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**Fifth United Nations Congress on the Prevention of Crime  
and the Treatment of Offenders  
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**THE TREATMENT OF OFFENDERS, IN CUSTODY OR IN THE COMMUNITY,  
WITH SPECIAL REFERENCE TO THE IMPLEMENTATION OF THE  
STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS  
ADOPTED BY THE UNITED NATIONS**

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## INTRODUCTION

1. The present working paper reflects the long-standing concern of the United Nations with the treatment of persons in correctional institutions or, more bluntly, prisons in the traditional sense. Beyond that, it deals with the plight of persons in less traditional correctional settings. The First United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Standard Minimum Rules for the Treatment of Prisoners (A/CONF/6/1). These rules were approved by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957. Although the Rules speak of the treatment of prisoners, they refer to something that is less than treatment in the therapeutic sense, yet far more than the maintenance of a standard level of humanitarian care for persons in custody. There has been almost universal acceptance of the view that the prison has a responsibility to protect the public, not only through the safe-keeping of prisoners, but also through the use of methods thought to be effective in preparing them to conduct themselves in a more socially responsible manner upon returning to the community. In recent years another view has also emerged to the effect that prisons should employ better measures to facilitate reintegration of the offender into the community. As suggested later in this paper, however, the concept of the prison's responsibility for changing the attitudes of people is currently being challenged and disputed. Many persons now believe that the maintenance of humanitarian conditions within institutions requires that prisoners be protected against potentially deleterious methods used to bring about changes in prisoner attitudes. The debate begun during the past decade about the purposes to be achieved by imprisonment has implications for the future of the Rules and may require attention.

2. The prison system was created to provide a humanitarian substitute for capital punishment, banishment, transportation and a variety of corporal punishments. For over 200 years, it has been virtually at the centre of penal policy throughout the world. The role of the prison in providing an alternative to harsher punishments should not be overlooked. Some writers who castigate modern imprisonment depict it as a cruel and unusual punishment introduced only recently as a sanction against criminals and deliberately designed to dehumanize the prisoner. In their preoccupation with the generally admitted evils of imprisonment, these writers take no account of the ways in which persons convicted of crime in earlier times, many of whom were not "dangerous" in any real sense, were eliminated from society or incapacitated and stigmatized.

3. While comparative figures on the current use of imprisonment are difficult to obtain, statistics reported to the United Nations indicate that imprisonment continues to be used widely, despite the fact that there is a growing reliance in some regions upon alternatives to imprisonment and more extensive use of community-based correctional programmes. 1/

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1/ For figures on prison populations in certain Member States, see annex II.

4. Many developing countries are experiencing serious difficulties in providing adequately for the needs of those who are imprisoned, often because resources for the construction and staffing of institutions are extremely limited. As a consequence, programmes for the care and treatment of offenders are almost non-existent in many areas. It is of critical importance, therefore, that these countries obtain the best possible return from the funds they allocate to correctional institutions. It is also essential that they have access to information about the effectiveness of the correctional approaches used in highly industrialized and urbanized countries so that they may avoid the acknowledged mistakes made by developed countries over the last 100 years.

5. Growing dissatisfaction with the prison as the major correctional instrument has given a strong impetus to the reduction of institutionalized treatment and to the search for community alternatives. It is generally conceded, however, that penal institutions will continue to serve a significant social function. There is a clear need to protect society from persons who are so dangerous as to require close custody, supervision and control. Even those who advocate the complete abolition of prisons usually concede that some arrangements must be made for the segregation of the dangerous, although there is no consensus on the definition of the term "dangerous" or on methods for the identification of those who are actually dangerous.

6. The Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders called for a report to be presented at the Fifth Congress on the progress achieved in promoting the implementation of the Standard Minimum Rules. The report was also to include the results of the deliberations of a working group set up to study the Rules and such improvements as might be deemed necessary. In response to this request and in view of the widely expressed dissatisfaction with the whole concept and practice of contemporary corrections, the Committee on Crime Prevention and Control, at its third session, held from 23 September to 4 October 1974, decided to enlarge the topic of discussion. Accordingly, the Committee added the subissue, "the treatment of the offender in the community", and formulated the present title of agenda item 4 of the Fifth United Nations Congress.

7. In the light of these decisions, the present working paper has been prepared to deal with new approaches and efforts to improve correctional practice. The first part of the document focuses upon the treatment of offenders in custody or in the community, while the second part concerns the future of the Standard Minimum Rules. Chapter V and annex III are specifically intended to help the Fifth Congress respond to paragraph 4 of General Assembly resolution 3218 (XXIX) of 6 November 1974, in which the General Assembly requested the Congress to include in the elaboration of the Standard Minimum Rules for the Treatment of Prisoners under item 4 of its agenda, rules for the protection of all persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment, and to report thereon to the General Assembly at its thirtieth session in 1975.

Part one - The treatment of offenders,  
in custody or in the community

I. CURRENT TRENDS IN CORRECTIONS

A. Prison developments during the twentieth century

8. While nineteenth century penal reforms were motivated by humanitarian concerns and took cognizance of the importance of human dignity and human rights, more recent international efforts to establish standards for the care of the imprisoned have attempted to give these matters stronger emphasis. There are a number of reasons for this attempt. The imprisonment of leaders of liberation movements in many countries, the confinement of members of resistance organizations, dissenters and political prisoners during purges and periods of persecution or occupation, and the war-time experience of resisters and conscientious objectors all led to a demand for better conditions in the prisons, especially in the period immediately following the Second World War. More recently, other forces have contributed to a climate of change. Throughout much of the world, the rising level of expectations among underprivileged members of society, who represent a substantial proportion of persons confined in correctional institutions, has produced intense pressure for the improvement of conditions in penal institutions. In some instances, the introduction into prison populations of a larger number of better educated, middle-class offenders and youthful narcotic drug users has also increased the pressure for change.

9. At least two fundamental assumptions have dominated the search for better standards during the twentieth century. One of these, an assumption that has been accepted almost universally, is that the prison should play a significant role as a character changing institution. While it has been recognized that the primary function of the prison is to provide social protection and that prisons play an important role in the infliction of socially approved punishment, the past 50 years have seen a generally consistent emphasis upon their role in preparing convicted prisoners to return to society as law-abiding citizens. In most parts of the world the ineffectiveness of penal institutions is measured exclusively in terms of the numbers of failures - those who, for whatever reason, are returned to prison after release. Recidivism, however defined, is a generally accepted yardstick for judging institutional performance.

10. A second assumption that also has been widely accepted is that prison operations are designed largely for benevolent purposes, and that the State has the interest of prisoners in mind. The agents of the State, according to this view, have the knowledge, interest, concern and skills to develop and maintain programmes and activities that correspond to the demonstrated needs of offenders. It follows from these premises that the inmate who is the object of efforts directed towards re-education, re-socialization or treatment has little, if anything, to say about

the measures imposed upon him. <sup>2/</sup> Only recently have objections been raised as to the use of certain measures that are of dubious morality - the use of mind-altering drugs, electro-shock and insulin-shock treatments, neurosurgical interventions and the like - and there is growing opposition to the use of prisoners for purposes of experimentation with human beings. Society was formerly only too willing to tolerate a very high level of administrative discretion on the part of those in charge of correctional systems and institutions.

11. In the course of history, the prison has become a social institution with increasingly complicated and conflicting aims. While penal institutions began as an innovative method of punishment, in more recent years they have had to accept responsibility for the protection of society as well as for modifying the attitudes and behaviour of criminals and assuring their reintegration into society. For at least 50 years, penal institutions and institutional systems have attempted to reconcile competing and contradictory objectives. Within the institution the responsibility for maintaining secure custody and control is generally in conflict with the objectives of rehabilitative treatment. Men and women confined in institutions are expected to develop individual responsibility in an environment where the most basic human activities are ordered and regimented. Prisons that are expected to prepare offenders for life in the community are all too frequently insulated, both geographically and psychologically, from the community they are expected to serve. Recognition of the existence of these fundamental paradoxes is by no means new, but there are indications that the apparent failure to resolve them may provide further impetus to the demand for change.

12. Efforts to respond to conflicting expectations of what prisons and correctional institutions can or should do have led to the development of a succession of institutional approaches. Originally, they were designed primarily to provide an atmosphere of monastic penitence. This type of institution gave way largely to the industrial institution that gave lip service to the regenerative qualities of inmate labour but actually was too often preoccupied with efforts to maintain productivity at a sufficiently high level to assure economic self-sufficiency. In some countries, this approach still prevails. With the introduction of principles derived from the behavioural sciences in the early part of the twentieth century came the adoption of the medical model. The prison was seen as a hospital for deviants where, through prescriptive treatment, the offender might be "cured" of his deviancy. The basic assumption was that criminality was a diagnosable entity and that through the application of treatment

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<sup>2/</sup> It is true that in some prison systems the prisoner is offered some choice regarding the institutional programmes in which he participates. Usually, however, the range of choices available is quite limited. Similarly, in at least some countries, the convicted person who is eligible for probation is given the opportunity to decide whether he wishes to accept the conditions of probation or be committed to an institution. Again the choices are obviously few.

methods the offender would be rehabilitated. The approach that has been most widely accepted in recent years may best be described as the education training model. The institution oriented toward education and training seeks largely to identify the deficiencies of the offender in adapting himself to the requirements of the labour process and provides opportunities for surmounting his shortcomings through development of knowledge and work skills.

13. Other models that have been designed and tested in various parts of the world include the socialization model, which promotes the solving of individual social problems through the use of group methods; the collaborative model, which emphasizes the interdependence of staff and inmates in the maintenance and operation of institutions, and the participation of inmates in the formulation of decisions that affect their status; the therapeutic model, which engages significantly large numbers of staff, psychiatrically and psychologically trained in the use of sophisticated interventive methods; and the community treatment model, which draws on a wide range of community resources in preparing the offender to cope with the responsibilities of living in society. 3/

14. None of the foregoing models exists in pure form. Indeed, some institutions incorporate elements from several of the approaches outlined. But whatever the predominant model, there is little hard evidence that any of the approaches described have significantly contributed to a reduction in crime or in recidivism. For this reason all models are being challenged.

#### B. Alternatives to imprisonment

15. Efforts to reduce the role of the prison as the central instrument of penal policy have taken several forms: the diversion from the criminal justice system of persons who present social, medical or emotional problems that may better be treated by other social welfare services, the development of sanctions that provide substitutes for imprisonment, and the creation of additional community services designed to meet the recognized needs of offenders. All of these approaches have their origin in the recognition of the fact that there has been a tendency to use

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3/ For a brief discussion of institutional programme models in Western Europe, see T. Mathiesen and others, Aspects of the Prison Community (Strasbourg, Council of Europe, April 1970), pp. 70-73. See also United States, President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections (Washington, D.C., Government Printing Office, 1967), pp. 46-50. For some of the inherent contradictions in the aims of correctional treatment, see Adam Krukowski, "Niektóre problemy Teoretyczne polityki penitencjarnej" (Some theoretical problems of penal policy), Przegląd Penitencjarny (Warsaw), vol. 6, No. 1 (17), 1968, pp. 28-46.

prisons to excess and that the institutional systems should be relieved of responsibility for the care of persons whose needs may be served more appropriately outside the criminal justice system.

1. Decriminalization and depenalization

16. In some countries there has been a trend towards the "decriminalization" of certain categories of offences. Other acts have been "depenalized" by the provision of sanctions other than imprisonment. Thus, such offences as drunkenness, drug abuse, consensual sexual acts, abortion and other so-called victimless crimes have been removed from the purview of the criminal justice system. Community and mental health services are increasingly being used in the case of alcoholics and narcotic-drug addicts who may require extensive treatment and other supportive services. Should this trend continue and extend to other countries, and should alternative treatment methods be found to be successful, the consequence would be a reduction in the populations of correctional institutions.

17. In a number of western European countries, particularly in Scandinavia, prison populations have been sharply reduced by the use of short-term imprisonment. In Finland, for example, in 1973, 71.1 per cent of the 8,756 prisoners released from correctional institutions served less than six months; 18.7 per cent, six months to one year; 8.3 per cent, more than one but less than two years; 1.7 per cent, two to four years; and 0.3 per cent, more than four years. In the Netherlands, more than 90 per cent of all prison sentences are for less than six months. Not only has the use of short-term imprisonment contributed to the reduction of institutional populations, it has also tended to reduce significantly the disabilities suffered by prisoners subjected to extended periods of isolation from the community. In those countries where extended terms of imprisonment have been virtually eliminated there is substantial agreement that more positive results are possible when long and repressive prison terms are not used.

2. Community alternatives to imprisonment

18. There has also been an upsurge of support for transferring responsibility for the offender from penal institutions to the community. The basis of the argument is that since crime has its origins in the community, the community should assume primary responsibility for the offender. The transfer of the correctional function to the community has been reinforced by earlier experiences in the mental health field, an area where a search for more effective substitutes for institutional confinement has been conducted for some time. The trend will unquestionably be accelerated by the fact that the construction, maintenance and operation costs of traditional institutions have risen rapidly in many parts of the world. There is growing reluctance to appropriate the funds required for additional institutions and for the manpower required for their operation.

19. Many Governments have already recognized the potential of an expanded

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community role. In Eastern European socialist countries and the Union of Soviet Socialist Republics, community participation in corrections has taken a variety of forms. Supervisory commissions, consisting of representatives of trade unions, communist youth groups, other community organizations and working people's collectives, exercise community control over the administrative activities of collective labour establishments for convicted persons and over the régime and conditions of confinement in these establishments. The commissions also provide social supervision of persons released from such institutions and provide help in making arrangements for their work and daily life. 4/ In addition, workers from industrial enterprises, state and collective farms, and cultural, social and educational institutions assist the administration of collective labour institutions in carrying out programmes for the correction and rehabilitation of offenders. Voluntary public councils are also set up to aid in correctional programmes. 5/ The Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders noted in particular the high level of success achieved by Japan in enlisting community volunteers to provide assistance to parolees and persons on probation. 6/ In other areas of the world, special experimental parole and probation projects also provide evidence of the effectiveness of community programmes when they are adequately staffed.

20. While as yet there is only limited empirical evidence that community-based interventions have achieved a high rate of success in the prevention and control of crime, they do not, at least, have the counter-productive effects that are associated with long-term imprisonment. None the less, there is a clear need for more evaluative research directed toward an understanding regarding the groups of offenders that respond best to such treatment and the circumstances under which the use of such programmes is most warranted.

21. The planning of community remedies should take into account the fact that the term "community" has differing connotations in different societies. Levels of toleration of the offender's behaviour also vary widely, as does the range of resources that may be available to provide necessary supportive and supervisory services in different regions of the world. It is clear that, if community programmes are to meet with success, there must be public support and

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4/ See R. G. Aslanyan, "Action to ensure that Soviet citizens enjoy equal rights and opportunities", International Labour Review (Geneva) vol. 100, No. 6 (December 1969), p. 566. In this connexion, it may be recalled, too, that the Fourth Latin American Penal Congress (Buenos Aires, 14-20 May 1967) recommended that public authorities, trade unions and private enterprises allot a certain percentage of employment opportunities to released offenders.

5/ See, for example, Ivan Pastrevich, "Co-operation between government and volunteer community groups in the prevention and control of crime in the Byelorussian Soviet Socialist Republic", International Review of Criminal Policy, No. 29 (United Nations publication, Sales No. E.72.IV.2), pp. 40-47.

6/ Japan, Ministry of Justice, Non-Institutional Treatment of Offenders in Japan (Tokyo, 1970).

involvement, a willingness to accept the offender and not to stigmatize him, and confidence in the programmes and in those responsible for their management.

22. Those who are responsible for correctional programmes in the community must develop sound criteria for the selection of participants and must maintain a responsible level of accountability in the supervision of the activities of the offender, so as to assure citizens protection against further possible criminal activities on the part of the offender. Failure to take reasonable care with respect to these matters would soon undermine public confidence and acceptance of the programmes and might lead to their curtailment.

23. In many instances, the reorientation of correctional programmes towards the expectations of the community may require a painstaking overhaul of the existing system of sanctions in order to make dispositional alternatives available to the court. New or revised statutes may in turn require the development of programmes for the education or retraining of the judiciary so that the alternatives may be applied appropriately. On the surface, the arguments for an expansion of community-based programmes are persuasive, especially when they suggest the prospect of major monetary savings, but there are clearly practical limits to the speed with which a major change in the orientation of corrections may take place, however desirable that objective may appear.

### 3. Probation, parole and other community methods of corrections

24. Despite the constraints upon rapid expansion of correctional activities within the community, the search for alternatives to imprisonment must necessarily move in that direction. The discussions of the Third United Nations Congress on the Prevention of Crime and the Treatment of Offenders at Stockholm in 1965 focused attention on adult probation and other non-institutional measures. Attention was drawn to the effectiveness of the use of probation in the Netherlands where, despite the doubling of the general population, the prison population had remained relatively constant over a period of 25 years, while the use of probation had steadily advanced. The experience of the Netherlands, as well as that of other countries, suggests that adoption and expansion of probation services are among the major efforts which might be undertaken to reduce prison populations. In the United States, the state of California <sup>7/</sup> in 1966 decided to provide subsidies to local governmental units for each offender who is not committed to a state correctional institution but is placed on probation. This practice has contributed to a steady reduction in the number of inmates at juvenile and adult institutions.

25. In addition to the strengthening of probation services, the establishment of group homes, sheltered workshops, half-way houses and other comparable facilities may provide short-term residential care and adequate

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<sup>7/</sup> See State of California, Crime and Delinquency in California, 1972 (Sacramento, Department of Justice, August 1973).

community supervision for those offenders whose homes are inadequate for these purposes. The supportive services that are provided in such facilities contribute to the offender's capacity to cope with a wide variety of problems of community adjustment at a cost that is substantially less than that of imprisonment.

26. For the minor offender, alternatives to short-term imprisonment are also being developed. These include programmes such as the one initiated in England that substitutes part-time work on civic projects for jail terms. In other countries similar programmes are making increased use of compensation to the victim for personal injury or property damage caused by the offender and of the payment of fines on the instalment plan. The system of day fines, which originated in the Scandinavian countries, has now been incorporated in the Latin American Model Penal Code. Under this system, fines are graduated in terms of daily earnings - 2 days' earnings for a minor offence, 30 days' earnings for a more severe offence. Since daily earnings vary with the job or profession of the offender, these fines are calculated to equalize the impact upon persons of different economic status. 8/

27. Italy is one of several countries that combine labour performed in prison or under suspended sentence with the obligation to make restitution out of the earnings. Restitution is mandatory in Argentina, Colombia, Norway and Sweden, and is regarded in many instances as an effective rehabilitative device. Perhaps the search for innovative forms of restitution is no more than an attempt to restore the sense of community that still exists in some societies which as yet have not suffered the depersonalizing effects of industrialization and urbanization. In some African societies, for example, the offender traditionally was sentenced to nurse the victim back to health in the case of felonious wounding. 9/ It may not be too late for developing societies to devise a system of restitution or compensation without going through the ineffective system of imprisonment. The new Polish penal code uses the method of restricted liberty - a monitored life in freedom, subject to constraints as to work assignment and use of

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8/ Gerhard O. W. Mueller, "Imprisonment and its alternatives", A Program for Prison Reform in the United States: The Final Report, Chief Justice Earl Warren Conference on Advocacy in the United States, 1972 (Cambridge, Massachusetts, Roscoe Pound - American Trial Lawyers Foundation, 1973), pp. 33-46.

