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PREVENTION OF DELINQUENCY, JUVENILE JUSTICE AND THE PROTECTION  
OF THE YOUNG: POLICY APPROACHES AND DIRECTIONS

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## INTRODUCTION

1. The prevention of juvenile delinquency, the administration of juvenile justice and the protection of the young have undergone a progressive evolution of thought and action under the aegis of the United Nations congresses.\* Many of the problems and aspects have been approached from different perspectives and, over the years, important achievements have been made, in conjunction with world-wide changes in the social, cultural and economic situation. The rights of the child have been accepted as a universal concept. The culmination of the long process of the promotion of those rights was the adoption by the General Assembly, on 20 November 1989, of the Convention on the Rights of the Child (General Assembly resolution 44/25, annex).
2. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by establishing the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33, annex), made a major contribution to the protection of the rights of juveniles in conflict with the law. The Rules have inspired innovation and reform in juvenile justice all over the world. They advocate the least possible use of institutionalization, and only as a measure of last resort; increased recourse to diversion; establishment of juvenile courts and the use of separate facilities for juvenile offenders; professionalization of personnel dealing with juveniles in conflict with the law; decriminalization and depenalization; respect of substantive and procedural rights; and abolition of capital and corporal punishment for juveniles. Less than five years after their adoption, the Rules have had a significant impact on many justice systems, as indicated in the report of the Secretary-General on their implementation (A/CONF/144/4). The Seventh Congress called for further standard-setting in the juvenile justice field to complement these Rules.
3. The prevention of delinquency was accorded high priority by the Seventh Congress. On its recommendation, the General Assembly, in its resolution 40/35, recognizing that the prevention of juvenile delinquency should include measures for the protection of young persons who were abandoned, neglected, abused or in marginal circumstances and, in general, those who were at social risk, called for the development of standards in this respect. It also acknowledged that one of the basic aims of the prevention of juvenile delinquency was the provision of requisite assistance and a range of opportunities to meet the varying needs of the young, especially those who were most likely to commit delinquent acts or to be exposed to crime. The Economic and Social Council, in its resolution 1986/10, section II, requested the Secretary-General, inter alia, to develop standards for the prevention of juvenile delinquency, and the Eighth Congress to consider the new instrument, with a view to its adoption.
4. In its resolution 21, 1/ the Seventh Congress noted that, although the Standard Minimum Rules for the Administration of Juvenile Justice stated that placement of a juvenile in an institution should be a disposition of last

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\*See, for example, the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex) and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (General Assembly resolution 317 (IV), annex) and the Declaration of the Rights of the Child (General Assembly resolution 1386 (IV), annex).

resort, large numbers of young persons were being held in penal and other closed institutions throughout the world. It was recognized that the Rules did not deal fully with the conditions in which juveniles were deprived of their liberty. It was also recognized that young persons had the right to benefit from special measures and structures designed to meet their specific needs. Young persons were identified as being very vulnerable, so deprivation of liberty during the most critical formative period of their personal development poses an enormous danger. In particular, the institutionalization of young persons with adult offenders represents a serious risk. Having noted that the United Nations Standard Minimum Rules for the Treatment of Prisoners, although having some applicability to juvenile institutions, specifically stated that they did not seek to regulate such institutions, the Congress recommended that rules should be developed for the protection of juveniles deprived of their liberty. Accordingly, the Economic and Social Council, in its resolution 1986/10, section II, requested the Secretary-General to formulate such rules, and the Eighth Congress to consider the new instrument, with a view to its adoption.

#### I. GENERAL DIMENSIONS OF JUVENILE DELINQUENCY

5. In developing countries, youth as a population group is constantly growing. By the year 2000, half of the world's population will be under the age of 25. 2/ Very often young people are deprived too soon of their childhood and are forced at a young age to earn their living in an adult world. Thus deprived of the chance to develop gradually into responsible members of society, they are very likely to come into conflict with the law.
6. The rising incidence and increasing seriousness of juvenile delinquency in many countries may be precipitated by certain socio-economic problems often associated with development. These include poverty, rapid population growth, inadequate shelter and housing, industrialization, urbanization, youth unemployment and underemployment, breakdown of the family unit, erosion of traditional values and internationalization of behaviour patterns, the growing influence of the mass media, a weakening of community support systems, inadequate provision of social services and the inability of the education system to respond to new challenges. Young people are the least able to support themselves, are often marginalized and are among the most frequent victims of "critical" poverty.
7. The impact of the debt crisis upon social policies and community life in the developing world cannot be underestimated. Inevitably, there is a tendency to accord insufficiently high priority to programmes for the prevention of delinquency. The debt crisis is not just a matter of budget deficits; its effect on day-to-day life distorts priorities and inhibits social development generally, and particularly in the area of crime prevention.
8. In the African region, juvenile crime and delinquency appear to remain primarily an urban problem. The principal offences committed by young persons are theft, robbery, smuggling, prostitution, abuse of narcotic substances and drug trafficking. They are often attributed to hunger, poverty, malnutrition and unemployment, which are linked to the marginalization of juveniles in the already severely disadvantaged segments of society. Juvenile crime and delinquency are on the increase on that continent, a trend also linked to the rapid social, political and economic changes that have taken place in Africa in recent decades. 3/

9. In the Asian and Pacific region juvenile crime and delinquency are also largely urban phenomena. There appears to have been a marked increase in the incidence and gravity of youth crime and delinquency over the last two decades. Statistically, young persons constitute the most criminally active portion of the population. The most alarming trends in the region are the rise in the number of violent acts committed by young persons, the increase in drug-related offences and a marked rise in female juvenile delinquency. 4/

10. The Latin American Regional Preparatory Meeting for the Eighth Congress noted that the problem of juvenile delinquency in that region was particularly acute, as young persons constituted a very high percentage of the population; 45 per cent of the population is under 17 years of age, and in some countries the percentage is even higher. 5/ For example, in El Salvador young people below 18 years of age account for 55 per cent of the population; in Ecuador, 56 per cent of the inhabitants are under 15 years of age; and in Nicaragua, 60.4 per cent are under 19 years of age. 6/ The young are the hardest hit by the economic problems generated by the debt crisis in the region, as is borne out by the extremely high unemployment rates prevailing among them.\*

11. In the Arab region, juvenile delinquency appears to be less serious than it is in other parts of the world. It does pose certain problems, however, varying from one country to another. Some countries, such as Egypt, the Sudan and Tunisia, have experienced socio-economic difficulties, while others, such as Kuwait, Saudi Arabia and the United Arab Emirates, have become prosperous. In the latter group, delinquency may be attributed to such factors as the impact of migrants seeking employment, continued urbanization, sudden affluence and a rapidly changing economy, and a heterogeneous population. The conflict between traditional Arab-Islamic values and the new, often imported, values appears to be a common problem throughout the region. 7/

12. In developed countries, the population as a whole is growing older because of a combination of factors, the principal ones being decreasing birth rates and increased life expectancy.

13. Families tend to have fewer children, and the children of those families tend to protract adolescence well beyond the traditional limits. This phase can extend easily up to the age of 25 years. This phenomenon may be due, for example, to high rates of primary unemployment, diminished social pressures to establish a family, difficulties in finding suitable housing in densely populated urban areas and prolonged education in more favourable economic situations, which may postpone a young person's independence and autonomy. This virtually lengthens the period in which many young people run a higher risk of drifting into conflict with the law, a risk that is particularly acute in the transitional phase of human maturation.

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\*According to a study, based on a scale of five socio-economic levels and conducted by the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders in 18 countries of the region, 89 per cent of the cases handled by the juvenile justice system were distributed between the two lowest levels, characterized by a very low family income. Most of the cases originated from a situation of "critical" poverty. See also the report of the Latin American and Caribbean Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (San José, Costa Rica, 8-12 May 1989) (A/CONF.144/RPM.3 and Corr.1).

14. In the Western world, increased prosperity and the availability of ever more consumer goods has led to increased opportunities for juvenile crime, including theft, vandalism and destruction of property. With the social changes of the last few decades, the smaller, nuclear family has replaced the extended one, the informal traditional control over young people exercised by adults - parents and relatives, teachers, sports trainers, youth workers etc. - has gradually declined and no adequate substitutes have been provided. If, as indicated by research, 8/ the lack of, or insufficient, parental supervision is one of the strongest predictors of delinquency, the contemporary Western family structure is one of the most important factors associated with an increase of juvenile delinquency in the last 50 years.

