

**Report on the
United Nations Course**



Human Rights in the Administration of Criminal Justice

CIIC) **Australian Institute of Criminology**

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United Nations Course



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The Course

Origin and Purpose

The fourth United Nations course on Human Rights in the Administration of Criminal Justice took place at the Australian Institute of Criminology, Canberra, Australia, from 29 November to 17 December 1976.

Organised as part of the United Nations Programme of Advisory Services in the Field of Human Rights by the United Nations Division of Human Rights and the Australian Institute of Criminology, at the invitation of the Government of Australia, the specific purpose of this course was to familiarise senior and experienced officials responsible for various aspects of the administration of criminal justice in their respective countries with the relevant legislation and administrative procedures in other countries of the region and the United Nations standards on human rights in the administration of criminal justice.

The course also provided an opportunity for an exchange of views on the law and practices relating to the protection of human rights in criminal procedure in these countries and the techniques for the implementation of international standards.

The United Nations Programme of Advisory Services in the Field of Human Rights was authorised by the General Assembly in its resolution 926 (X) of 1955. Under this programme, the Secretary-General, at the request of Governments of Member States, provides the services of expert consultants, organises seminars and grants fellowships for study and for advanced study. The Commission on Human Rights in 1964 requested that consideration

should be given to the possibility of including, from 1969 onwards, a training course in the annual programme of advisory services in the field of human rights.

The first such human rights training course was held in Japan from 14 August to 13 September 1972 on the question of human rights in the administration of criminal justice. The course was held at the United Nations Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders, situated at Fuchu, Tokyo, Japan, and was attended by 19 fellows from English-speaking African countries which were members of the Economic Commission for Africa and from countries in the Asia and Far East region which were members of the Economic Commission for Asia and the Far East.

The second training course on Human Rights in the Administration of Criminal Justice was held from 18 June to 7 July 1973 at the Centre for Social and Criminological Research in Cairo, Egypt, with the participation of 21 fellows from African countries which were members of the Economic Commission for Africa and from Arab-speaking countries outside Africa.

San Jose, Costa Rica, was the site for the third United Nations Training Course which also had as its subject Human Rights in the Administration of Criminal Justice and which took place from 24 November to 12 December 1975. This course was organised by the Division of Human Rights in cooperation with the United Nations Inter-American Institute for the Prevention of Crime and the Treatment of Offenders and was attended by 22 fellows and three observers from the States members of the Economic Commission for Latin America.

The programme of the fourth course on Human Rights in the Administration of Criminal Justice consisted of lectures, workshops, participant discussion groups, visits of observation and films.

Programme

The lectures and workshops were organised around three basic themes:

- I. The Human Rights of the Citizen in Relation to the Criminal Justice System.
- II. The Human Rights of Accused Persons in Relation to the Criminal Justice System.
- III. The Human Rights of Convicted Persons in Relation to the Criminal Justice System.

Under these themes the human rights standards of the United Nations in the administration of criminal justice and the machinery for their implementation were discussed, as was the fundamental question of the balance of human rights and social defence in criminal justice. During the workshops, discussions took place on lecture topics, the visits of observation, the films shown and on papers drafted and presented by the participants on subjects of interest to them and relating to human rights in the administration of criminal justice. (See Annex IV Part 2)

Three discussions and drafting groups were formed by the participants and met in the evenings for the purpose of discussing a specific topic and presenting a report for discussion by all participants. The topics selected were: The Role of the Police, Prosecutor and Judges in the Elimination of Torture; The Independence of the Judiciary; and the Duties and Obligations of Citizens.

To enable the participants to have a close contact with the practical aspects of the administration of criminal justice in Australia visits of observation were made to:

1. The Australian Capital Territory courts
2. The Australian Capital Territory police service
3. The Goulburn Training Centre (prison)
4. The Australian Capital Territory Juvenile Detention Centre at Red Hill
5. The Australian Capital Territory Remand Centre at Belconnen

Also, participants visited the Australian Parliament and were able to observe it in session.

Finally, three films on the administration of criminal justice were shown: *The Wasted Years*, a United Nations film on three different types of prisons, closed traditional prisons, labour camps and open prison camps; *Wall of Trust*, another UN film about the wider utilisation of free prison systems, in particular in developing countries; and *Four More Days*, an Australian film which explores the different reactions of guards and prisoners under three distinct types of prison discipline.

Opening, Closing Ceremonies

This fourth course on human rights in the administration of criminal justice was opened on 29 November by the Australian Commonwealth Attorney-General, the Honourable R.J. Ellicott, Q.C. The Secretary-General of the United Nations was represented by the Director of the United Nations Offices in Australia, New Zealand and Fiji, Mr Gilberto Rizzo. The Solicitor-General of Australia, Mr M.H. Byers, Q.C., addressed the closing ceremony on 17 December 1976. The Director of the Division of Human Rights, Mr M. Schreiber, on behalf of the Secretary-General, thanked the Government of Australia for having made the course possible and the Australian Institute of Criminology for the invaluable support given. At the closing ceremony certificates of participation were delivered to participants.

Lectures

The United Nations appointed two internationally recognised experts as consultants for the course. They delivered lectures on various subjects, chaired workshops and were available for discussions with the participants.

