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SEVENTH UNITED NATIONS CONGRESS ON
THE PREVENTION OF CRIME AND THE
TREATMENT OF OFFENDERS

REPORT OF THE INTERREGIONAL PREPARATORY MEETING FOR THE
SEVENTH UNITED NATIONS CONGRESS ON THE PREVENTION OF
CRIME AND THE TREATMENT OF OFFENDERS ON TOPIC V:
"FORMULATION AND APPLICATION OF UNITED NATIONS
STANDARDS AND NORMS IN CRIMINAL JUSTICE"

Varenna, Italy, 24-28 September 1984

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INTRODUCTION

1. The Interregional Preparatory Meeting convened to discuss topic V of the provisional agenda of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on "Formulation and application of United Nations standards and norms in criminal justice" was held at Varenna, Italy, from 24 to 28 September 1984. The Meeting was attended by 18 experts invited by the Secretary-General in their individual capacities with due regard to the principles of equitable geographical distribution and by observers from Italy, non-governmental organizations and United Nations regional institutes. The Meeting was also attended by Mr. Yoshio Suzuki, representative of the Committee on Crime Prevention and Control, in accordance with Economic and Social Council resolution 1982/30. A list of participants is given in annex II to the present report, and a list of documents presented to the Meeting is in annex III.
2. In her opening statement, the United Nations Assistant Secretary-General for Social Development and Humanitarian Affairs expressed her deep gratitude to the Government of Italy and the Centro Nazionale di Prevenzione e Difesa Sociale for their generous hospitality and the excellent work done in preparation for the Meeting. She expressed the appreciation of the Secretariat for the generous offer by the Italian Government to host the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985 at Milan, Italy.
3. Although the United Nations had always played a crucial role in the formulation of a number of international instruments in the criminal justice field, securing the implementation of such instruments at the national level was another matter, depending in the first instance on the political commitment of Governments to implement them. However, the international community could assist national authorities in the process of implementation. In considering the best ways and means of promoting the more effective application of standards and norms at all levels, national, regional and global, it was necessary to foresee that both the present adverse world-wide economic situation and the projections to the year 2000, including the scarcity of food, population growth and debt crisis, would affect the capacity of many countries to implement effectively those standards and norms and to cope with the rising crime rate.
4. It was to be hoped that Governments would continue to uphold existing international standards in criminal justice, as the protection of human rights and respect for fundamental freedoms should not be sacrificed, nor should their application be impeded by socio-economic dislocations and political instability. Achieving a balance between short-term requirements and long-term objectives was one of the most important challenges facing Governments and, consequently, the international community.
5. The representative of the Committee on Crime Prevention and Control underscored the concern of the Committee in the area of criminal justice and explained that the Committee had taken two approaches towards strengthening the impact of United Nations norms and guidelines on the protection of human rights. The first was to further develop ways and means of securing the more effective implementation of existing norms and guidelines, emphasizing the importance of international co-operation, especially at the regional level. The second was to formulate new guidelines in the field of criminal justice.
6. The Minister of Justice of Italy extended a warm welcome to the experts and observers from all parts of the world, to the United Nations Assistant Secretary-General and to the United Nations Secretariat and stressed the importance of the topic under consideration by the Meeting. He assured the Meeting of the

long-standing and continuing interest of his Government in the United Nations work in the field of crime prevention, along with its respect for criminal justice norms and standards. Italy had demonstrated that it ranked among the foremost countries in that connection, as befited a country that had given birth to such forerunners as Cesare Beccaria.

7. The independence and autonomy of the judiciary was a principle that had been staunchly upheld by the Government of Italy, notwithstanding certain difficulties entailed by that policy. The death penalty had been abolished long ago by constitutional provisions and would continue to be banned even in the face of the resurgence of crime, violence and terrorism and the anxiety of the public, which, although understandable, should not have a bearing on long-term policy options.

8. The current world socio-economic situation was, indeed, difficult, and Governments were likely to meet severe obstacles in overcoming situations that might arise from their fidelity to universal principles. However, those principles, especially when closely related to the respect for human rights and dignity, were to be maintained at all costs. It was the role of Governments to convince the public that criminal justice was not a marginal value. It was the role of the United Nations, at the highest levels, to expand the ideas that would ensure a just international order and, in the long run, a civil order that would be peaceful, humane and fair.

9. In his address to the Meeting, the Executive Secretary of the Seventh Congress explained the purpose of the Meeting and emphasized that one of its main goals was to find ways and means of implementing existing standards more effectively. The importance of that problem had been stressed at all five regional preparatory meetings for the Seventh Congress, and some of the major obstacles to the more effective implementation of standards had been outlined at those meetings. In that connection, the effective implementation of both the Standard Minimum Rules for the Treatment of Prisoners and the Code of Conduct for Law Enforcement Officials required consideration by the Meeting.

10. Another subject to be examined was the formulation of emerging and new standards: of the former, consideration was to be given to the draft model agreement for the transfer of foreign prisoners and a set of recommendations on the treatment of foreign prisoners and to the ways and means of giving them the widest possible publicity. The draft guidelines on the independence of the judiciary, alternatives to imprisonment, measures for the social resettlement of offenders, rights of prisoners and the independence of lawyers and public prosecutors were also to be given consideration.

11. Issues related to capital punishment and extra-legal, arbitrary and summary executions stemmed from the long-standing concern of the United Nations for the right to life. However, extra-legal, arbitrary and summary executions, as well as other phenomena, namely, persons who were involuntarily missing or had disappeared, called for new measures. The safeguards guaranteeing protection of the rights of those facing the death penalty, adopted by the Economic and Social Council in its resolution 1984/50 of 25 May 1984, represented a first step in that direction.

12. Finally, the Executive Secretary noted that the Meeting should analyse the role and scope of international co-operation at both the regional and the global level for the promotion of United Nations standards and norms, as recommended by all the regional meetings held in 1983. A strengthened role for the regional commissions and the existing regional institutes and the United Nations Social Defence Research Institute, the establishment of regional arrangements, improved collaboration between the United Nations and intergovernmental organizations, as well as the ratification of a number of international documents might serve,

inter alia, as possible ways and means of increasing the effectiveness of international co-operation.

13. The observer for the United Nations Centre for Human Rights stressed the complementarity of the United Nations programme on crime prevention, on the one hand, and the protection of human rights, on the other. He pointed out that the United Nations bodies principally concerned with human rights had consistently recommended, in formulating international safeguards, that "entrenched" human rights - the right to life, to protection against torture, to basic guarantees in criminal procedure etc. - be protected, increased and respected at all times, even in states of emergency. United Nations standards on human rights in criminal justice should, further, seek to strike the proper balance between the rights of the individual and the vital interests of the community; such interests should be defined in accordance with the Universal Declaration of Human Rights.

14. International standard setting should never be regarded as completed, since emerging human rights problems called for the review of existing norms and, possibly, the adoption of new standards. Both international standard setting and international implementation in the human rights field were necessary and should be pursued with renewed vigour in order to protect human beings from the impact of growing political, economic and other powers in a world of crisis.

