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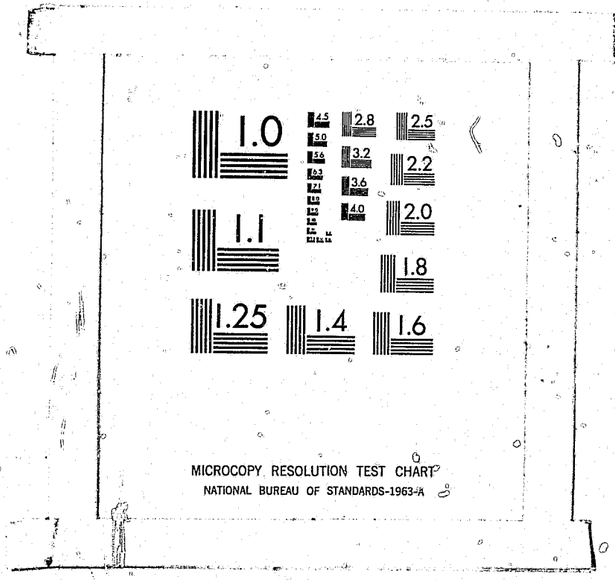

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JUVENILE JUSTICE: BEFORE AND AFTER THE ONSET OF DELINQUENCY

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INTRODUCTION

1. In endorsing the topic of juvenile justice for the provisional agenda of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Committee on Crime Prevention and Control noted that the subject of juvenile delinquency had appeared on the agenda of the first three Congresses. In view of the rapidly increasing youthful population, however, and the significant changes in methods and procedures designed to deal with the problems of delinquency and juvenile maladjustment - especially the increased emphasis on considerations of human rights - the Committee deemed it appropriate for the topic to be considered by the Sixth Congress. 1/

2. The Committee's decision to place the topic on the provisional agenda of the Sixth Congress was influenced also by the fact that the socio-economic and political context within which the earlier consideration of the topic had taken place had changed signficantly in many countries of the world. Also, the Committee believed that more intensive development of techniques to deal with endangered children and delinquent persons during their earliest years, while their future patterns of behaviour were in the formative stages, ranked as one of the most important areas in which to allocate crime prevention resources.

3. The Committee observed that

(a) An attempt should be made to translate general strategies for assisting maladjusted and delinquent persons into practical guidelines, in order to facilitate implementation in the administrative context;

(b) In keeping with the importance placed on the role of the educational system, planning for the prevention of delinquency should become an integral part of educational planning;

(c) Efforts should be made to explore the processes of diversion from the criminal justice system in its application to juvenile jurisdiction. 2/

4. Juvenile justice as a concept defies any easy definition that is generally acceptable. The study of a juvenile justice system will be meaningless without initial examination of the historical fabric from which it emerged and in which it operates, the values and norms of the society in which it functions and the over-all complexities of the social, economic and political structure of the society. A juvenile justice system is regarded as an integral part of a total effort aimed at general and specific prevention of juvenile delinquency. In many countries of the world, such a system is given responsibility for most of the decision-making relating to the protection and control of children and young persons. In discharging those functions, however, the system must seek to maintain a delicate balance between the protection of the rights of children and young persons and at the same time, the protection of society from conduct considered to be harmful or disruptive.

1/ See the report of the Committee on Crime Prevention and Control on its fourth session: (E/CN.5/536), para. 53.

2/ Ibid., paras. 54-56.

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5. The present working paper, while not attempting to provide a uniform definition of the concept of juvenile justice, will seek to provide a conceptual framework for a discussion of the topic from three perspectives: juvenile justice in the sense of social justice for all children and young persons; juvenile justice in the sense of special efforts within the social context to confront the problems of children and young persons in danger and in need of care and protection; and juvenile justice in the sense of justice for the adjudicated or incriminated child or young person.

6. The paper has been divided into two parts. Part one deals with juvenile justice before the onset of delinquency. This denotes a concept positively designed to promote and safeguard the well-being of all children and young persons. One basic aim is the assurance of a healthy, nourishing and supportive environment to enhance the proper development of children and young persons. Another is an early identification of children and young persons with problems or in irregular situations and the application of appropriate remedial measures, with full respect for their human rights, before they are in conflict with the law. In addition to discussing the general human rights to which children and young persons are entitled upon attaining a certain prescribed age, the first part of the paper will consider other specific rights, such as the right to be born healthy, to be wanted, to receive continuous love and care, to live in a healthy and stimulating environment, to have basic human needs satisfied and to acquire the emotional, psychological and intellectual skills necessary to achieve individual or group aspirations and to be able to cope effectively in society.

7. Part two deals with juvenile justice after the onset of delinquency and focuses on the development and application of measures and procedures that can be effective and humane in handling children and young persons who are classified as being in need of care and protection, those who have actually demonstrated deviant traits and are considered to be beyond control, and those who have failed to respond positively or benefit from all protective and preventive measures and have become a real danger to themselves and society.

Part one

JUVENILE JUSTICE BEFORE THE ONSET OF DELINQUENCY

I. CURRENT TRENDS IN JUVENILE JUSTICE

A. Varying conceptual approaches and dilemmas

8. Earlier reforms in the developed countries, based on the principle that the State had the duty to act as parent, intervening on behalf of children and young persons to correct inequity, injustice, or failures of socialization, have been challenged by social scientists and others in a number of countries. The commitment to paternalistic intervention has, in some countries, been perceived as opposed to an ideal of intervention closely restricted for the protection of the liberty of children and young persons. This has given rise to a concern that an increased focus on rights could increase neglect, and it has also raised the question of whether rights can be recognized and respected without ignoring needs. A related but distinct potential conflict has arisen from opposed philosophical positions concerning the appropriate treatment of juvenile offenders. 3/ This situation involves, on the one hand, exacting punishment scaled to the gravity of the harm done and the culpability of the offender and, on the other hand, of providing mechanisms - not intended as punishment - for achieving the utilitarian purposes of rehabilitation, deterrence or incapacitation.

9. Many countries had developed juvenile justice systems in order to deal with young offenders. This concept was derived from a belief that the problems of juvenile delinquency and related problems of youth in irregular situations are not amenable to resolution within the framework of the traditional processes of criminal law. Juvenile justice systems, therefore, have been designed to respond to the needs of young offenders. One principal role has been to provide specialized preventive and treatment services for children and young persons as means for "secondary prevention", rehabilitation and improved socialization.

