Physical Conditions of Detention :

The detention period can be extended for up to 7 days, depending on the type of offence. No extension is possible, unless the detained person is a member of the Mafia or some associated gang (Anti-Mafia Law of 31st May 1965). In this case, the detention period can be extended until the 14th day even for those offences for which the "mandat de capture" is only optional.

A note about the measure taken is included in the official report drawn up by the police officer.

The person apprehended can be released in one of three ways :

(1) at the end of the 7th day, unless an arrest warrant is issued against him by the magistrate ;

(2) after his interrogation by the magistrate, when the apprehension is not ratified due to lack of evidence as to his guilt ;

(3) on the orders of the "officier" or "agent" of the "Police judiciaire", for the same reasons.

Release on bail is only provided for in those cases where the police officer has the choice, and not the obligation, of making an arrest.

Police detention can be carried out in any public or private premises, in police stations or the legal detention centre.

Measures are taken to prevent the apprehended person injuring himself and to ensure that he is detained on premises suitable to his sex and age.

#### - Rights of detained persons and safeguards for these rights :

Since the magistrate has to interrogate the person concerned as soon as he is apprehended, this constitutes sufficient security and legal safeguard.

The detained person has the right to be informed of the decision on the basis of which the magistrate ratifies or extends the detention imposed by the "police judiciaire". His family is notified. Once a lawyer has been appointed, he can be present at certain stages of the police

operations. Food is provided. A doctor can be called in if the police (or the magistrate) feel this is necessary.

#### - Consequences of breaking the regulations :

Any abuse of the stipulated obligations with regard to police detention can lead to disciplinary or criminal action being taken, or to civil damages being awarded; depending on the case, the latter are paid by the police officer responsible, or by the police officer and the State.

#### NETHERLANDS :

#### - Police powers of detention :

In the Netherlands, there is no "police judiciaire" (criminal investigation department). Police enquiries are directed by the "Procureur de la Reine", as are legal proceedings for punishable offences.

Police detention can only be applied to persons presumed to have committed "crimes" or "délits" who may be charged in accordance with the Code of Criminal Procedure.

A distinction is made between "rétention en vue d'interrogatoire" (holding for questioning) and "la mise sous détention policière" (placing under police detention).

#### - Conditions for detaining a person :

As soon as a police officer apprehends a suspect, he takes him to the police station and immediately brings him before a "Procureur de la Reine" or one of the "Procureurs auxiliaires de la Reine" : these include certain police officials (State or municipal) and officers of the Royal Mounted Constabulary (1).

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(1) This feature can be associated with that in Finland and Norway (Group III), but in the Netherlands it is only after the "Procureur auxiliaire" (or the "Procureur") "de la Reine" has himself interrogated the person apprehended that he can - in certain cases - order police detention.



A "Procureur auxiliaire de la Reine" or the "Procureur de la Reine" himself can - after interrogation - order the presumed offender (if aged over 12) to be kept under "détention policière" when this is in the interest of the enquiry or when a punishable offence is involved which can lead to detention while awaiting trial, whether or not the offence is flagrant.

However, it is not possible to put a person under "détention policière" to prevent him from committing a "délit".

When - whatever the type of "délit" committed - the presumed offender is to be "held" for interrogation, he can only be held by the police for 6 hours maximum (the hours between midnight and 9.0 a.m. are not counted); he is released immediately after his interrogation by the police if he is not put under "détention policière" or brought before the "juge commissaire".

The police may not detain a witness; a witness can only be placed under "détention policière" by a "juge commissaire" (and not by a "Procureur de la Reine").

The "juge commissaire" is appointed by the Court of Justice for 2 years; he directs the preliminary judicial investigation and is competent to issue a detention order for charged persons at the end of the police detention period.

Finally, it should be noted that any investigating police officer may stop a presumed offender and ask him for his name and address.

#### - Physical Conditions of Detention :

The machinery is as follows: the person apprehended by the police is immediately brought before a "Procureur" (or "Procureur auxiliaire") de la Reine", who decides - after interrogation - whether or not to order a "détention policière" of 2 days maximum (this can be extended by a further 2 days but only by the "Procureur de la Reine" himself). At the end of this detention period of 2 (or 4) days, the presumed offender is brought before the "juge commissaire" who, at the request of the "Procureur de la Reine", is empowered to issue a detention order, valid for a period of 6 days (renewable for 6 days). During this period, the "Procureur de la Reine" or the "Juge commissaire" - if a preliminary judicial investigation has been ordered - can allow the presumed offender to be questioned by the police.

In practice, the above-mentioned periods of police detention of 6 hours and 2 x 2 days are spent in a cell, police station or detention centre they begin when the presumed offender is transferred to the police station. The time between the moment when the suspect is apprehended and the moment when the police detention period begins can never exceed 6 hours.

Premises where detained persons are kept comply with normal standards of hygiene, security and comfort. Men and women, adults and minors, are detained separately; they receive food.

#### - Rights for detained persons and safeguards for those rights :

A copy of the police detention order is handed to the detained person. During the period of police detention, the lawyer has free access to the suspect, except in certain cases ordered by the "Juge commissaire" or the "Procureur", after a court decision.

Medical care is provided if necessary.

#### - Consequences of breaking the regulations :

Unlawful detention is punished by imprisonment.

An enquiry is ordered by the "Procureur général près la Cour de Justice" if a complaint is lodged by the detained person.

No provision is made for financial compensation to be paid.

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GROUP VI

Countries where the police may only temporarily detain a suspect by exercising their power of arrest without warrant and where they can, in principle, only hold a witness for questioning with his consent.

Any study of police powers to temporarily detain persons who have not been charged and for whom no warrant of arrest has been issued in these countries therefore becomes a study of the system of the power of arrest without warrant.

We have classified in this Group 15 countries including, in addition to the UNITED KINGDOM (ENGLAND), those whose systems have their origins in or were inspired by, the English Criminal Law and which are consequently influenced by this law to varying degrees.

The Group has been sub-divided into two categories :

- Category 1 : Countries where the police must formally arrest a suspect before they can temporarily detain him and where they can only hold a witness for questioning with his consent (the list of these 14 countries is given under Category 1) ;
- Category 2 : Country where, in principle, the police must formally arrest a suspect before detaining him, but where a witness can be held for questioning (UNITED STATES OF AMERICA).

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Category 1

Countries where the police must formally arrest a suspect before they can temporarily detain him and where they can only hold a witness for questioning with his consent.

In these countries police powers to detain persons who have not been charged and for whom no warrant of arrest has been issued by a magistrate are strictly governed by the necessity to first exercise their power of arrest without warrant. Any study of the powers given the police with regard to the detention of such persons therefore involves a study of the power of arrest without warrant.

A.- COUNTRIES INCLUDED IN THIS CATEGORY.

This category includes the following countries (listed in French alphabetical order);

NETHERLANDS ANTILLES, AUSTRALIA, CANADA, CEYLON, CYPRUS, ETHIOPIA, INDIA, ISRAEL, KENYA, NIGERIA, NEW ZEALAND, UNITED-KINGDOM, SIERRA LEONE, THAILAND.

As the above list shows, this category includes the United Kingdom, represented here by the system which has developed in England, and those countries which have adopted a system derived from the English model or at least influenced by its principles.

For a better understanding of the regulations in force in these countries, we felt it useful to describe the main features of the English system which is the prototype (particularly in its form prior to the Criminal Law Act of 1967), indicating where appropriate some of the points on which certain countries within this category have made modifications.

We shall begin by describing the "legal framework" of police powers of arrest without warrant ; we shall then examine the principles governing these powers and finally the conditions in which they can be exercised.

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B.- THE LEGAL FRAMEWORK.a) The system of private prosecution and the participation of the police in criminal proceedings (1).

Under English criminal law and most of the systems derived from it, any person can instigate a prosecution either by acting himself or through a counsel or solicitor. But in practice almost all criminal proceedings are conducted by the police.

In courts of summary jurisdiction, the police officer often conducts the case himself and examines the witnesses. In England, this practice is mainly confined to county districts. In large towns, the Police Departments usually entrust the prosecution to an officially appointed "prosecuting solicitor" or to a private solicitor.

In the higher criminal courts - the Quarter Sessions and Assizes - the police also use a prosecuting solicitor or barrister, who conducts the prosecution for them.

In particularly serious or important cases, and in those cases where the law expressly requires it, the prosecution is conducted by the Director of Public Prosecutions; he is appointed by the Home Secretary and acts under the supervision of the Attorney General.

This system has its equivalent in other countries of the same group although there are, of course, certain modifications of substance or form.

b) Fundamental classification of offences and the different types of criminal procedure and criminal courts.

English Criminal Law makes a distinction - in decreasing order of importance - between INDICTABLE OFFENCES (comprising three categories of offences: TREASON, FELONIES and MISDEMEANOURS) and SUMMARY OFFENCES.

In principle, this classification is based on the gravity of the offence but it should be noted that several felonies are of minor importance while several misdemeanours are very serious (2). Since the penalties applicable to the various offences belonging to a given group or category are not standard for that particular group or category as a whole, it is therefore not possible to define a group or category of offences according to the type and extent of the appropriate penalties.

(1) This section is based on the chapter "The prosecution" of "Civil and Criminal Procedure" by J.R. LEWIS (page 146). Published by Sweet and Maxwell, London 1968.

(2) "Police Powers", an article by Professor D.C. HOLLAND in "Current Legal Problems", Vol.20, 1967. Published by Stevens & Sons, London.

In fact, the essential distinction between offences is determined by the type of criminal procedure applicable and by the criminal court which deals with them.

An indictable offence is one where the offender is (with only a few exceptions) committed for trial to a higher criminal court with a jury (QUARTER SESSION, ASSIZES or CENTRAL CRIMINAL COURT, in England) by virtue of a written charge called an "INDICTMENT". The offender is committed after a PRELIMINARY INVESTIGATION carried out by a summary jurisdiction (MAGISTRATES' COURT), provided that this Court decides there is a prima facie case.

