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

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INTRODUCTION

1. The topic "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures" was approved by the Economic and Social Council in its resolution 1987/49 as item 4 of the provisional agenda of the Eighth Congress, in pursuance of the recommendation by the Committee on Crime Prevention and Control at its ninth session. 1/ A discussion guide prepared by the Secretariat (A/CONF.144/PM.1) provided a basis for a policy-oriented elaboration of the topic in the course of the interregional and regional preparatory meetings for the Eighth Congress.*
2. In the present paper, an attempt is made to identify the principles underlying current correctional philosophy and practices, including emerging trends in the penal treatment of offenders. It is a field where "success" is elusive, at least as measured in the high recidivism rates prevailing in many countries. Scientific evaluation of the administration of imprisonment and its effects is still limited and the search for new approaches likely to minimize its human and material costs is as essential as ever.
3. The field of corrections is an area where few countries can claim to be "developed". Progress cannot be measured only in terms of bigger prisons, improved technology or even extended staff training. The highly industrialized countries may perhaps learn much from the alternative methods of social control that have been used for a long time in some other nations, both developed and developing.
4. With the exception of the limited number of cases where the death penalty is imposed, imprisonment is in practice the most severe penalty applied on those who violate criminal law. Prison is viewed more and more as the ultimate penalty for major violations of the law, and in many countries the ever-growing number of persons in prison poses serious difficulties. There are exceptions, but prison overcrowding has become a widespread problem in both developed and developing countries, and in many nations the construction of new prisons seems to have little impact on overcrowding, as the number of offenders incarcerated in them is increasing at an even faster rate. 2/
5. Alternatives to imprisonment are often seen as the solution, in the expectation that, if judges have a choice of sentences, which include sanctions to be served in the community rather than in custody, then fewer custodial sentences will be imposed and prison overcrowding will be avoided. That expectation has been found to be more complex in practice.

*Scientific contributions were made to this topic at an international symposium held at Milan from 29 November to 1 December 1987 and organized, under the aegis of the United Nations, by the Centro Nazionale di Prevenzione e Difesa Sociale, in co-operation with the International Society of Criminology, the International Penal and Penitentiary Foundation, the International Association of Penal Law and the International Society of Social Defence; at the European Meeting for Heads of Penitentiary Administrations, held at Messina and Rome from 6 to 12 November 1989 by the International Centre of Sociological, Penal and Penitentiary Research and Studies, the Henry Dunant Institute and the Helsinki Institute of Crime Prevention and Control affiliated with United Nations; and at a meeting organized by the International Penal and Penitentiary Foundation at Groningen from 8 to 12 October 1988.

6. One problem, for example, relates to the number of prisoners on remand. ^{3/} In some countries, as many as two thirds of the prisoners have not yet been tried, and many of them are later found not guilty. Similarly, there is evidence to suggest that, in many parts of the world, a much higher number of the prison population is made up of persons who are more prone to violence than was the case in the past. Some are terrorists, and others have been convicted of offences related to illegal drugs. The evidence also suggests a continuing problem of over-representation of indigenous minorities in many prison systems. The situation is worse for persons who are intellectually handicapped or mentally ill, and there are particular problems associated with the imprisonment of foreigners, and of women and children.

7. The possibility that prisons will become breeding grounds for acquired immunodeficiency syndrome could have particularly severe consequences. This is a major challenge for correctional administrators around the world, and as yet there is no universal agreement on what the most appropriate policies should be. The attention of the Congress is directed to the special report submitted by the World Health Organization (WHO).

8. Prison administrators and those responsible for non-custodial correctional programmes must also ensure that the human rights of offenders and staff are protected, and that demonstrably cost-effective approaches are employed. In a period of economic stringency, correctional administrators are increasingly being required to justify costs by referring to levels of recidivism, so playing on the public's fear of crime and its demands for safety. Some research findings indicate, however, that increasing the number of offenders in prison has little or no effect on the levels of recorded crime. ^{4/} Furthermore, research has been unable to demonstrate that particular correctional programmes (custodial or non-custodial, long or short) are consistently more effective than others in reducing recidivism, even though the cost differential between custodial and non-custodial measures can be readily established. ^{5/} Despite these findings, many countries are imprisoning more people now than they did 10 years ago.

9. There is a fundamental dilemma underlying much of the decision-making by Governments regarding the treatment of offenders. Outspoken members of the public, who are the actual or potential victims of crime, characteristically demand of their political leaders that criminals should be severely punished, and such demands are often taken up by the mass media. Hence, political pressures for more prisons, longer sentences and harsher conditions may become almost irresistible. The symbolism associated with punishing criminals seems to satisfy very deep needs within the human psyche, and well-entrenched and emotionally charged beliefs are difficult to change (A/CONF.144/RPM.3, para. 38). There is, therefore, a dual need: in the first instance, to evaluate the extent to which custodial and non-custodial sanctions do both protect and satisfy the public; and, in the longer term, to create a more informed climate of public opinion on advantages and disadvantages of imprisonment and alternative sentences.

I. MANAGEMENT OF PRISONS

A. General concepts and current issues

10. Consideration of the basic purposes of imprisonment has influenced the management of prisons in virtually all countries in recent years. It is increasingly accepted that imprisonment should not be destructive of the human spirit and personality, but, as the number of people sentenced to prison grows,

conditions in the prisons have, in many cases, even deteriorated. There is widespread agreement with the proposition that - if it is really necessary - imprisonment should be used as punishment, and not as a merely formal reaction. 6/ The Standard Minimum Rules for the Treatment of Prisoners 7/ set out what is generally accepted as being good practice in the treatment of prisoners and management of institutions. The Rules should stimulate constant endeavours to overcome practical difficulties in their application, in the knowledge that they represent the minimum acceptable conditions. Similarly, article 10 of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex) requires that all persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. From both a utilitarian and a human perspective, improved management is essential for implementing international norms and standards.

11. The acceptance of this underlying philosophical position can be seen in many correctional systems. Correctional administrators and prison staff are gradually coming to view the promotion of the constructive use of prison time through relevant education, training and work experiences as part of their responsibility. That is not to deny that prison managers continue to see their prime task as the maintenance of security and order, but it is now widely accepted that one way of achieving this is by keeping prisoners fully occupied with useful and interesting activities.

12. The effect of different sentencing practices on prison populations and procedures is being increasingly appreciated. In a number of countries, an approach has developed which is variously referred to as determinate sentencing, real-time sentencing, or truth in sentencing. This approach has resulted from public dissatisfaction with cases where the offender has been released after a much shorter time than the period set by the sentencing judge as a result of remission, good behaviour, early release or parole. Guidelines that are intended to reduce the possibility of unjustified disparities in the sentences imposed on offenders who commit similar offences have been introduced in some countries. In some guidelines, the object is to ensure that sentences accurately reflect the seriousness of different offences as determined by Governments. In neither case was the purpose to make prison management more difficult, but the "determinate sentencing" approach may reduce the power of the prison authorities to reward good behaviour by granting remissions or early release. Either approach could also increase the number of prisoners, and so exacerbate overcrowding.