The Australian Institute of Criminology provided specialists from its own staff, including its Director, to give lectures and also enabled highly qualified individuals from

Australia and elsewhere to address the course. The Director of the United Nations Division of Human Rights and a staff member of that Division also gave courses.

Participants: Fellowships

Twenty participants were selected from nominations made by member States of the Economic and Social Commission for Asia and the Pacific. This selection was made on the basis of criteria of distribution among the countries of the region in an effort to ensure that the various systems existing in it were adequately represented and in the likelihood that those selected would be able to use the knowledge acquired at the course on returning to their respective countries. Sixteen participants were awarded fellowships by the United Nations and four received the assistance of the Government of Australia. In addition to the twenty participants the host government nominated six observers.

The broad variety of posts occupied and functions performed by the participants in their respective countries enabled them to make an important contribution to various aspects of the course, which was enhanced by a wealth of information deriving from their knowledge and practical experience of many aspects of public administration.

The participants included judges and magistrates, high-ranking state counsels and public prosecutors, a senior ministry official, senior police officers and a university researcher. The participants and observers who took part in the course in their personal capacity came from the following countries: Australia, Bangladesh, Fiji, Indonesia, Iran, Japan, Korea, New Zealand, Nepal, Papua New Guinea, Philippines, Singapore, Sri Lanka, Tonga and Thailand. Their names and countries are set out in Annex II.

Reference Library and Documents

The library of the Australian Institute of Criminology with its important collection of books and documents on penal law, criminology and the administration of criminal justice

was opened to the course participants (see Annex VII). The United Nations distributed to participants basic documents on human rights and the administration of criminal justice and placed relevant reference documentation on criminal justice in the Australian Institute's library for consultation by the participants (see Annexes V and VI).

Copies of lectures delivered during the course were distributed as were papers and reference material prepared by participants (see Annex IV).

Directorship and Secretariat

Mr W. Clifford, Director of the Australian Institute of Criminology and Mr T. McCarthy, Special Assistant to the Director, United Nations Division of Human Rights, were co-directors of the course and Mr C.R. Bevan, Assistant Director (Training) of the Australian Institute of Criminology, headed the course's secretariat.

The Australian Institute of Criminology also provided the course with lecture rooms and other facilities and arranged transportation for the participants.

Summary of Course Discussions

The discussions which took place during the fourth United Nations course on Human Rights in the Administration of Criminal Justice focused on the three themes of the course — the human rights of the citizen, the accused person and the convicted person in relation to the criminal justice system. Other main topics of discussion were the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment, and the three subjects selected by the participants for their discussion and drafting groups, that is, the independence of the judiciary; duties and obligations of citizens; and the role of the police, prosecutors and judges in the elimination of torture.

Certain fundamental issues were raised and found pertinent to all the discussions of the course. They were: the balancing of rights and duties; the problem of standard setting in relation to particular social and cultural contexts; and non-discrimination in the enjoyment of human rights.

It was recognised that human rights in the administration of criminal justice was the expression of a balance established between the rights of the individual on the one hand and the interest of the larger human community on the other. The need to show this balance was particularly important in the Asian and Pacific nations where there was a lively appreciation of obligations through which human rights of all persons are ensured. In many cases this balancing is achieved by weighing the rights of the individual together with his duties to the community as laid down in article 29, paragraph 1 of the Universal Declaration of Human Rights. It was felt that greater attention should be paid to this article of the Universal Declaration, especially

in light of the evidence that crime is being less effectively detected and prosecuted in many Western societies with the result that the human rights of the citizen are being violated as much by other persons in society as by those who are prosecuted and appear before the courts. One participant called for a declaration of obligations and quoted from his own country's statutes which specify a citizen's duties, including the duty of respecting the rights of others.

It was also recognised that the balancing between the rights of an individual and the interests of the larger human community must take place within the context of each social and cultural system and that the balance struck in one system of society would not necessarily be valid for another. The need for human rights to be interpreted in relation to the cultural differences across the world in no way detracted from the inalienable rights of the human person enshrined in the Universal Declaration. It did mean however, that these rights might be differently secured in different cultures. For example, in some of the countries from which the course participants came, the concept of human rights in its Western setting might not be clearly understood, but human rights in those societies were effectively protected by a reciprocal network of obligations.

It was recognised that no minimum standards could ever be fully achieved by all countries everywhere and whenever there were minimum standards, they would always be open to challenge. The situation was greatly aggravated by the fact that some countries did not have the resources necessary to meet minimum standards. On the other hand, nations did not want to lower standards when a minimum had been determined because for some nations the very existence of declarations of minimum standards would enable the different ministries to obtain the consideration necessary when funds were being allocated to improve the conditions which they had. The United Nations Standard Minimum Rules for the Treatment of Prisoners were a good example of this: even nations which could not attain the minima required still objected to changes in the standards because they wanted to have them as an ideal to attain.

For the effective implementation of human rights, standards must not be so detailed as to prevent account being taken of limited resources within countries. It is the spirit as much as the letter which is important here and there could be no denial of human rights where countries were too poor to reach those higher standards of education, health and welfare which are normal in some of the richer countries. The main point to be observed is that human rights should be fully recognised in terms of things like the inviolability of life, the right to an education and the right to work, but that where resources are limited, the actual standards would have to be those which could be most fairly shared rather than those which were set by countries more generously endowed.