A summary offence is one which can be judged by a MAGISTRATES' COURT ON SUMMARY CONVICTION, i.e. no preliminary indictment or jury are necessary. In England the Magistrates' Courts are also known as PETTY SESSIONAL COURTS or COURTS OF SUMMARY JURISDICTION.

It should be noted that in England certain indictable offences can be judged by the Magistrates' Courts with the accused's consent. On the other hand, a person charged with a summary offence punishable by a term of more than 3 months' imprisonment can insist that the case be committed to a higher court with a jury.

The appropriate penalties for offences are laid down either in "Common Law" or in written law, i.e. "Statutes" or "Acts" which define certain types of offences (Homicide Act, Sexual Offenders Act, Theft Act, etc.), but the police officer cannot rely on the nature and seriousness of the penalty for a particular offence as a guide in determining those cases where he can make an arrest without warrant. The important point for a police officer subject to this type of system to know is whether or not the offence committed is indictable and, if so, if it is a felony, since his power of arrest without warrant is mainly applicable in such cases.

In England, this classification of offences governed the law regarding the power of arrest until 1967. It still applies in various countries which we have included in this group (Group VI), despite the obvious difficulties it presents, notably for the police (1). Also, some of the countries whose systems are derived from the English system, have made certain modifications to the model in order to simplify the task of those who are most directly concerned with applying the regulations (2). Ceylon, India and Kenya in particular have termed certain offences "cognizable". These cognizable offences are serious offences duly defined by law, the commission of which empowers the police officer to arrest the

(1) This is why we have described the main lines of the system in England prior to the coming-into force of the 1967 Criminal Law Act.

(2) Professor Glanville Williams deplored the complexity of the system in England prior to the 1967 Criminal Law Act and in 1959 wrote: "This is such a vast, illogical law that it has no place in the mind of any human being, nor even in a constable's notebook". ("Introduction au Droit Criminol de l'Angleterre". Institut de Droit comparé de l'Université de Paris, page 186. Editions de l'Épargne, Paris).

offender or suspect without an arrest warrant issued by a magistrate (see CEYLON, INDIA, KENYA below).

In England itself, the Criminal Law Act of 1967 attempted to clarify the situation, and as a result a new criterion was applied to designate a certain number of offences called "arrestable offences" which, when committed, can justify the exercise of the power of arrest without a warrant issued by a magistrate. At the same time the Criminal Law Act of 1967 abolished the distinction between felonies and misdemeanours.

Arrestable offences are not now offences. They are offences for which the law has fixed the penalty (for example, treason, murder) and those which are punishable by terms of more than 5 years' imprisonment by virtue of a statute. Attempts to commit these offences are also subject to this same power of arrest (1).

As a result of the new system created by the Criminal Law Act of 1967, from now on the police officer, instead of having to distinguish between a felony and a misdemeanour, has to know what penalties are applicable to various offences in order to determine which are arrestable.

However, in England, the constable without an arrest warrant can still arrest someone for several other offences not considered arrestable offences. He can do this whenever the Common Law or a Statute expressly give him the power to do so with regard to a given offence. This characteristic means that, even after being somewhat simplified by the Criminal Law Act of 1967, the system still remains rather complex (see UNITED KINGDOM below).

#### C.- POWER OF ARREST WITHOUT WARRANT.

The power of arrest without warrant is subject to different conditions, depending on whether it is exercised by a private citizen or by a police constable.

##### a) The private citizen's power of arrest without warrant :

This system empowers the private citizen - in certain cases and under certain conditions - to arrest a person.

In England, before the Criminal Law Act of 1967, the private citizen without a warrant could arrest :

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(1) For further details, see the description of the English system under UNITED KINGDOM below.

- any person caught by the private citizen concerned while committing a treason, felony or a dangerous wounding ;

- any person whom he had reasonable grounds to suspect had committed one of the above-mentioned offences, provided that the offence had in fact been committed ;

- any person who had committed a breach of the peace (1) ;

- any person in the process of committing an indictable offence at night ;

- finally, any person caught by the private citizen himself committing one or more of the offences covered by about a dozen or so Acts (Vagrancy Act 1824, Section 6 ; Larceny Act 1916, Section 41-1 ; etc.).

In England, since the Criminal Law Act of 1967, the private citizen can arrest :

- any person who is in the process of committing, or whom he has reasonable grounds to suspect of being in the process of committing, an arrestable offence ;

- any person who is guilty, or whom he has reasonable grounds to suspect of being guilty, of an arrestable offence which has in fact been committed.

The private citizen must bring the arrested person before a police officer or Justice of the Peace as soon as possible.

The power of arrest granted a private citizen is of mainly theoretical value since if the private citizen acts - even in good faith - improperly, he can be held criminally responsible, notably in a case where a non-flagrant arrestable offence is concerned and it emerges that this offence has not in fact been committed.

##### b) The police constable's power of arrest without warrant :

The police constable's power of arrest without warrant is defined in relation to that given the private citizen : the constable has the same powers as the private citizen, with certain additional powers.

Any police officer with the rank of constable can, in certain cases and under certain conditions, effect an arrest without warrant.

(i) Cases : the offence concerned must be a serious one. In England,

(1) This type of offence is not defined in English law. They are offences of a public nature, i.e. endangering public order (cf. UNITED KINGDOM below).

before the Criminal Law Act of 1967, these offences were essentially felonies. Since 1967, the offence concerned must be an arrestable offence or one of the various offences in respect of which the Common Law or a Statute expressly gives the constable this power (cf. B/b The Legal Framework above). In various Commonwealth countries, the offence concerned has to be a cognizable offence.

(ii) Conditions : The constable must have reasonable cause (i.e. valid reasons based on reliable information and observation, to believe that the offence was committed by the person arrested. Mere suspicion is not enough.

(iii) The constable's additional power :

The constable has the same power given a private citizen, but in addition he can arrest without warrant any person whom he has reasonable cause to suspect of having committed a serious offence, even if the offence has not in fact been committed (in this case the arrest would be illegal if made by a private citizen). He also has the power to arrest any person whom he has reasonable cause to suspect of being about to commit a serious offence.

This combination of cases and conditions is found (with different variations) in those systems which are derived from the English system. Their main characteristic feature is the requirement that the police officer must act with reasonable cause, i.e. after having formed an opinion based on reasons which would be determining for any person of normal good sense.

c) Illegality of detention prior to arrest :

Another main characteristic of this system is that a person can only be detained if he has been arrested.

Detention prior to arrest is inconceivable. Any person responsible for this would be liable to prosecution for false imprisonment.

A constable cannot therefore detain a person with the intention of subsequently looking for the elements of suspicion likely to justify the exercise of his power of arrest without warrant at a later date.

This major principle, together with the appropriate penal punishment for its violation, is found in the systems related to the English prototype.

d) Impossibility of detaining or stopping a person to question him :

This principle arises out of the previous one, also from the constitutional right to say nothing.

Even if a person's behaviour appears suspicious or if his description appears to correspond to that of someone who is wanted for a serious

offence, this prohibition still applies and the only solution is to arrest the person concerned. As long as a person has not been arrested he can refuse to accompany a police officer to the police station ; a police officer with no warrant of arrest or who has not told a person that he was arresting him cannot stop this person. If the constable persists, asking him his name and address or other questions, the questioned person has the right to ask the police officer if he is in fact arresting him ; he can even demand to be arrested. In fact, if the arrest is illegal, the arrested person has the right to institute criminal proceedings against the constable for false imprisonment.

However, the police officer can get round this difficulty by asking the person concerned to accompany him to the police station "to help the police in their enquiries". But here too, the person can refuse unless the police officer arrests him or can enforce a special provision in law which compels the person to provide the information requested.

Another legal procedure that the police can use to overcome the difficulty is to arrest the suspect on a minor charge, with a view to making subsequent enquiries in respect of a more serious offence (1).

In the English system this raises rather delicate problems, notably in establishing if the invitation made by the constable to accompany him to the police station had any degree of coercion - whether it was simply a request, allowing the person concerned a completely free choice, or a command. Certain jurists have felt that if the suspect no longer has the faculty of choice and feels himself forced to comply with the request, there is illegal detention since the interference with the detained person's freedom of action has not been preceded by a specific arrest (2).

Other jurists have called for the police to be given the right to stop or hold persons for questioning for a limited period (2 hours) "for the reasonable requirements of the enquiries" (3).

Similar provisions and situations exist in the other systems in this group.

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(1) HARRIS'S CRIMINAL LAW. 21st Edition. 1968. page 574. Published by Sweet & Maxwell, London.

(2) Cf. Professor Glanville WILLIAMS, "Police Detention and Arrest Privileges in England". The Journal of Criminal Law, Criminology and Police Sciences Vol. 51, N° 4, 1960. page 414.

(3) Professor D.C. HOLLAND "Police Powers and the Citizen". Current Legal Problems. Vol. 20, 1967, page 116. Stevens & Sons, London.

- c) The constable's legal obligations when making an arrest without a warrant and the rights conferred by law on persons arrested in those circumstances.

In the English system and in the systems of those countries with related legislation, Common Law and written law lay down a body of extremely strict regulations which the constable must observe when making an arrest without warrant. These regulations constitute safeguards for the person arrested on police initiative, i.e. without a warrant issued by a magistrate. These regulations can be summarised as follows:

- The arrested person must be informed immediately of the reason for his arrest:

In normal circumstances this must be done on-the-spot. The constable has no right not to impart the reason or to give a false reason (1). If the person arrested is not given this information, the constable (or the private citizen making the arrest, can be prosecuted for false imprisonment. However, this notification is not necessary when the circumstances of the arrest are such that the person arrested cannot be unaware of the reason for it (for example, someone arrested for a flagrant offence).

In practice, the constable always notifies the arrested person of the reason for his arrest in order to avoid any possible prosecution for false imprisonment. All the textbooks advise him to do this whenever he can. (2).

The constable does not have to use any technical, specific terms. The main thing is that the arrested person should understand why he has been arrested.

