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CRIMINAL LEGISLATION, JUDICIAL PROCEDURES AND OTHER FORMS OF SOCIAL CONTROL IN THE PREVENTION OF CRIME

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INTRODUCTION

1. Many countries, both developed and developing, are confronted with a crisis in the administration of justice. Not only do many jurisdictions register a significant and worrisome increase in serious crime, resulting in an overburdening of the criminal justice system and long court delays, but judicial rules and procedures have become more complex, more time consuming and more costly. In many countries, former confidence in official services is giving way to public expressions of doubt, hesitation and sometimes open dismay as the incidence of crime soars beyond the reach of traditional controls.

2. In some countries, the rise of crime and the decreasing effectiveness of crime control have become larger national and political issues. Even in countries where there was little or no crime in the past, there is evidence of increasing deviance and criminality, and people everywhere are feeling the need to closely examine the kind of society that is emerging as urban growth and industrialization spread a disturbingly uniform culture. 1/ In short, the criminal justice system as an institution of social control in the prevention of crime seems to be in jeopardy in many nations. Economic development, urbanization and ever-expanding industrialization have led to extensive changes in social organization. In a more indirect way, they have also led to changes in the forms and nature of social control.

3. Institutions of law and social control are among the more static ones in our societies and have therefore lagged far behind developments in social behaviour and attitudes and in the economic and political fields. Although there may well be general agreement on the definition of legal institutions, it is not always clear what is meant by social control. As here used, the term "social control" is concerned with the ordering of every form of human interaction.

4. Most frequently, social control operates without the interference of a policeman or a judge or, indeed, of anyone who thinks of himself as applying social control. A joke, a shadow over a friend's face, a polite suggestion that one should look for alternative ways of acting is, in most social situations, sufficient to keep human behaviour within limits. Social control in such cases is a part of daily life and of the normal flow of interaction. In these cases, no specialists exist for controlling the behaviour of other people. The friend does not consider himself a policeman, nor is he considered such by others. The role of the parent is basically dissimilar to that of the judge, even though there are some interesting similarities between them. These informal types of relationships are at the very core of social life, even in the most highly industrialized societies in the world.

5. Informal social controls are, however, dependent on three primary conditions for their efficient functioning. First of all, this type of control can only

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1/ "New frontiers in international crime prevention", International Review of Criminal Policy, vol. 30 (1972) (United Nations publication, Sales No. E.73.IV.17), p. 3.

function efficiently if the parties are in a situation where they spend a considerable amount of time together. If partners are not together, all the small corrections and rewards built into daily life have no chance to operate. Secondly, informal control is dependent on some degree of openness of communication within the social system. If partners do not know each other, they cannot evaluate each other's behaviour according to their frame of reference. Lastly, informal control acquires significance only if the parties in question are concerned about each other and about what they think and say.

6. Informal social control, therefore, is characterized by a definable group of members and is designed to ensure observance of the behaviour prescribed by the general norms that are accepted for a given situation. In individual cases, it functions essentially in a flexible and variable manner, and does so rapidly, inexpensively and directly. Many effective informal controls have disappeared from societies that are industrialized or in the process of industrialization, mainly because of the social differentiation that is a consequence of membership in different social groups that are centred on the family, employment, religion, clubs and other peer associations. In such societies there is less social visibility, less accountability and a low degree of interdependence.

7. Although some forms of informal controls will remain in force in any kind of society, formal institutions have taken over an increasing share of social control, particularly in the prevention of crime. Formal controls lack individualizing traits; they are not only formal but also impersonal. Their methods for solving problems are impersonalized because they are based on legalized systems of norms or on patterns that are regarded as acceptable by vast groups of people, at the expense of individual differences. Notwithstanding many positive effects, the quantitative growth of society and the processes of urbanization, industrialization, centralization and professionalization create situations where members of social groups not only are unacquainted with each other but can avail themselves of convenient shields to escape from the control of some of the basic groups that still seek to influence the individual through the use of informal social control.

8. Social control in the prevention of crime refers more particularly to social processes and structures that tend to prevent or reduce crime. It also refers to anything that people regard as "doing something about deviance", whatever that "something" may be. It may involve, for example, special prevention, deterrence, reform, vengeance, justice, reparation, compensation or the moral enhancement of the victim. 2/

9. The level of control, be it high or low, is determined by the types and forms of social relationships that exist among the individuals constituting a particular society, as well as by their effectiveness in inducing people to follow prescribed patterns of behaviour. Control is maintained through the rewards and

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2/ Albert K. Cohen, Deviance and Control (Englewood Cliffs, New Jersey, Prentice-Hall, 1966), p. 39.

punishments that are built into every relationship, and are evident in such matters as the conferring and withholding of esteem, the sanctions of gossip, and the economic and moral pressures that underlie behavioural patterns. The law and law enforcement agencies, important though they are, appear puny in comparison to the extensiveness and intricacy of these other modes of regulating behaviour. 3/

10. The communities with the most effective level of social control are normally small, homogenous and stable, and are frequently indigenous societies in developing countries or in the more remote villages of industrial nations. In such communities, social order is maintained to a very large extent by informal controls, and there is little need to resort to such formal controls as legislation or the full-time appointment of citizens to carry out law enforcement duties. Most tribal societies have no police forces, prisons, or mental hospitals. They are small enough to be able to control and care for their own deviants. 4/ The orderliness of the small homogenous society is not simply a matter of economics and social organization. Such a society, like any other, has its moral bases.

11. As societies become developed and socially differentiated and as the problem of maintaining order increases, they tend to adopt such formal controls as codes, police, courts and a central authority. This does not mean that informal control disappears completely. In many urban residential neighbourhoods, there is a very real sense of community even when the informal social controls that are in operation are less extensive than those of villages.

12. The composition and the function of criminal justice systems differ from country to country, but most systems have a law enforcement agency, a prosecutor's office, a judicial system and a correctional department, and social control of criminal behaviour as defined by the legislature is considered to be the chief task of the administration of criminal justice. Some systems are more legalistic and formal than others, and in some countries the community may have a larger impact on the administration of justice and may be more involved in it than is the case in other countries. This working paper will focus on the criminal justice system and its role as one of the institutions of social control in the prevention of crime. It will examine criminal legislation and judicial procedures not as separate and independent agencies of social control, but rather as crucial components of the criminal justice system and as supplements or replacements of informal social control methods.

13. The importance of criminal legislation is manifold. It reflects the history and precedent of the penal system as an instrument of social control. The desirable changes and improvements in the methods used for the prevention of crime will require legislative action, and it is therefore essential to examine the legislative process. In this regard, it is valid to ask who is the legislator, what influences legislation, and how does the legislator evaluate his own efforts?

3/ Michael Banton, "Law enforcement and social control", Sociology of Law, Vilhelm Aubert, ed. (New York, Penguin Books, 1973), pp. 127-128.

4/ Ibid., p. 128.

The scope of judicial procedures commences at the moment an alleged violator of the law comes into contact with the police and ends only when he has exhausted the last of his possible recourses. It also includes prosecutorial and judicial discretion and the decision-making process.

14. Domestic legislation and the nature and intensity of crisis areas may vary considerably, especially in the field of judicial procedure. Overcrowded jails and long court delays due to extensive use of pre-trial detention are a problem shared by many but by no means all countries. This holds equally true for the misuse of prosecutorial and judicial discretion and the disparities in sentencing procedures. Although the more technical procedural aspects are among the common problems shared by most countries, they may require solutions that differ according to the stage of domestic legal development or the prevailing ideologies in given countries. Problems of this nature may involve such procedural aspects as those that may arise in connexion with the functioning of the pre-trial release system, the complexity of evidentiary rules, the need for a jury system, the pros and contras of plea negotiation, the framing and adjustment of charges, the provision of legal safeguards for the accused, including legal aid for the indigent offender, and the lack of adequate sanctioning alternatives.

15. In addition to procedural difficulties, many countries complain about the poor training and the shortage of law enforcement and judicial personnel. Rather than focusing on specific weaknesses and short-comings of criminal legislation and judicial procedures or on potential remedies, this working paper presents a broad and critical examination of the relationship between crime and its social control.

16. A realistic evaluation of the functioning of the criminal justice system as a whole and of its individual components has to be preceded by an assessment of the nature and scope of the crime problem with which the system must deal. The impact of crime on society can only be measured, however, in comparison with other social problems such as non-criminal forms of deviant behaviour, poverty, unemployment, malnutrition, housing, public health, the provision of care for the old and aged, pollution, natural disasters and civil unrest.

17. It is, in other words, of great importance to distinguish why and how certain forms of behaviour have been singled out by society for solution through the application of criminal laws. The criteria used for selecting certain types of behaviour patterns and groups of persons as potential criminal offenders deserve critical discussion. The answers to such questions may, of course, vary among cultures; and within cultures, they may vary in time. This approach represents a relatively new movement in criminology that seeks to de-emphasize the importance of the study of the individual offender and to avoid often fruitless research into the causes of crime. In this new approach the focus is on the role of society and its legal institutions in generating and maintaining forms of crime and thus singling out certain deviants as criminal offenders who are to be subjected to the formal control of the law.

