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HUMAN RIGHTS AND CRIMINAL JUSTICE: RECENT DEVELOPMENTS IN THE PROGRAMMES  
CARRIED OUT BY THE UNITED NATIONS DIVISION OF HUMAN RIGHTS (1975-1980)

Background paper prepared by the Division of Human Rights  
of the United Nations

CONTENTS

	<u>Page</u>
INTRODUCTION . . . . .	3
I. PREPARATION OF STUDIES AND REPORTS . . . . .	3
II. STANDARD-SETTING ACTIVITIES . . . . .	5
A. Draft Convention on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment . . . . .	5
B. Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment . . . . .	7
C. Draft Principles of Medical Ethics relevant to the role of health personnel in the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment . . . . .	8
III. PROCEDURES OF INTERNATIONAL IMPLEMENTATION FOR THE PROTECTION OF HUMAN RIGHTS IN THE FIELD OF CRIMINAL JUSTICE . . . . .	8
A. Consideration of reports and review of developments . . . . .	8
B. Communications procedures . . . . .	11
C. Procedures of the International Convention on the Suppression and Punishment of the Crime of <u>Apartheid</u> . . . . .	12
D. Procedure to examine questions relevant to enforced or involuntary disappearance of persons . . . . .	13
E. <u>Ad hoc</u> investigation in specific countries and territories . . . . .	14
IV. INFORMATION AND EDUCATION . . . . .	16
V. SOME RECENT RESOLUTIONS OF THE UNITED NATIONS CONCERNING SPECIFIC ASPECTS OF THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND CRIMINAL JUSTICE . . . . .	17

## INTRODUCTION

The present background paper summarizes recent developments in the programmes carried out by the Division of Human Rights which appear to be of direct relevance to the agenda of the Sixth Congress on the Prevention of Crime and the Treatment of Offenders, particularly as regards item V: "United Nations norms and guidelines in criminal justice: from standard-setting to implementation".

The developments summarized have occurred since the Fifth Congress (1-12 September 1975). More extensive background information, going back to the inception of the United Nations, is to be found in the article entitled "The Division of Human Rights: activities in the field of crime prevention and criminal justice". 1/

During the past five years (1975-1980), questions regarding the rights of detained persons and protection against torture and other cruel, inhuman and degrading treatment and punishment have been given high priority at almost every session of the General Assembly, the Economic and Social Council, the Commission on Human Rights, the Sub-Commission on the Prevention of Discrimination and Protection of Minorities and various other United Nations bodies serviced by the Division of Human Rights. Intensive efforts as regards both norm-setting and implementation have been made, and continue to be made by these organs for the protection of human rights in those two areas.

For the sake of clarity, the work of these bodies during the period 1975-1980 has been summarized in accordance with the following outline:

- I. Preparation of studies and reports
- II. Standard-setting activities
- III. Procedures of international implementation
- IV. Information and education
- V. Some recent resolutions concerning specific aspects of the relationship between human rights and criminal justice.

## I. PREPARATION OF STUDIES AND REPORTS

The main purposes of the studies undertaken by the Commission on Human Rights and the Sub-Commission on the Prevention of Discrimination and Protection of Minorities as regards, in particular, detainees' rights and protection against torture, under the terms of the enabling resolutions, are to ascertain "the existing conditions, the results obtained and the difficulties encountered" in the field of

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1/ International Review of Criminal Policy, No. 34 (United Nations publication, Sales No. E.78.IV.8).

human rights, to educate "world public opinion" and to form a basis for the reaffirmation and development of international standards and their better implementation, through the adoption of general recommendations and, as appropriate, international instruments. 2/

At least three studies recently undertaken by the Sub-Commission, and approved by the Commission and the Economic and Social Council, appear to be of direct interest to the Sixth Congress. The subject-matter of these studies are:

(a) The implications for human rights of states of seige and emergency, with special reference to the rights of detained persons (Special rapporteur: Mrs. Nicole Questiaux of France); 3/

(b) The independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (Special rapporteur: Mr. L. M. Singhvi of India); 4/

(c) Discriminatory treatment against members of racial, ethnic, religious or linguistic groups at various levels in the administration of criminal justice proceedings (Special rapporteur: Mr. J. A. S. Chowdhury of Pakistan). 5/

The preparation of these studies, which may possibly lead to standard-setting, is expected to take a few years.