9/ E. Schulz-Evert and L. Adams, Das Eingeborenenrecht, Ostafrika I, VI Strafrecht (Stuttgart, 1929), p. 296. Concerning compensation as an alternative to other types of penalty, see also Alan Milner, ed., African Penal Systems (London, Routledge and Kegan Paul, 1969); and L. Brett and J. McLean, The Criminal Law and Procedure of Lagos, Eastern Nigeria and Western Nigeria (London, Sweet and Maxwell, 1963).

leisure time. In several countries the custom is for the offender and his family to be transferred from one area to another.

28. While these approaches appear to present reasonable alternatives to the imprisonment of offenders, the introduction of such options must take into account differences in the cultural settings where they may be introduced, as well as the need for trained judges and personnel to carry such programmes forward. Further, the importance and difficulty of winning public support for such innovations cannot be overlooked. If the trend toward greater reliance upon the community continues and the accompanying search for effective alternatives to imprisonment produces substantial evidence of their effectiveness, the result could be that imprisonment would be reserved for residual groups of hard-core offenders whose activities would otherwise be difficult to supervise and control. For the most part, such offenders will pose problems of treatment for which appropriate solutions are currently lacking.

### C. Prisons in a climate of change

29. A number of developments have occurred during the past 30 years that can be expected to exert a profound influence upon the role and function of the prison of the future. A partial list of the elements of change that deserve attention includes rising levels of expectations, prisoners' rights, special interest groups and approaches to correctional planning. Each of these elements is discussed below.

#### 1. Rising levels of expectations

30. Evidence of the impact of rising levels of expectation among prisoners has already been observed in certain countries where, as noted earlier, prisoners have organized riots and disturbances in an effort to call attention to prison conditions and abuses and to seek redress of grievances. The situation is likely to be exacerbated in those developing countries where conditions of life in the community at large improve while prison conditions remain relatively static. Even if the level of care provided for prisoners cannot reasonably be expected to be higher than the level for citizens of the community at large, it is still important that the treatment of prisoners should reflect the rising standard of living for the population as a whole. However, it should be observed that prison unrest is not necessarily a manifestation of bad prison conditions. In some instances, it may be a reflection of conflicts within the society and the degree of freedom available for the expression of protest.

#### 2. Prisoners' rights

31. Only in the relatively recent history of prisons have serious issues arisen concerning the protection of the civil rights of prisoners. Formerly, forfeiture of civil rights was accepted almost universally as an inevitable

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consequence of imprisonment. For many years this kind of "civil death" was regarded as a natural concomitant of prison life and, almost without exception, prison administrators exercised broad discretionary powers when dealing with prisoners. It was almost inevitable that, in the climate of concern about human rights that emerged after the Second World War, increasing attention would be directed toward an attempt to define more explicitly the rights of offenders after they are convicted. The adoption of the Universal Declaration of Human Rights by the General Assembly on 10 December 1948 played a significant part in stimulating such efforts. The General Assembly proclaimed the Declaration "a common standard of achievement for all people and all nations". Among the rights enumerated are protection from "torture or cruel, inhuman or degrading punishments; equality before the law; effective remedy for acts violating fundamental rights granted by constitution or by law; freedom from arbitrary arrest; a fair and public hearing in the determination of criminal charges; and the presumption of innocence until proven guilty". The Declaration also recognized the universal right to freedom of thought, conscience and religion; freedom of opinion and expression, and of peaceful assembly and association.

32. While it may be argued that the rights and freedoms articulated by the Declaration were not intended to be applicable to prisoners, there is nothing in its language that suggests that persons convicted of crime are to be excluded. Moreover, it should be noted that the thrust of the Standard Minimum Rules, since their inception nearly a half-century ago, has been in the direction of protecting the rights of persons detained while awaiting trial or imprisoned after conviction. The provisions of Rules 27-32 inclusive, which relate to discipline and punishment, incorporate the basic provisions of due process that are specifically designed to protect the prisoner from arbitrary and unfair punishment.

33. The manner in which countries address themselves to issues related to the rights of prisoners depends, in large measure, upon the culture and upon the legal and administrative structures that have been created for this purpose. Thus, in Sweden, the creation of the office of Justitieombudsman by the Constitution of 1809, laid the foundations for the establishment of a citizens' grievance procedure that would eventually be extended to persons detained against their will. Subsequently, the other Scandinavian countries, as well as New Zealand, adopted and made adaptations of the Swedish model. In the Scandinavian countries particularly, the services of the ombudsman are frequently employed by prisoners in their efforts to resolve issues relating to their confinement.

34. In other countries different approaches have evolved. In some socialist countries, including the Union of Soviet Socialist Republics, the office of the Procurator General is vested with the primary responsibility for assuring the uniform application of law. <sup>10/</sup> Officials of the procuratorship are required by law

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<sup>10/</sup> Vladimir K. Svirboul and Valérii P. Choupilov, "Contrôle du procureur sur l'exécution de la peine privative de liberté en U.R.S.S.", Revue Pénitentiaire et de Droit Penal (Paris), Avril-Juin 1974, pp. 249-258. See also Georges Shiwowski, "Surveillance judiciaire de l'exécution de la peine et des autres mesures privatives de liberté selon la nouvelle législation polonaise", Revue Pénitentiaire et de Droit Penal (Paris), Avril-Juin 1974.

to make "systematic" visits to places of detention, where they may interview prisoners and call for the testimony of staff members. In Japan, the Civil Liberties Bureau of the Ministry of Justice has operated since early 1948 to investigate and collect information concerning cases involving violations of human rights. The official staff of the Bureau is supplemented by several thousand unpaid Civil Liberties Commissioners and citizens of communities, who have the responsibility not only to report instances of the disregard of human rights, but to assist in creating a climate in which these rights will be respected. While it is reported that the complaints submitted by prisoners to the Bureau are relatively few, the law, none the less, provides the machinery by which grievances may be brought to official attention. Similar attention is given to the rights of convicted prisoners by the Federal Council for the Administration of Justice in Yugoslavia. In other countries, independent boards perform comparable functions.

35. The United States and a few other countries have witnessed, in recent years, an unprecedented involvement of the courts 11/ in efforts to define the limits of administrative discretion in matters relating to human welfare. The abandonment by the United States Courts of their traditional "hands-off" policy in matters of prison administration is seen by many as one of the most significant forces for change in the management of prisons in that country. In some European countries, special judges are appointed to monitor the lawful execution of sentencing, which is, in fact, an order of the court. 12/ The Italian Penal Code, for example, provides for a Surveillance Judge whose responsibility is to assure the proper and legal application of the sentence. 13/ Similar provisions exist in France, Poland, Portugal and also in Brazil. 14/

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11/ Roger Traynor, "The changing role of the law in protecting prisoners' rights", a lecture presented at the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, reported in the International Review of Criminal Policy, vol. 29 (United Nations publication, Sales No. E.72.IV.2), pp. 85-90. See also United States National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C., 1973), chap. 2; and South Carolina, Department of Corrections, The Emerging Rights of the Confined (Columbia, South Carolina, 1972).

12/ G. O. W. Mueller and F. Le-Poole-Griffiths, Comparative Criminal Procedures (New York, New York University Press, 1969), pp. 231-246.

13/ See Italian Penal Code, art. 144; Italian Code of Criminal Procedure, arts. 585, 634-652, 654.

14/ See Stanislaw Plawski, "Le Controle Judiciaire de l'Application des Peines en Droit Compare", Revue internationale de droit compare, No. 2, 1972; and M. Hennion, "Le rôle du juge de l'application des peines en milieu ouvert: Séance de section du 21 janvier 1967 de la Société Générale des Prison et de Legislation Criminelle", Revue Pénitentiaire et de Droit Penal (Paris) 1967 91/2, pp. 327-347.

36. While the debate about the appropriate role of the correctional institution may be expected to continue and perhaps become more heated, a more immediate problem is attracting attention - namely, the issue of maintaining the balance between the rights of the individual prisoner and the responsibility of the institution to control his behavior. This question would become even more crucial in a future situation if the prison, as suggested in chapter II, below, were reserved as a place for incapacitating dangerous persons and the custodial function of the institution were emphasized accordingly. As yet, there has been no serious challenge to the idea that the State may properly deprive a criminal of his liberty. But there is evidence that in some countries at least, serious efforts are being made to ensure that other human or civic rights are not unduly restricted while a prisoner is in custody. Thus, the authority of prison systems to abridge such rights as freedom of speech and association, of religious practice and of access to courts or other official authorities, and the right to protection from harm or to adequate physical and health care while confined, has been challenged in the courts and through other channels.

37. Another fundamental and, for the most part, unresolved question is to what extent the correctional system has the responsibility or the authority to employ measures designed to change human behaviour and attitudes. Conversely, to what extent has the prisoner the right to reject, without prejudice, programmes designed to correct or rehabilitate him? As already indicated, there are those who maintain vigorously that the correctional institution has a clear responsibility to function as a facility for modifying attitudes and behaviour. In a number of countries, the primary objective of the prison system is to reform the convict through labour or through a process of re-education that will ensure the subordination of individual interests to those of the larger society. The view that the prison has a responsibility to change prisoners is being increasingly challenged by those who argue that every person has a right to self-determination and should not be exposed involuntarily to efforts to change the individual. The rights to which any individual is entitled tend to be defined by the country of which he is a citizen. Hence, it would appear that the manner in which a country responds to the questions concerning the rights of prisoners will depend upon the legal structure within which it operates and the role or function assigned by the State to the correctional institution. But, as suggested earlier, the existence of the Universal Declaration of Human Rights sets a standard that civilized countries have an obligation to maintain.

38. Given such a standard, it is clear that all prisoners are entitled to expect that their rights will be protected and that, in the name of treatment, they will not be subjected to physical or psychological methods that offend the conscience of the world community. The emphasis placed on the importance of protecting the human rights of prisoners is likely to become a public issue in some countries in the face of rising crime rates, particularly when crimes of violence and organized criminality are increasing. Heightened concern about the need for maintenance of law and order may produce a shift in public opinion and a consequent move towards the suppression of the rights of prisoners. This possibility underlines the need to clarify the basic human issues involved and to maintain a programme of public education that will help to convince the community

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that the prisoner should not forfeit any rights enjoyed by other citizens, except those that are implicitly curtailed by imprisonment.

39. The recognition of the existence of human rights does not necessarily guarantee that they will be extended to persons charged with or convicted of crime. It is of paramount importance that within each correctional institution, each prisoner should have the opportunity to complain about the infringement of any of his rights, with the expectation that appropriate remedies will be made available to him. The need for effective grievance systems is, of course, recognized in the Standard Minimum Rules, but perhaps never in the long history of prisons has the need for establishing procedures that will assure an effective remedy for the resolution of grievances been more apparent.

### 3. Special interest groups and corrections

40. Volunteers and prison visitors have long played an important role in the prisons of many countries and have provided the prison inmate with an approved means of contact with the larger community. Since the Second World War, they have played an increasingly important part in the probation programmes of many countries by facilitating the transition of the offender from institutional life to life in the free community. In the United Kingdom, the Scandinavian countries and the United States, special types of interest groups have made their power felt, especially through organized groups of ex-offenders. Some have identified themselves with political organizations and have become active in promoting broad social change. Others have concerned themselves primarily with the reform of prison conditions or with the provision of direct services to prisoners returning to the community. In a few instances prisoners also have sought to organize unions in prisons with the objective of employing collective bargaining methods to improve conditions of work, wages and institutional living conditions. These developments may foreshadow the emergence of a significant force for change in prison systems.

41. The advocacy of improved prison conditions is not limited to societies of prison visitors and to groups of former prisoners. In a few countries a new level of concern for the offender and his needs is being displayed by bar associations, civic and religious groups and other organizations. The task of providing effective leadership in harnessing and exploiting the energies of these groups to bring about more rational changes in the system of criminal justice represents a major challenge. It seems clear that in some countries public involvement in promoting and influencing required legislative changes, as well as participation in the formulation of institutional policies, procedures and programmes, will contribute to the reshaping of conditions of imprisonment and of correctional programmes.

### 4. The systems approach to correctional planning

42. In many parts of the world, current correctional activities are fragmented and compartmentalized, a situation that is, at least in part, a

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function of the historical development of the primary components of the correctional system. The introduction of parole and probation occurred at different times, and these methods were, in a sense, superimposed on the existing penal system. Perhaps equally important is the fact that in most countries all of these components were societally rejected at one time and, for the most part, were isolated from other social welfare services. This situation has not prevailed in countries where social and economic planning has been comprehensive and the interrelationships between corrections and other human services have been better understood. For the most part, however, the need for such planning has not been clearly recognized. Moreover, planning efforts have been limited by a number of factors. There is a clear relationship between the relatively low priority attached to the importance of correctional services and the lack of public support for basic levels of care. As a result, systems have been forced to expend their energies in meeting day-to-day crises and emergencies and have had only the most limited resources for planning.

43. The need for systematic correctional planning is evident. There is, for example, an increasing demand on the part of legislative bodies in many countries for greater accountability on the part of all human service activities. The introduction of the concept of management by objectives requires that administrators re-examine traditional practices and examine and apply available alternatives with the aim of assuring a higher level of return on the tax investment. The advent of advanced computer technology will contribute to the administrator's ability to analyse the outcome of the efforts of the department for which he is responsible and to make essential adjustments, discarding or modifying programmes of limited social utility and adopting new measures that promise to yield better results.

44. These developments suggest that the focus of efforts for the years ahead may be the creation of a rational system for the delivery of services along a continuum that extends from the point at which the offender is arrested and enters the criminal justice system to the time when he is reintegrated into society. Such a service-delivery system would be accompanied by the elimination of widespread compartmentalization of the components of the correctional system. <sup>15/</sup>

#### D. Some obstacles to correctional reforms

45. Although correctional systems in many parts of the world are increasingly affected by the impact of wide-ranging social, economic and technological advances, a number of circumstances inhibit rapid changes within these systems. One is the fact that correctional systems tend to be bound by traditions that strongly resist change. In addition, because the correctional system operates within the framework of the law and is the servant of the

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<sup>15/</sup> One illustration of this trend is discussed in United States, National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C., Government Printing Office, 1973), chap. 16.

judicial system, it is frequently subject to legal constraints whose modification is painfully slow and often cumbersome. Furthermore, in the competition for scarce human and economic resources, resources for correctional systems are usually assigned a low priority. This difficulty is further compounded by the fact that in most regions of the world there are no commonly accepted theoretical foundations for correctional efforts and no clearly established goals that would provide a point of departure for evaluating the effectiveness of the system. Public expectations regarding the correctional system are often confused and contradictory, and public support for change is often lacking.

46. The attitude of the public towards correctional efforts is often indifferent and apathetic, and its rejection of the offender frequently makes it difficult to obtain support for programmes designed to help him. While from time to time the problems of the system may be brought forcefully to public attention by such events as a major institutional disturbance, a mass escape of prisoners, or the commission of violent crimes by persons under supervision in the community, sustained public concern and advocacy of change is all too rare. What is most needed is the provision of increased opportunities for public participation in the practical correctional work through programmes of prison visits or through community volunteer efforts. Such public involvement is but a short step away from public assistance in the shaping of correctional policy through the organization of citizens advisory groups or other methods of public participation. In some instances, the correctional system has strongly resisted such efforts and has tended to interpret public concern as meddling interference. It would appear, nevertheless, that the participation of the public in the formulation of correctional policy could represent an important point of departure for establishing needed change in correctional systems and improved services for the clients of such systems. The direct participation of citizens in the development of correctional policy is not without some risks, however. For example, it may be difficult to maintain a clear line between the advisory role of the citizen and the responsibility of the correctional authority properly to administer and manage the operations of the system. But such problems are not necessarily insurmountable. A skilled administrator, operating freely with citizens groups, can effectively ensure public understanding and acceptance of the need for him to retain the ultimate authority and responsibility for critical decisions regarding the system under his direction, even though he operates that system on behalf of the citizenry.

47. It is clear that radical changes in a prison or the prison system are not achieved easily. If, for example, prison officials, responding to what are seen as legitimate public concerns, attempt to change policies, procedures and practices without recognizing the need for informing and educating prison staff concerning the reasons for, or the implications of, the changes for the performance of their duties, the result may be heightened resistance of personnel to these innovations.

48. The task of involving prison personnel in planned change is often difficult. The staff is required to work in an environment that, in many instances, is threatening and sometimes dangerous. Therefore, a high value is

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attached to maintaining stability in institutional operations. More often than not, prison officers have limited education and inadequate training. Their difficult occupation usually is not highly regarded by society, and the compensation they receive for their work tends to be low. They rely to a large extent on the exercise of authority to maintain the order and discipline that are considered essential both to the security of the institution and to their own safety. Under these circumstances, the introduction of changes in policy or practice tends to be seen by them as a threat and a cause for anxiety. In those countries where strong employee organizations exist, such organizations tend to reinforce the maintenance of the status quo. It is possible to enlist the support of these organizations for proposed changes, particularly if it can be shown that their support will help to reduce the tensions within institutions that give rise to violence and disorder. The prospect of success is enhanced when staff at all levels are given the opportunity to participate in the solution of institutional management problems. But wherever the staff are disturbed by change or innovation, resistance may take the form of neglect or disregard of responsibilities for controlling the behaviour of prisoners, thereby subverting the efforts of prison managers and providing trouble-makers among the inmates with an opportunity to exploit the situation for their own purposes.

49. The advent or even the prospect of change directed towards the improvement of prison conditions and programmes may lead prisoners to expect that improvements will occur more speedily and be more far-reaching than the resources of the system permit. When the anticipated results are delayed even slightly, or when the changes are not as great as the prisoners had expected, leaders among the inmates may seize the opportunity to organize efforts designed to call attention to their grievances through institutional disturbances.

50. The situation is even more hazardous for a new administrator who, as is sometimes required, attempts to reclaim authority for the operation of the institution after it has fallen into the hands of prisoners as a result of the abdication of responsibility by his predecessors. Confrontation frequently may ensue, and violence is likely to occur in the struggle for supremacy. In the course of such struggles, many prisoners not directly involved may become victims of the effort to re-establish order.

