

UNITED NATIONS LATIN AMERICAN INSTITUTE FOR THE PREVENTION
OF CRIME AND THE TREATMENT OF OFFENDERS



UNITED NATIONS TRAINING COURSE ON HUMAN RIGHTS
IN THE ADMINISTRATION OF CRIMINAL JUSTICE

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Organized by the United Nations Division of Human Rights in cooperation with the Government of Costa Rica

The course was held at
San Jose, Costa Rica, from
4 November to 15 December
1975

United Nations Latin American
Institute for the Prevention of
Crime and the Treatment of
Offenders.

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**UNITED NATIONS LATIN AMERICAN INSTITUTE FOR THE PREVENTION
OF CRIME AND THE TREATMENT OF OFFENDERS**



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ACQUISITIONS

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**Organized by the United
Nations Division of Human
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24 November to 12 De-
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SUMMARY

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The course comprised the following activities, which were supplemented by observation visits to various types of rehabilitation centres and institutions for men, for women and for minors.	
(a) The first week was devoted to consideration of arrest, crime investigation and detention pending trial.	
(b) The second week was set aside for consideration of the treatment of persons in custody pending trial and persons serving a sentence of imprisonment, as also special subjects suggested by the fellows.	
(c) The third week was devoted to special talks by eminent Costa Rican lecturers (Ministers, magistrates, judges, State Counsels General, etc.).	
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I. ORGANIZATION OF THE TRAINING COURSE

1. Background

The United Nations training course on human rights in the administration of criminal justice was held, with the co-operation of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, at the headquarters of the Central American Institute for Public Administration (CAIPA) ⁽¹⁾ at San José, Costa Rica, from 24 November to 12 December 1975.

The training course, which was organized in co-operation with the Government of Costa Rica, is one of the activities in the programme of advisory services in the field of human rights authorized by the General Assembly in 1955, in its resolution 926 (X).

Under this programme of advisory services, the Secretary-General, at the request of Governments of Member States, provides the services of expert consultants, organizes seminars and grants fellowships for study and for advanced study. The training courses are one form of the latter activity.

By resolution 17 (XXIII) of 1967, the Commission on Human Rights requested that consideration should be given to the possibility of including, from 1969 onwards, a training course in the annual programme of advisory services in the field of human rights. The first such human rights training course was held in Japan from 14 August to 13 September 1972 on the question of human rights in the administration of criminal justice. The course was held at the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders, situated at Fuchu, Tokyo, Japan, and was attended by 19 fellows from English-speaking African countries members of the Economic Commission for Africa and from countries in the Asia and Far East region members of the Economic Commission for Asia and the Far East.

The second training course on human rights in the administration of criminal justice was held from 18 June to 7 July 1973 at the Centre for Social and Criminological Research in Cairo, Egypt,

(1) CAIPA made the "United Nations Room" available for the lectures, talks and discussions relating to the training course and provided space for typing and document reproduction services.

with the participation of 21 fellows from African countries members of the Economic Commission for Africa and from Arab-speaking countries outside Africa.

Under the 1975 agreement between the United Nations and the Government of Costa Rica, the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, which has its headquarters at San José, undertook to carry out training and research work in the countries of the western hemisphere.

As UNAFEI at Fuchu, Japan, had done in 1972 and the Centre for Social and Criminological Research in Cairo, Egypt, had done in 1973, the Latin American Institute offered its co-operation and services in organizing and holding a training course on human rights in the administration of criminal justice.

Like the previous two training courses, the San José course was designed to familiarize experienced senior officials responsible for various aspects of the administration of criminal justice with the relevant legislation and administrative procedures in Costa Rica and other countries, in so far as they affected human rights, and to provide an opportunity for an exchange of ideas on law and practice in regard to the protection of human rights in criminal proceedings in those countries.

In the assessments made of this course, emphasis was placed on the potential value of such training courses as a means of helping high-ranking public officials to identify ways of ensuring the effective exercise of human rights during the various phases of the justice administration system, and the view was expressed that it might be useful and effective to organize similar courses in other regions of the world with the participation of persons representing different legal systems in order to exchange experiences regarding the practices and principles prevailing in the various specific areas reviewed during the training course.

The States members of the Economic Commission for Latin America were invited to propose candidates who occupied or might come to occupy posts as judges, representatives of the **Ministerio Público**, police officers, jurists or practising barristers in their countries and who consequently, on returning to their respective countries, would be in a position to influence human rights policies, programmes and practices in the field covered by the course.

The applications received in response to this invitation outnumbered the 19 places available, a total of 22 Governments having submitted candidacies. ⁽²⁾ The availability of places made it necessary to

⁽²⁾ Initially, candidacies were submitted by the Governments of the following countries: Argentina, Barbados, Belize, Bolivia, Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, France, Guatemala, Haiti, Honduras, Jamaica, Nicaragua, Panama, Paraguay, Peru, Surinam, United States of America and Uruguay. A candidacy was submitted later by the Government of Mexico.

restrict the total number of fellowships granted to the 19 originally offered. ⁽³⁾ ⁽⁴⁾ The Government of Costa Rica sponsored three fellows, who, together with the 19 financed by the United Nations, made a total of 22 fellows participating in the training course. The course was also attended by three observers for the Government of Costa Rica.

2. Participation in the course

The final choice of United Nations fellows was made on the basis of criteria of distribution among the countries of the region in an effort to ensure that the various systems existing in it were adequately represented and in the likelihood that those selected would be able to use the knowledge acquired at the course on returning to their respective countries. The names, posts and functions of fellows and observers who participated in the course are set out in appendix I.

The broad variety of posts occupied and functions performed by the fellows in their respective countries enabled them to make an important contribution to various aspects of the course, which was enhanced by a wealth of information deriving from their knowledge and practical experience of many aspects of public administration and was complemented by the knowledge and experience of the Costa Rican fellows. The fellows included Professors of Law, high ministerial officials (Ministry of Justice), judges and magistrates, high-ranking State Counsels, ministerial advisers, police and prison security officials, members of special committees on legal reform and experts in social rehabilitation. ⁽⁵⁾

As a result of steps taken by the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, the Government of Costa Rica made available for the course the United Nations Room of the Central American Institute for Public Administration, and the services of Mr. Jorge Arturo Montero Castro, Director of the United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders, and Father Alberto Izaguirre, Principal Adviser of the Institute; in addition, it supplied typists and document reproduction staff for the course.

The Institute arranged for officials from the criminal police, the judiciary, the **Ministerio Público** and the social rehabilitation service to explain and answer questions concerning their respective duties in the administration of criminal justice in Costa Rica.

(3) The fellows originally selected were from the following countries: Argentina, Barbados, Belize, Bolivia, Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, France, Guatemala, Honduras, Jamaica, Nicaragua, Panama, Peru, Surinam, United States of America and Uruguay.

(4) The fellow from Surinam, who was among the 19 persons originally selected, did not attend the course. His place as a fellow was taken by the candidate of Mexico, who participated in the course from the outset.

(5) See appendix I below.

In addition, a number of public officials and eminent professional personalities from Costa Rica participated in the two round-table discussions which formed part of the activities of the course. As can be seen from the programme of the course (appendix II), the subjects of those discussions were "Community Participation in Crime Prevention and Treatment of Offenders" (second week) and "The Defence of the Accused" (third week).

The United Nations sent two officials from the Division of Human Rights and arranged for two experts to place their knowledge and experience at the disposal of the participants in the course: Professor Manuel López-Rey y Arrojo, Visiting Fellow at the Institute of Criminology, Cambridge, England, since 1965, former Chief of the Section of Social Defence (Prevention of Crime and Treatment of Offenders), Office of Social Affairs, and former social defence adviser for Latin America, Asia and the Near and Far East, who provided his services by virtue of a special appointment to the Division of Human Rights; and Dr. V. N. Pillai, former Director of the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders and former Prison Commissioner of Sri Lanka.

Professor López-Rey y Arrojo gave lectures and answered questions on subjects mainly concerning the protection of human rights in the investigation of crime and in indictment. Dr. Pillai gave lectures and answered questions on subjects mainly related to the protection of human rights in the institutional and non-institutional treatment of offenders.

Both experts also answered questions and made statements concerning further subjects raised by the participants.

Mr. Augusto Willemsen-Díaz of the Division of Human Rights made a statement on United Nations activities and represented the Division at the course. He was also responsible for the day-to-day organization of the course and he co-ordinated the support services provided by the Government of Costa Rica and by the Institute. Mr. José Luis Arroyave, also from the Division of Human Rights, assisted with some aspects of administrative arrangements during the course.

Mr. Gonzalo A. Serrano, Resident Representative of the United Nations Development Programme, and the staff of the UNDP Office at San José efficiently provided the necessary administrative support services.

In addition to co-operating actively in the holding and administration of the training course, the Director and the Principal Adviser of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders participated formally in the activities of the course. Mr. Jorge Ariuro Montero Castro, Director of the Institute and former Minister of Justice of Costa Rica, gave a talk on "Costa Rica's Penitentiary Reform in relation to Human Rights".

Father Alberto Izaguirre, Principal Adviser of the Institute and former National Director for Social Rehabilitation in Costa Rica, participated actively in the round-table discussion on "Community Participation in Crime Prevention and Treatment of Offenders". Both provided information requested by the fellows on various relevant aspects of the treatment of inmates of social-rehabilitation-institutions in Costa Rica.

Eminent personalities in Costa Rica ⁽⁶⁾ contributed to the training course, giving talks and answering questions on important matters related to the subject of the course and, in some cases, participating in the round-table discussions organized as part of the activities of the course.

The fellows took it in turns to act as Chairman and Rapporteur for the activities which took place in the United Nations Room of the Central American Institute for Public Administration (lectures, talks and debates). A number of fellows participated formally in the round-table discussions and the fellow from Uruguay acted as moderator of the second-round-table discussions. The fellow from Argentina gave a slide show, with relevant commentaries, on the Mendoza Penitentiary, of which he had been Director.

Mr. José León Sánchez, Observer, Adviser on prison affairs to the Ministry of Justice, made a statement on "Human Rights and some Implications of the Sentence" and answered questions put by the fellows.

3. General features of the Course

In preparing the programme for the San José course, efforts were made to adjust the programmes of the two previous courses to the conditions prevailing in Costa Rica and in the western hemisphere in general, taking into account the diversity of systems obtaining in the various countries of origin of the fellows. Adjustments were subsequently made to that programme to take account of the wishes expressed by the participants as the course progressed; some changes were made in the initial plans and some activities not originally provided for were included.

The three-week programme, which is set out in appendix II, sought to intersperse the scheduled lectures and talks with other activities such as discussions in small groups (for instance, the round-table discussions), visits to courts (arrangements were made to attend the public hearing of a criminal trial in a court of first instance) and observation visits to rehabilitation centres and open institutions. There were also other activities, such as the slide show, with relevant commentaries, on the Mendoza Penitentiary and the showing of a film on the Central Penitentiary of San José, already referred to.

[⁶] Including Mr. José León Sánchez, mentioned in the next but one paragraph below, who also participated in the course as an observer.