By its resolution 10 A (XXXIII) of 11 March 1977, the Commission on Human Rights, noting the reports circulated by the Secretary-General on the protection of the human personality and its physical and intellectual integrity in the light of advances in biology, medicine and biochemistry, requested the Sub-Commission to study, with a view to formulating guidelines, if possible, the question of the protection of those detained on the grounds of mental ill-health against treatment that may adversely affect the human personality and its physical and intellectual integrity. The Secretary-General, in accordance with Sub-Commission resolution 6 (XXXII), of 5 September 1979, prepared a report for the Sub-Commission at its thirty-third session analysing information concerning the subject referred to in resolution 10 A (XXXIII) of the Commission on Human Rights.

Other studies undertaken by the Commission on Human Rights and the Sub-Commission also appear to have a bearing on some of the questions placed on the agenda of the Sixth Congress - for instance: the further extension and updating of the Report on Slavery entrusted to Mr. B. Whitaker of the United Kingdom; 6/ and a comprehensive study on the duties of the individual to the

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2/ See Official Records of the Economic and Social Council, Sixteenth Session, Supplement No. 8, annex IV, paras. 57-62.

3/ See resolution 17 (XXXV) of the Commission on Human Rights.

4/ See resolution 16 (XXXVI) of the Commission on Human Rights.

5/ See resolution 14 (XXXVI) of the Commission on Human Rights.

6/ United Nations publication, Sales No. 67.XIV.2. See resolution 15 (XXXVI) of the Commission, approved by the Economic and Social Council.

community and limitations upon the exercise of human rights, entrusted to Mrs. Erica Daes of Greece. <sup>7/</sup>

In addition to the specific studies mentioned above, reports on current developments concerning the human rights of detained persons and protection against torture are being submitted by the Secretariat to various United Nations organs at their request. One finds, in this category, for example: the reports on the implementation of the Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, requested by the General Assembly in resolutions 34/167 and 34/168; and the annual reports on developments concerning the human rights of detained persons, prepared in accordance with resolution 7 (XXVII) of the Sub-Commission. These reporting activities will be more fully described in chapter III below.

## II. STANDARD-SETTING ACTIVITIES

### A. Draft Convention on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

It will be recalled that, by resolution 3452 (XXX) of 9 December 1975, the General Assembly, upon the proposal of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. <sup>8/</sup> By resolutions 32/62, 33/178 and 34/167, the General Assembly requested the Commission on Human Rights to draw up a draft convention against torture and other cruel, inhuman or degrading treatment or punishment, in the light of the principles embodied in the Declaration.

At its thirty-fourth session in 1978, the Commission started to consider the question of the draft convention and requested the Secretary-General to transmit all relevant documents from the session to Governments for their comments, and to prepare a summary of the comments.

The Commission, through an open-ended working group, considered the matter in substance at its thirty-fifth and thirty-sixth sessions in 1979 and 1980, on the basis of a revised draft submitted by Sweden (E/CN.4/WG.1/WP.1). <sup>9/</sup> The Commission and its working groups also had before them a draft convention submitted by the International Association of Penal Law (E/CN.4/NGO/213) and the Secretariat's summary of observations by Governments (E/CN.4/1314 and Add.1-4). At the close of the thirty-sixth session, in March 1980, the working group of the Commission had adopted all substantive articles of the Draft Convention except three. The draft articles provide for:

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<sup>7/</sup> See resolution 9 (XXVII) of the Sub-Commission, subsequently approved by the Commission on Human Rights and the Economic and Social Council.

<sup>8/</sup> See Fifth United Nations Congress on the Prevention of Crime and Treatment of Offenders (United Nations publication, Sales No. 76.IV.2).

<sup>9/</sup> The first draft by Sweden had been submitted in document E/CN.4/1285. See E/1979/36, para. 178, and E/1980/13, para. 205.

(a) A definition of "torture", without prejudice to stronger protection in international instruments and national legislation (art. 1);

(b) The obligation for States parties to take effective measures against torture, even in exceptional or emergency circumstances, it being further stated that superiors' orders shall in no case be a justification (art. 2);

(c) The prohibition of expulsion or extradition towards any State where there are substantial grounds for believing that the person concerned may be in danger of undergoing torture (art. 3);

(d) The obligation of States to provide effective criminal sanctions for torture (art. 4);

(e) Rules concerning the jurisdiction of States as regards the arrest, trial and punishment of offenders and their extradition, and mutual assistance between States for investigation and trial (arts. 5, 6 and 8);

(f) The duty of States to include the prohibition against torture in the training of competent officials, and their obligation to keep interrogation practices and the treatment of detained persons under systematic review (arts. 10 and 11);

(g) The right of the victims, upon complaint, to set an official inquiry into motion, as well as the obligation of the State to investigate ex officio wherever torture is suspected (arts. 12 and 13);

(h) The victim's right to compensation and rehabilitation (art. 14);

(i) The inadmissibility of evidence obtained through torture (art. 15).