10. In some countries the concept of juvenile justice, as a social service, is perceived as having fallen short of the goals and objectives originally set. Factors such as rapidly increasing numbers of young persons, insufficient resources and aggravated social and economic dislocations have had a devastating effect on the ability and capacity of the juvenile justice systems to deal effectively with the broad range of individual and social problems which characterize juvenile delinquency. In some of the developed countries, there has been, in addition to

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3/ The topic of juvenile justice is regarded as particularly relevant for the African continent owing to the extraordinarily large numbers of juveniles in the population. Juveniles have been the inevitable victims of a process marked by reduced capacity of families to transmit social values and contain the young. Since it is economic and social development which has brought about this dilemma, it is primarily by economic and social means that juvenile delinquency has to be prevented. See the report of the African Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders (A/CONF.87/BP.4), para. 18.

the pressures already noted, a charge of repeated failures by their juvenile justice systems to demonstrate the effectiveness of the design. 4/

11. By contrast, most of the developing countries have placed greater emphasis on the concept of social justice for all children, and this has been linked to broad preventive measures. 5/ In some of the more developed countries, there has been an increasing tendency for social control to be moved away from the family and other traditional social units to agencies of the State, whereas, in many of the developing countries the tradition of resolving problems within the family setting, rather than through public authority, seems to prevail.

12. However, certain socio-economic transformations are taking place in a number of developing countries which, invariably, tend to undermine the ability of those countries to rely wholly on the indigenous organs of social control and especially the family. For example, accelerated urbanization, industrialization, and increased emphasis upon economic growth may lead to increased dissolution of family and tribal control, and consequently, the simple remedies of uniformed officers, robed judges, and other trappings of the juvenile justice systems of more developed countries may naively be assumed, without careful examination, to provide appropriate substitutes for the traditional forms of social control. The Sixth Congress will have the opportunity to consider how it might be possible to preserve and strengthen the indigenous, or traditional or informal, forces of social control while, at the same time, maintaining a healthy momentum of socio-economic progress.

B. Basic philosophical approach

13. Juvenile justice before the onset of delinquency reflects a desire to provide social justice for children and young persons with a view to promoting and safeguarding their well-being. To this end, a system of social justice for children and young persons will protect their rights, including those which are

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4/ The European regional preparatory meeting noted that "Experience with the treatment model over the past several decades, when modern evaluative scientific criminology had begun to assess impacts, had not been encouraging, on the whole. Participants expressed somewhat divergent opinions regarding the success or inappropriateness of the treatment model, especially with respect to institutional treatment. But it was noted that the problems of delinquency had proved more persistent, and the solutions less successful, than had been predicted." See "Report of the European Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders" (A/CONF.87/BP/1), para. 28.

5/ The African regional meeting noted the following: "Little, if any, sympathy was expressed for the current controversy in some developed countries centering on the issue of whether the social and rehabilitation approach had or had not endangered the procedural and civil rights of youngsters actually or potentially in conflict with social standards and laws. Africa had a different concern, a concern which sought to achieve social justice for all and internalized value systems for each young person. Broadly based communal approaches were called for to achieve this far-reaching aim." See "Report of the African Regional Preparatory Meeting ..." (A/CONF.87/BP/4), para. 19.

necessary for their survival and those to which they have a just claim vested by law, authority and social custom, and it will also protect them when these rights are not met and when the judicial system becomes involved.

14. This broad concept of social justice for children and young persons is consistent with the United Nations Declaration of the Rights of the Child 6/ and also with the aims and objectives of the International Year of the Child. 7/ Both the Declaration and the International Year recognized that the special needs of children and young persons do not arise only out of their right to develop properly in the physical sense. They arise also out of their needs to develop their full potential psychologically, intellectually, morally, socially and culturally.

15. The continued concern of the United Nations about the plight of children was recently re-emphasized by the Secretary-General in his report on the work of the Organization to the thirty-fourth session of the General Assembly. The Secretary-General stated that during the International Year of the Child the world community had been reminded very forcefully of the stark deprivations suffered by children in many parts of the world and had seen that all too often children were also victims of violations of human rights. It was absolutely intolerable that children should be made to suffer in such a manner in that day and age. It was earnestly hoped that the objectives of the Declaration of the Rights of the Child would be furthered by the outstanding efforts which Governments and non-governmental organizations had made in 1979 to promote the interests and rights of children all over the world. 8/

16. Despite the differing forms and varieties of problems of children and young persons which were being experienced from country to country, there was agreement at each of the preparatory meetings for the Sixth Congress as to the fundamental philosophical stance required. It was generally agreed that juvenile justice in the sense of social justice for the child and his or her family was a priority goal, to be sought both as an inherent good and for the relevance of social justice to the prevention of delinquency. The concept of social justice thus included the child's rights to societal protection and would encourage the development and formulation of comprehensive prevention strategies designed to neutralize those socio-economic, bio-physical, and emotional factors which might predispose children and young persons to juvenile delinquency. 9/

6/ See General Assembly resolution 1386 (XIV).

7/ See General Assembly resolution 31/169.

8/ Official Records of the General Assembly, Thirty-fourth Session, Supplement No. 1 (A/34/1), para. 2.

9/ See "Directory of national action for the International Year of the Child" (E/ICEF/663), prepared by the United Nations Children's Fund (UNICEF). It is encouraging to note that nearly all the responding Governments adopted a philosophical stance towards social justice for children and their families and also demonstrated a clear determination to formulate long-term action plans and programmes to promote and safeguard the total well-being of all children and their families.

17. In the preparatory meetings different interpretations were placed on the term "juvenile justice", and clarification was sought, so that discussions on the topic at the Sixth Congress would be expedited. The European regional preparatory meeting held the view that juvenile justice after the onset of delinquency referred to justice in its normal juridical sense and that juvenile justice before the onset of delinquency referred to social justice. Thus, the concept of social justice was to be seen as relevant to the development of children and young persons generally and to endangered children particularly, while the concept of juvenile justice applied to accused or adjudicated young offenders. The two were closely related but could be separated for purposes of discussion and planning.

18. These considerations of social justice and the complexity of the problem made clear the need to discuss - first separately and then together - the roles of the family, education, community and the State, and their responsibilities for the development of children and young persons; the planning, implementation, co-ordination and evaluation of programmes and services for their normal or general development; and the planning and evaluation of programmes and services for endangered children.

C. Applicability of the concept of juvenile justice

19. The specific applicability of the concept of juvenile justice must be expected to vary with time, place, cultural setting, resources and a myriad of constraints. In those countries considered to be in a process of development, concepts of juvenile justice and delinquency prevention must be aligned closely with the development process so as to identify its negative elements and to minimize their adverse effects on the proper development of the young. The participants in the African Regional Preparatory Meeting, while agreeing on ideals and goals embodied in the concept of social justice, expressed recognition of the enormous task to be accomplished. It was observed that in many cities of the continent, children and young persons were swarming in the streets by the hundreds, without any goal except to survive, without support, without hope, subject only to peer-group pressure. 10/ Given the enormity of the task of those charged with delinquency prevention, and confronted with inadequate resources, it was clear that methods to cope with the problem would tax the entire range of human ingenuity. For one Latin American country it was reported that several million youngsters were lacking the basic essentials of life considered necessary for their proper development. 11/

10/ See the report of the African Regional Preparatory Meeting (A/CONF.87/BP/4), para. 21.