In addition to the basic subjects covered by the lectures given by United Nations experts, relevant matters were covered in the other formal course activities such as the round-table discussions and the talks given to participants by distinguished Costa Rican personalities, including officials of the Judicial Technical Police, officials of the **Ministerio Público** and judges and magistrates.

The content of the lectures and talks and the observations made during the visits to the courts were intended to cover important aspects of the principles and techniques considered advisable for the protection of human rights in the investigation of crime and in indictment, as also those aspects that were not considered appropriate for the purpose.

Efforts were made to ensure that, when matters relating to the institutional and non-institutional treatment of prisoners were being considered, each fellow should bear in mind the principles and practices prevailing in his own country so that he could compare them not only with the explanations given by the lecturers but also with direct personal observations during the visits included in the course.

Efforts were also made to promote an exchange of basic information concerning the theoretical principles and practical activities which each fellow regarded as appropriate on the basis of his professional experience and in the light of the information brought to his attention during the course.

The concluding meetings were devoted to an evaluation of the 1975 course, with suggestions concerning ways in which such courses could be made more effective, the advantages and drawbacks of organizing them on a regional basis, and suggestions for similar courses in the future.

Comments were also made on the way in which each fellow could, in his capacity as a public official or a private individual, disseminate information and help to ensure observance of the principles and practices mentioned during the course as being conducive to respect of human rights.

The San José course concluded with the presentation of attendance certificates by the Vice-Minister of Justice of Costa Rica and with some closing words by the Director of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders and by the representative of the Division of Human Rights of the United Nations Secretariat.

II. SUMMARY OF SUBJECTS DISCUSSED

1. General aspects

During the discussions, consideration was first given to the apparent contradiction between the fundamental rights of the individual and those of society as a whole. It was generally agreed that, however important the human rights and fundamental freedoms of

the individual were for the proper administration of justice, legal systems had to place limitations on them and incorporate such limitations in the national legislation so as to satisfy the requirements of public safety and order. It was felt, however, that the difficulty lay in finding the proper balance between those two factors. There were circumstances - for instance, war or threat of war, internal disturbances, etc. - which might make it necessary to give priority to the protection of society as a whole. At all other times, when no such collective peril existed, there should be a firm tendency to emphasize the importance to be attached to the rights and freedoms of the individual.

In this connexion, it was stressed that, neither in the formulation of legal standards governing states of exception (internal disturbance, emergency, siege, war, etc.) nor in their practical application should such states be conceived as a denial of human rights and fundamental freedoms, even on a temporary basis. It was considered that, although the effectiveness of certain human rights might be temporarily reduced or restricted as a result of such states of exception, it would be inadmissible to suppress them entirely. It was further stated that in no such case should anyone be deprived of the right of habeas corpus,* nor should the competent authorities be authorized to deny such requests, which in no circumstances whatsoever must they reject on the pretext that the requisite formalities had not been complied with.

The view was taken that the structure of the system for the administration of criminal justice was of paramount importance. Emphasis was placed on the need for liaison between the various components of the system applying criminal policy through the administration of criminal justice. The police, the State Counsel, the courts and the rehabilitation services should not work in watertight compartments but should actively endeavour to achieve efficient co-ordination and complementarity in their efforts. Each department within the system had a direct interest in the efficiency and effectiveness of the work of the others. It was emphasized that the rights of the individual and of society could only be realized with maximum efficiency and equitability within such an integrated organization.

It was stated that, in a number of the countries in the area covered by the course, there were substantial segments of the population, formed of indigenous ethnic minorities, who were not covered by the system for the administration of criminal justice. In many cases, such groups were, for reasons of language, culture and geographical situation, outside the effective functioning of the system concerned, and this raised problems which often resulted in the violation of the human rights and fundamental freedoms of those groups.

[*] Known in Chile as "amparo". Similarly, one of the forms of "amparo" in Mexico is essentially the same as habeas corpus.

It was generally agreed that it was because of the lack of adequate resources that the developing countries were unable to achieve greater improvements in the services for the prevention of crime and the treatment of offenders. It was pointed out, however, that in some countries of the region it was not merely that the necessary resources did not exist but often that much of the money available was used for other purposes - for instance, to cover substantial military expenditure.

In this connexion, a number of participants expressed the view that military Governments had a greater tendency than non-military Governments to violate the human rights and fundamental freedoms of inhabitants in general and of prisoners in particular. Some participants did not agree with these assertions, stating that there were "civilian" Governments which committed as many abuses as "military" Governments, or even more. In particular, they pointed out that, both in penal institutions and in police forces, some members of the military had performed valuable work in promoting respect for the human rights of prisoners. It was generally agreed that the crux of the matter was not that there were or were not military men among the staff of the police and of penal institutions but that that staff, whether military or not, should have the necessary moral standing and technical training to discharge their difficult duties. Emphasis was placed on technical training, careful selection of staff and freedom of staff from political influences and pressures as factors which were essential to ensure adequate services and respect for the human rights and fundamental freedoms of persons coming into contact with the services of the administration of criminal justice.

2. Protection of human rights in the stage of investigation and prosecution.

It was pointed out that the Standard Minimum Rules for the Treatment of Prisoners had a dual purpose: to safeguard the human rights and fundamental freedoms of detainees or prisoners and to promote the treatment of prisoners in the light of the principles of a progressive rehabilitation policy.

It was considered highly advisable to arrange for a public service of free legal assistance which would begin from the moment that criminal proceedings were instituted by the police and would continue during the help given to the offender after his release from prison. This system of public legal aid should be regarded as parallel to the State Counsel system.

It was generally agreed that knowledge of the offender's criminal record was useful for the purposes of criminological investigation and the classification of prisoners. However, the practice of issuing certification of the evidence included in that record for other purposes should be discontinued as being generally prejudicial to the person concerned.

It was agreed that compensatory funds should be established for use in cases in which the public authorities deliberately violated the rights and fundamental freedoms of individuals while they were the subject of criminal proceedings. It was further stated that such funds should also be directed towards compensating the victims of crime so as to lessen the impact of the crime on their future lives.

In development of ideas mentioned earlier, emphasis was placed on the need to provide the police with appropriate and comprehensive training. The principles and concepts appearing in the provisions of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights should occupy a prominent place in the curricula of police academies and in all vocational training programmes for the police. It was pointed out, in this connexion, that, to be effective, the safeguarding and protection of human rights through the law should be supplemented by guarantees of the integrity and sense of responsibility of those entrusted with the application of criminal justice system. To this end, all such persons, in addition to being required to possess professional competence, should be subjected to careful moral and psychological screening and should be given psycho-technical tests relating to integrity and socio-political responsibility before they were appointed.

Accordingly, it was considered undesirable and even dangerous, given the circumstances prevailing in many countries in the area, to form voluntary police forces composed of persons lacking the appropriate technical training and selected without strict application of suitable criteria regarding their character and moral fibre. Emphasis was placed on the need for technico-professional and responsible bodies to deal both with the prevention of crime and with the treatment of offenders serving a sentence of imprisonment.

For the purpose of ensuring that the police would be as free as possible from political pressures and influences, it was considered preferable that the police force should be under the sole authority of the judiciary. It was pointed out that the judiciary was everywhere among the most independent bodies in this respect, although it was also mentioned that in many countries the **Ministerio Público**, in contrast, was not in the same position.

Consideration was given to some supplementary points relating to the protection of human rights both during the investigation of the crime and in the pre-judgement and judgement stages.

The attention of participants was drawn to the fact that efforts were at present being made at the international level to draw up an international code of police ethics on a basis acceptable to all legal systems. In this regard, reference was made to the "draft International Code of Police Ethics", (7) which had been used as a basis for dis-

(7) See annex XII.

cussions on this subject at the recent Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in September 1975. ⁽⁸⁾

As an example of an eminently practical and humane method of police questioning, mention was made of the text known as "The Judges' Rules", which had been used in England since 1908 and which were revised in 1964; the text of these Rules was made available to the participants. ⁽⁹⁾ It was observed that these rules constituted a serious effort to treat the accused fairly and impartially and to preserve his human dignity, while at the same time ensuring that the police would not be hampered in gathering evidence in order to establish the truth.

During the discussion on these matters, emphasis was placed on the importance of having practical rules to assist the police in discovering the real circumstances of the acts under investigation, while at the same time providing the accused with every opportunity of demonstrating his innocence or the true circumstances of his involvement in those acts. The view was expressed that the concept of presumption of innocence was an important principle acceptable to all systems in the region. It was essential that investigations should be conducted with full respect for the fundamental rights of the individual and on an impartial and non-discriminatory basis in order to establish the true circumstances of the acts in question.

The principle of equality of all persons before the law, together with the concept of presumption of the innocence of the accused, made it necessary to examine closely the provisions and practices affecting detainees both before and during their trial. Particular consideration was given to two areas: release on bail and the treatment of an accused person detained pending trial.

With regard to conditions of detention during the pre-trial period, emphasis was placed on the need to separate detainees from convicted persons; the right to the services of a lawyer as soon as possible after arrest; and the right of the detainee to communicate with persons whom he needs to consult in order to prove his innocence or the true circumstances of the acts under investigation, to maintain links with his family and to retain the possibility of resuming his employment on release.

The view was expressed that release on bail tended to favour the well-to-do, and alternatives to temporary detention were considered. A number of measures were considered to have merit, such as release on parole; freedom under the supervision and guidance of probation officers or citizens of standing or of established reputation;

⁽⁸⁾ Report on the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, (United Nations Publication, Sales No. E.76.IV.2).

⁽⁹⁾ See annex XI.

house arrest; and the system of reporting periodically to the police. These alternatives were considered particularly appropriate in cases of non-recidivists whose offences were not serious and did not entail security problems.

It was agreed that, in principle, release on bail should be granted only by the trial judge and it was therefore not considered advisable that the police authorities or the authorities of the centre in which the person under detention was being held should be empowered to release that person without the express authorization of the judge who had ordered the detention. It was pointed out, however, that in certain circumstances even the police could grant release on a provisional basis and subject to the decision of the judge when the detainee was brought before him (for instance, in the case of persons who were not known to be habitual offenders and who were charged with minor offences and had been arrested at times when the courts were not functioning normally - e.g., weekends or official holidays). In such cases it should be enough for the police authorities to inform the person concerned that he must not leave the locality and must appear before the competent judge at the start of the official hours on the first subsequent working day.

With regard to the conditions for release on bail, it was felt that the fact of having to deposit a certain sum of money or to post some other pecuniary bond in order to obtain conditional release constituted a type of discrimination, based on economic status, in favour of the more well-to-do offenders. It was considered advisable for release to be granted rather on the basis of a personal guarantee or a pledge by the offender himself or by a relative, friend or volunteer of standing and with a reputation in the community, which would draw up special lists for that purpose.

3. Protection of human rights during institutional and non-institutional treatment of the offender.

The rehabilitation of the offender was more firmly assured through his own participation and co-operation in the rehabilitation process. An essential element in rehabilitation was an efficient system for the classification of prisoners; two such systems were considered.