With reference to standard setting concerning the rights of the citizen, there was recognition of the difficulty of avoiding the individual becoming swamped in a flood of legislation and his interests being more and more disregarded by the expansion of technology and the spread of bureaucracy. It was considered important that wherever possible the law should be amended to allow complaints by citizens against any abuse of powers in the administration of justice. The *habeas corpus* system — and its equivalents in other systems — was emphasised. Machinery should be set up to process such complaints, for example, the ombudsman system.

On the other hand, the danger to the rights of the citizen did not only come from the official administration. There were equal dangers from intrusions of privacy by the media and by the actions of large corporations causing pollution or keeping prices artificially high. Protecting rights therefore could mean a development of obligations to respect the rights of others — the balance was difficult but always necessary to strike. This became all the more important for societies in transition between customary and modern systems. Here the direction (that is, towards older customary traditions or forward to something quite new) should be specified to make rights and obligations meaningful. The participants noted that there were many societies now in the process of tackling this problem and

considered that the experience of these societies should be carefully monitored,

Since the criminal justice system depends upon witnesses being secure and free, the need to make more explicit and effective the measures for the protection of witnesses was recommended. In fact, in countries where there is an obligation to report crime, this obligation implied that victims would be safeguarded from the disadvantages and the problems likely to arise when they gave evidence.

In relation to standard setting concerning the rights of the suspect and the accused, it was noted that since there is a difference in culture, legal systems and social conditions among the participating countries, care must be taken in formulating formal standards regarding the protection of rights of the suspect and the accused. Especially in developing countries, where the legal system of a developed country has been adopted, the 'law in action' is often different from the 'law in books' or the 'law in the code'. Even when the law in the code sets high standards, the rights of a person may not be protected in practice. On the other hand, even when the law in the code may look unsatisfactory, it can protect rights when it is enforced through the feeling of mutual obligation and decency between government officers and the suspect or the accused. Therefore, in order to ensure the protection of the rights of the suspect, we should pay attention not only to the law in the code but also to the law in action and the general culture of the respective countries.

Naturally the goal of protecting rights is the same but the ways and the methods of protecting the suspect and the accused may be different, according to legal systems which a country has adopted. It was noted that when the minimum standards for the protection of the rights of the suspect and the accused are formulated, attention should be paid to this difference.

In protecting the rights of the suspect and the accused, the shortage of the resources of legal personnel should be kept in mind. Judges are sometimes located far from the place where a person is arrested and in some countries the number of the qualified lawyers are not sufficient. In such

cases, adequate measures, such as permitting the help of the suspect's friends or other persons, should be taken into consideration. The system adopted in one Pacific country under which judges, prosecutors and public defenders travelled to remote villages where cases were heard was discussed.

The United Nations draft principles on freedom from arbitrary arrest and detention and the proposed amendments on the right to communicate were reviewed and it was agreed that a person, even though suspected or accused of a criminal offence, retains his basic human rights which must be respected by the criminal justice system with only those essential limitations permitted by law in harmony with the particular cultural system. It was also agreed that in these circumstances the presumption of innocence must be maintained and that actual arrest or detention of a person suspected or accused of a crime should be an exceptional measure only in cases of serious offences. Preferably methods not involving deprivation of liberty should be used.

It was also felt that arrest or detention should be made pursuant to a written order or warrant except in cases of *flagrante delicto* or where the arrest cannot be safely delayed until a written warrant or order can be obtained. Arrest or detention of suspected persons is not a penalty and their liberty should be restricted only in so far as is necessary to ensure custody. These persons should be detained under different conditions from convicted persons and the establishment of separate remand centres was supported.

It was also suggested that a strict limit, for example 30 days, be set for the period of remand and that consideration be given to the continued payment of the normal salary or wage to the detained person. It was felt important that from the moment of arrest or detention the detained person had the right of access to legal counsel, his family and qualified doctors. It was believed that this would reduce the opportunity for undue physical or mental compulsion or other undue treatment of the detained person. It was believed that except for except-

ional circumstances the maximum length of detention before a detainee is brought before a judicial authority should be 24 hours. After the initial period in police custody it was felt that the detained person should be held under an authority distinct from that of the police and that strict rules should govern the access by police to the detained person.

Under certain systems of criminal justice it was felt desirable that during interrogation by police or other investigators the accused or suspected person should have the right to be accompanied by legal counsel or another person of his choice. Some participants stated that the warning of the rights to refuse to make any statement was contrary to the duty of the police to interrogate the suspect. A mere warning that a statement may be used as evidence should be sufficient. A view was expressed that a confession of a suspect in arrest or detention may be used as evidence, even when his counsel was not present at the scene of the interrogation, when it was made apparently voluntarily before a judge or even before a police officer.

In cases where the accused was financially unable to pay for legal representation it was felt that within the limit of the resources reasonably available, the state should assume the burden of furnishing counsel. It was noted however, that in some systems, notably those with an independent public prosecutor's office, that the need was not felt during interrogation by the independent public prosecutor to enable the accused person to be assisted by counsel.