Article 16, adopted by the working group of the Commission, extends the scope of various provisions to "acts of cruel, inhuman or degrading treatment or punishment which do not constitute torture as defined in Article 1".

The Swedish draft (E/CN.4/1285) provides for international measures of implementation: periodic reporting and optional State-to-State and individual complaint procedures. Furthermore a proposal by Costa Rica (E/CN.4/1409), based on an earlier paper by the International Commission of Jurists and other non-governmental groups, would provide for an optional system of visits in situ of detention centres by an international expert body. These proposals on implementation have not yet been considered by the Commission.

At its first regular session of 1980 the Economic and Social Council approved the Commission's proposal that high priority be given to the completion of the Draft Convention by the Commission, through its working group, in 1981.

B. Draft Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

By its resolution 3453 (XXX), adopted on 9 December 1975, the General Assembly requested the Commission on Human Rights at its thirty-second session to study, *inter alia*, any necessary steps for the formulation of a body of principles for the protection of all persons under any form of detention or imprisonment, on the basis of the Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile <sup>10/</sup> and the Draft Principles on Freedom from Arbitrary Arrest and Detention contained in the Study.

On 5 March 1976, the Commission on Human Rights, in turn, asked the Sub-Commission on the Prevention of Discrimination and Protection of Minorities to draw up, at its twenty-ninth session, a body of principles for the protection of all persons under any form of detention or imprisonment, on the basis of various relevant documents.

A first draft of the body of principles was submitted to the Sub-Commission in 1977 by its Special Rapporteur appointed for this purpose, Mr. Erik Nettel of Austria. The Sub-Commission then requested a working group to review the draft.

At its thirty-first session, in 1978, the Sub-Commission considered article by article, the revised draft prepared by its working group (E/CN.4/Sub.2/395). The Sub-Commission unanimously adopted the text with a few amendments and, by its resolution 5 C (XXXI), of 13 September 1978, submitted it to the Commission for consideration and adoption (E/CN.4/1296, para. 109).

On the recommendation of the Commission (resolution 17 (XXXV), of 14 March 1979), the Economic and Social Council, by its resolution 1979/34, of 10 May 1979, requested the Secretary-General to transmit to all Governments the revised Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, to solicit their comments and to report to the General Assembly at its thirty-fifth session, so that the General Assembly could consider their adoption. <sup>11/</sup>

The Draft Body of Principles contains 35 articles applicable to all forms of detention or imprisonment. They deal, in particular, with the grounds for arrest and detention, the procedures governing arrest and detention, the rights of arrested and detained persons especially at interrogation, their right to communicate with counsel and other persons, their right of complaint, in person or through another person acting on their behalf, against illegal or arbitrary deprivation of liberty, their right to be examined by a physician, and the duty of States to set forth and apply effective sanctions in case of violation of those principles. Some principles are applicable specifically to persons arrested or detained on criminal charges.

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<sup>10/</sup> United Nations publication, Sales No. 65.XIV.2.

<sup>11/</sup> The summary of governmental observations is contained in document A/35/289.

C. Draft Principles of Medical Ethics relevant to the role of health personnel in the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment

The General Assembly, by resolution 3453 (XXX), of 1975, invited the World Health Organization to give further attention to the study and elaboration of principles of medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment. This invitation was again conveyed to the World Health Organization by General Assembly resolution 31/85, of 13 December 1976.

At its sixty-third session, in January 1979, the Executive Board of the World Health Organization considered a report of the Director-General entitled "Development of codes of medical ethics", containing, in an annex, a draft Body of Principles prepared by the Council for International Organizations of Medical Sciences and entitled "Principles of medical ethics relevant to the role of health personnel in the protection of persons against torture and other cruel, inhuman or degrading treatment or punishment". At the same session, the Executive Board decided to endorse the principles set forth in the report and requested the Director-General to transmit it to the Secretary-General of the United Nations. Accordingly, the Draft Principles as well as the decision of the Executive Board were brought to the attention of the General Assembly at its thirty-fourth session (A/34/273).

The General Assembly, by resolution 34/168, requested the Secretary-General to circulate the draft Code of Medical Ethics to Member States, to the specialized agencies concerned and to interested intergovernmental organizations and non-governmental organizations in consultative status with the Economic and Social Council for comments and suggestions, and to submit a report to the General Assembly at its thirty-fifth session.

The Draft Principles of the World Health Organization would condemn in particular as contravention of medical ethics the participation - active or passive - of physicians in any form of torture, as well as their assistance in methods of interrogation.