The first system was relatively simple: prisoners were classified on the basis of sex, age, known criminal record and length of sentence.

Of the various elements mentioned as guiding principles for classification under this first system, detailed consideration was given only to some aspects relating to the "age" of the alleged offender.

Plans for the prevention of crime, with particular reference to juvenile delinquency, should be based on the relevant provisions of the Universal Declaration of Human Rights, the International Covenants

on Civil and Political Rights and on Economic, Social and Cultural Rights, the instruments relating to the rights of the child and to equality between men and women and other relevant United Nations instruments.

The second system was based on the availability of qualified technical personnel, including psychiatrists, psychologists, social workers and vocational instructors, who together would prepare individualized rehabilitation programmes and supervise their execution, it being always open to them to introduce any changes which might prove necessary.

Some consideration was given to the fundamental rights of prisoners in rehabilitation institutions. Among those examined in the greatest detail were the right of reasonable access to the court and to the legal services for protection against ill-treatment; the right, to fair and even-handed disciplinary proceedings; the right for complaints to be received, heard and examined impartially; the right to be informed of the rules and regulations applicable in the penal institution; the right to a reasonable degree of communication with the outside world through letters, documents and visits; and the right of access to the information media.

The problems in connexion with the sex life of prisoners were also considered, the opinion being expressed that such problems affected particularly men and women, whether or not convicted, who remained in institutions of detention or in prison for long periods. It was regarded as an established fact that in closed institutions throughout the world there was a certain incidence of homosexuality, lesbianism and other sexual deviations, possibly of a "stopgap" nature.

Consideration was given to the problems of married male and female prisoners, on the one hand, and of single, divorced or widowed male and female prisoners, on the other.

It was generally agreed that married male prisoners should be allowed conjugal or intimate visits which would give them the opportunity to have periodic sexual relations with their wives. ⁽¹⁰⁾ It was also agreed that married female prisoners in similar situations should be allowed periodic sexual relations, but there was no agreement on how this should be arranged. While some fellows proposed a system identical to that for male prisoners, with husbands allowed to make conjugal visits, ⁽¹¹⁾ some expressed the view that it would be better to allow such prisoners to leave the prison periodically for this purpose. It was stated that, in a number of countries of the area in

[10] At the training course, "wives" was understood to mean those persons linked to prisoners by valid matrimony or by a legally established *de facto* union.

[11] *Mutatis mutandis*, the concept of "husbands" corresponds to what was stated in the previous footnote regarding the word "wives".

which conjugal visits to male prisoners had been provided for, no similar provision had been made for conjugal visits to female prisoners. It was pointed out that this constituted discrimination based on sex and should be remedied.

In this connexion, it was noted that the Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955 at the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, did not include any provisions on this matter. Among the reasons advanced to explain this failure was the fact that none of the participating States had raised these problems; that in 1955 there had been a different attitude towards sexual matters in the world from that of today; and that attitudes on this point differed from country to country: even today there were States which categorically refused to consider measures of that type.

As a general aspect of great importance, emphasis was placed on the fact that this subject should not be regarded from a purely sexual point of view and that it was more appropriate to refer to a "family" visit. It was pointed out that what was needed was for male or female prisoners to be able to continue to exercise their functions within the family and that when their wives or husbands and children came to visit them they should be given the opportunity to spend a day *en famille* in an atmosphere as similar as possible to that of the home, during which there would of course be an opportunity for sexual relations between the spouses, as one of the aspects of the visit.

There were differences of opinion regarding "unmarried" male and female prisoners. While the majority of the fellows were inclined to think that such prisoners were entitled to resolve their sexual problems in a reasonable manner through the visit of "friends" or even prostitutes or professionals, others took the view that it was inappropriate to encourage in penal centres forms of behaviour which the State and society rejected outside such institutions. It was emphasized that, in this area too, it should be borne in mind that efforts to rehabilitate the offender were directed towards preparing him to live within the society from which he had come and to which he would return on leaving the penal centre, within an atmosphere of adaptation to the rules of conduct prevailing within that society. It was therefore concluded that the behaviour permitted within prison centres should correspond to the accepted standards of behaviour outside such institutions, in the society to which the prisoner would return on release.

On a related matter, it was regarded as an undue restriction violating the human rights of the male or female prisoner to allow a conjugal visit only on condition that contraceptive devices were used. In the case of female prisoners, this improper encroachment on their right to motherhood was supported with arguments based on efforts to avoid the birth of "prison children" (children born in penal centres).

Against this, it was argued that in many countries childbirth had for long taken place only outside prison, in suitable hospitals to which female prisoners were sent for this purpose before the birth. Since, furthermore, no reference was made in the birth registration to the fact that the mother had been a prisoner at the time, the alleged undesirable effects did not occur. It was agreed that, in general, the mother should be allowed to take the child back to the penal centre and keep it with her and bring it up for some time, later sending the child to live outside the penal institution with relatives or in appropriate institutions.

4. Evaluation and impact of the course

The vast majority of participants agreed that, through the explanations given by the experts and the representatives of the United Nations, the talks given by Costa Rican public officials, magistrates, professors and technicians, the opportunity for an exchange of views between participants and the distribution of important documents, the course had provided, confirmed or clarified useful knowledge which could be applied in their respective areas of activity. It was noted that the participants' existing knowledge of the subject had been significantly enriched during the course, which had rounded off and pinpointed concepts with regard to the necessary respect for fundamental rights and freedoms during criminal proceedings.

It was also stated that the course had provided all participants with a firm idea of the keen interest that the United Nations was taking in discovering and overcoming instances of violations of human rights in the world's prisons, as also of the broad scope of United Nations activities in the field of human rights.

It was recognized that the attention of participants had been drawn to some shortcomings in the practical application of some principles. The consideration of certain specific aspects had made participants more aware than before of various unsatisfactory aspects of the practice obtaining in their respective countries, in which actual action did not correspond to the standards formulated as attainable ideals by the United Nations in the relevant instruments and in the rules of practical application developed on the basis of those instruments. Although the precise way of putting into effect some of the concepts that had been emphasized was not always clear or easy, no effort within the power of the participants in the course should be spared to ensure that actual practice in their countries was increasingly in line with the principles proclaimed as desirable by the international community; it was noted that the desire of the participants to achieve this end had been significantly strengthened.

It was the unanimous view of the participants that such training courses should continue to be held on a regional basis, although some participants observed that the possibility of holding courses on a global basis, once regional courses had been held in the various parts of the world, should be constantly borne in mind.

Emphasis was placed on the advantage of holding such courses on a regional basis, in view of the relative uniformity which frequently existed between the legal systems of various countries within the different regions of the world, making it easier to exchange information since they were essentially comparable systems. The view was expressed that, within a particular region, uniformity or standardization, if thought desirable, was often more readily attainable because of the more direct and continuous relationship existing between countries situated in the same area of the world, still more between neighbouring countries, particularly those with similar historical, cultural, economic and social features.

On the other hand, it was observed that the organization of courses on a regional basis might come to be regarded as undesirable when there was excessive uniformity between the systems and traditions obtaining in the region. It was considered desirable that there should always be representation of different legal systems reflecting various historical and cultural traditions, so that each participant could compare them with those of his own country and see what was being envisaged and done according to different historical and legal patterns.

It was suggested that a deliberate effort should always be made to find contrasting systems so as to expose the participants to new or different ideas, knowledge, institutions and experience, giving the courses a broader base of support going beyond the frontiers of the region. It was stated, in particular, that the participation of fellows from European countries and from the newly independent African States might have been useful for the San José course.

For the same reasons, it was considered desirable and was suggested for all cases, that an invitation to participate in courses of this type should be extended to persons outside the region concerned who represented systems different from those mainly encountered in the region and, if possible, systems which did not exist at all within the region, thereby ensuring a more fruitful exchange of ideas, knowledge and experience.

When such a cultural, linguistic and legal affinity did not exist in the region, those factors should be borne well in mind in selecting the fellows, not only in order to ensure that the major historical and cultural traditions and most important different legal systems which might exist in the region were adequately represented, but also to require of all participants a knowledge of the working languages of the course, at least to a standard which would enable them not only to follow the explanations made in any of those languages but also - very important - to communicate with the other participants and with the persons at the course centre without needing interpretation services.

The inclusion in the programme of a slide show ⁽¹²⁾ and narrated film ⁽¹³⁾ and the opportunity to attend the public hearing of a real criminal case were welcomed, it being considered, that by these methods it was possible to have a far more direct view of how the institutions and rules worked. It was suggested that the course could have been still more effective if more intensive use had been made of audio-visual and direct perception methods, and it was recommended that this should be done in future courses of this kind. It was suggested that, to ensure that future training courses were as effective as possible, it might be advisable that, in addition to the extremely valuable general and comprehensive explanations of experts and the United Nations representative at San José, a more thorough study should be made of certain basic legal matters, both substantive and procedural, that a comparative review of particular institutions and practices should be undertaken with emphasis on the advantages and drawbacks of each system, and that appropriate consideration should be given to the possibility of combining the best elements of all of them. Additional measures suggested were the holding of more broad-ranging discussions on the basis of the fellows' provisional conclusions and the adoption of conclusions of the course.

By way of formal conclusions, it was proposed that there should be a constant exchange of information between the Division of Human Rights and the fellows, between the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders and the fellows, and among the fellows themselves. It was further proposed that a world conference of former prisoners who had acquired a profession following their term in a penal institution should be convened.

It was felt that the course had been a success and that its impact would result in tangible measures in the countries of the region.

All participants considered that the fact that the course had been held in Costa Rica had been beneficial for that country, since it had undoubtedly given a fresh impetus to all officials and professionals active in process of change to continue and possibly intensify their efforts in that regard. It was considered that the course had also provided them with the opportunity to reassess the measures adopted or planned in the light of the comments made by the experts and the representative of the United Nations and by the participants, given the obvious interest in that country in the protection of human rights in the administration of justice in accordance with the recent reforms in its criminal, trial and prison systems. The view was expressed that the questions put to the Costa Rican authorities who had given talks and participated in the round-table discussions scheduled as part of the course would shed light on matters still awaiting settlement or com-

⁽¹²⁾ See appendix II: Thursday, 4 December, at 2.30 p.m.

⁽¹³⁾ See appendix II: Tuesday, 9 December, at 5.30 p.m.

mending little attention, and that the suggestions made by the experts and the United Nations representative regarding the international principles and texts and the practices recommended by the United Nations to ensure their successful implementation would result in a re-examination and better assessment of a number of questions.

The fellows expressed favorable opinions regarding their experiences during the three weeks of the course, with particular reference to developments and practices in Costa Rica in the area covered by the course. For instance, they had been struck by the interest, good will and co-ordination in the efforts made to bring about a fundamental and total reform in the administration of criminal justice in Costa Rica. As was to be expected, however, there were still serious obstacles to overcome.