B. Staff selection and training

13. Effective prison management depends primarily upon the quality and commitment of the staff. Without suitable staff, the most progressive philosophies and the most refined and enlightened policies and plans will be ineffective.

14. The role of the basic-grade prison officer is today much more complex and demanding than it was in the past. He or she is now expected to counsel and befriend, to advise and inform, as well as to be alert to possible breaches of security or orderly management. To undertake this wider role, prison officers must be better educated than in the past, they must be emotionally stable and of good character, and they must be given extensive training, both specific and general. In-service training is also necessary throughout a prison officer's career, regardless of whether or not the officer intends to seek higher responsibility.

15. Higher-level prison staff, including those in charge of institutions, also have to be carefully selected and trained, and the need for continuous retraining is as vital for them as it is for the lower grades. It is now widely recognized that previous experience in a disciplined service, for example as a commissioned army officer, might be relevant but is not sufficient for the higher levels of correctional administration. Even though many such appointments have been made in different countries, and many have been eminently successful, it is today considered prudent to require specific training in penological or correctional matters, particularly in the complexities of correctional philosophy, law and practice.

16. Whereas in the past it was considered sufficient for specialized prison staff, such as medical, educational and welfare officers, to be trained in their respective disciplines, it is now deemed important, in the interests of sound management, that all specialized staff should be given both intensive and extensive training in correctional matters, to enable them to understand and accept the aims and practices of the organization. That again raises the question of where and how resources should be allocated at the national and local level.

C. Classification of prisoners

17. For many decades, most prison systems in both developed and developing countries have used a prisoner classification system as one of the prime tools of management. Classification systems essentially involve judgements regarding the security risks that should be attached to different prisoners and, also, to their treatment or training needs. This information is used to assign the individual to a particular institution or part of it. Some systems are more complex than others but the process is essentially the same.

18. Classification systems can also be seen as major sources of information on the number of prisoners, at each level of security rating, who have particular treatment or training needs. That information can be used to plan new programmes, in order to ensure that, as far as possible, the prison system is responsive to the constantly changing patterns of prisoners' needs. Thus, classification is both a major operational technique and a significant aid to future planning within a progressive prison system. It is an aspect of prison management that has strong advocates and some critics, who see it as a "non-accountable" tool of control. 8/

D. Prison education

19. Some prison systems have provided educational programmes for many decades, and in recent years there has been a marked increase in such programmes. A number of specialized conferences dealing only with prison education have been held recently, sponsored by educational organizations that have also promoted other relevant initiatives. The Committee on Crime Prevention and Control, at its eleventh session, also considered prison education. Its discussions are reflected in Economic and Social Council resolution 1990/20, in which ways are outlined of enhancing the educational process in prisons. Even more extensive guidance is needed, however, if appropriate prison education programmes are to be established. For example, decisions must be made on their content, on the methods of instruction, on whether participation will be voluntary or compulsory, and on how education will be integrated into the total programme of prison activities and adapted to outside market needs. It may turn out that different countries have different needs.

20. It is agreed that participation in prison education should be mostly voluntary, rather than compulsory, except, perhaps, for illiterate prisoners. There is less agreement, however, on the appropriate content or curriculum of a prison education programme. Some argue for a replication of the courses offered in regular schools, while others recommend specially designed courses that take into account the different ages and background of prisoners compared with students in the outside world.

21. The latter view envisages very practical courses, focusing on correcting the cognitive and affective deficiencies that led to conflict with the law in the first place and that are likely to impede readjustment to society afterwards. Such an approach also sees training in social skills as vital and encourages courses on such topics as anger management for appropriate cases. Prisoners should not, however, be denied the opportunity to pursue more formal education and to take examinations at the secondary or tertiary levels, and should be encouraged to learn vocational or trade skills.

22. Training for the constructive use of leisure, including sports, music, arts and crafts and other hobbies, is generally acceptable as a legitimate part of a broadly based prison education programme. At a more formal level, for both academically and vocationally oriented programmes, experience shows that prisons are ideal locations for education by correspondence. This has the advantage that the pace of learning can be adjusted to individual needs and temperaments and that courses can generally be started and finished at any time, making them well-suited to the constantly changing nature of prison populations. For this style of prison education to be effective, it is however, essential that educational staff should be available within the prison to provide advice and encouragement. With appropriate support, very high completion rates can be achieved.

23. A major issue that must be resolved if prison education programmes are to be effective is their relation to other prison activities. When educational programmes were first introduced several decades ago, they were generally regarded by prison staff as a privilege in which selected prisoners were permitted to indulge in the evenings or during non-working hours.

24. Education was not meant to allow prisoners to avoid hard labour, then seen as the central requirement of a prison sentence. Slowly, this attitude has changed, and in many prison systems today half-time or even full-time participation in educational activities is actively encouraged by all levels of prison staff (A/CONF.144/RPM.1, para. 52). Prisoners engaged in educational programmes suffer no loss of wages or remission compared with prisoners who work in prison industries. A compromise that is gaining popularity is one whereby all prisoners devote half of their time to work and half to education. This arrangement has a certain attraction but it also implies a violation of the principle of voluntary participation in prison education.

25. There are many other practical and theoretical issues worthy of examination, including the provision of educational materials, but staffing is probably the most important. The need for additional training in correctional matters, referred to earlier, has a bearing on the question of whether it is more appropriate for education officers to be permanent employees of the prison system or whether education centres in prisons should be part of the general educational system and staffed by people who would otherwise be working in normal schools. Strong arguments can be made for either option and no preferred solution is offered. Part-time instructors should, however,

generally be qualified members of the local teaching services, whether they are volunteers or are paid for their work. As far as recreational activities are concerned, and perhaps for some academic and vocational training, there is no reason why prisoners with particular skills should not be involved as instructors, provided there is appropriate supervision. This approach might be particularly welcome in countries where qualified experts are in short supply.

26. Prison libraries have an important place in educational programmes and in the functioning of prisons in general. Libraries are a pillar of education rather than merely a recreational resource. A relatively recent development in a number of countries has been the establishment of specialized libraries of legal materials, sometimes as a legal requirement. Regardless of how specialized or general they may be, adequate libraries are gradually being recognized as essential in all progressive prison systems.

E. Prison industries

27. Since 1955, the Standard Minimum Rules for the Treatment of Prisoners have required that sufficient work of a useful nature shall be available to keep prisoners employed for a normal working day, but very few prison administrators can claim that they have always met this requirement. It is usually not possible to make prisons pay for themselves by forcing prisoners to work hard. Prison industries in some countries generate a significant financial return to the State, but it is usually less than the total cost of the prison system.* The cost of maintaining workshops, supplying raw materials and providing appropriate supervision is usually greater than the financial returns, regardless of the other costs of imprisonment. For quite different reasons, such as high unemployment in the general population, idleness of prisoners is an issue in many countries, which demonstrates the strength of the relationship between overall economic growth and the prison labour market. Prison industries, even if they are difficult to operate, provide some degree of normality to the lives of prisoners. These industries should be as similar as possible to industries in the outside world and the work done should be productive and not designed simply to keep prisoners busy. Whenever possible, the actual work done by prisoners should increase the probability of their gaining employment after release. Tasks that improve the skills of prisoners, and industries in which there are employment vacancies in the wider community are, therefore, to be preferred.