15. Within developed countries, there are groups of impoverished and needy persons, suffering from relative deprivation in the midst of affluence. Their specific circumstances vary with the local socio-economic situations, but they merit special attention from social assistance agencies. Unfortunately, in recent years, some wealthy countries have curtailed their social services, dramatically reducing the budget allocations for the weakest strata of the population. Poverty has increased and the problem of the homeless has reached alarming dimensions. These persons find themselves isolated from the larger society and deprived of the financial support and structures that were assisting them in their disadvantaged circumstances. There is an urgent need to revise social policies that inadvertently penalize the weak and the poor, making them more prone to come into conflict with the law in order to survive.

16. In the European region, evaluative research has shown that although there has been a marked increase in juvenile delinquency since the end of the Second World War, juvenile delinquency stabilized in the early 1980s and is now declining in a number of countries, not only in absolute numbers, in terms of which it may have followed the decrease in birth rates, but also in delinquency rates. Young females and young males seem to have different delinquency patterns: male delinquency has been stabilizing and declining, while female delinquency has risen steeply since the end of the 1970s and has only recently started to decline. On the whole, it would appear that young males still commit more frequent and more serious offences than females, but there are hardly any differences in petty offences. 9/

17. Among the new types of youth crime are the so-called "play-type" offences. 4/ No deep-rooted motivation, except, perhaps, boredom and the search for fun or "kicks" can be ascertained for the commission of these offences, which may range from shoplifting and solvent abuse to far more serious offences, such as assault, rape and murder.

18. One type of offence that is causing serious concern in many parts of the world is the "hate" or "bias" crime, involving violent acts, mostly assaults, committed by groups of at least four persons. "Hate crimes" are committed by those in their teens or early twenties, but are not spawned by youthful rebellion. According to research, the perpetrators act out feelings shared by their families, friends and communities. These acts of violence originate in racial, religious and ethnic prejudice and tend to be more severe than other assaults. Often involving gangs, they occur largely in mixed neighbourhoods.

19. The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders reported (A/CONF.144/IPM.3) that the violent behaviour of youth groups, such as gang activities and vandalism, for example "hooliganism" at football and other sporting events, is a trend that is also arousing serious concern all over the world. Delinquent gangs are a particularly insidious form of peer-group

influence. Various attempts have been made to explain how and why youth gangs develop. They appear to be a symptom of malfunctioning societies. Further research is needed to identify the causes of this socially troubling phenomenon, with a view to proposing effective preventive strategies.

20. In both developed and developing countries, young people below 25 years of age are the largest consumer group of illicit drugs and the major victims of the illicit drug trade. Even in countries where drug consumption *per se* is not considered to be an offence, this pattern may hinder young people from developing their full potential and becoming integrated into the mainstream of social, economic, cultural and political life. The consumption of illicit drugs can lead to involvement in "irregular situations" and induction into criminogenic sub-cultures. Since drug-related offences account for a large percentage of the crimes committed in many countries, comprehensive strategies and programmes need to be developed for the prevention of alcohol, drug and other substance abuse by young persons (A/CONF.144/RPM.1 and A/CONF.144/RPM.4).

21. In many countries, the denial of opportunities for the balanced development of the young, lack of social support and care facilities and declining employment prospects against a background of poverty, deprivation and backwardness are among the major factors affecting juvenile delinquency. Misconduct can be a reaction to the lack of appropriate education, employment and livelihood prospects, or to the disparity between increased aspirations and limited options.

22. The failure to protect and preserve the cultural integrity of indigenous minority groups has contributed to the accelerated breakdown of many traditional family structures and relationships. This breakdown may have come about because of economic pressures, through the misuse of alcohol, or illicit drugs or in several other ways. However, it is a matter of common observation that young people from indigenous minority groups are almost invariably overrepresented in juvenile delinquency figures. While the clock cannot be turned back, it is incumbent upon nations to find ways of reinvolving the traditional community leaders of indigenous groups in a dialogue with the rest of the population in their areas. 10/

23. It would appear from studies carried out in different countries that the crime rate among minority groups, particularly migrants and foreigners, is higher than it is among native residents. These studies, however, often ignore the fact that first-generation migrants are usually young males, statistically the most active category in crime. More accurate data could be obtained by comparing migrants with native residents of the same age group and in comparable circumstances. It has also been noted in some countries that first-generation immigrants have a lower crime rate than their peers in their country of origin, as well as in the host country, while the crime rate among their children is higher. 11/

24. The problems of young second-generation migrants are to some extent similar to those facing indigenous young persons from a disadvantaged social background: high unemployment rates, few opportunities for constructive use of leisure time, bad housing and limited possibilities for social and individual advancement. Their position is made even more unfavourable by the intolerant and discriminatory attitude of the native population; weak family support (since the parents themselves may be experiencing difficulties in the host country); and differences between the values of the family and those of the surrounding society. Xenophobic attitudes can bias education, employment and criminal justice processes. 12/

25. Policies in the host country should not necessarily be designed to assimilate foreigners, which they themselves may not even wish but rather to reduce the obstacles to the participation of migrants and other non-residents in social life. Policies for the prevention of juvenile delinquency should be designed to enhance the social integration of young migrants, especially those in situations of social risk. Ultimately, and in accordance with the draft United Nations guidelines for the prevention of juvenile delinquency (see paragraph 26 below), in particular paragraph 15, dealing with the socialization of children in the family and paragraph 27, dealing with special educational programmes, young migrants should be offered the same opportunities as native young persons to achieve a satisfying position and effective participation in the society of the country of residence. Further research could usefully be carried out to determine the actual incidence of, and factors associated with juvenile delinquency among young migrants and devise possible measures to prevent it.

## II. DRAFT UNITED NATIONS GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY (THE RIYADH GUIDELINES)

26. In pursuance of General Assembly resolution 40/35 and Economic and Social Council resolution 1986/10, section II, and on the basis of a study prepared by Allison Morris, Professor at the Institute of Criminology, Cambridge University, a set of guidelines was formulated. The first draft of the guidelines was circulated to a wide constituency of experts in the juvenile justice field. A revised text, incorporating the comments received, was considered by the Interregional Meeting of Experts on the Development of United Nations Draft Standards for the Prevention of Juvenile Delinquency, hosted by the Arab Security Studies and Training Centre at Riyadh, from 28 February to 1 March 1988. That meeting, attended by prominent experts in the field of juvenile justice and by representatives of the United Nations entities concerned, further elaborated the draft Guidelines, which were submitted to the Interregional Preparatory Meeting for the Eighth Congress on topic IV, held at Vienna from 18 to 22 April 1988. Subsequently they were also considered and endorsed by the five regional preparatory meetings. The text of the draft United Nations Guidelines for the Prevention of Juvenile Delinquency, as amended and approved by the Committee on Crime Prevention and Control at its eleventh session, is contained in the report of the Committee. 13/

27. The draft Guidelines represent a set of 65 universally applicable principles intended to prevent juvenile delinquency at the "pre-conflict" stage, that is to say, before young persons come into conflict with the law. They emphasize early protective and preventive intervention modalities for all young persons, paying special attention to situations of "social risk" (A/CONF.144/IPM.3).

28. While aimed at promoting the well-being of young persons from their early childhood, the draft Guidelines adopt a child-centred orientation in their approach to the prevention of juvenile delinquency. Accordingly, in paragraph 3 it is stressed that young persons should play an active role in partnership with society and should not be considered as mere objects of socialization and control. Programmes that are developed with the participation of the young persons for whom they are intended will reflect more accurately their needs and concerns. Young persons are more likely to be attracted by such programmes and to take an active part in them.

29. It has been well documented that, all over the world, there are virtually millions of children at social risk. These young persons have been, and are

still, subjected to disturbances affecting their social integration. They may be abused, neglected, exploited and marginalized as a result of circumstances or conditions of malfeasance, misfeasance or non-feasance on the part of adults who are supposed to be responsible for their care and protection. Children at social risk are more vulnerable to victimization and to entrapment in irregular situations, and are thus in danger of lapsing into delinquency. But even when this does not occur, they are very likely to develop psychological and social problems that may prevent them from leading normal lives and being able to interact constructively with other people.