18. Owing, inter alia, to the results of recent studies on deviance and on hidden criminality, which will be discussed below, students of the behavioural sciences

and of the sociology of law have turned their attention towards the study of such systems of control as the police, the courts, legislators, public attitudes and the selection of certain groups of individuals as officially labelled criminals. 5/ Research on the selection process within the criminal justice system constantly demonstrates that certain groups and certain classes of persons are over-represented while others are under-represented in the criminal justice system. The large majority of persons caught up in the system are almost invariably the poor, the weak, members of minority groups, immigrants, foreigners, persons of low intelligence and others who are in some way at a social disadvantage. 6/

19. The supporters of this movement, which is new in criminology but old in social studies, are of the opinion that each society organizes itself for the protection of a dominant group and is often insensitive to the needs of socially inferior or disadvantaged groups. 7/ In this view, law reform is seen only as a measure to adapt the legal system to the problems generated by the more general social and economic structure, and accordingly, an engineered and managed criminal justice system becomes a more effective method of dealing with threats to the existing order. 8/ In the light of this interactionist approach, it seems relevant to consider what is defined and legislated as criminal behaviour by Governments in different political and socio-economic systems and how such legislation is implemented and enforced.

20. Such an approach evokes questions about the legislative process, about the use of discretion at all enforcement and procedural levels, and about the control of the criminal justice system. To what extent are the legislator and the judge, who make the most important decisions within the criminal justice system, influenced by the attitude of the public and of representatives of other components of the criminal justice system? Finally, it must be asked: To what extent is the formal and conventional criminal justice system that currently functions in most States the optimal instrument for the prevention or control of those forms of behaviour that have been defined as crime by the very same system? What seems needed, then, is a re-examination of the whole system of criminal justice, within the total context of national and international social policy. This re-examination should be undertaken from both the historical and the comparative perspective. Both of these perspectives teach us that current methods of dealing with deviancy certainly are neither exclusive nor unique.

21. In particular, consideration must be given to other kinds of informal and formal social control that may contribute to the effectiveness of the

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5/ Eugene Doleschal, "Hidden crime", Crime and Delinquency Literature, vol. 2, No. 5 (New Jersey, United States of America, National Council on Crime and Delinquency, October 1970).

6/ Eugene Doleschal and Nora Klapmuts, "Toward a new criminology", Crime and Delinquency Literature, vol. 5, No. 4 (New Jersey, United States of America, National Council on Crime and Delinquency, December 1973).

7/ Richard Quinney, Critique of Legal Order: Crime Control in Capitalistic Society (Waltham, Mass., Little, Brown and Co., 1974), p. 16.

8/ Ibid., p. 17.

administration of criminal justice. In particular, attention will be given to those countries or communities that still maintain intact large parts of their informal social control systems. Such communities should be encouraged as much as possible to retain these informal controls, or variations of them, for the prevention and control of crime in changing urbanized settings. The countries that no longer rely on these informal control systems are urged to learn from the experiences of those countries that use them, and to revitalize and adapt them for their community programmes.

I. THE CRIMINAL JUSTICE SYSTEM IN CRISIS

22. As an institution of social control in the prevention of crime, the criminal justice system has been seriously challenged in many countries. Although countries in all regions are highly concerned with their domestic situation, it appears that in countries with a relatively lenient penal system and with a political system and climate offering fairly wide protection to defendants, criticism of the penal law is more widespread than in countries with more repressive and more traditional approaches. It seems that it is not the absolute invalidity of the penal system that matters, but rather its relative shortcomings when compared with the standards and values of other societies. The increasing accumulation of empirical research data and the theoretical reflections of social, behavioural and judicial scientists have caused operators of penal systems to begin to recognize the many weaknesses of these systems. 9/

23. In many places, there is a growing credibility gap between the public and the criminal justice system. In some countries, only a minute fraction of the persons initially arrested are ultimately convicted, and in most instances, no data are available on the disposition of the remainder of cases (A/9032, para. 50). In the course of the regional preparatory meetings for the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders it was found that many countries in Asia were having problems in adjusting to the criminal codes that had been imposed upon them by colonial administrations. Several Asian representatives drew attention to the need for local boards, councils or tribunals in their countries and for flexibility in the local application of the absolute or technical requirements of the criminal justice administration.

24. Another complaint was that in developing countries most legislators actually knew little and sometimes nothing about the deep-rooted traditions and the values of the local societies for which they were legislating. As a consequence, although they could competently legislate for general offences like murder, robbery or the damaging of property, which in one form or another were considered crimes in any society, they were not competent to do so with regard to local mores and traditions and should, therefore, delegate their legislative authority to local communities.

25. Yet another problem for Asian societies was the inability of poor people to cope with the ever-increasing costs of legal services, which made it more difficult for them to obtain substantial justice. The Indonesian Government had attempted to counteract this situation by establishing at the Universities consultative bureaus where a form of legal aid was provided for persons who could not otherwise afford lawyers (A/CONF.56/BP/1 - Asia, para. 19).

26. The representatives of several Latin American countries expressed great concern about the lack of judicial personnel and the need for specialized judges, and many

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9/ C. I. Dessaur, "Introduction and definition of the problem", Abstracts on Criminology and Penology, vol. 12, No. 4 (July/August 1972), p. 391.

referred to the prevalence of official corruption in the region as a major impediment to the administration of effective and popular justice (A/CONF.56/BP/2 - Latin America, paras. 35 and 36).

27. In discussing the relevance and usefulness of the present laws and the performance of the judicial system in their region, the participants in the African regional preparatory meeting for the Fifth Congress were of the view that the system had been designed primarily to serve the needs of the colonial period and that it was too slow and cumbersome to function adequately under the impact of expanding economic and social activities. This made not only for an inefficient, but in many cases, for an inhumane system as well. The participants were of the opinion that, ideally, every accused person should enjoy the right to counsel not only at trial but also during the pre-trial proceedings. This, however, raised the issue of inequality in obtaining legal aid for accused persons when such aid depended on their status or economic situation. The view was strongly expressed that Governments or bar associations should create public defender or legal aid systems.

28. Recognizing the crisis dimensions of current criminal justice operations, some countries had already instituted independent committees to review and monitor the functioning of the legal system, including the police (A/CONF.56/BP/4 - Africa, paras. 19, 20 and 21). In order to eliminate extended court delays, one West African country had modified its criminal procedures by abolishing jury trial for all crimes other than those punishable by death and by also abolishing the voir dire procedure.

29. At the European regional meeting, a number of representatives thought it of the utmost importance to seek alternatives to criminal court trials and imprisonment whereby the disposition of many cases out of court would be facilitated. It was their view that the great problem posed by overcrowded court calendars and overcrowded prisons makes it imperative to consider, at both the national and the international levels, social alternatives to the established legal and penal systems. The participants in this meeting also stressed the fact that the abuses of discretion that flow from the impossible burden now imposed on some components of the criminal justice system led to injustices in the practical application of a system that was otherwise just. It was also suggested that economic and social measures leading to the reduction of crime should be accompanied by appropriate educational, cultural and legislative measures (A/CONF.56/BP/3 - Europe, para. 11).

30. Participants in a meeting representing Australia and countries of the South Pacific region observed that most countries were confronted with the question of long delays in judicial administration. It seemed that there were few answers to this problem that would not, at the same time, limit or prejudice the rights of the defendant or the accused in some way. It was thought that greater attention should be given to this problem of delay in justice and that measures should be taken to streamline the courts, providing more of them where necessary, dispensing with

preliminary hearings (or at least giving the offender the option of dispensing with them) and improving the general management of court business. 10/

31. In addition to the situations of stress with which domestic criminal justice systems must deal at the national level, they are also faced with problems of transnational crimes, which are increasing both in number and in boldness. The situation regarding the prevention and control of transnational and international crime is still relatively unexplored and presents the professional in this field with new frontiers for investigation. As in so many other areas, the need is urgent and the problem becomes more intractable with every year of delay in taking appropriate governmental action. 11/

32. One of the worrisome problems inherent in transnational and international crime is that of the fugitive offender. It has been recognized in African countries that there is a need for effective extradition procedures. 12/ The Organization of African Unity has drafted a convention on extradition, but it has not yet been implemented.

33. Much the same could be said regarding the progressive expansion of organized crime. Organized crime has become a feature of developed countries and manages somehow to survive the intermittent drives to eliminate it from society. Powerfully organized, well financed, supported by sophisticated legal advice and frequently politically oriented, this type of internationalized crime represents a dangerous new structure in our societies. It is able to terrorize witnesses and is counter-poised to outwit or fight the established forms of crime control. 13/ The established approaches of legislation to the control of crime are designed to combat the individual law-breaker and are therefore usually inadequate to deal with collective illegalities of this kind, whose sheer scale of operations places them beyond the reach of local and national controls. The understanding and control of the new collective and organized forms of illegality is a new and difficult task for crime prevention. 14/

34. Like organized crime, corruption is another widespread phenomenon that blocks the effective functioning of the criminal justice system. In one country, an entire panel of supreme court judges was dismissed because of corruption. This seems to be

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10/ "Draft report of the United Nations Regional Preparatory Meeting of Experts on the Prevention of Crime and the Treatment of Offenders for the Australian and South Pacific Region" (Canberra, Australia, January 1975), pp. 14-15.

11/ "New frontiers in international crime prevention", International Review of Criminal Policy, vol. 30 (1972) (United Nations publication, Sales No. E.73.IV.17), p. 5.

12/ The problem of fugitive offenders and the need for extradition laws was also discussed at the United Nations Conference for Collaboration in Crime Prevention in the Commonwealth Caribbean, held in Kingston, Jamaica, 5-11 January 1975.

13/ "New frontiers in international crime prevention", International Review of Criminal Policy, vol. 30 (1972) (United Nations publication, Sales No. E.73.IV.17), p. 5.