28. In a number of developed and developing countries, private companies have established workshops within prisons, and these arrangements have generally had a considerable effect on the efficiency of prison industries. For the prisoners there is a clear advantage compared with more traditional prison industries, as normal expectations of productivity apply and, in some cases, the wages paid are equivalent to those outside. In many countries, the relationship between prison industry and external commercial interests, either management or trade union, is a sensitive one.

*For an international review of the subject, see David Biles eds., Current International Trends in Corrections (Sydney, Federation Press, 1988) and a publication by the United Nations Interregional Crime and Justice Research Institute giving the results of the survey on prison labour conducted in 72 countries (forthcoming).

29. An interesting new development is the establishment in some countries of prison industries' commissions or corporations. These bodies use modern industrial skills in manufacture and marketing, and employ prison labour as would an employer on the outside. The main difference between these bodies and joint-venture arrangements made with private companies is that the Government retains control and there may be encouragement to support national goals, such as increasing food production or producing goods for export. In either case, the main advantage for prison management is that prison industries offer a greater sense of purpose.

F. Resettlement programmes

30. Virtually every prison system in the world would claim to be taking some steps to help prisoners to readjust to, and resettle in, the community after their release. The size and relevance of those steps vary widely and hardly any system would claim that everything possible was being done to ensure the harmonious resettlement of every ex-prisoner. The statistics on recidivism clearly indicate that in a high proportion of the cases, the ex-prisoner has not been effectively resettled.

31. There is some evidence to suggest that if prisoners are released conditionally on parole, there is a slightly lower rate of recidivism than if they are released after the sentence has expired. It has been suggested that this demonstrates the value of post-release supervision and guidance by parole officers, but it is possible that the finding is a simple matter of prisoners with better resettlement prospects being granted parole. Similarly, studies have shown that other early-release programmes have produced markedly lower levels of recidivism than the norm, but these findings could be interpreted as indicating the perspicacity of the correctional staff who selected the prisoners for early release, rather than the impact of the programme on those selected. 2/

32. A number of prison systems in different parts of the world have experimented with pre-release courses, offered in the last few weeks or days before discharge. They have not been systematically assessed (and any evaluation would be complicated by the selection issues mentioned above), but at an intuitive level they seem to be eminently sensible. Such courses have characteristically incorporated discussions on such topics as the legal requirements of parole, family and interpersonal relations, job-seeking, personal budgeting, health and hygiene, the use of leisure etc. Whatever their ultimate impact, pre-release courses would seem to be desirable for anyone who has served several years in prison.

33. Resettlement is also likely to be encouraged if support and practical advice are available to ex-prisoners from voluntary organizations, such as prisoners' aid and various after-care support groups. Some of these, though voluntary and largely dependent on public support for funding, have established after-care hostels that provide a bridge between the total control of the prison and total freedom in the community. As with other resettlement programmes, their work has not been fully evaluated, but on humanitarian grounds alone they would seem to warrant the full support of Governments and the public.

G. Private prisons

34. An extremely interesting recent development has been the emergence of a small number of penal institutions owned and operated by private companies. 10/

This has been the subject of intense debate, opponents arguing that only Governments should have the authority to restrict the liberty of citizens, while proponents refer to increased efficiency, and hence the saving of public money; they also point to the high level of government supervision that safeguards the rights of prisoners. The proponents also argue that private prisons should be accepted in the same way as private schools and hospitals. Furthermore, in some countries it has been the standard practice for a long time that juvenile offenders should be dealt with in institutions controlled by private, often religious, organizations.

35. At least one major review 11/ has concluded that private prisons are not justified, for the following reasons:

(a) Neither theory nor the limited information that does exist suggests that incarceration is very well suited to profit-seeking organizations, despite their advantages, which are, chiefly, cost-consciousness and an aptitude for innovation;

(b) There are serious structural barriers to genuine competition for prison management contracts; not only are incumbent contractors likely to become entrenched, but performance may be so difficult to monitor and evaluate that quality-based competition is unlikely to develop;

(c) In general, incarcerating people leaves relatively little scope for technical progress in trimming costs; once the decision to imprison has been made, there is not much room for innovation;

(d) Even if private-prison corporations do succeed in cutting costs, there is unlikely to be sufficient competition in any given community to ensure that the savings result in diminished government budgets for corrections;

(e) There is a good likelihood that government contracts with prison corporations will not fully protect either the interests of the public or the prison inmates;

(f) While private prisons might not be as unaccountable or inhumane as some critics have predicted, neither do they offer anywhere near the advantages claimed by their advocates;

(g) Incarceration today remains a symbolically potent public function; if the widespread uneasiness among policy-makers about introducing profits into punishment and corrections is to be assuaged, evidence will have to be produced of far more compelling practical advantages than those that the private prisons are likely to offer.

36. These conclusions are clearly not the last word, as a number of different countries are either actively or potentially developing private prisons. A compromise that may find support is one in which many separate aspects of prison management, such as food and health services and even perimeter security, are undertaken by private companies under contract. If these services can be supplied reliably and at a lower cost, objections will be difficult to sustain, even though they will certainly be made by public employees, associations or unions.

H. Human rights and grievance procedures

37. The past three or four decades have been marked by very significant advances in all parts of the world in the concept of human rights. The

United Nations has been in the forefront of the movement towards change and has influenced a number of States to make legislative or administrative provision for the protection of the rights of their citizens (see A/CONF.144/18). At an informal level, education on human rights issues has led to a wider understanding of the problem. These developments have had an impact on the management of prisons and the lives of prisoners.

38. One of the most effective ways of observing the human rights of prisoners is to provide a readily accessible, efficient and expeditious mechanism or procedure for resolving grievances. Prisoners should be aware of and understand the procedure, and there should be either independent or judicial review of the decisions made by prison staff. It is also highly desirable that more than one avenue should be available for the lodging of grievances. Thus, it is not unreasonable for a prisoner to be permitted to write, without censorship, to a political leader or to an ombudsman, and also to lodge an oral complaint with the officer in charge of the prison, a visiting magistrate or judge. Such an array of choices might seem like an administrative nightmare, but no difficulty should arise if all concerned are fully aware of the procedures. Normally, all grievances would initially be referred back to the officer in charge of the prison; only if they are not resolved should they be considered by the next highest authority, which might be an ombudsman or an independent body, as well as a supervisory judge or a public prosecutor (see A/CONF.144/11).

39. The form of judicial review of administrative decisions made by prison management is a matter for each country to decide. Since prisoners tend to generate a remarkable number of complaints, the question may arise as to whether particular prisoners could be declared vexatious complainants, in a manner similar to the declaration of vexatious litigants in civil law. At the same time, however, taking into account the exceptional degree of total control by the state which is inherent in imprisonment, prisoners should be entitled to particular safeguards and guarantees. ^{12/} The draft basic principles for the treatment of prisoners, recommended by the Committee on Crime Prevention and Control for adoption by the Congress ^{13/} seek to tackle these issues.

