Report on the United Nations
Human Rights Training Course

Human Rights Guarantees in the Administration of Criminal Justice

AUSTRALIAN INSTITUTE OF CRIMINOLOGY

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I. United Nations Human Rights Training Course on Human Rights Guarantees in the Administration of Criminal Justice

ORIGIN AND PURPOSE

The Sixth United Nations Human Rights Training Course on Human Rights Guarantees in the Administration of Criminal Justice was held at the Australian Institute of Criminology, Canberra, Australia, from 30 November to 18 December 1981.

The course was organised in cooperation with the Government of Australia. It formed a part of the United Nations Advisory Services Program in the Field of Human Rights which was established by the General Assembly in its resolution 926(X) of 1955. Under the program, the Secretary-General at the request of Governments of Member States provide the services of expert consultants, organises seminars and awards fellowships for study. At its twenty-third session, by resolution 17(XXIII) of 22 March 1967, the Commission on Human Rights requested the Secretary-General to consider the organisation, from 1969 onwards, of a training course in the annual program of advisory services in the field of human rights.

The purpose of the 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 procedures in these countries and the techniques for the implementation of international standards.

The first such human rights training course was held at the United Nations Asia and Far East Institute, Fuchu, Japan, from

14 August to 13 September 1972 on the question of human rights in the administration of criminal justice. That course was attended by 19 participants from English-speaking African countries, members of the Economic Commission for Africa and from countries in the Asia and Far East region who were members of the Economic Commission for Asia and the Far East.

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

The third training course on Human Rights in the Administration of Criminal Justice was held at San Jose, Costa Rica, from 24 November to 12 December 1975, at the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders. It was attended by 22 participants and three observers from member States of the Economic Commission for Latin America.

The fourth training course on Human Rights in the Administration of Criminal Justice was held from 29 November to 17 December 1976 at the Australian Institute of Criminology, Canberra, Australia. That course was attended by 20 participants from member states of the Economic and Social Commission for Asia and the Pacific. Six observers were also nominated by the host Government.

The fifth training course was at the United Nations Asia and Far East Institute, Fuchu, Japan, on Safeguards against Deprivation of the Right to Liberty and Security of Person, from 5 to 22 December 1977. That course was attended by 18 participants from member states of the Economic Commission for Asia and the Pacific. Six local participants were also nominated by the host Government.

PROGRAM

The program of the training course is reproduced in annex I. The lectures, and discussions were based on three themes:

(a) The Human Rights Guarantees for Minorities in Criminal Justice Systems.

(b) The Human Rights Guarantees for Juveniles in Criminal Justice Systems.

(c) The Human Rights Guarantees for Standards of Ethics in Criminal Justice Systems.

In the context of the above themes, the human rights standards of the United Nations in the administration of criminal justice and their implementation were discussed. Great concern was expressed for the necessity of a balance of human rights and social defence in criminal justice.

A number of visits of observation were made to institutions involved in the administration of criminal justice. In this connection, visits were made to the following institutions:

The High Court of Australia;
Belconnen Remand Centre; and
Australian Federal Police Services

Participants also visited the Australian War Memorial and the New Parliament House, Capital Hill.

OPENING AND CLOSING CEREMONIES

The course was formally opened on 30 November by Senator the Honourable P.D. Durack, Q.C., Attorney-General of Australia. The Secretary-General of the United Nations was represented by the Deputy-Director of the Division of Human Rights, Mr K.F. Nyamekye.

The Chief of the United Nations Advisory Services and Publications Section, Mr B. Pissarev, on behalf of the Secretary-General addressed the closing ceremony on 18 December 1981 and conveyed to the Government of Australia through Mr W. Clifford, Director, Australian Institute of Criminology, the gratitude and appreciation of the United Nations for the facilities which the Government of Australia had made available for holding the course.

LECTURERS

The United Nations provided the services of two expert consultants.* They delivered lectures and directed discussions. A third consultant, Mr Bykov, was also appointed by the United Nations but was unable to participate owing to his not receiving an entry visa. The Deputy-Director of the United Nations Division of Human Rights and the Chief of its Advisory Services and Publications Section also delivered lectures. The Australian Institute of Criminology provided personnel from its own staff and eminent Australian experts on pertinent subjects who gave lectures and conducted discussions (see annex III).

PARTICIPANTS: FELLOWSHIPS

Seventeen participants were awarded fellowships by the United Nations to participate in the training course. They were selected from nominations submitted by Member States within the geographical area, and members of the Economic Commission for Asia and the Pacific. Local observers also participated in the course.

The names and titles of the participants are listed in annex II. The diversity of specialisation represented in the professional posts occupied by the participants in their respective national areas of responsibility facilitated and enabled them to make important contributions to various aspects of the course. Their knowledge and practical experience in particular afforded ready information for comparative consideration of a number of issues.

REFERENCE LIBRARY AND DOCUMENTS

The Library of the Australian Institute of Criminology was opened to the participants. The United Nations distributed to participants a number of basic documents on human rights and the administration of criminal justice. Copies of lectures delivered during the course were distributed as were papers and reference material prepared by participants (see annexes IV and V).

* Dr Mustafa El Augi, Justice, Supreme Court of Lebanon and Mr W. Clifford, Director, Australian Institute of Criminology.

DIRECTORSHIP AND SECRETARIAT

Mr K.F. Nyamekye, Deputy-Director of the United Nations Division of Human Rights, and Mr William Clifford, Director of the Australian Institute of Criminology were Co-Directors of the course, assisted by Mr B. Pissarev, Chief of the Advisory Services and Publications Section, and Mr E.S.S. Palmer, Chief of the Advisory Services Unit, United Nations Division of Human Rights, and members of the Faculty of the Australian Institute of Criminology.

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

II. Summary of Course Discussions

A. THE HUMAN RIGHTS GUARANTEES FOR MINORITIES IN CRIMINAL JUSTICE SYSTEMS

During the discussions the participants focussed attention on the three main themes of the course. They also concerned themselves with the prevailing practices and procedures in their respective countries pertinent to the specific issues under discussion.

In connection with theme I, 'The Human Rights Guarantees for Minorities in Criminal Justice Systems', the course heard the following specific lectures:

(a) Activities of the United Nations Division of Human Rights in Asia and the Pacific, past and future;

(b) Safeguarding the rights of minorities in criminal justice systems;

(c) The special position of indigenous peoples;

(d) A police view of the three themes;

(e) The courts and the three themes;

(f) A barrister's view of the three themes; and

(g) Human rights of women in the criminal justice system.

The participants noted that the various areas of the work of the United Nations Division of Human Rights involved all member States of the United Nations. The activities of the Division were broadly concerned with the elaboration and implementation of international human rights instruments; Special Procedures; Communications; Research and Studies; Prevention of Discrimination; Advisory Services and Publications. It was suggested that the United Nations should consider organising a special seminar on these areas of its activities.

As regards the question of safeguarding the rights of minorities in the criminal justice system, it was observed that the world was now more conscious of the feelings of neglect and deprivation, if not indeed of the overt disregard or even the outright suppression, of minorities.

In considering criminal justice systems and human rights, it was pointed out that laws define rights and specify duties for all people regardless of status, colour or creed. But somehow in practice, certain groups appear more frequently before the courts and form a disproportionate part of the prison population. It was said that in modern criminal justice systems it was the poor, the disabled or the economically disadvantaged who seemed to find their way into the criminal justice systems while other people at certain levels of society appear to be privileged or else extraordinarily law-abiding. It was felt that the unfair discrimination which was suggested by the disproportionate appearances in court of some groups more than others was evidence of bias too strong to be dismissed. On the other hand the equally abundant evidence that some groups can operate peacefully and within the law, even though poor and sometimes economically or socially disadvantaged, is too strong to treat discrimination in the criminal justice system as being the sole and simple explanation of this peculiarity.