15. The following officers were elected by acclamation: Mr. Luciano Bausi (Italy), Chairman; Mr. Angel Djambazov (Bulgaria), Mr. James A. O'Brien Quinn (Botswana) and Mr. José Arturo Alves da Cruz Rios (Brazil), Vice-Chairmen; and Mr. L. M. Singhvi (India), Rapporteur.

16. The Chairman expressed appreciation for his election and stated that all participants at the Meeting were united in a common purpose, namely the need to find ways and means of bridging the gaps between international norms and standards for criminal justice and human rights, on the one hand, and practice, on the other.

17. The agenda was adopted.

I. IMPLEMENTATION OF EXISTING STANDARDS

18. After a brief overview of existing norms and guidelines relevant to criminal justice, the Meeting assessed the impact achieved as well as difficulties encountered in applying those standards. In view of the limited time available, it was agreed to focus the discussion on two specific standards to which the Seventh Congress was expected to pay particular attention in terms of implementation, namely the Standard Minimum Rules for the Treatment of Prisoners 1/ and the Code of Conduct for Law Enforcement Officials. 2/

A. Standard Minimum Rules for the Treatment of Prisoners

19. There was consensus that, in view of the variety of economic, geographical, legal, social and other conditions prevailing throughout the world, not all of the Rules could be applied to the same degree in all places and at all times. United Nations policy-making bodies had repeatedly noted that the Rules might be adapted to local circumstances and that national and regional commentaries on the Rules might assist in that process.

20. One participant reported that his region's version of the Standard Minimum Rules was subject to periodic revisions in order to adapt the Rules to changing socio-economic and cultural conditions. He felt, however, that although amendments were being made in his region, the United Nations should for the moment concentrate its efforts on assisting Governments in implementing the existing text.

21. Most of the participants agreed with the recommendations of United Nations congresses that the Rules should not be revised. However, some participants felt that a revision of certain Rules was warranted since the provisions regarding education in particular did not support a serious educational approach to prison administration and, furthermore, did not emphasize the concept of the dignity of the human person. The question of revising the Rules, or of incorporating an annex in which some fundamental principles related to the Declaration of Human Rights would be incorporated, was debated. However, it was agreed that, as previous United Nations congresses had recommended, the Rules should not be revised until the major elements had been implemented reasonably at the national level.

22. It was noted that so far the United Nations had made three inquiries on the implementation of the Rules. Those surveys had revealed that the Rules had had a significant impact on the laws and current practices of many countries and that, to a large extent, the principles of the Rules had been embodied in prevailing prison regulations. It was observed, however, that the results of the three surveys confirmed that there were still wide areas in which the Rules, in particular those dealing with accommodation and decent living conditions for prisoners as well as separation of categories and prison work, had not yet been implemented.

23. Some doubts were expressed about whether the replies received to the surveys conducted so far were representative samples for the entire world. It was recalled that in 1967 replies had been received from 44 countries and in 1974 from 62 countries, or about 45 per cent of the total membership of the United Nations. In the last survey in 1980, the percentage had not reached even 25 per cent. The participants therefore welcomed the Economic and Social Council resolution 1984/47 of 25 May 1984 in which the Council, on the recommendation of the Committee on Crime Prevention and Control at its eighth session, approved procedures for the effective implementation of the Rules and invited Member States to take them into consideration in the process of implementing the Rules and in their periodic reports to the United Nations.

24. Participants discussed ways and means of stimulating adherence to the new procedures. There was consensus that they were a valuable set of guidelines but that further efforts at the national, regional and global levels were needed to translate them into reality.

25. At the national level, it would be useful to disseminate the Rules as widely as possible in the local language, not only to those directly concerned, such as prison staff and other law enforcement officials, but also to the general public, in order to foster the awareness and understanding of the Rules among the citizens. That in turn would facilitate contacts of prisoners with the outside world and contribute to their resocialization before and after release. The mass media could play an important role in overcoming public apathy and stimulating concern for the rehabilitation of offenders.

26. Intensified training of prison personnel in the application of the Rules was one of the most effective means of implementing the Rules. In that context, the important role of the regional institutes for crime prevention and criminal justice, namely the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI), the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) and the United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders (ILANUD), was emphasized. Those institutes contributed to the implementation of the Rules, notably by facilitating the translation and dissemination of the Rules and by conducting international training programmes for prison staff. It was pointed out, in particular, that at present efforts were being made to elaborate regional commentaries to the Rules with a view to attuning them to the specific cultural, economic and social conditions existing in the different regions; UNAFEI had already initiated steps in the Asian and Pacific region.

27. Participants expressed the view that the United Nations should provide increased technical assistance and strengthen and extend its advisory services with a view to giving support to Member States, upon request, in implementing the Rules.

28. A discussion of the experience of countries with different legal systems in the supervision of prison administration revealed that whereas in some countries judges had no supervisory functions, other countries had special judges or other independent organs, such as ombudsmen, who supervised the execution of sentences or who were responsible for calling the attention of the authorities concerned to difficulties or violations of the rights of prisoners in the execution of sentences. It was observed that such supervision of the execution of sentences, which was a useful means for securing the rights of prisoners, should be emulated and that the role of the independent supervisory authority, particularly in its relationship to the prison administration, should be stressed.

29. It was further noted that judges should play a significant role in stimulating adherence to the procedures for the implementation of the Standard Minimum Rules for the Treatment of Prisoners, and it was recommended that judges should familiarize themselves with prison conditions both by personal visits to prisons and by membership on prison visiting committees. The situation in many countries was that once a prisoner had been sentenced, the judge took no further interest in what happened to that prisoner. Judges would be better equipped to carry out their duties more humanely if they were more fully aware of how prisoners were treated. Some participants suggested that judges could also make a valuable contribution towards ameliorating the conditions in prisons and other places of detention because of their independence, objectivity, knowledge of the law, status and experience.

30. Reference was also made to the right of amparo, habeas corpus and other legal remedies to the same effect, and their fundamental importance for the protection of detained persons was stressed. One expert reported that in his country the courts had been a significant force in protecting the rights of prisoners who had protested against deprivation of constitutional rights as well as conditions of confinement.

31. Experts from Africa noted that the implementation of the Rules in the African region had posed considerable difficulties. First, in most States there was no judicial supervision of the prison administration, which was accountable to the Ministry of Interior. Second, the Rules were scarcely known or not known at all in most countries of the region, although they had been in existence since 1955 when they were adopted by the First Congress. The United Nations had an important role to play in Africa in assisting in the process of disseminating the Rules and other United Nations standards in criminal justice. That would be one of the most pressing tasks that could be accomplished by an African institute for crime prevention and criminal justice, which should be established at the earliest possible date in pursuance of clear mandates of the General Assembly and the Sixth Congress.