I. Preventing the spread of the acquired immunodeficiency syndrome (AIDS)

40. The possibility of prisons becoming a breeding grounds for the AIDS virus is one of the main challenges facing correctional administrators around the world (A/CONF.144/RPM.1 and Corr.1, paras. 53 and 54, and A/CONF.144/RPM.2 and Corr.1, para. 4). The danger arises largely from the fact that in both developed and developing nations intravenous drugs are widely used in many prisons and homosexual activity is also common, even though denied by some prison administrators.

41. Current evidence has not yet shown that prisons have become incubators for AIDS. Indeed, it will not be possible to establish the extent of transmission of infection in prison without compulsory testing at different stages of a sentence, which would raise serious problems of human rights and would be very costly. The actual numbers of positive cases of human immunodeficiency virus (HIV) detected among prisoners is relatively small in most countries, but this picture could change at any time. A significant difficulty in assessing the seriousness of the situation lies in the fact that in only very few prison systems is there a complete screening of prisoners for the virus both on reception and on discharge. Without this, any attempt to gauge the prevalence of the virus and the extent of its transmission within the system will

necessarily be inadequate. Furthermore, even when testing is conducted, there is a period of some days, or even weeks, before the results are known, and HIV infection has an incubation period of between three weeks and four months. This latter consideration has led to the proposition that all prisoners should be regarded by staff as potentially infected with the virus and hence great care is advised in any contact with prisoners who have open wounds or sores.

42. One great problem for prison administrators is to determine what action should be taken when prisoners have definitely been identified as being infected by the AIDS virus. With skilled medical treatment, the infected individual may live for several years, initially may show no signs of illness, and, within the normal range of human contact, will not be infectious. One management response is to impose strict isolation on infected prisoners, but this would seem unjustifiably punitive. An alternative response is to keep the infected prisoner in the normal prison system of work, education and leisure, but to maintain a higher level of discreet surveillance. Even this more humane approach raises problems of who should be informed of the prisoner's condition, some administrators taking the view that the prisoner should only be informed of the outcome of the test by a trained counsellor. At the other extreme are those who would argue that all persons within the prison, including other prisoners, as well as the prisoner's usual sexual partners outside, need to be informed when a prisoner is found to be HIV-positive, in order to ensure that appropriate precautions are taken.

43. Another approach that has some support is for HIV testing to be conducted compulsorily in prisons but on an anonymous basis. The results would give an indication of the extent of HIV infection, but would not provide information about infected prisoners, and thus the ethical problem of deciding who should be informed is avoided. This approach certainly prohibits discrimination and further suffering of infected prisoners, but does not improve prevention. It is therefore doubtful whether it justifies the cost.

44. In this area of considerable controversy, AIDS education is probably the most controversial as far as prison management is concerned. In some countries, AIDS education programmes in the community stress two major preventive practices: the promotion of safe sex by the use of condoms and the prevention of infection through shared needles by either supplying new needles to heroin addicts or encouraging rigorous needle-cleansing practices. This message may often be passed on to prisoners and prison staff, but it is seen as a direct contradiction of prison policy, as most, if not all, prison administrations do not allow the supply of condoms or clean needles. It is generally argued at the political level that to supply condoms and clean needles in prisons would be seen by the public as encouraging both homosexuality and drug use within the prison system. This political dilemma creates significant problems for prison management. It is recognized, of course, that AIDS education can also convey factual information about how the disease is spread without giving a specific message for prevention. Such an approach, however, is likely to lead to a number of differing, perhaps contradictory, policy proposals. An even more intense level of debate on AIDS in prisons is therefore certain to arise in the near future. The attention of the Congress is drawn to the report submitted to the Congress by WHO on this topic.

J. Coping with overcrowding

45. As emphasized at most of the preparatory meetings for the Eighth Congress, prison overcrowding has become widespread. There certainly are exceptions but the vast majority of prison systems, in both developed and developing nations,

are having difficulty in making adequate provision for the increased numbers of persons being sent to prison as a result of both more severe sentencing policies and a greater number of people being brought before the courts. Prison overcrowding is both undesirable in itself and a likely source of other penal ills (A/CONF.144/RPM.1 and Corr.1, para. 41). In particular, the relationship between overcrowding and prison violence seems established, although the link with recidivism is less clear, at least in the countries studied. 14/ In both respects, the degree of overcrowding was a much more important factor than the simple size of the prison.

46. A major factor in controlling the number of people sentenced to prison is, of course, the scope of the criminal law itself.* In the discussion that follows, the influence of changes in legislation is taken not only as a major factor in the environment within which prison overcrowding is considered but also as a factor which, for present purposes, cannot be controlled. There are essentially two different strategies to control the problem of overcrowding, apart from the obvious policy of building more prisons, or extending existing ones - the policy of "system expansion". These are frequently referred to as "front-end" or "back-end" mechanisms. "Front-end" mechanisms supply courts with a wide range of realistic non-custodial options in the hope that this will result in a smaller number of persons being sentenced to imprisonment. But this does not happen. In one country where extensive research has been done, the persons who are sentenced to the additional options, such as community service orders, attendance centre orders, home detention etc., are often found in practice to be persons who would not have been sent to prison even if those options had not been available. 15/

47. Such an expansion of the numbers of persons in one or other type of correctional programmes is sometimes referred to as "net-widening", since the total number of persons caught in the net of correctional treatment is increased rather than decreased. One strategy would be to limit strictly the judicial discretion of judges and magistrates, in order to ensure that these new options are applied only to persons who would otherwise definitely be sentenced to imprisonment. As pointed out, however, in the working paper prepared for the research workshop on alternatives to imprisonment (A/CONF.144/13), there are several other options that can be pursued.

48. A practical step that can be taken to avoid overcrowding is to establish court advisory services. Such services must be able to provide advice to judges and magistrates, either in the form of fully researched pre-sentence reports, or by way of statements presented to the court after a short adjournment of the case to establish the basic facts. If the members of the court advisory services are persons with wide experience in correctional work, and if there is clear legislative and administrative support for the proposition that a sentence of imprisonment should only be imposed as a last resort, the establishment of such services may greatly assist in reducing overcrowding. That suggestion raises some fundamental questions on the political and judicial implications of the overcrowding problem, which are reviewed at the end of this section.

*That is, the scope of criminalization and decriminalization. See, for example, Norman Abrams, "The new ancillary offenses", Criminal Law Forum, vol. 1, No. 1 (Autumn 1988), pp. 1-40.

49. The second, "back-end", approach is used as a means of releasing people who are already serving prison terms. The options include the traditional practice of parole but also a variety of other early release mechanisms with varying degrees of supervision. The simplest approach, at relatively little additional cost, is to be more liberal in granting remission for good behaviour, with or without supervision. For example, if a prison system regularly takes off one quarter of the sentence as remission for good behaviour, and if that system changes the remission rules so that one third of the time is automatically available for remission, the total number of prisoners may be expected to decrease by a little over 8 per cent. Reduction in the number of prisoners is virtually guaranteed, as the granting of remission is not necessarily a matter of judgement by individual staff. A similar direct impact on prisoner numbers may be achieved by general amnesties. This way of coping with prison overcrowding has many attractions, but does carry with it considerable political dangers. Political leaders and the general public may well think that the prison system has become unduly lenient and judges may take the view that the sentences they impose are being undermined by prison administrators. 16/

50. Another strategy is to focus on specific categories of prisoners and try to reduce their numbers. For example, the number of prisoners on remand may decrease if bail is more liberal or if correctional administrations, or perhaps the police, provide some degree of pre-trial supervision to persons in that legal situation. Similarly, it may be possible to propose alternative arrangements for those who would otherwise be sentenced to prison for drug-related or alcohol-related offences. Specially designed treatment centres are more appropriate for this category of offender, but represent a heavy drain on resources.