On the question of trying to find an adequate definition for a minority, it was noted that the International Covenant on Civil and Political Rights, Article 27, reads as follows:

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

At the same time it was observed that there were States which in the interest of national unity, do not acknowledge the existence of special groups with special identities. Attempts to define the concept by UNESCO, some Governments and the Council of Europe were also examined. It was recognised that there was no internationally agreed definition of the meaning of a minority.

The point was made, that it was not always possible to find examples of direct bias on account of a person being a member of an identifiable ethnic religious or linguistic group though membership of that group may place the person inside a wider group apparently disadvantaged by the criminal justice system.

Referring to the question of value clashes, attention was called to the International Covenant on Civil and Political Rights which provides that minorities should be able to enjoy their own culture. While this is generally essential, it should not be overlooked that in many parts of the world there are minorities which have been brought up in accordance with their own precepts of behaviour and traditions and that there may be differences between these and the law of the land. 'Enjoy' in this sense could be interpreted as an approval of practices which might be repugnant to natural justice.

On the subject of discretion and discrimination, the view was expressed that having a common penal code for a State or a federation was no guarantee that the law would weigh equally on every citizen and it was there that majority and minority interests sometimes received inadequate attention. It was felt that the courts had to be relatively free to interpret the law to fit situations not foreseen by the legal draftsmen. The point was also made that however virtuous or scrupulously impartial or strictly objective the police may be, they cannot ignore obvious breaches of the law which they have sworn to uphold simply because the arrest may provoke allegations of discrimination. The laws are made by the majority and the life styles of certain minorities may be in conflict with the legal norms in ways which the police cannot overlook without being accused of not doing their duty.

It was said that one way to demonstrate the existence of discrimination and unfairness in the application of the law was to note the numbers of people who were held in prison belonging to the different groups in the population. The proportion of those held in jail demonstrated not only the criminality as perceived by the working of the criminal justice system but also the uneven extent to which the criminal justice system weighs upon the different sections of a society.

Participants' attention was drawn to countries where the basic problem was prejudice against minorities. It was considered that further efforts should be made to bring these minorities into the

various processes of government and administration so that their views can be adequately represented and in order to enable them to identify with these processes. Criminal justice services should have officers recruited from minorities. Affirmative action was discussed. This would induce confidence and provide the services with personnel capable of understanding persons of minority groups.

A number of participants spoke on the issues of special treatment for minorities, illustrating this with examples of privileges accorded to minorities in their countries.

In connection with a barrister's view of the three themes, it was stated that the problem was one of balancing the right of citizens to live in a law-abiding community against the need to protect those who may be innocent but especially vulnerable to the investigating and court processes by reason of their age, ethnic background, intellectual incapacity, language difficulties, poverty etcetera. Reference was made to the differences between the adversary and inquisitorial systems in the implementation of human rights guarantees in criminal justice. Four cases highlighting these problems were examined in detail.

It was concluded that the Australian courts had recognised that juveniles and minority groups, including Aboriginals, migrants etcetera, need special protection to ensure that their basic rights were observed, and certain measures were being taken.

The judge had a vital role to play in both systems but would have difficulty functioning effectively unless he had before him opposing counsel with the highest professional standards. The right to legal aid must be established for those without the means to afford counsel.

Note was taken of the Australian Commonwealth Criminal Investigation Bill of 1981 which endeavours to give statutory effect to the English Judge's Rules, as applied in Australia and to many of the rights which have already been recognised by the courts.

B. THE HUMAN RIGHTS GUARANTEES FOR JUVENILES IN CRIMINAL JUSTICE SYSTEMS

In connection with theme II, 'The Human Rights Guarantees

for Juveniles in Criminal Justice Systems', participants also heard the following lectures of specific relevance:

(a) protecting the rights of juveniles in Continental and Anglo-Saxon systems of criminal justice; and

(b) law reform for the protection of juveniles.

In considering the question of protecting the rights of juveniles in continental and Anglo-Saxon systems of criminal justice, it was agreed at the outset, that the criminal justice system was an integrated system comprising the police, the courts, corrections and the social welfare agencies, operating together for the achievement of a common goal which is the prevention of crime and the treatment of offenders. Note was taken of the trend to socialise the criminal justice system. The social invasion of the judiciary gave rise to a number of questions to be answered in the light of the new philosophy of the administration of justice. The most fundamental question to bear in mind was how to strike a balance between welfare and rights.

Some consideration was given to the impact of socialising the criminal justice system on judicial proceedings. It demanded a redefinition of 'delinquency' and 'deviant behaviour'. It was noted that the traditional legal judicial and procedural aspects of the court proceedings were being reviewed in the light of the new approach. Another aspect was the sentence and its associated consequences.

The Anglo-Saxon and Continental systems both adopt safeguards for the protection of the rights of juveniles. Consideration was also given to the problem of whether to include in the concept of juvenile delinquent children those who showed signs of maladjustment, social instability, uncontrolled behaviour, those who were neglected or abandoned as well as those who merely showed signs of deviance and criminal activity. While juvenile courts are often entrusted with jurisdiction over these categories of children, certain authorities have pointed out that their conduct does not necessarily involve criminal behaviour.

Therefore these non-criminal behavioural problems would be better dealt with by the family or by some other agency like the school, organisations for social welfare, private institutions, counselling clinics etcetera. The prime objective was what had to be done in the best interests of the child and in the best interests of the State. Above all, the child's constitutional rights should not be infringed in the name of welfare. Where welfare agencies are empowered to make decisions which could affect the rights of a child such decisions should be subject to review by a court. Then it was important that the Appellate Court should have the power to review all court decisions involving juveniles including dispositions on delinquency cases and the review of any decisions by social agencies. Such judicial recourse would provide a safeguard against undue social and/or judicial action or sentence.

It was thought important, that all concerned with the administration of juvenile courts should have special professional training related to the problems of juvenile delinquency and the treatment of juveniles. Note was taken of the fact that proceedings before juvenile courts need to become more informal and flexible. It was pointed out, that even when the normal criminal courts hear juvenile issues, the proceedings should accommodate their purpose which is mainly protective and not penal. The arguments for not departing from due process of law in juvenile proceedings were examined. Mention was made in respect of basic rules of procedure to be followed in juvenile cases and in a differentiation between juvenile offenders and juveniles in need of care and protection. An analysis was made of the actual situation of the juvenile in the criminal justice system. It was agreed that the guarantees provided for juveniles fell into two categories. The first included the procedural rules which ensured a fair trial and due process of law applicable also to adults, the second included special guarantees demanded by the particular situation of juveniles in the criminal justice system.

Because of the peculiar aspect of juvenile cases in the criminal justice system, special guarantees are or should be provided for the protection of the rights of the child. The factors which play an important role in the making of the referral decision by a police officer or by a social agency were considered. The view was expressed, that considering the negative consequences on the juvenile which could ensue as a result of an erroneous or unwise decision in referring a case to the courts or another agency, certain control should be exercised on such discretionary power vested in the police officer or the social agency.

Special training for police involved in this capacity was essential. Some prevailing practices in Australia, Belgium, Japan and the United States of America were examined. As regards the subject of unlawful or unfair arrest, it was said that the basic guarantee rests on legal provisions forbidding arrests except on a probable cause and only when the situation necessitates the confinement of the juvenile in a remand home. Superior judicial control over the detention order should be available. Recourse on the grounds of *habeas corpus* or its equivalent provisions should be available to the juvenile and his parents against custody. Release with or without bail should be made available whenever possible. It is important that this requirement should not be impeded by making the bail prohibitive.