32. Mention was made of the report of the European Committee on Crime Problems on the application of the Standard Minimum Rules for the Treatment of Prisoners in Member States of the Council of Europe, ^{3/} according to which: the Rules (European version) were available to the prison staff; they were used for the training of prison staff; the prisoners were informed of their existence; and they were available to them in nearly all Member States of the Council of Europe. In most of the Member States of the Council, the Rules were incorporated in domestic law so that prisoners might refer to these Rules in support of any complaint or request.

B. Code of Conduct for Law Enforcement Officials

33. Under the agenda item on measures for more effective implementation of the Code of Conduct for Law Enforcement Officials, the Meeting gave careful consideration to some of the most important provisions of the Code as well as to current practices and experiences at the national level.

34. The Meeting agreed that the following elements should be considered in the course of further work on the discretionary use of force and firearms by law enforcement officials:

(a) Armed law enforcement officials should be selected by a proper procedure of screening and should be psychologically and emotionally fit. They should receive thorough training in the use of firearms;

(b) Governments should set up and enforce rules and regulations to ensure that weapons and ammunition are appropriate to the circumstances and situations in which the need to use firearms is likely to occur;

(c) The type of weapons and ammunition to be employed should be so selected that the risk of causing harm to the public in general would be minimal;

(d) The only weapons and ammunition that officers should be permitted to use should be those officially issued by the competent authorities;

(e) The competent authorities should formulate and issue detailed regulations governing the control, storage and use of firearms by law enforcement officials.

35. The Meeting felt that further studies should also be carried out regarding confidentiality of information (article 4 of the Code) and problems arising from corruption (article 7 of the Code).

36. The Meeting unanimously approved the following set of guidelines for the more effective implementation of the Code of Conduct and recommended that the Seventh Congress should consider them and take action accordingly.

GUIDELINES FOR THE MORE EFFECTIVE IMPLEMENTATION OF
THE CODE OF CONDUCT FOR LAW ENFORCEMENT OFFICIALS

A. Application of the Code

1. General principles

(a) Efforts shall be made to incorporate the Code of Conduct into national legislation and practices;

(b) In order to achieve the aims and objectives set out in article 1 of the Code and its relevant commentaries, the definition of "law enforcement officials" shall be given the widest possible interpretation;

(c) The Code of Conduct shall be made applicable to all law enforcement officials, regardless of their jurisdiction;

(d) Governments shall adopt the necessary measures to instruct, in basic training and in all subsequent training and refresher courses, law enforcement officials in the provisions of national legislation that is connected with the Code of Conduct and other basic texts in human rights.

2. Specific issues

(a) Selection, education and training. The selection and training of law enforcement officials shall be given prime importance. Governments shall also promote training through a cross-fertilization of ideas at the regional and interregional levels;

(b) Salary and working conditions. All law enforcement officials shall be sufficiently remunerated and their working conditions shall be adequate;

(c) Discipline and supervision. Effective mechanisms to ensure the internal and external discipline as well as the supervision of law enforcement officials, shall be established;

(d) Complaints by members of the public. Particular provisions shall be made, within the mechanisms mentioned under (c) above, for the receipt of complaints against law enforcement officials by members of the public, and the existence of these particular provisions shall be made known to the public.

B. Implementation of the Code

(a) At the national level:

(i) The Code of Conduct shall be made available to all law enforcement officials and relevant competent authorities in their own language;

(ii) Governments shall disseminate the Code so as to ensure that the principles and rights contained therein become known to the public in general;

- (iii) In considering measures to promote the application of the Code, Governments shall organize national symposia on the role of law enforcement officials in the protection of human rights;

(b) At the international level:

- (i) Governments shall inform the Secretary-General of the United Nations every five years on the extent of the implementation of the Code;
- (ii) The Secretary-General shall prepare periodic reports on progress made with respect to the implementation of the Code, drawing also on observations and on the co-operation of specialized agencies and relevant intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council;
- (iii) As part of the information mentioned in (ii) above, Governments shall provide the Secretary-General with copies of abstracts of laws, regulations and administrative measures concerning the application of the Code, any other relevant information on its implementation, as well as information on possible difficulties in its application;
- (iv) The Secretary-General shall submit the above-mentioned reports to the Committee on Crime Prevention and Control for consideration and further action, as appropriate;
- (v) The Secretary-General shall disseminate the Code and the present guidelines and make them available to all States and intergovernmental and non-governmental organizations concerned;
- (vi) The United Nations, as part of its advisory services and technical co-operation and development programmes, shall:
 - a. Make available to Governments requesting them the services of experts and regional and interregional advisers to assist in implementing the provisions of the Code;
 - b. Promote national and regional training seminars and other meetings on the Code and on the role of law enforcement officials in the protection of human rights;
- (vii) Regional institutes shall be encouraged to organize seminars and training courses on the Code of Conduct and to conduct research on the extent to which the Code is implemented in the countries of the region and the difficulties encountered.

II. TOWARDS THE ADOPTION OF NEW STANDARDS AND NORMS

37. The Meeting was informed in considerable detail of the progress achieved in the United Nations on the draft convention against torture and other cruel, inhuman or degrading treatment or punishment, the draft principles for the protection of all persons under any form of detention or imprisonment, the model agreement for the transfer of prisoners and the guidelines on the independence of the judiciary.

38. The observer from the Centre for Human Rights said that the draft principles for the protection of all persons under any form of detention or imprisonment were before the General Assembly for action, and consensus had already been achieved on a number of points. A wide consensus had been achieved at the level of the Commission on Human Rights on most aspects of the draft convention on torture, including the rule of universal criminal jurisdiction. The prevention of any occurrences of torture must account both for the methods and means of torture as well as for the fact that without the involvement of medical personnel, certain complex and odious means of torture could not take place. In that context, the Principles of Medical Ethics relevant to the protection of persons against torture, as already considered and adopted by the General Assembly in its resolution 37/194, were found to be extremely pertinent.

39. The Executive Secretary observed that the Meeting could perform a very valuable role in the further enhancement of the draft instruments by making, wherever possible, comments on their substance with a view to improving their future implementation. The Meeting was fully in favour of the draft instruments and expressed the desire that they be adopted as soon as possible.

40. One participant stressed that the work to be pursued within the United Nations involved, inter alia, the dissemination of the draft convention to Governments and informal co-ordination of activities between the Member States concerned with the promotion of the objectives of this document. Another participant noted that in line with articles 19 and 20 of the draft convention there would be a need to inform the public of the existence of the convention and to make it available to all persons concerned with the protection of human rights.

41. Other participants observed that there might be loopholes in national mechanisms for the prevention of occurrences of torture, as persons subjected to torture at night or during weekends could not complain to judicial authorities because there was no immediate opportunity to appeal to them. It was pointed out that in some Latin American countries judges were not available on weekends to deal with applications relating to torture and other inhuman treatment of prisoners. On the other hand, in other legal systems, a judge was always available and could be called upon on weekends and even at night to deal with habeas corpus and other similar applications relating to inhuman treatment. It was suggested that such a procedure should be adopted by all legal systems in the furtherance of the protection of prisoners and other detainees from torture or inhuman treatment.