14/ Ibid., p. 5.

symptomatic of the extensive corruption existing in the legal systems and judicial administrations of several regions (A/CONF.56/BP/2 - Latin America, para. 36). Corruption is a significant element in the life of both developed and developing countries and is a crucial matter in itself as well as in its generally demoralizing effects on all social, economic and political relations. It is extraordinarily widespread, and thus introduces an element of uncertainty into all planning and plan fulfilment. The widespread awareness among ordinary people of corruption in the criminal justic system tends to dampen their efforts towards achieving national unity. In particular, it decreases respect for and allegiance to Governments and endangers political stability. 15/

35. Most criminal justice systems are equipped, though poorly, to cope with "ordinary" crime and even with aberrational violent conduct. But legislation and law enforcement in most countries are as yet neither adequately designed nor suitably instructed to cope with international crime, organized crime, corruption, white collar crime and corporate crime. In general, it can be said that there is growing recognition, not only among the public but also among the differenct branches of the legal profession and policy makers, that in many inst ces the administration of justice does not live up to its task of preventing and controlling crime and protecting society.

36. This recognition is particularly acute wherever the media have devoted an inordinate amount of attention to crime, criminals and the weaknesses of the system. Indeed, such excessive publicity has sometimes led to conflicts between the media and the administration of justice. In some Asian countries, for example, concern has been expressed about the interrelation between the mass media and judicial procedures. Fair trial and due process might be jeopardized where, due to over-emphasis on publicity, a trial might become a forum for political protest and exhibitionism (A/CONF.56/BP/1 - Asia, para. 20).

37. In the meantime, peoples all over the world are demanding a better quality of living, greater protection of their lives and property, more criminal laws and harsher treatment for offenders. It seems indeed that the existence of crime, the wide discussion of crime, the reports of crime and the fear of crime have eroded the basic quality of life of many people and have distorted the perspective in which the purposes and functioning of the criminal justice system should be viewed. 16/

15/ Gunnar Myrdal, Against the Stream (New York, Vintage Books, 1973), p. 117.

16/ Richard Harris, The Fear of Crime (New York, Frederick A. Praeger, 1969), p. 17.

II. THE CRIMINAL JUSTICE SYSTEM AS A FACTUAL PHENOMENON

38. The initial method for analyzing a crisis situation in a given system is to question the mandates of that system, and to examine how these mandates are being met. In the case of the administration of criminal justice, this would mean a re-examination of the goals and tasks of the criminal justice system. Are these goals and tasks realistic? What are the ways and means of fulfilling these obligations, and to what extent are they being fulfilled? A further method of analysis consists of the screening for unintentional negative side-effects. A third approach examines the element of control that is exercised over and within the criminal justice system. Who is in command, and how is control delegated? This, in turn, leads to questions about the structure of the system itself. Does it function as a system, and how are its components interrelated?

A. Assumptions and expectations

39. Legislators, judicial decision makers and policy makers have certain assumptions and expectations regarding the goals, aims and effectiveness of the criminal justice system. Thus, the system is expected to make laws and to enforce them, to reduce and prevent crime, to protect society, to treat all people equally, to process defendants justly and to rehabilitate offenders. It is supposed to do all this with a minimum of expenditure. It appears, though, that in many places in the world the criminal laws are rather arbitrarily written and arbitrarily enforced; consequently, many people do not feel protected at all, and members of disadvantaged groups are over-represented as "consumers" of the criminal justice system and under-represented as functionaries within the system. It also appers that while the rate of crime increases, most offenders simply are not being rehabilitated.

40. Some of the explanations and answers to this anomaly are provided by the improved statistical reporting methods that have come into use and the new orientation in sociological and criminological research. While many criminologists today are still preoccupied with such traditional concerns as the characteristics, classification and treatment of the offender, a new movement in criminology draws on the findings of studies of "hidden crime" and of research on the selection of offenders for punishment. 17/ The branch of sociology that has most profoundly influenced critical reflection among scholars of criminal law is undoubtedly the one that deals with deviant behaviour. This discipline was the first to entertain the notion that all human beings are deviant, in the sense that all individuals take part in one or several subcultures or non-dominant systems of standards and values, which are at odds with values of the dominant culture.

41. The logical implication of this notion is that some subcultures are obviously more suitable targets of penal law enforcement than others, always bearing in mind that this situation varies from place to place and from time to time and that such

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17/ Eugene Doleschal and Nora Klapmuts, "Toward a new criminology", Crime and Delinquency Literature, vol. 5, No. 4 (New Jersey, United States of America, National Council on Crime and Delinquency, December 1973), p. 11.

a presumption is at variance with the dominant proposition that all individuals should be regarded as equal under the law. 18/ Just as the study of deviant behaviour has led to and has emphasized the process of defining deviance, the study of criminal behaviour has ultimately progressed to an examination of the definition of criminality and the labelling of criminals. Most studies of hidden delinquency have examined the relationship of social class to crime and delinquency. While the evidence is contradictory, some of the more recent studies have come to the conclusion that persons of all classes commit crimes and that no social class is responsible for a disproportionate share of the crimes committed, although the types of crime committed may vary according to social class and, therefore, according to opportunity.

42. Two different strategies have been used in attempts to assess the volume or the number of unreported and unsolved crimes (the "dark figure"): (a) self-report or hidden delinquency studies, which use the method of questioning a representative group in the general research population about the delinquent acts they have committed and whether these have led to a court appearance or not; and (b) victim survey, or victimization studies to determine whether citizens have been victims of crime. 19/ Both kinds of research have, among other results, reaffirmed earlier findings and surmises that the "dark figure" of crime is much larger than the figure for reported crime. They have demonstrated also that crime and delinquency do not vary significantly from one social group to another even though the vast majority of inmates of correctional institutions come from the lower social strata. Such findings have led criminologists to take a closer look at the way in which offenders are selected for arrest, prosecution and punishment.

43. Much harm has been done through a popular but false belief that every criminal is a sick person and that each criminal act committed is the outcome of some personal disturbance or maladjustment. Recent studies concerning hidden criminality have done much to correct our false picture in this regard. They have shown that it may be perfectly normal to commit crimes and that almost everybody commits crimes at one time or another, at least during a certain age period. 20/ Earlier criminological studies had consistently introduced a distortion of the true situation because their emphasis was on those offenders who were caught and punished. The offenders most available for study are, after all, the persistent criminal failures who may have little in common with the able and successful

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18/ C. I. Dessaur, "Introduction and Definition of the Problem", Abstracts on Criminology and Penology, vol. 12, No. 4 (July/August 1972), p. 393.

19/ Roger Hood and Richard Sparks, Key Issues in Criminology (New York, McGraw-Hill, 1971), pp. 13-14. The two main empirical issues of such studies are (a) how much crime of various kinds is there, and what is the relationship between the reported or known crime and the unreported behaviour? and (b) who are the criminals and what is the difference between those officially known and those hidden in conventional society?

20/ Eugene Doleschal, "Hidden crime", Crime and Delinquency Literature, vol. 2, No. 5 (New Jersey, United States of America, National Council on Crime and Delinquency, October 1970), p. 566.

professional criminal. 21/ As one expert has stated, it is becoming increasingly clear that most criminals are created through a process of discriminatory selection, ostracism, stigmatization and dehumanizing punishment. 22/

B. Negative effects of the criminal justice system

44. The results of the recent studies mentioned in the preceding paragraph point directly to some negative effects that the administration of justice was neither designed to entail nor assumed to have. The unique aspect of criminal law is that it imposes sanctions that cause suffering to offenders, whether for purposes of retribution, incapacitation, rehabilitation, or general or special prevention.. However, recent research on the functioning of the criminal justice system and on its effects has demonstrated some other negative effects of the system that thus far either have not been recognized or have been under-estimated and that affect not only the individual criminal but society as a whole.

45. As a consequence, the criminal justice system may be adding to the social injustices that already exist. The judicial system, rather than ensuring special prevention, may well foster criminogenic effects, not only through so-called "contamination" in prisons and other institutions, but also through the reactions of society to the released prisoner, who is often stigmatized for life as a result of what may have been a first and often relatively minor offence. 23/ Decision makers frequently underestimate the impact of the criminal process and the intensity of the negative consequences of the penal stigma on the individual and on his environment. This negative effect may actually aggravate the conditions that may have contributed to his former criminal behaviour. Moreover, the impact of certain penal sanctions, particularly deprivation of liberty, may actually reduce the individual's capacity to readapt himself to a free society.

46. Because of the fact that nearly everywhere in the world the weak and the particularly vulnerable groups are over-represented as offenders in the criminal justice system, the negative social consequences to these groups are totally disproportionate to the objective differences in the social behaviour of various groups within the general population. This also means that the poorest and least privileged groups in society bear a disproportionate share of the socio-economic cost of the system.

21/ Eugene Doleschal and Nora Klapmuts, "Toward a new criminology", Crime and Delinquency Literature, vol. 5, No. 4, (New Jersey, United States of America, National Council on Crime and Delinquency, December 1973), p. 10.

22/ Berl Kutchinsky, "Report to the Council of Europe, Ninth Conference of Directors of Criminological Research Institutes", Perception of Deviance and Criminality (Strasbourg, 1971), pp. 75-79.

23/ See, for example, S. Giora Shoham, Society and the Absurd (New York, Springer Publishing Company, 1974), pp. 157-172.