In this connexion, emphasis was placed on the fact that Costa Rica was a country prepared to experiment with what for it were novel concepts in order to enhance respect for and safeguards of human rights in this area. This general desire to protect the rights of prisoners had prompted the entire series of criminal, trial and prison reforms undertaken and already, in many respects, carried out in Costa Rica. The reform was well directed and would gradually be improved through constructive criticism. The authors of reform in Costa Rica appeared to be ready to criticize their own action, and this self-criticism was considered highly salutary in a process of genuine reform. As indicated above, there were still some unsatisfactory aspects, such as the fact that prisoners were still being kept in cells for more than three weeks; the lack of work for many prisoners; the fact that overcrowding persisted in some penal institutions; and the incidence of sexual deviation and drug addiction in such institutions, particularly in the Central Penitentiary. There was, however, a genuine awareness of the fundamental problems and a determination to overcome them. More had been done in this area in Costa Rica than in countries with far greater resources.

It was also generally agreed that the course would probably bring direct benefit to the countries of origin of the fellows, since the latter said that they had been stimulated afresh to tackle subjects in the field from a broader point of view which was more closely in line with the ideals proposed by the United Nations.

The fellows stated that, as individuals and in their professional capacity as lawyers or social rehabilitation workers, they were determined to pass on the information and experience gained during the course by giving lectures or talks to groups of interested persons; writing articles and notes on important aspects; and ensuring continued coverage on important subjects by the press, radio and television. The fellows who were members of the teaching profession said, that, in giving lessons and explanations, in schools, universities, police academies or colleges for the training of prison staff, they would include

the necessary references to the nature and characteristics of the problems relating to the respect and protection of the human rights of indicted, accused or sentenced persons and to ways of overcoming such problems in accordance with internationally recommended principles and practices.

As public officials, the participants reiterated their determination always to proceed, in their official capacity and in the exercise of the office they held, with the strictest regard for the rules and practices of respect for and protection of the human rights and fundamental freedoms of those involved in the administration of criminal justice. They also said that they would do what was reasonably and legally possible to influence the competent authorities in their official acts, informing their colleagues and other appropriate officials of the measures proposed for working within the limits of what was technically advisable to ensure the best possible protection of the fundamental rights of suspects and accused and sentenced persons.

They said, in particular, that their efforts would be directed towards improving rules, situations and practices in which, through bad faith, neglect, imprudence or abuse or excess of power, the fundamental rights and freedoms of those subject to the administration of criminal justice were violated and towards endeavouring by all lawful means to secure legal reform resulting in the adoption of appropriate principles and rules and eliminating defects and shortcomings in existing legislation.

It was felt that the San José course was of undoubted interest for the entire region of the Americas in view of the growing relationship between the countries of the area and the mutual influences developing in the Western hemisphere. The personal acquaintanceships forged between the participants were extremely valuable, as were the direct relationships established between them and the protagonists of the recent reforms in Costa Rica and the personal experience of what was being done in that country. It was extremely useful to compare the different national systems and the influence which they exerted on one another in order to identify points of convergence and divergence between them. It was considered that the exchange of ideas, information and experience between the participants had been of great value in that regard. It was to be hoped that, in the not too distant future, the currently converging tendencies in the various countries would result, if not in the standardization of systems desired by many, then at any rate in an appropriate understanding and similar ideas regarding the rights and freedoms to be protected and on ways of bringing practices increasingly into line with internationally advocated standards for the protection of such rights and freedoms. The San José course would be an important step in that direction.

APPENDIX I

LIST OF PARTICIPANTS

A. Fellows

Argentina	Mr. José Alberto Yáñez	Deputy Minister of Justice, Government of the Province of Mendoza, Mendoza.
Barbados	Mr. Frank Decourcey King	Magistrate, Saint Michael.
Belize	Mr. Denis E. Malone	Judge, Belize City.
Bolivia	Mr. Napoleón Vilaseca Vélez	Professor, National Police Academy, Direction General of the National Guard, La Paz.
Brazil	Mr. Nelson Marabuto Domingues	Director of Police Recruitment, Brasilia.
Colombia	Mrs. Clara Colmenares de Segura	2nd Judge for Juveniles, Criminal Branch, Juveniles Court, Bogotá.
Costa Rica	Mrs. Alfonsina Camacho de Chavarría	Professor, Research Methods and Introduction to Law, University of Costa Rica, San José.
Costa Rica	Mr. Manuel G. Coronado Chavarría	Chief of Security, Penitentiary, San José.
Costa Rica	Mr. Andrés Umaña Di Palma	Social Rehabilitation Expert, San José.
Dominican Republic	Mrs. Elsa Rodríguez	Member, Commission on Agrarian Law, Santo Domingo.
Ecuador	Mr. Ricardo Vaca Andrade	Professor of Criminal Law, Faculty of Law, Catholic University of Ecuador, Quito.
El Salvador	Mr. Jorge Alberto Pinto Panameño	Chief, Department of Military Justice, Ministry of Defence and Public Security, San Salvador.

France	Mr. Jacques Schmelck	Magistrate, Department of Justice, Criminal Affairs and Pardon, Paris.
Guatemala	Mr. Apolo Eduardo Mazariegos González	Presiding Judge of the Fourth Chamber, Court of Appeals, and Professor of Criminal Law, Faculty of Juridical and Social Sciences, University of San Carlos of Guatemala, Guatemala City.
Honduras	Mr. José Luis Gale Guillén	Assistant, Legal Office, Institute of Military Social Security, Tegucigalpa.
Jamaica	Mr. Maurice Audley Reckord	Crown Counsel, Office of Public Prosecutions, Kingston.
Mexico	Mr. Roberto Eduardo Pizano Camberos	Deputy Director, Tutelar Council for Juvenile Offenders of the Federal District, Mexico, D. F.
Nicaragua	Mr. Raymundo Romero Chávez	Representative, Ministerio Público , Ministry of Government, Managua.
Panama	Mr. Wilfredo Sáenz Fernández	Circuit Judge, Seventh Circuit, Criminal Branch, Panama City.
Peru	Mr. Gustavo Bacacorzo	Secretary General, Senior Director National Council of Justice, Lima.
United States of America	Mr. Jack Michael Goldklang	Attorney-Adviser, Office of the Legal Counsel, Department of Justice, Washington D. C.
Uruguay	Miss Martha Jardi Abella	Professor of Procedural Law, Montevideo.

B. Observers

Costa Rica	Miss Inés León Valverde	Legal Adviser, General Comptroller- ship of the Republic, San José.
Costa Rica	Mr. José León Sánchez	Adviser, Penitentiary Affairs, Ministry of Justice, San José.
Costa Rica	Mr. Gonzalo Trejos	Magistrate, Supreme Court of Justice, San José.
Costa Rica	Mr. Ulises Valverde	Magistrate, Supreme Court of Justice, San José.

APPENDIX II

PROGRAMME OF THE TRAINING COURSE

First Week

Date	A.M.	P.M.
MONDAY 24 November	9.30 OPENING OF TRAINING COURSE Coffee.	15.00 "Get acquainted" meeting of participants.
TUESDAY 25 November	9.00 Statement on "United Nations Activities in the Protection of Human Rights", by Mr. Augusto Willemsen Díaz, Representative of the Division of Human Rights, followed by discussion.	15.00 Discussion on morning item continued. Proposals by participants.
WEDNESDAY 26 November	9.00 Lecture on "Administration of Criminal Justice and Human Rights", by Prof. Manuel López- Rey y Arrojo, followed by discussion.	14.30 Talk on "Costa Rica's Peni- tentiary Reform relating to Human Rights", by Mr. Jorge A. Montero, Director of the Latin American Institute followed by discussions.
THURSDAY 27 November	9.00 Lecture on "The Police and Human Rights", by Prof. Manuel López-Rey y Arrojo, followed by discussion.	14.30 Visit to the Supreme Court of Justice. Talk on "Human Rights in Judicial Investiga- tion" by Mr. Erich Neuror T., Chief of Judicial Technical Police, followed by discussion.
FRIDAY 28 November	9.00 Lecture on "Human Rights and Criminal Procedures", by Prof. Manuel López-Rey y Arrojo, followed by discussion.	14.30 General discussion.

Second Week

MONDAY 1 December	9.00 Lecture on "General Features of the Criminal Justice System in relation to Human Rights", by Mr. V.N. Pillai, followed by discussion.	14.00 Observation visit to "La Re- forma", a penal institution (minimum and medium security).
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Date	A.M.	P.M.
TUESDAY 2 December	9.00 Lecture on "Sentencing", by Mr. V.N. Pillai, followed by discussion.	14.00 Observation visit to "El Buen Pastor", a penal institution for adult women, and to "San Agustín", an open institution for men.
WEDNESDAY 3 December	9.00 Lecture on "The Treatment of Offenders", by Mr. V.N. Pillai, followed by discussion.	14.30 Round-table discussion on: "Community Participation in Crime Prevention and Treatment of Offenders", with the participation of: Mr. Cristián Tattenbach, former Minister of Justice (Moderator); Mr. Marcelo Prieto, Director of the National Youth Movement; Father Alberto Izaguirre, former Director General of Social Rehabilitation; Mr. Roberto Pizano Camberos, fellow from Mexico.
THURSDAY 4 December	9.00 General discussion on the topics of the week.	14.30 Projection of slides by Dr. José Alberto Yáñez, fellow from Argentina, former Director of the Penitentiary of Mendoza.
FRIDAY 5 December	8.30 Visit to the Rehabilitation Centre for Juvenile Offenders, in Cartago.	