42. One participant observed that extradition and transfer of prisoners should be prevented in cases where the surrendered person might be subjected to torture in the country requesting the extradition or the country where the sentence was to be enforced.

A. Model Agreement on the Transfer of Prisoners

43. The model agreement on the transfer of prisoners had been recommended by the Committee on Crime Prevention and Control for adoption by the Seventh Congress. After a brief survey of the development of the model agreement and its contents, the Meeting commented on some of the proposed provisions of the model agreement.

44. The Meeting agreed and thoroughly supported the idea that the consent of the prisoner to a transfer was an indispensable prerequisite for starting the process of transfer, for several reasons. It was noted that the main aim of the model agreement was to facilitate transfers for the purpose of achieving the social rehabilitation of the offender. The participants emphasized that a commentary on the model agreement, especially with reference to its paragraphs 5 and 6, should elaborate on the matter and should, *inter alia*, point out that prior to giving consent the prisoner must be informed of the conditions and consequences of a transfer, so that the prisoner would not face undue hardship by serving the sentence in the administering State. One expert suggested that it might be advisable for such information to be given by judicial authorities.
45. With regard to the consent of the prisoner, mention was made of the phenomenon of migration in Africa caused by different reasons, mostly of a political and economic nature. As migration for such reasons sometimes tended to be criminogenic, there would be demand for the transfer of prisoners from among migrants. Because of the reasons for such migration, transfer could be based only on the expressed free consent of the person concerned. Moreover, it should be ensured that the application of the transfer instrument should not be used as a means for disguised extradition.
46. The participants also considered the question of stateless prisoners and other special categories of prisoners. It was observed, however, that the model agreement dealt essentially with the principle of transfer and should serve as a basis for negotiations in that area. In the course of negotiations, special attention could be paid to such special categories, taking into account the particular situation of the negotiating States.
47. Some participants informed the Meeting of regional instruments on the transfer of prisoners in Europe and their increasing importance as a result of ever increasing international tourism and migration. In one European country a survey had been conducted on the attitudes of migrant prisoners towards the possibility of their transfer to the country of their nationality. It was found that attitudes depended on many factors but most decisively on the length of the migrant's stay in the sentencing State; the prisoner's willingness to be transferred to his or her native country in order to serve the sentence decreased with the length of residence in the countries surveyed.
48. Some participants referred to the existing agreements on the transfer of prisoners in Socialist countries, and it was proposed that the experience of those countries might be useful for other Member States in the course of the implementation of the model agreement.
49. The participants expressed the hope that the model agreement would be adopted at the Seventh Congress as it would promote better prospects and opportunities for the social resettlement of prisoners detained abroad and facing difficult problems because of language barriers, lack of communication, different social and cultural backgrounds and possible discrimination.
50. One expert mentioned that a further future step in the field might well be an initiative concerning a transfer of criminal proceedings, thereby creating a legal possibility of transfer even at a stage prior to the offender's conviction.

B. Guidelines on the independence of the judiciary

51. In considering the independence of the judiciary, the Meeting noted that the Economic and Social Council, in its decision 1984/153 of 25 May 1984, approved recommendation 8/3 4/ made by the Committee on Crime Prevention and Control at its

eighth session to endorse the draft guidelines on the independence of the judiciary and to invite the Meeting to finalize them in co-operation with all parties concerned with a view to presenting the finalized text to the Seventh Congress for adoption. In accordance with that mandate, the Meeting established a working group to consider the various issues related to the finalization of the text. The working group submitted the results of its work in the form of a revised draft. After examination of the draft, the Meeting unanimously agreed on the text annexed to the draft resolution without any revision and recommended that the Congress consider the subject as a matter of highest priority. It was noted that only the English text was approved. (The finalized text as agreed upon by the Meeting is contained in annex III.)

C. Areas of interest for new standards

52. The Meeting considered areas of interest for the elaboration of new standards with a view to assisting the Congress in providing policy guidance to Member States in that important field. It was recommended that the Congress might consider two priority areas, in accordance with recommendations of the Sixth Congress and other United Nations bodies, namely alternatives to imprisonment and the social resettlement of offenders.

53. The discussion of alternatives to imprisonment focused on new guidelines for the treatment of offenders in the community, based on resolution 8 of the Sixth Congress, 5/ which referred primarily to alternative measures to be applicable after the public prosecutor or the competent courts had been involved in the judicial criminal proceedings.

54. It was observed that the issue of alternatives to imprisonment touched crucial questions of criminal policy. The task of preparing principles or guidelines on the subject was a very important one but was also complicated and difficult and should be approached with a view to providing maximum flexibility with respect to substantive matters. For example, although penalties involving elements of community treatment, semi-liberty and social control were valuable alternatives to imprisonment, they also raised questions concerned with the assurance of respect for the human dignity of the offender and the obligations of the supervising authorities towards those sentenced to their charge. It was further pointed out that in the formulation of new principles on alternatives to imprisonment, the different judicial and social systems, cultures and traditions in Member States would have to be taken fully into account. In particular, the valuable experience of the developing countries with respect to the use of indigenous non-custodial forms of treatment, including compensation and restitution, should be fully taken into account in the development of non-custodial sanctions in all systems.

55. It was reported that there were different ways of enlarging the field of alternatives to imprisonment, including community work instead of prison when a sentenced person was unable to pay a fine and the extension of the period of probation, which was even up to two years of prison sentence in one country. Further alternatives, such as the confiscation of personal property, the deprivation of rights, as well as the suspension of driving licences and the deprivation of the right to exercise certain professions or activities were also discussed. It was felt that, notwithstanding their punitive effect, those alternatives were also security measures to prevent the offender from committing specific offences related to his or her former occupation, functions or licence.

56. With reference to the issue of the social resettlement of offenders (resolution 10 of the Sixth Congress) 5/ there was agreement that the goal of imprisonment was in general the re-education and social reintegration of the offender rather than the deterrent factor of punishment. However, those terms had to be seen in the context of the political, social and cultural background of each country.

57. The Meeting considered different measures that might be applicable in reaching the goal of social reintegration and agreed that treatment planning for that purpose was of paramount importance. The "classification" procedure should not be restricted to an examination of the prisoner on admission but should be continually adapted according to the prisoner's progress. Thus, in some countries prisoners were able to be transferred to labour settlements where they could live together with their families.

58. Other areas of interest discussed at the Meeting were:

- (a) Rights of prisoners;
- (b) Guidelines to ensure the independence of lawyers;
- (c) Guidelines to improve the selection and training of prosecutors.

In that connection, reference was made to pertinent resolutions of the Sixth Congress, notably resolution 14, 5/ on human rights instruments and their implementation for prisoners, and resolution 16, 5/ which dealt not only with guidelines for the independence of judges, which the Committee on Crime Prevention and Control had formulated in the meantime, but also with guidelines to improve the selection and training of prosecutors.