- The arrested person must be taken to the police station as soon as possible:

When a constable has arrested someone (with or without a warrant), or when he has taken into custody a person legally arrested by a private citizen, he must take that person to a police station as soon as is reasonable. The arrested person is then taken into the custody of the station officer and recorded by him after he has satisfied himself about the reason for the arrest. From that moment the arrested person is retained in custody.

(1) HARRIS'S CRIMINAL LAW. 1968, page 575.

(2) F. CALVERT. "The Constable's Pocket Guide to Powers of Arrest and Charges", page 1. BUTTERWORTHS. London 1968.

- The arrested person must be formally charged as soon as possible but within a time-limit compatible with the needs of the enquiry:

After his arrival at the police station, the person arrested without a warrant must, if applicable, be formally charged by the police as soon as the investigating officer(s) have assembled sufficient evidence against him. Since 1954 the practice in England has been to hand the person who has just been charged written notification of the charges made against him. (1)

- Compulsory formality Cautioning:

Before police interrogation begins and, if broken off, every time it starts again, the arrested person must be warned that he has the right to say nothing and that anything he does say will be put into writing and may be used in evidence. The written report of the interrogation must mention this warning (cautioning). In England these rules are called "Judge's rules" because they were drawn up by the judiciary.

- The person arrested must be brought before a magistrate:

The person arrested and charged by the police must be brought before a magistrate as soon as possible.

In England this rule has been interpreted as allowing the police to detain a suspect for a period of time which, in principle, should not exceed 24 hours (excluding Sundays and public holidays). This period is calculated from the moment when the arrested person is taken into custody by the police station officer.

In certain countries (for example, India and Ceylon), the Codes of Criminal Procedure fix the period during which the police may detain the arrested person at 24 hours. (2) In other countries in this group the period is 48 hours (ETHIOPIA, ISRAEL).

- Release on bail by the police:

The arrested person can be released on bail by the police in certain cases. In this case, the arrested person must undertake to pay a certain sum to the court should he not report when ordered to do so.

In England, the police can release a detained person on bail in the following cases:

(1) Professor Glanville WILLIAMS. Introduction to Criminal Law in England. page 187.

(2) However, in India, when it is not possible to complete police enquiries within 24 hours, the magistrate can sometimes authorise the police to detain the arrested person for a period which cannot exceed 15 days maximum (cf. Group VI).



(i) When the offence is not considered a serious one and when there is no practical possibility of bringing the arrested person before a magistrate within 24 hours (for example, because the court does not sit on that particular day).

(ii) When more detailed enquiries prove necessary in order to charge the arrested person and end the enquiry.

However, when the arrested person is charged with a serious offence, only a magistrate can decide whether or not he should be released on bail or remanded in custody.

#### NETHERLANDS ANTILLES.

##### - Police powers of detention :

The police can only detain a person after first arresting him, provided that he is suspected of having committed a criminal offence or if an arrest warrant has been issued against him (Articles 32-35, 37 and 41 of the Criminal Code).

##### - Conditions for detaining a person :

The police can arrest and detain a person without an arrest warrant :

(a) If that person is caught while committing an offence.

(b) In the case of a criminal offence punishable by a term of imprisonment of 4 years or more, or in the case of offences mentioned in Article 76 of the Code of Criminal Procedure.

Detention is allowed as a preventive measure when there is a danger that a person under the influence of alcohol may commit a serious criminal offence.

All police officers with the rank of sub-inspector and over have the power to arrest and detain, together with certain officials employed by the government who are empowered to act with regard to special offences.

Article 50 of the Criminal Code defines a suspect.

Under no circumstances can a witness be detained ; a minor suspect can be detained.

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##### - Physical Conditions of Detention :

The normal period of detention is 6 hours maximum. It begins at the moment the person concerned arrives at the place of interrogation. It ends when the suspect is brought before the prosecuting officer or one of his substitutes, who either releases him or issues a warrant.

Normally, the arrested person is kept in an interrogation room at the police station. Conditions of security and hygiene are respected. Precautions are taken to prevent the detained person committing suicide or injuring himself and to prevent promiscuity between persons of different sexes or ages.

##### - Rights of detained persons and safeguards for these rights :

The rights of a detained person include the right to be informed of the reason for his detention, to have his family informed, to consult a lawyer, to be fed and to be examined by a police doctor. But the detained person does not have the right to contact other persons or to appear before a magistrate during the period of interrogation. The detained person is immediately informed of his rights.

Checks are made by the court and police authorities.

All points are checked, particularly the length of the interrogation period (6 hours).

##### - Consequences of breaking the regulations :

Any non-respect or abuse of the regulations does not lead to the case being dismissed, but damages may be paid by the government which can take disciplinary action against the police officer responsible.

#### AUSTRALIA :

In none of the various States and Territories of Australia is there any statutory authority conferred on the police empowering them to detain a person prior to arrest.

The only exception to this appears to occur in some of the States where a person reasonably suspected of being under the influence of alcohol while driving a motor car may be detained long enough to give a sample of his breath for analysis. If the result of this is positive, the person is arrested.

Although the law does not provide for detention prior to arrest, it should be noted that in practice persons are detained for reasonable periods for questioning. This is voluntary detention, for if the suspect asks to be allowed to leave, the police officer concerned must either release him

or arrest and charge him.

In most States the police have the power to release a person on bail but only when the person concerned has already been arrested and charged.

A police officer who detains a person against his will, in circumstances which do not justify arrest, is liable to disciplinary action.

It is felt that the police should be empowered to detain a person prior to arrest during enquiries, since in the present legal situation a person who is the subject of investigation may leave the country to escape arrest, particularly if he already possesses a passport.

#### CANADA :

Under Canadian law there is no procedure whereby the police may detain prior to arrest. When a person is detained, he is in fact arrested.

The police are empowered to arrest without a warrant and to temporarily detain any person who, with reasonable cause, is suspected of having committed, or being about to commit, an indictable offence, i.e. a serious offence which gives rise to preliminary investigation by a magistrate and where the resulting proceedings take place before an Assize Court with a jury. A person found committing a criminal offence can also be arrested by the police without a warrant.

The detained person must be brought before a magistrate within the 24 hours following his arrest or, when a magistrate is not available, as soon as possible. If the suspect has been arrested by mistake or if there is insufficient evidence to charge him, he is released.

As a preventive measure, the police are empowered to arrest a person who, on reasonable grounds, is suspected of being about to commit an indictable offence.

Canadian law does not give a definition of suspect. Before a person can be arrested there must be reasonable and probable grounds to believe that he has committed or is about to commit an indictable offence.

#### CEYLON :

##### - Police powers of detention :

Before they can temporarily detain a person, the police have to arrest him for a serious offence. But they do not then have to charge the arrested person.

The power of arrest without warrant and power of detention granted the police are laid down in Article 129 (2) of Article 37 of the Criminal Procedure Code.

##### - Conditions for detaining a person :

Any police officer in charge of a police station or any officer subordinate to him has the power to arrest without warrant a person who is strongly suspected of having committed a COGNIZABLE offence. Cognizable offences are the following : murder, abduction, arson, rape, grievous bodily harm, riots, thefts of all kinds, abandoning children.

A magistrate's warrant is necessary to arrest someone guilty of a non-cognizable offence.

Under Article 129 (2), a person caught while committing a cognizable offence can be detained by the police for a maximum period of 24 hours. In fact, whatever the nature of the offence, the period of detention cannot exceed 24 hours.

Under Article 117 of the Criminal Procedure Code a person can be arrested without a warrant as a preventive measure, if there is no other way of preventing the commission of a cognizable offence.

Excise Officers are also empowered to detain persons.

##### - Physical Conditions of Detention :

The detention period begins from the moment when the detained person is deprived of his liberty. It ends when the police bring him before a magistrate or release him if there is insufficient evidence to charge him. Detained persons are formally charged before a magistrate.

The police are empowered to release a suspect if he gives guarantees, in the form of bail, to answer summons to appear.

All detained persons are kept on police premises. Before being put in a cell, the detained person is searched and any implements with which he might injure himself or escape are taken away from him. Conditions of security and hygiene are good. A police officer visits the cells at least once every two hours. Minors and women are kept apart from other detained persons.

##### - Rights of detained persons and safeguards for these rights :

Detained persons have the right to be informed of the reason for their detention. They are allowed facilities to contact their families and to be visited by a lawyer. Meals are provided free of charge, but these may also be provided by the detained person's family. They are allowed to be medically examined immediately on request.

Senior police officers who exercise supervisory powers over the investigating police officers carry out checks that these rights are respected. They make surprise visits and inspect police premises and cells.

- Consequences of breaking the regulations :

Any non-respect or abuse of the regulations by the police may, in certain circumstances, lead to the case being dismissed. The police officer responsible is liable to disciplinary action and civil damages. The latter are paid by the officer responsible.

CYPRUS :

The police, when acting without a warrant issued by a magistrate, have no power to detain a person prior to arrest.

ETHIOPIA :

- Police powers of detention :

Under the Constitution, the police have no right to detain a person prior to arrest.

The police have the power of arrest without warrant in certain cases specified by the Code of Criminal Procedure.

- Conditions for detaining a person after arrest :

Any member of the police may arrest without warrant and detain temporarily any person whom he reasonably suspects of having committed or being about to commit an offence punishable by a term of imprisonment of one year or more. Any person who obstructs a member of the police in the execution of his duties, who escapes when under police supervision or who is in possession of housebreaking implements, can be arrested without warrant and temporarily detained by the police.

An arrest can be made in the case of a flagrant offence which constitutes a breach of the peace or when the suspect is chased by members of the public.

Where is no legal definition of the term "suspect".

The police are not legally empowered to detain or hold a witness.

A minor (witness or suspect) cannot be detained by the police.

- Physical Conditions of Detention :

The normal period of detention is 48 hours. This can only be extended on the orders of a magistrate who can order a remand for a maximum period of 14 days. The time taken by the police to cover the distance between the place

of arrest and the court is not included in the authorised 48-hour period.

The police officer in charge of the enquiries can release a suspect on bail if the offence with which he is charged is not punishable by a term of rigorous imprisonment or if there is insufficient evidence to charge him.

