

145612



UNITED NATIONS



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

Havana, Cuba, 27 August to 7 September 1990

Distr.
GENERAL

A/CONF.144/13
1 June 1990

ORIGINAL: ENGLISH

Item 4 of the provisional agenda*

CRIMINAL JUSTICE POLICIES IN RELATION TO PROBLEMS OF
IMPRISONMENT, OTHER PENAL SANCTIONS AND ALTERNATIVE MEASURES

Research on alternatives to imprisonment

Report of the Secretary-General

Summary

This report contains background information for the Research Workshop on alternatives to imprisonment, including an overview of research, projects and legislation on non-custodial sanctions, and an inventory and classification of non-custodial sanctions, based on an analysis of the functions of imprisonment and alternative sanctioning. The drawbacks of imprisonment, both to the offender and to society, have led to a growing interest in non-custodial sanctions. Imprisonment is still, however, the predominant sentence. Non-custodial sanctions are used far less than the law would allow and their implementation is hindered by the absence of structures and funds. There is a trend towards diversification of such sanctions and their extension to a greater range of offences and offenders. Classical non-custodial sanctions are being used to a larger extent and new ones often incorporate a number of conditions, such as work, compensation or restitution, and treatment. "Traditional" sanctions are meeting with renewed interest. Interest in standard-setting is also growing, with an emphasis on legal safeguards. More research is needed on statistical data, effectiveness, factors influencing decision-making and sentencing attitudes, and promotion strategies.

*A/CONF.144/1.

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
INTRODUCTION	1-3	3
I. DEFINITION AND DELIMITATION OF THE TOPIC	4-8	3
II. FUNCTIONS OF PUNISHMENT	9-21	5
A. Functions and dysfunctions of imprisonment	9-14	5
B. Functions and dysfunctions of non-custodial sanctions	15-21	6
III. INVENTORY AND CLASSIFICATION OF NON-CUSTODIAL SANCTIONS	22-48	9
A. Measures for the avoidance of pre-trial detention	22-28	9
B. Non-custodial sanctions	29-48	10
IV. PROBLEMS IN EXPANDING THE USE OF NON-CUSTODIAL SANCTIONS	49-59	14
A. Considerations of penal policy	51	14
B. Statutory provisions	52	14
C. Legal safeguards	53	15
D. Sentencing and the establishment of penal value ..	54-55	15
E. Resources	56	16
F. Attitudes	57-58	16
G. Side-effects and dysfunctions	59	17
V. PROMOTION OF NON-CUSTODIAL SANCTIONS	60-70	17
VI. CONCLUSIONS	71-79	19

145612

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by
United Nations

to the National Criminal Justice Reference Service (NCJRS).
Further reproduction outside of the NCJRS system requires permission of the copyright owner.

INTRODUCTION

1. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 16, recommended to Member States that they should "intensify the search for credible non-custodial sanctions" and requested the Committee on Crime Prevention and Control to encourage the United Nations regional and interregional institutes to strengthen their programmes, *inter alia*, so as to give all possible assistance to Member States in undertaking research on this subject. ^{1/} Subsequently, the Economic and Social Council, in its resolution 1987/49, requested the Secretary-General to include research workshops on appropriate topics related to the substantive items of the provisional agenda as an integral part of the Eighth Congress. Following consultation with the institutes concerned, the topic "alternatives to imprisonment" was proposed for one of the workshops. The Fourth International Conference on Research in Crime Prevention, held at Riyadh on 13 and 14 January 1988, adopted the concept and structure of the proposed research workshop.

2. The proposed preparatory activities for the Eighth Congress, including the research workshop, were approved by the Committee on Crime Prevention and Control at its tenth session and were subsequently endorsed by the Economic and Social Council in its resolution 1989/69 and approved by the General Assembly in its resolution 44/72. The present document has been prepared by the United Nations Interregional Crime and Justice Research Institute, formerly the United Nations Social Defence Research Institute, in close co-operation with the Crime Prevention and Criminal Justice Branch, to facilitate consideration of the material at the research workshop which will take place during the Eighth Congress. The Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, the African Regional Institute for the Prevention of Crime and the Treatment of Offenders, the Arab Security Studies and Training Centre, and the Australian Institute of Criminology have collaborated with the United Nations Interregional Crime and Justice Institute in the preparation of the workshop.

3. Following the practice of previous United Nations congresses, the latter Institute was entrusted with the responsibility for the scientific and organizational co-ordination and conduct of the Research Workshop, with the full involvement of the relevant institutes and a number of institutions and individual experts from various regions. Two preparatory expert meetings were held at Riyadh on 19 January 1989 and on 14 to 15 January 1990, to review the results achieved and their scientific and policy significance.

I. DEFINITION AND DELIMITATION OF THE TOPIC

4. Imprisonment still remains the cornerstone of the present penal systems, despite efforts to decrease its use. Those guilty of a broad range of offences are deemed to deserve incarceration. Yet the drawbacks of imprisonment, both to the offender and to society, have become increasingly recognized. A world-wide search has therefore been under way for non-custodial alternatives, and for ways of alleviating the situation of prisoners. This search for "credible non-custodial sanctions" has generated much legislation, research and

projects.* Since the basic sentencing options are limited, (for example, probation, deprivation of certain rights, community service, restitution, compensation and fines), parallel developments have taken place in many countries. This is also the rationale behind the Research Workshop on alternatives to imprisonment at the Eighth Congress.

5. The present report is based on documentation prepared for the Research Workshop, containing regional reports for Asia and the Pacific, the Arab countries, Europe, Latin America and the Caribbean; country reports from Canada and the United States of America; country-based case studies on home detention (Australia), release on personal recognizance (Costa Rica), work on liberty under surveillance (Hungary), probation (Japan), community service (the Netherlands), personal reparation (Nigeria), diyva - a form of reparations - (Saudi Arabia), and electronic monitoring surveillance (United States); replies from Member States in response to a note verbale by the United Nations Secretariat used for a report of the Secretary-General on alternatives to imprisonment and reduction of the prison population (A/CONF.144/12); a report prepared by the Secretariat analysing replies to the Third United Nations Survey on Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies (A/CONF.144/6), and an international bibliography for the period 1980-1989 with a review of related literature.

6. The documentation for the Research Workshop is not a global inventory or an exhaustive analysis of non-custodial sanctions. The regional reports present a broad picture of the different types of non-custodial sanctions in use today. The country-based case studies illustrate different types, ranging from traditional to modern, involving different kinds and forms of supervision, administered in the context of different infrastructures. This material will be made available to the Workshop by the United Nations Interregional Crime and Justice Institute.