30. Research has demonstrated that situations of social risk can be produced by factors related to the inherent characteristics of the child, for example, a congenital physical or mental disability; the relationship between the child and his or her parents or guardians; and the socio-economic circumstances in which the child lives. In most cases, a child at social risk is a product of the interplay of many factors, and the more adverse they are, the greater the chance that the child will drift towards delinquent activities.

31. The new concept of "social risk" is the basis of the draft Guidelines. The identification of situations of social risk, their causes and circumstances, and the provision of conditions for the normal and healthy development of the child, can do much to prevent juvenile delinquency.

#### A. Child abuse and exposure to violence

32. It is generally agreed that the prevention of child abuse can go a long way towards preventing juvenile delinquency. The quality of the parent-child relationship largely determines whether or not a child will find himself or herself in a position of "social risk".

33. A consistent theme in research on violence is the criminogenic influence of early exposure to violence, in particular in the family micro-environment. Witnessing domestic violence directed against the mother or other relatives can be detrimental for the child, even when he or she is not the victim. Abusive parents or, in general, families where violence is considered an acceptable means for solving conflicts, may serve as negative role models for the children. This behavioural pattern has a tendency to be passed on from one generation to the next, creating a vicious cycle of violence.

34. Child abuse may involve physical, emotional and sexual abuse. Studies have indicated significant correlations between child abuse and neglect and deviant behaviour among violent juvenile delinquents and among adults who have committed violent crimes. This connection between a child's history of neglect or abuse and subsequent delinquency, crime and other problems has been mostly ignored by many juvenile justice and social service systems. When child sexual abuse turns into sexual exploitation, prostitution and pornography, the victim is even more at risk. Immediate interventions to protect the physical and sexual integrity of children are crucial if permanent damage is to be avoided. 14/

35. Prolonged emotional or physical neglect, particularly in infancy, is likely to turn the victim into a child at social risk. Various measures of a purely preventive nature can be taken in this respect. Some families may be unable to meet their children's needs because of the difficult circumstances in which they live and a lack of resources. Efforts should be made to establish a wide range of family support services in accordance with the provisions contained in the section of the draft Guidelines 13/ dealing with the family

(paragraphs 11-19), with a view to helping parents to understand better their parental roles and obligations as regards child development and care. Protective, timely interventions can help to forestall potentially damaging situations.

36. The family is the primary societal unit and the principal socializing agent and every child should have the right to remain with his or her own family unless there are compelling reasons which justify the child's removal. When proof exists of some specific harm or absence of parental ties, the criteria authorizing formal intervention should be strictly defined and limited to the situations described in paragraph 46 of the draft Guidelines. 13/ Removal of the child from the home should be a measure of last resort and alternative ways of dealing with the situation should be explored. When the recourse to formal intervention is unavoidable, every effort should be made to rectify the situation that caused it, so that the child can return to his or her family.

37. The delays in the processes of the justice system and procedures and rules that are insensitive to the feelings, perceptions and fears of children can exacerbate child abuse. 15/ For example, young people obliged to give evidence during sexual abuse proceedings may be exposed to undue anxiety and stress. Child assistance agencies have a tendency to override the rights of children in their zealous attempts to help them, by, for example, separating them from their original families, placing them in foster homes or uprooting them from their environment. In cases of child sexual abuse, where a victim is institutionalized as a protective measure, the child is doubly victimized. The law, in seeking to protect children against troubled situations in the family, gives the parents or the State child welfare agency, in certain cases, the right to institutionalize them. In this way, a virtually obstacle-free path is opened up for the placement of children and young persons in institutions. 16/ It would be opportune to devise alternative measures to institutionalization.

38. In order to ensure prompt protective intervention, cases of child abuse or neglect should be uncovered as early as possible. Similarly, efforts should be made to guarantee the immediate reporting of such cases to the competent authorities. Taking into account the rights of the parents, legislation should contain provisions concerning the mandatory reporting of such cases by certain categories of professionals who, by virtue of their activity, are in contact with children and young persons. 17/ These would comprise, but not necessarily be limited to, physicians, mental health professionals, social workers and teachers. In order for these provisions to be enacted, courses on child abuse and neglect should be part of the regular curricula of the professionals concerned, as is already the case in a number of countries.

#### B. Child exploitation

39. The sale of and traffic in children is an underestimated and under-investigated phenomenon, accounting for millions of "crimeless victims", who, because of their vulnerability, turn to or are subjected to exploitative practices and who, by virtue of mere involvement, not only may find themselves in situations of conflict with the law but are in need of special protection (A/CONF.144/PM.1).

40. In the report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the sale of children (E/CN.4/Sub.2/1989/38), a number of non-governmental organizations involved in the rights of children reported on various forms of child sale and traffic. This exploitative

practice has reached serious proportions in recent years, causing concern in the international community. In particular, the sale of and traffic in children for the purpose of sexual exploitation, although not new phenomena, have become matters of serious concern in many parts of the world, owing to their links to international crime, pornography and prostitution.

41. Child pornography is the most visible form of sexual exploitation. Its production always entails child abuse. Furthermore, the existence and distribution of pornographic material using children feeds the views of paedophiliac groups, according to which sexual relations between adults and children would be normal and beneficial to the child's development. On the contrary, it has been clearly demonstrated that any such sexual relation is detrimental to the child, who is subject to exploitation because he or she does not have the emotional and intellectual maturity to give or withhold consent. It is opportune, here, to stress the importance of the role of the mass media in conveying a healthy image of childhood when portraying children, without any implied erotic message, or proposing them as possible sexual objects.

42. Special attention should be paid to certain categories of children and juveniles particularly at risk of being victimized and involved in child prostitution practices, such as abused, neglected and abandoned children, runaways, drug-addicts and street children. Appropriate structures and services should be made available for their protection. Since child pornography and prostitution are engendered not only by producers and exploiters but also by customers and consumers, action should be taken on both fronts. Measures should also be taken to proscribe "sex tourism" involving children. This practice is widespread in Africa, Asia and Latin America, although the clientele come mostly from the Western world.

43. The sexual exploitation of children often has an international character: pornographic material is usually produced in one country and distributed abroad, so as to hinder the identification of victims and producers. In many cases, the victims of child prostitution are smuggled from one country to another and young women from disadvantaged areas are lured to wealthier regions by the promise of honest employment, only to be entrapped as prostitutes. A network of inter-State information should be established and co-operation among Governments strengthened. Since the victims of child sexual exploitation are often missing children - runaways, or children who have been abducted, sold or abandoned - efforts should be concentrated on improving international collaboration in tackling this specific problem.\*

44. Another alarming exploitative situation arises from the fact that, in many parts of the world, massive numbers of children are considered commodities to be used for economic benefit. Sometimes parents are led by poverty to sell their own children to earn money, or they force them to undertake illicit activities to sustain the family. The fact that children are sold or indentured

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\*See Council of Europe, European Committee on Crime Problems, Select Committee of Experts on sexual exploitation, pornography, prostitution of, and trafficking in children and young adults, "Preliminary explanatory memorandum concerning draft Recommendation No. R (89) (PC-R-SE (90) 6). Sexual exploitation of children and young adults is defined by the Committee as "the sexual use for economic purposes of a child or a young person, which violates, directly or indirectly, human dignity and sexual freedom and endangers his/her psycho-social development" (para. 2).

by their parents or guardians, or that their families thrive on the illegally acquired earnings of the children involved in such activities as prostitution, pornography, illicit drug trade and theft, does not in any way justify this heinous practice. A concerted effort on the part of the international community is urgently needed to put an end to it, in particular, by fully implementing existing international instruments, such as the Convention on the Rights of the Child (General Assembly resolution 44/25, annex).

45. The widespread use of children as agents in criminal activities and in the illicit drug trade, on the grounds that they are not criminally responsible, is a matter of grave concern. This serious form of child exploitation takes place within the framework of locally and internationally organized crime and particularly penalizes children, as they find themselves entrapped in criminal activities at a very early age. Their opportunities to lead normal lives are blocked and, without prompt intervention, little can be done to rescue them from an inevitable process of criminalization.