11/ The National Foundation for the Welfare of Children and Youths (Fundaçao Nacional do Bem Estar do Menor) of Brazil recently estimated the total population of abandoned, deprived, deviant and delinquent children in the country to be 14 million. Such children are defined by the Foundation itself as lacking the minimum standard of living needed to satisfy their five basic needs - health, education, recreation, social security and, according to the Foundation statute, love and understanding. See Justice and Troubled Children Around the World V. Lorne Stewart, ed., (New York, New York University Press, 1980), vol. I, p. 2.

20. In the developed countries, the need for more systematic planning for children and young persons was recognized along with the problems arising from increasing numbers of young people, problems of increased urbanization, constraints of resources, and the failure of programmes always to reach the youth in need of assistance.

21. Notwithstanding these and other constraints, commendable efforts are being made by many countries, both developed and developing, to promote the interests of children and young persons. For instance, the national theme for International Year of the Child in Australia was "Care" and the objectives were, inter alia, to raise awareness and stimulate action to meet the needs of all children and to highlight and accommodate the particular needs of disadvantaged children. 12/ Similarly, care for the rising generation of children is regarded as a constant and paramount concern of the people and Government of Mongolia. 13/

12/ See "Directory of national action ..." (E/ICEF/663), p. 15.

13/ (E/1980/6/Add.7), para. 4 (c).

II. RESPONSIBILITIES FOR THE DEVELOPMENT OF CHILDREN AND YOUNG PERSONS

A. Role of the family

22. Foremost among forces influencing the lives of young people in all countries is the family. With the changing structure of modern society, the role of the family in social control has, in some instances, greatly diminished. This phenomenon may be more pronounced in developing countries, which are undergoing rapid political and socio-economic transformation. In the developed countries also, the role of the family has in some places decreased as the principal transmitter of values. The presence of factors such as broken homes, social disaster, poverty, and a variety of pervasive social changes has led to a weakening of family control so that responsibilities for the care of children and young persons and their socialization have been assumed increasingly by the much more complex structures of public agencies.

23. Yet, the family unit is regarded almost universally as the most effective instrument, or agent, of social control for the care of children and young persons and as deserving of support in its role of strengthening and maintaining social stability. 14/ The central importance of the family in delinquency prevention was equally stressed in the regional preparatory meetings, all of which called for efforts to be made to strengthen the family and pointed out that the central aim of all delinquency prevention efforts was to instill in each child a sense of responsibility, security, belief and confidence.

24. In various countries, such aspects of socio-economic change as problems of increased urbanization, migration and industrialization may create conditions conducive to a weakening of family ties and, hence, may be listed as possible precursors to delinquency. For example, uncontrolled migration and poorly designed urban settlements could undermine the stability of family life as well as the cohesiveness of local communities. The separation of family members, radical transformations of family life, and increasing impersonalization of community structures may lead in some countries to marked disruption in family units. Rising divorce rates, a weakening of religious and other conventional values concerning marriage and the family, combined with other social changes, may in some regions or countries contribute to problems of delinquency. The results of the United Nations World Crime Survey of 1977 supported the notions, stressed repeatedly in

14/ States reporting on the implementation of article 10 of the International Covenant on Economic, Social and Cultural Rights have attributed particular importance to the family, which is considered the basic unit of society and is protected by law. In the German Democratic Republic, for example, the principles governing the protection of the family are enshrined in article 38 of the Constitution and elaborated in legislative acts such as the Family Code. In the United Republic of Tanzania, the Laws of Marriages Act of 1971 contains provisions to promote protection of the family. See "Analytical summary of reports submitted by States Parties in accordance with Council resolution 1988 (LX), concerning rights covered by articles 10-12 of the Covenant (E/1980/22), para. 11.

the preparatory meetings for the Sixth Congress, of the central role of the family in delinquency prevention and of the need for increased control by public authorities, concomitant with increased industrialization and urbanization. 15/

25. In light of the many circumstances that can have a negative impact on the cohesiveness of the family and recognizing fully the potential role of the family in delinquency prevention, assistance to children in need of care and protection is likely to have the greatest impact if it is provided through the family unit. Efforts to stabilize and strengthen the role of the family are regarded as the key to improving the chances of proper social adjustment by children and young persons. Such efforts would be consistent with article 10 of the International Covenant on Economic, Social and Cultural Rights. 16/

B. Role of the educational system

26. Second perhaps only to the family in determining whether children and young persons succeed or fail to develop their full potential is the educational system of a country. Even though a large number of children and young persons remain outside the educational system in some countries, especially in rural areas, many children and young persons spend a considerable number of years in various types of educational institutions. Those institutions represent an important element in their development. Yet, in both developing and developed countries, the potential of educational systems for preventing delinquency is unrealized. There is an expressed concern that - despite a belief in the important role of schools in socialization - schools may be perceived, in some instances, as contributing to delinquency problems. Many of the problems of juvenile delinquency are in some instances believed traceable to the school environment, especially in highly dysfunctional urban settings. The failure of some schools to serve as effective agents of socialization has been attributed largely, in some countries, to an inability of the educational system to adjust and adapt to changing circumstances.

27. Broad strategies of social action designed to improve the quality of social justice in a given community can scarcely be conceived - and surely cannot be expected to be effective - without the active and direct involvement of the educational system. An example of such a strategy might involve, inter alia, some degree of social recognition or revitalization of traditional agencies, including the schools and local community organs of social control and social security; and broad preventive programmes could be of importance in the formulation of an equitable juvenile justice system beneficial to all children in need of care, protection and control. Broad strategies could also be designed to provide general and specialized assistance to young persons at school in order to enhance their

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15/ See the report of the Secretary-General on crime prevention and control (A/32/199).

16/ Article 10 of the International Covenant on Economic, Social and Cultural Rights establishes the principles and collective agreements designed to promote the protection of the family, mothers and children (see General Assembly resolution 2200 (XXI), annex).

proper adjustment, including their response to the school environment. It is important, however, that such assistance not be identified overtly with delinquency prevention, for such a connexion might result in an undesirable labelling of the children involved. Reading difficulties, an inability to pay attention or concentrate, hyperactive behaviour, and other common educational problems are best treated strictly as such. They deserve attention in their own right and treatment ought not be justified solely on the basis of delinquency prevention. When proper solutions to such problems are found within the normal educational system, the chances of stigmatization are minimized.