III. PROCEDURES OF INTERNATIONAL IMPLEMENTATION FOR THE PROTECTION OF HUMAN RIGHTS IN THE FIELD OF CRIMINAL JUSTICE

A. Consideration of reports and review of developments

During the period under review, on 23 March 1976, the International Covenant on Civil and Political Rights came into force. Under article 40 of the Covenant, the Human Rights Committee, the expert body established by that instrument to oversee the implementation of its articles, has begun to examine reports submitted by the States parties on measures taken to ensure respect for the human rights

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recognized in the Covenant. The rights set forth in articles 6, 7, 8, 9, 10, 11, 14 and 15 of the Covenant relate to criminal justice and protection against torture.

The Human Rights Committee has developed a procedure under which further information may be sought, orally or in writing, from the Governments concerned (A/32/44; A/33/40; A/34/40). Meetings at which reports are considered are usually held in public.

Other State reporting procedures which have a certain relevancy to the agenda of the Congress are being applied within the framework of the International Convention on the Elimination of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The latter procedure is being "revised" under Sub-Commission resolution 5 (XXIX).

A voluntary reporting procedure, which is not treaty-based but set forth by Economic and Social Council resolution 1074 C (XXXIX), of 1965, continues to deal, every six years, with civil and political rights - including human rights - in the field of criminal procedure.

In accordance with its resolution 7 (XXVII), of 20 August 1974, the Sub-Commission annually reviews developments concerning the human rights of persons subjected to any form of detention or imprisonment, taking into account any reliably attested-to information from Governments, the specialized agencies, the regional intergovernmental organizations and the non-governmental organizations in consultative status with the Economic and Social Council concerned, provided that such non-governmental organizations act in good faith and that their information is not politically motivated, contrary to the principles of the Charter of the United Nations.

In accordance with resolution 7 (XXVII), the Secretary-General annually submits to the Sub-Commission a report summarizing information received from Governments, the specialized agencies and regional intergovernmental organizations and, in accord with Sub-Commission resolution 3 A (XXIX), a synopsis of information submitted by non-governmental organizations.

The annual reviews enable the Sub-Commission to identify the main types of problems with regard to the human rights of detained persons and to undertake further action such as the carrying out of certain studies and the drafting of standards. 12/ This procedure also seeks to develop public awareness of violations in this field. 13/

12/ See, for instance, the information communicated by Governments with respect to their legal systems concerning detention and imprisonment (E/CN.4/407 and Add.1 and 2; E/CN.4/430 and Add.1) and that of non-governmental organizations which relates in particular to the human rights of persons detained or imprisoned under a state of emergency or siege (E/CN.4/Sub.2/408 and E/CN.4/Sub.2/431).

13/ For example, the preliminary study prepared by the Secretariat on the independence and impartiality of the judiciary, jurors and assessors and the independence of lawyers (E/CN.4/Sub.2/428) and the draft body of principles for the protection of all persons under any form of detention or imprisonment (E/CN.4/1296, para. 109).

Information from non-governmental organizations, as summarized in the synopsis, tends to show the following main trends (E/CN.4/Sub.2/408; E/CN.4/Sub.2/431):

(a) Torture is becoming more common in a number of countries. Torture by the security police and military forces continues to be applied, increasingly in a covert manner, to people suspected of holding views or carrying out activities in opposition to Governments, including, it is claimed, a number of persons persecuted for their advocacy of human rights standards;

(b) An increase in the number of political opponents of various régimes who disappear under suspicious circumstances;

(c) While a certain number of persons previously subjected to long periods of detention have been released or brought to trial - sometimes after a change of government, sometimes possibly as a result of international concern - the total number of detainees before trial or without trial appears to remain excessive;

(d) Widespread torture and other forms of cruel, inhuman or degrading treatment or punishment, disappearances and summary executions are mainly alleged in relation to situations of state of siege, emergency or exception or with respect to some countries where no such régimes have been officially proclaimed but where arbitrary detention practices and the excessive power of the executive over individual freedom have become, in effect, institutionalized.

Reports are, furthermore, requested from time to time by United Nations bodies from Governments on various aspects of the Division's programme. For example, the General Assembly, by resolution 32/63, requested the Secretary-General to draw up and circulate among Member States a questionnaire soliciting information concerning steps taken, including legislative and administrative measures, to put into practice the principles of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, while giving special attention to the following subjects:

(a) Publicity given to the Declaration, not only in governmental bodies and services but also among the public at large;

(b) Effective measures for the prevention of torture;

(c) Training of law enforcement personnel and other public officials responsible for persons deprived of their liberty;

(d) Any pertinent legislative or administrative action taken since the adoption of the Declaration;

(e) Effective legal remedies for victims of torture or cruel, inhuman or degrading treatment or punishment.