The cells where detained persons are kept are equipped with safety devices to prevent escapes or suicide attempts. Conditions of hygiene are satisfactory. Promiscuity between persons of different sexes or between adults and minors is avoided.

- Rights of detained persons and safeguards for these rights :

The detained person has the right to be informed of the reason for his detention. He may consult a lawyer and be visited by his family under certain security conditions. He is allowed food and can ask to see a doctor if he is ill. He must be informed of certain of his rights at the beginning of the enquiry. He can apply for a writ of Habeas Corpus if he feels he is detained illegally.

Checks to ensure that a detained person's rights are respected are carried out by the Public Prosecutor and by the Court. They do this by questioning the detained person and studying police reports.

- Consequences of breaking the regulations :

Any abuse of the regulations can lead to disciplinary action being taken against the police officer responsible. The victim can obtain civil damages for unlawful detention.

INDIA :

- Police powers of detention :

In India, the police do not have the power to detain a person prior to arrest. But they can apprehend without warrant any person who is involved in a cognizable (serious) offence (Criminal Procedure Code, Section 54).

An arrested person does not have to be charged immediately after he has been arrested.

- Conditions for detaining a person :

The following may be arrested and then detained by the police for a period of 24 hours before being brought before a magistrate :

- any person involved in a cognizable offence ;

- any person reasonably suspected of having committed or of being about to commit such an offence.

- Minor, or non-cognizable, offences only give rise to arrest if the suspects refuse to give the police officer their names and addresses.

A person can be arrested as a preventive measure in the following cases :

- if he tries to hide in circumstances which give reason to believe that he is about to commit a cognizable offence ;

- if he has no visible means of support ;

- if he is an habitual offender who commits burglaries, thefts, extortion or receives stolen property.

In addition to all ranks of police officers, officials working for the Customs and Excise, Forestry Commission and agencies controlling opium and firearms are empowered to arrest without warrant.

The word "suspect" is not defined in law.

A minor suspect can be arrested in the same conditions as an adult, but he must be brought before a juvenile court.

#### - Physical Conditions of Detention :

The normal detention period is 24 hours (1).

Under the law, every fact of detention by the police must be put into writing (a "document of arrest"). The detention period is calculated from the time mentioned in this document. It ends when the magistrate orders the suspect to be released on bail or when he releases him because there is insufficient evidence to charge him.

The police can release a suspect on bail if the offence of which he is accused belongs to the group of "bailable" offences mentioned in the Code of Criminal Procedure. But, in principle, in cases of serious offences ("cognizable" and "non-bailable") the police do not release suspects on bail. However, even when a serious offence of this category is involved, the police are empowered to release a detained person on bail if the applicable punishment is neither the death penalty nor life imprisonment.

Detained persons are kept on police premises in cells which are equipped with security devices and conform to conditions of hygiene.

Promiscuity between persons of different sexes and different ages is avoided.

(1) However, the magistrate may authorize the police to detain the arrested person during a period which must not exceed 15 days maximum when it is not possible to complete police enquiries within 24 hours (Criminal Procedure Code, S.167).

#### - Rights of detained persons and safeguards for those rights :

The detained person has the right to be informed of the reason for his detention and to notify a lawyer.

Food is provided free-of-charge.

If the detained person complains of having been assaulted, the magistrate can order a medical examination.

The detained person can also ask to be examined by a doctor at any time if his health requires it.

The legality of the conditions of detention can be challenged by the detained person when he is brought before a magistrate. He can also apply for a writ of Habeas Corpus.

#### - Consequences of breaking the regulations :

Any police officer who detains a person without the authorisation of a magistrate for longer than 24 hours may be liable to prosecution for "wrongful confinement". Also, disciplinary action may be taken against him.

Any person unlawfully detained may obtain damages for "mental or bodily" suffering resulting from his arrest.

#### ISRAEL :

#### - Police powers of detention :

Israeli law authorises a police officer to arrest and temporarily detain a person in certain cases without a warrant issued by a magistrate. Any detention constitutes an arrest.

The laws governing police powers of arrest are the Criminal Procedure Ordinance (Arrest and Searches), and the Penal Law (Security of the State, Foreign Relations, Official Secrets).

#### - Conditions for detaining a person :

Any police officer may arrest without a warrant issued by a magistrate any person who is "reasonably suspected" of having committed a serious offence (felony) or an offence punishable by the death penalty or a term of imprisonment of more than 6 months. The police also have this power when the detained person attempts to escape.

Also, a person can be arrested while committing an offence if the offence of which he is guilty is punishable by the death penalty or a term of imprisonment of more than 6 months. Finally, a police officer may arrest anyone who prevents him from carrying out his duties.

**CONTINUED**

**1 OF 2**

An arrest can only be made as a preventive measure when the suspect has already made an overt act which might constitute an attempt to commit a crime.

Under no circumstances can a witness be detained.

Police officers authorised to order an arrest are those of and above the rank of Sub-Inspector in charge of a police station. Other persons so empowered are officials of the Customs, Port, Mines Authorities etc.

The term "suspect" is not defined in law, but the High Court of Appeal has described "suspicion" as "the possibility, which seems reasonable to the suspecting person, that the suspect has indeed committed the offence or done that act".

#### - Physical Conditions of Detention :

In principle, the detention period is 48 hours. However, when it is impossible to bring the suspect before a magistrate because the latter is not available, the detention period can be extended by a further 48 hours. In this case, the police officer has to record the reason for the extended detention period and inform the magistrate before whom the suspect must be brought eventually.

The Penal Law on Security of the State, Foreign Relations and Official Secrets empowers senior police officers to detain a person suspected of treason or espionage for a maximum period of 15 days before bringing him before a magistrate.

The detention period begins from the moment when the suspect is informed of the decision to arrest him. It ends either on the order of a police officer in charge of a police station, or by decision of a magistrate.

The police are empowered to release a suspect on bail, except in cases of offences punishable by the death penalty or a term of imprisonment of 15 years or more.

Detained persons are kept either on police premises or in detention centres. Security measures and conditions of hygiene are satisfactory.

#### - Rights of detained persons and safeguards for these rights :

Detained persons must be informed of the reason for their detention. They can call in a lawyer and be medically examined if they so desire. The legality of the detention can be challenged by petitioning the High Court of Justice (habeas corpus).

The application of the Police Standing Orders on the respect of the rights of detained persons is supervised by senior police officers. Any abuse is checked by the State Comptroller or by the courts.

#### - Consequences of breaking the regulations :

An abuse of the regulations does not lead to the case being dismissed. But the police officer responsible may be liable to disciplinary action and a civil claim for damages. In the latter case, the state pays the victim.

#### KENYA :

#### - Police powers of detention :

Under the laws of Kenya, any form of detention is synonymous with arrest. The police must arrest someone before they can temporarily detain him.

#### - Conditions for detaining a person :

A police officer who does not have an arrest warrant issued by a magistrate may arrest a person in the following cases :

- a) when he has reasonable grounds to suspect that person of having committed a cognizable offence ;
- b) when there is a flagrant offence ;
- c) when that person escapes or tries to escape from lawful custody;
- d) when that person is found in possession of any housebreaking implements without lawful excuse ;
- e) when that person is found in the street or other public place during the hours of darkness and the police officer suspects him of having just committed, or being about to commit, a crime.

#### - Physical Conditions of Detention :

A person arrested without warrant must be brought before a magistrate within the 24 hours following his arrest (Sundays and public holidays are not included in this calculation), but he can be released on bail before the end of that period.

Cells must be clean and contain nothing with which detained persons could injure themselves. Promiscuity between men and women or between minors and adults is avoided.

#### - Rights of detained persons and safeguards for these rights :

An arrested person has the right to be informed of the reason for his detention, to have his family notified and to be visited by a lawyer. He can obtain food free-of-charge or have meals brought in at his own expense. He can ask to be examined by a doctor at any time.



- Consequences of breaking the regulations :

Disciplinary action can be taken against the police officer responsible for any non-respect or abuse of the regulations concerning arrest and detention. The victim can obtain damages for unlawful arrest and detention.

NIGERIA :

- Police powers of detention :

The police may not legally detain a suspect unless they have arrested him. Police powers of detention are therefore subordinate to their power of arrest - in certain specified cases - without warrant.

- Conditions for detaining a person :

A police officer without a warrant may arrest and temporarily detain :

- any person suspected of having committed an indictable offence, i.e. an offence punishable by 2 years' imprisonment or more or a fine of 200 pounds and over ;
- any person who is actually committing any kind of offence ;
- any person who escapes or attempts to escape from lawful custody ;
- any person found in possession of housebreaking implements without lawful excuse ;
- any person who obstructs the police officer in the execution of his duty ;
- a receiver of stolen property.

As a preventive measure, Article 55 of the Law of Criminal Procedure authorises a police officer who has been informed of a person's intention to commit an offence to arrest that person without warrant, if the police officer feels that there is no other way to prevent this offence being committed. The police may also arrest without warrant - as a preventive measure - any person found in circumstances which give reason to believe that he is about to commit a felony or misdemeanour.

- Physical Conditions of Detention :

The detention period begins from the moment when the detained person is deprived of his freedom. The maximum period during which the police are allowed to detain a suspect is 24 hours (not including Sundays and public holidays). Before the end of this period, the suspect must either be brought before a magistrate or released on bail.

When it is not practicable to bring the suspect before a magistrate within the 24 hours, the police may - except in cases of serious offences - release him on bail.

Cells used for detained persons comply with standards of security and hygiene. Promiscuity between people of different sexes or between adults and minors is avoided.

- Rights of detained persons and safeguards for these rights :

As soon as he is arrested, the detained person has the right to be informed of the reason for his detention. He can be visited by one of his relatives and by a lawyer. If his state of health requires it, he can be examined by a doctor.

Checks to ensure that these rights are respected are carried out by the magistrate. If the detained person complains that any of his rights have been denied him, the magistrate conducts an enquiry and then reports to the Government, which then decides what action to take.

- Consequences of breaking the regulations :

A police officer committing any abuse of authority is liable to prosecution for unlawful detention and assault. If the victim is granted civil damages, these are paid by the police officer.

