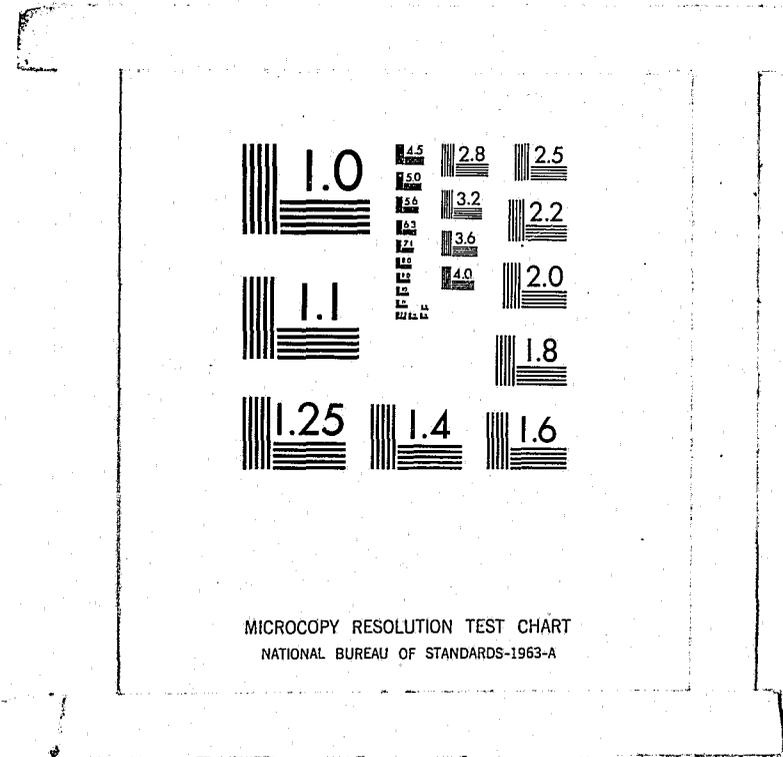


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7/14/81

77041



UNITED NATIONS  
GENERAL  
ASSEMBLY



Distr.  
GENERAL

A/CONF.87/7  
9 July 1980

ORIGINAL: ENGLISH

SIXTH UNITED NATIONS CONGRESS ON THE  
PREVENTION OF CRIME AND THE TREATMENT  
OF OFFENDERS  
Caracas, Venezuela  
25 August-5 September 1980

X  
DEINSTITUTIONALIZATION OF CORRECTIONS AND ITS IMPLICATIONS  
FOR THE RESIDUAL PRISONER

Working paper prepared by the Secretariat

NCJ# 77041

U.S. Department of Justice  
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INTRODUCTION

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ACQUISITIONS

1. The subject of the deinstitutionalization of corrections and its implications for the residual prisoner assumes a profound significance in the light of the world-wide controversy concerning the role and functions of the prison as an instrument of social control. While the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which adopted the Standard Minimum Rules for the Treatment of Prisoners, <sup>1/</sup> constituted a landmark in the process of penal reform, the deliberations of the Fifth Congress brought to the fore the global search for effective alternatives to imprisonment, at least in dealing with those offenders who do not endanger the peace and security of society. <sup>2/</sup>

2. There is no doubt that, in the wake of rapid industrialization, urbanization and technological changes resulting in the breakdown of social institutions, such as the family, the clan and the community, the prison appears to have been subjected to excessive use in most of the developed and developing countries. The problems of rising crime, overcrowding in penal institutions and the seeming inability of criminal justice systems to cope effectively with the new patterns and dimensions of criminality have further accentuated the controversy regarding the use of imprisonment. Besides the traditional arguments regarding the inherent contradictions in the custodial and rehabilitative functions of the prison, other factors such as the dehumanizing aspect of incarceration, the debilitating impact of total institutionalization on the human personality, the increasing awareness that imprisonment is unlikely to improve the offender's chances of living a law-abiding life and the failure of penal institutions to reduce crime have given a new impetus to the movement towards the treatment of offenders outside prisons or without prisons.

3. General thinking on this question is, however, not free from an element of ambivalence: while non-institutional forms of treatment are being widely recommended, the sanction of segregation from the community is still considered to be the strongest deterrent, both to individual offenders and to society at large, and imprisonment still appears to be necessary where the risk of repetition of a dangerous offence appears high. Moreover, in many countries of the world, there is also a tendency towards more severe sanctions in terms of long-term prison sentences for certain crimes, such as drug-related offences, the rationale of which is not necessarily valid, whether based on scientific or humanitarian grounds.

4. The above considerations make it clear that the question of the deinstitutionalization of corrections must be analysed in the broader context of

<sup>1/</sup> First United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. 56, IV.4), annex I /A/.

<sup>2/</sup> See Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publications, Sales No. E.76, IV.2 and Corr.1), chap. II, para. 268.

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society's response to crime and in relation to the constraints under which the criminal justice system as a whole operates. Crime as a social phenomenon continues to baffle and challenge human kind, as it has for so long. Indeed, in view of the rising crime rates in many parts of the world, the preoccupation with imprisonment is growing. Despite rapid advance in the social sciences, crime as a form of human behaviour still remains a subject of conceptual arguments and abstractions. In the absence of any wholly valid theory of crime causation, the development of appropriate methods for the treatment of offenders remains a matter of theoretical pursuit. Furthermore, there is an increasing scrutiny of the functioning of the criminal justice system in terms of its fairness and equity. 3/ Is there, in fact, any criminal justice system which can completely absolve itself of the charge of having operated less fairly with regard to the poor, the weak and the meek? Faced with such an intricate problem, denunciations of the prison and calls for its total abolition would inevitably make it an easy scapegoat for the failure of the criminal justice system itself, and thus, of society as a whole, to deal effectively and humanely with the various forms and manifestations of criminality. Indeed, in the face of the apparent failure of the institutional approach to treatment, a re-examination is surely needed.

5. The difficulty of visualizing the dismantling of prisons has been recognized by all the regional preparatory meetings. The Asia and Pacific Meeting suggested that the topic should be discussed in a broad context, taking into account the aims and functions of imprisonment within the full range of available policy options, consonant with the socio-legal and cultural traditions of any particular country, as well as the contemporary textures of legal reform. 4/ The African Meeting reported significantly that, while a number of countries in that region, upon achieving independence, decided to abolish that form of punishment, no nation had wholly succeeded in doing so. 5/ The Latin American Meeting, while agreeing on the need for enlightened reforms, with an increased emphasis on deinstitutionalization, pointed out a number of obstacles, including economic factors, cultural traditions and lack of empirical evidence for or against the prison's efficacy. 6/ In the European Meeting, there was a consensus that imprisonment should be used only as a last resort under a policy which would "prosecute and imprison only when there is a compelling reason to do so", but there was also agreement that the abolition of imprisonment was not to be expected in the near future. 7/

3/ See "Methods and ways likely to be most effective on preventing crime and improving the treatment of offenders" (E/CN.5/536), annex IV, para. 47, and "Human rights in the administration of justice: note by the Secretary-General" (E/AC.57/24 and Add.1).

4/ Report of the Asia and Pacific Regional Preparatory Meeting (A/CONF.87/BP/2), para. 41.

5/ Report of the African Regional Preparatory Meeting (A/CONF.87/BP/4), para. 37.

6/ Report of the Latin American Regional Preparatory Meeting (A/CONF.87/BP/3), paras. 37-38.

7/ Report of the European Regional Preparatory Meeting (A/CONF.87/BP/1), paras. 49-50.

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6. Strong definitional and conceptual problems were also raised during all the regional preparatory meetings regarding the term "residual prisoner": the use of this term, in fact, implies that a specific policy aimed at reducing the prison population has been adopted and fully implemented to a point where no more prisoners can be released from penal institutions and the number of those sentenced to imprisonment cannot be lowered any further. Since this is not the case, at least in most countries, the term "residual prisoners" has generally been equated with "long-term prisoners" and emphasis placed on the fact that this is not a homogeneous category, except in respect of its long-term status.

7. In view of these constraints and limitations, both theoretical and practical, deinstitutionalization and the special concern for the residual prisoner should be seen as part or, rather, as the natural outcome, of the broader process of penal reform and humanization in corrections. In this perspective, the present working paper will first attempt to make an assessment of current trends in penal policies and practices; it will then consider the available alternatives to imprisonment and will conclude by examining the problems posed by the residual prisoner.

8. Continuing in the tradition of previous Congresses, 8/ the working paper is supplemented by two additional working papers. The working paper on the implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners (A/CONF.87/11) summarizes the results of the third quinquennial inquiry on the implementation of the Standard Minimum Rules for the Treatment of Prisoners, in pursuance of Economic and Social Council resolution 663 C (XXIV) of 31 July 1957. The other working paper, entitled "Principles on Linking the Rehabilitation of Offenders to Related Social Services" as finalized by the Interregional Meeting of Experts on this topic, held at Cambridge, England, in December 1978, is presented to the Congress in accordance with the recommendations of the Committee on Crime Prevention and Control. 9/

#### I. TRENDS IN PENAL POLICIES AND PRACTICES

##### A. The challenges to corrections

9. During the last five years, fundamental questions have been raised all over the world, nationally and internationally, about the role of corrections in the criminal justice process, the relative balance of punishment and treatment as correctional objectives and the effectiveness of many current correctional

8/ See "The Standard Minimum Rules for the Treatment of Prisoners in the light of recent developments in the correctional field, working paper prepared by the Secretariat" (A/CONF.43/3), annex; and "The treatment of offenders, in custody or in the community, with special reference to the implementation of the Standard Minimum Rules for the Treatment of Prisoners adopted by the United Nations, working paper prepared by the Secretariat" (A/CONF.56/6), annex I.

9/ See E/CN.5/558, para. 84 (h).

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programmes and practices. Moreover, basic philosophical assumptions about the function of imprisonment in a system of crime control have been re-examined, and new directions and policies have been explored and applied: history has shown that "society's efforts to deal with offenders have been at worst inhumane, at best inefficient, usually ineffective, and at all times confused". 10/

10. In this perspective, the basic aims and purposes of the penal system have been reassessed; 11/ the rationale and consequences of the "treatment" ideology, and of the use of the medical model in corrections, have been evaluated; 12/ and the sentencing process severely scrutinized with a view to increasing its justice and fairness and to lessening unwarranted disparities. 13/

11. While the rising level of expectations among underprivileged members of society has produced intensive pressure for the improvement of conditions in penal institutions, the emphasis being placed on the importance of the human rights of prisoners has contributed to bringing corrections to the forefront of public debate.

12. The report of the Secretary-General on the implementation of the conclusions of the Fifth Congress not only confirms the recent ferment of ideas and approaches but also shows that, as a result, at least one-half of the responding countries have introduced important and innovative legislative changes, with the purpose of humanizing the correctional process. 14/ In most of these cases, the new legislation has dealt with alternatives to imprisonment. Fines based on the income and assets of the offender constitute in various countries 90 per cent and more of all sentences passed by courts. Restitution and victim compensation schemes are being used in an increasing number of countries. Probation, suspended sentences, community service orders and other alternatives are contributing to reduce imprisonment, especially of first offenders. In Romania, for example, after the enactment of a new law in 1977 according to which work penalties without deprivation of liberty can be substituted for penalties involving less than five years' imprisonment, the proportion of offenders sentenced to imprisonment dropped from 66 per cent in 1976 to 29.4 per cent in 1979. In

10/ D. Gottfredson, "Sentencing trends in the United States: implications for clinical criminology", Rassegna di Criminologia, vol. X, No. 1 (1979), p. 151.

11/ The National Swedish Council for Crime Prevention, A New Penal System, report No. 5, Stockholm, 1978, and E. Backman et al., Finnish Criminal Policy in Transition (Helsinki, Department of Criminal Law, University of Helsinki, 1979).

12/ D. Lipton, R. Martinson and J. Wilks, The Effectiveness of Correctional Treatment (New York, Praeger, 1975); and J. Wilson, Thinking About Crime (New York, Basic Books, 1975).

13/ A. von Hirsch, Doing Justice (New York, Hill and Wang, 1976); and A. Dershowitz, Fair and Certain Punishment (New York, McGraw Hill, 1976).

14/ "The implementation of the conclusions of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, report of the Secretary-General" (A/35/289).

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Austria, the percentage of prison sentences decreased from 40 per cent in 1971 to 23 per cent of all sentences in 1977. In Japan, the proportion of prison sentences as against non-institutional sentences was 5.9 per cent and 97.1 per cent, respectively in 1977, where as in England, a report of the Advisory Council on Penal Reform, completed in 1977, had led to a trend towards the reduction of the length of prison sentences in favour of medium-term and short-term sentences, on the evidence that such an approach would have no adverse effects on the deterrent value of imprisonment. A similar approach was followed in Sweden and Finland, where the expert Committee on Penal Reform had accepted that the stronger the measures society directs against the offender, the greater the probability that the offender would later become a recidivist. While in several countries the number of offenders treated in the community is twice the number of those who are in prison, there are also countries in which this ratio ranges from three or four to one. For those who are imprisoned, finally, increasing use is made of furloughs and release so as to lessen the isolation of the prisoner from community life.

13. In the light of the experience, it is extraordinary that so many countries have carried out significant reforms in a limited period of time, since corrections is traditionally one of the institutions most refractory to innovation. Those changes have focused mainly on narrowing the field of application of the criminal law; viewing offenders not as passive recipients of treatment, but rather as people with rights, duties and responsibilities and on using imprisonment as a way of dealing with offenders only as the most extreme sanction of "last resort", while expanding alternative community treatment methods or creating new non-institutional measures.