The General Assembly requested the Secretary-General to submit to it at its thirty-third session the information provided in response to the questionnaire. This request for replies to the questionnaire was renewed at subsequent sessions of the General Assembly.

By resolution 32/64, the General Assembly called upon all Member States to reinforce their support of the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by making unilateral declarations against torture and other cruel, inhuman or degrading treatment or punishment, along the lines of the text which was annexed to the resolution, and depositing it with the Secretary-General. This appeal was made again at subsequent General Assembly sessions.

The Working Group on Slavery, established by the Sub-Commission in resolution 1 (XXVII), of 21 August 1974, as authorized by the Economic and Social Council in decision 17 (LVI), of 17 May 1974, at its fifth session in 1979, considered, *inter alia*, the question of traffic in persons and the exploitation of the prostitution of others. <sup>14/</sup> The Working Group had before it reports on child prostitution (E/CN.4/Sub.2/AC.2/27, annex II) and on women being lured to other countries with the promise of non-existent jobs and then being held in forms of bondage for purposes of prostitution (E/CN.4/Sub.2/419).

#### B. Communications procedures

Articles 41 and 42 of the International Covenant on Civil and Political Rights, containing optional provisions for the consideration of State-to-State communications came into force in 1979. Such communications may conceivably allege violations of any of the articles of the Covenant relating to criminal justice. On 23 March 1976, the Optional Protocol to the Covenant, establishing a procedure for handling individual communications, had come into force. It is applicable only to the States parties to the Covenant which have ratified or adhered to the Protocol. The procedure, carried out by the Human Rights Committee, includes, first, an examination of the admissibility of communications according to certain criteria, followed by a confidential examination of the merits on the basis of written submissions by the parties. It culminates in the formulation of "views" by the Committee and the transmittal of such views to the parties.

The Human Rights Committee has undertaken the consideration of a number of individual communications. It has so far reached final views on four cases. These views have been published *in extenso* in annexes to the annual reports of the Committee to the General Assembly (A/34/40 and A/35/ ). The cases in question involved matters concerning the human rights of detained persons and their protection against torture and ill-treatment.

Another procedure for handling communications alleging "consistent patterns of gross violations of human rights" was established in resolution 1503 (XLVIII) by the Economic and Social Council.

Under that procedure, all human rights in the field of criminal procedure proclaimed by the Universal Declaration and other relevant United Nations instruments are protected. Communications may be submitted by individuals, groups

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<sup>14/</sup> See E/CN.4/Sub.2/434. Information from Japan, Singapore, Spain, Finland and Morocco - States parties to the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others - was issued in documents E/CN.4/Sub.2/AC.2/25 and Add.1.

of individuals or non-governmental organizations against any State - Member or non-member of the United Nations. The procedure involves action, successively, by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and the Economic and Social Council. The procedure is confidential up to the stage where the Commission on Human Rights sends its report and recommendations to the Economic and Social Council. At its thirty-fifth session, in 1979, however, by resolution 15 (XXXV) and a decision of 9 March 1979 - later endorsed by the Council - the Commission decided to publish relevant documents concerning alleged gross violations of human rights in Equatorial Guinea and to appoint a special rapporteur to make a thorough study of the human rights situation in that country (E/1979/36, chap. X, note 29). The Special Rapporteur's report was considered and generally endorsed by the Commission at its thirty-sixth session (E/CN.4/1371; E/1980/13, chap. X). Several aspects of the situation in Equatorial Guinea as reported upon by the Special Rapporteur concerned the protection of human rights in the field of criminal justice.

Allegations of violations of human rights, including the human rights of detained persons, are also made and discussed in public meetings of the Commission on Human Rights and of the Sub-Commission, in accordance with Council resolution 1235 (XLII), of 6 June 1967. Each year, the Commission and Sub-Commission consider, under a regular item of their agenda, the question of violations of human rights and fundamental freedoms. That practice, as it has so far been applied, does not involve the participation of individuals or groups as complainants. The Commission and the Sub-Commission have adopted a number of resolutions on human rights matters in specific countries, which relate, inter alia, to human rights in the field of criminal justice.

C. Procedures of the International Convention on the Suppression and Punishment of the Crime of Apartheid

The International Convention on the Suppression and Punishment of the Crime of Apartheid came into force on 18 July 1976. As of 1 May 1980, it had been ratified or acceded to by 56 States.