59. While acknowledging the importance of the issues under consideration, the Meeting could not enter into a detailed consideration of the issues and recommended that further studies by the Secretariat and by the relevant bodies should be continued.

III. THE QUESTION OF THE DEATH PENALTY

60. The Meeting discussed the problems related to the limitation and abolition of the death penalty comprehensively and exchanged views on several aspects of the question of capital punishment.

61. In accordance with resolution 1984/50 of 25 May 1984 in which the Economic and Social Council invited the Seventh United Nations Congress to establish an implementation mechanism for safeguards guaranteeing the rights of those facing the death penalty, the Meeting agreed on a list of wide-ranging measures for the implementation of those safeguards. It was emphasized that the proposed measures should not be regarded as delaying or preventing the abolition of the death penalty. Rather, it was re-emphasized, the measures were essential and conducive to the eventual abolition of the death penalty. The Meeting expressed its expectation that the delegates attending the Seventh Congress would give favourable consideration to the draft implementation mechanisms, and it was hoped that the Governments would readily agree to such mechanisms.

62. Views were expressed favouring the adoption by States of the second optional protocol on the International Covenant on Civil and Political Rights, which would help in strengthening the observance of the right to life. Provisions of the protocol were referred to in detail, and it was pointed out that the protocol contemplated the progressive curtailment of the death penalty and its eventual abolition.

63. Participants felt that it was necessary to inform the public as well as decision-makers that the application of the death penalty at a time of rising crime rates did not in fact reduce the incidence of crime, as shown by abundant empirical evidence on the dynamics and patterns of crime.

64. Many participants feared that persistent public sentiment in favour of the death penalty might induce some of the abolitionist countries to reinstate the death penalty and that such a move would be unfortunate. The participants from some of the abolitionist countries, however, pointed out that the decision-makers in those countries were aware that the claim of the deterrent effect of the death penalty was not substantiated. A participant from a Socialist country in Eastern Europe said that in his country, despite the retention of the death penalty in criminal law, there was a clear-cut commitment to resort to that punishment only in a very limited and ever-decreasing number of cases. Even in the wake of growing criminality, the courts were not inclined to apply the death penalty. It was, therefore, expected that a steady pro-abolitionist policy might, in the future, lead to the complete abandonment of the death penalty.

65. Another participant explained that in his country judicial intervention had also helped to reduce the number of capital sentences and the types of offences for which it was imposed. Judicial decisions had changed the whole sentencing approach. He felt, however, that it was ultimately up to the legislature to put an end to the existence of such sentences. He also said that the debate on the abolition of the death penalty should be kept alive with renewed vigour lest any country that had abolished it should restore it. He felt that the strategy of limitation should be pursued in a concerted manner.

66. Many participants said that research on the issue of deterrence should be intensified. Indeed, the burden of proving that the death penalty had a deterrent effect was on those who favoured its retention. Some participants said that the claim of deterrence was an issue that should be further explored by sustained research and writing.

67. The Meeting was of the opinion that even in the very unfavourable political and economic climate in the world, which often unleashed strong emotional reactions favouring the death penalty, the world community should nevertheless steadily strive towards the achievement of its abolition so as to fulfil the inherent premise of the right to life expressed in the Declaration of Human Rights and re-emphasized by the International Covenant on Civil and Political Rights.

68. Specifically, the Meeting proposed the adoption of the mechanisms for the implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty, containing the elements set out in the following draft resolution, which could be adopted by the Seventh Congress:

"The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

"Bearing in mind the provisions set out in articles 2, paragraph 1, 14 and 15, of the Covenant on Civil and Political Rights 1/ and in particular those on the death penalty contained in article 6,

"Recalling that the General Assembly, in its resolution 32/61 of 8 December 1977, inter alia reaffirmed that the main objective to be pursued in the field of capital punishment was that of progressively restricting the number of offences for which the death penalty could be imposed with a view to the desirability of abolishing that punishment,

"Welcoming Economic and Social Council resolution 1984/50 of 24 May 1984 containing safeguards guaranteeing protection of the rights of those facing the death penalty,

"1. Endorses the safeguards approved by the Economic and Social Council in its resolution 1984/50 on the understanding that they shall not be invoked to delay or to prevent the abolition of the death penalty or the reduction of the number of capital offences;

"2. Invites all States retaining the death penalty and whose present standards fall short of the safeguards to adopt the safeguards and to take the necessary steps to implement them by:

"(a) Incorporating or making provision for the safeguards in national legislation and regulations;

"(b) Ensuring that judges, lawyers, police officers, prison officials and other persons, including military personnel, who may be concerned with the administration of criminal justice are familiar with the safeguards, and any corresponding provisions in national legislation and regulations, by including them in courses of instruction, by disseminating and publicizing them and by other appropriate means;

"(c) Drawing the attention of persons charged with a capital offence, and their representatives, to the safeguards and to any corresponding provisions in national legislation and regulations;

"(d) Widely disseminating and publicizing the safeguards, and any corresponding provisions in national legislation and regulations, through the mass media and by other appropriate means;

"3. Requests the General Assembly to invite the criminal justice and human rights bodies of the United Nations to promote the safeguards and to take them fully into account in their work;

"4. Requests intergovernmental organizations, including regional organizations, specialized agencies and other bodies within the United Nations system having responsibilities in the field of criminal justice and human rights as well as the relevant non-governmental organizations to promote the safeguards and to take them fully into account in their work;

"5. Requests the Secretary-General of the United Nations:

"(a) To exercise his good offices in order to ensure so far as possible the effective implementation of the safeguards in all States;

"(b) To include in the quinquennial reports on capital punishment made to the Economic and Social Council, in accordance with Council resolution 1745 (LIV), a statement on the implementation of the safeguards;

"(c) To bring the text of the safeguards and of the mechanism for their implementation to the attention of all States, the General Assembly, the appropriate intergovernmental organizations, including regional organizations and specialized agencies, and other appropriate bodies within the United Nations system as well as non-governmental organizations;

"(d) To disseminate and publicize the safeguards and the mechanism for their implementation widely, and to publish the texts in as many languages as possible.

"1/ General Assembly resolution 2200 A (XXI), annex".

IV. EXTRA-LEGAL, ARBITRARY AND SUMMARY EXECUTIONS

69. The Meeting considered the questions of extra-legal, summary and arbitrary executions. Participants were of the view that those terms should be clearly defined to avoid confusion. It was pointed out that summary and arbitrary executions were perpetrated within the framework of law, whereas extra-legal executions could not claim such a pretence. It was noted that those abhorrent practices were widespread throughout the world and were perhaps on the increase. It was observed that there might be intricate relationships between occurrences of those three types of executions and the non-observance of provisions of the Code of Conduct for Law Enforcement Officials, 6/ especially provisions that concerned the discipline of law enforcement officials and the use of force by them. The question of the disappearance of persons and the principles and guidelines on judicial independence as elaborated by the Meeting also fell under the topic.