28. The educational system is always confronted with the basic fact of individual differences. Thus, individual needs must be met by the school. Attention must be paid to the needs of the exceptional child - the emotionally disturbed, the mentally retarded, the physically handicapped, or the slow learner. (This is not to assert that such handicaps predispose children towards delinquency; rather, it is to emphasize the profound responsibility of the educational system for meeting the social and educational needs of all children and young persons and ensuring the reinforcement of positive behaviour that comes from success. The student whose performance ends habitually in failure is bound to develop a negative self-image.)

29. Individual differences among children require a teaching environment that calls for many skills. This fact has inspired the development of a variety of educational approaches to children who have special needs, and educational systems in many parts of the world are being redesigned to better reach such children. Left undiscovered, unrecognized or unattended, these "exceptional" children may react in ways that create substantial problems within the school and in the community. Proper prophylactic attention at the early stages of irregular behaviour may act as an effective deterrent to delinquency.

30. In order to provide such attention, the person closest to the child in the school environment - the teacher - will have to be more than a transmitter of knowledge. He or she must combine personality and professional expertise, with the latter not confined to the narrow parameters of pedagogical skill. The ability to recognize the signs of stress, discouragement and defeat will be as important as the ability to teach new mathematical methods. It seems obvious, then, that the contemporary teacher must assume more than the traditional role of purveyor of knowledge.

31. Of equal importance in enhancing the role of the educational system in delinquency prevention is the content of the education that is offered. The curricula of some educational systems seem to be outdated and irrelevant to the socio-economic realities of the communities they serve. This can be a source of frustration to many children whose social backgrounds and aspirations are not fully reflected in the contents of their curricula.

32. In designing educational programmes, therefore, care should be taken to ensure that the contents of the curricula correspond to the emotional and social needs of children and young persons. Efforts should also be made to make the school serve as an institution of enlightenment for parents; it must be fully adapted to the real needs of the community and to its socio-economic realities by asking parents and others at the local level to assist in designing the school curriculum.

33. Of necessity, each country must determine its educational approach on the basis of its own circumstances. 17/ A number of countries have described innovative programmes designed to provide challenging and practical improvements in the school experience. In one country, a carefully designed school system offers a broad programme of cultural interest and the development of individual capabilities while providing realistically for special care and help for slow learners and children with psycho-social problems.

34. The problems faced by early school leavers are, in many respects, identical to those encountered by the large numbers of children and young persons who have never had the opportunity to go to school. The situation is much more serious in the developing countries. Solutions to the problems of school drop-outs and of those who have completed the full educational cycle but are without adequate preparation or opportunity for employment should be sought in conjunction with action relating to the problems of those who have never been to school.

35. It will be necessary to emphasize the importance of having relevant data on the problems of early school leavers, in order to deal with them properly. It is often difficult to assess the educational status of children and young persons - their employment situation, whether they are learning anything worthwhile in their work, relapse into illiteracy, and so on. While the status of those in school is recorded by the educational authorities and that of those employed in the "modern sectors" by the employment authorities, the status of the vast majority of early school leavers and others is often outside the scope of responsibility of established authorities.

C. Role of the community

36. In order that the basic social units of the family and the school function successfully, it is necessary for the community as a whole to provide support and other services. Indeed, the co-operative efforts of a variety of community agencies are essential, and integrated programmes of services can provide mechanisms for dispensing assistance to school children with special problems when the school is not well equipped to deal with those problems effectively or when the home environment or family situation is not conducive to the success of preventive measures.

37. Such integrated community service systems should not involve the imposition of formal sanctions but, rather - even where delinquency prevention is one goal among others - should be administered so as to avoid the necessity of invoking legal structures. At the same time, care should be taken that such programmes

17/ For example, World Bank loans of $20 million to the Syrian Arab Republic will help finance an educational project which focuses on two priority areas in the education sector: increasing the quality and relevance of education through improved teacher-training facilities; and orienting curricula towards the practicalities of everyday life. See World Bank, Annual Report for 1978 (Washington, D.C., 1979), p. 65.

are not developed in such a way as to reduce, rather than enhance, the strengthening of the central role of the family, as stressed above. In some countries, for example, while a rhetorical posture is maintained concerning needs to preserve and strengthen the family, government support for programmes which remove children and young persons from families have proliferated, with financial disincentives for keeping the children at home.

38. The importance and potential contributions to community programme development of diverse community groups, citizenry, schools, law enforcement agencies, the judiciary, academic groups, community leaders, public and private agencies, businessmen, and youth groups can not be denied. 18/ Yet the danger of simplistically believing that the more involved such groups are, the more effectively the work will be done must be recognized and avoided. Citizen, community, private sector or voluntary participation does not, ipso facto, contribute to children's welfare or to delinquency prevention. Just as community or group ideals, careful planning, support and care for children can lead to sound development of needed services, so too can community or group prejudice, hostility and impulsive action lead to social harm and denial of human rights.

39. It is essential, therefore, that those aspects of participation by diverse public groups which effectively contribute to delinquency prevention efforts - through provision of needed services, without sacrificing respect for children's rights - be fostered and encouraged. Thus, it becomes necessary to understand and to apply mechanisms of public participation in development and support of youth services which distinguish between socially protective and socially disruptive participation.

D. Role of the State

40. Although the specific roles of national Governments in supporting and enhancing social justice, including the provision of special services to endangered children and other primary delinquency prevention programmes, must be expected to vary with differing social, political, cultural and economic realities, opportunities and constraints, certain responsibilities are a common feature of official policy in many countries of the world.

41. Since all countries positively affirm the need to safeguard and protect the well-being of children, the attention of the Sixth Congress should be drawn to the United Nations Declaration of the Rights of the Child, International Year of the

18/ As an example of public participation, the Antigua Union of Teachers has set up a project called "Operation second chance". It envisages a complete youth service centre to provide school drop-outs, unemployed and unskilled youth with a second chance to develop self-esteem through self-development and to develop self-awareness, confidence and a sense of being worthwhile through training for self-sufficiency. See "Directory of national action ..." (E/ICEF/663), p. 9.

Child and article 10 of the International Covenant on Economic, Social and Cultural Rights, as noted above. Children's rights are not yet fully protected throughout the world. The right to special care, if handicapped, is not protected fully when physically, mentally or emotionally disabled children are not provided the best remedial services possible with available knowledge, and such complete provision is rare. The right to be among the first to receive relief in times of disaster is not met when children are abandoned; the right to be a useful member of society and to develop individual abilities is not protected fully when the process of development is thwarted and individual potentialities unrealized as a result of inadequate educational, vocational or specialized remedial services. The right to be raised in a spirit of peace and universal brotherhood and the right to enjoy these rights regardless of race, color, sex, religion, national or social origin are not protected fully when delinquent acts impinge on the rights of others or when protective services or employment opportunities are denied on the basis of unfair discrimination. Were all these rights to be protected fully by the State, the need for specialized programmes would decrease markedly.