46. In many countries, there is no specific legislation for the penalization of adults who exploit children for criminal activities and, even where such legislation exists, it is not always properly enforced. In fact, the "dark figure" associated with this type of exploitation indicates that fighting such practice is not always accorded the priority it deserves, both in terms of criminal policy and enforcement. The Interregional Preparatory Meeting for the Eighth Congress on topic IV, and the regional preparatory meetings, stressed that justice procedures should be updated and provisions be made for criminalizing the corruptors of youth, particularly drug dealers and procurers.

47. These children are victims of situations representing a wide variety of violations of their basic rights as laid down in the Convention on the Rights of the Child. In some countries, where the lower limit of criminal responsibility is set at a very young age, children are doubly victimized in that they are held accountable for their behaviour and are treated according to standards set for adults, thereby being deprived of the special safeguards and protection to which they should be entitled on grounds of their immaturity and vulnerability.

48. Attention should also be directed to the rampant practice of kidnapping and smuggling of children for adoption. This practice not only infringes upon the basic right of the child not to be separated from his or her family, but also is a way of circumventing the legislation regulating international adoption, depriving the child of the strict controls that guarantee the suitability of the adoptive family. Abduction is also used for the recruitment of slaves and young children, especially young females, for sexual exploitation of a transnational character and often involving criminal syndicates.

### C. Street children

49. While the media have concentrated on massive natural disasters and spectacular international action, and while Governments have struggled with recession and the balance of payments, the failures of development and overwhelming social pressures have given rise to the phenomenon of street children, which was thought to have disappeared in the nineteenth century: their emergence in countless numbers was not foreseen in many national plans. 18/

50. Street children are forced by circumstances beyond their control to live on the margins of the adult world. The principal causes of child abandonment - and in many cases of child neglect, abuse, and exploitation - are related directly to disadvantaged socio-economic situations. In developing countries, street children are the outcome of unemployment, poverty, rural-to-urban migration and broken families. Wars, revolutions, natural and man-made disasters have further aggravated the situation. In industrial countries, their numbers are often swollen by changing social assistance policies that neglect the disadvantaged segments of population, which cannot keep up with the fast pace of an extremely competitive society. Deprivation, chronic unemployment, impossible housing markets and extraordinarily high divorce rates can also aggravate the situation.

51. If children are left out on the streets and are unable to make the minimum amount of money necessary in order to survive, then they are forced to turn to other means, such as theft, acts of violence and prostitution. Street children become experts in the art of survival and may gradually develop an anti-social stance, fostered by the resentment and distrust of the society that has rejected them. Recourse to narcotic substances, such as crack, cannabis, inhalants or other substances, represents a common way of relieving the burden of reality, while at the same time it takes its toll on the children's physical and mental health.

52. Since there is no universally accepted definition for "street children", no objective basis for an accurate statistical calculation of their numbers exists. The United Nations Children's Fund (UNICEF) makes a distinction between children on the street and children of the street. The first category encompasses working children who still have family connections, while the second is a group formed by children who are totally on their own. The very nature of street children places them outside official classifications and records. UNICEF estimates indicate that there are 50 million such children in Latin America and the Caribbean alone. 19/

53. In many countries, street children find themselves trapped in a hopeless situation. These children are particularly exposed to serious forms of exploitation, such as bonded labour or other forms of slave trade, illicit drug trafficking, prostitution, pornography and organized crime. Poor socio-economic conditions can lead to a situation in which the child is not able to attend school, does not receive proper health care, and must earn a living from a very early age.

54. It should be stressed that street children are not actually delinquents, but only immediate candidates for delinquency if their needs are not met. Their social integration is seriously hindered or even made impossible and, being at social risk, these children are very likely to grow into chronic delinquents. Street children are subject to a process of stigmatization and criminalization and they are brought into the justice system because there are no other options. Very often they are not granted any protection. Official intervention, which usually takes the form of institutionalization or detention, contributes to their further victimization.

55. Street children account for a large number of cases of detention of children with adults. They are often deprived of their liberty without any charges being laid against them, or for minor infractions of the law. Deprivation of liberty has been proved to be the least effective measure to solve the problem of street children, since it exposes them to criminal life-style and values and the dangers of direct contact with adult prisoners, including physical violence and sexual abuse.

### III. THE PREVENTION OF JUVENILE DELINQUENCY

56. Just as situational crime prevention is most productive if it targets high-crime areas, so action to prevent juvenile delinquency is likely to be most effective if it accurately targets high-risk situations as a basis for the prevention of social crime. Thus, prevention programmes should be directed towards groups that can be identified as vulnerable to factors likely to be associated with high rates of juvenile delinquency. Bearing in mind the fact that predictions of delinquency at the individual or group level are generally difficult to assess, are unreliable and may be used to justify otherwise unacceptable intrusions into the child's life, including the family and school environment, care should be taken to focus more on the circumstances and situations of vulnerability. Identification of a child as being at social risk should not become a new form of stigmatization or result in a self-fulfilling prophecy. Review of the question of vulnerability should be continuous, because as social arrangements may change, so too may there be a shift in vulnerability patterns. Because of the link between delinquency and other social problems - for example, alcohol abuse, illicit drug consumption, victimization, school failure and unemployment - any measure that succeeds in reducing delinquency will probably also have other benefits. Prevention programmes must be part of a wide range of service-providing systems, so as to be presented as positive activities in themselves and not only as delinquency prevention strategies.

57. A corollary of this concept is that prevention of juvenile delinquency should be closely interlinked to general social policies for youth. The draft Riyadh Guidelines stress the need for a multidisciplinary and intersectoral approach to the prevention of juvenile delinquency. <sup>20/</sup> This policy approach to prevention encompasses various measures for all young persons, with emphasis on those at social risk. In this way, the possibility of adverse social interventions to persons who may never have required intervention to prevent them from becoming delinquent is no longer a problem. In fact, intervention can consist of additional resources and support programmes for a particular group of individuals at risk, instead of adverse measures that impinge on their rights. <sup>21/</sup> Protective intervention, where warranted, should take place in accordance with strict and precise legal criteria, without touching upon the fundamental rights of those involved.

58. It has been noted that juvenile delinquency tends to disappear with time, and that for many adolescents minor acts of delinquent behaviour do not indicate major difficulties in functioning and that such behaviour is gradually curbed as effective mechanisms of self-control are developed. Most of these acts, although a societal nuisance, do not permanently affect the maturation process. Official intervention is not necessary for minor delinquent behaviour, as long as the society accepts it as part of growing up.

59. Nevertheless, juvenile delinquency continues to be viewed as a serious social problem, arousing the concern of Governments, experts and practitioners. The fact that it has been studied for a long time does not automatically imply that its identification is the key to its elimination. Active prevention seems to be the most successful approach to juvenile delinquency.

60. It would be unrealistic to consider the complete elimination of juvenile delinquency as possible or as the ultimate goal of prevention policies. Since a certain level of crime and delinquency has always existed, prevention can

only seek to reduce its incidence to an acceptable level, especially since juvenile delinquency tends to be a temporary phenomenon. Therefore all measures for its prevention should reflect a proper balance between objectives and means.

61. In the public health field, useful distinctions have been made between primary, secondary and tertiary prevention. Primary prevention involves general policies designed to meet basic needs and it targets society at large. Secondary prevention consists of various programmes targeted at high-risk groups. Tertiary prevention involves individualized care and treatment, with a view to preventing a relapse.

62. In the context of juvenile delinquency, an effective prevention policy should focus on the alteration of the circumstances leading to delinquency, reduction in the rate of first and serious offences and prevention of recidivism. Primary and secondary prevention are closely interlinked. The new draft Guidelines for the Prevention of Juvenile Delinquency should be considered as an instrument of primary intervention policy for all young persons, especially those at social risk. They also deal with some of the specific needs of young persons at social risk, which are traditionally considered to be the object of secondary prevention policy. Secondary and tertiary prevention are subject to the intervention of justice systems <sup>22/</sup> and, therefore, are the focus of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) (General Assembly resolution 40/33, annex).