C. Who controls the criminal justice system?

47. In view of the fact that certain aspects of the criminal justice system involve the distribution of suffering, it is of extreme importance that the system be properly controlled. The persons or authorities that control the system differ from country to country. There is usually a considerable degree of government control, which is delegated, in the first place, to the legislature and the judiciary, and in the second place, to the chief prosecutor's office and to the police. Nevertheless, it is valid to ask what guidelines, priorities and controls are in force with respect to the subsystems. What regulations do law enforcement agencies have to direct them in their choice regarding which laws to enforce, what crimes to investigate, and whom to arrest? The structure of the criminal justice system, especially in developed countries, is an enormous complex of operations that might be described as a system of agents and agencies of social control that often assumes responsibility for dealing with those persons whom it has officially labelled or proposes to label as criminal or delinquent. 24/

48. One of the problems is that it is taken for granted that such a complex structure indeed works as a system, that the several subsystems share a set of common goals, that they relate to each other in a consistent manner and that the interrelationships constitute the particular structure of the system, enabling it to function as a whole with a certain degree of continuity and within certain limitations. 25/ However, in countries where researchers and policy makers have undertaken a critical examination of the structure of their criminal justice systems, they have found that there are few common aims, that there is considerable diffusion of duties and responsibilities and little or no co-ordination between the subsystems, and that there are often differing views regarding the role of each part of the system. In short, they have found a serious lack of cohesion within the systems. Yet, when people talk about the criminal justice system as a whole they implicitly and explicitly assume that the system functions well and is effectively controlled. They also assume that it is a system oriented toward goals that are designed to meet the needs of the community.

D. Reform and change

49. Are today's criminal justice systems basically equipped to serve as institutions of social control in the prevention of crime? Most indications are that they are not. In view of the fact that over-criminalization, arbitrary en enforcement of the laws, over-burdening of the system at all levels, discrimination against the vulnerable, the existence of undue negative side effects for the offenders as well as for the community, and an unmitigated crime problem are still among the major problems of criminal justice systems, it is evident that

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24/ Alvin W. Cohn, "Training in the Criminal Justice Nonsystem," paper presented at the Annual Meeting of the American Society of Criminology, New York, November 1973, p. 1.

25/ Ibid., p. 5.

consideration should be given to the creation of new channels for achieving more effective social control in the prevention of crime.

50. Most current reforms in the field of criminal justice have been along such traditional lines as the institution of improved techniques for the training of personnel as well as for rehabilitation programmes both inside and outside institutions, and the provision of higher salaries and more funds for research designed to uncover weaknesses and to strengthen and improve the system. 26/ The proponents of this kind of reform, which in most instances has not borne significant fruit, defend their efforts by saying that the programmes are on the right track but have never been given a fair trial and that public and legislative inaction are to be blamed for past failures. In the light of past experience and contemporary reality, some researchers believe that it is necessary to institute far-reaching reforms in judicial and correctional systems, to the extent that it is politically viable to do so. Others affirm that most reformers fail to question the basic assumptions of the system, even though they are sincerely interested in relieving human misery. 27/

51. Some scholars of European criminal law lean toward the view that the criminal justice system reinforces through its very functioning the already existing social injustices. Successful implementation of remedial reform might alleviate some of the major deficiencies of the present system, but a number of basic misconceptions about the administration of justice have to be changed. A change in values and a restructuring of the existing social control system are essential if more than a superficial reformation of the system is to be achieved.

52. Although the criminal justice system may reinforce and add to already existing social injustices, it does not create them and it need not reinforce them. However, the quest for justice will continue to be frustrated so long as there is failure to recognize that justice for the criminal is dependent upon and is largely derived from social justice. Social ills should be remedied not because they give rise to crime, but rather because of what they are inherently. 28/ Nevertheless, it has long been recognized that the penal system of any given society is not an isolated phenomenon subject to its own laws but rather an integral part of the whole social system sharing both the aspirations and the defects of that society:

> "The futility of severe punishments and cruel treatment may be proven a thousand times, but as long as society is unable to solve its social problems, repression, the easy way out, will always be accepted." 29/

26/ American Friends Service Committee, Struggle for Justice (New York, Hill and Wang, 1971), p. 11.

27/ Richard Quinney, Critique of Legal Order: Crime Control in Capitalistic Society (Waltham, Massachusetts, Little, Brown and Company, 1974), p. 16.

28/ Leslie Wilkins, "Crime in the world of 1990", Futures, September 1970, p. 208.

29/ Georg Rusche and Otto Kirchheimer, Punishment and Social Structures (New York, Columbia University Press, 1939), p. 208.

The social reality of the internal functioning of the criminal justice system and its external effects are, in many instances, very different, in a negative sense, from the assumptions and expectations of those persons who are responsible for the system and interested in it. Fundamental changes in the administration of criminal justice are therefore extremely urgent.

E. The need for feedback

53. A major factor that has led to the present short-comings of the criminal justice system and that impedes effective change is the lack of an effective flow of information between the various components of the system. In this respect, the interchange of information among all participants is essential for the operation of an effective system of social control. There are basically two forms of feedback, natural feedback and statistical feedback. The first can be easily observed in such informal control situations as those between parents and children, teachers and pupils and between village elders and deviant villagers. In modern criminal justice systems, however, this natural exchange of information is no longer possible, except in some individual cases. Thus, a police officer frequently does not know whether his arrestee stood trial, or what disposition was made of the case. The prosecutor and the judge usually have no idea what happened to the man who was sentenced to imprisonment long ago, and neither the correctional officer nor the parole officer knows what the judge had in mind when he meted out the sentence. Nor does the legislator usually have any idea of the practical effects of his criminal legislation.

54. Statistical information systems have been developed in several countries, but they are still rather rudimentary. In most cases, where data systems exist, they are used by the various subsystems mainly for their own particular purposes. What is most urgently needed is detailed information regarding the flow of clients through the judicial process from beginning to end. One author proposed that all parts of the criminal justice system should be accountable to the public at large, to the victim and to the offender alike. 30/ Moreover, each component of the system should be accountable to the one immediately preceding it. He also suggested that the police should institute procedures for following up cases so that they may be able to evaluate their own operation, and be better informed regarding the consequences of their investigative work. In his view, the district attorney, the courts, probations services, and corrections and parole agencies should all report directly to the police on the progress of the offender through the criminal justice system. In addition, more systems analyses and cost benefit studies should be undertaken in order to supply the component subsystems with useful data on the functioning of the system as a whole.

30/ Marvin E. Wolfgang, "Making the criminal justice system accountable", paper presented at the eighteenth Annual National Institute on Crime and Delinquency, Philadelphia, 7 June 1971, p. 16.

III. CHANGES IN CRIMINAL LEGISLATION AND JUDICIAL PROCEDURE

55. The restraint imposed on the power of the State is an essential hallmark of the criminal law. It would indeed be unjust and unreasonable to inflict upon a wrongdoer more harm than necessary. Accordingly, when an incident is investigated by the police and goes through the different stages of the criminal process, the onus should rest upon officials to show why a case should proceed further. Indeed, the rules of evidence and the procedures of many legal systems are based on this assumption. At different stages in the criminal justice process, opportunities arise for law enforcement officers to drop a case, for the prosecution to suspend charges pending settlement at the pre-trial level, or for the judiciary to exercise the discretion to withhold trial, conviction or sentence, or to impose a sanction other than imprisonment.

56. A case should be critically examined at each stage of the criminal process instead of being passed on automatically to the next stage. Although in some legal systems this might be a departure from existing law and practice in some respects, it would appear to be in accord with reason, logic and justice. Too many forms of socially problematic behaviour have been absorbed by the criminal law process in recent history. Therefore, restraint in the first instance should be used at the legislative level, and guidelines should be devised for the criminalization and decriminalization of behaviour that is unacceptable but not necessarily deserving of criminal punishment (see para. 63, below). A secondary means of alleviating the burden of the court system and reducing or eliminating some of the counter-productive stigmatization of certain types of offender can be found in the various projects designed to divert the offender from the criminal justice process to semi-legal, social and community services. Judicial procedure is another area in which restraint can be successfully exercised, particularly in sentencing procedures. Emphasis on reform and improvement in the areas mentioned could strengthen the administration of justice considerably and enhance the effectiveness of the criminal justice system.

A. Decriminalization and depenalization

57. Two processes that are attracting increasing attention, especially in cases where criminal justice systems are too overloaded to deal effectively with serious criminality, are "decriminalization" and "depenalization". The first of these terms is used to describe the legislative process that renders lawful certain acts that previously had been prohibited by criminal law. The second describes the legislative process through which certain criminal offences are converted into matters to be dealt with by administrative or civil agencies and existing penalties are replaced by non-penal remedies. 31/ In both developing and developed countries

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31/ See, for example, Sixth Conference of European Ministers of Justice, CMJ (70) CR Final, (Strasbourg, Council of Europe, 1970); and Knud Thestrup, "Decriminalization, communication of the Sixth Conference", CMJ (70) 6 (Strasbourg, Council of Europe, March 1970). See also The Decriminalization: Transactions of the Bellagio Colloquium, 1973 (Milan, Centro Nationale di Prevenzione e Difensa Sociale, 1975).

there is a trend toward decriminalization and and depenalization, but oddly enough, the reverse process is also occurring at the same time, especially in the field of offences that certain jurisdictions currently deem particularly heinous.

58. The most urgent calls for depenalization and decriminalization are in the areas of victimless crimes, intra-family conflicts and juvenile delinquency. In many countries, such victimless crimes as public intoxication, vagrancy, gambling, pornography, narcotics offences, prostitution, sexual misconduct between consenting adults and such pseudo-victimless offences as abortion and euthanasia, constitute more than 50 per cent of the offences brought to the attention of the police. It is, of course, fully recognized that the term "victimless crime" involves a concept that is debatable from several points of view. It is also being recognized in many countries that conciliation procedures are superior to legal procedures for dealing with intra-family offences, ordinarily arising out of disputes precipitated by domestic tension. In countries where very substantial resources of manpower, money and material are devoted to victimless crimes relating to public order and morality, it is being realized that these resources could be used more efficiently to combat the more serious offences against persons and property. It should be noted, however, that there are some countries where there is a strong interrelationship between laws and moral standards, with the result that decriminalization movements are not regarded as being appropriate. Recently, legislation against incest was introduced in one of these countries for the first time.