NEW ZEALAND :

The police cannot detain a person unless they arrest him. This principle has been laid down in case-law. In the case of *Blundell v. The Attorney General*, the Court of Appeal ruled that a police officer has no power to hold a person while enquiries are being made unless he arrests him.

An arrest without warrant can only be made if justified under the terms of Sections 31, 32, 315 (2) and 315 (4) of the Crimes Act 1961.

Certain special laws - such as the Customs Act 1966, the Arms Act 1958 and the Police Offences Act 1927 - empower the police to detain a person in certain circumstances while a search of that person is made.

In the case of less serious offences for which the offender may be proceeded against summarily (i.e. in a magistrate's court), the police are empowered to release a suspect on bail. However, the length of the period of bail cannot exceed 7 days. Furthermore, the police may only release someone on bail when it is not practicable to bring the offender before a court immediately.

Any police officer who unlawfully detains a person is liable to a civil action for damages. These are normally paid out of an official fund.

Some provision to detain prior to arrest would be welcomed but at present it is most unlikely that the police will be given such powers in New Zealand.

#### UNITED KINGDOM :

(The following is an account of criminal law and procedure in England).

##### - Police powers of detention :

In England the police cannot temporarily detain a person for whom there is no arrest warrant unless they arrest him. The legal powers of the police to detain such a person are subordinate to the powers of arrest without warrant.

The power of arrest without warrant is governed by the following principles :

- The offence for which an arrest can be made without warrant must be relatively serious. Under the Criminal Law Act of 1967 these offences are determined according to new criteria and are called "arrestable offences". But certain other offences can also give rise to arrest without warrant.

- The power of arrest without warrant accorded the police is defined in relation to the power of arrest accorded the private citizen ; the Constable's power is more extensive in view of the larger number of cases where he can exercise this power.

- The Constable - or private citizen - must have reasonable cause to believe that a serious offence is being, or has been, committed and that it was committed by the person he arrests.

- The person arrested must be told immediately in clear and simple terms why he has been arrested.

- The arrested person must be taken to the police station as soon as possible.

- If this person is charged, this must be done by the police. The detained person must be informed of this charge as soon as possible.

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#### - Scope of power of arrest without warrant and of police detention :

##### A/ Offences for which this power can be exercised :

The Criminal Law Act of 1967 did away with the distinction between felonies and misdemeanours and defined a new category, "arrestable offences" in order to enable the constable to determine more easily for which offences an arrest can be made without warrant, i.e. without a prior order issued by a magistrate.

Section 2-1 of the Criminal Law Act of 1967 defines arrestable offences :

- offences and attempted offences where the punishment is set by law (treason, murder) ;

- offences and attempted offences for which a person may, on first conviction be sentenced to a term of imprisonment of 5 years and more under a statute.

The adoption of this new criterion means that the constable must now know what penalties are applicable to the various offences in order to decide which of them are "arrestable".

Before the Criminal Law Act of 1967 it was considered that the constable's power of arrest without warrant applied mainly to felonies. Nowadays, it is considered that the offences classified as "arrestable offences" roughly correspond to felonies. However, there are certain important differences : (1).

- Certain offences which were not previously "felonies" are now considered "arrestable offences". For example : "obtaining by false pretence", "causing death by dangerous driving".

- Misdemeanours instituted by Common Law are not considered arrestable offences according to the new criterion since they are not covered by a statute or punishable by a sentence of 5 years' imprisonment or more. However, the Criminal Law Act of 1967, Section 2 (7), upholds the

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(1) These differences are described in the previously-mentioned book by J.R. LEWIS : "Civil and Criminal Procedure", Chapter "Arrest without warrant", pp. 125-126.

power of arrest without warrant with regard to certain "common law misdemeanours", notably when there is a "breach of the peace", or to prevent a "breach of the peace" (1).

- The Criminal Law Act 1967 also upholds the power of arrest without warrant accorded by several "Statutes" for offences which were not felonies (2).

B/ Circumstances in which the power of arrest without warrant applies.

In England, under the Criminal Law Act of 1967, the constable can arrest a person in the same cases and circumstances as a private citizen; he also has other, wider powers.

a) A private citizen can arrest :

- a person who is committing, or whom he suspects with reasonable cause to be committing, an arrestable offence ;

- a person who is guilty, or whom he suspects with reasonable cause to be guilty, of an arrestable offence which has actually been committed.

b) In addition, a constable can arrest :

- a person whom he suspects with reasonable cause to have committed an arrestable offence, even if this offence has not actually been committed ;

- a person whom he suspects with reasonable cause to be about to commit an arrestable offence ;

- a person whom he suspects with reasonable cause to be committing a "common law misdemeanour" when Common Law gives him the power of arrest with regard to these offences; this is also the case, notably when there is, or when it is feared that there may be a "breach of the peace" or that it will be repeated ;

- a person whom he suspects with reasonable cause of having committed an offence which was not a "felony" and which has not become an "arrestable offence" but in respect of which a statute expressly gives him the power of arrest (the statutory power of arrest).

1) "Breaches of the peace" are offences which are difficult to define ; their common characteristic is a threat to public order. According to G. WILLIAMS, they also imply "a certain danger for private individuals" (for example, "Unlawful assembly", "riotous assembly").

(2) Cf. HARRIS'S Criminal Law 1968 pp. 571 - 573.

English criminal law does not give a definition of the term "suspect" but this arises out of (B) above. Only a suspect can be arrested and it therefore follows that only a suspect can be temporarily detained by the police in the conditions described below.

- Physical Conditions of Detention :

An arrested person can be detained by the police for a reasonable length of time, i.e. long enough to establish his guilt or innocence. When proof is collected, the suspect is charged by the police and brought before a magistrate as soon as possible and in any case within the 24 hours following his arrest. Sundays and public holidays are not counted when calculating the detention period.

Police detention cannot, under any circumstances, be extended. Only the Court can order an extension, after the suspect is charged. But this is not police detention.

The period of detention by the police begins from the moment when the suspect is deprived of his freedom against his will. It ends when the arrested person is released without being charged or, if he is charged, either when he is released on bail or brought before a magistrate.

The police are empowered to release a suspect on bail in the two following cases :

a) before the charge, if all the evidence necessary to make the charge is not yet available; any Inspector or police officer of lower rank in charge of a police station may grant bail ;

b) after the charge, any police officer in charge of a police station can release the charged person on bail, unless the offence concerned is particularly serious (e.g. homicide). When the person charged is a minor (aged between 10 and 17 years), he must be released on bail except in cases of homicide or other serious offences.

Detained persons are kept on police premises and must be present when witnesses are interviewed. As the investigation progresses, they are placed either in detention rooms or cells. Women are only ever kept in detention rooms.

Before they are detained, suspects are searched to avoid the possibility of their injuring themselves.

Standards of hygiene and security of the cells are satisfactory. Detained persons are visited every hour by a police officer. Men are kept apart from women, adults from minors.

- Rights of detained persons :

An arrested person must be informed immediately of the reason for his detention. He can be visited by his family or friends and can contact a lawyer, if this does not hinder police enquiries. Meals are provided, either free-of-charge or at the detained person's own expense

if he so requests.

If the detained person is injured or ill, he has the right to be examined immediately by a doctor. If a medical examination is important for his defence he can also request one. The legality of his detention can be contested by the detained person when he is brought before the magistrate. All arrested and detained persons are informed of their rights under law.

- Consequences of breaking the regulations :

Any non-respect for the detained person's rights constitutes a disciplinary offence. The police officer responsible may be liable to disciplinary action, also a civil action for unlawful detention (tort of false imprisonment), if applicable. Any damages awarded are normally paid out of police funds.

SIERRA LEONE :

The law does not authorise the police to detain a person without first arresting him. Any deprivation of freedom must follow a formal arrest.

Since they considered that the questionnaire concerned the power of the police to legally detain a person who has been neither arrested nor charged, the Sierra Leone authorities felt that most of the questions did not apply to them.

However, they emphasised that a person arrested without an order being previously made by a magistrate must be charged and brought before a magistrate as soon as possible and that the police are empowered to decide, in certain cases, whether to release the person charged on bail.

Conditions of hygiene and security of the cells where arrested persons are kept temporarily by the police are satisfactory. Women are kept apart from men, minors from adults.

Sierra Leone would like the police - when acting without a magistrate's warrant - to be authorised to hold or detain persons for a given length of time in cases where they cannot effect an arrest, as is possible under the "gardo à vue" system. It was felt that this would be of assistance in certain enquiries.

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THAILAND :

The police may only detain a person after first charging him with an offence. Any detention must be preceded by an arrest.

Article 78 of the Code of Criminal Procedure empowers police officers to arrest a person without a warrant when there are reasons to believe that he committed an offence and is about to abscond.

An arrest can also be made when a person is found committing an offence or is discovered in possession of arms, implements or other articles in circumstances which give reason to believe that he is preparing to commit an offence.

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Catégorie 2

Country where a person cannot, in principle, be detained by the police unless he has been arrested but where this principle has undergone some slight modification.

The Category comprises the UNITED STATES OF AMERICA.

The U.S. system is undoubtedly derived from the English system, although there are some quite important differences.

However, the reason why we have classified this country in Category 2 of Group VI is that, after having adopted the principle that police powers of detaining a person are subordinate to prior arrest, this country made important modifications to the principle. The rules of criminal procedure or court-rulings in fact allow the police, when acting without a warrant, to detain or temporarily hold a suspect or witness for questioning provided that certain conditions are fulfilled.

UNITED STATES OF AMERICA :- Police powers of detention :

According to the principles of American law, any restriction of a person's freedom of action implies an arrest.

However, this principle has recently been modified, authorising the police to hold persons temporarily without arresting them. These modifications apply to situations where the police wish to "stop and frisk" a person. It should be stressed that these special situations do not correspond in any way to the concept of temporary detention by the police as referred to by the questionnaire. According to American standards, detention prior to arrest would be considered an arrest.