14. For the purpose of this discussion, the interplay of the last two changes as well as their feedback effects are of particular relevance. 15/ In fact, the cut-off point between institutional treatment and alternative measures varies greatly from country to country, in accordance with the socio-cultural and legal setting, the level of public tolerance and awareness, the availability of human and material resources and the range of the use of the criminal law to cope with the problems of deviance and criminality. The crucial question, in this regard, is that of assessing "how" these changes are being implemented in practice, so as to evaluate the effects produced and maximize the impact of new measures. But for any kind of such assessment, comparative figures are required on the current use of imprisonment and detention, as well as other information such as the duration of sentences, recidivism rates, distribution by sex, age and other characteristics, vis-à-vis other alternative penal measures. Such data,

15/ P. Graboski, "The comparative study of penal severity: some methodological considerations", International Annals of Criminology, vol. 17, 1978; J. Jasinski, "The punitiveness of the criminal justice system. A cross national perspective", The Polish Sociological Bulletin, No. 1, 1976; and N. Christie, "Utility and social values in decisions on punishment", in R. Hood, ed., Crime, Criminology and Public Policy (New York, Free Press, 1976).

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however, are difficult to obtain, 16/ despite the well-recognized need for them and their enormous usefulness for the study of global trends and the international exchange of information. 17/

B. Current practice

15. The quantitative data provided by Member States to the United Nations, as part of the inquiry on the implementation of the Standard Minimum Rules, prevent any detailed analysis in that they are not comprehensive enough and, as such, they may not necessarily be representative. 18/ However, they do seem to indicate, when matched with secondary evidence available from current criminological literature, that the growing reliance on alternatives to imprisonment in many countries is, nevertheless, still accompanied by a wide use of imprisonment. They also seem to confirm that the scope of the use of deprivation of liberty as a way of controlling crime is strikingly different even within very homogeneous groups of countries with a similar cultural heritage and socio-political system, such as the Scandinavian countries 19/ or some of the Eastern European socialist countries. 20/

16. This last consideration can be illustrated by the following comparisons: in 1979, one country with 730,000 inhabitants had the same prison population as another one from a completely different region, with almost 10 million inhabitants. This implies that in one country there were, at a particular time, about 63 persons deprived of freedom in a population of 100,000 while in the other, there were 850. Within the same region, it can be observed, for example, that two countries have the same imprisonment rate (for example, about 2,000 inmates in a given period), while the general population of one is more than 2 million and in the other one does not even reach 200,000. This implies that the imprisonment rate is less than 100 per 1,000,000 population in one place as against 1,000 in the other. 21/ Furthermore, it substantiates what was noted at the European Regional

16/ A first international survey on prison population, although incomplete, was presented at the Fifth Congress (A/CONF.56/6, annex II). For the preparation of this working paper, it was planned to include the results of a second survey. However, only a limited number of countries replied to the inquiry on the implementation of the Standard Minimum Rules, and a proportion of them did not provide any data.

17/ See the report of the European Regional Preparatory Meeting (A/CONF.87/BP/1), para. 61.

18/ For more details, see A/CONF.87/11, foot-note 10.

19/ I. Anttila, "Corrections in Finland", in International Corrections by R. Wicks and H. Cooper (Lexington, Lexington Books, 1979).

20/ J. Jasinski, "Deinstitutionalization of corrections and its implications for the residual prisoners: some problems and dilemmas", consultant paper prepared for the Secretariat, 1979.

21/ United Nations Latin American Regional Institute for the Prevention of Crime and the Treatment of Offenders, "Análisis Comparativo de las Estadísticas Criminales Latino-Americanas y del Caribe", San José, Costa Rica, 1980.

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Meeting, that is, that in some countries "the prison population was 10 times greater, in proportion to the population, than in others". 22/ And, within the same federal country, the imprisonment rate of one State in 1977 was 12 times smaller than that of another one (that is, 27 offenders committed to prison per 100,000 population as against 334). 23/

17. These figures would become even more divergent if calculated against the age groups within the population which tend to produce the highest crime level, or if computed on the basis of conviction rates (that is, the total number of offenders committed to prison in a given year) rather than the average daily prison population. Moreover, the fact that a country has more persons in prison does not necessarily mean that it has a greater incidence of crime and more criminals. Results of victimization studies and of cross-cultural research on the relationship between levels of recorded criminality and imprisonment rates seem to provide a negative answer. 24/ Therefore, it is the criminal policy and the punitiveness of the criminal justice system which should be considered, together with the basic principles of the administration of justice.

18. The prison still continues to be widely used, in spite of the increasing reliance on alternative measures. From the figures received, it seems that in some countries, during the years 1975-1979, there has been a parallel increase in both the numbers of offenders sentenced to imprisonment and of those in community programmes. In another group of countries, however, the prison population has remained stable, but there has been an increase in the number of offenders under alternative measures. With the exception of one country in which there was a slight decrease in the prison population, deinstitutionalization programmes have not had the effect of reducing the number of prisoners.

19. Female prisoners are, in general, a small proportion of the total, as are juveniles. The number of offenders in mental hospitals is decreasing, while there is in general, an increase in the number of persons in drug-treatment centres, who, in some countries, are treated outside the criminal justice system.

22/ See the report of the Eastern European Regional Preparatory Meeting (A/CONF.87/BP/1), para. 60.

23/ United States Department of Justice, National Prisoners Statistical Bulletin, SB-NPS-PSF-4.

24/ See United States Department of Justice, Sourcebook of Criminal Justice Statistics, 1978 (Washington, D.C., 1979), p. 364; H. Brennen, "Effects of the economy on criminal behaviour and the administration of criminal justice in the United States, Canada, England and Wales and Scotland", in United Nations Social Defence Research Institute, Economic Crisis and Crime, publication No. 15, Rome, May 1976; A. Blumstein and J. Cohen, "A theory of the stability of punishment", Journal of Criminal Law and Criminology, vol. 64, No. 2 (1977); and D. Greenberg and S. Redo, "Penal sanctions in Poland: a test of alternative models", to be published in American Sociological Review, 1980.

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The number of prisoners who are not citizens of the country of imprisonment is also increasing. <sup>25/</sup>

20. The number of people in detention awaiting trial represents a considerable proportion of the prison population and varies greatly among countries, from a maximum of 70 per cent in some to a minimum of 5 per cent in others. The average length of time pending trial ranges from 10 days in one country to about one year in others: in the latter cases, it means that for some offenders, it may take years before they are sentenced. In certain of these countries, the length of time spent in detention awaiting trial may be longer than the sentence imposed.

21. The average length of imprisonment varies from 56 days in one country to four years in others. As far as its breakdown in relationship to the prison population is concerned, there are countries in which more than half of the offenders are imprisoned for less than six months (that is, Bahrain 81 per cent, Italy 55 per cent, Netherlands 89 per cent, Norway 76 per cent, Sri Lanka 73 per cent and Sweden 74 per cent) and, as an average, no more than 70 per cent of the prisoners are sentenced for more than two years. However, there is greater variation in the number of offenders serving longer sentences, that is, more than five years: while in some countries, it is not even 1 per cent (Bahrain, Netherlands, Norway, Sri Lanka and Sweden), in several, it is below 10 per cent (Botswana, the Federal Republic of Germany, Italy, Japan, Saudi Arabia and Singapore), but in others relatively high, that is, more than 20 per cent (Argentina, Chile, France, Greece and Egypt).

C. Towards a global approach

22. Although the data received do not allow any more detailed analysis, there are some broad policy implications which can be drawn from the interpretation of those figures:

(a) In view of the fact that the process of stigmatization and marginalization starts at the very earliest stage of the criminal process, all efforts should be made to reduce the number of detainees to the barest possible minimum. <sup>26/</sup> There are countries where the proportion of these detainees is less than 10 per cent and the time needed to start trial relatively short. This means that these countries have found ways and means of reaching this goal.

<sup>25/</sup> This problem is particularly acute in a number of countries where efforts are being made to strengthen international co-operation. See, in this regard, the working paper on agenda item 7 (A/CONF.87/8).

<sup>26/</sup> The Fifth Congress recommended that the majority of persons under detention awaiting trial "should not be held in custody and that maximum use should be made of existing legal and administrative procedures to ensure that the penalty of confinement would be applied only to those persons whose offences were of a grave nature or whose detention in custody was necessitated by reasons of national security or the protection of the community or to ensure appearance on trial" (A/CONF.56/10, para. 274).

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(b) The large proportion of prisoners serving sentences of less than six months is an indication that deinstitutionalization is still in its infancy and that much more can be done. If it is true that there is a relationship between the seriousness of the offence and the length of imprisonment, there is no doubt that the target population towards which alternative programmes should be directed, at least in the initial stage, is mainly that constituted by short-term prisoners, who could be treated mostly in the community rather than in prison. This means that short-term imprisonment should be reduced by providing and using various alternatives. <sup>27/</sup> Obviously, such a policy should be implemented taking into account that in a limited number of countries, community programmes are used extensively and the severity of sanctions is mild and that imprisonment of six months is already regarded as a severe form of punishment.

(c) Even with the use of community programmes as an alternative to incarceration, there would still remain a large number of prisoners in many countries who will be spending two, three, four or more years in penal confinement. Cross-cultural research strongly suggests that the length of imprisonment is unrelated to recidivism; furthermore, that long-term imprisonment may actually impair the ability of an individual to function adequately in the community after his release. <sup>28/</sup> For these reasons, then, every effort should be made to return the prisoners to the community at the earliest possible time.

23. The above considerations are of great relevance not only in order to maximize the process of deinstitutionalization but also to humanize the correctional process further. Their rationale is based on the principles of efficiency and effectiveness and, above all, on the need for recognizing basic human dignity.

24. Their policy implications, however, require a global approach in which decriminalization and depenalization policies play a crucial part. By decriminalization is meant "the legislative process that renders lawful certain acts previously prohibited by criminal law, while depenalization implies a legislative process by which certain criminal offences are converted into matters to be dealt with administratively or by civil agencies, thus eliminating or reducing the stigmatizing effect inherent in the criminal law and easing the burden of the criminal courts". <sup>29/</sup>

<sup>27/</sup> This had already been recommended by the Second Congress, where Governments were invited to "ensure the enactment of legislative measures necessary to carry the recommendations (on short-term imprisonment) into effect" (A/CONF.17/20, annex I <sup>4/</sup>).

<sup>28/</sup> I. Waller, Men Released from Prison (Toronto, University of Toronto Press, 1974).

<sup>29/</sup> "Methods and ways likely to be most effective in preventing crime and improving the treatment of offenders" (E/CN.5/536), annex IV, para. 14. See also Centro Nazionale di Prevenzione e Difesa Sociale, The Decriminalization (Milano, 1975); Y. Suzuki, "Some thoughts on decriminalization and depenalization" in United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Resource Material Series No. 14, Fuch, March 1978, and European Committee on Crime Problems, Report on Decriminalization (Strasbourg, Council of Europe, 1979); and L. Rodriguez Manzanera, "La Decriminalización", Quadernos Panamenos de Criminología, No. 6, 1978.

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25. Moreover, the different sectors of the criminal justice system should have more coherent and clearly articulated goals which, at the end, would provide for a more unified approach to criminal justice operations.

26. Corrections, in fact, is only one sector (or subsystem) of the Criminal Justice System and cannot be dealt with in isolation. Changes in the operation and policies of any one sector (for example, police, courts) affect the others, with continuous feedback effects among all of them. Furthermore, from a budgetary point of view, in terms of both money and personnel, the different subsystems compete, to some extent, for limited resources; and, in turn, the criminal justice system as a whole competes for resource with other systems, such as those for the delivery of health, education and other services. In such a systems approach, those offenders received by the correctional administration are the subsystem's input, those sentenced to institutional or community treatment - the correctional population; and those discharged constitute the subsystem's output, some portion of which may return to the subsystem as its input in the future, that is, the recidivist. Using this approach, it is evident that the main decisions affecting both the input and the output of the correctional subsystem are determined by the other subsystems. Effective flow of information, integration and co-ordination among all of them are therefore essential, so that gains in effectiveness in one sector are not offset by a decrease in effectiveness elsewhere. 30/

27. As recommended by the Committee on Crime Prevention and Control, 31/ the establishment of a planning and co-ordinating body, with the participation of representatives of the different subsystems and of outside experts in the field of criminal justice, both at the national and at the local level where members of the community should be involved, would be of particular value in order to assess priorities and needs, improve resource allocation and monitor and evaluate current programmes.

28. In this context, clear sentencing principles could be established which would be beneficial not only to the courts but also to the public at large in order to discard the impression that imprisonment is the standard punishment and that other penalties are exceptions. As an example, the following principles were recommended by the Royal Commission of the Department of Corrective Services of New South Wales in Australia: 32/

(a) A person is sent to prison as punishment and not for punishment. The punishment is fundamentally the loss of that person's liberty.

30/ See, in this regard, A Policy Approach to Planning in Social Defence (United Nations publication, Sales No. E.72.IV.9).

31/ See "Methods and ways likely to be most effective in preventing crime and improving the treatment of offenders" (E/CN.5/536), paras. 34-35.

32/ See The Report of Royal Commission into New South Wales Prisons (New South Wales, Government Printer, April 1978).

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(b) While in prison, the inmate should lose only his liberty and such rights as expressly or by necessary implication result from that loss of liberty.

(c) Those who are imprisoned should be incarcerated for as short a time as possible. If alternatives to imprisonment (such as probation or parole) are inappropriate at first, they should be used as soon as it is reasonably safe.

(d) Those who are in prison should be housed in the lowest appropriate security.

(e) As few as possible should be incarcerated in prisons and then only when all appropriate alternatives have been exhausted.