51. In some countries an attempt has been made to solve prison overcrowding by deferring the application of prison sentences until sufficient space is available. 16/ Thus, non-dangerous offenders may have to wait some weeks or months after sentencing before they actually go to prison. This does not, of course, provide a long-term solution.

52. All of the approaches outlined above are well known and none is likely to be a panacea. In extreme cases, whole prison systems have been ordered by the superior courts to reduce the number of prisoners so that their rights and dignity can be protected. This may provide short-term relief, but in the long term the solution will be found only by providing more prison space, by reducing the number of persons sent to prison, or by reducing the average time that prisoners stay inside.

53. The problem of overcrowding is, therefore, important on at least two levels. First, it is important in itself. It is an infringement of the Standard Minimum Rules for the Treatment of Prisoners; it is a form of "extra" punishment, in addition to the deprivation of liberty; and it has measurable negative side effects. 14/ Secondly, while the problem itself may seem to be relatively self-contained, the solutions to it raise basic questions as to the objectives, priorities and social role of criminal justice, and as to the relationship between the different agencies, in the light of the central role of the judiciary in the sentencing process.

54. It is generally accepted in criminal justice systems that the judiciary has indeed two key roles: the conduct of the trial in accordance with the law, and the determination of the appropriate sentence. The judiciary are often sensitive to any apparent threat to their autonomy or judgement, and

are under constant observation by other officials in the system who see the sentencing strategies of the judiciary as representing the rightful punishment for those who have been apprehended and convicted. That in itself may exert significant pressure on them to impose punitive sentences and conservative strategies, which, combined with the pressure from large sections of the public, who wish to see convicted criminals dealt with severely, may reinforce the conservative view often associated with the majority of the judiciary. The changes introduced by both "front-end" and "back-end" mechanisms run counter to, and conflict with, these conservative influences, as they inadvertently reduce key roles of the judiciary in the sentencing process.

55. The different lead times before policy changes take effect can cause marked increases in the size of the prison population, and consequent overcrowding. One particular instance is the time difference between changes in sentencing policy and the building of new prison facilities. Jurisdictions can, and do, decide to penalize certain categories of crime or offenders much more severely, either by making the sentences longer or by sending more offenders to prison, or both. In this case, the increase in the prison population will begin to appear quite soon, and will be significant within two or three years. The average time taken to build a new prison is seven or eight years. In such circumstances, "back-end" mechanisms, particularly early release for selected prisoners convicted of less serious offences, may be appropriate or indeed necessary.

56. Two conclusions may be drawn. The first is that any discussion of overcrowding, unless it refers to the building of new facilities, must consider the fundamental objectives of both sentencing and imprisonment, and of practices and priorities in sentencing. In the Basic Principles on the Independence of the Judiciary, 17/ it is stated in principles 1-6 that judges and other sentencing authorities are to be free from political pressure and influence. That does not mean, however, that they should not operate in a political environment. Above all, the resources available to implement sentences, especially the number of prison places, are determined through the political process of government. Judges should operate independently of the State. But if they interpret "independently" to mean that they should not take into account the impact of their decisions, those decisions may then be revised by other authorities, not necessarily in the legal field, in a way they find undesirable but cannot control.

57. The second conclusion is that it is important to highlight the difference between the appropriate uses of "back-end" and "front-end" mechanisms. The former are useful in times of emergency, for example when there is a sudden change in the level of admissions to and average sentence served in prison; or when there is a need to draw attention to the perilous state of the prison system. "Back-end" mechanisms are not appropriate for regular or repeated use, as they can lead to an eventual deterioration of the whole situation.

58. Any long-term and lasting solution, therefore, should come from "front-end" strategies. There is no alternative to the greater use of alternatives. The reduction of prison overcrowding demands different sentencing strategies, and the sentences cannot be considered apart from those who impose them.

II. SPECIAL CATEGORIES OF OFFENDERS AND PRISONERS

59. There are certain categories of prisoners who present special problems to the officials responsible for the management of prisons (see paragraph 6

above). Those can be classified as problems of control or of special treatment, and problems relating to the observance of the human rights of the prisoners. Such distinctions overlap, but in the present section the categories are presented according to the amount of attention they are thought to require from the Congress.

A. Terrorists and violent prisoners

60. A special problem facing prison administrators in many countries is the management of persons convicted of offences that may be classified as a form of terrorism. In many cases the prisoners see themselves not as criminals but as freedom fighters or prisoners of war and therefore feel that they are under no obligation to conform to the requirements of the prison system. On the contrary, in many cases they would see themselves as duty bound to attempt to escape or to disrupt the smooth running of the system.

61. It is often in the national interest for terrorists to be securely held, which may necessitate the construction of special facilities. A further difficulty in maintaining security in some of these cases is that terrorists often have significant support groups in the general community, which may arrange for the introduction of contraband, including firearms.

62. The observations on the management of terrorists apply in many respects to the management of prisoners prone to violence, although the two categories are very different in most other respects.

63. In such extreme cases, it is sometimes necessary for prison managers to restrict visits to the prisoners and to maintain virtually constant surveillance over their activities. The establishment of such security régimes is very likely to invite accusations of denial of human rights and lack of respect for human dignity. In such situations, the underlying dilemma of prison management is forced into the limelight.

B. Drug offenders

64. One of the major reasons for the increase in prison populations and overcrowding has been the increase in the number of persons convicted of drug-related offences. Many of these offenders do not otherwise have a criminal record and many have been convicted of a single, albeit usually serious, offence, perhaps of attempting to import or distribute illegal drugs of high value. These people, as a group, are in some respects different from prisoners convicted of more conventional offences. Drug offenders create problems for prison management, because in most cases they were themselves drug users in the community and may endeavour to continue taking drugs. Furthermore, experience has shown that it is virtually impossible to maintain a totally drug-free environment in a prison without the use of very repressive measures covering all aspects of prison life.

65. Notwithstanding the difficulties, prison administrators see themselves as obliged to make every effort to restrict the availability of drugs within prisons and to that end make use of random searches, of sniffer dogs, and of the inspection of visitors. In a number of prison systems, urinalysis is used, either at random or by targeting suspect groups. But even these measures are rarely completely successful. Many prisoners have been known to display remarkable ingenuity in overcoming the rules imposed by prison management.

66. Many drug offenders will voluntarily participate in treatment programmes if given the opportunity. A number of prison systems provide methadone programmes, but others do not allow them, as they are deemed to substitute one form of drug addiction for another. As with so many other areas of prison administration, there is no universal agreement on the right approach.