The Convention declares the policies and practices of apartheid to be a crime against humanity. They are defined in article II, inter alia, as the following acts "committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them:

(a) Denial to a member or members of a racial group or groups of the right to life and liberty of person:

(i) By murder of members of a racial group or groups;

(ii) By the infliction upon the members of a racial group or groups of serious bodily or mental harm, by the infringement of their freedom or dignity, or by subjecting them to torture or to cruel, inhuman or degrading treatment or punishment;

(iii) By arbitrary arrest and illegal imprisonment of the members of a racial group or groups".

Under article VII, the States parties undertake to submit to the Group of Three Members of the Commission on Human Rights, appointed by the Chairman from among States parties to the Convention, periodic reports on the legislative, judicial, administrative or other measures that they have adopted to give effect to the provisions of the Convention.

In accordance with article X, the Commission on Human Rights is empowered, inter alia, to prepare, on the basis of reports from competent organs of the United Nations and periodic reports from States parties, a list of individuals, organizations, institutions and representatives of States which are alleged to be responsible for the crime of apartheid. Taking that article of the Convention into account, in 1978 and 1979, the Ad Hoc Working Group of Experts of the Commission on Human Rights on Southern Africa compiled such a list and submitted it to the Commission on Human Rights and its Group of Three Members.

The Commission on Human Rights, by its resolution 17 (XXXVI), of 16 February 1980, requested the Ad Hoc Working Group of Experts on Southern Africa to continue, in co-operation with the Special Committee against Apartheid as appropriate, its compilation of lists of individual organizations, institutions and representatives of States deemed responsible for crimes enumerated in article II of the Convention. The Commission on Human Rights further requested the Ad Hoc Working Group of Experts, in co-operation with the Special Committee against Apartheid and in accordance with paragraph 20 of the annex to General Assembly resolution 34/24, to undertake a study on ways and means of ensuring the implementation of international instruments such as the International Convention on the Suppression and Punishment of the Crime of Apartheid, including the establishment of the international jurisdiction envisaged by that Convention.

By its resolution 13 (XXXVI), of 26 February 1980, the Commission on Human Rights requested the Secretary-General to renew his invitation to the States parties to the Convention which have not yet done so to suggest ways and means for the establishment of the international penal tribunal referred to in article V of the Convention, and to transmit such suggestions to the Ad Hoc Working Group of Experts responsible for investigating violations of human rights in southern Africa in order that the Commission may undertake a study on the establishment of the international penal tribunal, in accordance with the mandate entrusted to it.

D. Procedure to examine questions relevant to enforced or involuntary disappearance of persons

In resolution 33/173, of 20 December 1978, entitled "Disappeared persons", the General Assembly expressed its deep concern at reports from various parts of the world relating to the enforced or involuntary disappearance of persons as a result of excesses on the part of law enforcement or security authorities or similar organizations, often while such persons were subject to detention or imprisonment, and as a result of unlawful actions or widespread violence.

At its first regular session of 1979, the Economic and Social Council adopted resolution 1979/38, entitled "Disappeared persons", in which it requested the Commission on Human Rights at its thirty-sixth session to consider as a matter of priority the question of disappeared persons, with a view to making appropriate recommendations. In the same resolution, the Council requested the Sub-Commission to consider the subject at its thirty-second session, with a view to making general recommendations to the Commission on Human Rights at its thirty-sixth session.

On 2 May 1980, the Economic and Social Council, noting resolution 20 (XXXVI), of 29 February 1980, of the Commission on Human Rights, approved the Commission's decision to establish for a period of one year a working group consisting of five of the members of the Commission, serving as experts in their individual capacities, to examine questions relevant to the enforced or involuntary disappearance of persons. The working group was asked to "seek and receive information from Governments, intergovernmental organizations, humanitarian organizations and other reliable sources". In establishing its working methods, the group was invited to bear in mind the need to be able to respond effectively to information that comes before it and to carry out its work with discretion. The group was asked to report to the thirty-seventh session of the Commission on Human Rights, in 1981.

In addition to being concerned at the phenomenon of missing persons in general, the United Nations has dealt with specific situations in Cyprus 15/ and in Chile. 16/

#### E. Ad hoc investigation in specific countries and territories

As regards allegations of violations of human rights, including detainees' rights, in certain countries and territories, the United Nations has established ad hoc fact-finding and investigative bodies which carry out special procedures generally characterized by the power to hear witnesses and receive communications and by a reliance on publicity. Such organs exist at present in respect of South Africa and Namibia, the Israeli-occupied territories and Chile.