63. Instead of dealing with problems of deviance at the primary and secondary levels, when young persons are still functioning socially, there seems, in many countries, to be a paradoxical tendency to abandon the long-term approach and outreach to society as a whole, with special attention to selected sectors in need. Instead, preference tends to be given to intervention at the tertiary level, after young persons have already come into conflict with the law. Thus, primary and secondary prevention are not allocated the resources they require, although they are more effective than short-term approaches and institutionalization.

#### A. Primary and secondary prevention

64. The occurrence of delinquent behaviour indicates that the social integration process has broken down. Effective preventive measures should contribute to the satisfactory social integration of the child at the earliest possible stage of his or her development. Parents are primarily responsible for the physical and mental well-being of their children, but Governments are responsible for securing the conditions that enable parents to carry out their duties. Health care, especially primary health care, and family support programmes are of the utmost importance for the sound development of the child and of the parent-child relationship.

65. Education, as stressed in paragraphs 20 to 31 of the draft Guidelines, is one of the main agents of socialization and plays a very important role in the next stage of development of the child. Educational shortcomings can contribute to the unbalanced development of the personality, which may increase the risk of the child being trapped in so-called "irregular situations". <sup>23/</sup> Many Governments have made strenuous efforts to reduce illiteracy. But too often, educational and employment planning have not been co-ordinated, and school leavers find no way of fulfilling their heightened expectations. Unemployment and underemployment are well known causes of frustration,

which destroy motivation. Long-term employment planning should be an integral part of policies for the prevention of juvenile delinquency, particularly in developing countries, where it should also be geared to national development needs.

66. Truancy and "dropping out" of school often indicate the inadequacies of educational systems rather than being manifestations of delinquent behaviour or a propensity to crime. As mentioned in paragraph 30 of the draft Guidelines, "drop-outs" deserve special attention, as they are at social risk. Other forms of education, less formal, competitive and factual than regular programmes, should be established for this group, with a view to helping it to overcome its difficulties.

67. Section C of the draft Guidelines (paragraphs 32 to 39) deals with the role of the community in the prevention of juvenile delinquency. In the last few years, there has been renewed emphasis in a number of countries on crime prevention in the community, that is to say, at the local level. This has led to the introduction of a number of experiments in prevention in schools, shopping centres, housing estates, sport and youth clubs, and in public transport systems. Such an approach necessitates close collaboration between the police, judicial authorities and administrative and social agencies.

68. Preventive programmes originating in the community offer a more organic response to local juvenile delinquency problems. In the draft Guidelines, where the important role of youth organizations is stressed, it is stated that such organizations "should encourage youth to organize collective and voluntary projects, particularly projects aimed at helping young persons in need of assistance". <sup>24/</sup> Governments may consider facilitating and encouraging prevention programmes developed by youth, rather than "delivering" them themselves. In fact, delinquency prevention, although part of national youth policy, does not necessarily have to be conceived in detail and implemented by "remote-control" authorities.

69. Section D of the draft Guidelines (paragraphs 40 to 44) indicates the important role that mass media can play in the prevention of juvenile delinquency. The mass media have often been accused of stimulating crime and delinquency by sensationalizing instances of violent and destructive behaviour, as well as popularizing culturally inappropriate role models and indifference to ethical issues. Efforts should be made to enhance the educative, rather than the entertainment role of the mass media. Positive role models proposed by the media could reach large strata of the population, bearing in mind the fact that, for example, television is a poor but very common substitute for parental involvement with children. <sup>25/</sup> The beneficial potential of the mass media should be recognized and made use of, with a view to promoting egalitarian principles and roles (Guideline 43). The media should be encouraged to develop codes of responsibility regarding the programmes being shown.

70. The fact that juvenile delinquency is caused by a complex and frequently interrelated set of factors has consequences for the nature and content of preventive programmes. Well-co-ordinated, multi-faceted policies are needed, touching upon all the elements of the socialization process, in accordance with paragraph 10 of the draft Guidelines: family, community, peer groups, schools, vocational training, work and voluntary organizations.

## B. Tertiary prevention

71. Tertiary prevention may be a critical juncture in the development of a young person. The chances of social integration of the individual are at stake. The first important step toward effective tertiary prevention, or prevention of recidivism is, in line with paragraph 5 of the draft Guidelines, to avoid criminalizing and penalizing a young person for behaviour that does not cause serious damage to his or her development or harm to others. In this connection, it is stated in paragraph 55 of the draft Guidelines that legislation should be enacted to ensure that any conduct not considered an offence or penalized if committed by an adult is not deemed an offence and penalized if committed by a young person.\* Traditionally, the juvenile justice system has had jurisdiction over non-criminal misbehaviour by young people, such as truancy, sexual behaviour, running away from home. Such behaviour should not be dealt with by the juvenile justice system, whose jurisdiction should be limited to offences that are punishable when committed by an adult. Very often the commission of a "status offence", for example, running away from home, is a means of escaping from a difficult or abusive situation in the family. Young persons referred to the juvenile justice system for having committed a status offence are, thus, often punished for their parents' misdeeds.

72. A significant proportion of juveniles who commit minor offences may not need any intervention, especially where the family, school or other informal social control institution has already reacted, or is likely to react, in an appropriate and constructive manner.\*\* Such cases should be excluded, as much as possible, from the official proceedings of the justice system. An over-reaction to minor cases by the judicial authority can be very detrimental to the individuals concerned, often contributing to the development of a consistent pattern of undesirable behaviour by stigmatizing the young persons, labelling them as delinquents and facilitating their contact with delinquent sub-cultures and values.

73. For juveniles who commit offences of a more serious type, relapse into crime and clearly have difficulty in functioning socially, intervention by the juvenile justice system seems to be the only answer. No matter how serious the offence committed, juveniles should be entitled to all special guarantees and safeguards, in view of their age. In some countries, however, these serious cases are dealt with by adult courts, as an exception to the juvenile court jurisdiction, on the basis of the seriousness of the offence.

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\*These are the so-called "status offences", also referred to in the commentary to rule 3.1 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. See Horst Schüler-Springorum, "General report of the International Association of Penal Law on Youth, Crime and Justice", paper presented to the Sixth Joint Colloquium [of the International Association of Penal Law, the International Penal and Penitentiary Foundation and the International Society of Criminology and the International Society of Social Defence], held at Bellagio, Italy, in April 1984.

\*\*See the reply of the Government of France on the implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1990. According to its estimate, over 60 per cent of the cases taken to court involve juveniles who have committed non-serious offences or delinquent acts not requiring official action by the juvenile justice system.

74. Tertiary prevention poses the problem of choosing the juvenile justice response that best suits the case; the careful classification of the juvenile offenders thus becomes a priority. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice propose a wide array of possible measures to respond to delinquent behaviour of different degrees of seriousness.

75. If, for a large number of juvenile offenders care, guidance, supervision and educational measures are sufficient to ensure a positive outcome, serious offenders require prompt identification and careful treatment in order to prevent their further involvement in crime.

#### IV. DRAFT UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY

76. Although the results of research conducted world-wide on the effectiveness of the various measures for juvenile offenders are not uniform, there is agreement that deprivation of liberty should be a measure of last resort, limited to the most serious cases and minimum length of time. Despite these findings, the number of young persons deprived of their liberty world-wide is still staggering. Although the exact extent is not known, the problem of lack of information on young persons deprived of their liberty will be overcome solely by continued information-gathering and international action. The research so far undertaken has revealed identical or similar patterns, which can be identified as common features: the insufficiency of the resources allocated to facilities and treatment for young persons deprived of their liberty is a major obstacle to their adequate treatment in custody; the majority of young inmates come from socially disadvantaged strata; many penal systems are not achieving the object of rehabilitating delinquents, particularly of the youngest ones; and chronic overcrowding of juvenile facilities is a common problem. 26/

77. Despite the efforts by those responsible for, or working in, juvenile facilities to help juveniles to develop more constructive attitudes, evaluative research has shown that such institutions can be ineffective, extremely costly and even harmful. Also, in many parts of the world, custodial measures are a common response to juvenile delinquency and are often used without taking into consideration their counter-productive effect on young persons. Furthermore, the policy of indiscriminately using the deprivation of liberty, without differentiating the categories of juvenile offenders to which it should be applied, may prevent the development of a system of alternative measures.