The powers of the police to detain a person who is not charged and for whom no arrest warrant has been issued are admissible if exercised reasonably in the particular circumstances. This was the principle established by a recent decision of the Supreme Court (Terry v. Ohio, 36 U.S.L. Week 4578, U.S. 10th June 1968); however, this did not specify whether or not a police officer can hold a person in a situation which would not justify an arrest.

In practice, the police stop persons in the street or take them to the police station for questioning. The police consider that this stopping or detention does not constitute an arrest. Opponents of this practice argue that this stopping or temporary detention does constitute an arrest and that

this should only be authorised when the police officer already has serious evidence to establish the guilt of the person concerned. The legality of this practice under the American Constitution has never been decided by the Supreme Court. It has often been interpreted as a temporary deprivation of freedom undergone voluntarily by the person stopped and questioned.

The laws governing police powers of arrest vary from one State to another. Some States - for example, the State of New York - have special laws (Stop and Frisk Statute) which expressly allow the police to stop a person in order to search him. Case-law has supplemented these rules. In other States, it is case-law itself which has established the principles.

- Conditions for detaining persons (with arrest) :

These offences which can give rise to an arrest without warrant vary from one State to another. For many, the offence concerned must be a crime, for others a felony or serious misdemeanour.

All police officers are empowered to detain a person "reasonably suspected" of having committed a serious offence. The factors which should be considered in determining whether the circumstances are reasonable which justify stopping a person under the Supreme Court standard in Terry include : the place where the suspect is observed ; his appearance ; the police officer's prior knowledge of the suspect ; the seriousness of the suspected offence ; the necessity for immediate investigative activity.

Naturally, the power of arrest applies in cases of flagrant offences. The police may also arrest a person as a preventive measure when there is "reasonable suspicion". However, detention as a preventive measure can only be for a brief period.

In addition to the police, officials of the following Federal Agencies are empowered to make arrests without warrant : Security Officers of the State Department and Foreign Services ; Immigration and Naturalisation Service ; Coast Guard ; Parks and National Monuments ; Forest Service ; Wildlife Protection Service ; Secret Service ; Customs ; Bureau of Prisons ; Bureau of Narcotics ; F.B.I. ; Superintendents of National Comotrios ; Department of the Treasury Officials ; U.S. Marshals and Deputies ; Sergeants-at-Arms of the Senate and House of Representatives.

The term "suspect" is not defined in any laws or regulations. However, police manuals have defined a suspicious person as "one whose actions, appearance, or very presence in certain places at late or unusual hours would normally excite the suspicions of an ordinary, prudent person".

An important witness who has direct knowledge of the crime (a material witness) and who does not provide bail may be detained in order to ensure his appearance before the court. However, under the Bail Reform Act of 1966, a material witness who is unable to put up bail can only be detained by the police for a reasonable period of time until his statement is taken.

- Physical Conditions of Detention :

According to the Supreme Court's decision in the TERRY Case, the detention period must be "reasonable under the circumstances". The State Laws designate time limits of detention ranging from 2 hours in the States of Delaware and Rhode Island to 20 hours in the State of Missouri.

Since the detention period must be "reasonable under the circumstances", it can vary according to the suspect's behaviour and the possibilities of checking his identity. The detention period lasts from the time the person concerned is deprived of his freedom of action until his formal arrest or complete release.

When the detention does not constitute an arrest, release on bail is not applicable.

A person may be stopped in the street or at the scene of crime or detained in a police station. However, the Supreme Court may have some reservations as to whether detention in a police station is proper when the detained person has not been arrested or consented to go there. Cells are never used for suspects who are detained ; they are reserved for arrested persons.

- Rights of detained persons and safeguards for these rights :

The issue of rights of persons who are detained but not yet arrested is an open question for which there are no guidelines. It is a matter which has not been adequately dealt with by the Federal Courts.

According to the MIRANDA Case (384 U.S. 436 - 1966), it would appear that a person merely held for questioning in the street does not need to be warned of his right to say nothing. He can, if he wishes, refuse to answer the police officer's questions and in the absence of any incriminating evidence or reasonable cause for suspicion this refusal in itself does not justify his arrest United States v. Vita, 294 F. 2d 524, 531 - c.A.2).

Apart from the Constitution and the Courts, which safeguard the citizen's fundamental rights, no special check is made to ensure that the rights of detained persons are respected. If a detained person falls ill or asks to be medically examined, a doctor is called in.

- Consequences of breaking the regulations :

Any non-respect or abuse committed during the detention period can result in the exclusion of certain physical evidence or a confession or statements from the trial.

A police officer who is guilty of any irregularity or abuse of authority may be liable to criminal prosecution or to disciplinary action. The latter may consist of his discharge or suspension, forfeiture of pay or reprimand.

If the detention constitutes an arrest and this proves to be unjustified, the victim can take civil tort action against the police for damages for false imprisonment. The police officer's liability is limited to where the petitioner has actually suffered as a consequence of an unlawful arrest. The State is not responsible for the torts of its officer.

GROUP VII

Countries where persons can only be apprehended and/or held for questioning by the police in very limited cases (Category 1), or where the action taken against persons apprehended or held for questioning is subject to very strict conditions (Category 2).

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Category 1

Countries where the circumstances in which a person may be apprehended and/or held for questioning by the police are very limited.

This Category consists of : THE DEMOCRATIC REPUBLIC OF THE CONGO, JAPAN and LUXEMBOURG.

In the Democratic Republic of the Congo and Luxembourg, judicial police officers are only empowered to forbid a person to go away from the scene of a flagrant and/or associated offence until the "procès-verbal" is finalised.

In Luxembourg this police power is called "défense de s'éloigner".

In Japan, the police have two special systems : stopping or questioning a person in the street ("police questioning") and "police request for a person to go to a police station". In no cases can the person be held for questioning by a police officer.

DEMOCRATIC REPUBLIC OF THE CONGO :- Police powers of detention :

In the Democratic Republic of the Congo, the concept of the "garde à vue" covers two very specific ideas, in accordance with the Code of Criminal Procedure and the Penal Code.

- Conditions for detaining a person :

The "garde à vue" is only applied in two distinct cases :

- cases of flagrant offences,
- cases of relogation and expulsion.

- Physical Conditions of Detention :(1) In cases of flagrant offences :

The "officier de police judiciaire" is empowered to keep under the "garde à vue" any person found at the scene of a crime and to detain him until the "procès-verbal" is finalised. (1)

(1) This merely constitutes the "défense de s'éloigner", the only measure available to the police in this case. This system is similar to that in force in Luxembourg. The "défense de s'éloigner" also exists in other systems but is then associated with other measures.

(2) In cases of relogation and expulsion :

In cases of relogation as an administrative measure (Penal Code, Articles 1 and 14b or Article 2, Decree of 8th August 1959), or in cases of expulsion the "officier du Ministère public" or the "juge de police" can decide that the person sentenced to relogation or expulsion shall be kept under the "garde à vue" until he leaves the country.

In the first case, the "garde à vue" is a measure taken at the stage of the preliminary judicial investigation allowed by the Code of Criminal Procedure. It is not a measure depriving the subject of his freedom since if he goes off without authorisation he does not come under the category of "an escaped detained person".

In the second case, the "garde à vue" is a measure depriving a convicted person of his freedom, i.e. after the preliminary judicial investigation.

This is the reply to the questionnaire, based on a theoretical study of the "garde à vue" as practised in the Democratic Republic of the Congo.

JAPAN :- Police powers of detention :

Japan's reply apparently indicates that a person can only be detained if he is first arrested on warrant.

Japan therefore indicated those cases where this principle has been modified so that the police may, even if they have no warrant, stop a person for questioning : when he is suspected of having committed a crime ; when he is a witness to a crime ; when he may cause some damage because of his behaviour ; when there are certain public disturbances.

Police Duties Execution Law N° 136 of 1948, amended by Law N° 163 of 1954, allows police officers to stop a person for questioning in the street if there are reasonable grounds to suspect him of having committed, or being about to commit, a crime. Under this Law, a police officer may also stop for questioning in the street a person who may be able to provide information about the commission of a crime. (1)

If the police officer, acting in accordance with the above-mentioned Law, considers that questioning in the street might disadvantage the subject or obstruct traffic, he can ask him to accompany him to a police station or post. (2).

(1) This is Police Questioning, or "SHOKUMU-SHITSUMON".

(2) Police request for a person to go to a police station, or "DOKO-YOKYU".

The power to stop and question someone in the street and to ask him to go to the police station can only be exercised with the consent of the person concerned. However, if a person is stopped in the street and suddenly attempts to escape, he can be apprehended (by means of force, if necessary).

Furthermore, the Law controlling possession of firearms etc. (1958) empowers police officers to stop a person suspected of carrying dangerous weapons and search him.

In addition to suspects, any person able to give information about the commission of a crime can be stopped.

#### - Conditions for detaining a person :

In principle, the police officer has no power to detain a person as a preventive measure. However, he can intervene if he notices that a crime is about to be committed. He is also obliged to protect any person who is drunk or mentally ill if their behaviour might endanger the lives of others or cause serious damage to property. In these cases, the person cannot be detained for more than 24 hours unless a magistrate orders an extension.

In addition to police officers, members of the Self Defence Forces are empowered to stop and question a person in the street and ask him to go to the police station, in the following two cases : when the Prime Minister orders them to intervene in the interests of public order; when the country is faced with an armed attack from outside.

The term "suspect" is not defined. However, a suspect can be considered to be a person who is the subject of police enquiries conducted in accordance with the Code of Criminal Procedure in order to identify the person responsible for a crime.

#### - Physical Conditions of Detention :

There are no provisions in law concerning time-limits for police detention. In practice, it is obvious that detention following the request to go to the police station is longer than the stopping and questioning in the street. The detention period ends when all doubt or suspicion is dispelled.

Stopping for questioning normally takes place in the street or other public place, detention in a police station. Under no circumstances is the detained person put in a cell.

#### - Consequences of breaking the regulations :

Any police officer who abuses his right to carry out police questioning can be subject to criminal prosecution. Also, if he injures the person concerned in any way, the victim can obtain civil damages from the prefectural government concerned.