The importance of the right to freedom from self-incrimination was recognised and the various systems for ensuring that confessions were given voluntarily were discussed — notably the systems where confessions were made only to magistrates. In the discussions concerning the human rights of the accused or the suspected person, it was recognised that the protection of the human rights of these persons was greatly affected by the independence and impartiality of the judicial system as well as of the lawyers and other legal professionals.

The question of standard setting in relation to the police was discussed. The issue of whether focusing on police

ethics implied a criticism of present police standards was taken into account. The usefulness of ethics in order to give police forces professional standards was recognised by all participants — including those who were police officers. It was observed that when standards or ethics were set up for police performance, a good many of them might be already found in existing statutes. Many statutes laid down the extent of police powers and the restraints which should be placed on these in certain conditions. The use of force, for example, was usually limited by statute.

The general view was that the police needed to improve their image but that, in terms of police training, this would only be effective if there was also corresponding public understanding of the police position. It was observed that some of the most trained police forces had now less respect than before. Was therefore training and respect for the police correlated or were both of these a function of wider changes in the society itself?

There was a general appreciation that education in human relations rather than ethics was required by the police. Better training in the handling of people was more effective than any standards which might be set down. There was also a recognition that the policeman's poor image with the public was often related to the way in which he was expected to enforce all laws, not only traffic but those dealing with agriculture, forestry, etc. Policemen take an oath to uphold the law but does this mean to enforce all laws: and, if not, where are the limits to be drawn? It was pointed out that the police in their work were far more subject to comment by the courts on the fairness of their operations than were persons in other professions. This was a control which was not generally recognised.

There was some division on the question of whether policemen should be expected to live according to higher standards than those expected of the public generally. One participant pointed out that his country's police regulations went so far as to regulate the domestic affairs of the police because disturbances of their family life were considered to be a reflection on the police organisation. This obviously

implied a much higher standard expected of police officers than of others. However, the police were not superhuman. They were recruited from the general public. They would take their morals and standards from those in fashion. They could not be expected indefinitely to live up to standards which were no longer recognised within the community generally. Finally, the police participants themselves agreed that people undertaking police work should be prepared to accept insults, harassment and punishment for the sake of the public which they served and if they were not able to do this they should look for other occupations. This, however, was a very high standard of police performance which might be expected in the standards formulated but might not be capable of implementation without very careful training of those involved.

It was believed that there should be a preoccupation with the changes in expectations which had revolutionised the concept of human rights over the past thirty years. For example, legal aid could not mean legal aid to the point where taxpayers were forced to subsidise all claims without merit or without limit of expense. Similarly, rights to education, health, etc., could not mean the rights to the most expensive and privileged treatment for anyone who wished to claim it. Again there had to be a levelling to the fairest common denominator so that in the quest for human rights, the general population would benefit and not merely those vociferous groups best organised to obtain their own advantage.

The importance of the principle of non-discrimination in the enjoyment of human rights in relation to the administration of criminal justice was recognised. These rights should be equally enjoyed without distinction of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status and in certain cases affirmative measures should be taken in line with the principles on the equality in the administration of criminal justice.

Another important element in the protection of human rights in the administration of criminal justice is the independence and impartiality of the members of the judiciary

and members of the legal professions as well as the staff of procurators in countries where such systems exist. It was suggested that in certain countries the independence of the bar association and its members was one way in which adequate defence could be given to the rights of the accused and independent representation could be given to the interests of the community on the side of the prosecutors. It was also suggested that it would be important in certain circumstances to take positive steps to ensure the respected position of judges within the community.

The extent to which the rights of a person may be restricted in case of emergency or *etat de siege* is a difficult problem. It was admitted that even in such a situation, basic rights of a person should be guaranteed.

A discussion also took place on the need for more effective coordination of the work of the police, the courts, social welfare and correctional services. In the interests of justice, not all these activities should be under the same ministry but this division of responsibility leads sometimes to conflicting policies and there is a great need to find an answer which would ensure greater effectiveness and justice for all concerned. A coordinating committee seems to be the solution.

In relation to a speedy administration of criminal justice, a number of suggestions were made. These aimed at reducing delays, especially those due to the quantity of work.

The suggestions were:

- . A rule requiring a decision within a number of days of the hearing.
- . Auxiliary (weekend) magistrates.
- . Minor offences being dealt with by mail without an appearance being necessary before a court.
- . A conciliation board (not comprised of lawyers) to which stipulated offences could be referred and before which the offender could be summoned, where the offender and victim may agree upon payment of a sum to the victim by way of compensation. If the case was not settled it could be brought before the

courts in the usual way. Offences which might be dealt with in this way would include common assault and wilful damage to property, but not theft, embezzlement, etc.

In evaluating the fourth United Nations course on Human Rights in the Administration of Criminal Justice the participants expressed the view that the course had enabled them to become familiar with international human rights standards in the field of criminal justice and with the different methods available for their implementation. They also learned of the standards in this field and techniques of application in the various home countries of the participants as well as in Australia and were able to exchange experiences and clarify their ideas with respect to the solution of some of the practical problems involved in implementing human rights at the national level.

The participants stated their conviction that as a result of the course they were better equipped to make real and substantive contributions to the respect for human rights in the administration of criminal justice in their countries. Courses like the fourth course on Human Rights in the Administration of Criminal Justice should be organised on a regular basis at frequent intervals in all the regions of the world. Participants were particularly anxious to be kept informed of developments within the United Nations relating to human rights and the administration of criminal justice.