70. It was noted, in particular, that the report of the special rapporteur on summary and arbitrary executions (E/CN.4/1984/29) traced the background and causes of such executions and indicated that there should be continuing world-wide concern in that respect. Some participants observed that such executions were ostensibly "judicial" in their appearance, although lawless in substance, whereas extra-legal executions were outside the judicial system and posed an intractable problem of applying legal control in extra-legal situations. The Meeting emphasized that, in principle, there should be different means and a comprehensive strategy aimed at preventing occurrences of such executions.

71. Several participants emphasized the vital importance of the safeguards not only for limiting the application of the death penalty in different legal systems but also in dealing with the problem of arbitrary, summary and extra-legal executions. It was pointed out, however, that additional measures had to be developed and that they should be more specifically designed to deal with the peculiar complexities in the case of extra-legal, summary and arbitrary executions.

72. While noting the difficulties in dealing with the problem of extra-legal, arbitrary and summary executions, it was stressed by many participants that those difficulties should not prevent the international community from adopting measures to deal more effectively with such executions. In that connection, the Meeting agreed to make the following recommendations for consideration and further action by the Seventh United Nations Congress, in order to prevent further occurrence of such phenomena:

1. In the national context:

- (a) Standards for the genuine investigation of all violent deaths and all deaths in custody should be established;
- (b) Independent monitoring and reporting by voluntary groups should receive the full protection of the courts, and the data collected by such groups should be fully investigated by the authorities;
- (c) Those entrusted with the conduct of the inquiry should be chosen for their recognized impartiality and competence for the task in hand;
- (d) The investigative body should have authority to obtain all information necessary for its inquiry. It should have power to ensure the co-operation of witnesses, including the means for their protection. All interested persons should be given legal representation. There must be an opportunity for the effective questioning of witnesses;

- (e) Emergencies should not be proclaimed unless provided for in the relevant constitutional laws, and once proclaimed such emergencies should not derogate from international obligations stemming from universal standards and, in particular, from article 4 of the International Covenant on Civil and Political Rights;
 - (f) Minimum substantial and procedural guarantees to be observed by military, special or revolutionary tribunals during public emergencies or situations of internal disturbance or tension and the qualifications of such tribunals should be laid down;
 - (g) In any emergency or similar situation there should be immediate access to an independent and competent judicial authority for seeking and obtaining appropriate legal protection and redress against possible cases of executions by concerned persons and their families;
 - (h) There should be procedures to guarantee that deaths in any official kind of custody or custody known to, or permitted by, the authorities were reported to appropriate independent authorities, whose task should be to conduct a genuine and reliable investigation of such deaths.
2. In the international context:
- (a) Governments should allow investigation on their own territories and press for such investigation elsewhere;
 - (b) Governments should be encouraged to respond fully to any inquiries by criminal justice and human rights bodies in respect of executions, so as to enable a meaningful exchange of concerns and clarifications relating thereto;
 - (c) Technical assistance and co-operation in the field of forensic and other related services should be made readily available on an international basis whenever requested by a Government wishing to investigate cases of extra-legal, arbitrary and summary executions in its country;
 - (d) The United Nations criminal justice and human rights bodies, particularly the Committee on Crime Prevention and Control or Commission and Committee on Human Rights, Subcommittee on Discrimination and Protection of Minorities, and non-governmental organizations in consultative status with the Economic and Social Council should co-operate closely. Such co-operation would be especially valuable when any of these bodies embarks on the elaboration on a new international instrument;
 - (e) The good offices of the Secretary-General should be used fully in cases where occurrences of executions have been alleged.

V. THE ROLE OF INTERNATIONAL CO-OPERATION IN THE FORMULATION AND THE IMPLEMENTATION PROCESS

73. In its discussion on the role of international co-operation, the Meeting recommended that wide dissemination of questions relating to human rights and to standards and norms in criminal justice should be encouraged, and a number of ways and means to that end were discussed. The right to education was emphasized, as was the need, in view of varying socio-economic and cultural conditions, to consider a possible diversification of the educational process and, hence, to further the specialization of educational staff. It was suggested that setting up university studies on human rights at a high level was desirable, but it was also suggested that all countries, notwithstanding the possible scarcity of resources, should endeavour to ensure a broader knowledge of human rights issues at all levels, starting from primary school. The public in general should also be made aware of its duties towards the community. Education on human rights, it was stated, implied bringing information to the grass-root level. It should not consist of a mere enunciation of rules; it required setting up massive programmes, creating human rights centres at universities, educating the educators and sensitizing the centres of power.

74. The Meeting also considered other ways and means for educating the public on human rights principles and standards and norms in criminal justice and for disseminating that information. The translation of such information into national and local languages was deemed to be essential; in countries where the illiteracy rate was high, the use of the mass media, namely radio and television, was most important.

75. Some participants felt that there was an increasing gap between the international standards that had been established over 40 years ago and the actual practice in various countries. Legal and institutional guarantees alone did not suffice. Governments had been called upon to establish national programmes of education and training in human rights; to establish local and national institutions to promote and protect human rights and serve as national centres for information; to assist in establishing programmes in schools and universities; and to organize training courses for the military and the police. However, it was felt that many Governments had done very little in that respect.

76. The role of the United Nations and of international co-operation in promoting more effective application of standards and norms was unanimously emphasized by the participants. It was stressed that in order to continue to carry out the voluminous work required for the preparation and implementation of such standards effectively, the Secretariat should be strengthened. Similarly, the role of the Committee on Crime Prevention and Control should be further upgraded; it should be convened every year; and its members should be proposed by Member States, subject to the approval of the Secretary-General, as was the case with the Commission on Human Rights. Furthermore, the Meeting felt that the Committee should also have subsidiary machinery in the form of sub-committees.

77. The Meeting welcomed the contributions of the United Nations regional and interregional institutes, as well as their statements. It expressed hope that their activities would be substantially strengthened, as it was the unanimous view that the regional institutes had rendered very important services to the countries in their respective regions. The Meeting also believed that the activities of UNSDRI as an interregional research institute should be enhanced.

78. Participants from the African region made reference to the recommendations of the African Regional Preparatory Meeting in 1983 (A/CONF.121/RPM/4) and reiterated the need for an African institute south of the Sahara.

79. Participants felt that international organizations should pay particular attention to assisting developing countries in the field of human rights and crime prevention. For that purpose clearing houses should be established within existing structures; such clearing houses could process requests for assistance and maintain lists of services available. In that context, the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs could play a decisive role.

80. While noting that the rate of resources flowing into the United Nations had slowed down over the past years, all participants felt that greater financial assistance should be provided so as to ensure that training schemes and advice to Governments were more accessible and readily available.

Notes

1/ Adopted by the Economic and Social Council in its resolution 663 C (XXIV) of 31 July 1957.