And the law Reform Commission of Canada 33/ recommended that: "Imprisonment is an exceptional sanction which should be used only:

- (i) To protect society by separating offenders who are a serious threat to the lives and personal security of members of the community, or
- (ii) To denounce behaviour that society considers to be highly reprehensible and which constitutes a serious violation of basic values, or
- (iii) To coerce offenders who willfully refused to submit to other sanctions".

The Interregional Meeting of Experts, which discussed this topic at Cambridge, England, in December 1978, agreed that "smooth progress towards deinstitutionalization could be based on:

- the principle of the least restrictive sanction;
- the principle of differentiated sanctions based on the gravity of the offence and on the socio-economic circumstances surrounding the offender; and
- the principles of consistency, fairness, and equity at all stages of the penal process".

29. The attitudes of the criminal justice personnel are very important in evolving alternatives to imprisonment, and their role is crucial in maximizing their impact. 34/ Conflict sometimes exists in the priorities and objectives of the different components of the criminal justice system, even when they were directed towards a common purpose. The degree to which policies of diversion and other alternative devices can be pursued is influenced to a large extent by the

33/ Law Reform Commission of Canada, Dispositions and Sentences in the Criminal Process (Ottawa, 1976).

34/ United Nations Latin American Regional Institute for the Prevention of Crime and the Treatment of Offenders Sistemas de Tratamiento y capacitación penitenciarios, San José, 1978.

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goals to which the various sectors are committed. For instance, when the police view their own role as law-enforcement only, the implementation of measures directed at the social reintegration of offenders could be seriously hampered. If, on the other hand, the police see the rehabilitation of offenders as part of their task, the introduction and implementation of non-institutional dispositions is much more effective. Similar considerations apply to the judiciary which is the key element in implementing any reform and whose support is indispensable for an effective deinstitutionalization policy and, above all, to correctional personnel whose function and role is gradually changing from that of custody, security and control agents to that of community correctional staff.

30. Finally, public participation and support is vital if success is to be achieved. <sup>35/</sup> In fact, the attitude of the public is central in shaping policies leading to deinstitutionalization. Indeed, the degree of public tolerance for the offender and of confidence in the manner of dealing with him or her can be described as the controlling variables. On the negative side, two aspects should be borne in mind. First, the public tends to over-react to particular crimes on the basis of emotional and not always rational beliefs. Secondly, the widespread use of imprisonment encourages the public to believe in its efficiency, to the point that a low rate of crime detection is often accompanied by considerable severity of sanctions against those who are apprehended, as a kind of trade-off. Thus, a highly punitive rationale, emphasizing imprisonment as an appropriate measure, can easily exist when the crime situation appears to be one of mounting seriousness, and such a process can in fact be self-reinforcing. In countries suffering from a sudden wave of certain types of violent crime, such as terrorism, public opinion is likely to swing strongly against policies apparently considered too lenient, often as a result of distorted or sensationalized campaigns by certain sectors of the mass media. Under these circumstances, effective, rational and humane policy-making is much more difficult for the authorities. It should be noted in this connexion, however, that what the public really wishes for and needs is certainty about the policies being implemented, knowledge of their functioning and of the reasoning upon which these policies are based. In short, a well-informed public opinion is more likely to be a supportive element in rationalizing and diversifying the approach to correctional treatment.

31. On the other hand, the fact that public opinion can be guided and moulded by concerted governmental action means that the problem is one of political will and social presentation. In this context, the law should be used as a vehicle of social change, provided there is a political commitment to take initiatives and educate the public to understand clearly that imprisonment can be self-defeating and that a positive attitude is needed for the development of effective community programmes. In fact, the most powerful reinforcement for conformity is the humanizing experiences of community life which occur in particular social environments, such as the family, school or work situation. Community corrections should, by providing successful and successive approximations of community life, lead the offender, by degrees, into the mainstream of life in the free world.

<sup>35/</sup> A. Begamini-Miotto, "Formas de participação da comunidade no tratamento dos delinquentes", Revista do Conselho Penitenciário Federal, No. 33, 1975.

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## II. DEINSTITUTIONALIZATION AND ALTERNATIVES TO IMPRISONMENT

### A. Consequences of imprisonment and need for alternatives

32. The dual demands made in various countries - for an increased employment of alternative measures and a decreased and more humane use of imprisonment are based on general requisites of humanity, justice and tolerance, <sup>36/</sup> as well as an objective and rational interpretation of official criminal justice data and findings of sociological and penal research, confirmed again and again across various societies. <sup>37/</sup> This experience may be summarized as follows: there is a lack of concordance between the prison institution as a "means" and the correction of imprisoned offenders as a "goal" of sentencing. Prison tends to further criminalize the convicted offender. In terms of any cost and benefit analysis, imprisonment is costly and wasteful, especially of human and societal resources, while deinstitutionalized sentences achieve the goal of correction at least as efficiently and effectively as imprisonment and without the costs and negative effects of the latter.

33. Any action, social or legal, is presumably inadequate if it cannot achieve its desired objective. And it is dysfunctional if it has the opposite effect. A sentence of imprisonment is a socio-legal action aimed at achieving one, or a combination of, the following purposes: retribution, or "just desserts"; individual or general prevention, or deterrence, protection of the public, or social defence or incapacitation; and correction, or reformation or social rehabilitation. <sup>38/</sup> However, its "essential" aim, which has been recognized and accepted by the community of nations, is the resocialization of the offenders so as to lead them to law-abiding and self-supporting life, as stated in the Standard Minimum Rules (rule 56) and in the International Covenant on Civil and Political Rights (art. 10).

<sup>36/</sup> N. A. Strouchkov, "New confirmation of humanism of Soviet legislation", Soviet State and Law, 1978; E. Sagarin and A. Karmen, "Criminology and the reaffirmation of humanist ideals", Criminology, August 1978.

<sup>37/</sup> The literature is vast. See, however, B. Cressey, "Adult felons in prison", in L. Ohlin, ed., Prisoners in America (Englewood Cliffs, New York, Prentice-Hall, 1973); T. M. Mushanga, Crime and Deviance: An Introduction to Criminology (Nairobi, E.A.L.B., 1977); Penalties not involving the deprivation of liberty (Moscow, 1972); U. Baxi, The Crisis of the Indian Legal System (Delhi, Allied, 1980); T. Mathiesen, The Politics of Abolition (London, Martin Robertson, 1976); J. M. Rico, Las sanciones penales y la política criminológica contemporánea (Mexico D.F., Siglo Veintiuno, 1979); J. M. Vouraut, La prison pour quoi faire? (Paris, La Table ronde, 1972); and M. Zaid, "The social consequences of deprivation of liberty", National Review of Criminal Sciences (Cairo, 1980).

<sup>38/</sup> A. Adeyemi, "Sentences of imprisonment" in T. O. Elias, ed., The Prison System in Nigeria (Binsley, University of Lagos, 1968); M. Shargorodsky, Punishment - Its Goals and Efficiency (Leningrad University, 1975); N. Strouchkov, Penal Responsibility and Its Realization in the Struggle Against Criminality (Saratov University, 1978); G. Vassalli, "Politica criminal y derecho penal", Revue Internationale de Droit Penal, No. 1, 1978; H. Singh, "New trends in corrections", Social Defence, April 1977.

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34. Consequently, the all-important question is whether or not a sentence of imprisonment achieves this "essential aim" and desired objective. The answer to this question can easily be given after having considered the following arguments.

35. It has been established repeatedly that it is difficult to prepare a person for freedom under conditions of captivity - to resocialize a person for normal citizenship in an open society in an "abnormal" and "closed" community, or to train persons for responsible living by giving them no responsibility whatever. The prison and society are different entities in almost all respects, and to expect the product of the former to successfully survive in the latter is unrealistic. All the attributes a person needs to develop into a good citizen are denied, frustrated and repressed in prison. The prisoner is denied even the essential minimum of any sense of responsibility. For example, like a child, the prisoner is told when to wake up, when to sleep, what to eat, what to do and when to do it. These and other decisions are made for him. In the outside society, unity and a sense of community contribute to personal growth. In prison, unity and community must be discouraged lest the many prisoners overwhelm the few warders. In society, leadership is the ultimate virtue. In prison, leadership must be identified, isolated and blunted. In the competitiveness of normal everyday living, assertiveness is a characteristic to be encouraged. In the reality of the prison, assertiveness is equated with aggression and repressed. Other qualities considered as positive in society, for example, self-confidence, pride, initiative, are eroded by the experience of prison into self-doubt, obsequiousness and lethargy.

36. Not only does prison desocialize offenders and deprive them of whatever remaining desirable social values they bring with them to the institution, but it may "criminalize" them further. The prison's role in making offenders more criminal than they are upon entry is underlined by the very high probability that the clustering together of first offenders and hardened repeaters and of petty and professional criminals, not only transmits the values of a criminal society to newcomers, but also proliferates techniques of crime commission. To counteract the effects of the formal economic, social and psychological deprivations of imprisonment, prisoners always develop some informal "counter-culture". While the function of this counter-culture is to cater, informally, to the "welfare" of the inmates for protection of one another from the prison authority, the values and norms of the counter-culture are subversive of the prison authority's required behaviour. Yet, almost every new prisoner gets "initiated" into this life style upon arrival and whoever wants a tolerable or bearable prison life subscribes to it. As a result, prisoners - by the time of release - get "prisonized", that is, they internalize the prison values, norms, practices and nuances of "successful" institutional existence and survival. The consequence here, again, is the further criminalization of the offender.

37. For the short-term prisoners housed in overcrowded prisons, usually there is only custodial caretaking, unaccompanied by rehabilitative efforts. Because of the still insignificant proportion of prisoners exposed to formal education, occupational apprenticeship and useful work, due to human and material resource limitations, most prisoners are merely "doing time". Prison work is usually geared towards prison maintenance and, more crucially, towards relief from boredom and the prevention of "improper" use of idle minds and hands.

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38. The experience of imprisonment and the post-prison social stigma attached to the ex-prisoner by society make it practically impossible for most former prisoners to readjust to society and to lead normal productive lives. Thus, a substantial proportion of prisoners are "forced" back to prison, that is, to recidivate. Estimates of recidivism among incarcerated offenders in some places run as high as 80 per cent, although comparative rates suggest that the figure can be much lower. 39/

39. The expenses involved in building and operating prisons are becoming prohibitive, even for prosperous countries, especially when compared with the generally poor effects of imprisonment on recidivism rates. It has been estimated, for example, that in the United States of America, prisons cost about \$51,000 per bed to build in 1979 40/ and as much as \$20 and \$30,000 a year to maintain a prisoner. 41/ This means that costs of imprisonment can be higher than those of a university education. It means also, however, that the incidence of such costs is even higher for developing countries, which can hardly afford to divert scarce human and material resources into the construction of more goals when there is a dire need for economic betterment and social services. 42/

40. In most cases, the criminal justice system is rather selective in sending people to prison. Those who would have their positions and status at stake, those for whom imprisonment would really serve as a deterrent, often escape imprisonment. Those are the persons who are not in want, socially or economically, but who nevertheless may have inflicted serious harm on the economy, political stability, respect for law and public morale, through bribery, corruption, fraud, embezzlement, smuggling, hoarding, price-fixing, frequently referred to as white-collar criminality and other similar socially harmful acts. 43/

39/ G. Phillpotts and L. Lancucki, Previous Convictions, Sentences and Reconviction, Home Office Research Study No. 53 (London, 1979) and T. H. Kafarov, Recidivism Problem in the Soviet Criminal Law (Baku, 1972).

40/ E. Van den Haag, "Prisons cost too much because they are too secure", Corrections Magazine, April 1980.

41/ S. Glase, Routinizing Evaluation (Washington, D.C., National Institute of Mental Health, Center for studies on crime and delinquency, United States Government Ministry Office, 1977).

42/ In some countries, non-governmental initiatives to establish national moratoria on prison construction have, in some cases, succeeded in halting new prison building, through the generation of public pressure and litigation.

43/ For example, in the United States of America, the total cost of crime was, in 1976, \$125 billion. Crimes against property such as theft, burglary and larceny, totalled to \$4 billion against \$44 billion of white-collar crime. Yet the proportion of white-collar criminals was very small in comparison with property offenders. See, in this regard, E. Doleschal, "Crime - some popular beliefs", Crime and Delinquency, January 1979. See also L. Aniyar de Castro and T. Santos, "Prisión y clase social", Capítulo Criminológico, No. 2, Maracaibo, 1974.

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41. Since most people equate conviction with imprisonment, such a situation has a crime-generating effect on the whole society, especially among prisoners. For the population at large, it fosters the impression that "crime pays" if one has the monetary, social, economic, political or bureaucratic position or power. For convicted "common" criminals, it provides the rationalization that they are in prison only because they are poor, lack money to raise bail, to hire a competent attorney, or to pay a fine. It thus neutralizes the sense of guilt necessary for a change of heart. In both cases, a "criminal environment" is created which brings into question the validity of the law, its enforcement and its justice.

42. On the basis of the above, it can be concluded that sentences of imprisonment seldom achieve their ultimate objective, that is, resocialization, and that, usually, they may further aggravate the problem of criminality. They constitute, therefore, an inadequate, dysfunctional and extraordinarily costly socio-legal response to the problem of crime. Furthermore, the claim that imprisonment "protects the public" from criminals seems to ignore the temporary nature of this protection and the heightened danger to society emanating from those discharged. There is, above all, the illusion that by locking up a part of the population, public security is assured when the facts show that, at any point in time, the great majority of actual and especially potential criminals remain in the society at large. 44/

B. Alternative measures

43. Given this historic ineffectiveness of the prison as a vehicle for resocializing offenders, alternative approaches have been explored, developed and established in various countries of the world. It should be noted, in this regard, that some alternatives to institutionalization have been utilized, especially in European and American countries for more than a century 45/ and that the customary methods of responding to wrong-doing in developed countries had included community control and social reintegration, coupled with restitution long before the concepts of prison and imprisonment were introduced or borrowed from other contexts. 46/

44/ The actual volume of crime in any society is always an unknown quantity. Assuming that this "unknown" is 100, only a part of it becomes known to the police, for example, 50 per cent. Of this 50 per cent, only about 30 per cent ever get to the courts. Of the 30 per cent, only about 15 per cent may end up in prison. Yet it is claimed that the public remains "protected" from crime by imprisoning those few outcasts. It is to be noted that the above figures are simply hypothetical. In fact, the situation can be different in various contexts. (See, for example, C. Kelly, Uniform Crime Reports (Washington, D.C., 1976).)