Third Week

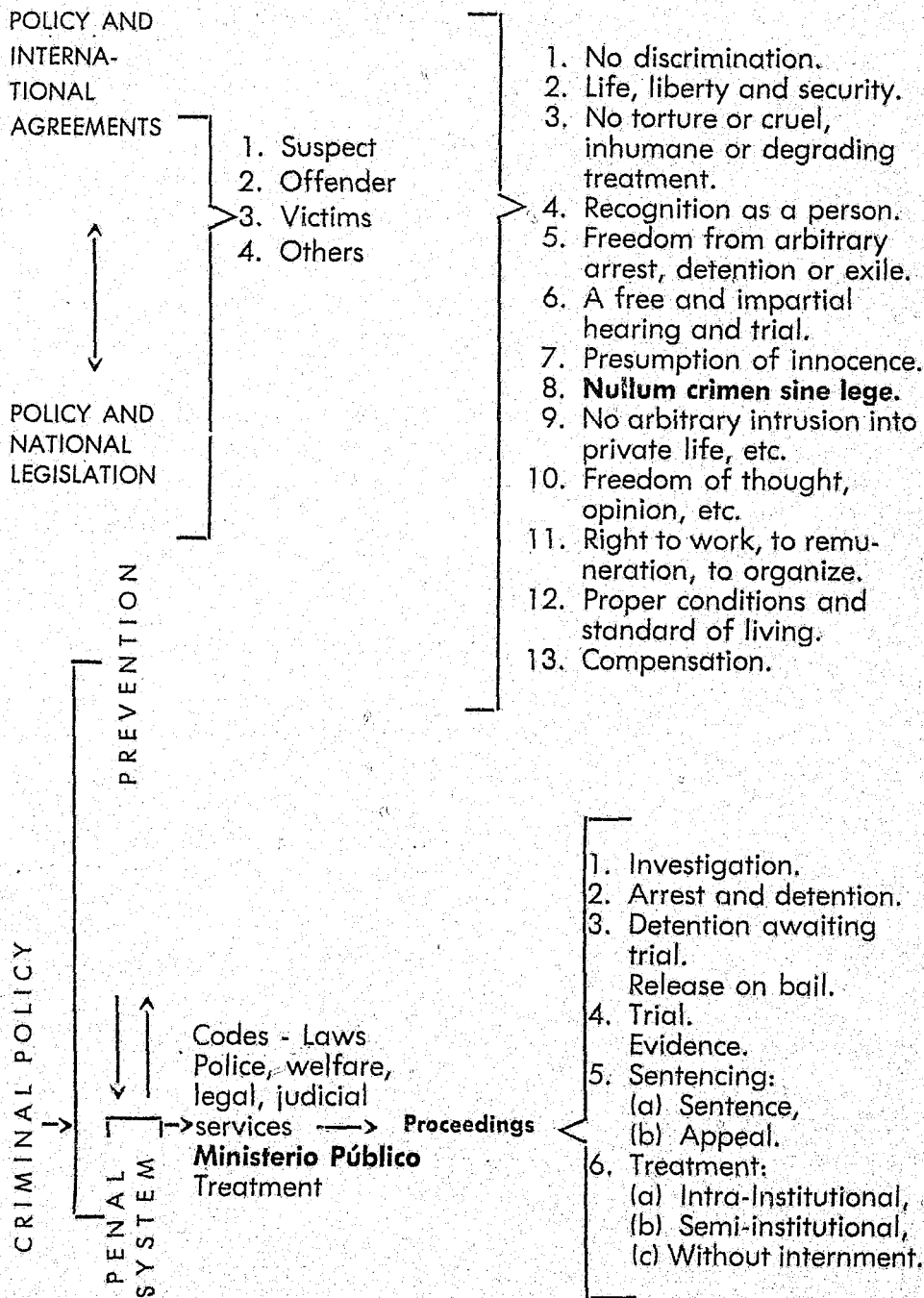
MONDAY 8 December	7.30 Observation visit to the San Lucas Penal Centre.	
TUESDAY 9 December	9.00 Round-table discussion on "The Defence of the Accused", with the participation of: Prof. Martha Jardi Abella, fellow from Uruguay (Moderator); Mr. Denis Malone, Judge, fellow from Belize; Mr. José Francisco Chaverri, Head of the Ministerio Público in the Supreme Court; Mr. Hugo Porter, Magistrate, Sala de Casación Penal ; Mr. Luis Paulino Mora, Juez Superior Penal , followed by discussion.	14.30 Talk on "Human Rights and some Implications of the Sentence", by Mr. José León Sánchez, Costa-Rican author of " La Isla de los Hombres Solos ", followed by discussion. 17.30 Showing of a film on the Central Penitentiary (San José).

Date	A.M.	P.M.
WEDNESDAY 10 December	9.00 Talk on "Human Rights and Social Development", by Mr. Fernando Volio, Minister of Education, followed by discussion.	14.30 Talk on "The right to information: another aspect of human rights", by Mr. Cristián Tattenbach, former Minister of Justice, followed by discussion.
THURSDAY 11 December	9.00 Talk on "Human Rights and the Woman Offender", by Sister Marina Ureña, Licentiate in Social Service, followed by discussion.	14.30 Evaluation of the training course.
FRIDAY 12 December	9.00 Presentation of Certificates of Participation by the Vice-Minister of Justice. Closure of session.	

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ANNEX I

THE ADMINISTRATION OF CRIMINAL JUSTICE AND HUMAN RIGHTS



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ANNEX II

THE POLICE AND HUMAN RIGHTS

1.—VARIOUS KINDS OF POLICE:

Civil, Military, Para-Military, Intelligence Service.

Judiciary police - (coming under the Ministry of Justice or the **Ministerio Público**).

2.—ARREST - DETENTION:

Distinction between the concepts

Requirements:

- (a) Recognition as a person.
- (b) No discrimination.
- (c) Compliance with legal formalities (Offence committed; about to be committed; in process of being committed).
- (d) Conviction that the State is discharging its function.

3.—ARREST - DETENTION - BREACHES OF LEGALITY

(Rising statistics)

Art. 29(2) of the Universal Declaration of Human Rights.

Police view of crime. Manual.

- (a) Abuse of authority. Arts. 4, 5, 9 of the International Covenant on Civil and Political Rights.
- (b) Misapplication of a legal provision.
- (c) Irregularities in a legal instrument.
(The problem of legality and malpractice).

4.—DETENTION

For specified periods: 24 h.; 2, 3, 5 days, etc.

Extension - **Garde a vue**.

- (a) Information about grounds for detention.
- (b) Opportunity to communicate with a third party, family, etc.
- (c) On expiry of the time limit, either release or referral to the competent judicial authority.

Police practices

- (a) List of detainees held at police stations.
- (b) Telephone calls properly answered.
- (c) Medical examination of detainees to establish whether they were tortured or ill-treated.

5.—PROTECTION - HABEAS CORPUS

Manifestation - (Sobrarbe, Aragon, twelfth century).

Mexico, Art. 16 of the Federal Constitution.

Problem: effectiveness.

Emergencies.

Restriction, not all human rights.

Art. 5 of the International Covenant on Civil and Political Rights.

6.—INVESTIGATION

(Torture - Cruel, inhumane, degrading treatment)

- A. Confiscation.
- B. Interrogation (Evidence - Confession).
- C. Forcible entry.

7.—PRIVACY

There is no international definition.

- (a) Cases covered.
- (b) Concept.

The person and personality;
Home-Work-Personal relations.

8.—TECHNICAL AND SCIENTIFIC DEVELOPMENTS

U.N. Studies 1973. General Assembly resolutions	2450. XXIII, 1958 3150. XXVIII, 1973 3268. XIX, 1974 Studies 24 - November 1975
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INVASION OF PRIVACY: Auditory and visual,
Physical and psychological.
Surveillance.
Microphones, tape recordings, listen-
ing devices, brainwashing, drugs, elec-
tronic devices, cameras, silence,
detectors, computers, telescopic
lenses, closed-circuit television,
advertising, compromising
situations, etc.

Inadequacy of Criminal Codes — e.g. Physical entry is a neces-
sary element of the
offence of illegal entry,
whereas present-day
scientific and technical
devices make physical
entry unnecessary in
many cases.

ANNEX III

HUMAN RIGHTS AND THE TRIAL PROCESS IN CRIMINAL CASES

CRIMINAL PROCEEDINGS. THE TRIAL PROCESS IN LATIN AMERICA

Articles 4, 5, 6, 7, 9, 10, 14 and 16 of the International Covenant
on Civil and Political Rights

Direct intervention makes for concentrated proceedings;
dispersion slows down the process.

1. REMAND IN CUSTODY

General rule. Exceptions.
Bail.

2. TRIAL PROCEDURE

Charge - evidence - sentence

- (a) Equality.
- (b) Presumption of innocence.
- (c) Information about the nature and grounds of the charge.
States of emergency.
- (d) Time and facilities for defence.
- (e) Right to be present at a trial. To cross-examine witness.
Availability of a qualified interpreter.
- (f) No self-incrimination.
- (g) Juveniles. Special provisions.
- (h) Appeal - Judicial error.

Non bis in idem

- (i) Trial within a reasonable period of time.
- (j) Penalties.
- (k) Criminal record. Restricted use.
- (l) Compensation in case of error.

PERSONS IMPRISONED WITHOUT SENTENCE

	Date:	Percentage of the prison population
ARGENTINA	1972	61%
COLOMBIA	1973	79%
PERU	1970	70%
VENEZUELA	1973	79%
PANAMA	1972	46%
CHILE	1975	65%
PUERTO RICO	1970	28%
COSTA RICA	Nov. 1975	60%
FRANCE	1972	36%
SPAIN	1974	37%
BELGIUM	1974	28%
UNITED KINGDOM	1972	17%

NATIONAL POPULATION AND PRISON POPULATION

	Date:	Total population of the country		Prison population*
COLOMBIA	1974	22	million	36,000
ARGENTINA	1972	23	"	23,500
PANAMA	1972	1½	"	2,000
VENEZUELA	1971	11	"	15,000
FRANCE	1973	51	"	30,300
ITALY	1973	53	"	26,000
SPAIN	1973	35	"	13,000
SWEDEN	1973	8	"	5,200
AUSTRIA	1973	7	"	8,000
COSTA RICA	10/11/1975	1.9	"	2,154

* Rate per 100,000 inhabitants.

ANNEX IV

GENERAL FEATURES OF THE CRIMINAL JUSTICE SYSTEM IN RELATION TO HUMAN RIGHTS

INTRODUCTORY REMARKS

The role of the United Nations in the field of human rights:

Human rights and their legal implications.

Human rights and human obligations.

Human rights and the rights of society. The need to preserve a practical balance.

THE ADMINISTRATION OF CRIMINAL JUSTICE

Objectives and methods for their achievement.

Necessity for an integrated approach to the problems in this field.

Human rights aspects of such an approach.

Primary importance that all elements of the criminal justice system should follow procedures ensuring that offenders are, and believe themselves to be, treated fairly.

RIGHTS OF OFFENDERS OR ACCUSED PERSONS

The presumption of innocence.

To learn to respect the law, the offender must see that respect demonstrated as it applies to him.

Rights of offenders during the pre-trial detention period.

Present situation in various countries.

The use of bail. Equality of persons before the law.

Right to speedy trial.

Right to public hearing before a just tribunal.

Equality of all persons before the law.

Some aspects of the presumption of innocence:

- (i) Right to bail.
- (ii) Alternatives to pre-trial detention:
 - (a) Release on personal recognizance.
 - (b) Release under supervision of probation officers.
 - (c) Release on the basis of accused reporting periodically to the police or prosecuting authorities.

CONDITIONS OF DETENTION DURING PRE-TRIAL PERIOD

Right of detained persons to be separated from convicted persons.

Right of juveniles to be separated from adults.

Right to communicate with those with whom it is necessary to communicate before the trial.

ADMINISTRATION OF CRIMINAL JUSTICE

Police Arrest

Prosecution

Court's
Sentence

Probation

Interrogation

Prison
Other forms
of treatment

Pre-
Release
(Parole)

40 - 50 %

SENTENCING PROCEDURES

ALTERNATIVES TO IMPRISONMENT

- (a) Probation.
- (b) Other non-institutional methods.
- (c) Fines.
- (d) Treatment in the community.

ANNEX V

SENTENCING

PROTECTION OF SOCIETY:

REHABILITATION OF OFFENDERS.

Pre-sentence reports

Sentencing Councils

Elimination of disparities
in sentences

- (1) Forms of treatment available
- (2) Types of sentence:
 - (a) Mandatory.
 - (b) Discretionary.
 - (c) Indeterminate.
- (3) Alternatives to Imprisonment:
 - (a) Admonition, oral reprimand.
 - (b) Fines.
 - (c) Probation.
 - (d) Suspended sentences.
 - (e) Treatment in the community:
 1. Week-end detention.
 2. Periodic detention.
 3. Services to the community.