Appendixes: Papers Resulting from Participant Discussion Groups

During the fourth United Nations Course on Human Rights in the Administration of Criminal Justice, the participants formed three evening discussion groups and each group selected a topic which they wished to analyse in more detail than was possible during the general course discussion. The following papers reflect the general trend of the discussions but they are not understood to be a definitive expression of the views of any one participant. In certain instances divisions of opinion on given points are noted.

I Role of Police, Prosecutor and Judge in Elimination of Torture

Role of the Police

The public conception of the police function varies widely. In some countries the stress is on law enforcement rather than on crime prevention, while in others the police assume a social role and therefore are more service-oriented. Still others emphasise the protection of civil liberties and human rights. Whatever role the police take, and it is a combination of them which will most likely prove ideal, it must have the support and acceptance of the community it serves. Despite the usual clamour for law and order, law alone does not shape the community; public acceptance of and response to the law is also important.

Arrest and Detention

Arrest as defined (under Article 1 of Draft Principles on Freedom from Arbitrary Arrest and Detention) means the act of taking a person into custody under the authority of the law or by compulsion of another kind and includes the period from the moment he is placed under restraint up to the time he is brought before an authority competent to order his continued custody or to release him.

Detention refers to the act of confining a person to a certain place, whether or not in continuation of arrest, and under restraints which prevent him from living with his family or carrying out his normal occupational and social activities.

As guidelines for police officers, both civil and military, the following measures are recommended:

1. Arrest shall be made only upon the authority of a warrant of arrest issued by a judge or other competent authority, except in the following cases:
 - (a) Upon reasonable suspicion of a person having committed or about to commit an offence.
 - (b) In the case of a person who is or reasonably suspected to be of unsound mind, addicted to drugs or alcohol, or a vagrant, for the purpose of his care or treatment or the protection of the community.
 - (c) For the purpose of preventing the spread of infections or contagious diseases.
2. No person arrested, detained or deprived of his freedom of action in any way shall be subjected to torture, or to any punishment or treatment which is inhuman or degrading.
3. No person shall be subjected to search of his person or property without his consent except:
 - (a) On a warrant upon reasonable suspicion that there is some illegally obtained property in his possession.
 - (b) That there is some evidence on him relating to an offence. Evidence obtained in violation thereof shall be inadmissible. (As to the last sentence some participants preferred the common law system of giving to the court a discretion to exclude evidence illegally or irregularly obtained.)
4. Any person arrested or detained or otherwise deprived of his freedom of action in any way must be informed as soon as practicable, in the language he understands, of the reasons for his arrest or detention, his right to remain silent and the right to counsel.

The warning to remain silent and to counsel must be accompanied by the explanation that anything said may be used in court.
5. Legal assistance shall not be denied by reason of poverty. If he is indigent and needs the services of a counsel, a lawyer shall be appointed to represent him. (It was noted that legal aid is not available in all countries but that it is a desirable objective.)

6. Any person arrested, detained or deprived of his freedom of action in any way must be brought within a reasonable time, but not exceeding 36 hours, before the prosecutor and/or the court for proper disposition.
7. The accused person shall have free access to a medical practitioner of his own choice.
8. Freedom of communication, and correspondence shall be maintained and protected.
9. Arrest by arrangement for minor offences for young people, married women, old people, provided they are not recidivists, should be encouraged. ('Arrest by arrangement' means as to time, place, etc.)
10. In an emergency situation it shall be the duty of the detaining authority to release detainees unless they are to be charged within a reasonable time.
11. The right of the detained person to avail himself of *habeas corpus* proceedings or similar review shall be respected.
12. Any person unlawfully arrested or illegally detained shall be entitled to compensation and reinstatement in accordance with law.

Role of the Prosecutor

All criminal prosecutions shall be under the direction and control of a public prosecutor (or any other person entrusted with such authority). However, some participants felt strongly that there was a growing need for the decision to prosecute to be transferred from the police into the hands of a judicial official. As such, the official would be duty bound to bring to court all persons who appeared to be responsible for a criminal act, in the same way that it would be equally his duty to refrain from prosecuting a case if, after careful investigation, the evidence appeared

insufficient to warrant prosecution. In other words, the prosecutor or his equivalent would be given the full discretion as to whether or not to prosecute a criminal case. This would enable him to prevent malicious and unfounded prosecution and at the same time to prosecute only the meritorious cases.

To help eliminate torture the following steps are recommended:

1. Preliminary investigation must be made public and attended by parties and counsel. A legal aid system should be approved to service all citizens equally.
2. The preliminary investigation must be terminated within 20 days from its first hearing and within 10 days thereafter the case must be filed in court or dismissed as the case may be.
3. The public prosecutor must, within three days from the time the police remand the suspect, determine the legality or illegality of the arrest; determine whether or not the confession has been illegally obtained; and release the detainee if, after conducting the preliminary investigation, there is no case against the accused.
- 4* No person shall be compelled to incriminate himself. No force, violence, threat, intimidation or any other means that vitiates the free will shall be used against him.
5. Any evidence secured in violation of the rights of an accused person shall be inadmissible.
6. The prosecutor must affirmatively prove the facts alleged against the accused beyond reasonable doubt.
7. Bail shall be a matter of right and the public prosecutor must recommend only reasonable bail depending upon the gravity of the offence, the financial capacity of the accused and the probability of his appearance at the trial.
8. Some participants felt it wise, whenever possible, to divorce cases from the criminal justice system, where they could be dealt with by compensation from the offender.