51. For the administrator of a prison system and of a prison itself, the introduction of needed change often involves elements of considerable risk. If a well-intentioned but inadequately informed public presses for radical change without taking such risks into account, it may contribute to the creation of situations that serve to worsen rather than improve the lot of the prisoner. In the light of experience, one must recognize that the changes or reforms that may be accomplished within a given period of time are limited. The constraints imposed by deeply imbedded tradition, as well as by apathy and indifference, yield reluctantly to innovation, and the administrator who finds himself too far in the vanguard may discover that he has been cut off from his sources of support both within his staff and in the community. Each country has its own tolerance level, but the outstanding correctional administrator will test these levels constantly in his quest for reforms.

52. There also have been a number of situations in which competent and

professionally trained personnel of correctional institutions have found themselves caught between the conflicting expectations of their clientele and the community and, recognizing the practical difficulties of reconciling these differences, have withdrawn from the system of criminal justice. This situation has contributed to an unfortunate "brain drain" in some correctional systems which can ill afford the loss of competent personnel.

53. The influence of the media in stimulating the interest and concern of the public regarding correctional problems can be expected to call increased attention to critical issues in many countries. Under these circumstances, the correctional administrator faces the requirement of dealing with the mass media more openly than in the past. While a posture of "openness" permits the administrator to inform the public more fully concerning the needs of the system and of its clients, it may also make him more vulnerable to criticism and attack. It is, nonetheless, important that he learn to use the resources of the media more effectively to promote necessary change and to create a climate of opinion which is more supportive of efforts in this direction.

54. In addition, there also is a need for the involvement of prisoners themselves in such efforts. The absence of effective systems of communication through which prisoners may be informed about matters of direct concern to them and through which they may communicate their own needs and problems to the public has long been recognized. Even were such systems of communication available, they would not serve the obvious need of providing on-going opportunities for prisoners to participate more directly in the formulation of policies, procedures and regulations affecting their daily lives within the prison. Limited experiments in the development of "collaborative" institutions suggest the importance of continuing exploration in that direction. Further experimentation with the concept of inmate involvement in participatory management schemes may have value, although such schemes may hold a greater hope of success in the small institutions for less dangerous offenders. But experimentation should not necessarily be limited to such institutions. There may be greater urgency to extend such experimentation to the larger, high-security institutions, since it is there that greater concentrations of particularly deprived prisoners frequently are to be found.

55. If pressures to reduce the populations of institutions result in offenders being thrust into a community unprepared to receive them and where essential supportive services have not been provided, the consequence may be an increase in crime, followed by a violent community reaction. As a result, legitimate efforts to establish or maintain community-based services may thereby be discredited. In the face of rising crime rates and an increase in the number of persons sentenced to imprisonment, a reduction in the number of institutions or a moratorium upon the construction of new facilities may result in additional overcrowding of existing institutions. This will tend to threaten the safety of inmates and staff alike. The consequent hazards for the effective protection of the community at large needs no emphasis. Moreover, the difficulty of guaranteeing the effective protection of the human rights of prisoners confined in grossly overcrowded institutions is clear.

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56. The role of correctional workers, particularly administrators, as advocates of change has become more important in many parts of the world. The administrator may attempt to help shape social policy with the respect to the function of correctional services within his country, to promote the enactment of the laws required to implement such policy, to seek with determination the resources to carry it out, and to provide the public with the knowledge and information essential to the understanding of the issues involved. In fulfilling this role, he will recognize his accountability both to the persons in his custody and to society at large.

## II. TOWARD THE REDUCTION OF THE USE OF IMPRISONMENT

### A. Community-based institutions

57. In the light of the climate of change outlined in the preceding section, it appears likely that significant developments in the organization of correctional services will take place during the remaining quarter of the twentieth century. There will be a need to develop resources for the early identification of persons who should promptly and appropriately be diverted from the criminal justice system. It will be necessary to design more effective programmes for persons who do not require institutional confinement, even though they may require intensive supervision and support. The role and function of residential institutions will be reassessed and the functions of community-based programmes will be more clearly defined. One of the most critical issues which must be faced relates to the function and functioning of institutions for persons awaiting trial.

#### 1. Institutions for persons awaiting trial

58. Historically, institutions for the pre-trial detention of persons charged with crimes have not been regarded as integral components of the correctional service delivery system. In some countries they have functioned under local authority with little or no supervision. Standards of operation have varied widely, and more often than not the treatment of the person accused of crime has been poorer than that provided after conviction and imprisonment. In the absence of provisions for release on bail or on recognizance, a substantial number of detainees are needlessly exposed to long periods of debilitating idleness and isolation from the community. In many regions of the world there is a clear need for the province or state, rather than the county or city, to set and maintain standards for the operation of local detention institutions, if not to assume direct responsibility for their administration. There is also a need, in several countries, for fundamental legal reforms to reduce or eliminate unnecessary and socially wasteful periods of pre-trial detention.

59. Experience with the use of programmes for release on recognizance, permitting carefully selected persons to remain at liberty in the community until called for trial, clearly suggests the desirability of this alternative to detention. <sup>16/</sup> It is an approach that is less expensive and socially more acceptable and under competent administration, does not increase danger to the community.

60. If it is necessary to detain a person so as to assure his appearance before the court, or to protect society against serious crimes, it is equally important to adopt measures to guarantee the maximum protection of his civil rights as an unconvicted detainee. This involves the assurance of the same level of care to

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<sup>16/</sup> For alternatives to pre-trial detention with particular reference to Africa see, for example, "Report of the Expert Group Meeting on Social Defence", (E/CN.14/328), para. 50.

which he would be entitled as a free citizen of the State. In a few countries there is a growing awareness that the detention facility may play a certain substantive role in the correctional process. <sup>17/</sup> Such detention might provide a range of services for the detainee and might also serve as a focal point for the collection of information required by the court in making decisions at critical stages in the correctional process, which truly might begin at the point when the accused is taken into custody. Experimentation involving pre-trial detainees in correctional programmes invariably has been based on voluntary participation, as the State's right to treat a person depends on conviction. Primary among the services that might be provided the pre-trial detainee, are counselling services related to problems and concerns incident to a person's removal from the community and the effects of removal upon his or her dependants.

61. Another significant function of the local detention facility staff might be the collection and evaluation of information about the detainee that might be essential to decisions concerning his suitability for release from custody on his personal recognizance. Similar information-gathering and assessment activities are also important in determining whether the person in custody may be diverted from the criminal justice system and referred to social welfare or public health services for assistance. In addition, the institution also might furnish the diagnostic evaluations that are required by the courts in sentencing. Finally, the detention facility might be viewed as a base for "out-patient" services required by offenders who are released pending trial.

62. Such dimensions given to the programmes of institutions designed for pre-trial detention might be incorporated into a rational continuum of services that ultimately would serve the ends of justice and of corrections. Institutions organized on this model would require both a higher level of professional staffing than now exists in most parts of the world and close interaction between the detention facility and the available social services required by the detainee and by his family. The Standard Minimum Rules already cover persons in pre-trial detention. However, if the type of pre-trial control over the accused were to change so radically that the detainee could no longer be regarded as the equivalent of a prisoner, a new, parallel set of Rules would have to be devised specifically to protect his or her rights.

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<sup>17/</sup> There is considerable literature in the United States relating to the reorientation of the functions of the gaol. See United States, President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections (Washington, D.C., Government Printing Office 1967), pp. 79-81; and United States, National Advisory Commission on Criminal Justice Standards and Goals, Corrections (Washington, D.C., Government Printing Office 1973), chap. 9, which outlines in detail the possible functions and programmes of local gaols serving in the role of community correctional centres. See also United States, Bureau of Prisons, New Roles for Jails - Guidelines for Planning (Washington, D.C., Government Printing Office, 1969).

## 2. The community residential centre

63. The experience of many countries with the use of half-way houses, probation hostels, group homes, correctional communes and community treatment centres, which were mentioned earlier, will be especially useful in the design of new community-based facilities. Such facilities will be open in character, but will provide a level of supervision that will assure appropriate control of offenders who, at the outset, may require close attention. They should be relatively small in size and residential in character, and their location should provide ready access to public transportation and to other necessary community services. In particular, they should be close to places providing employment opportunities. While it may be desirable to construct new facilities, consideration should be given to the possibility of remodeling suitable existing buildings obtained on a rental basis or at low cost. The parallel set of Standard Minimum Rules mentioned above in paragraph 62 for the protection of persons charged with crime and placed under various forms of supervision should be extended to provide equal protection to persons who are in such residential facilities as a result of conviction or, in some countries, by agreement in lieu of conviction.

64. The initial function of this new type of institution would be to afford an opportunity to assess the needs of the offender, followed by efforts to prepare him for independent life in the community. Both in planning and in carrying forward the programme, the institution would rely, to the fullest extent possible, upon existing community services that are appropriate to the offender's needs. Where public or private welfare and health service agencies are unable to provide necessary assistance either on a full-time or part-time basis, purchase-of-service agreements and other contractual arrangements may prove to be a satisfactory alternative to the employment of professional personnel. In large urban centres, it may be possible to deploy full-time professional teams, strategically located in neighbourhoods where the offenders live, to provide services to the complex of facilities.

65. The primary concern of the staff of the centre should be to provide the offender with immediate access to resources and services that will enable him to cope better with the daily problems of life, including family relations employment, education, training and the constructive use of leisure time. It will be critically important for the programme to provide for appropriate interventions that are designed to strengthen and reinforce the functioning of the family and that involve existing social welfare services in this effort.

66. In time, the development of such community-based facilities might eliminate entirely the need for pre-trial detention institutions for those offenders who are unlikely to require confinement in a prison. Many of the functions of pre-trial institutions outlined in the earlier section might well be assumed by the community centre if adequate provisions for study and classification of offenders awaiting disposition are provided and if the centre is capable of maintaining an adequate level of supervision and control during the pre-dispositional period.



B. What remains - the prison for the dangerous offender

1. The debate on the role of imprisonment

67. In the climate of change that permeates corrections today, it appears that in some parts of the world two fundamentally opposed views regarding the future of the correctional institution are emerging. Conventional prison reformers stress the importance of a higher level of support for institutions, better qualified personnel, refinement of institutional programmes and the need for diversified facilities that will meet the needs of offenders.

68. A growing number of persons, however, take the view that efforts to manage prisons for the purpose of changing people are futile and should be abandoned. 18/ The position taken by this group of reformers may be summarized as follows:

(a) The fundamental conflict between the competing goals of the institution is insoluble;

(b) The medical model of treatment is irrelevant;

(c) No treatment modality applied so far has a demonstrable effect upon prisoners. The institution has failed consistently in its role as an agency for changing people;

(d) The institutionalization of offenders is self-defeating. The informal inmate society of the institution ultimately shapes the prisoner's reaction to confinement, and staff efforts to counteract this influence are non-productive. As a consequence, the institution serves not only to dehumanize the offender but also to reinforce negative values rather than to modify them in a positive direction;

(e) The stigma of imprisonment is ineradicable and tends to hinder the offender's reintegration into society;

(f) In the final analysis, the problem of the prison is the prison itself. 19/

69. The strategy of the group is to restore the role of the institution as a place of punishment, but only for hardened criminals, and to reduce to a minimum the discretionary authority to return the prisoner to society. Sentences of imprisonment would be fixed, and prisoners would be released under supervision after the required portion of the sentence had been served. This view regards the

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18/ Lloyd Ohlin, ed., Prisoners in America (Englewood Cliffs, New Jersey, Prentice-Hall, 1973).

19/ Benjamin Frank, Contemporary Corrections (Reston, Virginia, Reston Publishing Co., 1973), pp. 149-157.

residual version of imprisonment as a penal measure. Nevertheless, the same group of reformers concedes that imprisonment also must neutralize those offenders who cannot be controlled in the community. The protagonists of both sides support the maintenance of legal guarantees for the protection of prisoners from arbitrary administrative decisions and abuse.

70. A third point of view regarding the function of imprisonment similarly challenges the notion that criminals should be sent to prison for treatment, but maintains a sharp distinction between the purposes of incarceration and the provision of opportunities for the training and assistance of prisoners. Those who subscribe to this position argue that behaviour in prison does not foreshadow behaviour in the community and that the medical model for treatment of offenders must be abandoned; that education, vocational training, counselling and other supporting programmes should continue to be provided and, indeed, expanded, but on an entirely voluntary basis; and that there should be no suggestion that a prisoner's release may be accelerated because of participation in such programmes, nor that it might be postponed or delayed because of failure to participate. In their view, the approach adopted should in no way be coercive but simply facilitative. Rehabilitative purposes and prison purposes must be fulfilled collaterally.

71. The debate concerning the social utility of institutions will undoubtedly become more intense over the years, equaling in vigour the debate that took place in many parts of the world more than a century ago between the proponents of the "Pennsylvania" system of cellular isolation and the "Auburn" prison system of collective labour. It is not the function of this paper, however, to argue the merits of the positions that appear to be taking shape, but rather to bring the arguments into focus because of their possible implications for the future of the Standard Minimum Rules.

## 2. Problems of imprisonment as a residual penalty

72. If the prison were to be reserved as a place of punishment for a residual group of offenders, marked by the seriousness of their crimes or their recognized danger to society, a number of critical problems would arise. The main problem relates to the personality of the prisoner. Thus, it is not entirely academic to speculate about the form that the programme of such an institution might take. The central question here is how the necessary controls can be maintained so as to assure the protection of prisoners from themselves and others, while at the same time providing an institutional environment that is not destructive of human dignity or of the human spirit. If the prison becomes primarily or solely an instrument to incapacitate dangerous prisoners, how will it be possible to maintain staff of professional quality that have the capacity to concern themselves with the human values of their work? How can programmes be designed that will ensure that prisoners have opportunities for constructive and purposeful use of time and are not reduced to monotonous, debilitating idleness? What responsibility will the institution have, if any, for the use of intervention or

of treatment modalities designed to modify the attitudes and behaviour of prisoners in order to facilitate their adjustment to the institution? 20/

### 3. Types of prisoners to be confined

73. The determination of the types of prisoners to be included in the residual group poses many difficulties. In the last analysis, offenders classified as dangerous must be identified according to the criteria developed under the legal and cultural traditions of each country. Dangerousness is not necessarily a function of a specific offence or category of crime. The person who has committed homicide, for example, may or may not be a source of continuing danger to society. Those who have committed particularly vicious offences are more likely to require control than others. Similarly, control might be appropriate for some people whose offences are less serious but whose histories of repetitive behaviour indicate that they are a threat to public safety.

74. Since dangerousness is defined in accordance with the values of a given culture and reflects the limits of tolerance of a particular society for offences that threaten public safety or public order, it is impossible to define specific criteria for the assessment of dangerousness which will have global acceptance.

75. In a number of countries, legal scholars, jurists, criminologists and other professionals have discussed the problem of determining the categories of persons who in the future might be identified as those for whom imprisonment should be reserved. Whatever the legal definitions of these offences or offender categories, many of the prisoners included in the residual group would pose a threat to the safety of the institution, to other inmates, or to staff members. Similarly, many would be extreme escape risks and potentially disruptive. Many also would be young and unpredictable.

### 4. The staff

76. The staff of an institution designed for the confinement of such a population would require exceptional qualifications. It would be necessary for them to have a knowledge and understanding of human behaviour that would provide them with insight into the personalities of the prisoners with whom they must work. Their own personalities must be such as to enable them to function calmly and effectively in a situation that would be hazardous and threatening, and they also must be capable of dealing with prisoners in a firm, yet humane, manner.

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20/ For some outlines of a possible approach to the organization of staff and the programme of an experimental prison for intractable offenders, see Norval Morris, The future of imprisonment (Chicago and London, the University of Chicago Press, 1974), pp. 107-117. See also E. Neuman and V. J. Irurzun, La sociedad carcelaria (Buenos Aires, Ediciones Depalma, 1974), p. 101-110.

5. The institution

77. A prime requirement for the physical facility that houses such a population is that it be kept to a manageable size, probably not exceeding a capacity to house 250. Prisoners might be housed in custodially secure outside rooms. Housing arrangements would need to take fully into account the need for maintaining physical separation of small groups of prisoners within the facility. Custodial supervision might be supplemented by technological devices in order to better ensure both internal and peripheral security. Despite the need for careful monitoring of prisoner's activities, the architectural design of the facility should have a residential quality, so as to approximate the quality and way of life on the outside.

6. The institutional régime

78. The maintenance of discipline and order in an institution such as that envisaged here is a most difficult task. It will tax the ingenuity of the institutional management and staff to establish the delicate balance between the need for control and supervision of the population on the one hand and for opportunities for individual and group activities essential to the socialization of the prisoner within the institution on the other hand. Furthermore, it will be of crucial importance to balance the custodial aspects with the fundamental human rights discussed earlier in this paper and which must be ensured even for prisoners in an institution of this kind.

7. The institutional programme

79. There is a danger that efforts to design an institution that will afford maximum security for a population of intractable prisoners might result in a return to the earlier method of total cellular isolation. Such isolation, however, would contribute further to moral and physical deterioration and debilitation. The task of the institution, therefore, must be to identify those prisoners who have a capacity for a reasonable level of adjustment within a controlled situation. This will require the application of diagnostic methods and techniques that will enable the managers of the institution to group prisoners in terms of their capacity to participate, probably on a voluntary basis, in institutional programmes designed primarily to facilitate their adjustment to the requirements of the institution itself. There may be small, intractable groups of prisoners who, because of the threat they pose to the safety of others, will require very close control and maximum supervision, and for whom participation in group activities must be minimal.

80. A secondary function of such programmes might be to raise the capacity of the individual to cope with the problems he will encounter upon his return to society. However, this would not be regarded as a primary objective. The range of programme opportunities might include academic and social education, job training, individual and small group counselling focused upon problems of institutional and community adjustment, and organized and supervised leisure-time activities.

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81. Another important dimension of the programme of such an institution would involve research into the aetiology of the behaviour of prisoners who, because of their dangerousness, require imprisonment. The need for more adequate research data on the dangerous offender is well established and requires little emphasis. In the organization of research, due regard necessarily would be given to the legally or constitutionally established rights of the prisoner. Obviously, the use of research methods and techniques that would violate human rights would be prohibited. <sup>21/</sup> Moreover, the participation of prisoners in research studies would, in many instances, require informed consent and voluntary involvement. If participation in research were to be in no way related to the promise of advancing the prisoner's release from confinement, an objectionable aspect of his participation might be eliminated.

#### 8. The work programme

82. Programmes of work will continue to occupy an important place in the life of the maximum security institution. As with other institutional programmes, the character of the work activity must take into account the capacity of prisoners to participate in collective activities. But even for those prisoners who require the most control, including segregation from the rest of the prison population, opportunities for constructive work would be essential. As far as possible, work opportunities within the institution should have a significant relationship to those in the community at large. Compensation for prison labour should be comparable to that for similar work outside. Generally prevailing community standards and conditions of work must be maintained for prisoners as well.