On the protection of the rights of the juvenile during the treatment stage following sentencing, it was observed that recourse procedures should be made available to juveniles and their parents in respect of violation of the ethics governing the daily life within the institution. In this regard, reference was made to the obligations of States arising under the provisions of the United Nations Standard Minimum Rules for the Treatment of Prisoners which by implication suggest similar rules for the treatment of young people who may not be prisoners but are in institutions. The United Nations Draft Convention on the Rights of the Child which states that States parties to the present Convention shall ensure competent supervision of officials and personnel of institutions directly responsible for the care of children. This raises the question whether the United Nations should not consider the need for Standard Minimum Rules for children and young people held in institutions.

The course concerned itself also with the question of Law Reform for the protection of juveniles. The need for a distinctive system for young offenders can be and is being challenged in some quarters. The views of the Australian Law Reform Commission in its recent report on Child Welfare were considered. The Commission had concluded that distinctive procedures for the young offender should be retained having regard to the child's lack of maturity, vulnerability, and the fact that in many cases children were not free agents, were still developing their personalities and often had difficulties in understanding legal procedures. However the Australian Law Reform Commission had not recommended juvenile

welfare panels to divert young offenders from the courts – preferring the police warning system followed by court appearances for delinquency.

With regard to police procedures it was proposed that certain basic protections should be provided relating to interviewing, use of the power of arrest, fingerprinting and photographing, detention in custody and the exercise of the discretion to prosecute. It was suggested that a child should normally be interviewed by the police only in the presence of a parent or other suitable adult. It was further suggested that violation of this rule could empower the court to refuse to admit a child's confession but such a confession should be admissible if the circumstances were such that it would have been impractical for such a witness to be present. Police use of their power to arrest children should be carefully controlled.

A child in custody should be brought before a court as soon as possible. Clear and public guidelines should be formulated to control the police in the exercise of their discretion. The law should make it plain that a child should be prosecuted only if such a course is clearly justified. The child should have access to legal representation. The courts' dispositional orders should be flexible and non-specific and should allow maximum opportunity for the exercise of administrative discretion. Such court orders should be no more than a broad framework designed to permit welfare workers to do what is in the child's best interests. Further, no hint of a tariff system of sentences should be retained since society's intervention is designed as a response to the child's needs rather than to his offence. Thus a relatively minor offence might disclose serious needs and it is to the meeting of these needs that the order should be directed.

Recognising the conflict between the lawyer and the social worker the course held the view that a balance could be achieved at the dispositional stage. In consultation with the social worker, the court should determine the conditions of a probation or supervision order and it should be subject to close supervision. It should be possible for the child to be brought back before the court and variations made.

Referring to the problem about some particular situations in which society is justified in intervening in the lives of children and their families, the course expressed the view that coercive inter-

vention should be permitted only after the careful proof of clearly defined matters. On the question of the duration and nature of the orders made by the court when a child had been found to be in need of care, the course thought that the court's orders should be open-ended and suggested that the regular review of court orders should be mandatory.

Some participants expressed the view that the increasing crime rate for juveniles could be a consequence of parental abdication of their duties and responsibilities and a result of the application of more effective modern means of detection. There was one example of a low juvenile crime rate in one country where the responsibility for offences committed by the child rested with the parents till the child attained the age of 21.

In discussing the problem of whether the records pertaining to juveniles should be destroyed, participants heard of one country where this happened after the hearing of each case. The practice varied as between countries. Most participants however were disposed to favour the retention of these records to be used only by the police for a period not exceeding five years. However, it should not be possible for those records to be used for denying employment or for any other discriminating practice.

There was wide support for the views that suitable public defenders or legal aid schemes should be available. It was stated that in one country individual legal aid was made available both to the child and the parent.

It was thought important, that separate remand and detention facilities should be made available for juveniles. In this connection, participants were at one in pointing out the possibilities of contamination.

C. THE HUMAN RIGHTS GUARANTEES FOR STANDARDS OF ETHICS IN CRIMINAL JUSTICE SYSTEMS

In connection with theme III, 'The Human Rights Guarantees for Standards of Ethics in Criminal Justice Systems', the course heard the following specific lectures among others of relevant interest:

(a) The history of standard setting by the United Nations and its future;

(b) Outlines of the Islamic penal system;

(c) United Nations action on the development of public information activities in the field of human rights across the world;

(d) Standard setting for correctional institutions;

(e) Monitoring standards of human rights by prison rates;

(f) Implementation of standards at the national level; and

(g) Problems of human rights in a modern prison setting.

The course took note of the current practice of the United Nations in terms of standard setting. It looked first at its authority deriving from the provisions of the Charter with particular reference to the provisions of Articles 1, 55 and 56. It noted also the powers of the General Assembly under Article 13, paragraph 1 and those of the Economic and Social Council under Articles 62, 68, 76 and 73. Second, it noted the functional organs and bodies involved in the evolution of human rights standards within the United Nations system. In addition to the General Assembly and the Economic and Social Council there were the Commission on Human Rights, the Commission on the Status of Women, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the specialised agencies. The modalities of preparation were also considered. As regards the future of standard setting in the field of human rights in the United Nations system, note was taken of the ongoing work on the Draft Principles on Equality in the Administration of Justice, Migrant Workers, Non-Citizens, the Convention on the Rights of the Child and the Draft Code of Conduct for Law Enforcement Officials.

ISLAMIC LAW

Taking advantage of the consultants' expertise in the field of Islamic Law – and in view of the interest in this subject in several countries of the region which were considering the Islamisation of Law – the course considered the question of Islamic Law and Human Rights.

In the area of Criminal Liability under Islamic Law, the following points, *inter alia,* were made:

> The bases of criminal liability under Islamic Law were the same as under any other system of law. For a person to be held criminally liable for an act punishable by law, he must have committed a criminal offence and have done so voluntarily, if the offence was intentional, and recklessly or negligently if the offence was unintentional. Second, at the time of the act, such person must have been in possession of his mental faculties and of sound mind, must have been free and must not have acted under physical or moral duress. These conditions set the limits to criminal responsibility and the grounds for exemption. Minors benefit from a special status. However, the question of discernment arises as from the age of 12 years (under the old Ottoman Code, it was from the age of 13 years). Insane persons and the mentally deranged are entirely exempt from criminal responsibility, but measures may be taken for their protection and treatment. Guardians may be appointed to take care of them. Physical and moral duress, together with *force majeure,* are grounds for exemption of responsibility, as are self-defence and necessity. There was much discussion as to whether in cases other than self-defence and *force majeure,* the victim was entitled to compensation for injury caused by the insane. Opinions are divided and it is not thought that any point would be served by going into the matter within the context of this study. Lastly, circumstances giving rise to acquittal or mitigating circumstances are recognised under Islamic penal law. It is for the judge to determine whether such circumstances exist and the duration or nature of the initial penalty and of the substitute penalty when no statutory penalty or penalty giving rise to retribution is involved.

With reference to the severe statutory (Hädd) punishments often quoted by people not familiar with Islamic Law, it was observed that these were punishments inflicted only in extreme cases and with so many procedural and substantive requirements that in practice these punishments (limited to five specified offences) form a very small part of Islamic Law and are directed more to the prevention of the offence than towards the punishment of the offender.

It was also noted that based on rules of legal construction and on the power of judicial discretion, the Islamic penal criminal law system was an evolutionary system that adapted readily to the needs of the moment.