C. Prisoners on remand

67. In a number of developing countries, the proportion of all unconvicted prisoners, sometimes referred to as pre-trial prisoners, is higher than that of convicted prisoners. The problem of how to manage unconvicted prisoners is both widespread and growing. This is largely because court systems are unable to cope with the increase in the number of accused persons sent to trial (A/CONF.144/IPM.4, paras. 19, 38, 43-44 and 52).

68. A central dilemma in managing remand prisoners is that they must be recognized as innocent until they have been found guilty by a properly constituted court of law; there can thus be no justification for them to suffer any significant degree of deprivation or punishment. Nevertheless, it has been claimed in some countries that the conditions they are exposed to are often even worse than those for convicted prisoners.

69. This has led to strong pressure for the establishment of remand centres away from the prisons, where the conditions are relatively good, and where contact between persons remanded in custody and their legal advisers is also facilitated. Even so, a basic problem remains unresolved, as deprivation of liberty is regarded as the major punitive element of the criminal justice system.

70. A further dilemma stems from the fact that a number of recent studies have shown that a significant proportion of those remanded in custody are very likely to be sentenced to non-custodial options or to be acquitted, or to be released following conviction on the grounds that the time served in custody awaiting trial is either equal to, or greater than, the sentence that would have been imposed if the trial had occurred immediately after the offence. These results raise serious questions about why these persons were remanded into custody in the first place, rather than being released on bail, perhaps with some supervision, while awaiting trial. Regardless of the merits of this argument, it is clear that the main approaches to be pursued to reduce the number of prisoners on remand relate to more liberal systems of release on bail and more efficient court systems, which would reduce delays in bringing offenders to trial. Compensation for wrongful remand is also important.

D. Intellectually handicapped and mentally ill persons

71. In recent years there has been a world-wide trend to de-institutionalize mental health services, so that today the number of people in mental or psychiatric hospitals, previously known as asylums, is considerably smaller than it was 20 or 30 years ago. This development has generally been seen as progressive and humane, but it has had the unfortunate consequence of leaving more intellectually handicapped or mentally ill persons in prisons. With the possible exception of non-violent sexual offences committed by intellectually handicapped persons, research has generally failed to show that either the intellectually handicapped or the mentally ill are any more likely to commit criminal offences than members of the general community. 18/ Because of a lack of social competence, communication difficulties and negative public

attitudes, however, the chances of such persons coming into conflict with the law are relatively greater. It is not always understood by the lay public, for example, that intellectual handicap and mental illness are quite distinct and those suffering from the former rarely represent a danger to others.

72. Once persons with such a handicap become involved with the criminal justice system and are sentenced to either custodial or non-custodial measures, they present management problems for the same reasons that brought them into conflict with the law in the first place. Intellectually handicapped persons, in particular, are likely to be ridiculed or bullied by other prisoners and, out of prison, they may have difficulty in understanding or remembering instructions given to them by probation officers. Similarly, communication difficulties are likely to cause problems with mentally ill offenders both in prison and in the community. One of the most common mental illnesses, depression, is characterized by a withdrawal from contact and communication with others, and manic or paranoid states may be disruptive, if not (occasionally) threatening. The presence of these categories of persons in correctional systems clearly demonstrates the need to make expert advice, particularly from psychiatrists, available to custodial and non-custodial correctional workers.

73. Notwithstanding these difficulties, most experts agree that it is generally preferable for intellectually handicapped and mentally ill offenders to be treated as far as possible in the same way as others. To do otherwise is likely to reduce their capacity to function effectively either in prison or in the outside world after release. Special sections for them within prisons, for example, would not seem to be in their best interests.

E. Foreign citizens

74. The rapid growth of international travel and the increase in migrant workers has led to larger numbers of foreign citizens in many countries. The vast majority behave in an exemplary fashion but a few come into conflict with the law, and some end up in prison, creating a growing percentage of foreign prisoners. Persons involved with the consumption of or trafficking in illegal drugs are particularly likely to be incarcerated.

75. The consular services of diplomatic missions often provide advice and assistance to their fellow citizens in prison, but in many cases there is little they can do to ensure medical treatment or meet other needs. Frequently, foreign prisoners experience acute isolation as they may not be fluent in the local language and may not fully understand the culture and customs of the country.

76. These problems have led to wide support for the principle of allowing foreign prisoners to serve their sentences in their home countries. The Seventh United Nations Congress adopted a model agreement on the transfer of foreign prisoners. ^{19/} While a number of nations favour the international transfer of prisoners, and a number of treaty arrangements have been made, many countries have taken the view that sentences should be served where the offence took place. Furthermore, there is sometimes concern that the receiving country will not always require the sentence imposed in the sentencing country to be served in full.

77. The trend for increasing numbers of nations to become parties to multi-lateral or bilateral treaties for the transfer of prisoners is nevertheless clear. In 1988, five more countries became party to the Council of Europe

Convention on the Transfer of Sentenced Persons, bringing the total number to 17. Greece, Hong Kong, Luxembourg, the Netherlands and Switzerland have joined Austria, Canada, Cyprus, Denmark, Finland, France, Ireland, Spain, Sweden, Turkey, the United Kingdom of Great Britain and Northern Ireland and the United States of America. Eight other countries have signed but not yet ratified the Convention and the Eighth Congress will have before it a draft Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released. 20/ Increased attention is also being given to the cross-national imposition of other sanctions (A/CONF.144/IPM.4, para. 37).

F. Women and children

78. In all prison systems, the number of female prisoners is very small. Women prisoners very seldom constitute more than 5 or 10 per cent of the total, and in some systems their proportion is as low as 1 or 2 per cent. It is therefore sometimes difficult for a full range of educational and training opportunities to be offered, particularly as in most systems females are segregated from males.

79. In a small number of countries, experiments have been conducted with co-educational prisons. Male and female prisoners share working and recreational facilities, but in nearly all cases they are required to sleep in separate quarters.

80. A particular problem relates to the action that should be taken in relation to babies and young children of female prisoners. There is no universal agreement: some prison systems will not permit any infants or children within the prisons; others will allow a female prisoner to keep a child until it reaches a certain age, generally not more than two or three years. Most experts support the notion of allowing a baby or young child to stay with its mother in prison, but other matters must be considered, such as the length of the sentence, the temperament of the mother and the suitability of alternative arrangements. 21/

G. Indigenous peoples and other minorities

81. In a relatively small number of countries there are identifiable groups of descendants of the original or indigenous population, which was conquered or outnumbered by a larger number of invaders or settlers, for example the native Indians in the United States and in Canada, the Aborigines in Australia and the Maoris in New Zealand.

82. Indigenous minorities are almost invariably overrepresented in the prison systems, frequently to a gross extent. The underlying reasons are probably associated with social and economic deprivation and loss of identity. In many cases many of the arrests of indigenous persons by the police are associated with alcohol consumption. It is claimed, however, that racial discrimination may also be a major factor. The ultimate solutions to overrepresentation of indigenous minorities in prisons are to be found in community attitudes rather than within the prison systems, but it is necessary for prison administrators to recognize the special needs of these groups and to provide for their cultural aspirations and religious observances. On humanitarian and health grounds and to facilitate their adjustment to the prison régime, prisoners from indigenous minorities should be allowed to spend time together, rather than being isolated.