42. It is clear that the State has numerous responsibilities for the protection of children's rights and for social justice. It must be agreed, also, that the protection of the rights of children and the assurance of social justice must be pursued not because delinquency will thus be prevented; it is a question, rather, of fundamental human values. Yet, it must be realized also that these issues are fundamental to primary delinquency prevention and to the attention needed by endangered children. When children are hungry, they must be fed; and if they are not fed, some will steal. If children are ill, they must be treated; some portion of delinquency behaviour may be traced to untreated physical problems or disabilities. If education and employment are promised but not provided, children suffer a social injustice; and some of them will seek rewards in socially undesirable ways. All children are entitled to affection, security, and protection; when those things are lacking, delinquent behaviour is sometimes one result. 19/

43. Although specific roles of the State may be expected to be diverse, varying with local situations and circumstances, some common problems may be noted which, if not considered carefully, may work towards the defeat of State intervention, programme planning or legislation. Children are, in many respects, a

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19/ There has been some progress in implementing international instruments designed to provide opportunities and facilities for the healthy physical and psycho-social development of children and young persons. In Finland the measures are contained in the Act on Child Guidance Centres and the Child Welfare Act; in Cyprus, the main law for the protection of children and young persons is the Children's Law, Cap. 352; and in the United Republic of Tanzania, the National Education Act of 1978 regulates the national educational system and provides for compulsory primary education, and labour legislation contains provisions to protect children and young persons against economic, social and other forms of exploitation. See "Analytical survey of reports ..." (E/1980/22), para. 19.

disenfranchised group with no organized constituency, and they may be expected to remain so. It should not be assumed that children can compete successfully for funds without extraordinary efforts being made on their behalf. Factual information on children's needs, available services and programme effectiveness and on the causes of delinquency is essential to the development of sound policy; the lack of such information is one of the greatest potential impediments to such development. Provisions for efficient and continuous funding for primary prevention programmes are essential if maximum benefits are to be derived from investments in such programmes.

III. THE PLANNING OF DEVELOPMENT PROGRAMMES AND SERVICES FOR CHILDREN AND YOUNG PERSONS

A. Methods of comprehensive planning

44. Planning, which may be defined as an organized design for determining what will be done, is everywhere recognized as a need. In the context of steps to be taken towards greater assurance of social justice and delinquency prevention among endangered children, careful planning furthers improved programme development, whether on the neighbourhood, community, regional or national level. One purpose of comprehensive planning is to provide for more effective delivery of services; this is done by setting priorities, co-ordinating the efforts of those responsible or concerned, and implementing impartial systems for monitoring and evaluating programme performance.

45. Generally, comprehensive planning efforts must begin with a careful and thorough assessment of the needs of children and young persons and a description and assessment of resources available to meet them. Those assessments ordinarily will result in the identification of gaps in services and programmes, providing a more accurate basis than previously available on which more specific problem definitions may be formulated. At that stage, it may be expected that it will be necessary to decide on the priorities of various needs. The examination, by various means, of alternative solutions and their expected feasibility may be the next needed step. Detailed planning might then proceed in terms of programmes designed to meet the needs of children and young persons and the development of specific procedures to implement, monitor and evaluate the plans.

46. Experience in a wide variety of settings suggests that in order to achieve a plan responsive in a realistic way to the needs of the community involved and of the persons affected, the concerned residents of that community, including the affected ones, must be involved in the planning process. Individual local needs may be lost in centralized planning remote from the persons most directly involved. Often, therefore, the planning process should include such community groups as community boards, school boards, administrators, teachers, youth, representatives of the service providers and representatives of community groups, unaffiliated but concerned persons, and representatives of the judiciary and affiliated government structures. The establishment of such a planning process may in itself serve to increase co-operation and collaboration and set the stage for more successful implementation of the plans.

47. Experience in various regions demonstrates also the need for specific attention to implementation issues at the beginning of the planning process. Following the assessment of the needs of children and young persons, the components of a planning, co-ordinating and service delivery system that may be expected to have a significant impact on receipt of services to meet those needs must be identified. Those components must be defined then or redesigned explicitly, with statement of clear programmatic objectives. At that point, it is essential that a detailed implementation plan be devised for the achievement of each objective. Thus, the plan should identify all the individuals, agencies or groups that must be involved, controversies to be expected, decisions to be made, the order in which events must occur, the incentives and assistance necessary for co-operation, and a schedule for achievement of objectives. Such implementation planning may serve also as a useful tool for evaluation of the planning and of its components.

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48. Much experience at local, regional and national levels shows clearly the need to include provision at the early stages of planning for the process of evaluation. In programme development, issues of evaluation must be considered at the outset; otherwise, useful opportunities for learning from experience are apt to be lost. Since the identification of general goals, specific objectives, and methods and procedures for goal attainment and the measurement and collecting of data are activities common to both the planning and evaluation processes, they should be undertaken together. Yet, this fact is often overlooked, with the consequence that desired and necessary programme evaluation later suffers or is not possible.

49. Changing conditions may be expected, and therefore a general need for continued planning efforts may be anticipated. Thus, there is need for a continuous appraisal of youth's needs and of available services, for the identification of gaps in services, duplication of services, and allowance for changed circumstances. Further, when processes for programmatic evaluation have been built into the planning scheme from the start, the examination of the results achieved can be put to use in further planning for more rational and effective youth service delivery systems.

50. Finally, the Sixth Congress may wish to consider the need for establishing closer linkages among the various programme activities of the United Nations system which are directed to children and young persons, both at the national and international level. In this regard, a unified approach to the formulation and implementation of programmes for the development of children and young persons will greatly enhance the development of effective strategies for primary delinquency prevention.

B. Support mechanisms

51. Comprehensive planning for improved services to endangered children and young persons, as outlined briefly in preceding paragraphs, may be organized and conducted on various levels (e.g., neighbourhood, community, regional, State) and with varying degrees of intensity and detail. Naturally, the financial arrangements and structures necessary to carry out the planning will vary also with time, place, political organization, needs, economic resources and other factors. Complex systems of planning and evaluation which may be suitable in one area may be prohibitively costly and unnecessary in another, and each country and subdivision must be expected to adapt the concepts of planning to local needs and reality factors. It seems clear, none the less, that the basic elements of planning, even if adopted in somewhat simplified form, are applicable everywhere, and that it may be much more costly in the long run to proceed with programme development without planning and evaluation than with them, despite the need for some financial support. This may be especially true when concepts of cost-effectiveness have been included in the planning/evaluation model and when the evaluation procedures are such that costly, but not useful, programmes may be eliminated or improved on the basis of the results.