45/ B. Alper, Prisons Inside-Out: Alternative in Correctional Reform (Cambridge, Mass., Ballinger Publishing Company, 1974).

46/ See A. Milner, The Nigerian Penal System (London, Sweet and Maxwell, 1972); M. Clinard and A. Abbot, Crime in Developing Countries. A Comparative Perspective (New York, John Wiley and Sons, 1973); and T. Elias, "Traditional forms of public participation in social defence", International Review of Criminal Policy, No. 29, 1969.

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44. Indeed, traditional non-institutional responses to crime still constitute part and parcel of many indigenous criminal justice systems and appear to offer effectiveness in the context of indigenous social control. These experiences of developing countries with sanctions other than imprisonment, for example, various forms of restitution and reparation, constitute valuable object lessons for developed countries, whose possible revitalization even in industrialized and urbanized settings deserves to be considered. 47/ The main difference between the current trends and the recent past, is that while alternative approaches once constituted sporadic and scattered experiments, especially on the part of charitable organizations, today they are planned and implemented as part of differentiated strategy intended to deal with the problem of criminality and in a global perspective, where the various sectors of criminal justice are viewed as an integrated system. 48/

45. Governmental efforts and resources are being increasingly devoted to the development of new or the redevelopment of old alternatives in the wake of the growing realization of the prison's incapacity to rehabilitate and as part of the over-all deinstitutionalization trend which also characterizes the field of mental health. Society, in fact, does not remove all the mentally disturbed and retarded to asylums, exile the poor or send the aged to workhouses. The care and support of such persons has gone back to the community. By returning these responsibilities to the community, and by providing it with the appropriate means for dealing with those persons, society will cope more effectively with them, while reducing at the same time the sense of powerlessness and fragmentation of its members. 49/

46. Deinstitutionalization can be undertaken at all levels of the criminal justice system: at the pre-trial stage, that is, the police and prosecutorial level; upon conviction, as a judicial disposition; and after the imposition of a prison sentence, usually as a result of an evaluation by the correctional authorities. 50/ In this connexion, the attached table illustrates the traditional correctional process, on the left-hand side, under "Institution" and the current community programmes on the right-hand side, under "Alternatives", offering an example of the wide range of available community programmes within a systematic

47/ See G. Mueller, Sentencing: Process and Purpose (Springfield, Charles Thomas, 1977).

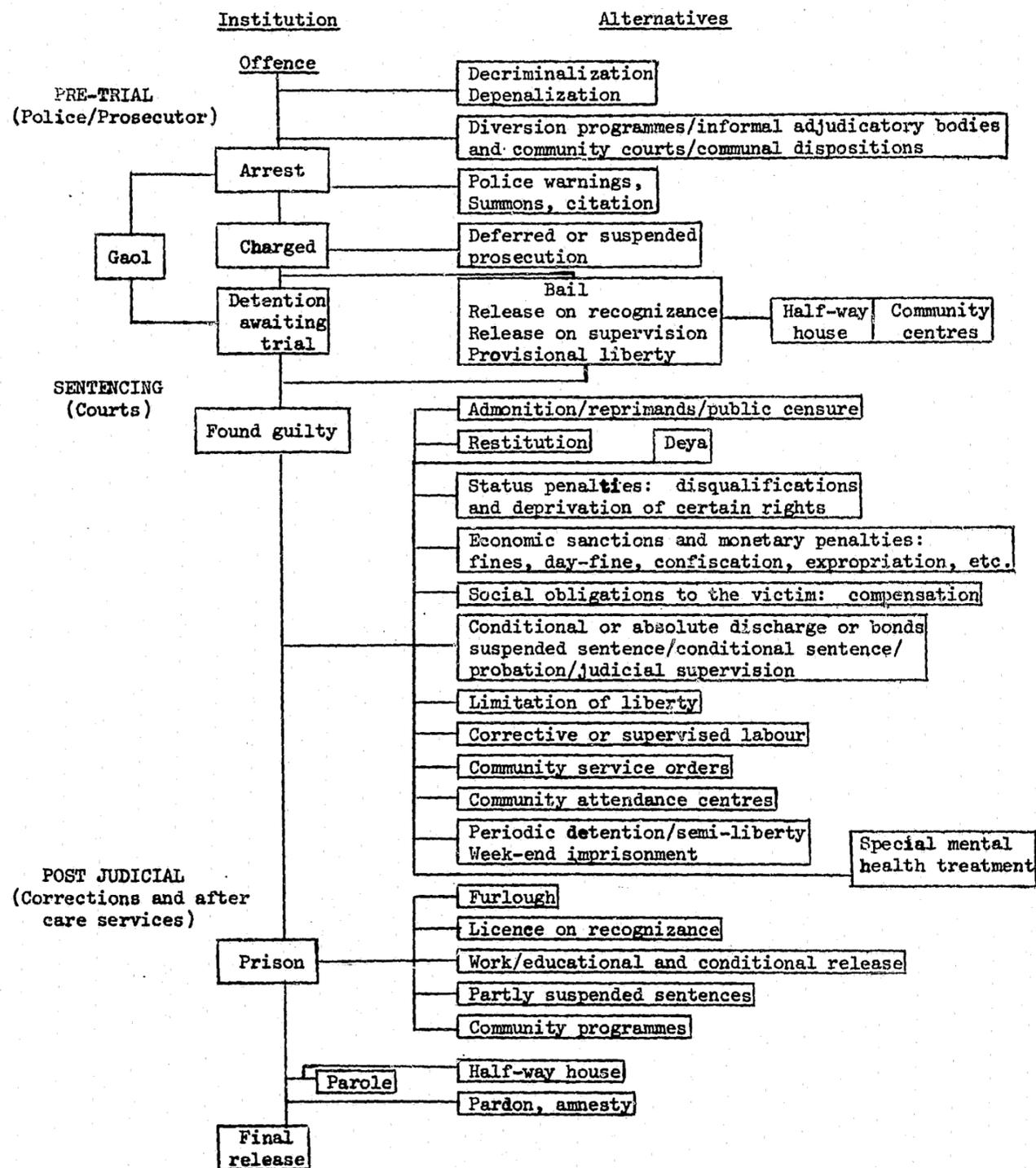
48/ Centro Nazionale di Prevenzione e Difesa Sociale, Fene e Misure Alternative nell'Attuale Momento Storico (Milano, Giuffrè, 1977); Ministero di Grazia e Giustizia, Una Strategia Differenziata per la Difesa Sociale dal Delitto (Roma, Quaderni Ufficio Studi e Ricerche, 1974); M. Mennon, "Social defence strategies and judicial reorganization", Social Defence, January 1978.

49/ F. Adler, "The migration of people among social control systems", to be published in Interactions.

50/ For a comprehensive bibliography, see J. Brantley and M. Kravitz, Alternative to Institutionalization, (Washington, D.C., National Institute of Law Enforcement and Criminal Justice of the United States Department of Justice, 1979).

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Community corrections



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framework. It should be noted that the table is neither exhaustive, nor conceptually bound to any particular legal system, but illustrates the criminal justice process as such, at its most important decision-making points. It should also be underlined that there are great difficulties in using an appropriate terminology which could be applicable to all legal systems. An attempt has been made, however, to explain the differences which at times are linguistic and at times substantive and procedural. Finally, the following considerations are in order: (a) some of these alternatives have traditionally been applied, though only as accessory to imprisonment, that is, as addition to or extension of prison sentences. <sup>51/</sup> Only recently have some of these turned into real alternatives, that is, in lieu of imprisonment and be applied as principal measures; (b) the range of application of each of these alternatives varies greatly from country to country. However, the differentiation in their application at the pre-trial and sentencing levels is usually dependent on the nature of the offence in terms of its seriousness and gravity; on certain personal and social characteristics of the offender, for example, at times recidivists or addicts are excluded; on the circumstances surrounding the act and the actor and on certain conditions to be met or obligations to be performed on the part of the offender.

47. Pre-trial and post-judicial alternatives should be considered as being outside the scope of the present working paper which is limited to the "deinstitutionalization of corrections" and, therefore, theoretically bound to consider only "sentencing alternatives to imprisonment". They are being briefly considered here, however, for the following reasons:

- (a) Deinstitutionalization has been conceived as part of the broad process of penal reform;
- (b) There is a continuous interplay in terms of mutual influences and feedback, among and between the different subsectors of the criminal justice system;
- (c) As has been shown in the previous chapter, a substantial number of people are in detention pending trial, often for a long period of time;
- (d) Both pre-trial and post-judicial alternatives can contribute greatly to reduce the number of persons committed to penal institutions.

1. Pre-trial alternatives

48. Pre-trial alternatives are also referred to as "diversion programmes" or "diversionary devices", that is, procedures and facilities for suspending criminal proceedings on the understanding that the offender accepts guidance or treatment

<sup>51/</sup> See, in this regard, J. E. Castillo Barrantes, "Los sustitutos de la prisión: estado actual y tendencias en América Latina", to be published in the International Review of Criminal Policy.

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from agencies outside the system of criminal justice, 52/ including various arbitration tribunals and informal community courts. 53/ Some of these alternatives necessitate great flexibility in the exercise of police, prosecutorial and judicial powers or may be dependent on the availability of detoxification and drug treatment centres, or on access to different adjudicatory bodies. There are other measures, however, which can be applied without impinging on the principle of legality, that is, without enlarging discretion and without necessary recourse to the above-mentioned facilities or institutions. This is especially true for measures like summonses, citations, bail and release on recognizance or with supervision, which are contemplated in various legislations. While bail practices often discriminate against the poor and minorities, release on recognizance or on supervision, where the offender reports to the supervising official who in turn maintains a minimum level of custody and assistance, would greatly help in reducing overcrowding in gaols. This problem is extremely acute in the many countries where the number of persons in gaol encompasses the number of sentenced prisoners, and the period of detention pending trial can at times be counted in years. 54/

49. There is no doubt that adherence to stricter criteria of pre-trial detention and the development and implementation of guidelines for making the administration of justice more expeditious and equitable 55/ would contribute significantly to a fairer and more humane approach to this area. However, experience and practice

52/ R. Nimmer, Diversions - the Search for Alternate Forms of Prosecution (Chicago, American Bar Foundation, 1974); and T. Satsumae, "Suspension of prosecution: A Japanese long-standing practice designed to screen out offenders from penal process", United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Resource Material Series No. 15, Fuchu, 1978.

53/ N. Kittrie, et al., The New Justice: Alternatives to Conventional Criminal Adjudication (Washington, National Institute of Law Enforcement and Criminal Justice of the United States Department of Justice, 1977); W. Felstiner and A. Bartherlness-Drew, European Alternatives to Criminal Trials and their Applicability in the United States (Washington, National Institute of Law Enforcement and Criminal Justice of the United States Department of Justice, 1978); and N. Tiruchelvam, "The popular tribunals of Sri Lanka: a socio-legal inquiry", unpublished doctoral dissertation, Harvard University, 1973.

54/ Report of the Latin American Regional Preparatory Meeting (A/CONF.87/BP/3), para. 40 and F. Canestri, Situación de los Procesados en Venezuela, Trabajo presentado en el Tercer Seminario de Criminología Comparada para la región del Caribe, Abril 1980.

55/ See "Draft body of principles for the protection of all persons under any form of detention or imprisonment, note by the Secretary-General" (A/34/146) and "Human rights in the administration of justice: draft guidelines on the expeditious and equitable handling of criminal cases", report of the Secretary-General (E/AC.57/34).

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have shown that the mere provision of time-limits and other individual guarantees prescribed in the statute books does not necessarily solve the problem unless collateral measures are planned and properly implemented, with clear guidelines for their application and with adequate resources for their effective functioning. 56/ In this connexion, the proposals made at the Latin American Regional Preparatory Meeting deserve special attention. 57/ In addition, the following alternatives could be suggested:

- (a) Promise of the person concerned to appear before the judicial authority as and when required and so as not to interfere with the course of justice;
- (b) Requirement to reside at a specified address (for example, the home, a bail hostel, a specialized institution for young offenders) under conditions laid down by the judicial authority;
- (c) Restriction on leaving or entering a specified place or district without authorization;
- (d) Order to report periodically to certain authorities (for example, court, police);
- (e) Surrender of passport or other identification papers;
- (f) Provision of bail or other forms of security by the person concerned, having regard to his/her means;
- (g) Provision of surety;
- (h) Supervision and assistance by an agency nominated by the judicial authority.

Moreover, consideration should be given to the establishment or development of a scheme for compensating persons who have spent time in custody pending trial and are subsequently not convicted. 58/

## 2. Sentencing alternatives

50. There can be several alternatives to imprisonment. However, their implementation in practice depends on the legislative provisions, on clear principles and criteria for their application on the part of the courts or other duly constituted adjudicatory bodies and, basically, on the nature of the offence.

56/ J. Galvin, et al., Instead of Jails (Washington, National Institute of Law Enforcement and Criminal Justice of the United States Department of Justice, 1977).