PUBLICITY

United Nations action on the development of public information activities in the field of human rights was discussed. Its activities in this regard were consistent with the provisions in the Charter requiring action for promoting and encouraging respect for human rights and for harmonising the actions of nations. The texts of the Universal Declaration of Human Rights and the International Covenants comprising the International Bill of Human Rights have been published and widely distributed in many languages. The General Assembly has on a number of occasions issued instructions for the dissemination of information on issues such as decolonisation, the right to self-determination, Namibia, the rights of the Palestinian people and the termination of all forms of racial discrimination. Other methods and procedures issued by the United Nations to publicise its activities in the field of human rights were special publications, commemorative observances of Human Rights Anniversaries – and its Advisory Services program which comprises teaching, the award of fellowships, the holding of seminars and training courses and the provision of expert services at the request of Governments.

STANDARD SETTING

The course also dealt with the subject of standard setting for Correctional Institutions. The assertion was made that imprisonment as a means of preventing or controlling criminal behaviour was only of limited usefulness as a protector of the community. The pertinent authorities were urged to direct their thinking to less costly and less repressive responses to crime. However it was acknowledged that for the foreseeable future there would be imprisonment in some form. Therefore attention had to be directed to the standards necessary to ensure respect for the human rights and dignity of those kept in custody.

It was not disputed that the authorities concerned had a responsibility to ensure that prisons met the requirements of the United Nations Standard Minimum Rules for the Treatment of Prisoners. Reference was made to a number of attempts at prison reform including the Just Community Program and the Swedish

experiment. The course noted that the United Nations Standard Minimum Rules for the Treatment of Prisoners adopted by the Economic and Social Council were the current international expectation in this regard. It also noted the attempts of member States to establish Minimum Guidelines for their own purposes, for example, the American Correctional Association and the National Advisory Committee on Criminal Justice Standards and Goals. Reference was made to the 1973 movement by the Council of Europe to publish its own Standard Minimum Rules and to the Discussion Paper on Minimum Standard Guidelines of the Australian Institute of Criminology.

It was noted however that the Australian Guidelines while generally accepted in principle by Australian correctional authorities had not yet received wide support from Australian Administrators of Corrections and their Ministers. Objections had been raised to some of the particular guidelines by correctional administrators. The most contentious were:

(a) a prisoner's access to records held about him;

(b) a prisoner's right to choose his hair style or wear a beard;

(c) a prisoner's right to use telephones to communicate with the outside world; and

(d) a remand prisoner's right to his own food, purchased at his own expense from outside the prison.

The impact of forced separation on prisoners' wives is receiving attention. Recommendations for alleviating the problems of wives of prisoners include improved publicity for travel assistance for visits, extending the use of volunteers (for example, to provide child minding and transport), further improvement to visiting facilities, introduction — but on a selected basis — of conjugal visits, providing early information to wives about the community supports available, extension of departmental counselling services and the introduction of community-based marital and family counselling services into the State's prisons.

It was noted that conjugal visits were already permitted in one State in Australia and the same State has introduced a system of reverse-charge telephone calls.

The course gave some consideration to the question of monitoring standards of human rights by prison rates. Imprisonment rates are defined as the number of prisoners per 100,000 of the general population.

Research achieved to date was summarised in three tentative conclusions:

(a) There is sometimes found a slight tendency for imprisonment rates to be high where crime rates are also high.

(b) There is no evidence to support the proposition that the high use of imprisonment results in lower levels of crime.

(c) Very recent research tends to show that two or three years after crime rates have increased, imprisonment rates decrease, rather than increase, as commonsense might have suggested.

Bearing these tentative conclusions in mind, particularly the second, and also bearing in mind the enormous costs and human misery caused by imprisonment, it seems reasonable to suggest that the human rights of citizens, even citizens who break the law, are best protected by keeping the use of imprisonment to an absolute minimum. Furthermore, it was suggested that the imprisonment rate, as defined earlier, could be regarded as a thermometer reading of the health of criminal justice systems. If the rate is abnormally high, the system may be sick and careful attention to the causes and possible cures needs to be given. It was argued that wherever the imprisonment rate was found to be over 100 than there was need to ask if there were special reasons why this were so.

Legitimate reasons may exist for high imprisonment rates in particular places at particular times. In situations, for example, of acute internal unrest, where civil order is in danger of breaking down or when there is widespread defiance of the law, one might expect to find a high imprisonment rate for a short time.

It was admitted that some potential offenders were deterred by the possibility of being punished, but those States which had high imprisonment rates did not seem to have lower rates of crime. Research findings from a study of a sample of statistics on Asia and the Pacific countries reveal *inter alia,* that probation and

parole do not necessarily have the effect of reducing prison numbers. On the contrary, it was found that those jurisdictions which had high imprisonment rates also had high rates of both probation and parole. Conversely where there were low rates for imprisonment there were also generally low rates for the use of probation and parole.

This rather disturbing research finding should not be used as an argument against the establishment of probation and parole programs. Rather, the findings should be regarded as indicating the need for probation and parole to be used very carefully so as to ensure that the end result is not an ever-increasing number of people being placed under one or other form of correctional supervision. Alternatives to imprisonment must be used as just that – not as alternatives to other penalties such as fines or bonds. Used in the right way probation and parole programs were worthwhile additions to the correctional armoury.

As regards the implementation of standards at the national level, it was emphasised that in the determination of the content and the extent of enjoyment of human rights in the field of criminal justice it was necessary to effect a balance between competing interests, such as balancing the rights of accused persons and prisoners with the rights of the victims of crime and the general public.

There were advocates of the view that adjustment and additions may be required to existing instruments on human rights to take account of changes in the forms and dimensions of crime and the economic and social costs of crime. A question considered was whether there was a need for instruments to recognise more specifically the basic right of the individual, subject to appropriate limitations, to protection from crime and to compensation for loss suffered from crime.

The International Bill of Human Rights was silent on the rights of the victims of crime and the emphasis was always on the protection of the accused rather than victims. The course focussed attention mainly on the International Covenant on Civil and Political Rights. Other instruments considered, included the Optional Protocol to the International Covenant on Civil and Political Rights, the Standard Minimum Rules for the Treatment of Prisoners, the Draft Principles on Freedom from Arbitrary Arrest and Detention, the Draft Principles on Equality in the

Administration of Justice, the Declaration on Torture and the Code of Conduct for Law Enforcement Officials.

These instruments refer to the introduction of legislation, the provision and enforcement of effective remedies and the provision of reporting procedures, complaint and investigative procedures and conciliation processes.

The International Covenant on Civil and Political Rights provides for implementation not only by legislation but also by other measures. Action by administrative and executive authorities is contemplated as well as action by legislative and judicial authorities. Second, there is a requirement to provide 'effective' remedies. Third, the Covenant places an emphasis on the rights of 'persons' and on the development of processes to respond to individual complaints.

Against this background, four implementation principles have been under consideration in Australia at the federal level. First, the need for legislation to supplement common law guarantees of human rights; second, the need for effective remedies; third, the need for administrative machinery or national institutions to investigate violations and undertake conciliation; and fourth, the need for education and research. The view is taken that all of these principles need to be brought into operation if maximum results of a long-term, as well as a short-term, nature are to be achieved. Each of the principles plays an important role in the implementation of international conventions establishing norms and guidelines in criminal justice. In relation to instruments that do not have the status of conventions, the focus of attention fell on the third and fourth principles.

Legislative provisions provided important safeguards to supplement the common law, where common law guarantees do not exist or do not operate satisfactorily.

No dissent was expressed on the importance of specific and detailed legislation. Specific legislation could deal with individual problems relating to human rights with a particular and comprehensiveness that could not be achieved by means of judicial interpretation of general guarantees. Australia takes the view that the International Covenant allows a choice to be made by States parties as to the type of legislation utilised – whether general or specific. In Australia, the *Criminal Investigation Bill* (1981) and

the *Racial Discrimination Act* 1975 are examples of specific legislation.