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IV. PROGRAMMES AND SERVICES FOR ENDANGERED CHILDREN AND YOUNG PERSONS

A. Early identification programmes

52. In the preparatory meetings for the Sixth Congress, the experts considering "Juvenile justice before the onset of delinquency" placed considerable emphasis on the need for appropriate social reactions to and provisions for those children and young persons who seemed to be at risk as potentially delinquent. There was wide agreement that the prevention of delinquency was increasingly being seen as more important than attempted socialization measures applied after the onset of delinquency. If, with due regard to the protection of their rights, endangered children and young persons could be identified, interventions could be applied, and delinquency prevention efforts would gain. The experts recognized, however, that such a sequence of events could be marred by certain potential hazards - not the least of which was whether the rights of children and young persons could be adequately protected. For example, in commenting on a proposed intervention programme designed to help troubled adolescents, the participants at the European regional preparatory meeting observed that "those adolescents who were thought to be at risk but against whom no criminal charges had yet been brought had to be treated in a very careful manner, as there was a danger that their human rights might be violated ... Mandatory forms of supervision or even support ... could undermine the basic principle of legality". 20/

53. Besides principles of rights and legalities, there were other basic issues to be dealt with if effective intervention programmes with children at risk of becoming delinquent were to be developed: namely the ability to predict delinquent behaviour with currently available knowledge; problems of "labelling", or the "self-fulfilling prophecy"; and a lack of demonstrably effective intervention programmes.

54. Although the concept of early identification of potential delinquents - in order to permit interventions - is attractive, concern has been expressed about the danger that may be inherent in the process. Risks include, notably, that of the "self-fulfilling prophecy", according to which the identification of a particular young person as "pre-delinquent" may bring about the very delinquency one wishes to avoid - as a result, for example, of the reactions of others or changes in the child's self-perception. Predictions of delinquency are also dangerous in that they may be used to justify otherwise unacceptable intrusions into the child's life, school or family environment.

55. Bearing in mind these potential dangers of attempted early identification of potential delinquents, it may be more profitable and less intrusive to identify vulnerable children likely to develop a variety of maladjustments and needs for services. If this is the case, a persuasive argument can be made for developing such procedures in school settings. This might be done in such a way that the child's needs, rather than future behaviour, could be predicted. This would obviate any need to treat the child as delinquency-prone or pre-delinquent, although proper and effective handling of current problems could reduce future maladaptive behaviour, including delinquency.

20/ See "Report of the European Regional ..." (A/CONF.87/BP/1), para. 31.

B. Intervention services and treatment measures

56. Specific planning for the identification of vulnerable children in need of specialized services, in order to prevent maladaptive behaviour, should be, ideally, a central component of the planning process discussed in preceding paragraphs. A wide variety of needs may be expected to be involved in such a process, and specific resources in terms of professional assistance, specialized treatment centres and facilities for remedial education may also be required. Issues of funding, staffing and training of the personnel required will depend upon specific problems, resources and constraints and, thus, may best be met as part of the comprehensive planning process.

57. When any such identification and intervention programmes are introduced, the need for careful evaluation, assessing the degree to which specific objectives are met, must be stressed in view of the extremely limited knowledge of effective methods and procedures. Such evaluation should be concerned not only with the goal of delinquency reduction but also with the degree to which potentially adverse effects of the intervention have been successfully guarded against.

Part two

JUVENILE JUSTICE AFTER THE ONSET OF DELINQUENCY

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V. ISSUES OF LEGAL AND SOCIAL RESPONSIBILITY

58. Since the development of children and young persons must, in its myriad aspects, be regarded as a growth continuum, the division adopted for the Sixth Congress of justice "before" and "after" the onset of delinquency must be assumed to be an arbitrary one. Thus, although separating the issues of social justice, endangerment and primary delinquency prevention from those arising from specific delegations or adjudications of delinquency may assist in conceptualization and discussion, the issues are inextricably bound together.

59. In many countries, juvenile justice after the onset of delinquency is based fundamentally upon the concept of parens patriae - from the English common law of chancery - and calls upon the juvenile justice system to view the child as a ward of the State. Usually this means that the court is expected to act as a "surrogate parent" if the natural parents are absent, incapacitated or incompetent. This places a special burden on the court to look after and to protect the best interests of children and young persons.

60. In other countries, greater emphasis is given to the notion of the child as less responsible and, hence, less culpable than an adult. For example, Islamic Law (the Sharia) deals with three stages of criminal responsibility: in infancy (birth to seven years of age) the child is not responsible and no criminal measure can be applied; in minority (7-14 years of age) the child is not responsible but should be treated in a disciplinary way; and in adulthood (after 14 years of age) the person is totally responsible for actions and can be punished accordingly.

61. In most countries, the importance of structures for protecting children with little responsibility for their behaviour, especially the very young, is fully recognized, but differing models for dealing with delinquent behaviour and with serious crimes committed by young adults have come into being. For example, in Kuwait, which has no separate juvenile system, sentences passed on adolescents can be lowered (as compared with adults). In Japan, young people charged with serious offences can be transferred to an adult court. Similarly, in the United States of America, 48 of the 50 states have statutory provision for such transfer. (In the other two states, Vermont and New York, the age of juvenile jurisdiction is under 16, so that persons 16 or older are dealt with by the criminal courts in the first instance.) In France, there is no special jurisdiction, but special provision is made for young adult offenders.

62. Besides the diversity in legal structures for dealing with delinquency and youth crimes, a marked variability exists among countries and jurisdictions in the specification of a minimal age below which a child can not be taken before a tribunal for alleged commission of an offence. In some countries, this age is set at seven years and in others at 14 years. In still others, no minimum age has been set and ordinary legal principles apply: the prosecutor has to prove the necessary mens rea in order to obtain a finding of guilt. A similar diversity can be found among countries and jurisdictions as to the age at which a young offender is to be treated as an adult. This can range from 14 years (which is the minimal age of responsibility in some countries) to 25 years. Even within countries,

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jurisdictions may differ markedly, giving rise on occasion to an appearance of legal confusion and chaos. In some countries, age specifications differ for males and females; the resulting potential for discriminatory treatment may be exceeded only by the rule - applicable in some parts of Africa until recently - that Europeans were considered mature at 21, Asians at 18, but Africans at 15. 21/

63. Common concerns for the protection of children and young persons and for responses by the legal system which seek to ensure that protection but also enhance the protection of society (while giving due regard to a lessened culpability of children) can be discerned in nearly all countries. Indeed, the goals of protecting society from juvenile delinquency and of helping children and young persons in trouble to grow up into mature and law-abiding persons are regarded as complementary, not contradictory.