57/ See the report of the Latin American Regional Preparatory Meeting (A/CONF.87/BP/3), para. 42.

58/ R. del Olmo, "Sentencing practices in Caracas: Venezuela's penal courts", International Journal of Criminology and Penology, February 1973; and C. Shelbourn "Compensation for detention", Criminal Law Review, No. 2, 1978.

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It has already been said, in this connexion, that there is a trend towards "up-grading" to principal sanctions some of these measures, such as the restriction of certain rights, 59/ disqualification, 60/ restitution, 61/ compensation 62/ and others previously used only as accessory or supplemental sanctions.

51. This trend, if it continues, can surely have an impact on the use of imprisonment. However, these measures are usually applied only with respect to minor offences. It is for this reason that, rather than examining all possible alternatives, the following discussion will concentrate on those measures which are most widely used and applied to a wide-range of offences and offenders, that is, fines, suspended sentences and probation, community service orders and corrective labour and periodic detention.

(a) Fines

52. In many countries, fines are used relatively effectively for a whole range of offenders and offences. 63/ They are economical, both in terms of money and manpower - practical in terms of management and administration and humane because they inflict the minimum of social damage on the offender. Moreover, they are clearly defined, easy to comprehend and predictable. However, though these be the merits of this measure, there are also short-comings: fines are not personal, are not always exemplary and can create inequalities discriminating against the poor, for whom they are usually converted into imprisonment because of non-payment, thus equating justice with money. Some of these short-comings, however, have been solved with the establishment of flexible system of fines, that is, by adjusting the amount of a fine not only to the gravity of the offence but also to the socio-economic situation of the offender. For example, in the day-fine system, operating in the Scandinavian countries and also in Austria, Bolivia, Costa Rica, Cuba, the Federal Republic of Germany, Peru and other countries, 64/ the amount to be paid is a proportion of the offender's net income, allowing for coverage of basic expenses, so that the gravity of the offence is reflected in the number of days for which earnings have to be paid. Often, part of the fine can be given as restitution or compensation to the victim; payments can be made in installments and, in the case of default of payments,

59/ M. Damaska, "Adverse legal consequences of conviction and their removal: a comparative study", Journal of Criminal Law, Criminology and Police Science, vol. 59, No. 3, 1968.

60/ Société internationale de défense sociale, Les interdictions professionnelles (Paris, Cujas, 1969).

61/ Law Reform Commission of Canada, Restitution and Compensation (Ottawa, 1976).

62/ European Committee on Crime Problems, Compensation of Victims of Crime (Strasbourg, Council of Europe, 1978).

63/ For a comprehensive and comparative study, see H. Jeschek and G. Grebing, Die Geldstrafe im deutschen und ausländischen Recht (Fines in German and foreign law) (Baden Baden, Nomos Verlagsgesellschaft, 1978).

64/ See A. Beristain, Medidas penales en derecho contemporaneo (Madrid, Reus, 1974).

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before committing the offender to prison, supervision or community work orders can be applied with a view to helping offenders manage their financial affairs or to deduct payments from their wages. When such modalities are used in the implementation of this measure, the difference between a fine and other alternatives such as the limitation of liberty in Poland, or corrective labour in the Soviet Union or Bulgaria, becomes vague. In fact, in both these measures, in addition to other obligations, such as that of reporting regularly to law enforcement agencies or residence in a particular place, there is usually a deduction in the offender's salary (from 10 per cent to 25 per cent), which goes to the State treasury or is transferred to social organizations performing benevolent services. 65/ While in some countries, for example, the Union of Soviet Socialist Republics, the replacement of fines by imprisonment is absolutely prohibited, in other countries, where this is possible, the law usually fixes the maximum term, often in months.

53. From the above considerations, it is clear that for a fine system to work properly, a humane and equitable approach should be developed, including reliable and effective mechanisms of recording and collection and periodic legislative adjustments of fine levels to take into account the influence of inflation.

(b) Suspended sentences and probation

54. Discharge, suspension of sentence and probation exist in the legislation and are applied in most countries of the world. Discharge (absolute and conditional) is mainly being used as a warning - a reasonable way of coping with those offenders whose crimes are not too serious and who do not present risks of reconviction. The suspended sentence (condena condicional in the Spanish system, conditional suspension of the execution of penalty in the socialist countries and suspension of punishment in the Arab countries) has a wider application because offenders are sentenced to a certain prison term, varying from a few months in some countries to five years in others (but there are countries such as the USSR and Japan, where there are no limits), thus permitting formal disapproval, sanctioned by the pronouncement of a sentence commensurate with the offence. However, the execution of the sentence is suspended for a certain period (also varying from country to country) and eventually vacated, if the offender does not commit further crimes in the prescribed period. In some Asian countries, that is, India, Pakistan, Singapore and others, conditional discharge is equivalent to a suspended sentence.

55. In various countries, that is, the socialist States, Switzerland, Sweden and others, the court may impose certain obligations to be fulfilled on the part of the offender, such as restitution or victim compensation, apologies to the injured person, abstention from alcohol and other drugs, residence in a certain place and others. In addition, the offender may be placed under supervision for a trial period tantamount to probation. Normally, supervision is exercised by the community or by work enterprises and organizations. As mentioned before, the suspended sentence may be used for heterogeneous categories of offenders. Indeed,

65/ See L. Lernell, "Certains aspects philosophiques et sociologiques du problème des peines pécuniaires", Revue de science criminelle et de droit pénal comparé, No. 3, 1979.

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in Japan, the Republic of Korea, Switzerland, Yugoslavia and other countries, more than 50 per cent of the offenders sentenced to imprisonment receive suspended sentences. More specifically, in Japan, those who received suspended sentences in 1977, included 57 per cent for theft, 45.2 per cent for rape, 28.9 per cent for robbery and 29.9 per cent for murder. Suspended sentences were revoked only in about 10 per cent of the cases. <sup>66/</sup> Often this measure is accompanied by an order of supervision by the probation officer - especially in case of longer sentences or for high risk offenders.

56. Technically, the boundaries between suspended sentences with supervision and probation, which is called "judicial supervision" in some countries, are not always clear and may vary from country to country. In some, the court, instead of sentencing, issues a probation order; in others, the court, in imposing the sentence, suspends its execution. In both cases, however, the offender, whose consent is essential in many countries, is placed under professional supervision in the community. Such supervision is usually carried out by professional social workers of the probation and after-care services, either within the correctional administration or within the national social service agencies, or in government-controlled private organizations. In many countries, such services are attached to the courts. The advantages of these measures, their legal nature, the modalities of their application and their organizational requirements have been previously considered by the United Nations <sup>67/</sup> and will, therefore, not be discussed further here.

57. The following innovations have been introduced recently and deserve particular attention: "shock probation" which combines the increased use of probation with a short period of incarceration; probation with restitution, both financial or symbolic; probation with residence in treatment centres or hostels or day-training centres; probation with employment opportunities and probation with outreach programmes so as to maintain continuous contacts with the offender's environment. <sup>68/</sup> Increased use of para-professionals, as well as of volunteers with clearly defined functions appointed from among the residents of the area in

<sup>66/</sup> Y. Suzuki, "Corrections in Japan", in R. Wicks and H. Cooper, International Corrections (Lexington, Lexington Books, 1979).

<sup>67/</sup> See "Probation and related measures", in The Prevention of Juvenile Delinquency (United Nations publication, Sales No. 51.IV.2); Practical Results and Financial Aspects of Adult Probation in Selected Countries (United Nations publication, Sales No. 54.IV.14); The Selection of Offenders for Probation (United Nations publication, Sales No. 59.IV.4); "Probation and Other Non-Institutional Measures, working paper prepared by the Secretariat", Third United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.26/5). For recent developments, see J. Shah, Probation Services in India (Bombay, Tripathi Private, 1973) and Paul Friday, International Probation (Washington, National Institute of Law Enforcement and Criminal Justice of the United States Department of Justice, 1979).

<sup>68/</sup> See H. Allen, et al., Critical Issues in Adult Probation (Washington, National Institute of Law Enforcement and Criminal Justice of the United States Department of Justice, 1979).

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which the probationer lives and with the full involvement of local and regional rehabilitation councils or other citizens groups which act as a bridge between the criminal justice system, the social service agencies and the population as a whole, also constitute significant new development in this area. <sup>69/</sup> In fact, the ultimate objective of the reintegration of the offender into the community can only be achieved if the offender can effectively use the services provided for the public as a whole and only if the community is fully involved in this process, not only at a central level of Government but also at the local and regional levels. <sup>70/</sup>

58. A further issue deserving particular attention relates to the very concept and practice of "supervision" in which it is not always possible to find the proper balance between the at times competing elements of control and social work. While in some countries, emphasis is placed on the element of social work, so that the appropriate services are organized and directed at meeting the actual needs of the offenders, in other countries it is the element of control which is stressed, including mandatory reporting to the police. In those cases, supervision can be provided more informally, even by persons who do not have particular skills and professional experience, including local authorities other than the courts or probation officers themselves, thus ensuring broader community participation in the implementation of such a measure. Whatever the emphasis, however, the goals of probation should be clearly defined so as to identify the service needs on a systematic and sustained basis. <sup>71/</sup>

59. In Finland, mandatory reporting to the police has been recommended as an independent new alternative. It would involve the duty, on the part of the offender, to report to the police up to seven times a week for a period lasting between 6 and 60 days, without being tied to any care, treatment or any other obligations. The rationale for this new measure is that of creating a new alternative which would have as much general deterrent effect as imprisonment, but would result in less suffering to the offender, in addition to being more economical to the State. It would comply with the principle of the "least possible intervention" and would be in line with the policy of a general expansion of the social welfare system geared to meeting the primary needs of offenders such as finances, work and housing. <sup>72/</sup> In Sweden, however, where a police supervision system is considered "of little use for resocialization", a new measure is being

<sup>69/</sup> European Committee on Crime Problems, Alternative Penal Measures (Strasbourg, Council of Europe, 1976); and Y. Shiono, "The use of volunteers in the non-institutional treatment of offenders", International Review of Criminal Policy, No. 27, 1969.

<sup>70/</sup> A. S. Vinculado, "Situations, problems and programs of community involvement in corrections in the Philippines"; and N. Singh Sandhu, "Community involvement in the treatment of offenders in Singapore", United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Resource Material Series No. 14, Fuchu, March 1978.

<sup>71/</sup> See in this connexion, Chief Probation Officers of California, Probation Standards, (San Bernardino, California, 1980).

<sup>72/</sup> See U. Bondeson, "Suspended sentence and probation; intentions and effects" (Lund, Sweden, 1978).

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proposed side by side with regular probation, called "intensive supervision": it would last no longer than the prison term which would otherwise have been imposed and require a markedly higher frequency of contacts between the supervisor and the client than that existing under the present probation system. It is interesting to note that such a new measure has been proposed as a result of a four-year experimental research <sup>73/</sup> and on the assumption that treatment through supervision is not an instrument which promotes rehabilitation but rather a way for society to coexist with a lawbreaker, a method which is cheaper and more humanitarian than imprisonment.

(c) Community service orders and corrective labour

60. While corrective labour was introduced in the USSR immediately after the October Revolution <sup>74/</sup>, the community service order started to be implemented in the United Kingdom on an experimental basis as a result of the 1972 Criminal Justice Act. <sup>75/</sup> Corrective labour is a widely offered alternative measure in all Eastern European countries except Poland, where it has been replaced by the limitation of liberty and in Yugoslavia, where it has been replaced by suspended sentences and fines. Community service orders, under different names and modalities, are also carried out in other countries, including the United States of America, where it is called Court Referral Programme, <sup>76/</sup> Australia, <sup>77/</sup> Jamaica <sup>78/</sup> and other States.

61. Corrective labour, as actually evolved, usually involves obligatory performance of work at the offender's place of work, with reduced remuneration - for example, a maximum of 25 per cent of the salary for a period not exceeding one year - and with several other restrictions, for example, the offender is not entitled to regular paid vacations and cannot change his place of work without permission.

<sup>73/</sup> See E. Kühlnhorn, Non-institutional treatment and rehabilitation, The National Swedish Council for Crime Prevention, report No. 7, 1979.

<sup>74/</sup> S. Frankowski and E. Zielińska, "Alternative to imprisonment in European socialist countries", to be published in the International Review of Criminal Policy.

<sup>75/</sup> Advisory Council on the Penal System, Non-Custodial and Semi-Custodial Penalties, (London, H.M. Stationery Office, 1972); J. Vérin, "Le succès du 'community service' anglais", Revue de Science Criminelle et de Droit Pénal Comparé, No. 3, 1979.

<sup>76/</sup> J. Beha and others, Sentencing to Community Service (Washington, National Institute of Law Enforcement and Criminal Justice of the United States Department of Justice, 1977).

<sup>77/</sup> J. McKay and M. Rook, The Work-Order Scheme: An Evaluation of Tasmania's Work Order Scheme, Hobart, Australia, 1976 and I. Potas, "Alternatives to imprisonment", in D. Biles, ed., Crime and Justice in Australia (Canberra, Australian Institute of Criminology, 1977).

<sup>78/</sup> D. Allen, "Increasing community involvement in the treatment of offenders in Jamaica", Social Defence, April 1977.