7. Throughout the present report, reference will be made to "non-custodial sanctions" and not to "alternative sanctions".** The latter term implies that imprisonment is the norm and that all other measures are secondary. The scope of report is limited to non-custodial sanctions considered at the time of adjudication. A "sanction" is to be understood as a measure used for the deliberate punishment of the offender by the State in response to an offence. This limitation to non-custodial sanctions implies that the report does not deal with:

(a) The pre-adjudicatory stage, for example decriminalization, diversion and discontinuance of proceedings, with the exception of pre-trial detention;

*For research and related material, see "International bibliography on alternatives to imprisonment, 1980-1989" (United Nations Interregional Crime and Justice Research Institute, Research Workshop document).

**Other possible terms in wide use include "community sanctions", "community-based sanctions", and "intermediate sanctions". The latter is used in the United States to refer also to those that fall between prison and non-custodial sanctions. See Annesley K. Schmidt, "An overview of intermediate sanctions in the United States"; Department of Justice, Canada, "Intermediate sanctions in Canada" (United Nations Interregional Crime and Justice Institute, Research Workshop documents).

(b) Measures imposed outside the criminal justice system. Such measures, which may involve institutionalization or other types of confinement, can be imposed, for example, on the basis of administrative law, military law or social welfare law;

(c) Alleviation of imprisonment (for example, such sanctions as short-term imprisonment, semi-liberty or semi-detention, and such measures as furlough and early release. Their use should be encouraged, but they remain essentially variants of imprisonment);*

(d) Non-custodial measures such as assistance in obtaining housing, treatment or employment.

The report likewise discusses measures that are applicable to adult offenders. In many juvenile justice systems, imprisonment does not have the same fundamental position as it does in the adult criminal justice system. Where imprisonment is used, the issues are largely the same as for an adult offender.

8. The report touches upon measures intended to limit pre-trial detention. Many of the problems connected with sentences of imprisonment are also evident with pre-trial detention. Moreover, in many countries, in particular in Latin America, a large proportion (or even the majority) of those held in prison are on remand. 2/ Attempts to reduce imprisonment should begin with the "front end" of the system, the decision to place a person in pre-trial detention.

II. FUNCTIONS OF PUNISHMENT

A. Functions and dysfunctions of imprisonment

1. Imprisonment as a sentence

9. Imprisonment is considered the most severe form of punishment in most contemporary criminal justice systems.** There is broad agreement about what offences "merit" imprisonment, for example those involving serious danger to life, health and well-being, serious trafficking in illicit drugs, serious economic crime, serious offences against the environment and offences that seriously endanger national security.*** Imprisonment is also considered to

*Two regional reports: Asia and the Pacific and Latin America and the Caribbean, deal with these measures. See Hiroyasu Sugihara and others (United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders), "An overview of alternatives to imprisonment in Asia and the Pacific Region"; Elias Carranza and others (United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders), "Alternatives to imprisonment in Latin America and the Caribbean" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

**With the exception of capital punishment and some forms of corporal punishment (where they exist).

***Legislation often specifies that non-custodial sanctions are not deemed appropriate, or prohibits their application, when the offence in question is punishable by imprisonment of a certain length. Norman Bishop, Non-Custodial Alternatives in Europe, HEUNI publication No. 14 (1988), p. 50.

be necessary for certain kinds of offenders but the characteristics of those offenders are often denoted in a broad and vague manner and commonly relate to their previous criminal history and record.

10. For less serious offences and for other types of offenders, there is considerably less unanimity on whether or not imprisonment should be imposed. If imposed, it would tend to be for a short term only.

11. Imprisonment can serve many functions. It is commonly justified by its presumed deterrent, incapacitative and rehabilitative functions, as well as by the public demand for a severe response to serious offences. The relative importance of these elements and the extent to which they are taken into account vary from one judge to another.

12. Scepticism about prison as a place of treatment has now been reflected in formal criminal policy in many countries. Imprisonment is often described as a sanction that may have serious negative effects on the great majority of the prisoners and on their social situation. With some notable exceptions, there is considerable evidence that the prospects for satisfactory adjustment in society are made worse by imprisonment. Another factor is the high cost of running a prison system - both in maintenance and capital costs. Today, the resources available are severely restricted. When a prison system is required to take in too many prisoners, overcrowding results, further hampering any attempt to alleviate the negative consequences of imprisonment. For these reasons, imprisonment should not be used where a non-custodial sanction will do, except as a measure of last resort.

2. Pre-trial detention

13. Persons suspected of offences of a certain level of seriousness, suspects who refuse to identify themselves, and suspects who the authorities fear will attempt to abscond, hinder the investigation of the offence or commit new offences are, under certain conditions, held in remand even where the system of habeas corpus is applicable. The principle of the presumption of innocence, together with the principle of minimum necessary intervention, argue for as limited a use of pre-trial detention as possible.

14. When criminal justice operates with dispatch, remand or pre-trial detention is generally quite brief. It is also generally taken into account when sentencing the convicted offender. In practice, however, the criminal justice system of many countries operates slowly. Moreover, many of those held in pre-trial detention can ultimately be sentenced to a non-custodial sanction or even acquitted, or the time spent on remand may be longer than the sentence imposed.

B. Functions and dysfunctions of non-custodial sanctions

15. The arguments for non-custodial sanctions reflect the arguments against imprisonment. First, they are considered more appropriate for certain types of offences and offenders. Secondly, they avoid "prisonization", promote integration back into the community for further rehabilitation and are generally more humane. Thirdly, they are usually less costly than imprisonment. Fourthly, by decreasing the prison population, they ease prison overcrowding and thus facilitate the administration of prisons and proper correctional treatment.

16. The main arguments against the greater use of non-custodial sanctions are that they are not as effective as imprisonment in deterring other members of

the public from committing offences, that they do not incapacitate the offender, and that they do not sufficiently demonstrate the reprobation of the offence by society. In brief they are considered too lenient.

17. Appropriateness. A wide range of petty offences are not judged to be "worthy" of imprisonment. In addition, non-custodial sanctions are also deemed appropriate for certain types of offenders, or offenders with certain characteristics, such as first-time offenders, where there is little likelihood of recurrence, and those whose past behaviour, repentance, and status in the community give reason to believe that the offence was not typical. 3/ The offender's willingness to participate in a non-custodial programme, the ties of the offender to the community (for example family and employment), and the availability of resources for non-custodial programmes (for example supervisors, space, even technological infrastructure) also help to determine appropriateness. Another consideration is the extent to which non-custodial sanctions can be made to accord better institutional custody with the characteristics of the offender. For these reasons, they serve to individualize treatment.