Judges or Courts

1. Sentence should only be passed in respect of those offences of which an accused person is convicted.
2. Sentencing decisions should be based on competent and reliable evidence.
3. Accused persons should be entitled to public, speedy disposition of cases.
4. The Court should have the right to visit prisons and detainees regularly to hear and investigate their complaints.
5. Judges should decide upon the report of the police whether the subject is illegally or unreasonably detained, and/or whether confession is legally or illegally obtained.
6. Judges must have the power to release detention prisoners if there is no reasonable ground for further detention.
7. If the decision is delivered in a language which the offender does not understand, the decision must be interpreted to the offender.
8. In the case of certain offences, judges must impose, as is necessary, an alternative penalty, other than imprisonment, which is least harmful for the offender and least expensive to the community.
- 9* The rights of the accused against double jeopardy shall be enforced, but appeals against acquittals should not be precluded.

* Indicates part on which a division of opinion existed.

II Independence of the Judiciary

To preserve the rights and dignity of human beings it is fundamental that the judiciary should be an independent arm of the state. This is manifested in Article 10 of the Universal Declaration of Human Rights which provides: 'Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him'. This can only be achieved if the judiciary is free from control by the executive or legislative arm of the state.

To this end we suggest the following principles to be adopted by the United Nations as a guidance for all its member states:

1. The judiciary shall be separate from the executive and the legislature.
2. The judiciary shall be independent in the exercise of its functions.
3. No extraordinary commission or special tribunal of a temporary character shall be established outside the framework of the judiciary to try any particular cases or persons.
4. (a) Judges and other judicial officers shall not be arrested, detained or charged for any act done in good faith in the normal discharge of their duty.
(b) Further, judges and other judicial officers should not be liable in any civil action for any act done in the normal discharge of their duty.
5. It shall be an offence for any person:
(a) To abuse, interfere with or obstruct the process of the court in any way or disobey any order of the court.

- (b) To scandalise the court or otherwise do anything which tends to bring the court or a judge of the court into hatred, ridicule or contempt.
 - (c) To do or attempt to do any act to secure a judgment favourable to him or to any other person.
6. (a) The judges of the Supreme Court or High Court and other judicial officers shall not be appointed by the executive.
 - (b) The Chief Justice or other person who is the head of the judiciary shall be appointed by the Head of the State on the advice of the legislature.
 - (c) The other judges shall be appointed by the Head of the State on the advice of the Chief Justice, the Head of the Judiciary or other appropriate body.
 - (d) The other judicial officers shall be appointed by the Chief Justice or other person who is the Head of the Judiciary or other appropriate body.
 7. The judges must enjoy security of tenure.
 8. A judge shall only be removed from office by the Head of the State or appropriate body for misbehaviour or inability to perform the functions of his office.
 9. (a) A judge's remuneration and retirement benefits shall be sufficient to relieve him (and his family) from financial anxieties and put him beyond the need for auxiliary appointment and venal temptations.
 - (b) Judges and other judicial officers shall be prohibited from engaging in any occupation of profit or otherwise except with the concurrence of the Head of the State or the Chief Justice respectively.
 - (c) A judge's remuneration or retirement benefits shall not be reduced without his consent.
 10. A judge must disqualify himself or be disqualified from sitting on a case where circumstances exist to affect his impartiality.
 11. The conduct of judges in the performance of their duty shall not be criticised by the legislature or executive.
 - 12.* (a) A decision of judges shall not be subject to criticism by the legislature or the executive.
 - (b) Any decision may be changed by the legislature by an enactment. No enactment shall have a retrospective effect.

- (c) Decisions of the Supreme Court (the highest Court in the hierarchy) shall be final and decisions of a lower court may not be altered except by a higher competent court.
13. Judges must be qualified, experienced and competent to discharge the duties of their high office.

We feel that it shall be imperative on each member state to make sure these principles are enshrined in the supreme law of their land (Constitution). These principles in the Constitution need to be entrenched by way of two-thirds majority in the legislature and simple majority at universal suffrage.

* Indicates points on which a division of opinion existed.

III Duties and Obligations of Citizens

Draft Code of Obligations

1. It shall be the duty of every person to actively participate in the attainment or preservation of a just and orderly society and, consistent with that duty, to be loyal to his country and to obey its laws.
2. Every person shall recognise, respect, and protect the rights and freedoms of others, and shall act justly, honestly and faithfully in his dealings with them.
3. Everyone shall suffer such interference with or detraction from his alienable human rights as is sanctioned by law and necessary or desirable for the development and welfare of his country.
4. In accordance with law, everyone shall contribute to the support of the state through taxation or otherwise.
5. To protect and conserve national wealth, everyone shall endeavour to use public or private property prudently and to the most beneficial advantage of himself and others.
6. Everyone shall support and educate every child for whom he is responsible; and instil in such child a respect for the feelings and sensibilities of his fellow human beings.
7. Everyone shall strive to obtain an education that will fully develop his potentials, character and personality, and will strengthen his concern for human rights and fundamental freedoms.