The central focus of action taken by the present Government of Australia for the implementation of the International Bill of Human Rights has been on the introduction of legislation for the establishment of a Human Rights Commission. The Human Rights Commission inaugurated on 10 December 1981 has the function of reporting on laws that should be enacted by the Commonwealth on matters relating to human rights. 'Human Rights' is defined as the rights recognised in the International Covenant. The functions of the Commission include those of investigating complaints by individuals of infringements of the rights recognised in the Covenant, endeavouring to effect a settlement by conciliation and undertaking programs of education and research to promote the observance of human rights. The Commission is one of the first bodies established at the national level specifically to deal with complaints of infringements of the rights set out in the Covenant.

Legislative provisions, that are declaratory only, need to be supplemented with a framework of practical and effective remedies. In Australia, they include specific legislation, common law, the rules of criminal procedure, the prerogative writs, legal aid, investigations by Ombudsmen, commissions of inquiry and other bodies, parliamentary processes, the operation of the Rule of Law, the freedom of the press, the pressure of public opinion and the system of representative and responsible government.

It was desirable for administrative machinery or national institutions to be established to investigate complaints by individuals of infringements of rights on a systematic basis. It is thought that the utilisation of processes of mediation and conciliation is often a more satisfactory way of tackling individual infringements of human rights than reliance on legal processes. In this context, the course noted the report of the United Nations Seminar on National Local Institutions for the Promotion and Protection of Human Rights, held in Geneva in 1978.

Attention was drawn to the important role to be played by programs of education and research and other programs to promote human rights. This approach recognises the importance of programs designed to change attitudes that result in the denial of rights and to mobilise public opinion for the promotion of human rights, and

the need for this long-term approach to supplement action on individual complaints.

The final Document of the UNESCO International Congress on the Teaching of Human Rights held in Vienna in 1978 was also noted.

On the question of human rights in a modern prison setting, it was first observed that the problems of human rights as viewed by a prison inmate was entirely different to the problem as viewed by the prison administrator. The public may even have a different view. It was fundamental to have a clear conception of what were the legitimate purposes of imprisonment, since the right of prisoners can only be judged against the background of the purpose for imprisonment. It was said that a person was sent to prison as a punishment and not for punishment. The question was raised however as to what were acceptable minimum standards or conditions of incarceration. In this connection, the provision of Article 20 of the Charter of the United Nations was recalled and some relevant decisions of the United States Courts examined.

It was felt that the former restrictive attitude of the courts as regards the 'hands off rule', would appear to have been based on the assumption that it was in the best interest of the public to allow prison administrators maximum freedom in the running of their establishments.

It was important to demonstrate to law breakers that the law could protect them even when they were its outcasts. A number of court decisions of Australia, England and the United States of America which demonstrated that judges continued to expose the 'hands off' doctrine were examined. The point was made, that the courts were not always best placed to resolve prison disputes and to protect the human rights of prisoners. Judicial machinery was cumbersome, slow and expensive and though expert evidence as such was available to them, it was not always easy for judges to understand, much less review the internal management of prisons. Prisoners' complaints were many and varied. Some lent themselves to investigation by court procedures, others did not.

Attention was drawn to the fact that most prison systems had grievance mechanisms unrelated to court action. Such mechanisms permitted complaints to be brought to the notice of those in authority in a prescribed procedure and sometimes they were settled to the satisfaction of the complainant at that level.

It was considered that in matters of prison discipline, minor infractions of rules of discipline could be dealt with administratively by the prison superintendent but that major infractions involving criminal offences should be disposed of in a truly judicial setting.

The course noted that in the federal prison system of the United States of America, there was a formal procedure laid down involving the submission of a complaint to progressively higher levels of administration. A complete record was kept of the incident enabling treatment and review at a later stage by people not connected with the complaint and superior to those whose conduct was under review.

Note was taken of the use of visitors to gaols such as visiting justices or Boards of Visitors. By Act of Parliament, Australian judges both of the Supreme Court and District Court may visit gaols at any time. It was noted that in New South Wales, an appeal may be brought from a decision of the visiting justice to the district criminal court. The practice in some countries, noticeably France and Italy, to appoint a person or body for supervising a prisoner's sentence was mentioned. The idea of a prison ombudsman was also suggested as a possible form of an independent check on prison administration.

While agreeing that it was improper to subject another to torture or to cruel, inhuman or degrading punishment it was recalled that people's views of treatment and punishment have varied with time and will continue to do so.

It was agreed that prison officers should be properly trained. It was necessary however to bear in mind that in the execution of their duties, they were frequently called upon to make decisions and to act in urgent circumstances far different from the calm of a court room where their actions might later be called into account. That made it all the more important that the training should be 'task-oriented'. It was observed, that the prisoners' constitutional rights ought to be guaranteed and respected but it was difficult to determine whether classification and dispersal policies were violation of human rights. Another point calling for action was the extent to which prison authorities might be entitled to go on treating prison inmates in attempting to rehabilitate them. Another critical area was behaviour modification. The problem of overcrowding was acknowledged.

The provisions of article 25 of the Universal Declaration of Human Rights raised the question as to reasonable standards to be applied to inmates in respect of food, health, clothing etcetera. But some authorities maintained that a reasonable balance must be shown in view of the fact that the object of the incarceration was punishment.

The right of the prisoner to communicate with the outside world was also discussed. It was pointed out, that this could involve security problems.

Conjugal visits were discussed but participants recognised the difficulty of making general rules on a subject which had cultural and moral implications of a different nature in different countries.

Participants agreed that the implementation of Human Rights at the national level could be effective at four levels: the Constitution; the legislation; the agencies or bodies responsible for law enforcement; and the citizens.

It was said that at the Constitutional level most of the countries represented at the training course had constitutional provisions embodying the main principles of the International Bill of Human Rights whether these provisions were customary or in written instruments. Since the Constitution reflects the will of the people, it therefore reflects in each country the principles and rules which govern public life. Peoples are sovereign in spelling out their will to live under the reign of laws guaranteeing their basic rights and freedoms.

In enacting laws, the legislation cannot depart from these basic rights guaranteed by the constitution. However, to guarantee such full compliance with the constitutional rights, a certain control should be exercised to ensure respect. It was suggested that by empowering the supreme courts to take cognisance of constitutional issues, whenever such capacity was not yet provided by the law of the land, an effective control could be achieved over the Acts passed by legislators. However, this formula does not exclude the implementation of administrative or *ad hoc* commissions to exercise control over the constitutionality of the laws.

As to the implementation of Human Rights within the criminal justice system in operation, it was the view that much depended on the level of professional training among the law enforcement officers, judges, correctional officers and social welfare workers. It was suggested that it was desirable to elaborate and to enforce

codes of ethics wherever such codes did not exist or were not in force. Human factors play an important role in making effective provisions aimed at guaranteeing the rights of citizens involved in the criminal justice system. One should not overlook the role played by public opinion, mass media, private associations who exercise a monitoring role on the effectiveness of the constitutional and legal guarantees in public life.

This implies that the citizens themselves who form the source of public opinion, should be aware of their obligations and rights in the society where they live. Therefore, emphasis should be put on legal education as a means toward enlightening people on their obligations and rights and toward awakening in their conscience the sense of civics.

It was agreed that the degree of dissemination of knowledge on human rights and legal issues was still not satisfactory in more than one country. Special efforts were needed in this field to facilitate the introduction of civic and legal education in schools through specific programs among the professionals, through training courses and seminars, and among the public at large through specially devised programs disseminated by audio-visual means and other public communication systems.