18. Rehabilitation. One of the main arguments for non-custodial sanctions is that they do not hinder but may indeed facilitate readjustment to society. Prisons have difficulty in preparing offenders held in detention for life in the outside world. The ordinary method for assessing the success of rehabilitation is to study recidivism. The assumption is that a greater use of non-custodial sanctions will increase recidivism. Problems in defining and measuring the link between recidivism and the type of sentence are commonplace in research. But recidivism is a rate of effectiveness that has to be handled with caution. Studies on the amount of recidivism at the end of a follow-up period following different disposals do not suggest that non-custodial alternatives lead to a significantly greater degree of recidivism than custodial sentences.* Another method to measure the effects of non-custodial sanctions is to consider the success rate. The assumption is that the successful completion of a programme indicates the likelihood of its having achieved its purposes, including rehabilitation. The problem is that non-custodial sanctions tend to be used where there is a considerable likelihood of success (some programmes have great control over admission). This means that the programme is applied to a selective profile of offenders, who are usually asked to give their consent. These factors tend to complicate assessments.

19. Cost reduction. A third supporting argument often advanced is that non-custodial sanctions are less costly. Costs can, however, be variously defined and measured. One may speak of the immediate financial costs of the adjudication or the enforcement of sentences, of the indirect financial costs

*See Matti Joutsen and Norman Bishop, "Non-custodial sanctions in Europe: regional overview" (United Nations Interregional Crime and Justice Institute, Research Workshop document). A Dutch study compared offenders sentenced to community service in 1981 with those sentenced to short-term unconditional imprisonment for similar offences in 1980. It emerged that 42 per cent of the community service group and 54 per cent of the matched custodial group reoffended during the three-year follow-up period. Also, Norway reported that no more crimes appeared to have been committed by offenders receiving a community service order than by those sentenced to imprisonment.

resulting from an increase or decrease of crime, of the human costs both to the offender and to the victim, of the wider social costs and so on. What is generally implied is that a wider use of non-custodial sanctions would allow the State to administer the enforcement of sanctions more cheaply. It must not be forgotten, however, that the total amount of savings realized through the use of a cheaper sanction depends on how often this sanction is applied and may be balanced by other factors. Comparisons of per diem costs alone oversimplify the issue. Fines and penal warnings are cheap (fines even bring in revenue), but probation and community service require an organized, skilled and professional corps of workers. Furthermore, minor cuts in prison rates would not reduce the maintenance costs. In addition, the possible net-widening effect of non-custodial sanctions (more persons are processed and controlled, including those who in other circumstances would not have had sanctions imposed on them) may increase costs. Moreover, the human and ethical factors ("costs") should also be taken into consideration with the related social costs. For example, home detention and electronic monitoring have been said to place a burden on the immediate environment, such as the family of the offender; this can be deemed a social cost. 4/

20. Reduction of the prison population. The greater use of non-custodial sanctions is commonly expected to reduce the prison population. This can be understood in two ways: either such sanctions reduce the number of offenders in prison at any one time, or they reduce the number of offenders entering prison. The impact of the first is reduced by the fact that non-custodial sanctions generally replace only the shorter prison sentences and thus have little practical effect on the over-all size of the prison population. Other circumstances (such as rising crime rates) could lead to more, or more severe, prison sentences, making it difficult, if not impossible, to determine whether non-custodial sanctions actually fulfil this function. The effectiveness of non-custodial sanctions cannot be judged solely on the basis of whether they reduce the prison population. Even if their greater use does not decrease the number of offenders in prison at any one time, it may reduce the number of persons entering prison. Such a function could have two benefits, one related to criminal policy and one to prison administration. If prison does, indeed, have a negative effect on offenders, than it is desirable to limit the use of imprisonment to the fewest possible offenders. Also, reducing the number of cases that have to be processed in prison decreases the work-load of prison administrations.

21. Effect on crime rates. The main argument against non-custodial sanctions is that, because of their leniency, they do not deter people from committing offences. There are serious methodological difficulties in studying the effect that a change in sentencing policy may have on public attitudes and behaviour, and on the over-all crime rate. The few existing studies suggest that the use of imprisonment is not decisive for the general level of crime control. It may thus be that high rates of imprisonment do not curtail crime in general, nor do low rates encourage it. There is also a lack of clear empirical evidence for asserting that the extended use of non-custodial sanctions leads to an increase, decrease or stabilization of crime rates. It is generally held that other factors, such as the likelihood of detection and the certainty of punishment are probably more important. Taking into account the drawbacks of imprisonment, and in the absence of appreciable evidence to the contrary, it would appear that a wider use of non-custodial sanctions does not lead to any substantial increase in criminality, especially when the sanctions are properly planned and implemented and have the full support of the community and the public.

III. INVENTORY AND CLASSIFICATION OF NON-CUSTODIAL SANCTIONS*

A. Measures for the avoidance of pre-trial detention

22. When the offence is a serious one, the use of pre-trial detention is determined by the severity of the probable sentence. The law may state, for example, that if the minimum punishment for the offence is two years' imprisonment, the suspect shall be detained. Release pending trial would be possible only if there were important grounds for release. In such cases, the use of pre-trial detention can be restricted by raising the minimum punishment stipulated or by granting the authorities more discretion as to whether or not to release the suspect pending trial.

23. In cases where the suspect refuses to identify himself or herself, pre-trial detention is often used for the (presumably brief) period it takes to ascertain identity. Detention can be reduced by making the identification of suspects more efficient (namely through mandatory identification documents or the computerization of fingerprints and other identifying characteristics).

24. It is in connection with a third set of criteria, that is to say, when the authorities fear that the suspect will attempt to abscond, hinder the investigation of the offence or commit new offences, that there is the greatest amount of discretion remains and the greatest potential for restricting pre-trial detention. Success would thus lie the ability to prevent the suspect from engaging in any of these activities. This could be done in a variety of ways, as outlined below.

25. Restriction of movement. The most restrictive measure to avoid pre-trial detention requires that the suspect stay within a certain area or premises, most commonly his or her home. Violation may lead to pre-trial detention. Observance is generally enforced through constant monitoring by the local police. Such monitoring can also be carried out electronically.

26. Supervision. A less restrictive measure requires that the suspect awaiting trial submit to supervision primarily in order to ascertain that he or she has not absconded. The suspect may be required to report to the police or another agency at intervals, or a representative of the agency may make random checks. The measure may include not only a prohibition against leaving the locality without prior permission but also conditions more directly related to the offence. Examples would include disqualification from driving in the case of a suspected traffic offence, or from engaging in certain business transactions, in the event of a suspected economic offence. Instead of a representative of an official agency, the supervisor may be another member of the collective in which the suspect works, a close relative, or simply a private citizen who agrees to act as a supervisor or as a guarantor that the suspect will come to trial.

27. Payment of bail. Bail can be understood in a narrow and a wide sense. In some jurisdictions, it is widely understood as release pending trial. In the more common, narrower sense, it is understood as the posting of property or money as surety that a person released from custody will appear in court

*Many possible classification schemes can be used. The one used here is based on the degree to which the State intervenes in the life of the offender but of course it is difficult to establish the exact extent of intervention.

at the appointed time. Some systems require the bailee to report at regular intervals to the local police station, while others require other types of supervision. Bail in the narrow sense is in common use in many countries. Its primary drawback is that it can be discriminatory for poorer suspects who cannot afford bail or are not able to find a bondsman to post bail for them. An alternative is "binding over". This involves a court order to keep the peace. Should the suspect violate the order, he or she may be fined or detained, or the order may be otherwise amended.