A substantial part of the reports of these ad hoc bodies continues to deal with matters concerning the human rights of detained persons and their protection against torture and ill-treatment, as well as allegations of untimely death in prison and involuntary disappearance of persons. 17/

15/ See resolution 4 (XXXI) of the Commission on Human Rights, and General Assembly resolutions 3450 (XXX), 32/128 and 33/172.

16/ See General Assembly resolutions 3448 (XXX), 31/124, 32/118, 33/175 and 34/179, and resolutions 3 (XXXII), 9 (XXXIII), 12 (XXXIV), 11 (XXXV) and 21 (XXXVI) of the Commission on Human Rights.

17/ See, for instance, the 1979 and 1980 reports of the Ad Hoc Working Group of Experts on Southern Africa (E/CN.4/1311), chaps. I and II, and (E/CN.4/1365), chaps. I and II; the 1979 and 1980 reports of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories (A/33/356) and (A/34/631), para. 381; the 1978 report of the Ad Hoc Working Group on the Situation of Human Rights in Chile (A/33/331), chaps. IV and V; the 1979 and 1980 reports of the Special Rapporteur on the Situation of Human Rights in Chile (A/34/583) and (E/CN.4/1362).

The reports and conclusions of these ad hoc bodies have formed the basis for many recommendations addressed to the States concerned by the General Assembly, the Economic and Social Council and the Commission on Human Rights.

For example, as regards the situation in South Africa, the General Assembly, in resolution 34/24, proclaimed, inter alia, that the elimination of all forms of racism and discrimination based on race and the attainment of the objectives of the Programme for the Decade for Action to Combat Racism and Racial Discrimination and of the Programme of Action adopted by the World Conference to Combat Racism and Racial Discrimination are matters of high priority for the international community and accordingly for the United Nations, and, in resolution 34/93 H, noted with grave concern the continued and escalating repression in South Africa, including executions, torture and killing of opponents of apartheid, and the institution of numerous trials under arbitrary laws providing for death sentences.

With reference to Israel's policy in the occupied territories, the Commission on Human Rights, in resolution 1 (XXXVI) was deeply alarmed by the conclusions of the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of Occupied Territories, contained in the report of the Special Committee to the General Assembly (A/34/631), called upon Israel to take immediate steps for the return of the Palestinians and the other displaced inhabitants of the occupied Arab territories to their homes and property, and condemned, in particular, the following Israeli policies and practices: mass arrests; administrative detention and ill-treatment of the Arab population and the torture of persons under detention; and the arming of settlers in occupied territories to commit acts of violence against Arab civilians.

With reference to Chile, the General Assembly, by its resolution 34/179, expressed its grave concern over the increase in the arbitrary powers of security agencies, the increased number of cases of torture, ill-treatment and unexplained deaths, and the deterioration of the situation with regard, inter alia, to the presumption of innocence of accused persons.

The Commission on Human Rights, in resolution 21 (XXXVI), inter alia, expressed deep concern that the whereabouts of the numerous persons who have disappeared since 1973 in Chile were still unknown. The Commission concluded that since the military Government had come to power in Chile on 11 September 1973, between 1,000 and 2,000 persons were reported to have disappeared as a result of actions by the Chilean authorities, that during the period from September 1973 to late 1978 the Chilean judiciary in general had taken no effective steps to prevent the disappearance of detainees through the use of the remedy of amparo and had not investigated complaints of disappearances, and that the Government of Chile was responsible under international law for the disappearance of a large number of persons (E/CN.4/1363, paras. 91-93).

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#### IV. INFORMATION AND EDUCATION

It is recalled that under General Assembly resolution 926 (X) and other relevant resolutions, the Secretary-General is authorized to make provision, at the request of Governments, for the advisory services of experts, seminars, regional training courses and fellowships and scholarships in the field of human rights.

Since 1975, the following seminars and training courses on subjects wholly or partly relevant to the Congress agenda, have been organized by the Division of Human Rights:

(a) United Nations Training Course on Human Rights in the Administration of Criminal Justice, held at the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, Costa Rica, 24 November to 12 December 1975;

(b) United Nations Human Rights Training Course on Safeguards Against Deprivation of the Right to Liberty and Security of Person, held at the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Tokyo, from 5 to 22 December 1977;

(c) United Nations Course on Human Rights in the Administration of Criminal Justice, held at the Australian Institute of Criminology, Canberra, 1978;

(d) Seminar on National and Local Institutions for the Promotion and Protection of Human Rights, held at Geneva, 18-29 September 1978 (ST/HR/SER.A/2);

(e) Seminar on Recourse Procedures Available to Victims of Racial Discrimination and Activities to be Undertaken at the Regional Level, held at Geneva, 9-20 July 1979 (ST/HR/SER.A/3);

(f) Symposium on the Role of the Police on the Protection of Human Rights, held at The Hague, 14-25 April 1980 (ST/HR/SER.A/6).