59. In the Scandinavian and several West European countries, demands have been made for the depenalization of such offences as traffic violations, libel and slander, shoplifting petty theft and non-payment of child support. The latter is a typical example of an offence that could be dealt with much better by a family court, and of an instance where everyone involved suffers either emotionally or financially when the matter is handled by the criminal justice system. In some countries, traffic violations have been transferred to administrative tribunals or agencies. In terms of the resolution of conflicts, many of the same effects might be achieved through civil or administrative procedures such as those involving restitution or payment of damages; but more important is the fact that these procedures do not have the stigmatizing effects inherent in the criminal law. 32/

60. It was pointed out in several of the regional preparatory meetings that decriminalization could be a specious device that merely shifts the responsibility from one service to another and that it would be necessary in some cases for decriminalization or depenalization to be accompanied by alternative provisions, regardless of whether they might turn out to be more or less costly than established procedures. It was the view, therefore, that cost-benefit studies were definitely needed before attempting decriminalization and that agreement on the distribution of costs between governmental and private agencies was necessary.

32/ See, for example, Amnon Rubinstein, "The victim's consent in criminal law, an essay on the extent of the decriminalizing element of the crime concept, and John P. Reid, "Civil law as a criminal sanction", Studies in Comparative Criminal Law, E. Wise and G. O. W. Mueller, eds. (Springfield, Illinois, Charles C. Thomas, 1975).

61. Some countries have expressed the fear that decriminalization and depenalization may themselves precipitate deterioration of behaviour by proclaiming, in effect, that certain forms of behaviour no longer warrant penalization. Another drawback associated with decriminalization and depenalization is the possibility that they might entail erosion of legal rights inherent in criminal procedure and in criminal justice. Erosion of this nature has been experienced in some of the countries that transferred juvenile delinquency cases from criminal courts with traditional legal safeguards to juvenile courts where, under the guise of patria potestas, these legal safeguards were not available.

62. In many countries, the values which the laws have supposedly been designed to protect are seldom re-examined. In some developing countries the effects of imported and unadapted legislation had not been sufficiently reviewed with regard to their relevance to modern conditions, but these countries now have an opportunity to adapt laws, adjust government machinery and devise new and imaginative solutions to crime. Both developed and developing countries are faced with the problem of defining boundaries in that vague frontierland which separates illegal acts or omissions from the kind of deviant behaviour that can be left to other forms of social control. Interwoven with this problem are such issues as the need to protect the human rights not only of the victims of criminal acts but also of third parties and of other groups of deviants that are likely to be subjected to constraints outside the governmental justice system.

63. There are certain criteria for criminalization that might be used in the re-examination of existing legislation and the enactment of new statutes if it is assumed that the objectives of legislation against criminal acts are to keep the crime rate as low as possible, to avoid over-burdening the criminal justice system, to criminalize only those forms of behaviour that might successfully be handled by the criminal justice system and to cope more effectively with certain socially unacceptable forms of deviant behaviour by referring them to other agencies. On the basis of these assumptions, such criteria might include stipulations to the effect that:

(a) The type of behaviour to be criminalized is contrary to the widely held social norms that are deemed to be legitimate by the authorities;

(b) It can reasonably be expected that the criminal justice system would be capable of handling the conduct in question at an acceptable social and economic cost;

(c) No other administrative or social policies that could achieve acceptable results with less interference in the lives of the citizens are available;

(d) It is improbable that unintended but predictable side effects of the proposed legislation would outweigh the expected gains.

B. **Diversion programmes**

64. Decriminalization unfortunately has not always proved to be successful. Even when offences are eliminated, there often remains problematic behaviour that has to be dealt with and that may lead to liability for other charges. Diversion, in this context, represents an approach that seeks solutions in reducing to a minimum the involvement of the traditional criminal process and by emphasizing the use of conciliation and mediation for the settlement of problems, while recognizing that problematic behaviour cannot simply be wished away. The full force of the criminal process can thus be restricted to offences causing serious public concern. In short, diversion is concerned with persons who, under existing law, are properly within the criminal justice system and over whom the system continues to exercise authority until the conditions stipulated are satisfactorily completed. 33/

65. Official diversions from the criminal process are not new. As early as the late nineteenth and the early twentieth centuries, for example, some countries established juvenile jurisdictions through which a significant proportion of offenders was withdrawn from the criminal process and their cases handled by alternative and less onerous methods. Among other examples are the imposition of suspended sentences and the institution of probation and parole services. Diversion is a means of reducing the volume of persons going through the entire process of arrest, arraignment, trial, conviction and sentencing, while at the same time attempting to interrupt the cycle of recidivism among certain offenders without imposing the handicap of a criminal record.

66. The diversion method is used for a wide variety of purposes. Canadian experimentation has resulted in emphasis of the following types:

(a) Community absorption - individuals or particular interest groups deal with problems in their area, privately and outside the sphere of police or court intervention;

(b) Screening - police refer an incident back to the family or community or simply drop a case rather than press criminal charges;

(c) Pre-trial diversion - instead of proceeding with charges in the criminal court, a case is referred for handling at the pre-trial level through settlement or mediation procedures;

(d) Alternatives to imprisonment - the counterproductive effects of imprisonment are avoided by increasing use of such alternatives as absolute or conditional discharges, restitution, fines, suspended sentences, probation, services to the community, partial detention in a community-based residence, or programmes of release on parole. 34/

33/ Nora Klapmuts, Diversion from the Criminal Justice System (New York, National Council on Crime and Delinquency, 1973), p. 4. The exception is community absorption programmes, which deal mainly with juveniles outside the police and the court.

34/ Law Reform Commission of Canada, "Studies on diversion" (Ottawa, Information Canada, 1975), p. 4.

67. Most of the diversion programmes that have been instituted fall into the first three categories. The screening and pre-trial diversion methods depend on police and prosecutorial discretion that could, in some cases, become a challenge to the ideal of equal justice under law. The policies upon which the decisions are based should therefore be stated publicly and should be observed in all cases. To ask the police and prosecutors to screen cases and to divert them from trial according to stated policies and guidelines for decision can break new ground without challenging the existing sense of justice. While it may be difficult and frustrating in some cases to institute such policies and guidelines, diversion is essential if the administration of these programmes is to be visibly fair and accountable.

68. The Canadian Law Reform Commission, which has been engaged in studies covering all aspects of the criminal process, has recommended the following diversion policies and criteria. First, the decision to indict or not to indict and the decision to try or not to try must rest on some rational basis that will withstand examination. At the police level, such policies should, as far as possible, identify situations calling for an indictment rather than for screening and should establish criteria for the decision to file charges rather than to screen. The cases that might well be screened rather than processed through the filing of charges are identifiable from current police practices and include, among others, incidents involving juveniles or the elderly, family disputes, misuse of alcohol or drugs, incidents involving mental illness or physical disability, and nuisance-type incidents.

69. The criteria to be considered in deciding whether or not a charge should be filed might include the following elements:

(a) The offence is not so serious that the public interest demands a trial;

(b) The resources necessary to deal with the case by the screening process are reasonably available in the community;

(c) Alternative means of dealing with the incident are likely to be effective in preventing further incidents by the offender in the light of his record and other evidence;

(d) The impact of arrest or prosecution on the accused or his family is likely to be excessive in relation to the harm done;

(e) There was a pre-existing relationship between the victim and offender and both are agreeable to a settlement. 35/

70. In order to decide whether to proceed with an indictment or divert given cases for settlement at the pre-trial level, a policy of pre-trial intervention might be publicly stated and should:

35/ Ibid., pp. 6-7.

(a) Identify situations that warrant pre-trial intervention rather than trial;

(b) Establish criteria for the decision to proceed to trial rather than divert for pre-trial settlement.

Keeping in mind the need for sound police screening practices, the need to give a role to the victim and to community interests in the disposition of cases and the need to take advantage of police and prosecutorial experience, the following factors may be useful in developing a set of guidelines for the establishment of pre-trial diversion programmes:

(a) The incident being investigated cannot be dealt with at the police screening level;

(b) The circumstances of the event are serious enough to warrant prosecution, and the evidence would support that step;

(c) The circumstances show a prior relationship between the victim and offender;

(d) The facts of the case are not substantially in dispute;

(e) The offender and victim voluntarily accept the offered pre-trial settlement as an alternative to prosecution and trial;

(f) The needs and interests of society, the offender and the victim can be served better through a pre-trial programme than by conviction and sentence;

(g) Trial and conviction may cause undue harm to the offender and his family or exacerbate the social problems that led to his criminal acts. 36/

71. The number and scope of diversion projects have grown significantly in recent years. Most diversion programmes are instituted at the pre-trial level and are directed at juveniles or young adult offenders involved in delinquent or near-delinquent acts that would not warrant imprisonment in any event. Increasingly, such projects are being given formal encouragement through official programmes or through legislation. The criminal justice system stands to benefit from this conversion as much as the defendants. Diversion programmes have proved to be "curative" in many respects. They are more humanitarian than the regular approaches without being less efficacious in terms of control of the crime rate and the correction of offenders. Above all, they are almost universally less expensive than traditional methods for the disposition of cases.