28. Release on recognizance. The most common measure for avoiding pre-trial detention is simple release on recognizance, whereby the suspect promises to appear before the court when the case comes to trial. This "bail" does not involve the posting of property or money as surety. Research in one country reveals that while recognizance is frequently used for minor offences, it is not applied for serious offences (for example more than three years' imprisonment). 5/ The main reasons lie in the attitudes of judges and defence lawyers, and in the sentencing practice of the higher courts. The research-monitored experiment on the application of this measure for serious offences revealed that the main argument against its use was not sustained; as regards compliance with the obligation to appear before the court, there was no significant difference between suspects released on recognizance and those released on economic surety.

B. Non-custodial sanctions

1. Sanctions that imply supervision and control

29. Probation and suspended or conditional imprisonment with supervision. Of those measures that imply considerable supervision and control of the offender (suspended or conditional imprisonment with supervision, probation, community service, reformatory and educational labour, special forms of treatment and local banishment), the most common are probation and suspended or conditional incarcerative sanctions with supervision or some form of treatment. The common element is that the offender is convicted, but is given the opportunity of not serving a sentence (which may or may not be specified) under certain conditions, most commonly that he or she does not commit a new offence during the probationary period. This category of non-custodial sanctions is present in almost all criminal justice systems, in one or more variants. Although its use is increasing in some jurisdictions, in others it is decreasing, and in still other jurisdictions it is being combined with other categories of non-custodial sanctions.*

30. Supervision can be intensive, moderate, or minimal. With intensive supervision, the offender is kept under close control in order to reduce the opportunities for recidivism, integrate the offender into society and ensure that the conditions of probation, or suspended or conditional imprisonment are met. At the other end of the scale, minimal supervision entails only sporadic contacts between the offender and the supervisor, with little attempt at reintegration. The supervision can be exercised by professionals, volunteers or members of the collectivity in which the offender works or lives. 6/

*One example is described in Masakazu Nishikawa (United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders), "Adult Probation in Japan" (United Nations Interregional Crime and Justice Research Institute, Research Workshop document).

31. In some countries, violation of probation does not automatically lead to obligatory and immediate revocation. Options may be a judicial warning, fines, an amendment of the conditions or an extension of supervision. Should the violation of probation lead to enforcement of a prison sentence, various modalities exist. The length of the sentence may be specified in the original sentence; the court may be granted some discretion to modify this length; or the length of the sentence may be set after a violation of probation occurs.

32. Community service. This is a fairly recent innovation. The sanction involves a certain number of hours of unpaid work for the good of the community, usually during leisure hours. Most systems stipulate the prerequisites under which a community service order can be made; for example, the type of offence and the consent of the offender. 7/ The use of this type of sanction has spread to a number of countries. A similar one has existed in the socialist countries for a long time, 8/ but with the main difference that the sanction is enforced during working hours and relies heavily on the support and supervision of co-workers. A second difference is that it does not require the offender's consent. One of the arguments often made on behalf of community service is that it provides for community involvement in the integration of the offender into society. Although little research exists to support this argument, it can, however, be presumed that the community's commitment can be enhanced when the service is performed within the context of community organizations or structures already in place.

33. Home probation. In home probation (home detention, home confinement or house arrest), the offender is required to stay at home for a specified period (generally, two or three months). Confinement may be limited to night-time, or to night-time and leisure hours. It may also be full-time for 24 hours a day. The conditions may include full or partial abstinence from alcohol, counselling or treatment for substance abuse. Offenders are generally subject to strict and random surveillance, either face-to-face or through electronic monitoring.

34. Electronic monitoring, also referred to as "tagging", uses recently developed technology to ensure compliance with home confinement, requiring that the offender remain within a designated area during a specified period of time. 9/

35. The benefits of home probation are, first, that the offender's movements are so restricted that he or she is inhibited from committing further offences, unless they are self-inflicted (e.g. drug-taking) or are directed at others in the household; there may perhaps be some other exceptions, such as giving advice that may be construed as abetting in an offence. Secondly, it is flexible. It can be implemented anywhere within the reach of current technology (if, indeed, technology is necessary), and conditions can be modified to allow for participation in different activities outside the home. As with other non-custodial sanctions, home probation allows the offender to maintain family ties and to continue with his or her work or studies. 10/ It is also less costly than prison, regardless of whether or not electronic monitoring is used. There are, however, some technical difficulties, as well as legal and ethical problems, involved with home probation combined with electronic monitoring. 11/

36. Open, ambulant or contract treatment. This is an option used in only a few countries, for categories of offenders where medical or psychiatric expertise suggests that there is a connection between the offence and, for example, drug addiction or a drinking problem. As a result of unfortunate experiences with forced treatment in the earlier part of this century, the consent of the offender is often a pre-condition for rehabilitation of this sort.

2. Sanctions that do not require supervision and control

37. There is less State intervention in the application of non-custodial sanctions that constitute, in essence, a penal warning. Such sanctions may be of varying severity.

38. Conditional sentence without supervision. In certain serious offences, where the offender is considered to have been hitherto of good character or where there are other mitigating circumstances, some systems recognize the possibility of a conditional sentence of imprisonment without supervision. The offender is thus not subjected to any control. If, however, the offender commits a new offence during the term of the sentence, the court may order that the conditional sentence be enforced.

39. Penal warnings. Penal warnings are customarily used if the offence is not serious and the offender is considered to have been hitherto of good character. They are known by a variety of names, including admonition, absolute discharge and conditional discharge. Release on recognizance or release on a bail order after adjudication related options: the offender is convicted, but sentencing is postponed until a later date. His or her behaviour in the interval is taken into consideration in deciding on the final sentence.

3. Monetary payments

40. Fines. Like penal warnings, monetary payments involve minimal State intervention. Fines are the best known and most widely used form of monetary sanction. They save money and labour, and are practical to manage and administer. They are also humane, since they cause a minimum of social harm. Fines can, however, create inequities by discriminating against the poor, for whom non-payment often means imprisonment. This disadvantage can be overcome by imposing a day-fine, by setting limits on the conversion of unpaid fines into imprisonment, by granting a postponement of payment, by allowing the fine to be paid in instalments, or by giving the court discretion over whether or not the fine shall be converted to imprisonment. Fines can also be conditional. In addition, some jurisdictions use good-behaviour bonds whereby the offender pledges to keep the peace and be on good behaviour, failing which he or she will be brought before the courts.