Annexes

I Programme

Themes

- I. The Human Rights of the Citizen in Relation to the Criminal Justice System
 - II. The Human Rights of the Accused Person in Relation to the Criminal Justice System
 - III. The Human Rights of the Convicted Person in Relation to the Criminal Justice System
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- A. The Citizen, the Accused and the Convicted Person and the Criminal Justice System
Lectures on Themes I, II and III
-
1. Activities of the United Nations in the Field of Human Rights - Mr M. Schreiber, Director, United Nations, Division of Human Rights (Geneva)
 2. The United Nations and the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment — Mr M. Schreiber
 3. The Balance of Human Rights and Social Defence in Criminal Justice — Mr W. Clifford, Director, Australian Institute of Criminology (Canberra)
 4. Standard Setting in the Criminal Justice System — Mr W. Clifford
 5. Ombudsmen and Their Value — Dr J. Robson, United Nations Consultant, Visiting Fellow of Criminology, Victoria University (Wellington, New Zealand)

6. Rights and Duties — The Japanese Concept — Professor R. Hirano, United Nations Consultant, Professor of Criminal Law, University of Tokyo
7. Human Relations, Crime and the Press — Dr J. Robson
8. The Question of Human Rights in the Conduct of Criminological Research — Mr D. Biles, Assistant Director (Research), Australian Institute of Criminology
9. United Nations and Human Rights in the Administration of Criminal Justice. Introduction — Mr T. McCarthy, Special Assistant to the Director, United Nations Division of Human Rights (Geneva)
10. Human Rights and the Detainee: United Nations Standards for the Protection of Persons Deprived of Liberty — Mr T. McCarthy
11. United Nations Standards on Arrest, Detention and Trial (three lectures) — Mr T. McCarthy

B. The Citizen and the Criminal Justice System
Lectures dealing with Theme I

1. Human Rights of the Citizen in Relation to the Criminal Justice System — Mr P.R. Loof, Senior Assistant Secretary, Human Rights Branch, Attorney-General's Department, Canberra
2. Human Rights of the Citizen as Affected by Variations in Criminal Justice Systems-.
 - (a) The Japanese Experience — Professor R. Hirano
 - (b) Other Major Legal Systems - Mr W. Clifford
3. Human Rights of the Citizen in Relation to the Police — The Honourable Mr Justice Kirby, Chairman, Australian Law Reform Commission

4. Complaints Against the Police — The Honourable Mr Justice Kirby
5. Human Rights in Respect of Privacy — Professor Sir Zelman Cowan, Q.C., Vice Chancellor, University of Queensland
6. Protecting Human Rights by Bills of Rights, Legislation and Education — Mr P.R. Loof
7. Human Rights of Victims in the Criminal Justice System — Mr G.R. Wardlaw, Senior Research Officer, Australian Institute of Criminology, Canberra
8. Human Rights and the Administration of Criminal Justice, Recent Singapore Legislation (Also Theme II) — Mr A.W. Ghows, Solicitor-General, Singapore

C. The Accused and the Criminal Justice System
Lectures and Seminars dealing with Theme II

1. Human Rights of the Accused in Relation to the Criminal Justice System (two lectures) — Professor R. Hirano
2. Human Rights of the Citizen in Relation to the Courts — Mr F.J. Mahony, O.B.E., Deputy Secretary, Attorney-General's Department, Canberra
3. Human Rights of the Police as Citizens and in the Performance of Their Duties — Mr R. Whitrod, Former Commissioner of Police, Queensland
4. Human Rights as Reflected by Sentencing in Queensland (also Theme III) — Mr J. Newton, Senior Research Officer, Australian Institute of Criminology, Canberra

D. The Convicted Person and the Criminal Justice System
Lectures dealing with Theme III

1. Human Rights of Convicted Persons in Relation to the Criminal Justice System (two lectures) — Professor R. Hirano

2. Human Rights of Convicted Persons in Relation to Institutional and Non-Institutional Penalties (two lectures) — Dr Dr J. Robson
3. Human Rights of Convicted Juveniles — Dr J.A. Seymour, Senior Criminologist, Australian Institute of Criminology, Canberra
4. Human Rights of the Convicted Person and Pre-Sentence Reports — Mr P. Mullaly, Senior Crown Prosecutor, Victoria
5. Human Rights in the Administration of Corrections — Mr C.R. Bevan, Assistant Director (Training), Australian Institute of Criminology, Canberra

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IV Lectures and Other Papers Distributed to Participants

Lectures and Opening Addresses

Opening Address by the Attorney-General - The Honourable
R.J. Ellicott, Q.C.

Opening Address to the Human Rights Course on the Adminis-
tration of Justice — W. Clifford

Human Rights of Victims in the Criminal Justice System —
Grant Wardlaw

Human Rights in Sentencing: The Queensland Experience —
J.E. Newton

The Question of Human Rights in the Conduct of Criminolog-
ical Research — David Biles

Human Rights of Convicted Juveniles — Dr J.A. Seymour

Human Rights and Legal Drafting in Singapore — A.W. Ghows

Human Rights in the Administration of Corrections — C.R.
Bevan

Human Rights of the Police as Citizens and in the Performance
of Their Duties - R. Whitrod

Complaints Against Police: How Should They be Handled? —
The Honourable Mr Justice M.D. Kirby

Human Rights of the Convicted Person in Relation to Pre-sentence Reports — Paul R. Mullaly, Q.C.