2/ Adopted by the General Assembly in its resolution 34/169 of 17 December 1979.

3/ PC-R-CP (83) 8 of 19 September 1983.

4/ Official Records of the Economic and Social Council, 1984, Supplement No. 6 (E/1984/16) chap.I, sect.C.

5/ Report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August - 5 September 1980 (United Nations publication, Sales No. E.81.IV.4), chap.I, sect.B.

6/ General Assembly resolution 34/169 of 17 December 1979.

Annex I

DRAFT RESOLUTION ON THE INDEPENDENCE OF THE JUDICIARY

The Meeting recommended the following resolution for adoption by the Seventh Congress:

"The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

"Recalling the Caracas Declaration, unanimously adopted by the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 35/171 of 15 December 1980,

"Recalling also resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, a/ in which the Congress called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges,

"Recalling further Economic and Social Council decision 1984/153 of 25 May 1984, in which the Council invited the interregional preparatory meeting on the formulation and application of United Nations standards and norms in criminal justice to finalize the draft guidelines on the independence of the judiciary formulated by the Committee on Crime Prevention and Control at its eighth session and invited the Secretary-General to submit the finalized text to the Seventh Congress for adoption,

"Taking note with appreciation of the work accomplished in pursuance of the mandates cited above by the Committee on Crime Prevention and Control and by the interregional preparatory meeting at Varenna, Italy,

"1. Adopts the guidelines on the independence of the judiciary as set out in the annex to the present resolution;

"2. Recommends the guidelines for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

"3. Invites Governments to apply the guidelines and to put them into practice by means of appropriate legislation and policy directives;

"4. Also invites the relevant authorities of Member States to bring the guidelines to the attention of judges, lawyers, members of the executive and the legislature and the public in general;

"5. Urges the regional commissions, the regional and international institutes in the field of crime prevention and the treatment of offenders, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations having consultative status with the Economic and Social Council to become actively involved in the implementation of the guidelines;

a/ Report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. (United Nations publication, Sales No. E.81.IV.4, chap.I, sect.B.)

"6. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, the necessary ways and means to ensure the effective implementation of the present resolution;

"7. Requests the Secretary-General to take steps, as appropriate, to ensure the widest possible dissemination of the guidelines, including the intensification of information activities in this field;

"8. Also requests the Secretary-General to prepare a report on the implementation of the guidelines for consideration by the General Assembly;

"9. Further requests the Secretary-General to assist Member States, at their request, in the implementation of the guidelines and to report on the matter regularly to the Committee on Crime Prevention and Control;

"10. Invites the Economic and Social Council and the General Assembly to consider the above issues, as a matter of priority.

"Annex

"GUIDELINES ON THE INDEPENDENCE OF THE JUDICIARY

"Whereas in the Charter of the United Nations the peoples of the world affirm their determination to establish conditions under which justice can be maintained and to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

"Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by competent, independent and impartial tribunal established by law,

"Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights,

"Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

"Whereas the organization and administration of justice in every country should be inspired by those principles and efforts should be undertaken to translate them fully into reality,

"Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles in a pragmatic way on a day-to-day basis,

"Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

"Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

"Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

"The following guidelines, formulated to assist Member States in their task of securing and promoting the independence of the judiciary, with emphasis on criminal justice, should be implemented by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and the public in general. The guidelines have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

"I. INDEPENDENCE OF THE JUDICIARY

"1. Judges shall exercise their functions independently of the executive, the legislature, political parties, the military and all other organizations and institutions.

"2. Judges shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarters or for any reason.

"3. It is the duty of the institutions of Government to respect and observe the independence of the judiciary and to ensure that the judiciary occupies, and is seen to occupy, a position in society that enables it to maintain its dignity and standing and to perform its proper functions.

"4. In the decision-making process, judges shall exercise their functions independently of their superiors and judicial colleagues.

"5. Judicial decisions by the courts shall not be subjected to revision by the executive.

"6. The judiciary shall have jurisdiction, directly or by way of review, over all issues of a judicial nature that are within its competence. Courts shall have exclusive authority to decide whether an issue submitted for their decision is within their competence.

"7. No power shall be exercised to:

"(a) Interfere with the judicial process;

"(b) Assume control over judicial functions;

"(c) Close down or suspend the operation of the courts or change the composition of a court to affect the decision of a particular case.

"8. The executive shall:

"(a) Refrain from any act or omission that would prevent, prejudice or influence the judicial resolution of a dispute;

"(b) Ensure the proper execution of orders and judgements of the court.

"9. Recourse to the courts over the execution of court orders and judgements shall be possible and the State shall ensure their due and proper execution.

"10. The State shall ensure that everyone shall have the right to be tried in a fair and expeditious manner by the established ordinary courts or judicial tribunals.

"11. No special or ad hoc tribunals shall be established to displace the jurisdiction properly belonging to the courts, except that some derogations may be permitted in times of grave public emergencies threatening the life of the nation and only to the extent strictly required by the exigencies of the situation. Such derogations shall be reviewable by the courts and may be made only under conditions prescribed by law and in keeping with internationally recognized standards.

"12. In such times of emergency:

"(a) Civilians charged with criminal offences of any kind shall continue to be tried by the competent civilian judges following established procedures;

"(b) Courts shall retain their jurisdiction to review the legality of detentions and detention orders and to enquire into any allegations of ill-treatment.

"13. The jurisdiction of military tribunals, where they exist, shall be confined to military offences committed by military personnel. These tribunals shall as far as possible be so composed as to include persons with legal training. There shall be a right of appeal to an appellate court, which shall be so composed as to include persons with legal training and judicial experience.

"II. FREEDOM OF EXPRESSION AND ASSOCIATION

"14. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly. Judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

"15. Judges shall be free to form and join associations of judges to represent their interests, to promote their professional training and to protect their judicial independence.

"III. QUALIFICATIONS, SELECTION AND TRAINING

"16. Candidates for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law.

"17. In the selection of judges, there shall be no discrimination on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory.

"18. The law shall provide safeguards against judicial appointments for improper motives.

"19. (a) Where judges are appointed, appointments shall be made either by the judiciary or by the executive and/or the legislature, preferably in consultation with members of the judiciary or by a body in which members of the judiciary participate;

"(b) Where judges are elected, the electoral system shall not impair their impartiality and independence.

"20. Upon taking office, it is appropriate that judges swear an oath or make a solemn declaration to the effect that they will fulfil the duties of their office faithfully, honestly and to the best of their ability without fear or favour and uphold the professional standards of the judiciary.

"21. Judges shall be given opportunities to enhance their knowledge of law and related subjects, for example by:

"(a) Facilitating the exchange of information, experience and expertise in the administration of justice;

"(b) Providing courses in social and behavioural sciences and in judicial administration;

"(c) Organizing seminars concerning national and international experiences, including those of the United Nations, in the areas of administration of justice and human rights and the relevant international conventions, instruments, guidelines and standards in these fields;

"(d) Making use of other national and international programmes, as appropriate, to improve the information available to judges, particularly those programmes provided by the United Nations regional institutes.