41. Compensatory payment. Compensation orders and the like, as independent sanctions, are offered in only a few countries. They can be imposed as one of several terms of a conditional sentence. Generally speaking, compensation and restitution remain civil matters, even if in many jurisdictions they are often imposed by a criminal court. Restitution of the loss to the victim, a method traditionally used in customary justice systems, is deemed an appropriate aim of criminal justice, and is usually in the interests of society as a whole.*

42. Personal reparation. This pre-dates imprisonment, and is a common form of compensatory payment and part of the reconciliation procedure in almost all African societies. ^{12/} It is widely used in customary law and, to a much lesser extent, in formal criminal justice systems. In the latter, it is

*In some countries, however, restitution programmes are ineffective, inefficient and inequitable. See, for example, Annesley K. Schmidt, "An overview of intermediate sanctions in the United States" (United Nations Interregional Crime and Justice Research Institute, Research Workshop document).

frequently combined with restitution and a fine; default often leads to imprisonment. Research reveals that personal reparation, being culturally well established, could be more widely used.

43. Reconciliation. Often tied to compensatory payments, reconciliation is generally considered as an option only during the preliminary stages of the criminal process, for example during the police investigation or as a measure implemented outside the State-based criminal justice system. In the latter case, the structure in which reconciliation takes place can be traditional (such as the village courts in Papua New Guinea or the Lupong Tagapayapa in the Philippines), or of more recent origin (such as the social courts). In some countries, however, reconciliation is also an option at the adjudicatory stage, even for offences in the medium range of seriousness, where imprisonment might be a possible sanction.

44. Confiscation. In many systems, forfeiture or confiscation of personal property is used as an independent sanction, and appears to be expanding. This trend is encouraged by the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr.1 and 2). Generally, however, confiscation of the property derived from or used in the offence is considered a penal measure, to be applied in addition to a sanction and not as an independent penal sanction.

45. Diyya. Originating in pre-Islamic common law, diyya shares the traits of compensatory payments, but there are important distinctions. ^{13/} It also has a deterrent and punitive component. It is a possible alternative to a retaliatory sanction for five felonies: premeditated murder, quasi-intentional murder, unintentional manslaughter, intentional physical injury or maiming, and unintentional physical injury or maiming. The diyya is paid to the victim or to his or her family as compensation for bloodshed. Furthermore, diyya is based on collective responsibility, and the family members of the offender may also have to pay. In some cases, it may be paid by the State. There are rules regulating the amount to be paid, depending on the offence and the religious affiliation and sex of the victim. There are no definite rules for the division of the responsibility for payment of diyya among family members of the offender, but generally the amount depends on kinship and financial status.

4. Withdrawal of rights

46. Suspension of driving or other licences. In some systems suspension of a licence is used as a criminal law sanction; in most, however, it is an ancillary sanction or administrative measure.

47. Deprivation of certain rights and removal of professional status. Examples of this form of sanction include the right to perform certain functions or hold certain positions or public offices; to vote, and to act as an expert or witness in court. In most systems, however, deprivation of such rights is an ancillary sanction. Furthermore, some forms of withdrawal of rights (such as dismissal from office) are reserved for certain special groups, such as civil servants.

5. Combination of sanctions

48. Several systems combine custodial with non-custodial sanctions; a combination of different non-custodial sanctions may be used. If the offence is rather serious or if the offender has a serious criminal record, it may be deemed inappropriate to impose a single non-custodial sanction. A combination of sanctions may give the sentence more weight. In addition, a combination of

non-custodial sanctions may be more successful in tailoring the sentence to the characteristics of the offender while meeting the expectations of the court and the community.*

IV. PROBLEMS IN EXPANDING THE USE OF NON-CUSTODIAL SANCTIONS

49. There seems to be a strong interest throughout the world in replacing imprisonment by non-custodial sanctions as demonstrated by various United Nations resolutions. Many of the national replies submitted to the United Nations Secretariat make it clear, however, that appropriate non-custodial sanctions are either simply not available or are used far less than they might be and, if they are used, they tend to replace other non-custodial sanctions rather than imprisonment. The documentation submitted to the Research Workshop suggests some reasons for this: even if the necessary statutory changes are made, the courts may either be unwilling or unable to impose non-custodial sanctions owing to factors related to sentencing, to a lack of suitable resources, or to attitudes.

50. Other problems do not directly explain the slowness with which non-custodial sanctions are put into effect, but should nonetheless be taken into account in the planning and implementation of the sanctions, since they affect the entire criminal justice system. For example, in addition to their "net-widening" effect (see paragraph 19) and their supposed leniency, it has also been argued that, from the point of view of the offender, non-custodial sanctions may raise problems of due process and legal safeguards, in particular in the case of an alleged violation of the conditions of the sanction.

A. Considerations of penal policy

51. The likelihood of non-custodial sanctions being used depends first of all on the degree to which the penal policy is favourable to them and to the functions assigned to them. Punitive penal policy would tend to favour the wide use of imprisonment for a broad range of offences. Policy orientation is also indicated by the legislator's attitudes to a breach of conditions of the non-custodial sanctions, as well as by the legal prerequisites under which a court can impose them. Thus, direct conversion of a non-custodial sanction into imprisonment in the case of a breach of conditions indicates a greater degree of punitiveness than does the search for other, more suitable non-custodial sanctions. Similarly, the requirement for justification of a non-custodial sanction, as opposed to the requirement for justification of a prison sentence, indicates a greater degree of punitiveness.

B. Statutory provisions

52. There are jurisdictions in which the courts have wide discretion to develop new non-custodial sanctions. In most jurisdictions, the courts can only impose sanctions that are expressly defined in statutory law, that is to say, the law must first provide for a range of appropriate non-custodial sanctions before they can be imposed by the courts. Some reports prepared for the Research Workshop note that in some countries there is a lack of clear

*For an account of developments along these lines in Australia and New Zealand, see Dennis Challinger (Australian Institute of Criminology), "Alternatives to imprisonment in Australia and New Zealand" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

provisions in law regarding both the conditions for imposition of non-custodial sanctions and the methods of implementing them. 14/ In some countries, the range of non-custodial sanctions is quite restricted, and limited to a number of traditional sanctions, such as fines, suspension of imprisonment and probation. 15/

C. Legal safeguards

53. Non-custodial sanctions have been and are being developed primarily with consideration to the position of the offender, for example to improve the likelihood of social reintegration. The attitude may therefore be taken that any non-custodial sanction is preferable to imprisonment, and legal safeguards are not to be seen as an issue. Nonetheless, non-custodial sanctions are still punitive. To adjudicate and implement them properly requires objective discretion. Thus there may well be cases in which the human, civil and political rights of the offender are restricted to a greater extent than the sanction itself would imply. Among the more important safeguards against such a situation are that the application of the sanction should be based on law and established criteria, that the discretionary powers should be exercised by a competent authority, and that the sanction should be subject to review at the request of the offender. The offender should be properly informed of the conditions and possible consequences of non-compliance with them. In an alleged breach of conditions, the offender should have the right to be heard before a decision is taken on the consequence of such a breach. Work on guidelines and standards in the area of non-custodial sanctions is under way in several countries, as well as at the international level. A set of Standard Minimum Rules for Non-Custodial Measures, as recommended by the Committee on Crime Prevention and Control at its eleventh session, is before the Eighth United Nations Congress for consideration and adoption. 16/