72. The diversion to pre-trial disposition of the cases of some young persons

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36/ Ibid., p. 11.

might entail the advantage of engaging these persons in restitution efforts, as well as involving them in counselling, employment, job training or training in the "life skills" that so many of them lack. As an additional benefit, this method encourages community support of the criminal justice system to a degree that was not always possible under traditional methods. Thus, professionals, para-professionals, ex-offenders and ordinary citizens are encouraged to join in rendering services to the criminal justice system inasmuch as diversion programmes derive their strength from community participation. 37/

73. It should be noted that diversion programmes entail certain risks and that care should be taken to inform all participants of their right to trial whenever they propose to contest a charge of criminal liability. It should be borne in mind that diversion projects are applicable only to those who would normally propose to plead guilty or who expect to be convicted on the basis of all available evidence. Diversion should be firmly grounded on sound sentencing principles and governed throughout by the exercise of restraint; and it should also be the responsibility of the officials concerned to justify the decision to proceed with a case to the next more serious level. There should be no compromise with the basic propositions of the Universal Declaration of Human Rights, proclaimed in General Assembly resolution 217 A (III) of 10 December 1948, nor with the constitutional principles of the State in question.

C. Sentencing procedures

74. Although diversion procedures may provide an alternative solution for certain kinds of cases, the more serious cases of criminality must still be handled by trial, with the possibility of imprisonment as a sanction where other sanctions might fail; sentencing, then, occupies a central position in the administration of justice. The decisions made at the sanctioning level not only have important consequences for offenders, but they also affect the entire criminal justice system. Sentencing is one of the more difficult and complex issues for discussion in an international context because sentencing procedures vary widely.

75. First, the function of the judge in sentencing and the relationship between the judge and the defendant, in particular, are different in adversary, accusatorial, inquisitorial and indigenous systems of criminal procedure. Secondly, the actual power to determine the sentence rests with different sentencing "agents" in different jurisdictions: it may be a single judge, a panel of judges, a layman, or a mixed panel of judges and laymen. Some jurisdictions have jury sentencing, or shared decision-making by the judge and jury. In other jurisdictions, the judge is assisted by experts or by a sentencing board. In most indigenous courts, the "elders" decide on the disposition of the case. Thirdly, each country has a different range of prescribed or possible custodial and non-custodial sanctions. The most obvious differences are in the length of sentences and between fixed-term sentences and indeterminate sentences. Some codes

37/ Ibid., p. 24.

will offer only one sanction, while others will provide a range of options. Differences also arise, for example, from the recognition given by various codes to aggravating and mitigating circumstances, to special sentencing laws, or to the possibility of additional and cumulative penalties. 38/ In the fourth place, there are wide variations in the degree of freedom of choice or discretion allotted to the sentencing tribunal. Some laws confer wide discretion and others provide precise procedures for calculating the sentence. In the fifth place, the role of the judge does not necessarily end with the pronouncement of sentence. In most States the correctional system takes responsibility for the convicted person as soon as a judge passes a sentence. But in several countries - France, Italy, Portugal and the Federal Republic of Germany, among others - supervision of the execution of the sentence is the prerogative of the criminal court, and in some instances, of a special judge.

76. For example, in 1953 the Federal Republic of Germany instituted a special judgeship to supervise the execution of sentences passed on juveniles. This judge works closely with the directors of penal establishments on matters connected with the implementation of the sentence and later on takes decisions in connexion with the administration of juvenile sentences, such as the granting of conditional release and the supervision of conditionally sentenced or conditionally released offenders. In 1969, similar chambers for matters connected with the execution of sentences of adult offenders were created by the legislature. Such chambers were added to the regional courts that have jurisdiction over penal establishments in which adults serve prison sentences. These courts have jurisdiction over such decisions as those concerning the parole and unconditional release of offenders, and in addition, exercise legal control over the prison administration at the request of the prisoner. 39/

77. The task of the sentencing judge (or other sentencing body) is highly complex. The different theories concerning the aims of punishment or treatment of offenders present many competing considerations that cannot always be reconciled. The judge in a criminal trial today is bound to be concerned with wider considerations than the mere application of the law to a given case. He must consider the needs of society and this, in turn, means that he has to become involved to some extent in a dialogue with others about the kinds of values and attitudes that should be promoted and protected by the administration of criminal justice. He also needs to be aware of the teachings of modern psychology and sociology, and of their relevance to criminal law. 40/

38/ Many jurisdictions have special sanctions for the criminally insane, recidivists, or dangerous offenders.

39/ "Draft report of Sub-Committee No. XXII (Sentencing) of the European Committee on Crime Problems", DPC/CEPC XXII (74) 1 Rev. (Council of Europe, Strasbourg, 12 March 1974), p. 25. See also Christian Nils Robert, "Le controle judicaire dans l'application des sanctions pénales en allemagne" (RFA), Revue Internationale de Criminologie et de Police Technique, vol. XXVII, No. 1 (1974), pp. 31-38.

40/ Ibid., p. 28.

78. The fundamental problems in sentencing arise from lack of agreement on the social purposes that sentencing should serve, lack of evidence regarding the effectiveness of penal measures in achieving these objectives, and lack of uniformity in the way present knowledge is used. 41/ Moreover, most legislatures have given the courts enormous discretionary power as far as sentencing is concerned, but provide no criteria or guidance in the exercise of that power. This situation leads to a disparity between sentences imposed for cases that do not appear to be substantially different from one another. The seemingly unjustified imposition of unequal sentences for the same offences or for offences of comparable seriousness has brought widespread criticism and caused great resentment on the part of convicts and disrespect for the law.

79. For a long time criminologists paid scant attention to the sentencing process, their major concern being with the effects of sentences on offenders. More recent studies, however, have focused on the disparity of sentences. In the studies undertaken so far, three different methods of evaluation have been used. In the first, comparisons were made between the proportion of offenders receiving various sentences in different courts, without attempt to assess the extent to which the courts receive similar cases. The second method took very large numbers of cases and assumed that the different types were distributed at random between the judges, so that each had a similar proportion of trivial or serious cases to handle. The third method attempted to monitor sentencing for different offenders coming before different judges through matching or prediction techniques. 42/

80. One researcher who studied the sentencing behaviour of judges in Ontario and was especially concerned with the question of how judges make their decisions found that there were considerable differences among judges in nearly every aspect of their decision-making. He concluded that judges differed in their penal philosophies, in their attitudes, in the ways in which they defined what the social system expected of them, in the way they used information and in the sentences they imposed. 43/ Considerable variation was found to exist among magistrates as a

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41/ John Hogarth, Sentencing as a Human Process (Toronto, University of Toronto Press, 1971), p. 5.

42/ See Roger Hood and Richard Sparks, Key Issues in Criminology (New York, McGraw-Hill, 1971), pp. 141-142. See also F. J. Gaudet, "The sentencing behaviour of the judge", V. C. Branham and S. B. Kutash, eds., Encyclopaedia of Criminology (New York, Philosophical Library, 1949), pp. 449-461; E. Green, Judicial Attitudes in Sentencing (London, Macmillan, 1961); S. Shoham, "Sentencing policy of criminal courts in Israel", Journal of Criminal Law, Criminology and Police Science, vol. 50 (1959), pp. 327-337; H. Mannheim, J. Spencer and G. Lynch, "Magisterial policy in the London Juvenile Courts", British Journal of Delinquency, vol. 8 (1957), pp. 13-33, 119-138; R. G. Hood, Sentencing in Magistrates' Courts (London, Stevens, 1962); John Hogarth, Sentencing as a Human Process (Toronto, University of Toronto Press, 1971); and S. C. Versele, Motivations et röles dans le monde judiciaire (Centre de Sociologie de Droit et de la Justice, Institut de Sociologie, Université libre de Bruxelles, 1971).

43/ John Hogarth, Sentencing as a Human Process (Toronto, University of Toronto Press, 1971), p. 361.

group, but individual magistrates appeared to have worked out a fairly consistent, rational sentencing policy. Consistency was achieved, however, through the mechanism of selectivity. Magistrates chose certain kinds of information selectively, interpreted this information selectively, ascribed importance to certain features of the case to the exclusion of others, and selected from among the various purposes in sentencing those that were more consistent with their personal values and subjective ends. 44/

81. If the sentencing process is to be improved, fundamental changes will have to be made in existing practices. However, rather than resorting to drastic curtailment of discretionary power in sentencing, attempts should be made to promote uniformity by structuring and directing discretion along specific lines. Through legislative change, many offences could be simplified and redefined so that they would relate to a narrower range of conduct. The maximum penalty provided could then bear a closer relationship to the type of conduct proscribed. 45/ As another device for developing uniformity in the application of criteria and in the evaluation of circumstances, sentencing councils and seminars have been held in which judges study and discuss cases coming before them for sentencing. In different cities and regions in North America, judges participate in sentencing seminars or regular sentencing councils. 46/

82. Lawyers, and judges in particular, should be provided with training and the knowledge required to make the best use of information derived from the behavioural sciences. In addition, training programmes should be available that would enhance the perceptual skill, human sensitivity, and critical ability of judges and magistrates in handling information and in assessing the results of research concerning the effectiveness of different types of penal measures. The purpose of such a course would be to develop a greater level of sophistication among judges and magistrates in their approaches to sentencing problems. 47/

83. Another way of guiding the use of discretion in sentencing would be by requiring that the reasons for imposing a sentence that deprives an offender of his liberty be stated in writing. This requirement would help to promote uniformity in the application of criteria and in the evaluation of pertinent factors. It also would be an aid to greater rationality in sentencing and a guide for judges in cases of appeal. In addition, it might be not only of therapeutic value for the offender but also of help to correctional authorities. 48/

44/ Ibid., p. 378.

45/ The American Law Institute, in its Model Penal Code of 1962, has indeed simplified and standardized the grading of offences for sentencing purposes.

46/ Law Reform Commission of Canada, Studies on Sentencing (Ottawa, Information Canada, 1974), p. 25.

47/ John Hogarth, Sentencing as a Human Process (Toronto, University of Toronto Press, 1971), p. 390.

48/ Law Reform Commission of Canada, Studies on Sentencing (Ottawa, Information Canada, 1974), p. 26. See also the new Penal Code of the German Federal Republic of 1 January 1975, which states Principles of Sentencing in Art. 46.