H. Solutions to overcome management and other problems relating to special categories of offenders and prisoners

83. In considering measures to overcome the problems presented by prisoners listed in subsections C-G above, the Congress may wish to take into account the related activities of the Commission on Human Rights and its Sub-Commission on Protection of Discrimination of Minorities to protect persons in these categories in general, irrespective whether they are detained or not. This would apply in particular to the draft body of principles and guarantees for the protection of mentally-ill persons and for the improvement of mental health care, 22/ as well as to the international standards being elaborated on the human rights of indigenous persons.

84. With regard to female prisoners, the Congress may wish to discuss the results of the work of the Commission on the Status of Women, considered in the report of the Secretary-General (E/CN.6/1988/9) and Economic and Social Council resolution 1990/5.

85. From a managerial point of view alone, however, it is clear that, in order to meet the legitimate needs of special categories of offenders and prisoners, changes are needed in the traditional methods of recruitment and training of criminal justice staff. With the growing internationalization of criminality on the one hand and humanization of criminal justice policies on the other, more diversified treatment of offenders and prisoners should become an indispensable matter for discussion at the international level.

86. This is why it is so important to exchange experiences between prison managers bilaterally and multilaterally. Conferences organized annually in the Asia and Pacific region, and seminars held recently in the African, Latin American and European regions - all these events generate valuable material for follow-up. The Eighth Congress has before it draft resolutions submitted by the Committee on Crime Prevention and Control on several of the managerial issues discussed above. 23/ The Congress may wish to refine the texts by taking into account the results of the discussions under item 4 (topic II) of the provisional agenda.

III. ALTERNATIVES TO IMPRISONMENT

87. The long-standing interest of the United Nations in increasing the use of penalties that do not involve a prison sentence is well known. The traditional expression "alternatives to imprisonment", although retained in this paper to emphasize that long tradition, is tending to be replaced by such terms as "non-custodial measures (or sanctions)" or "community based sanctions". At the interregional preparatory meeting on this topic it was observed that the term "alternatives" implied that a prison sentence was, in some way, a normal or natural sanction (A/CONF.144/IPM.4, para. 19) not, perhaps, a desirable interpretation. An important feature of this development is the increasingly common view that non-custodial sanctions are not "soft" alternatives, since they comprise a public denunciation of the act and make quite stressful demands on the offender.

88. The trend towards non-custodial measures, therefore, can be seen as being driven by at least four factors: evidence that it is difficult for prison to reform offenders so that they reintegrate into society (although that process may well vary considerably from one culture to another); the inescapable

evidence that prison is expensive; the spreading problem of prison overcrowding; and the growing, more recent, belief that offenders can be both punished and rehabilitated without being sent to prison.

89. The data provided in the second United Nations survey of crime trends, operations of criminal justice systems and crime prevention strategies (1975-1980) (A/CONF.121/18 and Corr.1) suggests that the application of non-custodial measures does not vary with the national prison rates. The relationship tends to be a direct one, the availability of more non-custodial sanctions being related to higher prison populations. That in turn suggests that the provision of a range of non-custodial options does not automatically reduce the use of custody, or rather does not do so to such an extent as to change existing national differences in prison use.

90. These factors have given rise to the realization that standards are needed for the implementation of non-custodial sanctions, because they, like prison or any other punishment, are capable of being unfairly or inappropriately applied. Since the Seventh Congress, the Asia and Pacific Regional Institute for the Prevention of Crime and the Treatment of Offenders and the International Penal and Penitentiary Foundation (IPPF) have both taken initiatives in this respect. One outcome is the draft United Nations standard minimum rules for non-custodial measures ("Tokyo Rules"), 24/ which are before the Congress for adoption. The Rules have been developed and revised in the course of many meetings. They represent a consensus of contemporary progressive opinion on the appropriate scope of and legal safeguards for non-custodial measures, guidance for action at the different stages of the criminal process, modalities of implementation, human and other resources and planning and evaluation. The Standard Minimum Rules for the Implementation of Non-Custodial Sanctions and Measures Involving Restriction of Liberty (the "Groningen Rules") are also brought to the attention of the Congress, as representing the contribution by IPPF to the resolution of the question of non-custodial measures.

91. The main focus of the Congress at the meetings for which this paper is the working document is the discussion and adoption of the "Tokyo Rules". Three other documents are also relevant: the report of the Interregional Preparatory Meeting on topic II (A/CONF.144/IPM.4), the reports of the Secretary-General on alternatives to imprisonment and the reduction of the prison population (A/CONF.144/12), and on research on alternatives to imprisonment (A/CONF.144/13). All these reports provide extensive coverage and convey the prevailing opinions in many countries.

IV. COMPUTERS AND NEW TECHNOLOGY

92. The massive advances in computer technology have had a marked effect on all aspects of business and government, including prison administration, such as the installation of centralized prisoner record systems stored on computers and the monitoring of all transactions within a prison system, including the movements of prisoners and staff between institutions. The introduction of computerized management into prison systems requires that special attention be paid to staff development in order to reduce the inevitable problems and resistance associated with any new system. A relatively small number of staff members have to develop a fairly high level of competence with computers. It is also essential, however, that all prison staff acquire a basic understanding of what computers can do to assist management. This general training is aimed largely at increasing confidence and reducing fear of the unknown, including staff members' apprehension that they might be replaced by machines.

93. Other aspects of new technology have not always, however, had such a positive impact as computers. Automatic control systems within prisons, for example, including the electronically controlled opening and closing of cell doors, have reduced the level of interpersonal contact between prisoners and staff. Closed circuit television surveillance, either of perimeters or within prison buildings, also depersonalizes the prison environment. All this may have undesirable psychological and managerial consequences, as well as negative implications for human rights.

94. Computers may have a direct role to play in staff training. The interactive nature of computerized operations makes them ideal for the transmission and assessment of new information, including all the prison records and prison rules and regulations. In the long run, the increasing availability of both computers and other aspects of new technology should allow more staff time to be devoted to dealing face-to-face with prisoners, thus increasing the level of interpersonal interaction rather than reducing it. The discussion on these and other items in the framework of the Eighth Congress demonstration workshop on computerization of criminal justice systems will help in developing relevant recommendations proposed for the Congress in two resolutions submitted to it by the Committee on Crime Prevention and Control. 25/

95. Likewise, computer-assisted prisoner training and education become potentially valuable, especially on account of their capacity to provide individualized learning environments. Even in medium-sized prisons, it often happens that only one or two prisoners are interested in pursuing a particular course of study at a particular time. In such a situation, a class and instructor would not be justified, but a computer-based course, perhaps supplemented by correspondence lessons, could meet the need more than adequately.

V. PRIORITIES FOR FURTHER INTERNATIONAL CO-OPERATION

A. Descriptive research and trend analysis

96. The prison system is particularly amenable to statistical collection and analysis. The most pressing research need at the international level is for a marked increase in the flow of descriptive, especially statistical, information on correctional trends; the analysis of needs, and possible policy responses.