78. The international community has devoted increasing attention to the rights of young persons deprived of their liberty. As already noted (see paragraph 3 above), the Seventh Congress treated this issue as an area requiring urgent action. The matter has also been on the agenda of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights since 1985.

79. A number of international standards, such as the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex), the Standard Minimum Rules for the Treatment of Prisoners,\* the

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\*For the complete text, see Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

Convention on the Rights of the Child (General Assembly resolution 1386 (IV), annex) and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (General Assembly resolution 40/33, annex), stress that young persons should not be held in facilities with adult offenders.

80. In pursuance of resolution 21 of the Seventh Congress 27/ and Economic and Social Council resolution 1986/10, section II, the development of new rules for the protection of juveniles deprived of their liberty was initiated. In 1986, Defence for Children - International at Geneva, a prominent non-governmental organization active in this field, was invited by the Secretariat to assist in this work. In co-operation with the Secretariat, an open-ended working party of non-governmental organizations was established, which included Amnesty International, Defence for Children - International, the Friends' World Committee for Consultation, Human Rights Internet, the International Catholic Child Bureau, the International Commission of Jurists and Rädga Barnen International. A series of meetings were held by these organizations in 1986 and 1987, resulting in the formulation of a set of draft rules.

81. In January 1988, the expert advisory services of Professor G. Kaiser, Director of the Max Planck Institute for Foreign and International Criminal Law at Freiburg, were engaged to review the text, which was then submitted to the Interregional Preparatory Meeting for the Eighth Congress on topic IV and to the five regional preparatory meetings. The text of the draft United Nations Rules for the Protection of Juveniles Deprived of their Liberty, as amended and approved by the Committee on Crime Prevention and Control at its eleventh session, is contained in the report of the Committee. 28/

82. The draft Rules deal with the overuse of the detention of young persons and the serious problems they encounter in such situations. The draft Rules specify the conditions required to ensure the fair treatment of young persons deprived of their liberty and to safeguard their individual rights and well-being, consistent with human rights and fundamental freedoms, and with a view to counteracting the detrimental effects of all types of detention and fostering integration into society (rule 3).

83. In principle, the draft Rules should apply to any situation entailing the deprivation of liberty of a young person, such as official custody for observation or treatment, detention under charge or without charge, detention while awaiting or pending trial, or detention when already sentenced and in facilities such as prisons, reformatories, training schools, youth centres, police lock-ups, gaols, or the like. For the purpose of their application, deprivation of liberty is described in rule 10 (b) as "any form of detention or imprisonment or the placement of a person in another public or private custodial setting from which this person is not permitted to leave at will by order of any judicial, administrative or other public authority". 28/

84. The draft Rules cover all aspects of the management of juvenile facilities in a very detailed way, including record-keeping, admission, registration, movement and transfer; classification and placement; physical environment and accommodation; education, vocational training and work; recreation; religion; medical care; notification of illness, injury and death; contacts with the wider community; limitations of physical restraint and the use of force; disciplinary procedures; inspection and complaints; return to the community; and personnel.

85. The Latin American and Caribbean Regional Preparatory Meeting for the Eighth Congress recognized that the draft Rules were of crucial importance in preventing a very serious situation from developing in several countries where adult prisons, with all their negative features, dehumanized and damaged juvenile inmates. In fact, it was reported in several countries that the practice of arbitrarily arresting groups of young persons (redadas or batidas) was common and a major source of concern. The proposed Rules, together with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, are considered a useful instrument in curbing the criminalization process, which often starts with the deprivation of liberty.
86. The shortcomings and adverse conditions associated with the deprivation of liberty can produce effects particularly detrimental to young persons, which contribute to their victimization. These effects may include physical and sexual abuse, emotional neglect, severe malnutrition, untreated physical and mental illness, trauma, suicide, cruel and inhumane treatment or punishment, and even torture.
87. In several countries, alongside the broad discretionary authority granted to judges in the framework of juvenile justice, those responsible for applying the measures imposed by judges are also commonly given the widest possible powers over the lives of those deprived of their liberty. This can be a source of violation of the human rights of institutionalized juveniles, their parents and relatives by the same juvenile justice system. The new Rules should facilitate a more appropriate response to this serious problem, since they are designed to serve as a convenient standard to be used by professionals involved in the management of juvenile facilities.
88. Pre-trial detention presents an even more serious risk. It can be a shock for a young person to be exposed to criminal contamination, and can lead to suicide and self-inflicted injuries, as well as to the appearance of psychological problems. As far as possible, therefore, efforts should be made to limit detention to exceptional circumstances (rule 16).
89. Juveniles who have not been tried should be presumed innocent and treated as such, in accordance with section III of the draft Rules. It is of the utmost importance that this category of young persons be separated not only from adult offenders but also from convicted juveniles, with a view to curbing the negative effects of contacts with more experienced offenders, and protecting juveniles awaiting trial from any form of abuse.
90. Surveys of the situation in many countries show that children and juveniles are imprisoned with adults as suspects of alleged crimes, as illegal immigrants, as truants, as beggars, as "uncontrollable" elements, as witnesses to adult crimes and as hostages in states of siege. The consequences of this can be extremely serious and can undermine any attempt to promote the social integration of juvenile offenders. This situation usually arises from a lack of resources, preventing the provision of separate facilities for juveniles. But the social cost of such forced contacts between juvenile and adult offenders is very high in terms of the harm caused by criminal contamination. Deprivation of liberty under such adverse circumstances may turn a detention facility into a real "school of crime".
91. As suggested in rules 26 and 27, a complete evaluation of the psychological and social needs of every juvenile should be made as soon as possible after admission to a facility, so as to identify the most appropriate type and level of care and programme; and classification should be based on a number of

factors, such as age, personality, sex and type of offence. The rationale should always be their protection from harmful influences and risk situations.

92. It is opportune to stress the importance of classification, in view of the fact that, although the legislation of many countries includes the obligation to keep young persons separate from adults in institutions involving deprivation of liberty, in practice, this provision is not always observed. <sup>29/</sup> Furthermore, classification is often inadequate, particularly with regard to the age and legal situation of the juvenile offender. In fact, children and juveniles share the same facilities; juveniles awaiting trial are not kept separate from convicted offenders; and cases involving public assistance, child abandonment and even victims of abuse are not dealt with in appropriate and separate facilities.

93. Rule 29 advocates the establishment of open institutions, with minimal security measures or none at all. Experiments conducted in many Western European countries indicate that a more open penitentiary system, with adequate human and technical resources, does not produce adverse effects. Escape from open institutions - even among recidivists or other difficult offenders - has proved to be rare and very few violations have been reported. A substantial increase in the proportion of open institutions could be achieved without putting public safety at greater risk, as indicated by the international comparison of the respective measures and recidivism rates in some countries. Open detention facilities, however, require particularly well-trained personnel, able to provide the support and assistance the young persons need to rejoin society and to function after being released. <sup>30/</sup>

94. Institutionalization without post-release support mechanisms invites high failure rates. The draft Rules contain provisions on the arrangements and services necessary to assist juveniles in re-establishing themselves in society and lessening prejudice against them. The role of the community is essential in this respect. In order for the community to contribute effectively to this process, its involvement in the care of juvenile offenders should start while they are still inside the institution. Rule 8 underlines the need to involve the public in the preparation of juvenile offenders for their return to society. This is of great importance, and active steps should be taken to foster contacts between the juveniles and the local community.

95. The principle of decentralization is critical in promoting this aim and reducing the stigmatization and marginalizing effects of deprivation of liberty on juvenile offenders. Following this principle, rule 29 leads to the conclusion that juvenile facilities should be located close to a community to allow the juveniles to take advantage of the available educational and cultural facilities and if possible, to have access to job opportunities.

96. Rule 37 stresses the right to education of every juvenile of compulsory school age, adding that it should be provided outside the detention facility, in community schools wherever possible. In rule 44, reference is made to the opportunity to perform remunerated labour, if possible within the local community. Rule 48 suggests that medical care should, where possible, be provided to detained juveniles through the appropriate health facilities and services available in the community, in order to prevent stigmatization and promote self-respect and integration into the community.