D. Sentencing and the establishment of penal value

54. Determination of the penal value of a non-custodial sanction presents a further problem. The penal value of existing sanctions is generally well established. Thus, for example, a fine is generally deemed to be a lesser penalty than a suspended sentence, which in turn is deemed to have less value than imprisonment. The measure of each individual sanction is also based on established practice: a fine of "x" amount for theft under certain circumstances, for example, and imprisonment for "y" months for robbery under certain circumstances. When a new custodial sanction is introduced, it may be difficult for the legislator and the court to assign it its appropriate place in the scale of punishment, and to decide, for example, whether 40 hours of community service is the equivalent of one month of imprisonment, and whether it is more or less severe than a suspended sentence of a certain length.*

*In some jurisdictions, the criteria for assessing the appropriate place of non-custodial sanction are laid down by law. For example, in Hungary the provisions on community service introduced in 1987 state that one day of community service corresponds to one day in prison (see Karoly Bard, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations), "Work in liberty under surveillance in Hungary" (United Nations Interregional Crime and Justice Research Institute), Research Workshop document). A study in the Netherlands found that judges and prosecutors considered 150 hours of community service to correspond to about three months of imprisonment, instead of six months as originally envisaged in the planning of the experiment (see Peter J. P. Tak, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations), "The community service sentence in the Netherlands" (United Nations Interregional Crime and Justice Research Institute, Research Workshop document).

55. In sentencing, therefore, the court must make a choice among a number of sanctions, using multiple criteria that relate the seriousness of the offence to what are deemed to be the relevant characteristics of the offender and the penal value of the non-custodial sanctions available, either singly or in combination. Furthermore, courts frequently work under pressure of time and tend to favour sanctions that do not require time for the collection, presentation and assessment of social inquiries about the offender and his or her situation. Judges tend to find juridical information easier to assess than data drawn from the social sciences.

E. Resources

56. Another problem relates to the availability of resources to implement the sanction. Just as imprisonment calls for prison facilities, personnel and a prison programme, probation generally requires a suitable infrastructure for supervision, and community service requires not only a suitable organization but also designated places of work. In addition, the general economic and political circumstances in a country may have a role to play in determining the extent to which non-custodial sanctions are used. The mere provision of the necessary resources is not enough. They must be of sufficient quantity and quality to ensure that the sanctions are successful in achieving their purpose, no matter how defined. The courts tend to be cautious in imposing new non-custodial sanctions. If a court lacks confidence in the operational efficiency of the services responsible for the implementation of non-custodial sanctions, it will probably be less inclined to make use of them.

F. Attitudes

57. In order for non-custodial sanctions to be imposed, implemented and become effective, they must be regarded as legitimate. The attitude of various parties (including the public, the police, the courts, professional groups and the victim) towards non-custodial sanctions are therefore important. Non-custodial sanctions will not be imposed if the court regards them as ineffective. They will not be implemented properly if those responsible for their implementation (such as the supervisors) regard them as inappropriate; if this is the case, then the courts will adjust their sentencing policy accordingly. Public opinion will be instrumental both when new sanctions are being considered by the legislature and when they are being incorporated into the general sentencing policy. Finally, in individual cases, the position of the victim (and, indeed, of the offender) may be of significance in selecting the sanction.

58. Of all these groups, it is especially the courts and the practitioners who occupy a key position, as they decide on the imposition of the sanction and act on its implementation. On the basis of research on the subject, there is reason to think that precedents, general guidelines and sentencing conferences are not fully adequate measures for introducing new non-custodial sanctions. It is important to involve judges (as well as other professional groups) at the drafting stage of new legislation. Demonstrating the appropriateness of non-custodial sanctions to the courts and practitioners is an on-going process, which by no means ends with the adoption of legislation and an initial training phase. Many experiments with non-custodial sanctions have succeeded because they were run by highly motivated individuals. Once the programme is in place, there is the danger of falling into routines or meeting with unexpected difficulties in implementing the sanctions in the light of local circumstances or with persons who are not so committed to its original

purpose. Broad policy premises must be translated into practice taking into account different environments and local contexts.

G. Side-effects and dysfunctions

59. One area of concern relates to the possible dysfunctions of the wider use of non-custodial sanctions, in particular the so-called net-widening effect. Statistical evidence from various countries suggests that non-custodial sanctions are either used far less than they might be or, when applied, are used as substitutes for other non-custodial sanctions and not for imprisonment. In addition, when suspended sentences are pronounced, the sentence imposed may be longer than if an unconditional sentence to imprisonment were used. If the original sentence is activated, the offender can therefore go to prison for longer than would otherwise have been the case. In the long run, the extended use of non-custodial sanctions might lead to a dichotomization of sentencing: offenders receiving less restrictive non-custodial sanctions on the one hand and those sentenced to longer prison terms on the other.

V. PROMOTION OF NON-CUSTODIAL SANCTIONS

60. A variety of ways of promoting greater use of non-custodial sanctions have been reported, including those intended to avoid pre-trial detention.

61. Statutory measures. The fundamental statutory measure is legislation, making a range of non-custodial sanctions available to the criminal justice system and clearly outlining the procedures and conditions for their imposition and implementation.

62. Another measure includes a statutory requirement of justification for the use of imprisonment.* This would compel the court to justify its decision that none of the available non-custodial sanctions is appropriate.

63. Limiting conditions on the use of non-custodial sanctions could be eliminated or relaxed. For example, the maximum length of imprisonment that can be replaced by a non-custodial sanction could be raised, and existing prohibitions against the use of non-custodial sanctions in case of recidivism could be replaced by statutory provisions allowing for court discretion. Imprisonment for certain offences could be abolished. Changes in society are often reflected in the attitude towards certain types of behaviour. A review of criminal law may indicate that existing penal provisions on certain offences were passed at a time when those offences were deemed particularly reprehensible; in the light of present attitudes, a non-custodial sanction may be deemed more appropriate. At the same time, the public attitude towards the use of imprisonment may have changed; in many countries, its "penal value" has increased. Where imprisonment at one time was imposed in decades, it may now be imposed in years; where it was once imposed in years, it may now be imposed in months or even weeks.