#### 9. Extramural relationships

83. In so far as possible, the supportive services of the community, including visits from family members, prison visitors and other representatives of the community with a legitimate interest and concern, should be made available to the prisoners. Conjugal visits for prisoners would be facilitated. All prisoners should have access to the community through correspondence. Except in unusual circumstances, no limitation should be imposed upon either the number of letters or of correspondents. All mail would be forwarded without censorship, although it would be inspected to ensure that the rights to correspond were not abused. The inspection of incoming mail would be limited to efforts to prevent the introduction of contraband into the institution or the use of correspondence to formulate plans for escape or institutional disturbances, or to continue involvement in criminal activities. The maintenance of an open system of communication would represent an important safety-valve for prisoners confined under rigorous control and, at the same time, would assure the community that abuses of administrative discretion would not escape unnoticed.

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<sup>21/</sup> For some of the issues arising in this connexion, see "Human rights and scientific and technological development" (E/CN.4/1028/Add.2), p. 6.

#### 10. Preparation for release

84. The return of a prisoner from a closely controlled and supervised institution to conditions of freedom in the community, even with guidance and under supervision, unquestionably poses serious problems. A transitional experience, whether in one stage or in a series of stages, might be provided by specially organized community treatment centres, staffed and equipped to provide the offender with a range of services that would facilitate his re-entry into the community. The time spent in such transitional, semi-open residential centres would be determined, at least to a degree, by the difficulties a prisoner might encounter in obtaining a suitable place to live and legitimate employment and in re-establishing relationships with his family. As in the case of community-based institutions for the less dangerous offender, the activities of the community centre for released prisoners would be integrated closely with other available programmes of the social welfare services, public and private, of the community so as to provide a wide range of services to released prisoners.

85. It is clear that the use of prison for the confinement of a residual group of offenders might have important implications for the future formulation of the Standard Minimum Rules. Some of the issues that might arise are discussed in the second part of the present paper.

#### C. Corrections and social welfare institutions

86. The emergence of the prison as an instrument of social policy occurred nearly a century before recognition of the need for a range of public social welfare services was brought about by the Industrial Revolution. During the twentieth century there has been a growing recognition that correctional systems - including institutions, probation and parole - are in no small way concerned with meeting the needs of persons whose deviant behaviour reflects their inability to cope with the requirements of an increasingly complex society. In recent years there has been a heightened awareness that many persons who commit criminal acts have problems that are not significantly different from those of other clients of the social welfare system and that offenders are entitled to the support and assistance provided by the wide range of human services that are available to other citizens.

87. The interrelationship between the system of correctional services and the larger system of social welfare services has increasingly induced public non-correctional agencies to identify the offender as a member of a significant group for social service efforts, thus breaking the almost complete isolation in which the correctional systems of most countries have operated. In a few countries, the responsibility for the operation of the correctional system has been given to public agencies that also provide other social welfare or human services. 22/ For

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22/ Concerning the responsibility for probation and after-care service, see, for example, Andrew Wilson, "New approaches in the handling of juvenile delinquents in Scotland: a. Recent developments in social work", International Journal of Offender Therapy and Comparative Criminology (London), vol. 18, No. 3, 1974, pp. 247-259.

the most part, however, prison systems are regarded as the appropriate responsibility of the criminal justice or public safety agency of the State, of independent departments, ministries of correction, the courts or, in some instances, of the military establishment. In the long run, the organizational location of the corrections agency may be of less consequence than the manner in which that agency interacts with or relates to other public agencies that provide services. The problem is one of ensuring that the correctional client has access to such community services as those dealing with health, social welfare and education, on an equal basis with other eligible members of the community.

88. As noted earlier, it is equally important to organize these services in ways that will reduce the fragmentation of correctional systems. The efficiency of a correctional system can be enhanced if the total range of services is provided within and co-ordinated by a single agency, department or ministry. These services include pre-trial detention, probation and other community-based programmes, as well as short-term and long-term residence at institutions and after-care services. Organizational arrangements of this nature tend to reduce duplication of effort, to permit the most appropriate use of staff and personnel, and to encourage career development of personnel. As a result of the diversified work experience that would become available to the corrections worker as he proceeded upwards on his career ladder, such arrangements would also facilitate the establishment of a cadre of correctional generalists. While there would be a continuing need for specialists, a significant number of professional staff would tend to advance to positions of managerial responsibility requiring broader knowledge and experience. In addition, such an organizational structure would serve to facilitate the development of integrated systems for the collection of data concerning offenders who have been brought into the system, including information regarding the measures to which they have been exposed and the outcome of their participation in various programmes. Such basic information is a fundamental requirement not only for a comprehensive system of information management but also for evaluating and assessing the effectiveness of programmes.

### III. CONCLUSIONS AND RECOMMENDATIONS

89. The Fifth United Nations Congress will have the task of recommending guidelines for international co-operation to improve the standards of correctional practices. The diversity of attitudes and conditions in this field show a certain pattern which may be summarized as follows:

(a) It is obvious that prisons in most parts of the world are badly overcrowded and make little or no effective contribution to the prevention and control of crime. Moreover, the harmful effects of incarceration are widely recognized, especially where long-term imprisonment is involved;

(b) On the other hand, the need to protect society from dangerous persons is acknowledged and it is generally accepted that correctional institutions are, for the time being, the only instrument of protection - apart from the death penalty - against this group which, however, constitutes but a small proportion of the prison population in the world;

(c) As a result of the growing dissatisfaction with prison as a means of correction, there is a widespread movement towards developing non-institutional forms of treatment and systems of community integration for offenders. It is, however, clear that many difficulties must be overcome. Even where it is established, the community model in most countries is not well organized, planned or developed. In many parts of the world the prerequisites for the programme components are not to be found outside certain major cities. In some cities and in rural areas it is not easy to find communities in the sense of organized groups capable of assuming responsibilities related to corrections. Moreover, the resources are inadequate for extending specialized social services to the population as a whole, let alone to the offenders. Nearly everywhere the public attitude towards law-breakers, on which the eventual success of a community-based treatment heavily depends, must be changed.

90. In the light of these factors and of changing attitudes toward imprisonment, if a world policy were to be formulated, it would probably be stated, as follows:

(a) On the whole, the use of prison as an instrument for prevention of crime has proved to be unsuccessful. To incarcerate offenders in order to make them useful members of an open society is in itself an anomaly. While locking up dangerous persons, even for a maximum of 10 or 20 years, may be useful as a temporary measure, long-term imprisonment does not guarantee removal of the danger they pose for society. Therefore, the use of incarceration as a sanction of the criminal justice system must be restricted as much as possible;

(b) It does not seem likely that any nation is prepared to deprive itself completely of the use of prisons as a sanction against offenders, especially persistent, professional or dangerous offenders. It must also be remembered that, in some countries, the correctional systems provide a variety of services. These consist not only of maximum-security prisons, but also of such institutions as

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training centres, collective labour camps and halfway houses, which reduce some of the negative effects of imprisonment. Facilities of this kind provide opportunities for linking together institutional treatment and community-based programmes, and are therefore recommended;

(c) It must be the constant endeavour of each country to develop alternatives to imprisonment and to use such measures as much as possible. Where required, laws should be enacted in order to expand diversion from the criminal justice process and to permit the implementation of such methods as compensation of victims and fines. In the community, probation and parole resources should provide offenders with the social services they need, whether as part of the general social welfare system or as a component of the correctional administration.

Part two. Review of the Standard Minimum Rules for the  
Treatment of Prisoners

IV. THE RULES IN THE CLIMATE OF CHANGE

A. A perspective on the Rules

91. Throughout the history of prisons, men have sought to elaborate principles or standards to guide the operation and management of penal institutions. At the outset, there was a prolonged debate between the protagonists of a system of cellular isolation and those who argued for a system of collective work for prisoners. A little more than a hundred years ago, the work of a small group of reformers in the United States of America resulted in a Declaration of Principles that emphasized the responsibility of society for the reformation of criminals. 23/ At a meeting of this group in Cincinnati, Ohio in 1870, it was noted that education, religion and industrial training were valuable aids in this undertaking, that prison discipline should build the self-respect of each prisoner and that the prisoner's co-operation might best be obtained through the use of an indeterminate sentence under which his discharge would be regulated by a merit system.

92. The meeting at which the Declaration was adopted was the forerunner of the first International Penal and Penitentiary Congress, convened in London in 1872. The latter gave rise to the organization of the International Penal and Penitentiary Commission (IPPC), which provided international leadership in prison reform for nearly 80 years. The London Congress adopted a statement of principles of prison reform that established the foundations for what later were to become the Standard Minimum Rules. The deliberations of later congresses during the ensuing half century were primarily concerned with a search for standards. The outcome of these discussions was the promulgation by IPPC in 1926 of the first statement of the Rules. Revisions followed in 1933 and in 1951. In 1949, prior to the transfer of the functions of the IPPC to the United Nations, a United Nations ad hoc advisory committee of experts recommended that the Social Commission should undertake a further revision of the Rules, using as a working paper the IPPC document that was then in preparation. In 1955, the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the current Rules. Two years later, by its resolution 663 C (XXIV) of 31 July 1957, the Economic and Social Council approved the Rules and invited Governments to give favourable consideration to the adoption and application of the Rules in the operation and administration of their penal and correctional institutions.

93. Problems related to the implementation of the Standard Minimum Rules 24/ were

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23/ American Correctional Association, Transactions of the National Congress on Penitentiary and Reformatory Discipline, (reprinted) (College Park, Maryland, 1970).

24/ J. Carlos García Basalo, "Obstacles to the implementation of the Standard Minimum Rules in Latin America", International Review of Criminal Policy, No. 26 (United Nations publication, Sales No.: E.70.IV.1), pp. 17-24.

discussed at considerable length during the meeting of the United Nations Consultative Group held at Geneva in 1968. The Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Kyoto, Japan in 1970, gave further attention to the Rules and recommended that the General Assembly approve them and recommend their implementation by Member States; that the United Nations social defence programme be given the means to undertake research and develop technical assistance for promotion of the Rules; that a working party be established that would undertake an international evaluation of the needs, means and results, through periodic inquiries addressed to Member States with regard to the Standard Minimum Rules, and that would report to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on the action taken.

94. On 20 December 1971, the General Assembly of the United Nations, in its resolution 2858 (XXVI), invited the attention of Member States to the Standard Minimum Rules for the Treatment of Prisoners, recommended their effective implementation in the administration of penal and correctional institutions and requested that favourable consideration be given to their incorporation in national legislation. The General Assembly also noted with satisfaction the establishment, within the Commission for Social Development, of the Working Group of Experts on the Standard Minimum Rules for the Treatment of Prisoners.

B. Progress toward the implementation of the Rules  
and related matters

1. The Working Group of Experts on the Standard Minimum Rules

95. As recommended by the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and in accordance with the recommendations of the Commission for Social Development, the Economic and Social Council in its resolution 1583 (L) of 21 May 1971 approved the Commission's work programme that provided, among other activities, for the convening of a working group to advise on methods of strengthening the implementation of the Standard Minimum Rules.

96. The first meeting of the Working Group of Experts on the Standard Minimum Rules took place at United Nations Headquarters from 25 to 29 September 1972. In line with the terms of reference set down by the Fourth United Nations Congress, the Group examined matters relating to the extent to which the Rules are currently being applied, the need for a more effective system of reporting upon their implementation, the areas in which the Rules may be deficient or out of date and the ways in which the scope of the Rules might be enlarged. 25/

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25/ For a more detailed discussion, see "Preparatory report on the possible modification of the Standard Minimum Rules for the Treatment of Prisoners" (ESA/SD.AC.1/1).

97. It was the consensus of the Group that the need to provide specific guidelines and other assistance to countries interested in putting the Rules into force was more important than the amendment or expansion of the Rules. It was agreed that a new introduction to the Rules as a whole and an interpretative commentary on each of the Rules, incorporating suggested guidelines for their implementation, should be prepared. Since the commentaries would not have the force of Rules, they would provide room for flexibility and an opportunity for revision in the light of the experience of Member States in adapting the Rules to changing conditions.

98. The Group also proposed the writing of a short, easily understandable brochure that would describe the Rules and emphasize their importance. It recommended that attention be given to a more attractive presentation of the Rules when they were reprinted. The Group also emphasized the importance of assuring wider dissemination, using all appropriate channels of communication, especially those available within the United Nations.

99. The Working Group noted some instances where the preparation of commentaries might suggest ways in which the Rules could be applied in the light of changing conditions without doing violence to the intentions of those responsible for their formulation and adoption. For example, it was the clear intent of Rule 7 that accurate records be maintained concerning persons who were imprisoned or detained. The purpose of the Rule was the prevention of illegal or irregular confinement of persons. While the Rules required that the names of prisoners be recorded in a bound registration book with numbered pages, the commentary might suggest alternative and more modern methods (computerization, for example) for accomplishing the same aim.

100. A commentary on the provisions of Rule 8, concerning the separation of categories of prisoners, might explore the growing practice of establishing correctional institutions in which both sexes were housed on a segregated basis but participated in approved and appropriate institutional programmes and activities on a coeducational basis.

101. Another commentary might deal with the desirability of using community hospitals for the confinement of pregnant female prisoners and for the appropriate placement of their infant children after the women were released from such hospitals. It also might discuss the continuing contact of all prisoners, either directly or through prison medical services, with the medical services that may have taken care of them prior to their imprisonment. These observations would relate to the present provisions of Rules 23 and 24.

102. Although Rule 28 prohibited the practice of granting a prisoner disciplinary authority over other prisoners, the Working Group suggested that a commentary might make it clear that the Rule did not militate against prisoners being given responsibility in such areas as the organization and execution of the institutional work or education or rehabilitation programmes, where inmates might exercise supervision over others without having the authority to punish or impose disciplinary measures.

103. A carefully prepared commentary might suggest methods that could lead to the effective resolution of inmate grievances. Rules 35 and 36 concerned the right of prisoners to be informed of the rules and regulations of the institution and to transmit complaints to the competent authorities. Paragraphs 33-35 of the present report explained that a number of approaches have been adopted in different countries to provide administrative remedies. A more comprehensive description of these approaches might be of particular value to countries wishing to establish more responsive legal or administrative machinery for the resolution of grievances.

104. The preparation of commentaries might also serve to elaborate on the legislative intent of a number of the Rules Applicable to Special Categories, Rules 56-94, inclusive. A few examples of areas in which such elaboration is needed are cited in the paragraphs that follow.

105. It is deemed to be the objective of the Rules regarding classification and individualization that there be a minimum of contact or association between less sophisticated prisoners and those who might exercise a detrimental influence over them. Consequently, there has been a tendency in the correctional institutions of many countries to separate the younger from the older inmates and to maintain a rigid segregation of the sexes. However, it would appear to be propitious to re-examine the assumptions underlying the categorical separation of prisoners and to explore alternatives to traditionally accepted measures. There may be advantages in mixing older and younger prisoners or in permitting prisoners of different sexes to participate in joint programmes.

106. Rules 71-76, inclusive, concern a wide range of issues regarding prison labour. Again, without detracting from the force or the intent of these Rules, commentaries might be employed to examine approaches taken in different countries to such issues as the establishment of minimum wage levels for inmate workers and the creation of inmate labour unions and their involvement in negotiations concerning conditions of work. Other issues that might be examined in this context concern the administration and control of prison industries. Rule 73 (1) indicates that institutional industries and farms preferably should not be operated by private contractors. The experience in countries that have provided high levels of institutional employment through contractual relationships with free enterprise - notably, Japan - may deserve comment.

107. While Rule 77 (2) recommends that, in so far as is practicable, the education of prisoners should be "integrated with the educational system of the country", there is no reference to the participation of inmates in extramural educational programmes. Reference in the commentaries to the use of such external resources in countries that have adopted programmes of inmate work and extramural education might be instructive and helpful to countries wishing to consider the initiation of similar activities.

108. Without modifying any of the Rules in substance or in principle, the proposed commentaries could identify the variety of ways in which the Rules might appropriately be interpreted under changing conditions of progress and enlightenment.

109. In its discussions, the Working Group also took into account the potential need

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for the enlargement or addition of Rules concerned with such problems as chronically overcrowded prisons, the duration of pre-trial detention, the elimination of abusive disciplinary measures, additional issues concerning prison labour, matters relating to the special needs of prisoners sentenced for long terms, the extension of the Rules to categories of persons not now included within their purview and, in general, all issues that compelled little or no attention at the inception of the Rules but that have become serious problems for correction officials and prisoners alike.

110. The Group concluded, however, that hasty efforts made to modify, amend or extend the coverage of the Rules might prove to be self-defeating. The lack of adequate knowledge concerning the implementation of the current Rules, as well as the absence of information about the specific reasons why certain Rules have not been incorporated into the practice of some countries, suggested the continuing need for gathering such data.

111. The Group also took into account the proposal of the Fourth United Nations Congress that consideration be given to the desirability of dividing the Standard Minimum Rules into a general part, containing a more refined statement of basic principles that might form an international convention, and a special part, devoted to technical questions relating to treatment, to which additions could be made in the light of favourable experience. The proposal led the Group to consider the close relationship between the Standard Minimum Rules and other United Nations instruments concerned with human rights. It was recommended that the existing close co-operation between the United Nations Crime Prevention and Criminal Justice Section and the Division of Human Rights be continued and that joint or interregional seminars on the Rules be promoted in accordance with General Assembly resolution 926 (X) of 14 December 1955. It was the consensus of the Group that efforts to develop the Rules in the form of an international convention would be premature.

112. Finally, the Working Group suggested that until and unless a United Nations agency was specifically charged with the task of implementing the Standard Minimum Rules, the Committee on Crime Prevention and Control should undertake the task of keeping the Standard Minimum Rules and their implementation under periodic review and appraisal on a continuing basis.

113. At its second session, held from 14 to 23 May 1973, the Committee on Crime Prevention and Control reviewed the Secretary-General's report on the meeting of the Working Group of Experts on the Standard Minimum Rules for the Treatment of Prisoners (E/AC.57/8). The Committee endorsed the Working Group's recommendations that, at least for the time being, there should be no convention or substantive change in the Rules.

114. On 14 December 1973 the General Assembly, in its resolution 3144 B (XXVIII), noted with satisfaction the recommendations of the Working Group of Experts and again called upon Member States to make all possible efforts to implement the Rules and to take them into account in framing their national legislation.

115. A second meeting of the Working Group of Experts on the Standard Minimum Rules

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for the Treatment of Prisoners was held from 18 to 22 November 1974. At that meeting, the Group reviewed the first drafts of an introduction to and a commentary on the Standard Minimum Rules and of the working paper on agenda item 4 of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders.

116. The Working Group noted that substantive preliminary work had been completed on the introduction to the Rules and that the commentary urgently needed to be completed. It was noted that the material which had been prepared, together with work currently in progress in the Council of Europe and the data relative to the implementation of the Rules prepared by the United Nations Social Defence Research Institute and by the United Nations Asia and Far East Institute should be of valuable assistance to the Secretariat in the preparation of a more comprehensive commentary.