In this respect, the United Nations role would be to widen its sphere of action so as to encompass fields of information not yet covered or insufficiently covered in order to promote the dissemination of the international instruments on human rights and to organise international and regional meetings and seminars so that people interested in human rights would be kept aware of the development of national and international actions in the field.

The participants at the present course expressed their belief that such courses were always beneficial to the member States and to officials involved in the implementation of human rights. They expressed the wish to see such courses held more frequently, thereby allowing a wide range of professional people to attend them and acquire accurate information and experience in their respective fields of action. It was also suggested that it would be valuable if officials attending seminars and congresses could brief their subordinates on issues which contributed to the improvement of the performance of their duties in the light of recent developments in their respective fields of action.

D. THE HUMAN RIGHTS OF ETHNIC GROUPS IN IMMIGRANT COUNTRIES

The course examined a number of issues related to the topic. The first was the rights of migrant defendants in criminal justice. It considered the question of whether ethnic groups were represented in national and local government, and among magistrates, police and corrections staff in proportion to their numbers in the community. It was said that this mix need not be a question of positive discrimination. Objective educational standards had little to do with it; the professional skill wanted here was the capacity to relate to the community to be policed; and in this respect ethnics have experience which training alone cannot supply. It was thought important that the migrants should have the right to interpreters and to contact support at every turn, both for migrant criminals and for migrant victims of crime. Some consideration was also given to the question of deportation and extradition. The issues of rehabilitation were considered in connection with whether repatriation or deportation should prevail as a policy.

The course also lent some time to the rights of refugees and emigres. The discussion on this revolved around the provisions of the Convention on the Status of Refugees, 1951, and its Protocol; the Agreement on Refugee Seamen; the Convention on the Status of Stateless Persons; and the Convention of the Reduction of Statelessness. Reference was also made to Declaration on Territorial Asylum, 1967. The nature of ethnicity was also discussed under the topic 'Ethnicity as a value and as a disvalue'. The view was expressed that ethnicity touched on criminological questions of racism, cultural genocide, nationality, repatriation and asylum. All these overlapped. It was felt that the right to ethnicity was not unqualified. References in this context were made to the Charter of the United Nations, article 2 of the Human Rights Covenants and article 27 of the International Covenant on Civil and Political Rights. On the question of ethnic victimity, it was said that without an exemplary submission to the rule of United Nations law national leaders were not pursuing anyone's rational interests, since survival itself depended upon first securing humanity's common interests.

There was some examination of discrimination on the ground of religion. The Declaration on the Elimination of Intolerance Based on Religion and Belief adopted by the United Nations in 1981 was referred to among other relevant instruments.

The concept of racism was dealt with, with particular references to the Charter of the United Nations, Articles 1, 13 and 55, the Universal Declaration of Human Rights, article 2, and the Declaration on the Elimination of all Forms of Racial Discrimination, the Convention for the Suppression of White Slave Traffic, the Code of Offences against the Peace and the Security of Mankind, the Convention on the Elimination of All Forms of Racial Discrimination and the procedures for implementation contained in these instruments.

Cultural genocide was also discussed. It was felt that cultural genocide could not be regarded as a distinct crime. The concept was vague and it appeared to be a non-criminal violation or deprivation of rights. There was a cognitive dissonance in claiming or attempting to guarantee a human right for the protection of ethnicity, as of racial purity.

On the issue of guarantees, it was suggested that they could be enforced only through submission to United Nations tribunals, that the best sanction was the moral support of an educated public opinion, and that such an education would gradually dissolve and merge the world's several ethnicities.

The course felt that ethnics also had duties in general. Migrants had unique opportunities for growth, but the difficulties of change might have the opposite effect of inducing them to retreat into the false security of the fading memory of the past. Adaptation, for all, involved a continuous redefining of one's cultural boundaries, a new inclusiveness and a new purging, a new way of relating and belonging.

E. HUMAN RIGHTS COMMISSIONS AND THEIR FUNCTIONS

Participants noted that Human Rights Commissions existed either as international commissions, regional international commissions, national commissions or provincial commissions. They noted that it was important to identify the kinds of functions the different commissions performed and to suggest a list of benchmarks to which policy makers could refer when deciding whether to establish a Human Rights Commission. It was suggested that the precise form the Commission would take in a particular country would depend to a significant degree on the situation in that country. By way of illustration, it was said that in Australia, the authorities were not permitted to legislate for a Human Rights Commission applying to all federal and State laws, partly because of constitutional restraints, but more significantly because of resistance by the States within the federation to what they would have thought would have been interference by the Commonwealth in their area of responsibilities. In some countries, the urgent operative cause may be racial discrimination, in which case the Commission may be directed particularly towards eliminating racial discrimination. In other cases, the country may have a Bill of Rights, in which case the role of the Commission may be less one of enforcement that of inquiry and investigation.

The course examined the following representative group of Commissions:

(a) **International**
- Commission on Human Rights (United Nations)

(b) **Regional**
- Commission of Human Rights (European)
- Inter-American Commission on Human Rights

(c) **National**
- Civil Liberties Commissioners (Japan)
- Commission for Racial Equality (United Kingdom)
- Commission on Civil Rights (United States of America)
- Human Rights Commission (Australia)
- Human Rights Commission (Canada)
- Human Rights Commission (New Zealand)

(d) **State/Provincial**
- Commissioners for Equal Opportunity (three Australian States)
- Standing Advisory Commission on Human Rights (Northern Ireland)
- State Division of Human Rights (New York)

Analysing the functions of these commissions, it bore in mind the title of the seminar and consequently observed that the word guarantees had many potential meanings. At one extreme, it could be said that the only sure guarantee of a right was that it was enshrined in an unalterable constitution. At the other end of the scale, the view could be taken that rights were guaranteed where there was available some form of public ventilation of a complaint, so that people generally, and in particular those in authority, could become aware of the alleged violation of human rights. There was a wide range of institutional arrangements designed to give people some assurance that their rights would be respected.

For the purpose of its discussion, which was about guarantees, four categories were identified under which the 14 bodies were listed. The categories, and the institutions involved, were:

(a) Conciliating agencies – community oriented
Civil Liberties Commissioners (Japan)

(b) Reporting/Advising agencies – government oriented
Commission on Civil Rights (United States of America)
Commission on Human Rights (United Nations)
Inter-American Commission on Human Rights
Standing Advisory Commission on Human Rights (Northern Ireland)

(c) Investigating/Conciliating agencies – court or tribunal-oriented
Commission for Racial Equality (United Kingdom)
Commissioners for Equal Opportunity (three Australian States)
European Commission of Human Rights
State Division of Human Rights (New York)

(d) Investigating/Conciliating agencies – oriented in part to courts or tribunals but also to Governments and in some cases to the community
Human Rights Commission (Australia)
Human Rights Commission (Canada)
Human Rights Commission (New Zealand)

F. THE ASIAN AND PACIFIC APPROACH TO HUMAN RIGHTS IN THE ADMINISTRATION OF CRIMINAL JUSTICE

The training course noted the traditional international approach to the concept of human rights. It was suggested that the approach was an inadequate statement of a very complex tradition with regional variations across the world. The fundamental inadequacy of such statements was that they were Western conceptions of human rights and in their more general orientations, they needed broadening in order to take fuller account of a number of different dimensions of thinking about human rights.

Looking at the Western and Eastern perspectives it was said that there was no doubt that the Universal Declaration of Human Rights applied to everyone in the human family. Inalienable rights to life, liberty, property, education, and the rest cannot be dependent in any way on differences of cultural interpretation. Nevertheless, as in the application of any set of general principles the practice will be culturally conditioned. When this was taken into account the importance of considering different perspectives was underlined.