97. Many provisions of the draft Rules are intended to ensure greater respect for the dignity of young persons deprived of their liberty. For example,

rule 25, on transport, stresses the need for the observance of conditions that should in no way subject the juvenile to hardship or indignity. Rule 34 states that the possession of personal effects is a basic element of the right to privacy and is essential to the juvenile's psychological well-being, and rule 35 recognizes that, as far as possible, juveniles should have the right to use their own clothing.

98. These and other provisions draw attention to one of the most important elements in the process of rehabilitation, namely, the right of the juvenile to understand the rules, aims and process of treatment, while at the same time maintaining a sense of dignity. As rule 65 points out with reference to disciplinary measures, the fundamental objective of institutional care should be to instil in juveniles a sense of justice, self-respect and respect for the basic rights of others.

#### V. JUVENILE DELINQUENCY AND THE PROTECTION OF THE YOUNG IN THE CONTEXT OF THE CONVENTION ON THE RIGHTS OF THE CHILD

99. The Convention on the Rights of the Child was adopted by the General Assembly in its resolution 44/25 and signed by representatives of 59 Governments at the signing ceremony on 26 January 1990. The Convention mandates the international community to ensure the rights of children in their totality and urges Governments to evaluate their welfare and legal systems in relation to its fundamental principles. As the Secretary-General pointed out in his statement on the adoption of the Convention, this instrument "attempts to provide a framework within which the child, in the light of his or her evolving capacities, can make the difficult transition from infancy to adulthood. It also acknowledges that children are particularly vulnerable to certain kinds of exploitation. In a series of important articles it seeks to protect the child from attacks so prejudicial to his or her welfare as child labour, drug abuse, sexual exploitation and sale, trafficking and abduction." (A/44/PV.61, pp. 9-10.)

100. The Convention on the Rights of the Child contains 54 articles covering all aspects of child development. Although many of these rights bear some relevance to the administration of juvenile justice, articles 37 on torture and deprivation of liberty, and 40 on the administration of juvenile justice, expressly deal with the protection of children in conflict with the law. They contain a summary of what is covered by, respectively, the draft United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 28/ and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (General Assembly resolution 40/33, annex). Not only do the latter two documents represent an important reference tool for Member States wishing to adapt their legal systems to the distilled wisdom and experience of the world community but they also reinforce the guarantees provided for by the Convention. They can therefore be considered as an extremely valuable complement to the Convention, able to facilitate its practical application in a related field.

101. The effective implementation of the Convention would be the best contribution to the prevention of juvenile delinquency, both primary and secondary. The Convention encompasses a large number of children's rights, 31/ which are also advocated in the draft United Nations Guidelines for the Prevention of Juvenile Delinquency. 24/ In particular, reference should be made to: article 9, on the child's right to live with his or her parents unless it is deemed incompatible with his or her best interests; article 12, referring the

child's right to express an opinion on any matter of procedure affecting him or her; article 18, dealing with parental responsibilities and State assistance to parents in the performance of their child-rearing responsibilities; article 19, on measures to protect the child from abuse and neglect; article 24, on the child's right to the enjoyment of the highest attainable standard of health and to access to the health services; article 27, on the child's right to an adequate standard of living; articles 28 and 29, on the child's right to education and on the role of education in the development of the child's personality; article 32, dealing with child labour and the protection of the child from economic exploitation; article 33, on protection from the abuse of drugs and from being involved in the production and distribution of such substances; article 34, on protection from sexual exploitation and abuse; article 35, on prevention of the abduction or sale of, or traffic in, children; article 36, on the protection of the child from all other forms of exploitation; and article 40, dealing with the rights of children in conflict with the law.

102. According to article 1 of the Convention, "a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier". In this respect, the Convention goes one step further than the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (General Assembly resolution 40/33, annex), which do not suggest any lower limit for the age of criminal responsibility, although the commentary to rule 4 refers to the need for a reasonable lowest age limit that is applicable internationally.

103. If, according to the provisions of the Convention, a child should normally be entitled to a series of specific rights up to the age of 18 years, due consideration should also be given to his or her emotional, mental and intellectual maturity before holding him or her responsible for anti-social behaviour. In general there is a close relationship and reciprocity between the notion of criminal responsibility and other social rights and responsibilities.

104. There seem to be a tendency in international law to recognize 18 as the age of majority for penal purposes. For example, in article 6, paragraph 5, of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex), it is stated that sentence of death "shall not be imposed for crimes committed by persons below eighteen years of age". Therefore the Convention can play a very important role in fostering a more progressive attitude towards the age at which a child is deemed to be able to live up to the moral and psychological elements of criminal responsibility. This idea has been reflected in the draft United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 28/ where a juvenile is defined to be a person under the age of 18 (rule 10, paragraph (a)).

105. Another article of the Convention deserving of attention is article 3, concerning the need to consider the best interests of the child. This concept has been defined as providing the best conditions and opportunities for the child's development. 32/ It is held that the best interests of the child should be a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. This can be considered as the guiding principle underlying the three instruments on juvenile justice. Since young persons are a very vulnerable group, priority should be given to their needs in every action taken, both on their behalf and in sanctioning them.

106. In many parts of the world, the problem is not so much the absence of legal provisions for the protection of children and young persons <sup>33/</sup> but, rather, the enforcement and monitoring of the existing provisions and their updating in line with the current social, cultural and economic conditions. In view of its binding effect, the Convention, once ratified, can also be used as an instrument to assess the laws regulating different aspects of child development within every national legal system, with a view to improving the uniformity of definitions and standards for children. The technical content and pragmatic approach of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice permit them, together with the proposed instruments before the Congress, to play a relevant role in this endeavour in the context of their practical application. Indeed, they represent a solid basis for any project aimed not only at their implementation but also at the effective application of the Convention in the juvenile justice field.

#### VI. INTERNATIONAL CO-OPERATION

107. In order to achieve greater success in reducing juvenile crime, the innovative programmes for the prevention of juvenile delinquency and the administration of juvenile justice should be initiated, promoted and developed at all levels, in accordance with the United Nations instruments. The underlying principle of the programmes should be that juvenile justice and social justice for children are vital human rights issues and basic requisites for more viable productive societies. For this reason, it is most important that intersectoral programmes for the prevention of juvenile delinquency and for juvenile justice be part of national economic and social development planning. Governments should give higher priority to such programmes and should be helped to identify and assess their specific needs. It would thus be appropriate to explore ways and means of further enhancing the co-operation among specialized agencies and other bodies of the United Nations concerned with child-related programmes. The Eighth Congress may wish to consider how this can best be done, including the incorporation of juvenile justice and juvenile delinquency prevention projects in the country programmes of the United Nations Development Programme (UNDP) and the United Nations Children's Fund (UNICEF). The United Nations, in co-operation with the interregional and regional institutes on the prevention of crime and the treatment of offenders, could assist in these endeavours. The protection of the basic rights of young persons, in particular street children, in conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, the two new draft instruments and the Convention on the Rights of the Child, is a common concern requiring joint efforts.

108. The network of regional and interregional institutes for the prevention of crime and the treatment of offenders has proved very effective in promoting international co-operation in the field of delinquency prevention and juvenile justice. As emphasized by all the regional preparatory meetings for the Eighth Congress, technical co-operation, through advisory services, demonstration projects, workshops, training initiatives and the evaluation of programmes, research, scientific collaboration and formulation of policy options, should be vigorously promoted and strongly supported. Efforts should be concentrated particularly on overcoming national and individual programme constraints. Information exchange at the international level should also be strengthened. <sup>34/</sup>

109. In close co-operation with non-governmental organizations concerned, such as Defence for Children - International and Rädda Barnen/Swedish Save the

Children, various projects on juvenile justice have been carried out by the United Nations all over the world. The activities of the United Nations in the field of juvenile justice and the prevention of juvenile delinquency should also be considered within the framework of the Task Force for Child Survival, established by UNDP, UNICEF, the World Health Organization (WHO), the World Bank and the Rockefeller Foundation.