Human Rights of the Citizen in Relation to the Courts. Discussion paper — F.J. Mahony, O.B.E.

Standard Setting in the Criminal Justice System — W. Clifford

Protecting Human Rights by Human Rights Legislation — P R. Loof

The Balance of Human Rights and Social Defence in the Administration of Criminal Justice — W. Clifford

Human Rights of the Citizen in Relation to the Police — The Honourable Mr Justice M.D. Kirby

United Nations Standards on Human Rights in the Administration of Criminal Justice. Discussion paper prepared by the United Nations Division of Human Rights

Papers and Documents Submitted by Participants

Human Rights in the Administration of Criminal Justice in Papua New Guinea — C. Maino-Aoae

Human Rights in the Preliminary Investigation Within the Sphere of Criminal Law in Indonesia (some viewpoints concerning the rights of suspects) — S. Dalimunthe

Independence of the Judiciary and the Judicial System of Indonesia — Sunu Prawoto

Human Rights in Relation to the Administration of Criminal Justice — H. Tonga

The Constitution of Japan

Constitution of the Independent State of Papua New Guinea

Fundamental Duties and Rights: Constitution of Nepal

Constituent Assembly of Bangladesh. The Constitution of the
People's Republic of Bangladesh

The Constitution of Sri Lanka (Ceylon)

Singapore Constitution

The 1945 Constitution of the Republic of Indonesia

The Constitution of the Kingdom of Thailand

Constitution of the Republic of the Philippines, Article IV,
Bill of Rights

Criminal Statutes, Japan, selected articles. Ministry of Justice
of Japan

V United Nations Documents Distributed to Participants

General Documents

1. Charter of the United Nations and Statute of the International Court of Justice. (OPI/511)
2. Universal Declaration of Human Rights. (OPI/15)
3. The International 'Bill of Human Rights'. (OPI/565)
4. The International Covenants on Human Rights and Optional Protocol. (OPI/562)
5. United Nations Declaration on the Elimination of All Forms of Racial Discrimination. (OPI/151)
6. International Convention on the Elimination of All Forms of Racial Discrimination. (OPI/442)
7. Programme of Action to Combat Racism and Racial Discrimination. (OPI/514)
8. International Convention on the Suppression and Punishment of the Crime of Apartheid. (OPI/513)
9. Declaration on the Protection of All Persons from Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (OPI/560)
10. The United Nations Declaration on the Elimination of Discrimination Against Women. (Equal Rights for Women - A Call for Action). (OPI/538)
11. Declaration on the Granting of Independence to Colonial Countries and Peoples. (OPI/472)
12. Basic Facts About the United Nations. (Sales No.E.75.1.13)
13. States Members of the United Nations. (OPI/554)
14. Questions and Answers on Human Rights. (OPI/493)

Documents Relating to Human Rights in the
Administration of Criminal Justice

1. Study of Equality in the Administration of Justice. (Sales NO.E.71XIV.3)
2. Standard Minimum Rules for the Treatment of Prisoners and Recommendations on Selection and Training of Personnel for Penal and Correctional Institutions and on Open Penal and Correctional Institutions. (Sales No.1956.IV.4)
3. Draft principles on freedom from arbitrary arrest and detention, and amendments thereto proposed in the study of the right of arrested persons to communicate with those whom it is necessary to consult in order to ensure their defence or to protect their essential interests: Conference room paper prepared by the Secretariat for the Fifth United Nations Congress on the Prevention of Crime and Treatment of Offenders. (A/CONF.56/CRP.1)
4. Report of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. (A/CONF.56/10)
5. Report of the United Nations Committee on Crime Prevention and Control on its Third Session, (Geneva, 1974). (E/CN.5/516)
6. Report of the United Nations Committee on Crime Prevention and Control on its Fourth Session (New York, 1976)
7. Health aspects of avoidable maltreatment of prisoners and detainees: paper by the World Health Organisation submitted to the Fifth United Nations Congress on the Prevention of Crime and Treatment of Offenders. (A/CONF.56/9)
8. 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. (A/CONF.56/6)
9. Analytical summary of information received on torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment submitted by the Secretary-General to the General Assembly at its thirtieth session (A/10158 and Corr.1 and Add.1)

10. Notes by the Secretary-General on the question of the human rights of persons subjected to any form of detention or imprisonment submitted to the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its twenty-ninth session. (E/CN.4/Sub.2/359/Add.2); (E/CN.4/Sub.2/374 and Add.1-2)
11. Report on the question of the human rights of persons subjected to any form of detention or imprisonment prepared by the Secretary-General and submitted to the Sub-Commission on Prevention of Discrimination and Protection of minorities at its twenty-ninth session. (E/CN.4/Sub.2/376)
12. Note by the Secretary-General on torture and other cruel, inhuman or degrading treatment or punishment in relation to detention and imprisonment submitted to the General Assembly at its thirty-first session (A/31/234)

VI United Nations Documents Placed in the Library of the Australian Institute of Criminology for Consultation by Participants

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VII Human Rights and the Criminal Justice System: A Bibliography

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