*For example, section 11 of the Penalties and Sentences Act 1985 (Vic), promulgated in Victoria, Australia, states that: "Where a Magistrates' Court passes a sentence of imprisonment on a person, the Magistrates' Court: (a) must state in writing the reason for its decision; and (b) must cause these reasons to be entered in the records of the court."

64. In countries where there is a call for harsher punishment, it may be sufficient, instead of expanding the use of imprisonment, to allow for a combination of non-custodial sanctions. This end may also be achieved by making the existing non-custodial sanctions more attractive as sentencing options, for example by allowing for the possibility of inserting additional requirements or conditions in, for example, probation orders. In several jurisdictions, the elimination of imprisonment below a certain length has been proposed. The rationale is that the courts would be compelled to seek alternatives to short-term custody. Other restrictions on the application of imprisonment could also be embodied in legislation.

65. Measures related to the courts. Emphasis is often placed on the role of court precedents in guiding the practice of the lower courts, this method being preferred over legislated guidelines in order to maintain a proper division of power. Precedents are still, however, merely decisions on individual cases, and the extent to which general conclusions can be drawn from them depends not only on the legal system but also on the case. In some countries, the supreme court has the power to issue sentencing guidelines that go beyond the scope of the cases at hand. Such guidelines provide the judge with information on the usual sanction given for a specific type of offence.

66. Also, judicial conferences or professional associations can help to clarify sentencing objectives and guidelines. For example, they could stipulate the criteria and principles that permit comparison of various sanctions and their standardization. Conferences and associations need not be limited to judicial personnel; they could include corrections staff and other persons responsible for the administration of sentences, thus providing a special form of training. Other forms include special courses and seminars at which new legislation is introduced, or at which the court personnel is acquainted with research on the effectiveness of the various options. Since non-custodial sanctions depend on the professional legal culture of judges (as well as prosecutors and other practitioners involved in the imposition and implementation of the sanctions), their promotion to the "norm" should start with the process of professional education. For example, the curriculum of law schools should reflect these concerns.

67. Other strategies focus on drawing the attention of the courts to the official policy of favouring non-custodial sanctions (for example through the adoption of an official statement of the purposes and principles of sentencing), or on increasing their credibility. The latter can be achieved by providing the courts with systematic information on the effectiveness of various sanctions and through closer control over the enforcement of the sanction. Where this would not be deemed a violation of the principle of the separation of the power, the executive branch could consider providing the court with sentencing guidelines, based on current court practice. In turn, the judiciary could overview the implementation of the non-custodial sanctions, particularly in those countries where supervising judges have this function.

68. Measures related to prosecution. The selection of the sanction is often determined by the motion of the prosecutor, or by the way in which the case is presented. For this reason, guidelines should also be developed for prosecutors on the selection of the appropriate sanction for presentation to court, and appropriate prosecutorial training should be arranged. Such guidelines should include in particular criteria for non-prosecution.

69. Measures related to implementation. One very important measure to increase the credibility of non-custodial sanctions and thus promote their use

is for the State and local community to provide the resources needed for the development, enforcement and monitoring of such sanctions. Attention should also be paid to the training of the practitioners responsible for their implementation and for co-ordination between criminal justice agencies and other agencies involved in their application in the community.

70. Because the success of many non-custodial sanctions depends to a large extent on the interaction between the community and the offender, special measures should be adopted to make the community sensitive to their benefits and potential for crime control. Examples include the provision of relevant information on the situation of offenders, greater use of the existing reconciliation or dispute settlement mechanisms or institutions in the community, and increased reliance on volunteer and citizens' associations in the implementation of non-custodial sanctions (which may also decrease the costs of such implementation).

VI. CONCLUSIONS

71. The problems associated with the use of imprisonment, both for the offender and for society, have led to a greater interest in non-custodial sanctions. These are expected to combine many functions. They are generally expected to help reduce the prison population and the over-all costs of the system. They are believed to be more conducive to social integration, thus reducing recidivism, and increasing the crime control effects of the criminal justice system. They are also supposed to act as a deterrent and just punishment for a certain range of offences and for certain types of offenders, thus providing certain advantages to society if compared with imprisonment.

72. Some of these purposes conflict with one another, and they may not be adequate to all types of non-custodial sanctions. Some may be directed more towards treatment, some may have a bias towards integration, while others simply call for payment by the offender - a fiscal contribution to the State, compensation to the victim or compensation to the community as a whole.

73. Experience with different sanctions in different countries cannot be taken as a clear-cut demonstration that non-custodial sanctions do everything they are supposed to. For example, even when non-custodial sanctions are substituted for imprisonment, they generally replace quite short sentences, thus having little effect on the size of the prison population. The same negligible results are achieved if they are used for a small number of offenders. At the same time, other circumstances (such as an increase in crime rates) could lead to more, and even more severe, sentences of imprisonment, thus giving the impression that the reform has, on the contrary, led to greater use of imprisonment. There is no clear evidence that the greater use of non-custodial sanctions does or does not succeed in lowering the overall costs or in promoting rehabilitation. Yet, the evidence is at least as ambiguous for the argument that the extent of non-custodial sanctions is linked to the structure and level of crime in society - for example, that non-custodial sanctions are used to a proportionately lesser extent when a country faces a "serious crime problem", or that their "excessive" use would encourage more crime. No connection has been shown between more lenient sanctions and a greater amount of crime or, correspondingly, between more severe sanctions and a reduction in crime.

74. From the material made available for the Research Workshop, the following general conclusions can be drawn:

(a) There is an interest throughout the world in increasing the use of non-custodial sanctions. This can be seen in both penal philosophy and policy and, increasingly, at the statutory level (as in Australia and Europe). This trend, however, is not unidirectional. In some countries, there has been an increase in the use both of non-custodial sanctions and of imprisonment, or in punitive components in non-custodial sanctions, presumably as a reaction to an increase in crime;

(b) Despite the increased theoretical interest in non-custodial sanctions, a gap remains between policy and practice. This is evident on several levels. On the statutory level, many Governments (particularly of Arab and Latin American countries) report that they do not have an appropriate range of such sanctions, or that the legislation does not provide clear guidance on their purposes, imposition and implementation. As regards sentencing practice, the gap is reflected in the continuing predominance of imprisonment as the "norm" or as the criterion for sentencing. Non-custodial sanctions are either used far less than the law would allow, or as alternatives for other non-custodial sanctions. Moreover, the implementation of some non-custodial sanctions is hindered because of the absence, for example, of the necessary personnel, support structures and funds;

(c) In many jurisdictions (for example in Australia, Canada, Europe and the United States), there is a clear trend towards the diversification of non-custodial sanctions. This can be seen, for example, in the adoption of a greater number of different non-custodial sanctions, in the adding of certain conditions to existing non-custodial sanctions, and in increased opportunities for combining different types of sanction. The latter two may be seen as a partial response to the demand for developing more appropriate and, in some cases, more punitive non-custodial sanctions;

(d) In addition to these general trends, some patterns can be noted, the strength of which vary from one jurisdiction to the next:

- (i) The diversification of non-custodial sanctions, paralleled in some countries by an extension of non-custodial sanctions to a greater range of offences and offenders (for example in Europe);
- (ii) Greater use of the traditional non-custodial sanctions, such as fines (in some countries of Europe and Latin America, in the form of day-fines), probation (in many Asian and in some African countries, and in the United States) and suspended or conditional sentences (in some countries of the Arab region and in Latin America);
- (iii) Development of non-custodial sanctions containing a number of conditions, in particular one or a combination of the following components: work (as in community service), compensation or restitution, and treatment (in Australia, Canada, Europe and the United States);
- (iv) Renewed interest in traditional sanctions, and those relying on traditional infrastructures (in Africa and parts of Asia and the Pacific region).