110. The United Nations recommendations on juvenile justice are also relevant in the context of the forthcoming World Summit for Children, scheduled to take place at United Nations Headquarters in New York on 29 and 30 September 1990. Its purpose is to draw attention and promote commitment, at the highest political level, to the goals and strategies for ensuring the survival, protection and development of children, as key elements in the socio-economic development of all countries and of human society. The aim is to stimulate new initiatives in every part of the world and, among the international community, to tackle those issues that will most critically affect children in the decades ahead.\* If priority is to be given to the basic needs of children, emphasis should also be placed on the child's continuing development: ensuring that the child obtains a dignified and satisfying place in society and that he or she has the motivation for leading a law-abiding life and the possibility of doing so. The set of international instruments on juvenile justice constitute a useful framework of reference for technical assistance projects and a yardstick against which Governments can take appropriate action. They can contribute significantly to the development of measures that can make the difference between a child's mere survival and his or her meaningful existence. 35/

111. While political will is critical in order to bring about the changes and reforms necessary to improve the situation of children, including their treatment by the justice system, technical know-how can help to put them into effect. Some Member States may require substantial external financial and technical assistance, particularly in the early stages of programme development. Assistance by interested donor-countries as bilateral aid or contribution to multi-lateral projects becomes invaluable to this end. For problems concerning children and transcending national boundaries, technical co-operation is an even more urgent necessity.

112. The United Nations programme on crime prevention and criminal justice has an important role to play in assisting Member States in the improved planning, implementation and evaluation of juvenile justice policies. Through its interregional advisory services, it can promote law reform, provide technical and practical expertise in this field, and stimulate technical co-operation projects.\*\*

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\*The United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders reported that several Latin American countries have requested technical assistance, in order to change the existing situation and to improve the juvenile justice response to various social problems concerning the young.

\*\*A number of technical co-operation projects have been, or are being, carried out by the United Nations in the field of juvenile justice. Among them, the recent projects "Pibes Unidos", in Argentina, and "Gurises Unidos", in Uruguay, for children on and of the street, have involved UNDP and the United Nations Interregional Crime and Justice Research Institute, and have been funded by the Directorate-General for Development Co-operation of the Italian Ministry of Foreign Affairs. Project proposals concerning street children in Chad, Ethiopia, Haiti and the Sudan are also under consideration.

## VII. SUMMARY AND CONCLUSIONS

113. The present paper gives an analysis of the world-wide situation and circumstances of juvenile delinquency, its prevention and the protection of the young. Two new instruments, the draft United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) and the draft United Nations Rules for the Protection of Juveniles Deprived of their Liberty, together with their policy implications have been described. The Eighth Congress may wish to consider them with a view to their adoption.

114. A number of problems related to juvenile justice and the protection of the young require further action by the international community. To this end, the attention of the Eighth Congress is drawn, in particular, to some of the areas discussed in the paper.

115. In view of the detrimental effects of child sexual exploitation and the enormous dimension of the problem, the Eighth Congress may wish to recommend that further attention be given to it, with a view to identifying effective responses by the criminal justice system.

116. In many parts of the world, youth crime, especially violent crime, represents a matter of grave concern. Youth gang activities, violent acts at sporting events, serious drug-related offences and phenomena such as the so-called "wilding" are giving rise to increasing anxiety in many societies. As reported by the Interregional Preparatory Meeting on topic IV (A/CONF.144/IPM.3), there seems to be a general trend for young people to commit offences at an earlier age and often to commit serious offences that are largely considered to be adult crimes. Those who commit serious offences frequently have histories of abuse and institutionalization, and represent a group for whom rehabilitation will be extremely difficult. The Eighth Congress may wish to recommend that further research be carried out and measures designed to meet the more demanding needs of this group of young persons particularly liable to choose crime as a professional career. This research might be based upon the experience with the implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and the most recent findings on the subject, particularly assessments of differential rates of success of the various dispositions.

117. The Eighth Congress may also wish to consider ways and means of promoting international co-operation, in accordance with the specific situations and socio-economic requirements of each country, so as to develop effective policies and structures for the protection of young persons at social risk and the administration of juvenile justice.

118. Other areas, such as child abuse and neglect, exploitation of children for criminal activities and the various forms of sale of and traffic in children, require further studies and research. The Eighth Congress may wish to recommend that steps also be taken in this respect. Setting the objectives of juvenile justice for the rest of the century and beyond is a matter of priority, as youth is the world's most precious asset: it must be developed and preserved not only for better societies today, but also as a key to the future.

### Notes

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- 2/ See Street Children, A Growing Urban Tragedy: A Report for the Independent Commission on International Humanitarian Issues, presented by S. Agnelli (London, Weidenfeld and Nicolson, 1986).
- 3/ Report prepared for the United Nations Secretariat, by Florence Muli-Musiime (Nairobi, African Medical and Research Foundation), 1990.
- 4/ Report of the Expert Group Meeting on Adolescence and Crime Prevention in the ESCAP Region, 3-10 August 1989, Tokyo (United Nations publication, ST/ESCAP/769).
- 5/ Instituto Latinoamericano de las Naciones Unidas para la Prevención del Delito y el Tratamiento del Delincuente, "Programa sobre prevención del delito y justicia juvenil", March 1990.
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- 7/ Badr-El-Din Ali, "Arab States", in Action-oriented Research on Youth Crime: An International Perspective, United Nations Interregional Crime and Justice Research Institute, publication No. 27 (Rome, November 1986).
- 8/ T. Hirschi, Causes of Delinquency (Berkeley, California, University of California Press, 1969); M. Rutter and H. Giller, Juvenile Delinquency - Trends and Perspectives (Harmondsworth, Penguin Books, 1983); D. Riley and M. Shaw, Parental Supervision and Juvenile Delinquency, publication No. 83 (London, Home Office Research Unit, 1985); J. Junger-Tas, "Causal factors: social control theory", in Juvenile Delinquency in the Netherlands, J. Junger-Tas and R. Block, eds. (Berkeley, California, Kugler Publishers, 1988).
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- 10/ Report of the International Seminar on the Prevention and Treatment of Juvenile Delinquency through Community Participation, held at Beijing from 19 to 24 October 1988 (United Nations publication, TDC/SEM.89/4, INT-88-R77).
- 11/ Report of the Secretary-General on research in juvenile delinquency (A/CONF.121/11), submitted to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders.
- 12/ Council of Europe, "Social reactions to juvenile delinquency among young people coming from migrant families", Recommendation No. R(88)6 and explanatory memorandum.
- 13/ Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/117, annex.
- 14/ Jaap Doek (Juvenile Judge, Vrije Universiteit, Amsterdam), "Prevention of juvenile delinquency: between dreams and actions", paper prepared for the United Nations Secretariat, 1990.
- 15/ See Metropolitan Court Judges Committee, Report: Deprived Children. A Judicial Response: 73 Recommendations (Reno, Nevada, National Council of Juvenile and Family Court Judges, 1986).

16/ A. M. Nechaeva, "Pravovaya okhrana semi v SSSR" (Legal protection of the family in the USSR) (Moscow, 1987); P. Kubadinska, "Dolg semeyny i obshchestvenny" (Family and social duty) (Moscow, 1988); A. I. Pergament and E. A. Pavlodski, "Dinamika sudebnykh sporov, vlyekayushchikh iz brachno-semeinykh otnoshenii" (Dynamics of judicial disputes flowing from marriage and family relations), Pravovedenie, No. 1, 1988; A. Likhanov, "My i nashi deti" (We and our children), Pravda, 14 October 1988; and A. Katolikov, "Dve tysyachi pisem, dve tysyachi sudeb" (Two thousand letters, two thousand fates), Semya, No. 16, 1988.

17/ Laura Freeman Michaels, "Evidentiary issues in cases involving children", in Foundations of Child Advocacy, Donald Bross and Laura Freeman Michaels, eds. (Longmont, Colorado, Bookmakers Guild, 1987).

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26/ Katarina Tomasevski, Children in Adult Prisons (London, Frances Pinter Publishers, 1986).

27/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: Report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. E.

28/ Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/118, annex.

29/ "Los derechos humanos del menor y del niño frente al sistema de justicia juvenil", conclusiones finales del I° Seminario Latinoamericano de Capacitación e Investigación al Sistema de Administración de Justicia Juvenil, held at San José, Costa Rica, from 4 to 14 May 1987, revised by the Seminario de Centroamérica y del Caribe, held at Mexico City from 26 to 30 October 1987, the Seminario del Cono del Sur, held at Montevideo from 3 to 7 November 1987, and the Seminario del Grupo Andino, held at Bogotá, from 25 to 29 April 1988.

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