117. The Working Group urged the Secretariat either to continue the Group's existence beyond the current expiration time so that the Group might address itself to the work remaining to be done, or to have that task completed by some other group such as the Committee on Crime Prevention and Control. That task would be:

(a) To strengthen efforts toward the implementation of the Rules;

(b) To consider the formulation of a new set of Rules applicable to convicts under forms of restraint other than those considered to be institutional in the classic sense;

(c) To prepare an elaboration similar to the Standard Minimum Rules providing for more effective protection of prisoners from inhuman or degrading treatment.

118. In order to strengthen efforts towards the implementation of the Rules, the Working Group suggested that the Secretariat prepare concrete proposals concerning the following means of implementation, suggested by previous experience in dealing with the establishment of international standards:

(a) A vigorous programme for the dissemination of the Rules in various languages;

(b) International, interregional, regional and national programmes for the training of all administrative and correctional personnel in the content, scope and significance of the Rules;

(c) Use of technical assistance programmes and interregional and regional advisers in aiding Governments with the establishment and improvement of national implementation programmes;

(d) Continuation of the established questionnaire procedures for periodic reporting to the Secretary-General on the extent of implementation of the Rules;

(e) Utilization of existing United Nations procedures for aiding national

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compliance with the Secretary-General's request for periodic reports through the network of national correspondents and interregional and regional advisers. The Group also recommended that the Secretariat urge all States to establish procedures for implementing the Rules and urged their use as teaching materials at educational institutions concerned with law, criminology, corrections and related subjects.

119. With a view towards extension of the Rules to groups of offenders other than prisoners in the classical sense, the Working Group deemed it desirable that the Fifth United Nations Congress authorize the United Nations Secretariat to draft new Rules on the treatment and supervision of offenders in the community.

120. Recognizing that changes in the roles and functions of prisons are under constant discussion in many countries, the Group suggested that a systematic study be undertaken in interested countries to assess and evaluate trends in the use of imprisonment and of alternative methods of sanction.

121. The Working Group noted that the principal purpose of corrections was to reintegrate the offender into the society in which he was supposed to live peacefully. Since offenders in modern society were highly mobile, the Working Group called for the drafting of rules providing for the return of persons convicted of crime in a foreign country to their State of residence for the service of sentence. The Group also considered the possible need for rules regarding the correctional implications of the civil disabilities that in many instances accompany criminal conviction.

## 2. Survey by the Secretary-General on the implementation of the Rules

122. On 14 May 1974, the Secretary-General addressed an inquiry to Member Governments concerning the implementation of the Rules. In an annex to the Secretary-General's note, attention was directed to the fact that an earlier inquiry transmitted in the fall of 1967 had produced responses from 44 countries.

123. Briefly summarized, the responses to the 1967 survey revealed that in the majority of cases the Rules had not been formally embodied into national laws, though they had influenced regulations and practices in half the countries reporting. Five countries went beyond the Rules, both in law and practice. Implementation depended upon the extent to which the Rules accorded with existing practices, the number of experts and specialists needed and the resources that were available. However, a majority of the countries replying were applying the Rules to some extent (A/CONF.43/3). The major difficulties encountered by the responding countries in implementing the Rules included lack of funds and of trained personnel, inadequate physical facilities, problems in ensuring uniformity of standards throughout a country (especially in a federal system) and legal and administrative rigidities or inertia.

124. The 1974 inquiry has sought to obtain a useful statistical survey of the extent to which each Rule is implemented as well as information concerning reasons for any difficulty in implementing it. The latter information will be of help to the Working Group in its continuing assessment of the Rules and will enable the United Nations to be of assistance to countries that are seeking to improve their prison systems. The results of the latest inquiry, to which 59 Member States and 63 states within federated systems responded, are reported and analysed in annex I.

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V. PROTECTION RULES AGAINST TORTURE  
AND DEGRADING TREATMENT

125. Recent international discussions on the question of the human rights of prisoners occurred at the twenty-seventh session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities. On the question of the rights of persons subjected to any form of detention or imprisonment, the Sub-Commission's resolution 7 (XXVII) expressed grave concern at numerous reports that violations of the basic human rights of persons detained or imprisoned persist in various parts of the world. The Sub-Commission emphasized that persons subjected to any form of detention or imprisonment for any reason whatsoever, should enjoy basic human rights. The resolution notes that torture and other forms of cruel, inhuman and degrading treatment are "flagrant violations of human rights that continue to occur notwithstanding their rejection by the General Assembly in resolution 3059 (XXVIII) and that available information suggests that in several countries there may be a consistent pattern of such violations". The Sub-Commission therefore decided to review annually developments in the field and for this purpose to retain the item on its agenda.

126. On 6 November 1974 the General Assembly adopted resolution 3218 (XXIX), reaffirming the rejection in its resolution 3059 (XXVIII) of 2 November 1973 of any form of torture and other cruel, inhuman or degrading treatment or punishment, and requested Member States to furnish the Secretary-General with the following information in time for submission to the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and to the General Assembly at its thirtieth session in 1975:

(a) Information relating to the legislative, administrative and judicial measures, including remedies and sanctions, aimed at safeguarding persons within their jurisdiction from being subjected to torture and other cruel, inhuman or degrading treatment or punishment;

(b) Their observations and comments on articles 24 to 27 of the draft principles on freedom from arbitrary arrest and detention prepared for the Commission on Human Rights.

An analytical summary of the information thus received is to be prepared by the Secretariat for submission to, inter alia, the Fifth United Nations Congress.

127. In addition, the General Assembly requested the Congress, under item 4 of its agenda, to include in the elaboration of the Standard Minimum Rules for the Treatment of Prisoners, rules for the protection of all persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment, and to report thereon to the General Assembly at its thirtieth session. With a view to assisting the Congress in this task, the General Assembly invited the World Health Organization to draft for the Congress, in close co-operation with other competent organizations, an outline of the principles of medical ethics that may be relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment.

128. The Standard Minimum Rules, as presently drafted, preclude torture and other forms of cruel, inhuman and abusive punishment and treatment. Their range of application might, however, be debatable. The extension of the scope of the Rules was considered by the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. 26/ It was acknowledged that, expressis verbis, the Rules were applicable to, or referred to, the following:

(a) Persons in prison by virtue of a criminal sentence and persons awaiting trial;

(b) Insane and mentally abnormal persons who, as a result of the commission of a crime, were being treated in the closed wards of a psychiatric institution;

(c) Persons imprisoned for debt or for the execution of a judicial decision of a non-penal nature.

129. A very large majority of the participants were of the view that the Standard Minimum Rules should be applicable to any person deprived of his freedom regardless of whether a criminal charge had been lodged against him, a modification that would be easy to effect by amending Rule 84 (1) in the present text.

130. Pursuant to the view taken by the Fourth Congress and in order to respond to the request of the General Assembly in paragraph 4 of its resolution 3218 (XXIX), Rule 84 (1) and Rule 4 (1) could be amended to read as follows (suggested changes are underlined):

(a) "4 (1) Part I of the rules covers the general management of institutions, and is applicable to all categories of prisoners, criminal or civil, untried or convicted, including prisoners subject to 'security measures' or corrective measures ordered by any authority."

(b) "84 (1) Persons arrested, imprisoned or otherwise deprived of their liberty by whatever reason, who have not yet been tried and sentenced, will be referred to as 'untried prisoners' hereinafter in these rules."

131. The suggested amendments are based on the letter and spirit of the Rules and are in keeping with article 5 of the Universal Declaration of Human Rights (General Assembly resolution 217 A (III) of 10 December 1948) and articles 7 and 10 of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI) of 16 December 1966). The non-discriminatory features of the Standard Minimum Rules compel the broadest interpretation in regard to the groups of persons to whom they apply. A restrictive interpretation would allow the decision-making process of the detaining authority the discretion to characterize the detainee (or the detention) in such a way as to render the Rules inapplicable, and is not in keeping with the policy of interpreting rules for the protection of human rights in extenso. However, by these suggested amendments, the

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26/ Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No.: E.71.IV.8),

Rules would refer not only implicitly, but explicitly, to all persons detained, whatever the cause of the incarceration or whatever the deciding authority.

132. Nevertheless, as they stand now, the Standard Minimum Rules themselves merely contain standards and do not provide for the implementation of those standards. For this reason and in order to help secure the effective application of the Rules, it is proposed that a set of implementing procedures be adopted and appended to the Standard Minimum Rules for the Treatment of Prisoners. Such procedures, together with the broadened scope of Rules 4 (1) and 8 (1), proposed in paragraphs 129-130 above, would be a means of meeting the mandate in General Assembly resolution 3218 (XXIX), paragraph 4, for the Congress to include, in the elaboration of the Standard Minimum Rules for the Treatment of Prisoners, rules for the protection of all persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment. The draft implementing procedures prepared by the Secretariat are contained in annex 3.

133. Additional measures both of a substantive and procedural nature, for protection against torture and other inhuman treatment might, however, be prepared in the light of the information and the comments to be received from Member States to be presented to the Congress by the Secretariat in the analytical summary mentioned in paragraph 126 above. That analytical summary is still in the process of preparation, pending receipt of replies from Governments to the Secretary-General's inquiry, and will be contained in A/CONF.56/8. In this connexion, attention must be given to the fact that articles 24 to 27 of the draft principles on freedom from arbitrary arrest prepared for the Commission on Human Rights in certain respects provide more explicit protection against torture and other inhuman treatment than the Standard Minimum Rules - for example, against hypnosis and administration of drugs.

134. In elaborating the Standard Minimum Rules for the Treatment of Prisoners, the attention of the Congress is also drawn to the outline of principles of medical ethics which is being prepared by the World Health Organization in close co-operation with other competent organizations on the basis of various declarations on medical ethics adopted by the World Medical Association and of an inquiry to the Member States of WHO. That outline is also being presented to the Congress in a separate document (A/CONF.56/9).

## VI. CONCLUSIONS AND RECOMMENDATIONS

135. Twenty years have now elapsed since the Rules were first promulgated. These have been years of heightened social change throughout the world. Such changes may be expected to continue, perhaps at an even more rapid rate. It is difficult, at best, for social institutions to keep pace with rapidly moving developments. The problem of adjusting institutional policies and procedures so that they remain responsive is most complex. If the Rules are to be a vital force in the field of criminal policy, machinery must be provided to ensure their continuing relevance. The Congress has the responsibility of considering the means that might be most appropriate for this purpose and of presenting practical recommendations to the Committee on Crime Prevention and Control and, through that Committee, to other appropriate bodies of the United Nations. It must make certain that the leadership of the United Nations will promote the achievement of higher standards for the care and treatment of persons deprived of their liberty.

136. During the past 15 years, the climate of change has had a significant impact upon prison systems in a number of regions of the world. There has been a trend towards the removal of victimless crimes from the criminal category, a growing emphasis on the use of community alternatives to imprisonment, a higher level of public involvement in nearly all aspects of corrections and a new emphasis on a systematic approach to the development of correctional services. In some regions, there has been a noteworthy movement of prison systems from a posture of isolation to one of closer collaboration with other human services and particularly with the community. Efforts to ensure the effective protection of the human rights of prisoners, as well as those of other persons detained against their will, have been reinforced in many countries.

137. Another significant source of change for the future may be represented by the dialogue and debate that is now taking place concerning the social utility of the prison. A possible outcome of this debate may be a shift in national social policy and a substantial reduction in the use of prisons as instruments of social control. If this occurs, new institutional models may emerge - new community-based institutions as well as new types of institutions for the control of the residual group of offenders that are so serious a threat to the community as to require incapacitation.

138. The speed with which change is taking place in many countries and the recognition that it is likely to continue at an accelerated pace not only create a need for more effective methods to promote the implementation of the existing Rules, but also suggest the advisability of elaborating additional Rules that will respond to changing conditions and policies.

139. Furthermore, there is substantial agreement that affirmative action is required to assure wider dissemination and more universal application of the Rules throughout the world. At both the first and second sessions of the Working Group, specific suggestions, as noted above, were put forth for consideration by the Fifth United Nations Congress.

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140. The Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders has the opportunity to contribute to the shaping of international policy with respect to the Rules by:

(a) Reviewing the proposals made by the Working Group, mentioned in paragraph 118 above, concerning measures that might be adopted to ensure the widest possible dissemination of the Rules, as well as their implementation throughout the world, and by suggesting such additional measures as may be desirable;

(b) Discussing thoroughly the proposals for the elaboration of new rules on the treatment and supervision of offenders in the community, as suggested in paragraph 119 above, and rules for the return of persons convicted of crime in foreign countries to their State of residence for the service of sentence, as proposed in paragraph 121;

(c) Considering the need for, and content of, an exhaustive commentary on the Standard Minimum Rules, as discussed in paragraphs 99-108 of the present report;

(d) Considering the proposals in paragraphs 130 and 132 to amend Rules 4 (1) and 84 (1) of the Standard Minimum Rules and to adopt a set of implementing procedures for the effective application of the Standard Minimum Rules, and any additional measures that might be proposed in the Secretariat's analytical summary and the WHO draft outline of principles of medical ethics, mentioned in paragraphs 133-134 above, in order to protect all persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment, as called for by the General Assembly in its resolution 3218 (XXIX) of 6 November 1974; 27/

(e) Advising the Secretariat on the need for systematic studies to be undertaken in interested countries to assess and evaluate trends in the uses of imprisonment and of alternative non-custodial sanctions.

141. The Fifth United Nations Congress will be formulating action proposals for consideration by the Secretariat and approval by the responsible organs of the United Nations. It is important, therefore, that the Congress consider the priorities that should attach to the several interdependent activities to be undertaken in connexion with the Rules.

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27/ The part relating to the action of the Congress on these proposals as well as the discussion leading to the action will be extracted from the report of the Fifth Congress and submitted in advance of the rest of the report to the General Assembly at its thirtieth session in 1975.

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Annex I

THE IMPLEMENTATION OF THE STANDARD MINIMUM RULES FOR  
THE TREATMENT OF PRISONERS

A. The inquiry

Background

1. By resolution 663 C (XXIV) of 31 July 1957, the Economic and Social Council approved the Standard Minimum Rules for the Treatment of Prisoners, as adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955. According to this resolution, Governments were invited to give favourable consideration to the adoption and application of the Rules. Furthermore, the Council recommended that the Secretary-General be regularly informed of the progress made with regard to the application of the Rules and that Governments arrange for the widest possible publicity to be given to them.

2. The first inquiry on the implementation of the Standard Minimum Rules was made in 1967. The result of this inquiry, to which 44 countries replied, was presented to the Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Kyoto, Japan, from 17 to 26 August 1970. 1/

3. In a note verbale of 14 May 1974, the Secretary-General invited all Member States to respond to a new inquiry concerning the implementation of the Rules. The replies received have been analysed and the results are summarized in paragraphs 6-71, below.

The structure of the inquiry

4. The 1974 inquiry was structured as a questionnaire which, it was felt, might encourage a broader and more meaningful response than had been elicited from the inquiry made in 1967. The questionnaire consisted of three parts:

(a) Part I was intended to provide a general survey of the extent to which the Rules had influenced the legislation and administrative regulations of Member States or were otherwise embodied in national prison laws, as well as to supply information on measures taken in order to disseminate the Rules. Simple YES/NO responses were given by checking an appropriate square, but room for amplifying comments was structured into the survey form;

(b) Part II was designed to provide an assessment of the extent to which the Rules were implemented in practice - rule by rule. In order to make it possible

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1/ See annex to "The Standard Minimum Rules for the Treatment of Prisoners in the light of recent developments in the correctional field" (A/CONF.43/3, paras. 1-51).

to evaluate and compare the national reports and yet permit a certain range of choices, the replies to the questions in this part were given under the following five categories:

(i) Implemented, indicating that the specific Rule or Rules were fully implemented;

(ii) Implemented partially, indicating that the specific Rule or Rules were implemented only in part;

(iii) Recognized in principle, indicating that the specific Rule or Rules were not being implemented in any manner but would have been if circumstances had permitted - for example, when the prisons were overcrowded and accommodation in single rooms therefore was impossible;

(iv) Not implemented, indicating that the specific Rule or Rules were deliberately not implemented; and

(v) Not applicable, indicating that the specific Rule or Rules were not applicable - for example, when the law did not permit imprisonment for debt.

(c) As in part I, space was provided in part II for explanatory comments. Such comments were particularly requested when the reply was one of the possible alternatives mentioned under (b) (ii) - (v) above.

(d) Part III was a "blank" section intended to supply information on measures planned for the implementation of the Rules, supplemental data on experiments or innovations that deviated from the Rules, and recommendations and suggestions that might be adopted or modified in the light of changes that had occurred after the Rules were adopted in 1955.

#### Extent of response

5. The number of replies received by 15 June 1975 was as follows:

<u>Region</u> <u>(Continent)</u>	<u>Number of countries</u> <u>queried</u>	<u>Number of replies</u> <u>received</u>
Africa	41	8
America, Latin <u>a/</u>	25	10
America, North	2	2
Asia	35	14
Europe	29	26
Oceania	3	2
TOTAL	135	62

a/ Including the Caribbean region.

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This table includes only replies from Member States, which means that, in the case of countries with a federal system, only the answer from the appropriate federal authority in each country is registered. However, the response from the United States of America also covers, in addition to the federal prison system, 48 states, the Commonwealth of Puerto Rico and the District of Columbia. Information has been received from 11 Canadian provinces and territories, in addition to the reply from the Federal Government which deals with the federal correctional system. Two Australian states (South Australia and Tasmania) have sent replies to the questionnaire.

#### B. General application of the Standard Minimum Rules

6. It has become obvious that the Standard Minimum Rules have influenced national legislation or regulations to a very large extent. Thus, the great majority of the responding countries have affirmed that both the prevailing prison laws and the executive regulations have been influenced by the Rules. One country expressly reported that parts of its prison regulations are a literal translation of the relevant Standard Minimum Rules.

7. Several countries have pointed out that their prison laws had already been established when the Rules were adopted and, consequently, had not been influenced by the latter. Even in those cases, however, the Rules have either been important for the formulation of executive regulations or in interpreting the prevailing legislation. Furthermore, three countries reported that laws currently in preparation have taken into consideration provisions of the Rules. A few States noted that no specific enactments had been made in response to the Rules, as these were already generally reflected and embodied in the existing statutory provisions or in instructions issued to penal establishments.

8. Considerable effort seems to have been made to disseminate the Rules. Only three countries reported that the Rules are not translated into the official language of the country, but in all three cases it is mentioned that English is widely understood. None of the reporting States, however, has indicated whether translations have been made into languages used in specific areas of the country.