97. Efforts of this kind have already brought some tangible results: most European countries reported such data in the framework of the United Nations survey of crime trends, operations of criminal justice systems and crime prevention strategies, as did - to a lesser extent - several from other regions of the world (A/CONF.121/18 and Corr.1). Quite apart from international comparisons and trends that are of general interest, the analysis of trends within countries is probably the most powerful tool for planning. Depending on the degree of detail of the basic data collection, it is possible to make some informed estimate of when and where new correctional facilities will be needed. Consequently, these statistics need to be improved nationally and internationally.

B. Evaluation research

98. As the level of research competence increases with the initial development of simple data collections, moving on to more complex collections and analyses, attention will almost certainly focus on the evaluation of correctional

services and programmes. As in the assessment of the effectiveness of non-custodial sanctions (A/CONF.144/13), evaluation research in corrections attempts to review systematically the extent to which a specific programme or activity succeeds in achieving its goals. Depending on the stated aims, the assessment can be based either on relatively objective measures, such as recidivism and costs, or on more subjective measures, such as prisoner or staff morale.

99. Evaluation research, if used at all, is generally directed at new programmes, such as a work-release scheme or an alternative treatment option. The techniques may take many different forms, and may ultimately be applied to the entire system. Without the information generated by this type of research, a correctional administrator has no solid basis upon which to improve cost-effectiveness.

C. International transfers

100. The subject of international transfer has been mentioned earlier (paras. 74-77 above) in relation to foreign citizens in prison. It is mentioned here again as a priority area for international co-operation. One of the political reasons why some nations are reluctant to support the concept is that a very large proportion, probably the majority, of foreign prisoners have been convicted of offences related to illegal drugs, and they are disinclined to take any action that could be interpreted as showing sympathy to drug offenders. In this vein it is further argued that the deterrent effect of imprisonment will be greater if drug traffickers convicted in foreign countries are required to serve their sentences under conditions that are unfamiliar and therefore more stressful. Finally, particularly in very small nations, the local community may favour the policy that foreigners who break the law must be seen to serve their sentences where the offence occurred, as otherwise people might believe that the offender will be set free upon leaving the country.

101. These are powerful arguments that cannot be lightly set aside, but there is room for negotiation in relation to foreign prisoners with special problems, such as the sick or the elderly, or those who have served a substantial proportion of very long sentences. The fact that a relatively large number of foreign prisoners are female is also relevant. In support of international transfers it has been suggested that prisoner transfer treaties help to reduce overcrowding and to ease prison tension and inmate resettlement problems.

D. Mutual assistance

102. The Seventh Congress, in 1985, launched a significant number of international instruments and model agreements. These focus on different aspects, including investigation, sentencing and punishment of offenders, and are therefore relevant to topic II of the present Congress. Bilateral and multilateral treaties between many nations have been signed since 1985, but the process is by no means complete and further negotiations will no doubt continue.

103. Possibly the most significant part of these mutual assistance agreements relates to the extradition of persons in custody to face charges in another nation. Under recent extradition treaties, an offender serving a long prison sentence may be transferred to another country to face trial and possible sentence there, and then later be returned to the first country to complete the original sentence. Such complicated and expensive arrangements would

only be made if the new charges were very serious, but these treaties have closed a gap which in the past has allowed some serious international criminals to avoid prosecution with the passage of time.

104. Similar international agreements have provided for witnesses who are themselves in custody in one country to be temporarily transferred to another in order to give evidence and to face cross-examination in a trial in the second country. A person in this situation would be returned to the first country to complete his or her sentence after the evidence had been concluded.

105. Mutual assistance agreements may also focus on financial issues. For example, the requirement for international cash transactions over a specified amount to be reported to a central authority is seen as a powerful weapon for use against major drug syndicates, and provisions to freeze bank accounts and confiscate the proceeds of crime are generally seen as very useful. The confiscation of criminal proceeds may well be one of the most effective alternatives to imprisonment that could be imposed on certain categories of offenders, even though this penalty may in some circumstances be imposed in addition to a sentence of imprisonment, rather than as an alternative.

VI. CONCLUSIONS

106. This paper has reviewed current trends and issues in the management of prisons, including the uses of alternatives to imprisonment as a sentencing option. The Congress is invited to give guidance to both Member States and the Secretary-General on the policies with respect to those issues which it considers most pressing or most amenable to improvement.

107. In addition to action on the draft Tokyo Rules, 23/ the Congress may wish to consider the following issues:

(a) Responses to prison overcrowding and especially the link with sentencing practices;

(b) Management of prisons housing HIV/AIDS infected prisoners, and the treatment of those prisoners individually;

(c) The management of prisoners being held for terrorist offences and of prisoners prone to violence;

(d) The provision of suitable treatment for prisoners who use illicit drugs, and the management of prisons where drug use is believed to occur;

(e) The need for special protection of human rights for different categories of particularly vulnerable prisoners.

The conclusions of the two Congress research workshops on further use of non-custodial sanctions, including possible follow-up on the implementation of the Tokyo Rules, and on the use of computer technology in criminal justice systems, particularly prisons, will all be relevant to these questions.

Notes

1/ See Official Records of the Economic and Social Council, 1986, Supplement No. 5 (E/1986/25), chap. I, sect. B, draft decision.

2/ Reports of the African Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.144/RPM.5 and Corr.1), para. 44, and of the Latin American and Caribbean Regional Preparatory Meeting (A/CONF.144/RPM.3 and Corr.1, paras. 38 and 42).

3/ Reports of Western Asia Regional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.144/RPM.4 and Corr.1), para. 50, and of the Latin American Regional Preparatory Meeting (A/CONF.144/RPM.4 and Corr.1), para. 44.

4/ Norman Bishop, Non-Custodial Alternatives in Europe, Helsinki Institute for Crime Prevention and Control affiliated with the United Nations, Publication No. 14 (1988), p. 55; David Biles, "Crime and imprisonment: a two-decade comparison between England and Wales and Australia", British Journal of Criminology, vol. 23, No. 2 (1983), pp. 166-172; and John Walter, Patrick Collier and Roger Tarling: "Why are prison rates in England and Wales higher than in Australia?" British Journal of Criminology, vol. 30, No. 1 (1990), pp. 24-35.

5/ C. van der Werft, Recidivism and Special Deterrence (The Hague, Ministry of Justice of the Netherlands, 1978); Peter H. Burgoyone, Recidivism among Robbers: A Study of Men Released from Custody after Having Served Sentences of Robbery or Attempted Robbery (Criminology Research Council and Victoria Department of Community Welfare Services, 1970).

6/ Bishop, op. cit.; and Thomas Mathiasen, Prison on Trial (London, Sage Publications, 1990), pp. 135-168.

7/ First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: report prepared by the Secretariat (United Nations publication, Sales No. 1956.IV.4), annex I, sect. A.

8/ Stanley Cohen, Visions of Social Control: Crime, Punishment and Classification (Oxford, Basil Blackwell, 1985).

9/ Cohen, op. cit., and James Austin, "Using early release to relieve prison crowding: a dilemma in public policy", Crime and Delinquency, vol. 32, No. 4 (October 1986), pp. 404-502.

10/ Roger Matthews, ed., Privatizing Criminal Justice (London, Sage Publications, 1989).

11/ John D. Donahue, Prisons for Profit: Public Justice, Private Interests (Washington, D.C., Economic Policy Institute, 1988).

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13/ Official records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. c, decision 11/115.

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