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62. The community service order, instead, centres on a commitment on the part of the offender to perform unpaid work for no less than 40 and no more than 240 hours, usually on week-ends, to be completed within one year. The work assignment is organized by the probation service, but may also be provided by a voluntary organization; it is arranged in the offender's local area, and an attempt is made to structure it around employment, family and religious commitments. Community service is seen as a constructive, inexpensive alternative to short prison sentences and a new means of diversion, designed to bring the offender into closer touch with fellow citizens in need of help and support. <sup>79/</sup>

63. As was mentioned above, the Polish code of 1969 introduced a new measure called "limitation of liberty", in which the obligation to work remains an essential factor but where there are various conditions under which such work can be performed; for example, unremunerated supervised work in the amount of 20 to 50 hours per month and for a period ranging from three months to two years, deduction of 10 per cent to 25 per cent of the monthly salary for persons employed in State enterprises and others; several restrictions, such as not to change place of residence and regular reporting and obligations, such as restitution for damages and apologies. <sup>80/</sup>

64. From the description of these measures, it is quite evident that they are more punitive and demanding than supervision orders or suspended sentences, that they incorporate the use of labour as a penalty and that such labour can be full time or part time, paid or unpaid, with or without the consent of the offender. Where the labour is full time and paid, it makes a practical contribution to the development of the country as a whole. At the other extreme, where unpaid labour is required on week-ends, there is no disruption to the offender's normal work or family responsibilities, but only a loss of leisure time while remaining largely at liberty. One problem associated with the imposition of orders of this type is in the availability of suitable work. Local authorities, community bodies and city councils are probably the more appropriate bodies to assist in providing such work since it is the local community which in the end receives the benefit of the labour without paying for it, and this should be sufficient incentive for its co-operation. However, since the responsibility for prison systems generally rests with the central Government and since imprisonment is expensive, consideration should be given to the provision of subsidies to local authorities in order to encourage the use of locally based work order projects.

<sup>79/</sup> K. Fease and others, Community Service Orders, Home Office Research Unit, report No. 29 (London, 1975).

<sup>80/</sup> E. Zielinska, "A new type of sanction in Poland: the non-custodial curtailment of liberty", International Journal of Offender Therapy and Comparative Criminology, vol. 20, No. 1, 1976.

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(d) Periodic detention

65. Periodic detention, 81/ week-end detention, 82/ semi-liberty and semi-detention 83/ are used in various countries: they do not imply a complete deprivation of liberty, as does imprisonment, but some restrictions on it, placing offenders under conditions of security but permitting greater freedom and limited contact with the outside world. In practice, these measures do not remove the offender from the community but allow him to continue to work outside and to maintain contacts with the family. Periodic detention entails a sentence to perform supervised restitutive work within the community in conjunction with a limited deprivation of liberty on the week-ends or on week-day nights. It has, therefore, many similarities with restitution schemes and community service orders.

66. Semi-liberty and semi-detention, as well as week-end detention, are sentencing alternatives which permit the offender to remain in the community during the day for educational or employment purposes. They are usually used as a substitute for short-term imprisonment. While in some countries, they are conceived as real alternative options, in others, they are just one of the modalities of the execution of short-term imprisonment. In the latter case, they are very similar to work of educational release or half-way houses. In various countries, similar measures of this type are carried out but with a different terminology, such as community residential or attendance centres. In practice, however, the aims and modalities of these measures are basically the same.

3. Post-judicial alternatives

67. Other forms of deinstitutionalization can be applied at the post-sentence stage, including conditional release and parole, work or educational release, half-way houses and other types of release on licence or recognizance, or leaves on furlough, pardons and amnesty. In addition, imprisonment itself, apart from its traditional full-time form, might require custody only at night, or only during the day. The former becomes equivalent to day-parole or work release. It should also be noted that most of these measures can be applied in conjunction with, or as a supplement to, others. Again, these programmes are not alternatives to incarceration, but they can help to offset the damaging and dependency-producing effects of imprisonment, on the one side, while reducing prison populations on the other.

81/ E. Missen, "Periodic detention in New Zealand", in United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Resource Material Series No. 11, Fuchu, 1975; M. Stace, "Periodic detention work centres", Australian and New Zealand Journal of Criminology, vol. 12, No. 2, 1979.

82/ R. Schmelck and G. Picca, Pénologie et droit pénitentiaire (Paris, Cujas, 1967); J. Sainz Cantero, "Arresto fin de semana y tratamiento del delincuente", Revista de Estudios Penitenciarios, No. 26 (October-December 1970); P. Ward, "Week-end detention", Australian and New Zealand Journal of Criminology, vol. 12, No. 4 (1969); R. Breda and F. Ferracuti, "Alternatives to incarceration in Italy", Crime and Delinquency, January 1980; and Instituto de Medicina Social e de Criminologia de São Paulo Ilustrado, Prisão Albergue, No. 1, São Paulo, 1978.

83/ R. Morice, "Evolution et perspectives de la sémi-liberté", Revue Pénitentiaire et de Droit Pénal, No. 1, 1967; and H. Schultz, "Semi-liberté et sémi-détention", Revue internationale de criminologie et de police technique, April-June 1975.

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68. Programmes of temporary release to the community, aimed mainly at helping the offender's smooth return to society after a period of isolation in an unnatural environment, are usually granted to prisoners who have demonstrated particular receptiveness to the treatment process or who at least provide evidence of conformity with the prison régime. As such, these measures constitute a very important element of institutional programmes based on the progressive régime. 84/ In some countries, however, such programmes constitute a specific right of convicted prisoners. In early release schemes (remission, good time), usually a reduction of the time to be served in the institution is contemplated, based on the behaviour of the offender during treatment in the institution. Conditional release is granted when an offender still has a portion of a sentence to serve, generally from two-thirds to one-third, but the prisoner may be recalled if a further offence is committed during the unexpired portion of the sentence. Release may be accompanied by the obligation to report regularly to police authorities. This means that failure to comply with the terms or conditions imposed on the release in the community may result in revocation of the measure and return to prison.

69. The most important and controversial of these post-judicial measures is parole, which was originally designed for long-term prisoners and which, in some countries, is linked to indeterminate sentences as an expression of the rehabilitative ideal: for example, a prisoner is granted parole when he is "ready" to be released. This decision, against which only limited appeal is possible, is usually taken by the Parole Board, which in some places is attached to the Correctional Administration and in others, acts independently. Under this scheme, prisoners are allowed to complete their sentence in the community, under parole supervision, provided that certain conditions and obligations carrying a wide range of restrictions on liberty are met. The underlying principle of parole (indeterminate sentence), 85/ its very process (that is, eligibility criteria, selection and revocation), the great amount of discretion and arbitrariness involved in these decisions and the disparity and inconsistency in its application, have been severely criticized, especially in the United States. 86/ Appropriate guidelines to structure, delimit and regulate discretion have been advocated and proposed by some, 87/ while others have suggested a more

84/ A. Sanchez Galindo, "Régimen de pre liberación", Memoria del 5to Congreso Nacional Penitenciario (Secretaría de Gobernación, Mexico, 1975) and United Nations Latin American Regional Institute for the Prevention of Crime and the Treatment of Offenders, Jornada de trabajo sobre el régimen de libertad regilada (San José, 1979).

85/ Parole is normally associated with the indeterminate sentence, although that aspect of parole which consists of post-imprisonment supervision and care can also coexist in a fixed sentence scheme.

86/ American Friends' Service Committee, Struggle for Justice (New York, Hill and Wang., 1971); J. Hogarth, Sentencing as a Human Process (Toronto, Univ. of Toronto Press, 1972).

87/ J. Kress, L. Wilkins and D. Gottfredson, "Is the end of judicial sentencing in sight?" Judicature, No. 60, 1976.

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radical reform: abandonment of the indeterminate sentence and of parole. 88/ At present, as a result of this debate, parole has been abolished together with the indeterminate sentence in seven jurisdictions, and sentencing guidelines have been adopted in fifteen. 89/

70. In many countries, as part of the implementation of those measures, group homes, sheltered workshops, half-way houses and other comparable facilities, at times managed by ex-prisoners, provide short-term residential care and adequate community supervision for those offenders whose homes are unsuitable. Such supportive facilities contribute to the offender's capacity to cope with a wide variety of problems of community adjustment at a cost that is substantially less than that of imprisonment. In some countries, the application of these alternatives is also supervised by a special office of the judiciary. 90/

71. The success of these measures requires the existence of programmes specifically planned to prepare the offender, during a limited period before the end of institutional treatment, for release into the community. 91/ Pre-release treatment programmes are specifically designed to help and assist the offender in the transition from the artificial and regimented life in prison to the normal and independent life in free society. These issues were already discussed during the Second United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 92/ and most of its recommendations are still valid, especially those regarding the possible removal of interdictions of the employment of ex-prisoners. Such restrictions constitute, at times, a double punishment. Records of ex-prisoners, therefore, should be expunged, after an appropriate crime-free period.

88/ N. Morris, The Future of Imprisonment (Chicago, University of Chicago Press, 1974); and A. Von Hirsch, Doing Justice: The Choice of Punishments (New York, Hill and Wang, 1976).

89/ J. Potter, "Annual prison population survey: growth slow - at least for now", Corrections Magazine, April 1979.

90/ G. di Gennaro, M. Bonomo and R. Breda, Ordinamento Penitenziario e Misure Alternative alla Detenzione (Milano, Giuffrè, 1976).

91/ See, "Pre Release Treatment and After-care as well as assistance to dependents of prisoners" (A/CONF.17/8 and A/CONF.17/9); Instituto de Medicina Social e de Criminologia de São Paulo Ilustrado, Plano de intervento dentro de uma realidade: Trabalho comunitario de incrementação de recursos para regressos de institutos penais, No. 3, São Paulo, 1978; and J. Kent, "Una responsabilidad social insuficientemente atendida: el que hacer post-penitenciario; alcance y proyección futura", United Nations Latin American Regional Institute for the Prevention of Crime and the Treatment of Offenders al día, April 1979.

92/ A/CONF.17/20, annex I (6).

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### C. Evaluation

72. The discussion of the various alternatives to imprisonment, as tried in different countries, and the question of what has been found to be "successful", inevitably raises the problem of how "success" is to be evaluated. Successful completion, relative costs and recidivism have been, up to now, the main criteria for the evaluation of community programmes. While the criterion of successful completion, that is, that no major violation of the conditions of supervision has occurred, can be used to measure effectiveness only of different community programmes, the other two criteria, namely that of relative cost and that of recidivism, have been used to assess the effectiveness of both institutional and community programmes. As far as cost is concerned, community programmes are universally much less expensive than imprisonment. For example, probation and parole costs are roughly one tenth of those of imprisonment, and work order schemes may cost even less (one thirtieth of imprisonment). Evaluative studies, using the criterion of recidivism, have given evidence that community programmes can be at least as effective in preventing recidivism as institutional sentences.

73. Although there is general agreement, cross-culturally, that "evaluative research could not begin and stop with a determination of system efficiency in terms of operational costs, crime rates or recidivism", 93/ the principal outcome variable used in correctional evaluation studies is still recidivism. An emphasis on this variable tends to obscure the effectiveness of various forms of deinstitutionalization where measures of such qualitative variables as family reunion, participation in labour force and reintegration in the community would be of paramount significance. Unfortunately, evaluation programmes have not yet been able to operationalize these positive qualitative variables. Moreover, it has been acknowledged that evaluation is not yet adequately developed for scientific use as an exclusive instrument for determining the ultimate worth and effectiveness of social programmes and that expectations for evaluation should not be set so high as to result in eventual disappointment. 94/

74. In order to overcome these methodological problems, it has been proposed that community programmes as alternatives to imprisonment be considered a success "to the extent that they establish and maintain their credibility as is shown by the degree to which they are applied to persons convicted of relatively serious offences who would otherwise have received prison sentence". 95/ This implies that to be "successful", alternatives to imprisonment should bring about a corresponding reduction of the number of offenders in prison.

93/ United Nations Social Defence Research Institute, Evaluation Research in Criminal Justice, publication No. 11 (Rome, 1976), p. 8.

94/ United States Congress, Cost, Management and Utilization of Human Resources Programme Evaluation, Washington, 1977.

95/ D. Biles, De-institutionalization of Corrections and Its Implications for the Residual Prisoner, Australian discussion paper (Canberra, Government Publishing Service, 1979), p. 14.

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75. The above observations in no way minimize the great importance and continued necessity for research and evaluation in the field of crime prevention and criminal justice, so as to monitor the degree of implementation of the various programmes, assess their progress and, if required, make the necessary adjustments. Deinstitutionalization is indeed a gradual process which, inter alia, takes place in the community. This means that, contrary to imprisonment, it is visible and accountable. Failures in such a process could result in a possible swing-back to the use of imprisonment. Research and evaluation can assist in avoiding such failures.

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### III. IMPLICATIONS FOR THE RESIDUAL PRISONER

#### A. Basic assumptions and the reality

76. The concept of the "residual" prisoner was predicated on the premise that, with the full and complete implementation of the various discretionary deinstitutionalization techniques, the prison population in most countries would be reduced to a bare minimum of difficult, dangerous, recalcitrant, untreatable and other "hard-core" offenders. <sup>96/</sup> Accordingly, the central question would be that of devising appropriate programmes for this small group of offenders so as to assure the protection of those prisoners from themselves and others, while at the same time providing an institutional non-dehumanizing environment, offering opportunities for constructive and purposeful use of time, and maintaining staff of a high professional quality with the capacity to be concerned with the human value of their work.

77. The above-mentioned scenario, however, has not yet been realized in practice, especially from a world-wide, macro-level perspective. In fact, the prison population is still large and in some countries even growing; the persons under pre-trial detention are still all too numerous, and the time spent awaiting conviction much too long in many countries; prison sentences imposed by the courts are still severe; and the conditions of penal institutions, though improving in various countries, are not yet quite satisfactory. In this perspective, a discussion focused even on the "residual" prisoner seems not only premature but even baffling because it would fail to take into account the complex and diversified situation of all those prisoners who, not having the opportunity to participate in community programmes, because of the nature and seriousness of their crimes, prior criminal history or other personal attributes, are still sentenced to imprisonment.