64. However, many countries still have difficulty translating this ideal concept of complementarity into practical action. Societal attitudes, the levels of tolerance for delinquent acts by certain segments of society, and the constantly changing characteristics of the problem both in form and severity, have tended to raise very serious obstacles to the maintenance of a proper balance between the two goals. The group of experts who discussed this central issue 22/ noted that what appeared to be the clash of irreconcilable ideas was merely the expression of two important values in society which sometimes came into conflict. Both values had to be maintained, but the Group was of the opinion that sometimes one of the two could be regarded as more important than the other. For example, on one level, consistent with the concept of social justice before the onset of delinquency, various administrative and other bodies must be primarily concerned with the protection of children and young persons. On another level, the juvenile courts must also be concerned with such protection, but with an emphasis upon re-education and treatment. At the same level, the criminal courts would give somewhat greater emphasis to general and specific deterrence and to the protection of society. Noting that the problems of maintaining a healthy balance between the two contrasting values would be heightened when serious crimes were committed by older youth, the Group of Experts strongly recommended that all possible efforts be made to keep the two concepts in equilibrium.

65. At a more realistic level, the process of psycho-social development is best viewed as a growth continuum that correlates only roughly with chronological age, and wide individual differences in maturity can easily be discerned at any given age. Just as there are different patterns of physical development, so too are there varying patterns of intellectual, psychological and social development, both between and within cultures. Therefore, to specify a particular chronological age as the point at which adult responsibility may be expected from all children, even within a specific cultural setting, must be an arbitrary step, although

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21/ T. M. Mushanga, "Juvenile justice before and after the onset of delinquency in Africa: A paper prepared for the United Nations Secretariat, December 1978".

22/ The Interregional Expert Group Meeting on Topic II was convened at Reno, Nevada, United States of America, from 28 May to 1 June 1979 to prepare this topic for the Congress.

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perhaps it is necessary if the legal structure is to protect younger children from the full force of the criminal law and its associated sanctions.

66. The seriousness with which undesirable behaviour is regarded is, to some extent, associated with the stage of development of the child along the growth continuum. For example, some behaviour perceived as "naughty" or mere childish misbehaviour in a very young child (such as striking another child) may be perceived as "delinquent" in an older child or, indeed, as "criminal" when performed by an adult. When differing cultural settings are considered, this circumstance is, of course, complicated further by the fact that behaviour considered "naughty" (or delinquent or criminal) in one culture may not be perceived in that way in another setting, and within cultures the designation of behaviour as delinquent or criminal, of course, may change over time.

67. Just as there are differences in perception, tradition and law among various countries in respect to expectations concerning the age of social responsibility, so too are there markedly differing alternative structures for providing the necessary social control and assistance in socialization processes. A general difference in social control structures may be discerned between some of the developing countries and the more developed ones. In the former, behaviour considered naughty (that is, merely a normally expected example of unwanted behaviour associated with the stage of development) or delinquent (that is, more serious misbehaviour calling for a more serious and concerned response) is typically dealt with by the family or by members of a close community unit. In the latter, the naughty behaviour is expected to be dealt with by the family, but the court system may be called upon to intervene in cases of delinquent behaviour; in other words, the court system provides a social control mechanism not only for "criminal" behaviour but also for delinquent acts.

68. For example, in the United States of America, a complex juvenile justice system, including juvenile and family courts, has developed. In the countries of Africa and Asia, a tradition of seeking to resolve delinquency problems within the family, rather than calling on any public authority, has persisted. In many parts of Latin America, in the Pacific region and in the Arab countries, the family has continued to play a central role. This is true even among nomadic peoples, in which the entire clan takes responsibility for any deviant behaviour and corrects it as necessary.

69. In the developed countries, a great deal of attention had been given recently to methods and procedures for the "diversion" of delinquency cases from the juvenile justice system to appropriate treatment agencies. The question arises as to whether such diversion is already being achieved in the developing countries and whether the development there of juvenile court systems to address problems of delinquent behaviour might in some instances represent a retrogressive step.

70. The kinds of agencies and intervention mechanisms that function in various cultures as a juvenile justice system present both similarities and differences. In the United States of America, for example, such agencies may include the police, the juvenile courts; social service units of governmental subdivisions, training

institutions and services. In Scotland, the system may include sheriffs' courts, reporters, children's hearings, and mechanisms for juvenile/police liaison. In Scandinavian countries, it may include child welfare councils or youth boards; in Japan, it may include a three-tier system involving the police, the family courts, and the child-guidance clinics. The African system relies similarly upon a variety of agencies. Thus, what is childish misbehaviour in one region, to be dealt with by the family or tribal unit, may be labelled delinquent behaviour in another, to be handled by various legal or social structures.

71. A second dilemma has arisen, particularly in the countries of North America and Western Europe, as a result of the two conflicting values referred to above - the need to protect both the child and society - which focuses on protecting the child's rights while meeting his needs. Faith in the benevolence of the State, through the courts, always to act in the best interest of the child is in some places giving way to an increased emphasis on the provision of more complete legal protection for the child. Thus, for example, in the United States of America, in the past 15 years, the Supreme Court has ruled that when jurisdiction over a child is in process of possible transfer to a criminal court, the child must have the benefit of due process protections. Soon thereafter, the Court ruled that a child charged with conduct that could result in confinement must have the same due process of law as an adult in similar circumstances. These decisions were followed by others that similarly stressed the rights of the child in juvenile court procedures. The implementation of mechanisms and procedures to ensure these rights has been slow and the increased attention to children's rights, although widely heralded, has been challenged as a potential hindrance to the ability of the juvenile courts to ensure the provision of services aimed at meeting the needs of the children.

72. Thus, the dilemma of protecting the rights and meeting the needs of children and young persons on an equal basis will require serious attention at the Sixth Congress. The report of the European regional preparatory meeting commented on this dilemma as follows: 23/

> "... there was conflict over theoretical perspectives concerning the appropriate form of judicial proceedings in cases involving juveniles. On the one hand, in order to obtain the full use of the various support services, it was thought that the court should be constructed on a "family tribunal" model, with diagnostic and prescriptive functions; but this might deprive the offender of legal rights of defence. On the other hand, if the 'due process' element was to be emphasized, according to which the juvenile was afforded a status analogous to that of an adult, the focus tended to change from the offender to the offence, and the sanction might become primarily punitive."