Totally new sanctions rarely appear. Among the few examples are community service and home probation. Perhaps the most effective road towards greater use of non-custodial sanctions is to give life to "old" measures. Indeed,

most recent legislative action has tended to expand the scope of sanctions already available or to place them on a statutory footing;

(e) In many countries (such as Australia and Canada, and several countries in Europe), non-custodial sanctions are being promoted through measures that provide guides for sentencing, including standardization of sentencing. This has been done, for example, through the introduction of statutory guidelines or guidelines adopted by judicial conferences and professional associations;

(f) There is increased interest in national and international standard-setting, with an emphasis on legal safeguards.*

The need for further research

75. In all regions there is a clear lack of statistical data and research on the effectiveness of non-custodial sanctions, and problems met in promoting them. 17/ Research is needed on the normative structure that determines the availability and application of non-custodial sanctions. Non-custodial sanctions cannot be imposed where the law does not allow it. Furthermore, certain legal provisions may unintentionally deter their use. For example, the procedural requirements for the imposition of certain non-custodial sanctions may bar their imposition in simplified proceedings. Also, the greater use of non-custodial sanctions may widen the statutory discretionary powers of certain authorities. This may conflict with other policy goals, such as ensuring due process. In addition, the introduction of non-custodial sanctions through legislative action requires analysis of the proper place of the sanction in the normative scale of punishments.

76. Research is needed on the factors considered by the sentencing judge or tribunal. Unexpected factors may have a decisive influence. Non-custodial sanctions may also be discriminatory, as has been argued to be the case with prison sentences. For example, fines may be imposed only on those who are able to pay them; community service may be imposed only on offenders with certain characteristics not necessarily envisaged by the legislator; or the milder forms of non-custodial sanctions may be imposed on offenders who have a high standing in the community.

77. One area of research related to sentencing concentrates on attitudes. Those of the sentencing judge affect his or her decisions on the available options. Just as important are the attitudes of other persons involved in the implementation of non-custodial sanctions. In particular, the degree to which a non-custodial sanction is "accepted" by professionals as well as by the community influences the probability that this sanction will actually be applied. Research on changes in attitudes (showing their causes and extent) might be of assistance in planning the introduction or expansion of non-custodial sanctions.

78. A key factor in the "success" of any non-custodial sanction is the extent to which the policy-makers, courts, other practitioners and agencies and the community are informed of its costs and benefits. Their effectiveness (and, indeed, the effectiveness of sanctions in general) has long been a popular

*Examples include work done in Australia, Canada, the United States and, at the regional level, the Council of Europe.

subject of research. Regrettably, it has yielded relatively meagre results.* The problems encountered in such research, and in evaluative research in general, are great. Nevertheless further research is needed in order to promote non-custodial sanctions.

79. The initial observation that different countries share much the same problems and concerns suggests that one promising approach is through comparative research. This also provides information on the applicability and potential of non-custodial sanctions under different socio-economic, cultural, political, legal and organizational conditions. By making it possible to assess their use, it plays an important role in the much needed sharing of experiences and exchange of information throughout the world in the crucial area of penology and crime control.

Notes

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

2/ Elias Carranza and others (United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders), "Release on personal recognizance in Costa Rica" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

3/ Reda Mezghani (Arab Security Studies and Training Centre), "Alternatives to imprisonment in Arab countries" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

4/ Annesley K. Schmidt, "Electronic Monitoring in the U.S.A."; Dennis Challenger (Australian Institute of Criminology), "An Australian case study: the Northern Territory Home Detention Scheme" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

5/ Elias Carranza and others, "Release ...".

*The following quotation is taken from Michael Tonry and Richard Wills, "Intermediate sanctions" (November 1988), an unpublished draft report, cited in Schmidt, "Overview ...": "First, the purpose of particular programmes are seldom specified in any authoritative way, and different people often have different purposes in mind ... Second, it is difficult to disentangle cause and effect in assessments of most legal changes ... Third, efforts to isolate the effects of specific policy changes ... are complicated by the occurrence of other changes that may affect the implementation and consequences of the policy changes under examination ... Fourth, although very few intermediate sanction programmes have been evaluated carefully, many administrators believe their programmes to be successful ... (so that) in a field, however, in which few rigorous evaluations have been conducted, the persuasive force of conventional but untested wisdom is great. (And) fifth, although there are important exceptions, much of the existing evaluation research is badly flawed ... and cannot serve as a foundation for drawing meaningful conclusions" See also, Alvazzi, Fornara and Siemaszko, op. cit.

6/ Hiroyasu Sugihara and others (United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders), "An overview to alternatives to imprisonment in Asia and the Pacific region" (United Nations Interregional Crime and Justice Research Institute, Research Workshop document).

7/ Peter J. P. Tak (Helsinki Institute for Crime Prevention and Control affiliated with the United Nations), "The community service sentence in the Netherlands" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

8/ See Karoly Bard (Helsinki Institute for Crime Prevention and Control affiliated with the United Nations), "Work in liberty under surveillance in Hungary" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

9/ Annesley K. Schmidt, "Electronic ...".

10/ Challinger, op. cit.

11/ Annesley K. Schmidt, "Electronic ...".

12/ Adedokun A. Adeyemi (United Nations Interregional Crime and Justice Institute), "Personal reparations in Africa: Nigeria and Gambia" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

13/ Mohamed F. Al-Sagheer (Arab Security Studies and Training Centre), "Diyya legislations in Islamic Shari'a and its applications in the Kingdom of Saudi Arabia" (United Nations Interregional Crime and Justice Institute, Research Workshop document).

14/ Elias Carranza and others, "Alternatives ...".

15/ Mezghani, op. cit.

16/ Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/108.

17/ Anna Alvazzi del Frate, Maria Luisa Fornara and Andrzej Siemaszko (United Nations Interregional Crime and Justice Institute), "Review of literature on alternatives to imprisonment, 1980-1989" (United Nations Interregional Crime and Justice Institute, Research Workshop document).