9. In their replies, most countries answered that the Rules were available in their penal and correctional institutions, but several mentioned that the inmates did not have access to them. With few exceptions, the Rules were included in programmes for staff training. One country, in which the Rules were neither available in institutions nor used in training programmes, mentioned that it seemed more important for both the prison personnel and the prisoners to know and have access to the valid national provisions than to de lege ferenda recommendations, but conceded that a knowledge of the Rules was necessary for those persons who had a role to play in the development of statutory provisions.

10. The Standard Minimum Rules obviously have had a significant influence on the laws and regulations of jurisdictions within federated systems, even if not to the same extent as indicated in paragraphs 6 and 7 above. Thirty-six per cent of the



responding jurisdictions in the United States reported that the Rules had influenced the prevailing prison law, 42 per cent indicated that they had influenced executive regulations and 60 per cent reported that the guarantees embodied in the prison laws themselves are in conformity with those enunciated in the Rules even if not as a direct result of them. With a few exceptions, the reporting Canadian provinces and territories recognized the impact of the Rules on their legislation, and the two Australian states noted that the Rules had influenced both their prison laws and their executive regulations.

C. Detailed observations on the Standard Minimum Rules

11. The content of this section is based on all the replies received from Member States and jurisdictions mentioned in paragraph 5 above. However, in order to avoid presenting an unbalanced picture of the situation, which might arise as a result of the very large number of responses from jurisdictions within Canada and the United States that have similar social, economic and legal backgrounds, the comments from different states within federated systems are mentioned only when they are considered to be of particular interest because they reflect new developments or experiences of an important character, or because they deviate from the general trend. Consequently, the word "country", frequently used, refers only to Member States. The bulk of the response data is displayed in tables 1 and 2 at the end of this annex.

12. With regard to Rule 6 (Basic principle), all but one of the reporting countries fully implement this Rule and many make references to constitutional guarantees of the principle it embodies. Religious beliefs and moral precepts are generally respected.

13. Concerning Rule 7 (Register), with one exception, this Rule is fully observed, although in one country the registration book has been replaced by a card-index system and the replies from three countries indicated that computer registration was either planned or already in use. One reporting country mentioned that the hours of admission and release are not entered in the register.

14. With regard to Rule 8 (Separation of categories), while the replies from approximately half of the reporting countries indicated that the separation of the different categories of prisoners is fully implemented, the rest announced deviations from this Rule in different respects and for various reasons. The replies from some 10 countries of different regions made reference to overcrowded prisons - in some cases combined with the inappropriate architectural design of institutions - as obstacles to the full implementation of this Rule. One country mentioned that its small local prisons, where there are rarely more than five inmates at any given time, are of a type that makes it impossible to carry out the prescribed separation, and two replies referred to the fact that the total prison population is too small to warrant arrangements for the separation of categories.

15. Even when implementation of Rule 8, which is directed against overcrowding, is reported impossible, it seems that differentiation according to sex is generally observed, whereas prisoners who have not yet been tried by the Courts are not always separated from convicts. Sometimes young prisoners are mingled with adults. Three countries pointed out that debtors or other civil prisoners are kept together with persons imprisoned for criminal offences. In addition, one State reported that prisoners charged with civil offences and young prisoners, unless they object, sometimes work in the same workshops as adult convicted prisoners.

16. Some countries reported intentional departures from Rule 8. Thus, a few replies indicated that juveniles are placed together with adults, in exceptional cases, whenever it is felt that the positive influence which the latter may exert on the former justifies such a measure. One Scandinavian country mentioned that pre-release activities, designed to prepare inmates in so-called local institutions to cope with conditions outside, make it necessary to bring together young and adult offenders, and minimize the harmful effects of such integration. In these institutions, inmates of both sexes participate in joint treatment programmes, although they are detained in separate sections. Commingling of the sexes for certain programme purposes such as education or counselling is practised also in another country which reported that a "healthier institution climate" and better preparation for return to the community resulted from this practice. Sexually mixed programmes are reported from two states within the United States of America. Another country referred to the fact that the whole concept of separation of categories is now being reconsidered and that changes in current practice are likely to be made.

17. Concerning Rules 9-14 (Accommodation), several countries mentioned that overcrowding and lack of modern institutions made it impossible to implement fully the recommendation in Rule 9 (1) that each prisoner should occupy a cell or room by himself at night. However, some replies indicated progress in reducing the numbers of prisoners that have to share cells because of overcrowding. For example, one European country reported a vast programme of new construction and modernization of existing institutions, which will facilitate implementation of the principles laid down in the Rules.

18. Some Eastern European countries reported that the individual cell system had been abolished and that the resocializing aim of the deprivation of liberty speaks in favour of having several persons in one cell or in dormitories, pursuant to a classification based on such considerations as sex, age, criminal record and the like.

19. Several replies stated that overcrowding and conditions in old institutions where sanitary installations are inadequate and the general standard of hygiene insufficient prevent full adherence to Rules 10 to 14. Some of these countries reported that new buildings or reconstruction programmes now in progress will provide more suitable facilities in the future, thus leading to an improvement of the situation in so far as health requirements are concerned.

20. Rules 15-16 (Personal hygiene) are generally respected, although three countries mentioned overcrowding and inadequate facilities at institutions as obstacles to the maintenance of an adequate level of personal hygiene.

21. Although Rules 17-19 (Clothing and bedding) are recognized generally, several developing countries reported that their economic resources do not permit the full implementation of these Rules with respect to clothing and, in some cases, with regard to bedding. Three countries mentioned that prisoners are not allowed to wear their own clothing while appearing before the court.

22. While Rule 20 (Food) is generally respected, three countries admitted that lack of funds makes it impossible to provide each inmate with food of adequate nutritional value. On the other hand, one country with a high standard of living mentioned that a governmental committee on diet had drawn up recommendations for the provision of scientifically balanced meals providing high-level energy and nutrition, and that consideration was given to special wishes regarding food for members of various religions as well as for those inmates who, as a matter of principle, wish to have special foods, as in the case of vegetarians, for example.

23. Regarding Rule 21 (Exercise and sport), the stipulation that every prisoner shall have at least one hour of open-air exercise daily is observed in principle by all but three of the reporting countries, where the time allotted is normally 30 minutes. One of those three countries, however, mentioned that a new prison law to be enacted in 1976 will provide for a minimum of one hour of outdoor exercise. Some jurisdictions within the United States of America reported that exercise time may be considerably reduced at some institutions where they are unable to provide outdoor exercise for prisoners under maximum custody or disciplinary segregation. About one third of the States reported that insufficient space, installation and equipment, particularly in old institutions, prevent full implementation of this Rule. Two countries pointed to lack of staff, both custodial and instructional, as an obstacle, and one referred to overcrowding as being a hindrance for organized physical and recreational training to the desired extent.

24. Concerning Rules 22-26 (Medical services), the replies show that several countries, both developed and developing, are unable to implement these Rules fully because of a shortage of medical expertise, particularly in the field of psychiatry. Two countries reported that consideration was being given to a reorganization of the medical services in order to establish better co-ordination with the public health and hospital services outside the correctional system. In some other countries, such co-operation is already in existence and the institutions are adequately provided with the services of community physicians on a contract basis, even if this does not always mean daily visits as Rule 25 (1) stipulates.

25. With regard to Rules 27-32 (Discipline and punishment), the most important deviation from these Rules seems to be that four countries still apply corporal punishment in the case of serious offences against discipline. However, it appears that efforts are being made to limit the use of this type of disciplinary measure or, at least, to limit its application by means of special regulations

designed to avoid abuse and diminish risks to the health of the offender. One European country noted that, in the case of adult prisoners, placement in a dark cell may be used as a disciplinary punishment, but that the application of such punishment depends on the outcome of a preliminary physical examination which is followed by continuous medical control. The use of a dark cell is reported, too, from one state within a federated system.

26. While three countries reported, without any specification or comment, that Rules 27-32 are not fully implemented, one mentioned that, in spite of present attempts to improve disciplinary régimes, overcrowding in old prisons makes it difficult to apply these Rules even though their content is completely accepted and recognized in principle. Two countries noted that the daily health examination prescribed in Rule 32 (3) is impossible due to lack of medical officers, and another stated that the national law requires "frequent" but not daily visits by a doctor to confined prisoners. One reply mentioned that the national law permits imposition of both criminal punishment and disciplinary action for the same act, which is not in conformity with Rule 30 (1). Finally, one country reported that there still are certain types of behaviour that are subject to disciplinary sanction and for which no express provision is made in the regulations.

27. On the other hand, some countries seem to go beyond Rules 27-32, at least in certain respects. Five countries indicated that reduction of diet is no longer permitted as a sanction. The same is applicable to several states within federated systems.

28. Regarding Rules 33-34 (Instruments of restraint), all the reporting countries observe these Rules and some stressed the fact that national laws prohibit the use of methods of constraint as punishment.

29. Rules 35-36 (Information to and complaints by prisoners) seem to be observed by the great majority of reporting countries, although several admit that no written information is available to the inmates. In two countries, at least the lack of information of this kind is compensated by a series of lectures on the rules and regulations, given regularly after admission and also during later stages of the serving of sentence. With one or two exceptions, the replies show that prisoners are able to make requests or complaints, as prescribed in Rule 36, and several countries reported the existence of such institutions as the "Ombudsman", the "Supervising Judge" or a "Visiting Committee" as additional instruments for safeguarding the rights of the inmates.

30. Rules 37-39 (Contact with the outside world) are generally respected, and one country pointed out that in this respect its national law is identical to the Standard Minimum Rules. Three countries, however, reported restrictions as far as wireless transmissions and newspapers are concerned. In one of these countries, prison inmates do not have access to radios and, in two, newspapers and periodicals are allowed only by special permission or under supervision. Concerning communications between the inmates and their families, relatives or friends, the frequency of visits varies widely, from once every four weeks to two or three times a week. In some systems, the prisoner is not allowed to send more than a certain number of letters within a certain period, while other countries have no restrictions at all in this respect.

31. Rule 40 (Books) is generally recognized in principle, but several countries reported that funds are not available for providing every institution with a library or for stocking existing libraries in an adequate manner. For example, one country stated that in one particular closed institution only inmates participating in educational training programmes have access to the library because of the restricted number of volumes. In another country, on the other hand, close co-operation has developed between the prisons and the local public libraries and, as a result, the latter provide the inmates with literature free of charge. The same method is reported by one of the Canadian provinces, where the Provincial Government's bookmobile calls at each institution every second week.

32. With regard to Rules 41-42 (Religion), in response to the question concerning these Rules some countries - one in Asia and the others in Eastern Europe - referred to constitutional obstacles to the appointment of representatives of a religion since the State and Church are separated and religious practice is regarded as being the private affair of each citizen. However, freedom of religion is guaranteed and, therefore, the spirit of the Rules is implemented. Four other countries noted a recognition in principle, but two of them reported that financial difficulties prevent full implementation.

33. Rule 43 (Retention of prisoner's property) apparently is widely observed, although a few countries mentioned the absence of corresponding regulations in their national law or instructions. Three countries noted that the Rule is only partly implemented, one of them pointing out that each prisoner is expected to hand over all his valuable effects, except money, to his family or friends.

34. Concerning Rule 44 (Notification of death, illness, transfer, etc.), all but three countries reported this Rule to be entirely respected. Two replies, however, show that an inmate cannot be granted furlough according to Rule 44 (2), and another states that for the time being the question of furlough in the circumstances mentioned in the Rule has to be decided by a public prosecutor and not by the correctional authorities.

35. With regard to Rule 45 (Removal of prisoners), four countries in Latin America stated that, for economic reasons, their systems for the transport of prisoners were very inadequate, although one of them reported certain improvements.

36. Even if Rules 46-54 (Institutional personnel) are generally recognized in principle, practically all the reporting countries - developed as well as developing - have difficulties in observing them to the fullest extent in practice. A great number mentioned the lack of specialists, particularly psychiatrists and psychologists, as a serious impediment. One Latin American country noted, however, that the prevailing poor remuneration and insufficient basic education are the main problems in the recruitment of custodial staff. One European country reported that the small institutions have no full-time director but are governed by the public prosecutor at the local court. According to several replies, the absence of full-time medical officers in most institutions makes it impossible to observe the prescription in Rule 52 (2).

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37. Several countries in different parts of the world consider their in-service training programmes insufficient. Some of them mentioned the absence of introductory courses (prescribed in Rule 47 (2)) and others pointed out the lack of recurrent training courses (prescribed in Rule 47 (3)). However, the importance of adequately trained personnel is generally recognized, and some of the replies expressly pointed out that training is being developed and improved and that in the future it will be in conformity with the Rules.

38. As far as the selection of personnel is concerned, two countries reported that the prison authorities have little or no influence in the selection or examination of candidates who, in one case, are employed by the Ministry of Labour and, in another recruited from members of the police force.

39. Another kind of deviation from the Rules is mentioned in the replies from two European countries and relates to Rules 50 (3) and 52 (1), which specify that the director and the medical officer should reside on the premises of the institution or in its immediate vicinity. One of these two countries noted that these Rules are no longer strictly applied, and the other reported that, according to the general regulations applicable to its government employees, a civil servant cannot be subjected to any constraint regarding his choice of a place of residence. On the same subject, one of the Canadian provinces considers it neither necessary nor desirable to implement Rule 50 (3), and several jurisdictions of the United States of America seem to have taken a similar position.

40. The question of the sex of staff members serving at institutions for female offenders, dealt with in Rule 53, has not evoked any comments indicating deviations by Member States, but some of the states in the United States of America reported the use of staff composed of both sexes in male and female institutions, under conditions that ensure the right of privacy. In one of these replies it was stated that strict segregation becomes "reactionary" in a fully modern system.

41. Concerning Rule 55 (Inspection), seven countries that recognize this Rule in principle reported difficulties in maintaining regular and thorough inspections, in part because of the lack of a sufficient number of qualified and experienced inspectors. On the other hand, many countries mentioned the existence of inspection bodies outside the correctional system such as "Visiting Judges", "Visiting Committees" and "Supervising Committees" (see para. 29 above).

42. With regard to Rules 56-66 (Guiding principles and treatment), according to the reply from one Western European country, the wording of Rule 58 is no longer quite satisfactory since, in its view, the ultimate goal of the prison - to produce law-abiding and self-supporting citizens - cannot be regarded as realistic. On the other hand, several countries expressly support the ideology behind the principles laid down in Rules 56-66 and agree on the importance of implementing them fully. Two Eastern European countries mentioned, however, that the recommendations in Rule 60 (1) that the régime of correctional institutions should seek to minimize any differences between prison life and life at liberty that tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings, seemed to be unrealistic, since the conditions in closed

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institutions must necessarily be incompatible with those in life at liberty. With reference to Rule 63 (3), the same replies noted that it was easier to adapt prison labour to modern, efficient working methods when the number of inmates exceeded 500.

43. Although practically all countries that responded expressed their recognition of the principles set down in Rules 55-66, about half of them reported considerable difficulties in applying these principles, mainly due to lack of funds, shortage of competent personnel, inadequate institutions, and because overcrowding and insufficient classification instruments impede the individual treatment of inmates.

44. As far as pre-release training, release on trial and the involvement of community agencies in social rehabilitation work (see Rules 60 (2) and 61) are concerned, the replies reveal three different kinds of obstacles. Three countries noted that their national law allows only very limited or no release on trial under supervision. One of these, however, announced that an expected new law will extend parole to all categories of prisoners. Another type of hindrance, mentioned in five replies, is the absence of community agencies or after-care organizations. Two countries mentioned negative public attitudes towards offenders and the failure of the community to apply itself to the rehabilitation of criminals as the main obstacles to realization of the goals outlined in the guiding principles of the Standard Minimum Rules.

45. With respect to Rules 67-69 (Classification and individualization), about half of the reporting countries referred to the same difficulties as those mentioned under paragraph 43, above. Two noted the absence of an adequate classification centre as a serious disadvantage, and one stated that the classification of prisoners is based on the type of crime and not on the needs of the offender, which is not in accordance with the Standard Minimum Rules. In one country progress was reported in the creation of more appropriate classification systems for inmates as a result of the introduction of a regional prison system and the development of a range of institutions in each region, thereby facilitating the work of classification and allocation.

46. Concerning Rule 70 (Privileges), one country mentioned that the system of privileges has now been abolished as part of the treatment programmes because of the arbitrariness involved in extending privileges. Another country reported that a collective pardon system has been practised for annual "good time release"; this system, however, is not based upon individual merit. Otherwise, all the countries seem to observe this Rule, even though five of the replies indicated that lack of resources and overcrowding make implementation of this Rule difficult.

47. Regarding Rules 71-76 (Work), according to the replies, the importance of providing the inmates with sufficient and suitable work is generally recognized and the need for equitable remuneration of the worker has been accepted in principle. However, a large number of countries face significant obstacles in the realization of work programmes that conform to the principles laid down in these Rules. Thus, several countries reported that work is provided only when and in so far as "the facilities permit". One Western European country noted that prisoners are

employed only part of the day. An Asian country reported that about 50 per cent of the inmates in maximum security institutions are not working, owing to the lack of projects that can be established within the walls and the lack of custodial personnel to escort prisoners to outside projects.

48. The replies indicated that, even when work is provided, there are difficulties in supplying labour of a useful and productive nature and in organizing institutional workshops along the lines of those existing in outside industry. Thus, one country mentioned that only maintenance jobs, such as laundry, cooking and tailoring are provided. Another report pointed out the limited selection of work that could be provided. A third revealed that not all inmates can be assigned to the kind of work that would enhance their ability to adapt themselves to a normal occupational life after release. Furthermore, two countries noted that the prisoners are compelled to perform work determined for them by the penal authorities, a practice that is not entirely in accordance with Rule 71 (6).

49. The remuneration of work performed by prisoners is considered insufficient by many countries, and in one reply the earnings are described as mainly "pocket money".

50. Other reported deviations in the replies concern Rule 74 (2), regarding which three countries noted the lack or inadequacy of provisions for indemnifying prisoners against industrial injury. Deviations were similarly reported concerning Rule 73, which states that institutional industries and farms should be operated directly by the administration and not by private contractors. One country reported that both systems are practised, but that experience had shown that there were some advantages in using private contractors because they usually have modern equipment, pay the inmates better wages and frequently offer them employment after release.

51. The main reasons for the difficulties in fully implementing the Standard Minimum Rules regarding prison work are overcrowding, lack of workshops, shortage of qualified instructors and failure to provide work of a useful nature. In addition, the reply from one country made reference to the public's objections to full-scale economic utilization of prisoners' skills.

52. In spite of the many obstacles mentioned by a large number of countries, some replies indicated that progress was being made. Thus, one country noted better implementation as new institutions were being established, and another reported that an increasing number of prisoners were employed in refurbishing old accommodations and building new facilities. Some of the countries have either introduced incentive earnings or expect to do so in the near future.