In considering the question of rights and reciprocal obligations, it was stated that the Asian, African and Pacific peoples have never needed any lessons in this respect. Their traditions, their history, their philosophies have hardly ever acknowledged rights as a separate concept from responsibilities. The example of the system of social control among the Trobriand Islanders in Papua New Guinea was referred to. Some consideration was also given to custom, philosophy and practice and it was interesting to find differences of conceptualisation creeping into the actual Asian and Pacific implementation of legal systems which they have either imported from the West or had superimposed on their culture by the West. This was demonstrated by the way in which the Japanese, the Philippinos and the Koreans provided for Public Prosecutors to exercise a very wide discretion over the question of whether cases should go to court. It was noted that even where offences have been committed and the evidence is overwhelming, there may be no need for a court hearing if the parties can agree to a settlement and if appropriate reparation, compensation (and of course apologies) are tendered. This is tantamount to a civil law

approach to criminal law; but this is so because some societies do not feel the need for criminal law to solve their crime problems.

It was agreed that in interpreting human rights in Asian and Pacific terms, one had to acknowledge the cultural variations. This was true in other regions of the world. Justice is never universally conceived in Western terms and this has to be recognised.

G. GUARANTEES FOR POLICING STANDARDS IN THE CRIMINAL JUSTICE SYSTEM

In connection with this topic, the participants noted that notwithstanding the role of Parliament in making the laws which the criminal justice system administers, it was the policeman as the law enforcement officer who normally started the wheels of the criminal justice system moving in any particular case such as investigating and charging a person with an offence or a crime, arresting or making application to a court for the issue of summons to answer a charge, or obtaining a warrant from a justice to search a person's home and premises for evidence of an offence or crime. It was thus agreed that the policeman is normally first to be seen to affect the individual's liberty and the freedom of his home.

It was observed that Australian police system is derived from the English system. It was said that police forces in Australia were instruments of the State striving through their institutional accountability to the Government, the Parliament and the people and their individual answerability to the courts, to be neutral or impartial between citizens and between the individual and the State.

It was said that a balance needs to be struck between the measures necessary to protect the community and those measures which the community is willing to accept in order to be protected. Note was taken of the view that a review of the working of this balance has been taking place in Australia. In this connection, reference was made to the Royal Commissions and inquiries held in most Australian States and in the Commonwealth sphere, and also of the new arrangements and legislation that have arisen as a result.

Among a variety of mechanisms through which control of the police was effected, mention was made of the answerability to the courts, the disciplinary code and the impartial investigation of

complaints, the accountability of the police organisation to the Government, the Parliament and the public and the regulation of police powers and procedures by Parliament through legislation.

H. HUMAN RIGHTS AND THE MENTALLY DISABLED IN THE CRIMINAL JUSTICE SYSTEM

Reference was made in this connection to the classical school of criminology founded on the belief that people who committed evil acts, voluntarily committed such acts and, therefore, were fully responsible for their actions. The positivist school of criminology, however, questioned the concept of free will. The idea that people were equally responsible for their actions was questioned. Treatment rather than punishment was thought to provide the key to crime control. Contemporary criminal justice systems have adopted an approach under which the concept of free will and equality of all persons has been qualified in a way that takes account of a person's idiosyncracies. The differences tend to be reflected in the sentencing policies, rather than in the determination of guilt. In the area of sentencing factors personal to the offender are taken into account.

In this regard, the offender's mental health is of primary consideration. It was noted that the law attempts to reflect morality because we do not intend to punish those who cannot appreciate the nature and quality of their actions. Despite the concept of strict liability arising on the statutes, the common law principle that a person who commits a prohibited harm does not thereby attract liability to punishment unless that person can also be regarded as being morally blameworthy for the act, is still the prevailing philosophy of the criminal law. In other words, *actus non facit reum nisi mens sit rea.* It was, therefore, disturbing that persons found unfit to plead could find themselves detained for an unspecified period of time in circumstances that might readily be compared with a sentence of life imprisonment. It was observed that there has been little change since 1800 in the proceedings for holding persons who are held unfit to plead or who have been acquitted on the grounds of insanity.

The question of human treatment also received some consideration by the course. The point was made that the mental

health system may be no better than prisons in providing a merciful and humane environment. Prevailing mental health laws, practice of over-prescription of drugs which may constitute a serious violation of human rights, surgical intervention, and/or electro-convulsive therapy used as a means of changing behaviour, were discussed. How mental illness is defined is of critical importance. It was certainly not enough to leave the definition solely in the hands of the medical profession. The decision to hold a person in an institution against his or her will involves ethical as well as medical judgement. As to the right of prisoners to accept or reject treatment, suggestions were being made in this regard in the appropriate forum dealing with the issue.

Annex I
Program

Themes

I. The Human Rights Guarantees for Minorities in Criminal Justice Systems

II. The Human Rights Guarantees for Juveniles in Criminal Justice Systems

III. The Human Rights Guarantees for Standards of Ethics in Criminal Justice Systems

A. For Minorities, for Juveniles and for Standards of Ethics in the Criminal Justice Systems

Lectures on I, II and III

1. Asian and Pacific Approach to Human Rights in the Administration of Criminal Justice — Mr W. Clifford, Director, Australian Institute of Criminology (Canberra)
2. Activities of the United Nations Division of Human Rights in Asia and the Pacific, Past and Future — Mr K.F. Nyamekye, Deputy Director, Division of Human Rights, United Nations (Geneva)
3. Human Rights Commissions and Their Functions — Mr P.H. Bailey, O.B.E., — Deputy Chairman, Human Rights Commission (Canberra)

4. Police View of the Three Themes – Mr J.C. Johnson, Deputy Commissioner, Australian Federal Police (Canberra)

5. The Courts and the Three Themes – The Honourable Mr Justice L.K. Murphy, High Court of Australia (Canberra)

6. A Barrister's View of the Three Themes – Mr T.A. Walsh, Q.C., Barrister, Perth (Western Australia)

7. Human Rights of Women in the Criminal Justice System – Mrs H. Larcombe, SM (Sydney)

B. For Minorities in Criminal Justice Systems

Lectures dealing with Theme I

1. Safeguarding the Rights of Minorities in the Criminal Justice Systems – W. Clifford

2. The Special Position of Indigenous Peoples – Senator N.T. Bonner – Senator for Queensland, Parliament of the Commonwealth of Australia (Canberra)

3. The Human Rights of Ethnic Groups in Immigrant Countries – Mr S.W. Johnston, Reader-in-Charge, Department of Criminology, University of Melbourne (Australia)

4. The Human Rights of the Mentally Disabled in the Criminal Justice System – Mr I. Potas, Senior Research Officer, Australian Institute of Criminology (Canberra)

C. For Juveniles in Criminal Justice Systems

Lectures dealing with Theme II

1. Protecting the Rights of Juveniles in Continental and Anglo-Saxon Systems of Criminal Justice – Dr M. El Augi, Judge of the Supreme Court, Lebanon

2. Law Reform for the Protection of Juveniles – Dr J. Seymour, Senior Criminologist (Legal), Australian Institute of Criminology (Canberra)

D. For Standards of Ethics in the Criminal Justice Systems

Lectures dealing with Theme III

1. Appropriate Standards of Policing Human Rights – The Honourable K.E. Newman, Minister for Administrative Services, Parliament of the Commonwealth of Australia (Canberra)

2. The History of Standard Setting by the United Nations and its Future – Mr K.F. Nyamekye

3. Human Rights in Islamic Law – Dr M. El Augi

4. United Nations Action in Dissemination of Public Information on Human Rights Across the World – Mr B. Pissarev, Chief, Advisory Services and Publications Section, Division of Human Rights, United Nations Office (Geneva)

5. Standard Setting for Correctional Institutions – Mr C.R. Bevan, Assistant Director (Training), Australian Institute of Criminology (Canberra)

6. Monitoring Standards of Human Rights by Prison Rates – D. Biles, Assistant Director (Research), Australian Institute of Criminology (Canberra)

7. Implementation of Standards at the National Level – P.R. Loof, First Assistant Secretary, Attorney-General's Department (Canberra)

8. Problems of Human Rights in a Modern Prison Setting – The Honourable Mr Justice N.F. Nagle, A.O., Chief Judge at Common Law, Supreme Court (Sydney)

9. Improving Documentation and Communication on Human Rights – Dr M. El Augi

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Judge of the Supreme Court, Lebanon

Mr W. Clifford
Director, Australian Institute of Criminology, Canberra, Australia

Lecturers

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Annex IV
Lectures and Other Papers Distributed to Participants

Lectures and Opening Addresses

Opening Address by the Attorney-General — The Honourable P.D. Durack, Q.C.