"IV. FUNCTIONS, PROMOTION AND TRANSFER

"22. The assignment of functions to judges within the court to which they belong is an internal matter of judicial administration.

"23. Promotion of judges shall be based on an objective assessment of the candidates' integrity and independence of judgement, professional competence, experience and commitment to uphold the rule of law and shall be free from improper motives.

"24. Except pursuant to a system or an accepted policy of regular rotation, judges shall not be transferred from one jurisdiction to another without their consent, but such consent shall not be unreasonably withheld. No transfer shall be made from improper motives.

"V. TENURE

"25. The term of office of judges, their independence, security, adequate remuneration, conditions of service and the age of retirement shall be secured by law.

"26. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

"27. The appointment of temporary judges and the appointment of judges for a probationary period jeopardize judicial independence and shall, therefore, be avoided, except for:

"(a) Part-time or temporary judges, when needed, provided that proper safeguards are laid down to ensure impartiality and to avoid conflict of interest;

"(b) Probationary judges for certain periods after their initial appointment in countries with a career judiciary, such as civil-law countries.

"28. Salaries and pensions of judges shall be adequate and commensurate with the status, dignity and responsibility of their office.

"29. After retirement a judge shall not engage in any activity that might bring the judicial office into disrepute.

"VI. PROFESSIONAL DUTIES AND IMMUNITIES

"30. Judges shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings.

"31. Judges shall not be compelled to testify on matters that have come to their knowledge in their official capacity.

"32. Without prejudice to any disciplinary procedure, judges shall enjoy personal immunity from civil suits in court for acts done in their judicial capacity.

"33. The executive authorities shall, if necessary, ensure the security and physical protection of judges and their families.

"VII. DISQUALIFICATIONS

"34. Judges may not serve in an executive or a legislative capacity unless these functions are exercised without compromising their judicial independence in any way.

"35. While in office, judges shall not practise law in a private capacity. This shall not apply to lawyers who sit only on a part-time basis to fulfil judicial functions.

"36. Judges shall refrain from activities that may cast a reasonable doubt on their independence and integrity.

"37. Judges shall abstain from sitting in any proceedings where they have a conflict of interest or where they may on other reasonable grounds appear to be biased.

"VIII. DISCIPLINE AND REMOVAL

"38. A charge or complaint made against a judge in his judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the opportunity of a full hearing and of commenting on the subject matter from its initial stage. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

"39. Proceedings for removal or discipline of judges shall be held before a board wholly or predominantly composed of members of the judiciary or of members selected by the judiciary. The power of removal may be vested instead in the legislature or

another constitutional body which shall act, as far as possible, upon a recommendation of the board referred to in the preceding sentence.

"40. All disciplinary or removal proceedings shall be based upon established standards of judicial conduct.

"41. Decisions in disciplinary or removal proceedings, whether held in camera or in public, may be published. If the judge concerned so requests, the decision shall be published.

"42. Decisions in disciplinary or removal proceedings should be subject to appropriate arrangements for an independent review. This may not apply to decisions of the highest court and those of the legislature in impeachment proceedings.

"43. Judges shall be subject to removal only for reasons of incapacity or misbehaviour rendering them unfit to continue in office.

"IX. COURT ADMINISTRATION

"44. The main responsibility for court administration shall vest in the judiciary.

"45. It shall be a priority for the State to provide adequate resources to allow for the due administration of justice, including physical facilities appropriate for the maintenance of judicial independence, dignity and effectiveness; judicial and administrative personnel; and operating budgets.

"46. The budget of the courts shall be prepared by the competent authority in close co-operation with the administrative organs of the judiciary. They shall play an active role in the process and submit their estimate of the budget requirements to the appropriate authority.

"47. The division of work between judges and case assignment shall be made by the judiciary under a predetermined plan, which may be changed only in certain circumstances clearly defined in advance."

Annex II

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Annex III

LIST OF DOCUMENTS

A. United Nations documents

- A/CONF.87/9 United Nations norms and guidelines in criminal justice: from standard-setting to implementation, and capital punishment.
- A/CONF.87/11 The implementation of the United Nations standard minimum rules for the treatment of prisoners.
- A/CONF.87/11/Add.1 The implementation of the United Nations standard minimum rules for the treatment of offenders.
- A/CONF.87/12 Principles on linking the rehabilitation of offenders to related social services.
- A/CONF.87/14/Rev.1 Report of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August - 5 September 1980.
- A/CONF.121/PM.1 Discussion guide for the regional and interregional preparatory meetings for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.
- E/AC.57/1984/4 Report of the Secretary-General: Code of conduct for law enforcement officials.
- E/AC.57/1984/9 Report of the Secretary-General: Alternatives to imprisonment and measures for the social resettlement of prisoners.
- E/CN.4/1984/29 Report of the Economic and Social Council: Summary of arbitrary executions.
- No. 36 1980 Alternatives to imprisonment, prepared by the United Nations Secretariat.

B. Background documents

Papers submitted by experts

José Arturo Alves da Cruz Rios, "Problems of implementation of the standard minimum rules in Latin America"

Joaquín Martín Canivell, "The independence of the judiciary"

Angel Djambazov, "The role of research, education, training, public information and dissemination of knowledge in the formulation and implementation process of United Nations norms and standards in criminal justice"

Marianela Ferriol Echevarría, "Formulación y aplicación de los criterios y normas de las Naciones Unidas en materia de justicia penal"

Ezzat A. Fattah, "Towards the establishment of mechanisms for the implementation of United Nations safeguards guaranteeing protection of the rights of those facing the death penalty"

Fé P. Gutierrez, "The role and scope of United Nations standards and norms in criminal justice in the Philippines"

Przemyslaw Mackowiak, "Standard minimum rules for the treatment of prisoners in Polish practice"

H. G. Moeller, "Measures for the implementation of rights of prisoners in both developed and developing countries"

Youssoupha Ndiaye, "Formulation et application des normes de l'organisation des Nations Unies en matière de justice pénale"

James A. O'Brien Quinn, "Ways and means to attune the formulation of new standards and norms in criminal justice to the requirements of modern criminal policy indigenous traditions and customs and the strategies for economic and social development in full respect for human rights"

Helge Røstad, "Ways and means to stimulate adherence of the procedures for the implementation of the standard minimum rules for the treatment of prisoners"

Miguel A. Sánchez-Méndez, "Aplicación del código de conducta para funcionarios encargados de hacer cumplir la ley"

Han Wu, "The judicial system for juvenile delinquency in China"

Papers submitted by non-governmental organizations

Cherif Bassiouni, International Association of Penal Law, "The United Nations procedures for the effective implementation of the standard minimum rules for the treatment of prisoners"

Lucien Morin and J. W. Cosman, International Council for Adult Education, "United Nations standards and norms in criminal justice: an obstacle to implementation"

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