53. With regard to Rules 77-78 (Education and recreation), the education of prisoners, particularly young offenders, seems to be a major concern in most countries. Several reported greatly expanded programmes in recent years, while others mentioned difficulties of various kinds in achieving the optimum in the extension of their educational and recreational activities. One Latin American country reported that the educational programmes in the prisons are co-ordinated with those of the public system but, nevertheless, are hampered by a lack of



teachers and financial resources. In five countries, the education of illiterates and young prisoners is not compulsory. In this connexion, it should be mentioned that one of the United States jurisdictions responded "Not applicable" because it considered that each individual inmate had the right to refuse any kind of treatment.

54. Concerning Rules 79-81 (Social relations and after-care), four countries noted that no after-care agencies exist, and several others regard the present services as being inadequate. In some of those cases, however, the question of developing appropriate and sufficient means to assist released prisoners is under consideration. Some countries appear to have made substantial progress in establishing after-release programmes and in increasing the social and financial support of prisoners, ex-convicts and their families. One country mentioned that the difficulty in finding employment for ex-prisoners was an obstacle to their rehabilitation.

55. Regarding Rules 82-83 (Insane and mentally abnormal prisoners), nine countries stated that facilities for the treatment of insane and mentally disturbed prisoners within their correctional systems were limited due to the lack of psychiatrists. Usually, provisions exist for transferring a prisoner to public institutions where adequate treatment can be obtained. Even then, however, the limited resources for follow-up treatment in prisons might be a problem, according to one reply. Some countries mentioned that the execution of a sentence of imprisonment was not legally permitted if the person sentenced was regarded as mentally abnormal.

56. With respect to Rules 84-93 (Prisoners under arrest or awaiting trial), the overcrowding that exists in many countries and the use of old institutions still constitute serious obstacles to full implementation of Rule 85, which prescribes separation of untried prisoners from those convicted, and of Rule 86, according to which, in principle, untried prisoners should be accommodated in separate rooms. As a consequence, about twenty countries reported that these Rules cannot be followed in practice - either permanently or temporarily. One country mentioned that in some cases as many as 15 to 18 untried persons are housed in the same cell. While observing a strict separation between convicted prisoners and untried inmates, three Eastern European countries prefer to place those awaiting trial in community cells, if the prosecutor does not object or if the inmates are not serving disciplinary sentences.

57. Eight countries noted that they do not allow inmates awaiting trial to bring their own food from outside, and in nine countries the unconvicted are not allowed to be treated by their own doctor without special permission of the prison doctor. Some countries report difficulties in offering an untried prisoner work. If he obtains such an opportunity, he is not always paid for his work, in contravention to Rule 89. Most countries seem to allow unconvicted inmates to wear their own clothes, but if they cannot do so for various reasons, prison garb is usually the same as for convicted prisoners, a practice not in accordance with Rule 88.

58. It might be of interest to record one reply - probably applicable also to other countries - from a Canadian province reporting full adherence to these Rules. The province stated that unconvicted prisoners are treated under maximum security conditions and often accorded fewer privileges than those serving sentence.

59. Regarding Rule 94 (Civil prisoners), while 24 countries and a considerable number of the jurisdictions within federated systems expressly noted that their national laws do not permit imprisonment for debt, the rest fully implement this Rule, with the exception of three countries which report that, in principle, civil prisoners are treated the same as other inmates.

D. Future implementation of the Standard Minimum Rules

60. Part III of the questionnaire was intended to supply information on measures planned for the future, so far as the implementation of or deviation from the Rules is concerned. It contained the following questions:

- (1) Please give any information on measures planned in your country for the implementation of the Standard Minimum Rules.
- (2) For further discussions and perhaps refinements or modifications of the Standard Minimum Rules it would be useful to receive:
  - (a) brief supplemental data on experiments - successful as well as unsuccessful - or innovations which deviate from the Rules;
  - (b) recommendations or suggestions regarding Rules which might be adopted or modified in the light of changes that have occurred since 1955.
- (3) In obtaining universal implementation of the Rules more intensive international co-operation (e.g. regional seminars and training courses, technical assistance) might be one method. Is your country prepared to contribute to such a programme and how (e.g. by organizing seminars, sending instructors to training courses etc.)? What type of action do you suggest at the United Nations level?

61. Some 25 countries have answered the first question, and the measures mentioned in their replies can be divided mainly into three categories: (a) legislative measures; (b) increase of the resources allocated to corrections; and (c) supervision of the de facto implementation of the Rules.

62. Several countries reported that they have under consideration new prison laws or executive regulations that use the Standard Minimum Rules either as a model or to otherwise influence the legislative work involved. In some cases, revisions of the prevailing acts are planned or already accomplished in order to facilitate application of the Rules in such specific areas as temporary leaves of absence, pre-release work, parole and assistance to former prisoners.

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63. Financial obstacles to the application of the Rules are reported by countries at all stages of development, but particularly by developing countries. Occasionally, specific treatment services, for example, effective after-care systems and adequate remuneration for prison work, are plagued by financial problems. In other cases, the lack of funds has made it impossible to replace old institutions unsuited to treatment purposes and maintaining poor sanitary standards with more suitable facilities. In these respects some of the reporting countries mentioned such improvements as the construction of new institutions of different types, including half-way houses, better continuity between institutional and non-institutional treatment programmes, development of after-care services and revisions of wage rates for prison labour.

64. Some of the countries that regard themselves as having more or less fully implemented the Rules mentioned that the responsible administrative agencies are engaged in persistent efforts to supervise the application of the Rules, to overcome the conditions that might impede their implementation in specific cases and to improve the correctional programmes within or beyond the framework of the Rules. In this connexion it might be appropriate to mention the annual two-day conferences arranged in one country for directors of prisons, at which the Rules are discussed, thus ensuring their de facto implementation.

65. Question (2) (a) was intended primarily to obtain information regarding experiments or innovations that were considered deviations from the Rules and could therefore serve as indicators of the need to change some of the Rules in the light of developments. However, very few deviations of this type have been reported. All of these have been mentioned in the present survey in connexion with the detailed observations under section C, above (for example, commingling of the sexes, staff of both sexes, abolition of the individual cell system). As far as the other reported innovations are concerned, space does not permit a detailed account, but the following examples deserve mention.

66. The home-leave system has been adopted by more and more countries with good results, as reported by such diverse countries as Canada (the province of Ontario), Chile, Sri Lanka and Sudan. In Yugoslavia inmates who have worked for a period of 11 months are eligible for a two-week vacation, which can be spent either at home or on the special premises of an institution.

67. Japan has introduced a new classification and segregation system for young adult prisoners between the ages of 20 and 26, and the Netherlands reported that one prison wing has been set aside as a "crisis-intervention" centre where inmates who create conflicts in the ordinary institution can receive psychological treatment for a maximum period of 30 days. In addition, Belgium and Canada (the province of Ontario) report a system of week-end imprisonment for short-termers that permits the prisoner to maintain his employment or education in the community while serving his sentence. A similar experiment has recently been tried in Sri Lanka, where short-termers convicted of minor offences are housed in "community service centres".

68. The Federal Republic of Germany reported that by 1978 so-called social-therapeutic institutions will be set up for specific categories of mentally abnormal prisoners who are in need of specialized medical treatment and socio-psychiatric care. These institutions differ from ordinary penal institutions in that they have more staff, smaller groups of prisoners, collective and individual therapy, and increasing contacts with the outside world prior to release and with the institutions after release. The same country mentioned the establishment of citizens' advisory councils at the penal institutions, which include members who are not otherwise active in correctional work as representatives of the general public to assist the prison warden in his task and to establish contacts with organizations, authorities and other agencies outside the prison. The necessity of contacts with the community is also stressed by the German Democratic Republic, where there is a legal obligation for state-owned enterprises to allocate working places, to provide training facilities for prisoners and to guarantee that the conditions of employment for ex-convicts are similar to those of other workers.

69. Eight of the 16 countries that answered question (2) (b) expressly considered the present Rules (two referred to the Council of Europe's new version) as completely adequate, if properly applied. The rest suggested certain minor changes of specific Rules, such as excluding reduction of food as a disciplinary measure, greater emphasis on various kinds of contacts with the outside world and modifications of the Rules dealing with religion. It appears, however, that practically all of the proposed changes and remarks can be discussed within the framework of further commentaries on the Standard Minimum Rules.

70. It might be worth mentioning here that the question of international supervision of the implementation of the Rules is raised by one country (Malaysia), which suggested "a milder form of supervision such as an Inspectorate or a Survey Team to visit the various countries, and to submit their recommendations to the Governments concerned after their fact finding tours, and to leave it to the moral conscience of the Government receiving such reports" to improve the situation accordingly.

71. Half of the reporting countries have expressed an interest in taking part in more intensified international co-operation to ensure more effective implementation of the Standard Minimum Rules. Forms suggested for such co-operation are regional and interregional seminars and expert meetings, training courses for prison personnel and administrators, increased technical assistance by the United Nations, United Nations fellowships, regular dissemination through the United Nations of new legislation in the field of criminal justice and increased efforts by interregional bodies such as the Council of Europe. Three countries (Finland, Egypt and Greece) offered to act as hosts for the proposed regional seminars.

### E. Conclusions

72. A number of questions can be raised concerning the representative nature of the replies received and the reliability and validity of the results obtained. Only 62 countries - that is, 45 per cent of the total number of Member States, replied and it might be argued that only countries with a relatively good implementation record felt so inclined. Furthermore, there is the question of whether the replies reflect actual practice or perhaps the opinions and wishes of the respondents. It is also difficult to determine the range of variations in the application of the Rules in different types of institutions.

73. As a measure of the implementation of the Rules in particular countries, the value of the present inquiry is increased considerably by the fact that it has become possible for the first time to collect data from practically all governments at sub-federal levels in the United States of America and Canada although, in so far as the United States is concerned, the survey does not cover the jurisdictions of the local (county) authorities that account for some 40 per cent of all detained adults in the criminal justice system of the United States.

74. In spite of the obvious deficiencies of this inquiry, it can be noted that the Standard Minimum Rules have had a significant influence on the laws and regulations of a great number of countries and jurisdictions replying and that, to a large extent, the guarantees of the Rules are embodied in their prevailing national laws. Judging from the results of the inquiry, this influence has expanded to a notable extent when compared with the results of the previous examination at the end of the 1960s. It is also possible to note progress with regard to the translation of the Rules. Thus, all the reporting European countries except Iceland announced that the Rules have been translated into their official languages. The Rules are now also available in Arabic.

75. Regarding the de facto implementation of specific Rules, it must be said that although more than 70 per cent of the total number of replies are in the "implemented" category (see tables 1 and 2), some of the perhaps most important Rules are among those least effectively implemented. Thus, only half of the countries have been able to achieve the guidelines in Rules 9 to 14, dealing with accommodations and fundamentals for securing decent living conditions for prisoners. Furthermore, a great number of countries face tremendous difficulties in following the recommendations concerning institutional personnel (Rules 46-54), a fact that might be deemed more serious, since the application of the spirit of the Rules is to a very large extent dependent on the availability of adequately trained staff with appropriate levels of education, intelligence and knowledge of institutional problems. In terms of protection of the fundamental right of prisoners against arbitrary treatment, the Rules dealing with discipline and punishment (Rules 27-32) are of a basic nature, and it is therefore unsatisfactory that only about 60 per cent of the replying countries claim to observe these guidelines fully.

76. The description of methods of treatment is mainly to be found in part II of the Standard Minimum Rules, entitled "Rules applicable to specific categories" (Rules 56-94). Here, again, adherence to the Rules on the whole must be considered

insufficient, particularly since the deficiencies, with few exceptions, are the result not of changing attitudes towards the treatment ideology, but mainly of lack of resources, inadequate facilities and overcrowded institutions. Shortcomings are especially notable in regard to prison work (Rules 71-76) and the treatment of prisoners awaiting trial (Rules 84-93), about which less than half of the countries that replied can report complete implementation.

77. Comparing the two parts of the Standard Minimum Rules (part I, "Rules of general application" and part II, "Rules for special categories"), it can be noted that in practically all countries, part I of the Rules is more fully implemented than part II, an observation that conforms with the results of an earlier study. 2/

78. The obstacles to the implementation of the Rules are caused by legislative deficiencies, lack of adequate finances, shortages of accommodation and personnel inadequacies. In some parts of the world the legal impediments are to be found in the slowness and complexity of legal procedures, particularly during the pre-trial stage. In some countries, other obstacles arise from the absence of legal authorization for prisoners to work outside the institution, to be granted temporary home-leave, to receive increased remuneration for prison labour, or to obtain parole or probation. Even if it is true that the implementation of certain Rules, such as those relating to discipline and punishment, does not require any additional resources, effective implementation of most of the Rules is dependent on more adequate financial support. Even if the overcrowding in institutions, which is a problem in many countries, can be overcome by more frequent use of non-institutional measures, there will still be a need to replace old institutions with modern facilities of all types - closed, semi-open and open, as well as half-way houses and hostels - corresponding to the need for modern correctional programmes that are able to guarantee the enforcement of safeguards for the basic human rights of those deprived of their liberty. Another important obstacle to the application of the Rules in many countries is the fact that sufficient institutional personnel is simply not available, often because of a shortage of the funds needed to establish new posts, but sometimes because the low pay does not attract suitable job applicants. This is true as far as specialists such as psychiatrists, psychologists and social workers are concerned, and perhaps more so with respect to prison staff of lower ranks in many reporting countries.

79. There seems to be a general consensus that no radical revision of the Rules is needed for the time being, although some minor changes are suggested, particularly in the Rules relating to methods and techniques of treatment. The proposed modifications and the need for interpretation of the Rules in the light of recent developments underline the importance of a commentary on the Rules. Furthermore, the growing use of such non-institutional methods as parole, probation and other community or semi-community-based programmes gives emphasis to the need for additional Rules to cover the treatment of offenders outside traditional correctional institutions.

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2/ The International Prisoners' Aid Association, "International survey on the Standard Minimum Rules: a pilot study", International Review of Criminal Policy, No. 26 (United Nations publication, Sales No. E.70.IV.I), 1968.

Table 1. Survey of the replies from Member States to part II of the questionnaire on the implementation of the Standard Minimum Rules

Rule(s)/Section	Number and types of replies <u>a/</u>					
	Implemented	Implemented partially	Recognized in principle	Not implemented	Not applicable	No response
Rule 6 (Basic principle)	53	1	1			55
Rule 7 (Register)	54	1				55
Rule 8 (Separation of categories)	35	19		1		55
Rules 9-14 (Accommodation)	28	22	5			55
Rules 15-16 (Personal hygiene)	50	4	1			55
Rules 17-19 (Clothing and bedding)	43	9	3			55
Rule 20 (Food)	52	3				55
Rule 21 (Exercise and sport)	38	15	2			55
Rules 22-26 (Medical services)	36	18	1			55
Rules 27-32 (Discipline and punishment)	36	19				55
Rules 33-34 (Instruments of restraint)	54					1 55
Rules 35-36 (Information and complaints)	44	9	2			55
Rules 37-39 (Contacts with the outside world)	49	6				55
Rule 40 (Books)	42	8	5			55
Rule 41-42 (Religion)	43	5	3		3 1	55
Rule 43 (Retention of prisoners' property)	52	1	2			55
Rule 44 (Notification of death, etc.)	49	6				55
Rule 45 (Removal of prisoners)	50	4	1			55

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Table 1 (continued)

Rule(s)/Section	Number and types of replies <u>a/</u>									
	Implemented	Implemented partially	Recognized in principle	Not implemented	Not applicable	No response				TOTAL
Rules 46-54 (Institution personnel)	30	22	3							55
Rule 55 (Inspection)	46	6	1	2						55
Rules 56-64 (Guiding principles)	31	17	7							55
Rules 65-66 (Treatment)	37	14	4							55
Rules 67-69 (Classification and individualization)	32	19	4							55
Rule 70 (Privileges)	43	8	2	2						55
Rules 71-76 (Work)	28	22	5							55
Rules 77-78 (Education and recreation)	39	13	2	1						55
Rules 79-81 (Social relations and after-care)	37	10	7	1						55
Rules 82-83 (Insane and mentally abnormal prisoners)	41	10	4							55
Rules 84-93 (Prisoners awaiting trial)	25	25	3	1	1					55
Rule 94 (Civil prisoners)	29	3	1		22					55
TOTAL	1 226	319	69	8	26	2	1			680

a/ Four countries that did not use the questionnaire when replying are not included in this survey. A survey of the replies from states within federated systems is given in table 2. Table 1 includes the responses from the Federal Bureau of Prisons in the United States of America and from the Federal Government of Canada.

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Table 2. Survey of the replies from states within federated systems to part II of the questionnaire on the implementation of the Standard Minimum Rules

Rule(s)/Section	Number and types of replies <u>a/</u>				
	Implemented	Implemented partially	Recognized in principle	Not implemented	TOTAL
Rule 6 (Basic principles)	59	4			63
Rule 7 (Register)	60		2	1	63
Rule 8 (Separation of categories)	32	25	5	1	63
Rules 9-14 (Accommodation)	29	27	7		63
Rules 15-16 (Personal hygiene)	63				63
Rules 17-19 (Clothing and bedding)	56	7			63
Rule 20 (Food)	62	1			63
Rule 21 (Exercise and sport)	45	14	4		63
Rules 22-26 (Medical services)	41	20	2		63
Rules 27-32 (Discipline and punishment)	55	6	2		63
Rules 33-34 (Instruments of restraint)	55	8			63
Rules 35-36 (Information and complaints)	52	10	1		63
Rules 37-39 (Contacts with the outside world)	63				63
Rule 40 (Books)	57	5	1		63
Rules 41-42 (Religion)	57	6			63
Rule 43 (Retention of prisoners' property)	58	4	1		63
Rule 44 (Notification of death, etc.)	61	2			63

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Table 2 (continued)

Rule(s)/Section	Number and types of replies <u>a/</u>						
	Implemented	Implemented partially	Recognized in principle	Not implemented	Not applicable	No response	TOTAL
Rule 45 (Removal of prisoners)	59	4					63
Rules 46-54 (Institutional personnel)	43	18	1			1	63
Rule 55 (Inspection)	47	5	7	3	1		63
Rules 56-64 (Guiding principles)	39	19	4			1	63
Rules 65-66 (Treatment)	54	8				1	63
Rules 67-69 (Classification and individualization)	42	13	8				63
Rule 70 (Privileges)	58	3	2				63
Rules 71-76 (Work)	42	17	4				63
Rules 77-78 (Education and recreation)	45	15	1		2		63
Rules 79-81 (Social relations and after-care)	49	11	3				63
Rules 82-83 (Insane and mentally abnormal prisoners)	41	18	4				63
Rules 84-93 (Prisoners awaiting trial)	11	18	9	1	24		63
Rule 94 (Civil prisoners)	17	1	5		39	1	63
TOTAL	1 453	288	73	6	66	4	1 890

a/ Including 50 jurisdictions in the United States of America, 11 provinces or territories in Canada and two states in Australia. The replies of the federal authorities of the United States and Canada are contained in table 1.