LEGAL STATUS

HUMAN RIGHTS OF PRISONERS

- (1) Right of reasonable access to courts. SOLITARY CONFINEMENT?
- (2) Right of access to legal aid services.
- (3) Right to be informed of Prison Rules.
- (4) Right of protection against - personal, physical - abuse.
- (5) Right to have complaints heard and investigated.
- (6) Right to have justice and fairness in disciplinary proceedings.
(Appeals).
- (7) Right to religious freedom - the practice of each person's religion.
- (8) Right to communicate with the outside world (letters, visits, etc.).

ANNEX VI

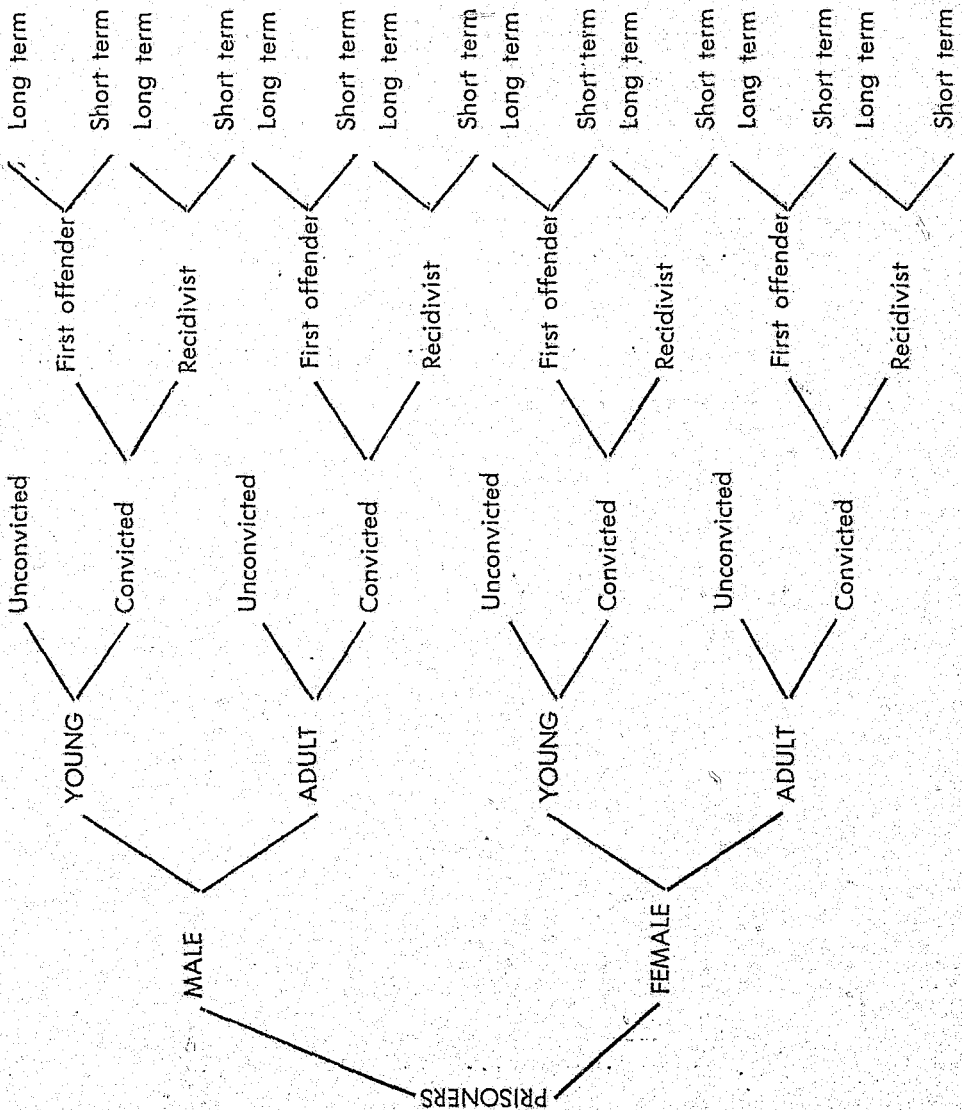
TREATMENT OF OFFENDERS

STANDARD MINIMUM RULES

Not a model system but it contains essential elements of good principles and practice.

ESSENTIAL POINTS

1. Classification and segregation of different categories.
2. Work and discipline.
3. Complaints and inquiries.
4. Selection and training of personnel.
5. Open institutions.



DIAGNOSTIC CENTRE

ADMISSION



ORIENTATION

← 3 days to 1 week



OBSERVATION AND STUDY

← 1 month



SUITABLE TECHNICAL COMPOSITION OF THE BOARD

MEDICAL

PSYCHIATRIC

EDUCATIONAL

SOCIAL

FAMILY

RELIGIOUS

VOCATIONAL

AFTER-CARE



PLAN OF ACTION



ACTION

PERIODICAL REVIEW UNTIL RELEASE

OR CHANGE OF PLAN

ANNEX VII

UNIVERSAL DECLARATION OF HUMAN RIGHTS

Some relevant provisions *

ARTICLE 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

ARTICLE 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

ARTICLE 3

Everyone has the right to life, liberty and the security of person.

ARTICLE 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ARTICLE 6

Everyone has the right to recognition everywhere as a person before the law.

ARTICLE 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

ARTICLE 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

ARTICLE 9

No one shall be subjected to arbitrary arrest, detention or exile.

[*] Adopted and proclaimed by the General Assembly of the United Nations in its Resolution 217 A (III), on 10 December 1948.

ARTICLE 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

ARTICLE 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

ARTICLE 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes or principles of the United Nations.

ARTICLE 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

ANNEX VIII
**INTERNATIONAL COVENANT ON CIVIL
AND POLITICAL RIGHTS**

Some relevant provisions *

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

(*) Adopted and opened for signature, ratification and accession by the General Assembly of the United Nations in its Resolution 2200 A (XXI), on 16 December 1966. The Covenant entered into force on 23 March 1976.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant.

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (**ordre public**) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires of the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality;

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was

committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

ANNEX IX
**STANDARD MINIMUM RULES FOR THE TREATMENT
OF PRISONERS**

(30 August 1955)

Some relevant provisions*

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Register

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) Information concerning his identity;
- (b) The reasons for his commitment and the authority therefor;
- (c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

1. The following rules are not intended to describe in detail a model system of penal institutions. They seek only, on the basis of the general consensus of contemporary thought and the essential elements of the most adequate systems of today, to set out what is generally accepted as being good principle and practice in the treatment of prisoners and the management of institutions.

2. In view of the great variety of legal, social, economic and geographical conditions of the world, it is evident that not all of the rules are capable of application in all places and at all times. They should, however, serve to stimulate a constant endeavour to overcome practical difficulties in the way of their application, in the knowledge that they represent, as a whole, the minimum conditions which are accepted as suitable by the United Nations.

3. On the other hand, the rules cover a field in which thought is constantly developing. They are not intended to preclude experiment and practices provided these are in harmony with the principles

(*) Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution of 30 August 1955. The preliminary observations contained in the text include those quoted below, making reference to the purposes and principles of the rules as guiding criteria in this matter.

and seek to further the purposes which derive from the text of the rules as a whole. It will always be justifiable for the central prison administration to authorize departures from the rules in this spirit.

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

(a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;

(b) Untried prisoners shall be kept separate from convicted prisoners;

(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

(d) Young prisoners shall be kept separate from adults.

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.

10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.

(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

21. (1) Every prisoner who is not employed in out-door work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

60. (1) The régime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.

(2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release régime organized in the same institution or in another appropriate institution, or by release on trial under some kind of supervision which must not be entrusted to the police but should be combined with effective social aid.

65. The treatment of persons sentenced to imprisonment or a similar measure shall have as its purpose, so far as the length of the sentence permits, to establish in them the will to lead lawabiding and self-supporting lives after their release and to fit them to do so. The treatment shall be such as will encourage their self respect and develop their sense of responsibility.

66. (1) To these ends, all appropriate means shall be used, including religious care in the countries where this is possible, education, vocational guidance and training, social casework, employment counselling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner, taking account of his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.

(2) For every prisoner with a sentence of suitable length, the director shall receive, as soon as possible after his admission, full reports on all the matters referred to in the foregoing paragraph. Such reports shall always include a report by a medical officer, wherever possible qualified in psychiatry, on the physical and mental condition of the prisoner.

(3) The reports and other relevant documents shall be placed in an individual file. This file shall be kept up to date and classified in such a way that it can be consulted by the responsible personnel whenever the need arises.

67. The purposes of classification shall be:

(a) To separate from others those prisoners who, by reason of their criminal records or bad characters, are likely to exercise a bad influence;

(b) To divide the prisoners into classes in order to facilitate their treatment with a view to their social rehabilitation.

68. So far as possible separate institutions or separate sections of an institution shall be used for the treatment of the different classes of prisoners.

69. As soon as possible after admission and after a study of the personality of each prisoner with a sentence of suitable length, a programme of treatment shall be prepared for him in the light of the knowledge obtained about his individual needs, his capacities and dispositions.

84. (1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as "untried prisoners" hereinafter in these rules.

(2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.

(3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special régime which is described in the following rules in its essential requirements only.

85. (1) Untried prisoners shall be kept separate from convicted prisoners.

(2) Young untried prisoners shall be kept separate from adults and shall in principle be detained in separate institutions.

86. Untried prisoners shall sleep singly in separate rooms, with the reservation of different local custom in respect of the climate.

87. (1) An untried prisoner shall be allowed to use his own clothing if it is clean and suitable.

(2) If he wears prison dress, it shall be different from those supplied to convicted prisoners.

92. An untried prisoner shall be allowed to inform immediately to his family of his detention and shall be given all reasonable facilities for communicating with his family and friends, and to receive visits from them, subject only to such restrictions and vigilance as are necessary in the interests of the administration of justice and of the security and good order of the institution.

93. For the purposes of his defence, an untried prisoner would be allowed to apply for free legal aid where such aid has been provided and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions for these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his lawyer may be within sight but not within the hearing of a police official or of an institution official.

ANNEX X

**DRAFT PRINCIPLES ON FREEDOM FROM ARBITRARY
ARREST AND DETENTION (1962)**

Some relevant provisions *

Article 9

Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Article 10

1. A person who is arrested shall be brought promptly, and in any case not later than twenty-four hours from the time of his arrest, before a judge or other officer authorized by law to exercise judicial powers. The law may provide that the time absolutely necessary for the journey from the place of arrest to the place where the competent authority is located shall not be counted.

2. The time-limit prescribed above may not be extended except upon the written authorization of the judge or other officer authorized by law to exercise judicial powers. The extension may be granted only once for a period not exceeding twenty-four hours, upon a showing of good and sufficient cause. The authorization must state the reasons for the extension and must be communicated to the arrested person.

Article 11

If the arrested person is not brought before the judge or other officer authorized by law to exercise judicial powers within the specified time-limit, his detention shall become illegal and he shall be released forthwith.