Legislation could be enacted that would discourage the use of imprisonment by clearly stating that it is to be used only as a last resort.

84. The most important legislative change that could be made, however, relates to the establishment of criteria for the selection of particular types of sentences in specific types of situations. In its studies on sentencing, the Canadian Law Reform Commission stated at the outset that fairness and rationality in sentencing would be encouraged by a legislative statement of principles and criteria. The Commission suggested that State intervention in deciding questions of sanctions be limited so that: (a) the innocent are not harmed; (b) dispositions are neither degrading, cruel nor inhuman; (c) they are communsurate to the offence; (d) they take into account restitution or compensation for the wrong done; and (e) similar offences are treated more or less equally. The Commission has drafted criteria for a Sentencing Guide to be considered by courts in deciding whether a custodial or non-custodial sentence is appropriate and has expressed the view that imprisonment should be used with restraint, given its doubtful effectiveness in reducing recidivism and its high economic, social direct and indirect cost.

85. Accordingly, it was suggested by the Commission that as a rule non-custodial sentences should be imposed, unless otherwise indicated, on the basis of the following criteria:

(a) The gravity of the offence;

(b) The number and recency of previous convictions;

(c) The risk that the offender might commit another serious crime during his sentence unless he is imprisoned.

The Commission then recommended that the following factors ought to be accorded weight in favour of withholding a custodial sentence: 49/

(a) The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property;

(b) The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property;

(c) The defendant acted under strong provocation;

(d) There were substantial grounds which, though insufficient to establish a legal defence, tended to excuse or justify the defendant's conduct;

(e) The victim of the defendant's conduct induced or facilitated its commission;

49/ In the United States of America, such factors have also been proposed in Section 1301 of the Study Draft of a New Federal Criminal Code (Title 18, United States Code) (Washington, D.C., Government Printing Office, 1970).

(f) The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury that was sustained;

(g) The defendant has no history of prior delinquency or criminal activity, or has led a law abiding life for a substantial period of time before the commission of the present offence;

(h) The defendant's conduct was the result of circumstances unlikely to recur;

(i) The character, history and attitudes of the defendant indicate that he is unlikely to commit another crime;

(j) The defendant is particularly likely to respond affirmatively to probationary treatment;

(k) The imprisonment of the defendant would entail undue hardship to himself or his dependants;

(l) The defendant is elderly or in poor health. 50/

86. Decisions regarding sentencing are usually taken in closed sessions, and in many jurisdictions, once rendered are subject to little or no review by higher authorities. 51/ In evaluating the quality of justice in sentencing, considerable emphasis should be given to devising techniques that would render the decision-making process more open, more visible and more accessible to the community. One way of maintaining contact with the community and its values is to have individual citizens from the community sit with the sentencing judge. This has been done in Denmark for a number of years with considerable support from the community. In the lower courts of the Sudan, the whole courtroom audience is able to participate in the trial and sentencing process. Citizen participation in the sentencing process may raise a problem of increased disparities in sentencing, but this can be reduced by the establishment of criteria and standards for sentencing and of provisions for the review of cases on appeal. Research on sentencing procedures and rationales has shown that policy making in this area can no longer be based on conventional wisdom. The improvement of sentencing procedures seems to depend to a large extent on the establishment of continuous research and evaluation of the effectiveness of differerent penal measures, and on the communication of the results of such research to the courts and correctional agencies.

50/ Law Reform Commission of Canada, Studies on Sentencing (Ottawa, Information Canada, 1974), pp. 16-17.

51/ See, for example, Dutch Code of Criminal Procedure, Art. 404; Code of Criminal Procedure of the Federal Republic of Germany, Art. 296, 331 and 358; French Code of Criminal Procedure, Art. 497 and 515.

IV. OTHER FORMS OF SOCIAL CONTROL IN THE PREVENTION OF CRIME

87. Formal and informal social controls extend to every conceivable social, legal, private and public institution, including most prominently the family and the school. There are many people who argue that any programme that is designed to improve society - whether through more equitable distribution of income, better education, more social welfare services, more employment facilities, the elimination of forms of discrimination or any other measure - contributes to social control and crime prevention to the extent to which it tends to rectify social injustices and to remove or lessen their criminogenic influence. As has been said earlier in this working paper, the criminal justice system is but a minor part of the mechanism for the social control of crime.

A. Community organization and public participation

88. It is necessary to consider the legislative, procedural and judicial tasks that can be delegated to, or shared with, other legal and social services or community organizations. At both the Third and Fourth United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, agenda items have dealt with preventive action by communities, in particular those relating to the planning and implementation of medical, police and social programmes (A/CONF.26/2), with social forces and the prevention of criminality, in particular as they refer to the public, the family, educational facilities and occupational opportunities (A/CONF.26/3; and with the participation of the public in the prevention and control of crime and delinquency (A/CONF.43/2). In the respective background papers, "community" was defined as "a relatively small group of persons living in a particular area and bound together by mutual interests", and "community preventive action" in the field of crime prevention and control was taken to embrace programmes of action planned and implemented at both the local and national levels. Public participation was understood to encompass all the ways in which community groups assist in the prevention of crime and treatment of offenders.

89. The Fourth Congress actually focused on public participation in a more narrow sense, in its concentration on aspects of community group participation in the work of the police, of adult and juvenile courts, and of agencies and institutions for the treatment of convicted adults and adjudicated cases of juvenile offenders. It distinguished four kinds of public participation: (a) public support for social defence programmes; (b) public co-operation with social defence programmes (auxiliary police, dissemination of information about crime); (c) delegation of certain tasks of the criminal justice system to community groups (neighbourhood organizations, comradeship courts, probation and after-care functions); and (d) autonomous crime prevention functions assumed by community groups (for example, vigilante groups taking the law into their own hands and community groups trying to deal independently with alcoholics and drug abusers).

90. In the discussion of forms of social control that could contribute to the control of crime now exercised by the criminal justice system, or that could take over parts of the tasks performed by that system, a distinction should be made between non-penal legal institutions, such as those dealing with administrative or civil procedures; existing formal services, such as those provided by institutions for education, mental health, youth services and public and private social services; and group as well as individual participation by members of the public. It was pointed out that in some countries, such offences as traffic violations had been depenalized and transferred to administrative agencies, that in many other countries institutions of formal social services collaborated closely with the relevant components of the criminal justice system, and that in some European and Asian countries the probation and parole services are private organizations. 52/

B. Traditional controls in developing countries

91. There seem to be great differences among the various countries regarding the manner of formal and informal participation in functions of social control and in the sharing of these functions. Generally speaking, developing countries seem to have more alternative controls at the level at which adjudication is made, while in developed countries there has been an increase in alternative controls at the pre-trial and post-trial stages. In many developing countries, several forms of traditional controls are still in use. Among these are village councils, customary courts, assessors, technical advisers and tribal "elders". There are many cultural variations among these groups. In a number of instances, these traditional forms of control are functioning simultaneously with temporary criminal justice systems. 53/ In other developing countries, traditional forms of control are incorporated in modern systems. Thus, in Sierra Leone or in the Sudan, a good majority of persons will lodge complaints with the customary courts rather than with the police. Village committees in Pakistan, called the islahi or mohallah committees, that establish regulations and deal with misconduct of local villagers, are an example of traditional forms of control functioning outside the ordinary criminal justice system. The jirga system in Pakistan is an example of elders who are legally empowered to adjudicate even such serious offences as attempted murder. The barrio council system in the Philippines works in a similar fashion. In the administration of criminal justice, the traditional form of tribal village panchayats in India has legal authority and its adjudication is assured, making justice cheap and prompt, while reflecting at the same time the cultural mores and customs of tribal groups. The village panchayats have been delegated powers to dispense justice in simple civil and criminal matters. 54/

52/ See, for example Rehabilitation Bureau, Non-Institutional Treatment of Offenders in Japan (Ministry of Justice, Japan, 1970).

53/ Sevérin-Carlos Versele, "Public participation in the administration of criminal justice", International Review of Criminal Policy, vol. 27 (1969) (United Nations publication, Sales No. E.70.IV.7), pp. 9-17.

54/ S. D. Gokhale, "Youth, crime and social control", paper presented to the working group of experts on the preparation for agenda item 2 of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Reno, Nevada, 3-6 April 1975, p. 7.

92. Some customary courts as well as some modern courts in developing African countries use such traditional forms of settlement as reconciliation and compensation proceedings, of which the blood-money or dia procedure in the Sudan is a typical example. As one observer of African legal procedures pointed out, reconciliation is used as an extraordinary sanction. In traditional English society, reconciliation proceedings were common. In order that this power or method for conflict resolution might be used more often in modern African courts, more investigative research needs to be done and much learned about methods of traditional reconciliation, compensation, and procedures, such as "compounding" that are used in northern Nigeria and India. 55/

93. In any attempt to discuss the future development of African criminal justice processes, it is imperative to give full attention to the potential of customary law and, in particular, to the sanctions and procedures of customary law; and to continue to assess their relevance for the reform of the foreign-imposed codes which continue to be in force in African nations. 56/

C. Public participation in countries with a centrally planned economy

94. In most developed countries public participation and community intervention are exercised on an ad hoc basis. In countries with centrally planned economies, public participation in judicial procedures and the resocialization of offenders are usually important aspects in combating criminality. Thus, in the Byelorussian Soviet Socialist Republic, where the application of penalties of deprivation of liberty has been considerably restricted and sentences involving deprivation of liberty have been reduced in length, the criminal code lays down the procedures and conditions for absolving a person from criminal responsibility and transferring the case to a comradeship court or for placing the guilty person in the care of a public organization or of a working people's collective. Moreover, when it is considered that the guilty person does not constitute a great social danger, such a person may, at the request of a public organization or a working people's collective, be absolved from criminal responsibility and placed in the care of the public organization or working people's collective on whose application for reform and re-education the procedure had been instituted. 57/

95. A rather radical change in the development of the social control of crime is taking place in Cuba where, after the revolutionary transformation of Cuban society with its impact on the legal treatment of Cuban citizens, a comprehensive legal system based upon new socio-economic relations has begun to emerge. Some of the principles upon which this new legal system is founded are: that most crime is caused by the individual's inability to acquire the basic socio-economic

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55/ G. H. Boehringer, "Aspects of penal policy in Africa, with special reference to Tanzania", Journal of African Law, vol. 15 (London, Butterworths, 1971), pp. 202-203.