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Table 3. List of Member States replying  
to the questionnaire

Argentina	Iceland	Romania
Austria	Iraq	Singapore
Bahrain	Ireland	Spain
Belgium	Israel	Sri Lanka
Bulgaria	Italy	Sudan
Byelorussian Soviet Socialist Republic	Jamaica	Swaziland
Canada	Japan	Sweden
Chile	Kenya	Syrian Arab Republic
Colombia	Kuwait	Thailand
Costa Rica	Libyan Arab Republic	Trinidad and Tobago
Cyprus	Luxembourg	Turkey
Denmark	Malaysia	Union of Soviet Socialist Republics
Egypt	Mauritius	Ukrainian Soviet Socialist Republic
Fiji	Mexico	
Finland	Netherlands	United Kingdom
France	New Zealand	United States of America
German Democratic Republic	Norway	Upper Volta
Germany, Federal Republic of	Pakistan	Yugoslavia
Greece	Peru	Zambia
Guatemala	Philippines	
Haiti	Poland	Total 62
Hungary	Portugal	

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Table 4. List of states within federated systems replying to the questionnaire

Australia	Connecticut	New Hampshire
South Australia	Delaware	New Jersey
Tasmania	District of Colombia	New Mexico
Canada	Florida	North Carolina
Alberta	Georgia	North Dakota
British Columbia	Hawaii	Ohio
Manitoba	Idaho	Oklahoma
New Brunswick	Illinois	Oregon
Newfoundland	Indiana	Pennsylvania
Ontario	Iowa	Rhode Island
Prince Edward Island	Kansas	South Carolina
Quebec	Kentucky	South Dakota
Saskatchewan	Louisiana	Tennessee
Northwest Territories	Maine	Texas
Yukon Territory	Maryland	Utah
United States	Massachusetts	Vermont
Alabama	Michigan	Virginia
Alaska	Minnesota	Washington
Arizona	Missouri	West Virginia
Arkansas	Montana	Wisconsin
California	Nebraska	Wyoming
Colorado	Nevada	Puerto Rico
		TOTAL 63

Annex II

CENSUS OF PRISON POPULATION IN CERTAIN MEMBER STATES  
AS OF 1 DECEMBER 1972 AND 1 JANUARY 1974 a/

Country	<u>Prison population</u>		Male prisoners (3)	Female prisoners (4)	Prisoners under 21 years (5)	Prisoners awaiting trial (6)
	Total (3 + 4) (1)	Per 100,000 inhabitants (2)				
<u>Argentina</u>						
1972	26 036	109	24 780	1 256	3 540	17 972
1974	...	...	...	...	...	...
<u>Australia</u>						
1972	10 570	83	10 272	298	2 438	914
1974	9 268	70	8 993	275	1 554	1 020
<u>Austria</u>						
1972	8 093	109	7 624	469	371	2 271
1974	7 784	104	7 431	353	1 007	2 223
<u>Belgium</u>						
1972	6 019	63	5 755	264	498	1 094
1974	5 610	58	5 390	220	611	1 217
<u>Cambodia</u>						
1972	544	9	415	129	52	383
1974	...	...	...	...	...	...
<u>Canada</u>						
1972	19 668	90	18 986	682	5 608	2 402
1974	20 712	95	20 010	702	...	2 533
<u>Chile</u>						
1972	9 505	108	8 643	862	1 840	4 204
1974	...	...	...	...	...	...
<u>Colombia</u>						
1972	32 505	186	31 203	1 302	4 013	24 262
1974	31 096	178	29 682	1 414	8 792	23 235
<u>Cyprus</u>						
1972	181	31	175	6	37	9
1974	...	...	...	...	...	...

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## Annex II (continued)

Country	Prison population		Male prisoners (3)	Female prisoners (4)	Prisoners under 21 years (5)	Prisoners awaiting trial (6)
	Total (3 + 4) (1)	Per 100,000 inhabitants (2)				
<u>Dahomey</u>						
1972	...	...	...	...	...	...
1974	1 612	55	1 592	20	62	819
<u>Denmark</u>						
1972	3 462	69	3 393	69	565	873
1974	2 709	54	2 627	82	497	840
<u>Ecuador</u>						
1972	3 705	58	3 631	74	724	1 150
1974	...	...	...	...	...	...
<u>El Salvador</u>						
1972	6 473	175	6 220	253	443	4 249
1974	...	...	...	...	...	...
<u>Fiji</u>						
1972	...	...	...	...	...	...
1974	688	124	681	7	292	34
<u>Finland</u>						
1972	4 782	102	4 675	103	594	508
1974	4 706	101	4 615	91	584	669
<u>France</u>						
1972	31 573	61	30 564	1 009	5 114	...
1974	27 100	52	26 389	711	4 305	10 731
<u>Germany, Federal Republic of</u>						
1972	53 086	86	51 601	1 485	...	15 890
1974	50 519	81	49 155	1 364	...	15 942
<u>India</u>						
1972	...	...	...	...	...	...
1974	206 100	36	201 088	5 012	22 864	110 912
<u>Iraq</u>						
1972	5 931	59	5 849	82	739	3 529
1974	...	...	...	...	...	...

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Annex II (continued)

Country	<u>Prison population</u>		Male prisoners (3)	Female prisoners (4)	Prisoners under 21 years (5)	Prisoners awaiting trial (6)
	Total (3 + 4) (1)	Per 100,000 inhabitants (2)				
<u>Ireland</u>						
1972	1 053	35	1 027	26	428	121
1974	...	...	...	...	...	...
<u>Israel</u>						
1972	4 258	134	4 181	77	416	679
1974	4 503	137	4 440	63	444	808
<u>Italy</u>						
1972	27 812	51	26 358	1 454	4 560	15 116
1974	...	...	...	...	...	...
<u>Ivory Coast</u>						
1972	5 895	130	5 779	116	117	3 805
1974	...	...	...	...	...	...
<u>Jamaica</u>						
1972	2 330	121	2 299	31	335	271
1974	2 311	121	2 277	34	273	264
<u>Japan</u>						
1972	49 241	46	48 110	1 131	1 161	8 390
1974	46 083	43	45 024	1 059	...	7 013
<u>Kenya</u>						
1972	19 924	165	19 287	637	3 225	2 907
1974	...	...	...	...	...	...
<u>Lebanon</u>						
1972	3 554	120	3 407	147	399	1 580
1974	...	...	...	...	...	...
<u>Malaysia</u>						
1972	2 703	25	2 631	72	549	530
1974	4 037	37	...	...	...	...
<u>Mexico</u>						
1972	43 506	83	...	...	3 617	17 573
1974	...	...	...	...	...	...

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Annex II (continued)

Country	Prison population		Male prisoners (3)	Female prisoners (4)	Prisoners under 21 years (5)	Prisoners awaiting trial (6)
	Total (3 + 4) (1)	Per 100,000 inhabitants (2)				
<u>Morocco</u>						
1972	15 231	96	14 434	797	...	7 812
1974	16 335	108	15 547	788	...	5 148
<u>Netherlands</u>						
1972	2 779	21	2 730	49	983	1 311
1974	...	...	...	...	...	...
<u>New Zealand</u>						
1972	2 465	85	2 355	110	1 048	97
1974	...	...	...	...	...	...
<u>Nigeria</u>						
1972	...	...	...	...	...	...
1974	24 673	42	24 206	467	1 303	8 611
<u>Norway</u>						
1972	...	...	...	...	...	...
1974	1 544	39	1 509	35	344	460
<u>Panama</u>						
1972	1 900	120	1 793	107	319	918
1974	...	...	...	...	...	...
<u>Philippines</u>						
1972	...	...	...	...	...	...
1974	20 746	53	20 570	176	2 174	7 075
<u>Portugal</u>						
1972	...	...	...	...	...	...
1974	3 772	44	3 501	271	597	572
<u>Sierra Leone</u>						
1972	...	...	...	...	...	...
1974	2 324	88	2 286	38	105	...
<u>Spain</u>						
1972	13 826	40	13 111	715	1 583	5 761
1974	...	...	...	...	...	...

/...



Annex II (continued)

Country	Prison population		Male prisoners (3)	Female prisoners (4)	Prisoners under 21 years (5)	Prisoners awaiting trial (6)
	Total (3 + 4) (1)	Per 100,000 inhabitants (2)				
<u>Sri Lanka</u>						
1972	8 309	64	8 133	176	1 280	5 135
1974	12 825	98	12 570	255	4 910	8 640
<u>Sweden</u>						
1972	4 393	54	4 283	110	...	807
1974	3 538	43	3 444	94	831	520
<u>Syrian Arab Republic</u>						
1972	2 328	35	2 242	86	435	1 859
1974	4 574	69	4 511	63	620	1 839
<u>Thailand</u>						
1972	44 865	124	43 359	1 506	...	14 022
1974	48 209	133	46 657	1 552	11 158	9 548
<u>Trinidad and Tobago</u>						
1972	1 112	106	...	...	209	173
1974	896	86	883	13	63	219
<u>Tunisia</u>						
1972	5 559	103	5 283	276	397	1 524
1974	...	...	...	...	...	...
<u>United Kingdom</u>						
1972	45 904	82	44 634	1 270	11 947	5 814
1974	41 722	75	40 588	1 134	11 912	3 541
<u>United States of America</u>						
1972 <sup>c/</sup>	393 680	189	365 568	28 112	...	...
1974	...	...	...	...	...	...
<u>Venezuela</u>						
1972	13 920	127	13 598	322	1 468	10 428
1974	16 654	151	...	...	...	13 454

(Foot-notes on following page)

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(Foot-notes to annex II)

a/ The figures are based on reports from the national correspondents of the United Nations Secretariat in the crime prevention field. They have been computed against the total population figures for the countries concerned but not against the age groups within the population that tend to produce the highest crime levels. Furthermore, the figures are based only on two censuses and neither reflect any definite trend nor indicate whether the decrease in the prison population in some countries is the result of an actual decline in the use of imprisonment or of the imposition of shorter prison sentences. Thus, the statistics provide nothing but a basis for rough comparisons of the extent of the use of imprisonment in different regions. It must be observed that the high frequency of the use of institutions in, for example, Latin America does not indicate a corresponding level of criminality. Rather, it largely reflects the lack of alternatives to imprisonment - for example, suspension of prosecution, suspension of the execution of sentence or the use of probation, parole or other non-custodial sentences. In many developing countries the inability of the poor to pay fines often results in their imprisonment, even though the fine might be the more appropriate measure.

b/ As of 1 April 1974.

c/ Census dates differ from one jurisdiction to another. Thus, the date for the prison population in federal institutions and state prisons is 31 December 1972; in county and local gaols, 1 July 1972; and in state and locally operated detention and correctional facilities for juveniles, 30 June 1971.

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Annex III

DRAFT PROCEDURES FOR THE EFFECTIVE IMPLEMENTATION OF THE STANDARD  
MINIMUM RULES FOR THE TREATMENT OF PRISONERS

Implementing procedures

1. All States, whose standards for the protection of all persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment fall short of the Standard Minimum Rules, are requested to adopt the Rules, subject to their adaptation and harmonization with the laws and culture of the adopting State, but without deviation from the spirit and purpose of the Rules.

Commentary

The General Assembly recommended in its resolution 2858 (XXVI) of 20 December 1971 that Member States implement the Standard Minimum Rules in the administration of penal and correctional institutions and reiterated the importance it placed thereon in its resolution 3218 (XXIX) of 6 November 1974. Since some States may have standards that are more advanced than the Rules, specific adoption of the Rules is therefore not requested on the part of such States. Where States feel that the Rules need to be harmonized with their legal system and adapted to their culture, the emphasis is placed on the substance rather than the letter of the Rules.

2. The Standard Minimum Rules or any modification thereof, when adopted, should be embodied in national legislation and other regulations and made available to all persons concerned with their application and execution in the criminal justice system, particularly to correctional personnel.

Commentary

It is self-evident that if the Rules are to be implemented they must be widely circulated (see the section, "Dissemination of information", below).

3. In order that the Standard Minimum Rules may succeed in their effort to humanize criminal justice, they should also be made available to all prisoners and to all persons under detention, in a manner and form that is understandable to those confined.

Commentary

The requirement that the Rules be made available to the persons for whose protection they have been elaborated is indispensable. That was established in the four Geneva Conventions of 12 August 1949, of which articles 47 of the first Convention, 48 of the second, 127 of the third and 144 of the fourth state in common:

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"The High Contracting Parties undertake in time of peace as in time of war, to disseminate the text of the present Convention as widely as possible in their respective countries, and, in particular, to include the study thereof in their programmes of military and, if possible, civil instruction, so that the principles thereof may become known to the entire population, in particular to the armed fighting forces, the medical personnel and the chaplain." 1/

#### Reporting system

4. Member States shall inform the Secretary-General of the United Nations regularly of the extent of the implementation and the progress made with regard to the application of the Standard Minimum Rules by responding to the Secretary-General's questionnaire.

#### Commentary

It will be recalled that the Economic and Social Council, in its resolution 663 C (XXIV) of 31 July 1957, recommended that the Secretary-General be informed every five years of the progress made with regard to the application of the Standard Minimum Rules and authorized the Secretary-General to make arrangements for the publication, as appropriate, of such information and to ask for supplementary information if necessary.

5. As part of the information mentioned in draft rule 4, above, Member States are requested to furnish the Secretary-General with: |

(a) Copies or abstracts of all laws, regulations and administrative measures concerning the applicability of the Standard Minimum Rules to persons under detention and to places and programmes of detention;

(b) Statistics, data and descriptive material on detention programmes, detention personnel and the number of persons under detention in the various programmes and facilities.

#### Commentary

This requirement is part of the existing mandate which is cited in the commentary on draft rule 4 above. Even though the items of information requested herein are not specifically mentioned in the Rules, they are within the meaning of the survey authority. This request for information is analogous to the existing periodic reporting system on human rights, originally established by the Economic and Social Council in its resolution 624 B (XXII) of 1 August 1956. The Council also provides for a reporting procedure for the implementation of the Declaration on the Elimination of Discrimination against Women under its resolution 1677 (LII) of 2 June 1972. The Single Convention on Narcotic Drugs of 30 March 1960 contains a

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1/ See J. Pictet, Commentary on the Geneva Conventions (Geneva, International Committee for the Red Cross, 1952, 1958, 1960).

reporting requirement and the reporting procedure is also an essential part of the International Convention on the Elimination of Racial Discrimination and the International Covenants on Human Rights.

#### Dissemination of information

6. The Secretary-General shall disseminate the Standard Minimum Rules and the present implementing procedures in all United Nations official languages and make them available to all Member States and non-governmental organizations concerned in order to ensure the widest reach of the Rules.

#### Commentary

The need for the widest possible dissemination of the Standard Minimum Rules is self-evident. Close co-operation with all appropriate non-governmental organizations is important to secure more effective dissemination and implementation of the Rules. Therefore, the Secretariat shall maintain close contacts with such organizations and shall make relevant information and data available to them. It shall also encourage these organizations to disseminate information about the Standard Minimum Rules and the present implementing procedures.

7. The Secretary-General shall disseminate to Member States of the United Nations periodic reports, including analytical summaries of his periodic surveys, reports of the Committee on Crime Prevention and Control, reports prepared for United Nations Congresses on Crime Prevention and the reports of those Congresses, scientific reports and other data as from time to time may be deemed necessary to further the implementation of the Standard Minimum Rules.

#### Commentary

This procedure reflects the present practice of disseminating such reports as part of documentation for the United Nations bodies concerned, as sales publications or as articles in the Yearbook of Human Rights and the International Review of Criminal Policy.

8. The Secretary-General shall ensure the widest possible reference to and use of the text of the Standard Minimum Rules in all its relevant activities, publications and documentation.

#### Commentary

The rule is proposed in view of the fact that such inclusion or reference has not been consistently made in the past, as witnessed by the fact that the 1968 United Nations publication entitled Human Rights: A Compilation of International Instruments of the United Nations does not contain the Standard Minimum Rules.

9. As part of its technical assistance programme the United Nations shall:

(a) Aid Governments, at their request, in setting up and strengthening comprehensive correctional systems;

(b) Promote national and regional seminars and other meetings at the professional and non-professional levels to further the dissemination of the Standard Minimum Rules and the present implementing rules;

(c) Continue to give substantive support to regional research and training institutes in crime prevention and criminal justice that are associated with the United Nations.

The regional research and training institutes in crime prevention and criminal justice, in co-operation with national institutions, shall develop curricula and training materials based on the Standard Minimum Rules and the present implementing procedures and suitable for use in criminal justice educational programmes at all levels as well as in specialized courses in human rights and other related subjects.

#### Commentary

The purpose of rule 9 is to ensure that the United Nations technical assistance programmes and the training activities of regional institutes are used as indirect instruments for the enforcement of the Standard Minimum Rules and the present Rules for implementation. Apart from regular training courses for correctional personnel, training manuals and the like, particularly at the policy-making level, provision should be made for expert advice on questions submitted by Member States, including an expert referral system to interested States.

#### The role of the Committee on Crime Prevention and Control

10. The Committee on Crime Prevention and Control shall:

(a) Review from time to time, as may be needed, the Standard Minimum Rules and the present implementing procedures and recommend appropriate changes;

(b) Elaborate rules, standards and procedures applicable to emerging and new forms and methods of treatment of persons deprived of liberty;

(c) Advise the Secretary-General, United Nations bodies and organizations in the United Nations system in relation to (a) and (b) above as may be required;

(d) Make policy recommendations to the Secretary-General and the appropriate organs of the United Nations in the field of corrections;

(e) Perform such additional functions as may be requested of it under rules 12 through 14 below by the Secretary-General, the Economic and Social Council or the General Assembly, within the general purposes of the Standard Minimum Rules and their implementation.

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Enforcement

11. Nothing in these procedures is to be construed as precluding resort to any other means of enforcement available under international law or set forth by other United Nations bodies and agencies for redress of violations of human rights.
12. The Commission on Human Rights, utilizing its established procedures, may review requests from the Secretary-General and other United Nations bodies and agencies to consider individual complaints pertaining to violations of the Standard Minimum Rules. The Commission, through the Economic and Social Council, may refer the review of such complaints to the Committee on Crime Prevention and Control and recommend to the Secretary-General the appropriate responses.
13. Allegations of serious, repeated and consistent violations of the Standard Minimum Rules shall be brought to the attention of the Secretary-General with a recommendation that the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities examine the situation in accordance with the procedures of those bodies.
14. The Committee on Crime Prevention and Control shall assist the General Assembly and the Secretary-General when requested, with recommendations on the formation, methodology and reports of ad hoc inquiry commissions whenever they are appointed with respect to matters pertaining to the Standard Minimum Rules and their application and implementation.