Article 12

The judge or other officer authorized by law to exercise judicial powers before whom the arrested person is brought shall, within twenty-four hours, decide whether to release him or order his continued custody.

Article 13

1. No person may be kept under detention pending investigation or trial except upon the written order of a judge or other officer authorized by law to exercise judicial power and upon the conditions set forth in article 5.

Article 16

1. The arrested person shall be given an opportunity to obtain his provisional release, with or without financial security or other conditions, when he is brought before the authority competent

(*) Text submitted to the Commission on Human Rights at its 18th session (1962) by the The Committee charged with the study of the right of everyone to be free from arbitrary arrest, detention and exile.

to order his continued detention or at any stage of the proceeding thereafter, either on his application or that of his counsel or relatives, or by the authorities of their own motion. In case of denial of provisional release, an immediate appeal or other speedy recourse shall be available.

2. To ensure that no person shall be denied the possibility of obtaining provisional release on account of lack of means, other forms or provisional release than upon financial security shall be provided, e.g. release into the custody of a responsible person or organization; release on promise not to leave a specified address or to reside in a specified area or to appear at regular intervals before a stated authority; release upon temporary surrender of identity papers; release upon an undertaking to appear before the authorities whenever legally summoned to do so.

Article 17

Every arrested or detained person, immediately on his being taken into custody, shall be informed of all his rights and obligations and how to avail himself of his rights. And thereafter, the judicial or other authorities shall be required to inform him at each stage of the proceedings of his rights and obligations.

Article 18

The authority arresting or detaining a person in custody shall immediately notify his family, legal representative or other person of his confidence whom he may designate, of his arrest or detention and of the place where he is kept in custody.

Article 19

1. The arrested or detained person may not be held **incomunicado, mise au secret** or in solitary confinement.

2. Immediately after his arrest, the detained person shall be allowed to inform his family, legal counsel or other person of his confidence, of his arrest or detention.

3. The right of the arrested or detained person to communicate with his family and friends is subject only to such restrictions as may be ordered by a judge or other officer authorized by law to exercise judicial powers for the purpose of preventing interference with witnesses or suppression of evidence or the passing of information which may assist the detained person to escape or assist his accomplices.

Article 20

From the moment of his arrest the arrested or detained person shall have the right to be assisted by legal counsel of his own choice. He shall be immediately informed of this right and provided with reasonable facilities for exercising it. If he has been unable to obtain

counsel, the court or other competent authority shall provide him with counsel unless he is unwilling to accept counsel and is capable of defending himself.

Article 24

1. No arrested or detained person shall be subjected to physical or mental compulsion, torture, violence, threats or inducements of any kind, deceit, trickery, misleading suggestions, protracted questioning, hypnosis, administration of drugs or any other means which tend to impair or weaken his freedom of action or decision, his memory or his judgement.

2. Any statement which he may be induced into making through any of the above prohibited methods, as well as any evidence obtained as a result thereof, shall not be admissible in evidence against him in any proceedings.

3. No confession or admission by an arrested or detained person can be used against him in evidence unless it is made voluntarily in the presence of his counsel and before a judge or other officer authorized by law to exercise judicial power.

Article 25

No one may be required to incriminate himself. Before the arrested or detained person is examined or interrogated, he shall be informed of his right to refuse to make any statement.

Article 26

The arrested person shall not be kept in police custody after he is brought before the competent authority as provided in Article 10. The officials responsible for his custody shall be entirely independent of the authorities conducting the investigation.

ANNEX XI

POLICE INTERROGATION

The Judges' Rules in England

(Adopted 1908, Revised 1964)

It is a well established principle of the English Criminal Law that a confession is admissible at a trial only if it was made voluntarily and without inducements, threats or force. It is to this rule of the English Common Law that the Judges' Rules owe their origin.

The purpose of these rules is to achieve a correct balance between the need to ensure that the police have adequate means to investigate crime and the desirability of protecting the innocent and ensuring the liberty of the subject.

Introduction

The Introduction to the 1964 Rules reads as follows:

- (a) The citizens have a duty to help a police officer to discover and apprehend offenders;
- (b) That police officers, otherwise than by arrest, cannot compel any person against his will to come to or remain in any police stations;
- (c) That every person at any stage of an investigation should be able to communicate and consult privately with a solicitor. This is so even if he is in custody, provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so;
- (d) That when a police officer who is making inquiries of any person about an offense has enough evidence to prefer a charge against that person for the offense, he should without delay cause that person to be charged or informed that he may be prosecuted for the offense;
- (e) That it is a fundamental condition to the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear or prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression.

The principle set out in paragraph (c) above is overriding and applicable in all cases. Within that principle the following Rules are put forward as a guide to police officers conducting investigations. Non-conformity with these rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings.

Rules

Rule 1. When a police officer is trying to discover whether, or by whom, an offense has been committed he is entitled to question any person whether suspected or not, from whom he thinks that useful information may be obtained. This is so whether or not the person in question had been taken into custody so long as he has not been charged with the offense or informed that he may be prosecuted for it.

Rule 2. As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offense, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions, relating to that offense. The caution shall be in the following terms:

"You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence."

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended and of the persons present.

Rule 3 (a) Where a person is charged with or informed that he may be prosecuted for an offense he shall be cautioned in the following terms:

"Do you wish to say anything? You are not obliged to say anything unless you wish to do so but whatever you say will be taken down in writing and may be given in evidence."

(b) It is only in exceptional cases that questions relating to the offense should be put on the accused person after he has been charged or informed that he may be prosecuted. Such questions may be put where they are necessary for the purpose of preventing or minimising harm or loss to some other person or to the public or for clearing up an ambiguity in a previous answer or statement.

Before any such questions are put the accused should be cautioned in these terms.

"I wish to put some questions to you about the offense with which you have been charged (or about the offense for which you may be prosecuted). You are not obliged to answer any of these questions, but if you do the questions and answers will be taken down in writing and may be given in evidence."

Any questions put and answer given relating to the offense must be contemporaneously recorded in full and the record signed by that person or if he refuses by the interrogating officer.

(c) When such a person is being questioned, or elects to make a statement a record shall be kept of the time and place at which any questions or statement began and ended and of the persons present.

Rule 4. All written statements made after caution shall be taken in the following manner:

(a) If a person says that he wants to make a statement he shall be told that it is intended to make a written record of what he says. He shall always be asked whether he wishes to write down himself what he wants to say; if he says that he cannot write or that he would like someone to write it for him, a police officer may offer to write the statement for him. If he accepts the offer the police officer shall, before starting, ask the person making the statement to sign, or make his mark, to the following:

"I..., wish to make a statement, I want someone to write down what I say. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(b) Any person writing his own statement shall be allowed to do so without any prompting as distinct from indicating to him what matters are material.

(c) The person making the statement, if he is going to write it himself, shall be asked to write out and sign before writing what he wants to say, the following:

"I make this statement of my own free will. I have been told that I need not say anything unless I wish to do so and that whatever I say may be given in evidence."

(d) Whenever a police officer writes the statement, he shall take down the exact words spoken by the person making the statement, without putting any questions other than such as may be needed to make the statement coherent, intelligible and relevant to the material matters: he shall not prompt him.

(e) When the writing of a statement by a police officer is finished the person making it shall be asked to read it and to make any corrections, alterations or additions he wishes. When he has finished reading it he shall be asked to write and sign or make his mark on the following Certificate at the end of the statement.

"I have read the above statement and I have been told that I can correct, alter or add anything I wish. This statement is true. I have made it of my own free will".

(f) If the person who has made a statement refuses to read it or to write the above mentioned certificate at the end of it or to sign it, the senior police officer present shall record on the statement itself and in the presence of the person making it, what has happened. If

the person making the statement cannot read, or refuses to read it, the officer who has taken it down shall read it over to him and ask him whether he would like to correct, alter or add anything and to put his signature or make his mark at the end. The police officer shall then certify on the statement itself what he has done.

Rule 5. If at any time after a person has been charged with, or has been informed that he may be prosecuted for an offense a police officer wishes to bring to the notice of that person any written statement made by another person who in respect of the same offense has also been charged or informed that he may be prosecuted, he shall hand to that person a true copy of such written statement, but nothing shall be said or done to invite any reply or comment. If that person says that he would like to make a statement in reply, or starts to say something, he shall at once be cautioned or further cautioned as prescribed by Rule 3 (a).

Rule 6. Persons other than police officers charged with the duty of investigating offenses or charging offenders shall, so far as may be practicable, comply with these Rules.

An investigation by the police is thus divided into distinct stages.

With the first rule it is still an inquiry and a police officer can ask questions without administering a caution. Indeed, no time limit is laid down as to how long he can continue questioning a suspect.

Rule 2, however, provides that as soon as an officer has evidence which would afford reasonable grounds to suspect that that person has committed an offense he must caution him; but the officer can still continue his questioning.

The third stage is reached when the person being interrogated is charged. He must again be cautioned and further questioning is forbidden except in exceptional circumstances, as defined in Rule 3.

Since the inauguration of the new Rules a case has held that under both the old and the 1964 Rules, it is permissible to question a person, who is in custody for one offense, regarding other offenses for which he is not in custody.*

Under the old Rules a police officer was required to caution as soon as he "made up his mind" to charge a person with a crime, and that persons in custody should not be questioned without the usual caution being administered. Under the new Rules the question is somewhat different. Has the officer evidence which would afford reasonable grounds for suspecting the person being interrogated? If such "reasonable" grounds do exist he must administer a caution. When the person is later charged or informed that he may be prosecuted he must then be cautioned a second time.

(*) R. V. Buohan 48 Crim. App. R. 126 (1964).

There must be no delay in charging a person when the police officer has sufficient evidence. Any obvious and undue prolongment may cause the Judge in the exercise of his discretion to disallow the use in evidence of questions put by the officer to the person charged.

Rule 4 and 5 deal particularly with written statements made by the accused. The Home Office felt that these rules required some explanation and therefore issued a circular to all Police Forces.

The guidance given is so important that it is here reproduced in full:

ADMINISTRATIVE DIRECTIONS ON INTERROGATION AND THE TAKING OF STATEMENTS

1. Procedure generally

- (a) When possible statements of persons under caution should be written on the forms provided for the purpose. Police Officers notebooks should be used for taking statements only when no forms are available.
- (b) When a person is being questioned or elects to make a statement, a record should be kept of the time or times at which during the questioning or making of a statement there were intervals or refreshment was taken. The nature of the refreshment should be noted. In no circumstances should alcoholic drink be given.
- (c) In writing down a statement the words used should not be translated into "Official" vocabulary; this may give a misleading impression of the genuineness of the statement.
- (d) Care should be taken to avoid any suggestion that the person's answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might help to clear him of the charge.

2. Record of Interrogation

Rule 2 and Rule 3 (c) demand that a record should be kept of the following matters:

- (a) When, after being cautioned in accordance with Rule 2, the person is being questioned or elects to make a statement of the time and place at which any such questioning began and ended and of the persons present:
- (b) When, after being cautioned in accordance with Rule III (a) or (b) a person is being questioned or elects to make a statement of the time and place at which any questioning and statement began and of the persons present.