56/ Ibid., p. 206.

57/ V. A. Shkurko, "The improvement of criminal legislation as a factor in the prevention of crime", International Review of Criminal Policy, vol. 30 (1972) (United Nations publication, Sales No. E.73.IV.17). See also A. Fonyo, T. Földvari and T. Horvath, "Evolution of methods and means in the criminal law of the Hungarian People's Republic: national report for the Eleventh Congress of the International Association of Penal Law" (1974), chap. III.

necessities and that uncivilized behaviour can only be reduced when these necessities are satisfied on an equal, non-competitive basis; that people acquire an understanding and respect for the law when they participate in the formulation and administration of the legal system; and that the rehabilitation of offenders is more important than mere capture or punitive isolation. 58/ Prior to the enactment of a major law, masses of people discuss and vote on it. This concept of a "people's legislature" attempts to find out what the masses really think of new laws and whether they understand them in depth and, consequently, are able to vote on them in true conscience.

96. The principle of mass participation and administration is also deeply embedded in the court structure of a number of socialist countries. Lay judges sit on the lowest and the highest courts in these countries. Lay and professional judges are elected at assemblies of residents living in the neighbourhood or of workers in the work places where the court is to be based. The elected terms are finite, and may also be terminated before completion if the people are not satisfied with the judge's performance.

D. Decentralization of social control in the prevention of crime

97. In some Scandinavian countries, there is a trend towards changing from a centralized to a decentralized legal system, from professional to lay participation and from a criminal justice to a civil justice system. The proponents of such changes are aware of the fact that industrialized societies in particular will always be in need of some forms of centralized criminal justice services that include the police, courts and corrections, since laws have to be applied with a certain degree of consistency and abuse of local power has to be avoided. There is a real danger that any departure from traditional practices may lead to interference with the citizen's constitutional civil rights. Consequently, law reformers must be ever vigilant to ensure that no departure from established procedures will lead to a diminution of such rights as those anchored in national constitutions and in the Universal Declaration of Human Rights. Any such departure would defeat the very purpose of reform.

98. There is also a trend in some Scandinavian and West European countries to divert functions of the criminal justice system to well organized professional social services. At the same time, training programmes in non-judicial skills for all levels of judicial personnel have been introduced. Thus, a State Committee in Finland found no real differences between well-equipped and ill-equipped criminal justice programmes or between treatment oriented and control oriented methods. The Committee subsequently recommended the abolition

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58/ Robert Cantor, "New laws for a new society in crime and social justice", Crime and Social Justice, vol. 2 (Fall-Winter 1974), p. 15.

of probation and parole departments and the disbursement of funds for social services instead. In lieu of probation, some form of controlling registration was recommended. The underlying rationals was that if non-institutional sanctions can reduce the prison population, they should be used, but that probation and parole systems should not be used solely because they happen to exist. 59/

99. In short, there seems to be a recommendable tendency to decentralize the criminal justice system and to share the tasks involved in the control of crime with other institutions and with community organizations. In delegating and extending some of the crime control functions of the system to other legal institutions, to public and private organizations, and to the community, it is crucial that a maximum of control be retained with a minimum of stigmatization and discrimination. There should be an equal representation of all social groups on either side of the system, and the cost should be distributed equally among all members of the community. Public participation in the criminal process, as in any other social process, presupposes some basic understanding and acceptance of the underlying norms. Public participation at the operational stage of law enforcement, adjudication or correction - for example, in a jury or in a parole board - accomplishes little if the principles and processes of the law are not accepted by the society which the lay participants purport to represent.

E. The victim and the criminal justice system

100. In most countries increasing attention is being given to the victims of crime. The realization that in criminal offences the injured party is the victim, and not society in the abstract, may lead to better ways of resolving conflicts, such as compensating the victim, and thus increase the availability of civil and administrative alternatives to the administration of criminal justice. A victim might well be content to be adequately compensated without necessarily pressing for a criminal conviction with counter-productive effects. 60/ The victim has most of all a right to know what happened to the perpetrator of an offence against him. In addition, victims of crime should be encouraged to take part in the criminal justice process. The studies on hidden crime that were mentioned earlier (see paras. 40-42) demonstrated that many victims do not contact the police. There are many explanations for this. The most obvious one is that there exists among many people a disrespect for, and alienation from, the police in particular and the criminal process in general. This feeling is not very difficult to understand if one realizes that in many jurisdictions only a small fraction of crimes known to the police will result in a conviction. Moreover, victims are often isolated from the criminal justice process and are used merely as sources of evidence.

59/ Inkeri Anttila, "Probation and parole: social control or social service?" International Journal of Criminology and Penology, vol. 3 (1975), pp. 79-84.

60/ The issue of compensation for the victims of crime is discussed in agenda item 9 of the Fifth Congress.

101. Another explanation of the low rate of reported victimization is the reluctance of victims to become enmeshed in the criminal process. This is particularly true in the case of sexual offences. The creation, in some countries, of centres for the victims of forcible rape and the addition of female police officers to the force may encourage larger numbers of victims to contact the police. A third explanation is that many victims lack knowledge about the functioning of the system and about their own rights. Such a situation could be improved, if not remedied, by better distribution of information regarding the criminal justice system, by improving police-community relationships, and by the collection and dissemination of victim oriented crime statistics.

102. More recently, it has been suggested that victims could also be utilized as treatment media. By providing the victim with the opportunity to become the treatment agent of the delinquent, particularly in cases where restitution of damages is possible, he might become more involved in the rehabilitation of the offender; this could moderate any antagonistic and punitive attitudes that the victim might have towards offenders in general. Justice, when it is focused alike on the wrong done and on the need to restore the rights of the victim, provides an opportunity to individualize the sentence and to emphasize the need for reconciliation between the offender, the community and the victim. More possibilities could be created within the criminal justice process for settlement and arbitration as distinct from adversary courtroom trial. In this regard, some of the indigenous traditional methods of developing countries might be of use to the developed countries.

103. One way of reducing victimization is to reduce opportunities to commit crimes. The reduction of such opportunities demands considerable foresight and innovation, and ranges from the provision of more adequate street lighting and increased numbers of check-out counters, for example, in self-service stores and libraries to the mandatory use of security locks on cars, 61/ and improved architectural designs for houses, 62/ and even to the legalization of pornography, which in Denmark has led to a considerable decrease in the number of sexual offences. 63/

61/ See, for example, C. Ray Jeffry, Crime Prevention through Environmental Design (Beverly Hills, California, Sage Publishing Company, 1971).

62/ See, for example, Oscar Newman, Defensible Space (New York, Macmillan, 1972); William Fairley and Michael Liechtenstein, Improving Public Safety in Urban Apartment Dwellings: Security Concepts and Experimental Design for New York City Housing Authority Buildings, R-655-NYC (New York, Rand Institute, 1971); and Michael Liechtenstein, Reducing Crime in Apartment Dwellings: A Methodology for Comparing Security Alternatives, paper No. P-4656 (New York, Rand Institute, 1971).

63/ See, for example, Berl Kutchinsky, "Eroticism Without Censorship", International Journal of Criminology and Penology, No. 7 (1973), pp. 217-225; and "The effect of easy availability of pornography on the incidence of sex crimes: the Danish experience", Journal of Social Issues, vol. 29, No. 3 (1973), pp. 163-188.

F. Dissemination of information

104. The need for increased and improved dissemination of information regarding criminal justice programmes and their effects has been discussed at nearly every regional or preparatory meeting for the Fifth Congress. In many countries the public is as unaware of the laws as it is of the social control mechanisms that are operating in the field of crime. The rules of law and the values underlying them should be expressed in simple language so that ordinary citizens can understand them and participate in the process of changing them. Citizens are equally unaware of their rights and of the extent to which they could participate in the system. Not only should the public, including school children, be better educated in matters of criminal justice, but all agencies involved should exchange information on this subject. This has been realized in some countries. Thus, the preventive influence of criminal law in the Byelorussian Soviet Socialist Republic is intensified by the use of the press, radio, cinema and television in giving widespread publicity to criminal legislation and its practical implementation. Legislation on these subjects is studied in public schools, and lectures are delivered for the general public. 64/ In other countries, materials are developed and programmes instituted for the purpose of increasing lay-group awareness of legal and civil rights, problems and services. In several cities in the United States, educational television programmes have been developed to provide minority groups with education in community-legal affairs in their own language. 65/

105. There also is a growing demand for dissemination of social control programmes among countries. In this respect, the United Nations regional social defence institutes, the United Nations Social Defence Research Institute and non-governmental agencies could make a valuable contribution.

64/ V. A. Shkurko, "The improvement of criminal legislation as a factor in the prevention of crime", International Review of Criminal Policy, vol. 30 (1972) (United Nations publication, Sales No. 73.IV.17).

65/ R. D. Algren, "Ayuda", Legal Aid Briefcase, vol. 2, No. 2, pp. 43-46.

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