### LUXEMBOURG :

#### - Police powers of detention ("défense de s'éloigner") :

In the Grand Duchy of Luxembourg there is no law which authorises the police to detain a person who has not been charged or for whom no arrest warrant has been issued by a magistrate.

However, the police may make use of their right called "défense de s'éloigner" (Articles 34, 46 and 49 of the Code of Criminal Procedure).

#### - Conditions for the "défense de s'éloigner" :

The "défense de s'éloigner" can be applied in two cases :

##### (1) Cases of flagrant crimes :

"Officiers de police judiciaire" are empowered to forbid a person to leave the scene of crime until the "procès-verbal" has been finalised.

An offence is considered to be flagrant in the following cases :

- a/ when the offence is being committed or has just been committed ;
- b/ when a person is chased by public outcry ;
- c/ when a person is in possession of weapons, articles, instruments or documents which give reason to believe that he has committed an offence, or been an accomplice to it, provided that this is shortly after the commission of the offence.

(2) Cases of "crime" or "délit" - even when not flagrant - committed inside a house when the head of that house calls in an "officier de police judiciaire" to investigate. This is a case of associated flagrant "crime" or "délit", as found in the legislation of certain countries (cf. Article 53 of the French Code of Criminal Procedure).

In the Grand Duchy of Luxembourg, persons with the rank of "officiers de police judiciaire" are : "commissaires de police", "officiers" and certain "sous-officiers" of the Gendarmerie, members of the "service de la sûreté publique".

This "défense de s'éloigner" can be applied to a suspect, witness or any person who might be able to help in enquiries.

#### - Physical Conditions of the "défense de s'éloigner" :

The "défense de s'éloigner" can be enforced until the "procès-verbal" is closed. It ends when the "officier de police judiciaire" authorises the person concerned to go away.

The subject of the "défense de s'éloigner" must stay at the scene of the "crime" or in the house to which the police have been called.

The law does not allow the police to detain someone on police premises or in a detention room or cell.

Any person who goes away from the scene, although forbidden to do so, is liable to a sentence of up to 10 days' imprisonment and a fine of 10 francs. (1) This sentence is passed by the "juge d'instruction", on the findings of the "Procureur d'Etat" after the offender has been summonsed. It can be passed in his presence or in absentia. It is not possible to enter a defence or lodge an appeal.

- Rights of persons subject to the "défense de s'éloigner" and safeguards for those rights :

Although there are no laws expressly stipulating such rights, the general rules regarding human rights are respected. Any irregularity or abuse committed by a police officer in connection with a "défense de s'éloigner" would not lead to the case being dismissed, but disciplinary action could be taken against him and financial compensation could be awarded in solidum, paid by the police officer responsible and by public funds.

- Miscellaneous :

A Committee set up in 1968 to study reforms of the Code of Criminal Procedure considered that the regulations in force on the "défense de s'éloigner" were satisfactory and stated that it was not in favour of adopting the French-type system of the "garde à vue".

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(1) The penalty incurred by the person who disobeys the "défense de s'éloigner" is similar to that mentioned in the case of Lebanon.

Category 2

Countries where the action taken against persons apprehended or held for questioning by the police is subject to very strict conditions.

In CHILE, LIECHTENSTEIN and YUGOSLAVIA, the police are only empowered to hold someone for questioning in very special circumstances.

The general rule is that the person apprehended or held for questioning must be brought before the competent magistrate or court as soon as possible.

In Chile, the apprehended suspect is immediately brought before the magistrate, or if this is not possible, at the beginning of the first court sitting.

In Liechtenstein, police officers are obliged to inform the court of their decisions to "provisionally arrest" someone or to release them.

Finally, in Yugoslavia, police powers are reduced to the minimum with regard to criminal procedure. Only the "juge d'instruction" can interview a person (suspect or witness) held for questioning.

CHILE :

- Police powers of detention :

(1)

In principle, the police only have the power of "detención" in certain cases laid down in the Code of Criminal Procedure (Article 251 et seq.).

- Conditions for detaining a person :

Officers of the Security Police are authorised to arrest and detain :

- any person who goes around under a false identity and refuses to give his true identity (Article 260, N° 3) ;

- any person who is found at an abnormal time or in a place or circumstances which give reason to suspect that he has dishonest intentions and is not able to give a satisfactory explanation (Article 260, N° 4).

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(1) Note : The term "detención" has the sense of arrest and detention.

Arrest and detention are applied to "crimenos"-offences punishable by a penalty depriving the accused of his liberty or restricting it for 5 years or more - and "simples delitos" - punishable by a sentence of 61 days to 5 years' imprisonment.

Arrest and detention are only possible with regard to "faltas" (which are punishable by 1-60 days of "prisión") when the person responsible is caught committing the offence, has no fixed place of residence and does not give adequate guarantees.

Article 260 of the Code of Criminal Procedure stipulates that officers of the Security Police must arrest any person caught while committing an offence.

Any police officer may carry out a "detención" in cases covered by the law. Magistrates, Intendants, Governors, Subdelegates and Inspectors are also empowered to order arrest and detention in cases specified by the law.

The concept of "suspect" emerges from Article 260, N° 4, mentioned above.

The police may not detain a witness; only the examining magistrate of a "sumario" has the power to do this in certain given cases (Articles 252, 255 of the Code of Criminal Procedure).

The police may arrest and detain a minor suspect provided that they immediately transfer him to a "Comisaria de Menores".

They may also arrest any detained person who has been sentenced or is being tried and who escapes.

#### - Physical Conditions of Detention :

When the arrest and detention are decided on by the police, the person concerned must immediately be handed over to the competent magistrate, or if this is not possible, must be brought up at the beginning of the next sitting.

When the arrest and detention are decided on by the magistrate during the preliminary judicial investigation stage of criminal proceedings, the length of the detention period may not exceed 5 days (except in cases of arson in shops; here, the offender may be detained for 10 days from the beginning of the "sumario").

Any detention ordered by a Governor may last 48 hours. At the end of this period the detained person is handed over to the competent magistrate.

The Chief of Police before whom the suspect is brought may continue his detention or release him, depending on the explanations given.

In the case of "delitos" covered by Article 247 of the Code of Criminal Procedure, and in the case of "faltas", the police officer may release the suspect, ordering him to appear before the competent magistrate at the first sitting, if he gives guarantees and pays bail (Article 266 of the Code of Criminal Procedure).

A person may be detained either in his home or in a public place: prisons, offices or barracks of the Investigation Department, and even in a cell; the latter must conform with standards of security, hygiene and comfort.

The detained person is searched at the outset to prevent him committing suicide or injuring himself.

Minors are subject to special regulations. Persons of different sexes are kept apart.

#### - Rights of the detained person and safeguards for those rights :

The arrested and detained persons have several rights, particularly when the detention is ordered by the magistrate, since the length of the detention period is reduced to a minimum.

In principle, the detained person must be informed of the reason for his detention.

Unless he is kept "incomunicado" at the magistrate's orders, the detained person can be visited by a minister of religion, his lawyer, his representative, his family.

He is examined by a doctor before being taken to the Investigation Department premises.

The detained person is not informed of his rights since he is presumed to know them.

The regulations in force provide similar rights to those drawn up under the auspices of the United Nations.

The legal authorities check to see that these rights are respected.

#### - Consequences of breaking the regulations :

In the case of arbitrary detention, the victim can apply for an "amparo" (a kind of Habeas Corpus provided for in Article 306 of the Code of Criminal Procedure).

This application is made to the competent Court of Appeal which decides within 24 hours (or within 5 days at the latest) whether to allow or reject the appeal. The Court can order an enquiry to be made or the detained person to be brought before it immediately.

The Criminal Code (Article 148 et seq.) penalises public officials who are guilty of any non-respect or abuse of the regulations. Disciplinary action can also be taken against them.

Provision is made for civil damages to be paid to the victim by the officer responsible (Article 311 of the Code of Criminal Procedure).

LIECHTENSTEIN :- Police powers of detention ("arrestation provisoire") :

The police are empowered to provisionally detain a person in cases covered by the Code of Criminal Procedure and by police standing orders.

- Conditions for detaining a person :

"Crimes", "délits" and "contraventions" can give rise to "arrestation provisoire" (vorläufige Festnahme). (1).

Flagrancy, the danger that the offender will escape, interfere with the evidence or commit further criminal activities, are all circumstances which can permit an "arrestation provisoire" to be made. With regard to "contraventions", only the danger that the offender will escape or interfere with the evidence can be taken into consideration.

Article 93 of the Criminal Code allows anyone to hold any person considered to be harmful or dangerous, provided that they immediately inform the police or court.

All police officers are competent to effect an "arrestation provisoire", in the same way as the court.

When there are reasons for arrest as laid down in Articles 117/1 and 119 of the Code of Criminal Procedure, all persons of legal majority (i.e. over 18 years of age) can be the subject of "arrestation provisoire".

- Physical Conditions of Detention :

In all cases, the period of police detention is 24 hours maximum, calculated from the time the person is apprehended.

It ends either when the person concerned is released when suspicion is dispelled or when he is brought before the court.

Any decision to make an "arrestation provisoire" or to release a detained person must be reported to the court.

Persons who are provisionally arrested are kept in police stations or in cells in police prisons. These are places which although not comfortable - conform with the basic requirements for human dignity. The detained persons are searched at the outset to prevent escape, injuries or suicide.

Persons of different sexes or ages must be kept apart.

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(1) Cf. the same concept in FEDERAL GERMANY.

- Rights of detained persons and safeguards for these rights.

The person who is provisionally arrested must be informed of the reason for his arrest. His family is notified with the authorisation of the examining magistrate. He can obtain food from outside at his own expense.

He can be examined by a police doctor at any time.

The detained person appears before the examining magistrate at the latest 24 hours after he is apprehended by the police.

The police do not inform him of his rights.

The treatment given provisionally detained persons conforms to the rules drawn up under the auspices of the United Nations.

Checks to ensure that the legal obligations are respected are made by the Chief of Police, the court, and the government of the Principality. This check covers the reason for the detention, its length, the absence of cruelty, etc. and is made from an examination of the files.