In addition, a number of fellowships continue to be granted, under the Advisory Services programme, on subject-matter concerning human rights and criminal justice.

Yearbook on Human Rights, which has been published by the United Nations since 1946, contains the texts or summaries of many laws, regulations and leading court decisions concerning human rights in relation to the administration of criminal justice.

Bulletin of Human Rights, a quarterly review published by the Division, contains information on current human rights developments in the United Nations.

In order to publicize them, the texts of human rights instruments, such as the Universal Declaration of Human Rights and the International Covenants, and studies and draft principles relevant to the agenda of the Congress are being printed and given wide distribution. These publications as well as seminar reports and papers are valuable resources for the non-governmental organizations concerned and develop public awareness of human rights problems.



V. SOME RECENT RESOLUTIONS OF THE UNITED NATIONS CONCERNING SPECIFIC ASPECTS OF THE RELATIONSHIP BETWEEN HUMAN RIGHTS AND CRIMINAL JUSTICE

The General Assembly and other United Nations organs - in particular, the Commission on Human Rights - have adopted over the years a number of resolutions that are of importance as regards the relationship of human rights and criminal justice, although the resolutions cannot easily be classified as activities of standard-setting, implementation or education and information. Rather, they recommend the combined use of all three approaches in regard to specific situations deemed particularly critical. Some of the most recent resolutions of this type are summarized below.

Bearing in mind the provisions of the Universal Declaration of Human Rights - in particular articles 5, 10 and 19 - and recalling article 19 of the International Covenant on Civil and Political Rights, the General Assembly, in resolution 32/121, inter alia, recognized the importance of full respect for the human rights and fundamental freedoms of all persons detained or imprisoned as a result of their struggle against colonialism, aggression and foreign occupation and for self-determination, independence, the elimination of apartheid and all forms of racial discrimination and racism, and the termination of all these violations of human rights.

By the same resolution, the Assembly requested Member States to take effective steps to ensure, in particular, that such persons were not subjected to torture or other cruel, inhuman or degrading treatment or punishment; and that such persons, in the determination of any criminal charge against them, receive a fair hearing by a competent independent and impartial tribunal established by law; and called upon Member States to examine periodically the possibility of releasing such persons as an act of clemency or by way of conditional release or otherwise.

In resolution 32/122, the General Assembly also expressed its solidarity with fighters for the national independence and social progress of their people, against colonialism, apartheid, racism and foreign occupation, and demanded the release of all individuals detained or imprisoned as a result of their struggle for those causes.

In resolution 33/169, the Assembly, recognizing the important work done by the International Labour Organisation to promote trade union rights and in order to take appropriate action in concrete cases of persons arrested, detained or exiled by reason of their trade union activities, inter alia, requested Member States to take effective measures to safeguard and protect the human rights and fundamental freedoms of trade union leaders who were detained or imprisoned as a result of their struggle against colonialism, aggression and foreign occupation and for self-determination, independence, the elimination of apartheid and all forms of racial discrimination and racism, and to terminate all those violations of human rights.

Bearing in mind the provisions of the Universal Declaration of Human Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights, in resolution 34/178, the General Assembly, inter alia, expressed its conviction that the application within the legal systems of States of amparo, habeas corpus or other legal remedies to the same effect was of fundamental importance for protecting persons against arbitrary arrest and unlawful detention, effecting the release of persons who were detained by reasons of their political opinions or convictions, including those in pursuance of trade union activities, and clarifying the whereabouts and fate of missing and disappeared persons. In the same resolution, the General Assembly considered that the use of such remedies might also forestall the opportunities for persons exercising power over detainees to engage in torture or other cruel, inhuman or degrading treatment or punishment, and called upon all Governments to guarantee to persons within their jurisdiction the full enjoyment of the right of amparo, habeas corpus or other legal remedies to the same effect, as applicable in their legal system.

The Commission on Human Rights, in resolution 26 (XXXVI), expressed its deep concern over the fact that some persons were victims of discrimination - as reflected in persecution and other infringements of their rights and freedoms - solely on account of their connexion - particularly family connexion - with a suspect, an accused person or a person who had been convicted. The Commission reaffirmed all the relevant principles governing the fundamental safeguards of the individual set forth, in particular, in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and called upon Governments to see to the strict application of those provisions, so that no one would be prosecuted or persecuted merely because of his connexion - particularly family connexion - with a suspect, an accused person or a person who had been convicted.

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