78. Moreover, it would be misleading, because the issues of deinstitutionalization of corrections and humane treatment of all those offenders sentenced to imprisonment should be viewed as a part of a broader process of penal reform and not as one of prison management. Furthermore, the implications of a discussion focused on a concept of a "residual category" and possible recommendations thereon could probably be misinterpreted or abused so as to be indiscriminately applied to the whole prison population. History and practice show that the particular management problems of violent and long-term prisoners have set the limits and boundaries of any institutional programme; that rules, regulations and methods of operation originally designed to control those offenders have ultimately been extended, almost automatically, to all other prisoners for whom a great amount of security and a restrictive environment is generally not necessary; and that excessive concern with these prisoners has usually negatively affected the planning and implementation of programmes which the institution can and should offer in preparation for the release of prisoners into the free world, such as job training, mail privileges, visiting facilities, outside contacts and community involvement.

<sup>96/</sup> The Committee on Crime Prevention and Control observed that this topic "was based on the assumption that the trend towards de-institutionalization ... was continuing". See A/CN.5/536, para. 59.

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79. There are probably some countries where the prison population is composed largely of residual prisoners, since those who receive a prison sentence are a minority and, as such, represent a special class of prisoners. Undoubtedly, growing use of deinstitutionalization and diversion policies would increase the proportion of prisoners in institutions who present particular management problems, alternative measures having been, by and large, directed towards those offenders who received less strict sentences. However, until the goal of establishing alternatives to imprisonment is reached - and this will require sustained effort, understanding, social acceptance, political will and time, because deinstitutionalization is a gradual process - it seems more practical and effective to continue to discuss the prison as it is, rather than dwelling on the prison as it will eventually be.

80. This does not mean that the search for new approaches and the identification of new, more effective and humane treatment models should be disregarded; but that prior to proposals for, and adoption of, any policy and special programmes for residual prisoners, it will be necessary to find some generally accepted criteria on the basis of which such prisoners can be defined and identified.

B. On becoming a residual prisoner

81. The identification of residual offenders who would not respond to community programmes raises a basic issue: what criteria should be used to define and identify those prisoners? While discussion at the Regional Preparatory Meetings helped to outline particular problem areas, no feasible suggestions were given to provide answers to this question, since "there was by no means agreement within criminal justice systems as regards the characteristics of offenders in the category". 97/ Moreover, "the drawback of classifying those offenders as a separated category was the probability that the implied prophecy would become self-fulfilling; that is, the offenders would become what they were labelled". 98/ Furthermore, the point was made that "society may well have a role in rendering certain persons dangerous, due to the inequities or inadequacies of the social and economic structure or, ultimately, due to brutalization by imprisonment". 99/ In the absence of any detectable criterion, an exploration of the different parameters on which such criteria could be based seems in order.

(a) The "hard-core" offender

82. Definitions of "hard-core" offenders may vary in different socio-cultural and political contexts, but some common ones appear to be universally recognized, such as the pattern of repetitive, habitual behaviour which poses a serious threat to the safety of others; a pattern of persistent aggressive conduct with heedless indifference to consequences; or a particularly serious offence involving the threat

97/ See A/CONF.87/BP/3, para. 46.

98/ See A/CONF.87/BP/1, para. 58.

99/ See A/CONF.87/BP/4, para. 42.

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or infliction of serious bodily injury. Moreover, the legal or judicial definition of the "hard-core" offender may or may not involve psychiatric or psychological definitions of "abnormality". In this regard, it should be noted that "normality and abnormality imply an evaluation process, the aim of which is approval or disapproval in accordance with a system of fundamental values". 100/ This means that from a global perspective, there is no uniformity in the construction and interpretation of the concept of the "hard-core" offender. Moreover, overextended definitions and sometimes vaguely constructed conceptualizations are bound to entail negative consequences, both for a just process of adjudication and for the protection of the rights of these prisoners.

(b) The "dangerous" offender

83. The concept of "dangerousness" is neither a legal nor a clinical one. 101/ It is more a call for sterner measures than a statement of the condition of offenders ascertainable on the basis of reliable predictors. Generally speaking, as used today, the idea of dangerousness is usually based on the following criteria: gravity of the offence, the number of prior crimes, the mental state of the offender and the probability that the offender will continue to be a threat to public safety were he to be released into the community. This and all other definitions tend to turn on the emotional and psychological status of the criminal. From the earliest statement of dangerousness, *manie sans délire*, through atavism, abnormality, endocrinological deficiencies, psychopathy, sociopathy, chronically anti-social personality, criminal mind and XY syndrome, the search for the dangerous and potentially violent personality has been fruitless. 102/ In general, dangerous criminals have been thought to be impulsive, unable to experience guilt, shame, anxiety or empathy, without life goals or plans and brutal especially under alcohol or central nervous system depressants.

84. The underlying assumption in the concept of dangerousness, as defined by the Positive School, is that it is possible to predict future behaviour (prognosis), on the basis of understanding the actor and his/her previous acts (diagnosis) and on the conviction that people classified as "dangerous" have a high probability of engaging in future criminal behaviour of a serious nature. Research has shown, however, that the prediction of dangerousness is at best risky. It must be stressed in this connexion, that in no study has it been found that the prediction of

100/ M. Lopez-Rey, Crime: An Analytical Appraisal (New York, Praeger, 1970), p. 123.

101/ Dangerousness is used here with reference to the offender's status. In various countries, however, this concept is related to the behaviour of the offender, that is, the "socially dangerous act". The relativity of the notion follows from its being linked with the economic, political and cultural structure of any given society, at any given time. See, in this regard, M. Vermes, Fundamental Questions of Criminology (Leyden, Sijthoff, 1978), p. 85.

102/ See Y. Rennie, The Search for Criminal Man: A Conceptual History of the Dangerous Offender (Lexington, Massachusetts, Lexington Books, 1978).

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dangerousness is better than chance alone, using both statistical and clinical variables. 103/ Most dangerous persons turn out to be "false positives", that is, people who will not, in fact, be found to have committed a dangerous act, or no worse than others released to the community from prison. 104/ Some studies have concluded, in this connexion, that "there is clear and convincing evidence of the inability of psychiatrists or of anyone else to accurately predict dangerousness. 105/ The consequences of being officially labelled as a "dangerous" or "persistent" or "habitual" offender still result, in practice, in a double sentence, that is, "security measures" or "preventive detention", in addition to imprisonment, usually for an indefinite time. 106/

(c) The difficult prisoner

85. Unlike the definition of the dangerous offender - which is both legal and clinical - the difficult offender is one who is so defined by the correctional authorities, because of his difficulties of adjusting to the rigours and deprivations of confinement, largely with respect to his personality characteristics, within an environment severely limited in space and over considerable time. Such persons are often found in maximum security institutions, solitary confinements, or in protective custody. Some are predators, some are victims inside the institutions. However, they are the product of the special conditions and deprivations of prison life, which tends to produce claustrophobia and indeed, induces in most prisoners all the symptoms of it. However, the very same persons may not at all be difficult once released. In fact, studies of prisoners' adjustment indicate that there is no relationship between non-conformity to prison rules and recidivism. 107/

86. In a preliminary cross-cultural study conducted by the United Nations Social Defence Research Institute, covering 12 countries, it was found that, generally, assignment to a maximum security institution is not linked directly to the crime for which a prisoner is sentenced or the severity of the sentence, but, rather, to the risk he or she presents as reflected by his or her prison behaviour. These people are also those who, usually, end up in solitary confinement, which

103/ J. Conrad and S. Dinitz, eds., In Fear of Each Other (Lexington, Massachusetts, Lexington Books, 1977) and S. Shah, "Dangerousness: Some definitional, conceptual and public policy issues", in B. Sales, ed., Perspectives in Law and Psychology (New York, Plenum Press, 1977).

104/ J. Monahan, "The prediction of violent criminal behaviour: A methodological critique and prospectus", in the National Research Council, Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates (Washington, N.A.S., 1978).

105/ J. Cocozza and H. Steadman, "The failure of psychiatric predictions of dangerous behaviour", Rutgers Law Review, vol. 29, 1976.

106/ T. Hernandez, La Ideologización del Delito y de las Penas (Caracas, Instituto de Ciencias Penales y Criminológicas, 1977); W. Hammond and E. Chayen, Persistent Criminals (London, Home Office, 1963); and B. Bahadir, "Treatment of dangerous or habitual offenders", Social Defence, July 1979.

107/ J. Irwin, Prisons in Turmoil (Boston, Little Brown, 1980).

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is provided for the protection of the prisoner, the protection of other prisoners or as a punishment for the infringement of prison rules. 108/

87. In summary, the difficult prisoners are simply those who pose a management rather than a safety problem. Some of them are unable to adapt to their environment even out of prison, most are chronic management problems in their refusal to conform to internal rules and in their poor interpersonal relationships: they are, however, the ones so defined by the system's operators, who are responsible for their custody and the good order of the institutions, simply because they cannot be trusted. 109/

(d) The long-term prisoner

88. Long-term imprisonment is also a relative concept because sentencing practices vary greatly from country to country, and, like imprisonment, are related to the use of capital punishment. Experience shows that the problems connected with this category of prisoners can be exacerbated, in terms of public and staff demands for super-maximum security prisoners and strict conditions of detention, in countries which have abolished capital punishment in view of the increasing number of offenders sentenced to life imprisonment. 110/ In the United Kingdom, for example, the life-sentence population has grown from 133 in 1957 to 1,220 in 1977, and in Canada, it has been calculated that the number of 90 life-sentence prisoners in 1974 could increase to 1,250-2,000 after 20 years. 111/

89. Moreover, long-term incarceration and life imprisonment are interlinked with other issues, such as indeterminacy as a principle of sentencing, the relationship between crime and mental illness, the effects on the prisoners of long-term incarceration, the question of appropriate programmes for these prisoners and the problems of security.

108/ United Nations Social Defence Research Institute, "The use of maximum security imprisonment", interim report on the Initial Survey, October 1977.

109/ G. di Gennaro, F. de Fazio and A. Jaria, "A tentative model for the identification of the dangerous prisoners and experiences in community based treated", Crime and Justice, No. 78, 1979-80.

110/ Advisory Council on the Penal System, The Régime for Long-term Prisoners in Conditions of Maximum Security, Radzinowicz Report (London, Home Office, 1968); and H. McKay, C. Jayerwardene and P. Reddie, The Effects of Long-term Incarceration and a Proposed Strategy for Future Research (Ottawa, Ministry of the Solicitor General, 1979).

111/ R. Levy, S. Rizkalla and R. Zauberman, "Canadian situation and delimitation of the problem", in International Center of Comparative Criminology, Long-term Imprisonment: An International Seminar (Montreal, 1977); and D. Smith, Life-Sentence Prisoners, Home Office Research Study No. 51 (London, 1979).

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90. Although in many countries a lifetime sentence can be commuted and the average time actually served can be shortened (ranging between 8 and 15 years) the concrete problems faced by this category of prisoners deserve further study and attention in view of the fact that they do not generally present special problems of security and control and that, usually, they offer little threat to the community when eventually released from custody. 112/

91. However, even with regard to this category of prisoners, it is possible to differentiate among those inmates who pose a physical threat to society, institutional staff, other inmates and themselves, and the prisoners sentenced to lengthy prison terms because society views the crimes they have committed with such abhorrence that a long sentence is the only adequate means of denouncing their acts. Whatever the differentiation, imprisonment entails a curtailment of human rights, and more importantly, it imposes a deprivation of responsibility. The longer the sentence and the more confined the conditions in which it is served, the more painful and lasting is the effect in terms of social isolation and alienation.

(e) The social misfits

92. This is a label which may be used for all those who are unable to comply with the requirements of a non-custodial sanction, the mentally ill and mentally defective offenders, those with special problems such as sexual obsessions and compulsions, those with alcohol and drug addictions and those whose disturbances take still other forms. Incarceration is unlikely to improve or remedy these defects and deficits, but society is unwilling to keep such persons in the community because of the perceived threat they present and the fear they inspire. By the same token, warehousing them in prisons as long-term offenders solves neither the problems of society nor the needs of these prisoners with character adjustment and special problems.

C. Outlook for the future

93. The success of deinstitutionalization would mean that an ever-increasing percentage of serious criminals will dominate prisons and penitentiaries. While each country should develop its own approaches, in keeping with the level of public awareness, socio-cultural development and manpower resources, methods and ways for dealing with the remaining prison population might usefully be considered under several aspects and in terms of some basic objectives. These will have to deal mainly with problems of management, of institutional programmes and of considerations of human rights, keeping in mind that correctional institutions are places where prisoners serve time for crimes they have committed, while being prepared for useful and productive lives and that the criminal justice system cannot solve all social problems because that is not its function, and it is not equipped to do so.

112/ G. Wardlaw and D. Biles, The Management of Long-Term Prisoners in Australia (Canberra, Australian Institute of Criminology, 1980).

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(a) Management

94. The core issue concerning the management of the remaining prison population is whether to centralize or disperse the "dangerous" and "difficult" prisoners within the prison system. The policy on this issue varies from country to country and depends on the number of such prisoners and on the definitions applied. However, since most countries apply a differentiated system of classification and treatment in which security factors are considered, the segregation and concentration of these prisoners in special super-prisons may inevitably lead to restrictive régimes and tensions between staff and inmates, thus stabilizing and exacerbating the problem of these prisoners.