Welcome Address to the Human Rights Course on Guarantees in the Administration of Criminal Justice — Mr W. Clifford, Mr P.R. Loof and Mr K.F. Nyamekye

Appropriate Standards of Policing Human Rights — The Honourable Mr K.E. Newman

Asian and Pacific Approach to Human Rights in the Administration of Criminal Justice — Mr W. Clifford

Activities of the United Nations Division of Human Rights in Asia and the Pacific, Past and Future — Mr K.F. Nyamekye

Safeguarding the Rights of Minorities in the Criminal Justice System — Mr W. Clifford

Protecting the Rights of Juveniles in Continental and Anglo-Saxon Systems of Criminal Justice — Dr M. El Augi

The History of Standard Setting by the United Nations its Future — Mr K.F. Nyamekye

Human Rights Commissions and Their Functions — Mr P.H. Bailey, O.B.E.

Human Rights in Islamic Law – Dr M. El Augi

The Special Position of Indigenous Peoples – Senator N.T. Bonner

The Human Rights of Ethnic Groups in Immigrant Countries – Mr S.W. Johnston

United Nations Action in Dissemination of Public Information on Human Rights Across the World – Mr B. Pissarev

Law Reform for the Protection of Juveniles – Dr J. Seymour

Discussion on the Protection of Juveniles – The Honourable Mr Justice M.D. Kirby

Standard Setting for Correctional Institutions – Mr C.R. Bevan

Monitoring Standards of Human Rights by Prison Rates – Mr D. Biles

Implementation of Standards at the National Level – Mr P.R. Loof

A Police View of the Three Themes – Mr J.C. Johnson

The Courts and the Three Themes – The Honourable Mr Justice L.K. Murphy

Problems of Human Rights in a Modern Prison Setting – The Honourable Mr Justice N.F. Nagle, A.O.

A Barrister's View of the Three Themes – Mr T.A. Walsh, Q.C.

Human Rights of Women in the Criminal Justice System – Mrs H. Larcombe

The Human Rights of the Mentally Disabled in the Criminal Justice System – Mr I. Potas

Papers Submitted by Participants

Constitutional and Legal Guarantees for Minorities in Pakistan – Mr M.A. Arbab

Protection of Human Rights for Minorities in the Indonesian Criminal Justice System – Mr M. Budiarto

The Human Rights Guarantees for Minorities in Korea: and
The Machinery for Protecting Human Rights in Korea – Mr Jin-Woo Byun

Human Rights Guarantees in the Administration of Criminal Justice in Sri Lanka – Mr J.P. Delgoda

Guarantees for Minorities in Japan's Criminal Justice System: and
Machinery for Protecting Human Rights in Japan – Mr Kenji Nakai

Safeguarding the Rights of Minorities Before the Criminal Justice System: and
Machinery for Protection of Human Rights in New Zealand – Mr B.O. Nicholson

Safeguarding the Rights of Minorities in the Criminal Justice Systems in the Philippines – Mr Ramon F. Nieva

Recent Measures Undertaken for the Protection of Human Rights in Nepal – Mr I.B. Shrestha

The Human Rights Guarantees for the Minorities in Bhutan – Mr Sonam Tobgye

Machinery for Protecting Human Rights in Afghanistan: and
Minorities in Afghanistan – Mr M.A. Wahidi

Annex V
United Nations Documents Distributed to Participants

1. Study of the Problem of Discrimination Against Indigenous Populations. (E/CN.4/Sub.2/476)

2. Study on the Independence and Impartiality of the Judiciary Jurors and Assessors and the Independence of Lawyers. (E/CN.4/Sub.2/481)

3. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (A/35/369/Add.1)

4. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Addendum: (A35/369/Add.2)

5. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (A/35/401/Add.1)

6. Measures to Combat Racism and Racial Discrimination and the Role of the Sub-Commission. (E/CN.4/Sub.2/L.766)

7. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. (A/35/401/Add.2)

8. Study on the Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers. (E/CN.4/Sub.2/481/Add.1)

9. Study of the Problem of Discrimination Against Indigenous Populations. (E/CN.4/Sub.2/476/Add.2)

10. Study of the Problem of Discrimination Against Indigenous Populations. (E/CN.4/Sub.2/L.622)

11. Exploitation of Child Labour. (E/CN.4/Sub.2/479)

12. Study of the Problem of Discrimination Against Indigenous Populations. (E/CN.4/Sub.2/476/Add.6)

13. 1959 Seminar of Judicial and Other Remedies Against the Illegal Exercise or Abuse of Administrative Authority. (ST/TAO/HR/6)

14. Remedies Against the Abuse of Administrative Authority — Selected Studies. (ST/TAO/HR/19)

15. Seminar on Freedom of Association. (ST/TAO/HE/32)

16. Study of the Problem of Discrimination Against Indigenous Populations. (E/CN.4/Sub.2/476/Add.5)

17. Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Thirty-Fourth Session. (E/CN.4/1512) (E/CN.4/Sub.2/495)

18. Study of the Problem of Discrimination Against Indigenous Populations. (E/CN.4/Sub.2/L.566)

19. The Roles of Human Factors and Public Opinion in Implementing Human Rights Protection: Paper, UNAFEI Fuchu — Dr M. El Augi

20. New Trends in Criminal Justice Administration and the Rights of the Accused: Paper, UNAFEI Fuchu — Dr M. El Augi

21. Police and Courts on Human Rights Protection: Paper, UNAFEI Fuchu — Dr M. El Augi

22. 1960 Seminar on the Roles of Substantive Criminal Law in the Protection of Human Rights and the Purposes and Legitimate Limits of Penal Sanctions. (ST/TAO/HR/7)

23. 1960 Seminar on the Protection of Human Rights in Criminal Law and Procedure, Vienna, Austria

24. 1962 Seminar on Judicial and Other Remedies Against the Abuse of Administrative Authority (with special emphasis on the role of parliamentary institutions) Stockholm, Sweden

25. 1958 Seminar on the Protection of Human Rights in Criminal Law and Procedure, Baguio City, Philippines

26. Remedies Against the Abuse of Administrative Authority — Selected Studies. (ST/TAO/HR/19)

27. Seminar on The Effective Realisation of Civil and Political Rights at the National Level, Kingston, Jamaica

28. Seminar on the Protection of Human Rights in Criminal Law and Procedure. (ST/TAA/HR/3)

29. Study of Equality in the Administration of Justice. (E/CN.4/Sub.2/296/Rev.1)

30. Fourth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. (A/Conf.43/5)

31. Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Thirty-Fourth Session.

32. Commission on Human Rights. Report of the Thirty-Seventh Session (2 February—13 March 1981) Supplement No. 5. (E/1981/25) (E/CN.4/1475)

33. United Nations Action in the Field of Human Rights.

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