In addition to the records required by these Rules full records of the following matters should additionally be kept:

- (a) Of the time or times at which cautions were taken, and
- (b) Of the time when a charge was made and/or the person was arrested, and
- (c) Of the matters referred to in paragraph 1 (b) above.

If two or more police officers are present when the questions are being put or the statement made, the records made should be countersigned by the other officers present.

3. Comfort and Refreshment

Reasonable arrangements should be made for the comfort and refreshment of person being questioned. Whenever practicable both the person being questioned or making a statement and the officers asking the questions of taking the statement should be seated.

4. Interrogation of Children and Young Persons

As far as practicable children (whether suspected of crime or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not a police officer and is of the same sex as the child. A child or young person should not be arrested, nor even interviewed, at school if such action can be avoided. Where it is found essential to conduct the interview at school, this should be done only with the consent, and in the presence, of the head teacher, or his nominee.

5. Interrogation of Foreigners

In the case of a foreigner making a statement in his native language:

- (a) The interpreter should take down the statement in the language in which it is made.
- (b) An official English translation should be made in due course and be proved as an exhibit with the original statement.
- (c) The foreigner should sign the statement at (a).

Apart from the question of apparent unfairness, to obtain the signature of a suspect to an English translation of what he said in a foreign language can have little or no value as evidence if the suspect disputes the accuracy of this record of his statement.

6. Supply to Accused Persons of Written Statement of Charges

- (a) The following procedure should be adopted whenever a charge is preferred against a person arrested without warrant for any offense:

As soon as a charge has been accepted by the appropriate police officer the accused person should be given a written notice containing a copy of the entry in the charge sheet or book giving

particulars of the offense with which he is charged. So far as possible the particulars of the charge should be stated in simple language so that the accused person may understand it, but they should also show clearly the precise offense in law with which he is charged. Where the offense charged is a statutory one, it should be sufficient for the latter purpose to quote the section of the statute which created the offense.

The written notice should include some statement on the lines of the caution given orally to the accused person in accordance with the Judges' Rules after a charge has been preferred. It is suggested that the form of notice should begin with the following words.

"You are charged with the offense(s) shown below. You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

- (b) Once the accused person has appeared before the Court it is not necessary to serve him with a written notice of any further charges which may be preferred. If, however, the police decide, before he has appeared before a court, to modify the charge or to prefer further charges, it is desirable that the person concerned should be formally charged with the further offense and given a written copy of the charge as soon as it is possible to do so, having regard to the particular circumstances of the case. If the accused person has then been released on bail, it may not always be practicable or reasonable to prefer the new charge at once, and in cases where he is due to surrender to his bail within forty-eight hours or in other cases of difficulty it will be sufficient for him to be formally charged with the further offense and served with a written notice of the charge after he has surrendered to his bail and before he appears before the court.

7. Facilities for defence

- (a) A person in custody should be allowed to speak on the telephone to his solicitor or to his friends provided that no hindrance is reasonably likely to be caused to the processes of investigation, or the administration of justice by his doing so.

He should be supplied on request with writing materials and his letters should be sent by post or otherwise with the least possible delay. Additionally, telegrams should be sent at once, at his own expense.

- (b) Persons in custody should not only be informed orally of the rights and facilities available to them, but in addition notices describing them should be displayed at convenient and conspicuous places at police stations and the attention of persons in custody should be drawn to these notices.

These directions have so far not caused any difficulty to police officers. Included are some detailed provisions regarding the recording of statements, but again it will be noticed that there is no prohibition of lengthy interrogations. Facilities for the defense are referred to at N° 7. It refers to persons in custody and to those who are being questioned before an arrest is made. It would, however, be very improper and, no doubt, invoke criticism if a suspect under questioning asked for his solicitor and was refused one. Notices are displayed prominently in police stations informing persons in custody of their rights and the facilities available to them.

ANNEX XII

DRAFT INTERNATIONAL CODE OF POLICE ETHICS DECLARATION OF THE HAGUE (1975)

On 19th and 20th June 1975 a Seminar on an International Code of Police Ethics was convened by Amnesty International at the Peace Palace in The Hague, Holland. Participants were members of police forces, police authorities and of national and international police organizations. The following countries were represented: Austria, Belgium, France, Ireland, Luxembourg, the Netherlands, Norway and the United Kingdom.

At the end of this meeting the following conclusions were reached. Aware of the grave problems regarding the enforcement of the international rules forbidding torture or any inhuman or degrading treatment, the participants supported the creation of an international code of police ethics. This code should in their view contain at least the following requirements and basic provisions.

1. The police function is the provision of a public, essentially civilian service, created by and responsible only to the properly constituted government under law. It is obliged by law to prevent violations of the law, apprehend and prosecute law-breakers and maintain order and public security under law.

This obligation includes the duty to maintain and promote human rights, as described in the Universal Declaration of Human Rights, in the principles of which police officers should receive proper education and training.

2. A police code of ethics should apply to all those individuals and organizations, including secret services, military police, armed forces or militia acting in policing capacities, or other engaged in enforcing the law, investigating violations, maintaining public order, or preserving state security.

3. Summary executions, torture and other cruel, inhuman or degrading treatment or punishment, and in general every violent act against the physical or mental integrity of the individual are prohibited under any and all circumstances, including the greatest emergencies of civil strife or war.

4. There should be established a clear chain-of-command responsibility whereby superior officers, civilian or military, are personally liable for acts of commission or omission in connection with acts of torture and other ill-treatment.

5. Police officers and all others covered by this code have the right to disobey or disregard any order, instruction or command, even if lawfully made within the context of national legislation, which is in clear and significant contradiction to basic and fundamental human rights, as described in the Universal Declaration of Human Rights.

They have a duty to disobey or disregard any order, instruction or command summarily to execute, torture or otherwise to inflict bodily harm upon a person under their custody. They also have the duty, where they have carried out orders, instructions or commands which they believe to be otherwise in clear and significant contradiction to basic and fundamental human rights —such as lengthy detention without effective judicial supervision— to protect against the issuance of such order, instruction or command.

6. Police and other officials who are detaining persons should follow the instructions of doctors or other competent medical workers when, for the preservation of the good health of a detainee, the doctor or medical worker places the detainee under medical care.

7. Those covered by the code have an obligation to inform the proper national and international bodies of those activities which are in direct contravention of the principles and provisions of this code of ethics and in gross violation of human rights, as described in the Universal Declaration of Human Rights. If necessary as a last resort, they should make such information publicly known.

8. No officer or other person covered by the code should suffer administrative or other penalties as a result of action taken to resist or protest against orders, instruction or commands inconsistent with the principles and provisions of this code of ethics.

9. Given articles 23 (4) of the Universal Declaration of Human Rights, there should be a personal and corporate duty upon all officers and other professionals or persons covered by the provisions of the code, and their professional, workers, trade union, or other employees organizations, to offer support to all those who are in need of such as a result of their adherence to the principles and provisions of the code.

10. Any organizational body, national or international, which adopts, proposes or promulgates the code, should maintain some mechanism for hearing appeals from those covered by the code who claim that any of its provisions have been violated.

11. The police officer or any other person covered by this code who complies with the code, deserves and is entitled to the active moral and physical support of the community in which he/she performs his/her duty.

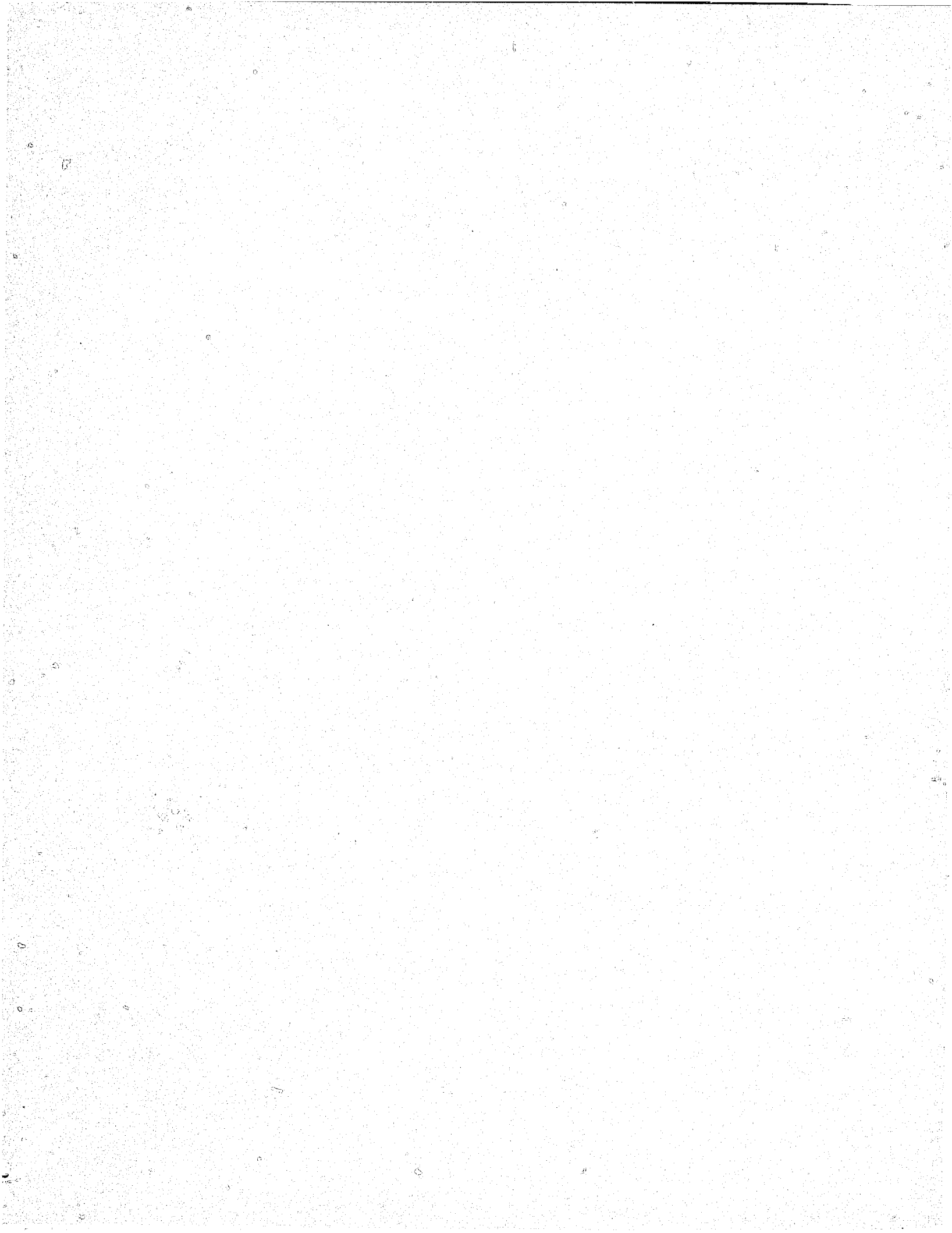
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END