95. Another issue of considerable importance is the "environment" in which prisoners find themselves. Prisons should be smaller so as to foster communication and enhance integration as a means of building trust and assuring the circulation of information with which control can be maintained without recourse to sheer force. 113/ In fact, the establishment of severe control measures in the interests of "security" can impose added stress and exacerbate conflicts between frustrated inmates and repressive staff, with possible escalation into prison violence. 114/ Some kind of outlets for pent up energy and hostility must be provided if the lid is not to blow off. At the same time, the apathy and hopelessness of the prisoners' situation must be offset in some way, if their human potential is not to be entirely dissipated. The best way might be by providing some measure of hope: to be deprived of it, in addition to the other deprivations which prison entails, would mean living death. Facilitation of contacts with the outside world, the family if available or other meaningful individuals, represents not only the observance of a fundamental human right but also a means of preventing depersonalization. Where such relationships do not seem to exist, efforts at the development of surrogate ones might be encouraged. While the use of the prison as a "therapeutic community" might not very well be feasible, the human contacts with staff, other inmates and with occasional visitors should be fostered as an emotional growth experience. The programmes of progressive classification within the same institution, with earned incentives and experiments in allowing normal family life in remote prison settings, could also be considered.

96. Work is an essential ingredient of satisfactory life, and facilities for meaningful labour and work preparation should be provided, including opportunities for educational and vocational development. All too often such work as is provided in prisons is meaningless, stereotyped and not or inadequately remunerated. This needs to be changed, with more productive and fulfilling opportunities for labour provided, serving also to train the offenders in legitimate work routines, with more than a token remuneration. In this connexion, the experience of countries with prison labour programmes adapted to national needs and with remuneration schemes to defray inmate expenses has been extremely positive.

113/ See United Nations Social Defence Research Institute, Prison Architecture (London, Architectural Press, 1975).

114/ H. Toch, Living in Prison: the Ecology of Survival (New York, Free Press, 1978).

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97. Self-reliance and responsibility cannot be encouraged by being denied: they have to be fostered. This may also mean efforts at "de-prisonization" to counter the "prisonization" syndrome, in so far as possible, permitting the inmates to retain a measure of self-determination and decision-making, through certain options in their routines and participation in inmate councils or constructive self-help groups.

(b) Programmes

98. Any meaningful institutional programme is going to be influenced by the "right to treatment", that is, the provision and access of the consenting prisoner to basic medical, psychological and social services and other opportunities for rehabilitation in general and the "right to resist treatment", that is, the recognition that prisoners cannot be forced or coerced into submission to special treatment programmes. 115/

99. Institutional programmes are beset by various problems, including the heterogeneity of the prison population, the reliability of psychiatric diagnoses and the unresponsiveness of many offenders, especially those with character disorders, to psychotherapeutic interventions. Then, too, a goodly number of such offenders might be considered "normal" in terms of their particular milieux, life-styles and value systems and are not motivated for change - an essential condition of therapeutic efforts.

100. More mechanical and scientific approaches, such as "behaviour modification" 116/ have been tried, with appropriate adaptations to the prison context, for prisoners who "willingly" participate in such programmes. The ethical considerations and inherent limitations, as well as possibilities, of such techniques have been noted 117/ as have the basic conditions required for their achieving even a measure of success (use of rewards instead of punishments, a broader approach than just that of stimulus and response, etc.). As in the case of psychotropic drugs - whose use on prisoners has been critically evaluated and found to promote addiction and deepen apathy - such methods have to be properly assessed and used only under strict medical advice, with the prisoner's informed consent and in full observance of fundamental human rights.

101. Essentially, the problem of the residual prisoner in the prison setting is not one of incapacitation or piecemeal attempts at reform, but rather one of broader readjustment in a context conducive to learning the social skills which are

115/ See World Health Organization, "Health aspects of avoidable maltreatment of prisoners and detainees" (A/CONF.56/9), paper prepared for the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Prisoners.

116/ M. Milan and J. McKee, "Behaviour modification: principles and application in corrections", in D. Glaser, ed., Handbook of Criminology (Chicago, Rand McNally, 1974).

117/ See "Protection of the human personality and its physical intellectual integrity, in the light of advances in biology, medicine and biochemistry" (E/CN.4/1172 and Add.1 and 2).

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required for community living. Institutional confinement usually negates that process. If the prison must be maintained as the ultimate recourse - at least for the moment - then the measure of its efficacy will not be the extent to which it manages to separate the "expendables" from society as a whole but rather that to which it succeeds in bringing them closer to the mainstream of national life. In this connexion, contacts of prisoners with the outside world should be reinforced and periods of leave from prison should be provided, not just as a relief from detention, but as an integral part of the programme of treatment. All this means that prisons must be "hopeful" places. Keeping people in prison on the basis of their apparent need for rehabilitation or because they may be "dangerous" when released after the completion or expiration of their lawful sentence is likely to be counterproductive.

(c) Prisoners' rights

102. One highly important issue that is becoming increasingly recognized in correctional practices is the problem of striking a satisfactory balance between the rights and responsibilities of the prisoner and the power of the prison institution and its officials to control inmate behaviour. 118/ The relevance of this issue was stressed in all the Regional Preparatory Meetings in view of "the potential of abuse linked to imprisonment". 119/ In particular, it was noted that "the United Nations Standard Minimum Rules for the Treatment of Prisoners needed to be applied and implemented especially for those prisoners as to whom the emphasis on security and control poses special problems" and, that "the judiciary should be fully involved in any decision concerning their status and position"; and that "prisoners should be granted the right of appeal against those decisions, especially if these had been made administratively". 120/

103. The manner in which countries address themselves to issues related to the rights of prisoners depends, in large measure, upon the culture and the legal structures that have been created for this purpose. 121/ Thus, while in the Scandinavian and other countries, the services of the Ombudsman are frequently employed by prisoners in their efforts to resolve issues relating to their confinement, 122/ in some socialist countries, including the USSR, the Office of the

118/ G. di Gennaro and E. Vetere, "I diritti dei detenuti e la loro tutela", Rassegna di Studi Penitenziari, January-February 1975; and United Nations Latin American Regional Institute for the Prevention of Crime and the Treatment of Offenders, Derechos Humanos en la Administración de la Justicia Penal, (San José, 1976).

119/ A/CONF.87/BP/4, para. 43.

120/ A/CONF.87/BP/2, para. 51.

121/ United Nations Social Defence Research Institute, Human Rights in Prison and Independent Supervision (Rome, 1974).

122/ S. Anderson, "Ombudsmen and prisons in Scandinavia", Nordisk Tidsskrift in Kriminal Videnskab, Nos. 3-4, 1978.

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Prosecutor General is vested with the responsibility of assuring the uniform application of law. <sup>123/</sup> In Japan, such a function is performed by the Liberties Bureau of the Ministry of Justice with the help of outside Civil Liberties Commissioners and citizens of local communities; in Yugoslavia by the Federal Council for the administration of justice; while in other countries, independent boards perform comparable functions. In the United States and other countries, <sup>124/</sup> the courts have increasingly been involved in deciding prison matters and administrative discretion, while in various other countries, special judges ("Juge d'Application des Peines" in France and "Magistrato di sorveglianza" in Italy) monitor and supervise the lawful execution of sentences in institutions as well as in the community. <sup>125/</sup>

104. Considering that security has always been one of the major preoccupations of the correctional authorities, and that the main cause of prison tensions and riots is the lack of an effective communication network between prisoners and staff, <sup>126/</sup> prison grievance mechanisms and procedures with the equal participation of personnel and inmates have proved particularly useful, not only in redressing of unfair situations, but also in acting as a parenthetical system of social control and accountability. <sup>127/</sup>

105. Access to the law, especially in administrative decisions which may have a tremendous effect on the prisoners' lives such as classification and transfer, disciplinary measures and matters related to release, not only protect prisoners from harsh treatment, but satisfy society that sentences are carried out properly and humanely. As such, it can greatly contribute to change attitudes and conceptions on the part of all those who are involved in the correctional process: prisoners as well as correctional officers, judges and people in general.

<sup>123/</sup> Vladimir K. Svirboul and Valerii P. Choupirov, "Contrôle du procureur sur l'exécution de la peine privative de liberté en U.R.S.S.", *Revue pénitentiaire et droit pénal*, Avril-Juin 1974; and Georges Sliowski, "Surveillance judiciaire de l'exécution de la peine et des autres mesures privatives de liberté selon la nouvelle législation polonaise", *loc. cit.*

<sup>124/</sup> G. Alpert, *Legal Rights of Prisoners* (Lexington, Massachusetts, Lexington Books, 1978).

<sup>125/</sup> See Stanislaw Plawski, "Le controle judiciaire de l'application des peines en droit comparé", *Revue internationale de droit comparé*, No. 2, 1972; and V. Grevi, "Magistratura di Sorveglianza e misure alternative alla detenzione nell'ordinamento penitenziario profili processuali", in *Pene e Misure Alternative nell'attuale momento Storico* (Milano, Giuffrè, 1977).

<sup>126/</sup> A. Cohen, G. Cole and R. Bailey, *Prison Violence* (Lexington, Massachusetts, Lexington Books, 1978).

<sup>127/</sup> M. Keating, *Prison Grievance Mechanisms* (Washington, D.C., Center of Community Justice, 1977).

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IV. CONCLUSIONS

106. There is today general agreement that "penal treatment should be based on respect for human dignity". <sup>128/</sup> The United Nations, in the preamble to the Charter, reaffirmed its "faith in fundamental human rights" and "in the dignity and worth of the human person". However, the conditions of imprisonment in many parts of the world, the protracted periods of detention pending trial and the high cost of imprisonment in both human and material terms, would seem to indicate a serious discrepancy between these universal ideals and the reality of penal practice which impinges on the realization of the rights inherent in those principles. If justice is to be "the first virtue of social institutions", <sup>129/</sup> then justice should become a more universal basis of penal policy and correctional reform. Justice requires the restoration to prisoners of a sense of dignity of which the physical reality of incarceration deprives them.

107. In this perspective, and taking into account the suggestions from the discussions of the regional preparatory meetings, some priority areas seem to emerge which the Congress may wish to consider for further action and follow-up.

108. At the national level, increased efforts are required to reduce the number of prisoners by providing effective alternatives, more viable options, more hopeful devices and to deal more humanely and fairly with those offenders who might remain in correctional institutions. Although some progress has been made to retain offenders for treatment in the community so that their links and productiveness within society are not impaired, innovative approaches should be adopted, which could be adapted to the circumstances of the various countries, and new modalities should be devised by drawing on the local experience and customary practices and traditions. Moreover, practical guidelines for a more effective application of the Standard Minimum Rules, particularly with regard to those provisions not requiring excessive outlays, are needed, as are policy-oriented studies on ways of rationalizing correctional approaches on the basis of the best knowledge available and the increasing emphasis on the observance of fundamental human rights.

109. At the regional level, the development of an appropriate framework for the meaningful exchange of information, on a continuous basis, on the practices adopted to date and on their relative success, deserves particular attention. The regional approach to this task offers particular promise, given the communality of problems and circumstances of countries within the various regions. Intensified activities of the regional United Nations institutes in this respect should, therefore, be envisaged, as well as a more direct involvement of the Regional Commissions. This would include appropriate regional training programmes and different kinds of action-research and pilot-projects, as well as policy planning and implementation. The role of the United Nations Social Defence Research Institute in fostering and stimulating such activities should be underlined. Globally, policy-oriented studies

<sup>128/</sup> Report of the First International Symposium on Penal Systems, held at Havana in November 1979 (E/CN.4/1386).

<sup>129/</sup> J. Rawls, *A Theory of Justice* (London, Charendon Press, 1972).

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are also needed on the relative efficacy of different ways of treating different categories of offenders, in the broader cross-cultural and developmental context. Behavioural and management studies on the refractory offenders and on ways of improving their treatment so as to minimize the loss of human resources should also be contemplated.

110. At the international level, the exchange of experience and expertise among correctional administrators, system operators and research experts is crucial; so is the possibility of referring to some fundamental norms and guidelines in expediting the task of humanizing the penal system. One quarter of a century has passed since the adoption of the United Nations Standard Minimum Rules for the Treatment of Prisoners. Their value has been universally recognized by the international community, scientific fora, correctional personnel and prisoners alike. <sup>130/</sup> However, times and circumstances have changed and new international efforts are required in this whole area, as the survey on the implementation of the Standard Minimum Rules clearly shows (see A/CONF.87/11). In particular, it seems that there is general agreement, which started to emerge during the previous Congresses, on the following propositions:

(a) The rules need a commentary which would help in interpreting the different provisions in the light of the socio-economic realities of the various regions.

(b) The rules require more effective implementation procedures. This has been noted on several occasions by the General Assembly and strongly underlined by many Member States in their answers to the current inquiry. The procedures drafted by the Committee on Crime Prevention and Control for this purpose as contained in the annex to document A/CONF.87/11 constitute a basis for further action in this field.

(c) International standards for the treatment of offenders in the community need to be developed.

111. Throughout, the inherent links between the offenders and the community from which they stem must be recognized and maintained, and the various means of retaining and restoring them must be explored, including better co-ordination and more effective co-operation between correctional systems and social services. The principles contained in document A/CONF.87/12 should provide a basis for the appropriate linkages in this regard.

112. In addition, as the inquiry on the implementation of the Standard Minimum Rules indicates, technical assistance and interregional advisory services should be provided in order to practically sustain efforts to achieve positive changes and reforms. Research and evaluation, especially of a cross-cultural, comparative nature, is of particular relevance in this regard.

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<sup>130/</sup> "Las Reglas Mínimas son, hasta ahora, el momento culminante de la internacionalización en materia ejecutiva penal, no obstante su carencia de fuerza vinculante. Fruto de larga y minuciosa elaboración, las partes de que se componen son, todavía, la mejor revisión orgánica del régimen penitenciario. Además, han tenido el acierto de saberse ajustables a las exigencias de medios diferentes." S. García Ramírez, La Prisión, Fondo de Cultura Económica, Universidad Nacional Autónoma de México, 1975.

**END**