- Consequences of breaking the regulations :

Certain persons must not be interrogated otherwise the case may be dismissed - for example, those who are bound by the secret of the confessional, or official secrecy, and those whose physical or mental health means they are not in a condition to tell the truth (Article 95 of the Code of Criminal Procedure).

A certain number of persons are not obliged to make statements ; they must be warned about this (Article 96 of the Code of Criminal Procedure). No pressure must be brought to bear on them.

Police officers are responsible for their actions, both before the courts and in respect of disciplinary action. It is possible for the victim to be paid compensation ; this is paid by the state which can then take action against the police officer responsible.

YUGOSLAVIA :- Police powers of detention :

In Yugoslavia, police participation in the criminal procedure is very limited. Their powers are reduced to the minimum with regard to measures restricting the freedom of citizens.

In accordance with Articles 141, 176 and 180 of the Code of Criminal Procedure police services may only hold someone for questioning in special circumstances.

- Conditions for detaining a person :

Police officers are empowered to hold until the "juge d'instruction" arrives, or to bring before the latter, any person found at the scene of a crime who may be able to provide important information about the offence. In this case, the detention period cannot exceed 2 hours.

Also, any person caught while committing an offence - and apprehended by anyone - must be immediately handed over to the "juge d'instruction" of the nearest departmental or communal court.

If, as a result of unavoidable difficulties, the person apprehended cannot be brought before the "juge d'instruction" within 24 hours, the police have to justify this delay.

In addition, Article 20 of the "Principal Law on matters of the Interior" stipulates that the "competent services of the Interior" have the right to detain - for 24 hours maximum - any person who causes a public disturbance if this is the only possible solution.

Finally, the "juge correctionnel" or a "member of the services of the Interior" can order that a person caught committing a "contravention" who is drunk may be held until he sobers up, but in any case for no longer than 12 hours (Article 100 of the Principal Law on "contraventions").

- Physical Conditions of Detention :

Since the police are completely excluded from the preliminary procedure which comes under the sole competence of the court and which only takes one form - the preliminary judicial investigation ("instruction") - the general rule is that all persons must be brought before the "juge d'instruction".

In exceptional cases, when police detention is permitted, it consists of maximum time-limits which vary according to the cases mentioned above : 2 hours, 24 hours or 12 hours.

- Rights of detained persons and safeguards for those rights :

Article 184 of the Code of Criminal Procedure stipulates that "the services of the Interior" or the magistrate, must notify the family of an apprehended person within 24 hours, unless the detained person himself objects.

In the case of a person causing a public disturbance, if this person is held at his home for more than 6 hours - or if he insists on their so doing - the police must notify that person's family or any person he designates.

Reports must always mention the date and hour when the measure was ordered.

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- Consequences of breaking the regulations :

When a person is held without reason or for a period exceeding the stipulated period, he has the right to receive compensation from the sociopolitical body to which the officer who ordered the detention measure belongs.

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INTERNATIONAL CRIMINAL POLICE ORGANIZATION  
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**XXXVIII<sup>th</sup> GENERAL ASSEMBLY SESSION**

**MEXICO**

**13th - 18th OCTOBER 1969**

*Report submitted*

*by the*

**GENERAL SECRETARIAT**

**N° 8 bis**

*Subject :*

**POWERS AND DUTIES OF THE POLICE WITH REGARD TO DETENTION**

**( Addendum n° 1 to report n° 8).**

**A**

AUSTRIA and CAMEROON should now be added to the list of countries which replied to the General Secretariat questionnaire, bringing the total number of countries which supplied information on their legislation to 52. In addition, ALGERIA has sent in an addendum to its original reply, which appears on pages 16 and 17 of Report No. 8.

The information from these three countries is given in the group order established in Report No. 8.

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ALGERIA (Addendum)

Gr. I

- Conditions for detaining a person prior to arrest

Article 50 of the Code of Criminal Procedure allows the "officier de Police Judiciaire" to :

- forbid any person to leave the scene of an offence until all operations are completed;
- check the identity of any person if this appears necessary during the course of the judicial investigations. Possible punishment : up to 10 days' imprisonment and a fine of 500 DA.

- Consequences of breaking the regulations

The "Chambre d'Accusation" is responsible for detecting any irregularities committed by "officiers de Police Judiciaire" in the exercise of their duties.

These irregularities can give rise to a reprimand, disciplinary action, suspension (temporary or permanent), even prosecution, depending on their seriousness (Articles 206 et seq. of the Code of Criminal Procedure).

CAMEROON

Gr. I

- Police powers of detention prior to arrest ("garde à vue")

The Law of 26th December 1958 and the Code of Criminal Procedure of the Federal Republic of Cameroon are the relevant texts covering the "garde à vue".

- Conditions for detaining a person prior to arrest

All offences punishable by any restriction of freedom ("crimes" and "délits") can give rise to police detention. Flagrancy, the seriousness of the offence and suspicion are the factors which motivate the decision taken by the "officier de police judiciaire".

The "garde à vue" may be imposed as a preventive measure with regard to :

Gr. I

- any suspect whose identity, etc. has to be checked (time-limit 24 hours);

- any persons who have taken the firm and united decision to commit a "crime" or "délit"; this is "conspiracy" (conspiracy);

- the protection of any persons who are in danger (Article 233 of the Criminal Code.

Also, Articles 46-50 of the Criminal Code allow the police to take action with regard to persons whose behaviour quite clearly shows an intention to commit an offence against public order; this is the "engagement préventif", which means that the person concerned - on the orders of the Chairman of the Court - undertakes personally, or with solvent guarantors, to pay a certain sum of money if he commits such an offence within a period of 1 to 3 years.

Persons empowered to order police detention are "officiers de police judiciaire", magistrates, the "Gendarmerie", the "administration préfectorale, mayors, and customs, tax and various other officials so empowered by specific laws.

A witness can be kept under the "garde à vue" if his statements appear suspicious, if he fails to appear during the judicial investigations or at a hearing (once his absence is noted by a magistrate), or if he refuses to clear a person who is being prosecuted.

- Physical conditions of detention

The normal length of the "garde à vue" is 24 hours. This can be extended by 72 hours (3 x 24) by the "Procureur de la République". The time taken to transfer the suspect from the place of arrest to the offices of the "Parquet" is added to this period.

In cases of embezzlement of public funds, the "garde à vue" is limited to 4 days if the offence is non-flagrant, but can be extended if the offence is flagrant.

The detention period begins from the moment the "Bon de garde à vue" issued by the "officier de police judiciaire" is signed and the suspect notified.

The police detention period ends, either when the time-limit (the basic regulation time-limit or an extended period) expires, or when the detained person is released, or else when he is handed over to the "Parquet".

Gr. I

A person subject to the "garde à vue" can be kept wherever the investigation is being carried out, on police premises or sometimes in cells; the latter conform to regulation standards of security, hygiene and comfort. Women are detained separately from men, minors from adults.

- Rights of detained persons and safeguards for these rights

The person kept under the "garde à vue" has certain rights : the right to be informed of the reason for his detention, to have his family notified, to communicate with other persons, unless this is contrary to the interests of the investigation. Food may be supplied free-of-charge or not, depending on the case. A doctor can be called in at any time during the "garde à vue".

At the police level of investigations, the person kept under the "garde à vue" is not allowed to call in a lawyer.

The person detained by the police does not have the right to appear before a magistrate to challenge the legality of the "garde à vue".

The detained person is presumed to know his rights. A check to ensure that these rights are respected is made by the "Procureur de la République" - both during and after the "garde à vue" - on all points related to the legality of the measure and on the conditions of detention. A "garde à vue" register is kept; a list of the persons kept under the "garde à vue" is submitted daily to the competent "Procureur de la République".

- Consequences of breaking the regulations

Non-respect or abuse of the regulations does not lead to the case being dismissed, but can lead to disciplinary action and prosecution of the "officier de police judiciaire" responsible. Civil damages may even be awarded; these are paid by the officer responsible or out of public funds.

AUSTRIA

Gr. IV

- Police powers of detention

Articles 24, 175, 177 and 452 of the Code of Criminal Procedure and Article 5 of the Introductory Law to the Laws of

Gr. IV

Administrative Procedure empower the police in certain cases to detain persons suspected of having committed any offence punishable by the courts : "crime", "délit" or contravention".

- Conditions for detaining a person

Article 175 (1/4) of the Code of Criminal Procedure permits detention as a preventive measure when special circumstances give reason to believe that a person may persist in committing, or carry out his threats to commit, any offence other than a "contravention".

Persons empowered to order such detention are police officials and, in certain circumstances, commandants, military guards and customs officials.

There is no legal definition of the term "suspect".

A witness cannot be detained by the police.

- Physical conditions of detention

The police detention period is 48 hours maximum.

This period begins from the moment when the suspect is in fact deprived of his freedom of action. It ends when he is released or handed over to the competent court. The "garde à vue" takes place in police or local authority prisons or on district court premises. In certain cases it is possible to put the detained person in a cell.

All police prison cells must conform to certain standards of security and hygiene, and precautions are taken to prevent the detained persons from injuring themselves or committing suicide.

- Rights of detained persons and safeguards for these rights

The detained person has several rights; however, he cannot ask to be brought before a magistrate to lodge a complaint since he is either released or brought before the competent magistrate within 48 hours of his detention.

Since the detained person must be interviewed immediately, he can make known any requests or complaints and these are followed up, provided that the objectives of the detention are not endangered. In addition, the detained person has the right to lodge an appeal before the Constitutional Court should he believe himself to have been denied any of the rights guaranteed by the European Convention on Human Rights or by the Austrian Constitution.

Various supervisory bodies look into all questions concerning the detention of persons.

- Consequences of breaking the regulations

In cases of non-respect or abuse of the regulations, provision is made for severe disciplinary action and possibly criminal prosecution for abuse of authority. Depending on the case in question, civil damages may be awarded; these are paid by the officer responsible or by the State.

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END

7. 10. 1952 / 10. 10. 1952