23/ "Report of the European Regional Preparatory Meeting ..." (A/CONF.87/BP/1), para. 32.

Recognizing the dangerous situation that this dilemma might pose, the experts at the preparatory meeting stressed the need for a thorough discussion of the issue at the Congress. The experts also recognized that, although the matter was currently debated mainly in the Western countries, a discussion at the Congress might lead to an examination of experiences that could be of benefit to the developing countries as well, especially with regard to the problems of fact-finding and due process protections.

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VI. THE LEGAL DEFINITIONS OF DELINQUENCY AND THE JURIDICAL NATURE OF JUVENILE JUSTICE

A. Definitions of delinquency

73. Virtually any form of youthful behaviour which is regarded in a society as deviant may be, and has been, labelled as "delinquent". The word "delinquency" thus, has no standard or commonly accepted precise meaning; rather, it is a common appellation used by the public and by the courts to designate a wide variety of forms of behaviour regarded as "mis-behaviour". 24/ The ambiguity of the term presents a number of difficulties. One is the difficulty of measuring the incidence and prevalence of delinquency over time; if different definitions of delinquency are used, it is clearly not possible to compare meaningfully statistics on delinquency from the various countries or jurisdictions. Another difficulty is that the term may be used to designate behavioural problems of youth as if such problems were all alike, whereas in actuality, they are quite diverse in form and aetiology. Yet another is the tendency to use the word "delinquent" as if it described a state of being (that is, a diagnosis) when the word more often refers to a combination of a person's behaviour and a societal reaction to it.

74. Following the recent Belgian and Portuguese models, a new Brazilian juvenile law has dispensed with the labels applied to juveniles, such as "abandoned", "delinquent" or "law breaker". A general term, "irregular condition" will now be applied to all young people below the age of 18 years who: 25/

(a) Suffer from material deprivation through their parents or tutors' deliberate intervention or omission;

(b) Are victimized by any kind of ill treatment carried against them by their parents or tutors;

(c) Are not able to be represented before the courts;

24/ This is not to deny that more specific and clearer definitions may not be found in the laws of various countries. An example of a greater degree of specificity, with differentiations on the basis of both age and whether or not an offence is alleged is provided by the juvenile law of Japan. A juvenile is a person under 20 years of age, although one under 14 years is not criminally liable. Juvenile delinquents are of three types: a "juvenile offender" is any juvenile under 20 years but not less than 14 years who is alleged to have committed an offence; a "law-breaking child" is any juvenile under 14 years who is alleged to have violated a criminal law or ordinance; a "pre-offence juvenile" is any juvenile who is deemed likely to commit an offence or violate criminal law or ordinances in the future, given his character or environment and the presence of one or more factors similar to those found among "status offenders" in other jurisdictions.

25/ Justice and Troubled Children ..., p. 9, para. 2.

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(d) Are singled out as deviants through maladjustment to family and community;

(e) Have been arrested as law breakers.

75. Underlying the application of measures to correct delinquency in Egypt is the belief that delinquent juveniles are not different from other people who violate laws of behaviour. In other words, it is believed that delinquent juveniles do not constitute a unique group but are, before anything else, human beings who have been unlucky in their adjustment to the social circumstances which they face and have therefore violated the penal code. 26/ In most other countries the criteria applied in determining who is in fact a delinquent are extremely vague. Considerable discretion seems to exist in evaluating whether the facts indicate a state of "moral" or "physical" danger to the child or young person involved or whether he or she should be labeled a delinquent. 27/

76. The issue may be clarified somewhat when the term "delinquency" is restricted to meaning that a court has adjudged the person to be delinquent. Then it is clear, at least, that the term designates a status within the juvenile justice system and not the status of a person as such.

77. If such a restricted definition of delinquency can be accepted, then it may be said, with due regard to the widely differing legal norms and procedures in various jurisdictions, that two general categories of delinquency do exist, and this approach may provide useful classifications for purposes of conceptualization and planning. The first category embraces those classifications of behaviour which, while labelled "delinquency" because of the offender's age, would be considered criminal if committed by adults. The second category embraces other classifications of behaviour which may also be labelled "delinquency", although not within the first category, in view of the person's status as a child. The latter category, which in some jurisdictions is termed "status offences" commonly includes such classifications as "incorrigible", or "ungovernable", truancy, runaway, or sexual misbehaviour. Thus, under the second category, the court may take actions in respect to a child's misbehaviour on the basis of age (being a child) rather than on the basis of the offence committed. The justification, ordinarily, is that the child is endangered in some way, including being in danger of becoming a delinquent under the first category (that is, committing offences considered to be crimes when committed by an adult).

B. Varying juridical forms

78. Current debates concerning appropriate forms and mechanisms within juvenile justice systems to deal adequately with delinquent children and young persons were reflected in the deliberations of the preparatory meetings for the Sixth Congress. A fundamental question, for example, was "to what extent and under what

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26/ Ibid., p. 44, para. 3.

27/ Ibid., p. 107, para. 2.

circumstances should formal sanctions be applied in cases involving juveniles, and which judicial branch should have jurisdiction?" Thus, a working group meeting to discuss this topic 28/ expressed misgivings about the desirability of having a separate court or tribunal for children in trouble. They also raised a question as to whether or not a young offender should be treated in much the same way as an adult. The views of the experts were based on the theory that what mattered most were the establishment of careful fact-finding procedures and the protection of the young defendant and society. However, the Expert Group recommended the retention of the juvenile court system - as an interim measure, at least - as the best available means of dealing with the problems of endangered children and young offenders.

79. Although structures of courts, tribunals, lay or judicial panels and the like may vary widely among jurisdictions with separate or special provisions for addressing delinquency problems, it is generally recognized that the judicial processing of juvenile delinquents has to take account of several social, emotional, physical and economic factors which are not, as a general rule, taken into account in the case of adult offenders. Among these factors are the important issues of decreased responsibility and culpability based on the child's stage of development, on the one hand, and, on the other, the needs for control and provision of services to children and young persons perceived as being in danger of committing serious offences. These issues have continued to make it necessary for some countries to retain or develop juvenile or family court structures, since the typical adult criminal court procedures are seen as inappropriate for resolving the kinds of problems that develop in the case of younger children. In other countries, the resolution of such problems is sought in tribal or community structures, tribunals, groups of elders, or by other less formal means. In some instances, however, when separate structures are not provided for delinquency cases, procedures are usually available to permit lesser sanctions commensurate with culpability or social responsibility.

C. Procedural questions

80. A variety of issues for discussion at the Sixth Congress emerged from the preparatory meetings; each of the issues on procedural questions needs to be examined further in order to establish the appropriate criteria to be applied in the selection of procedural models, in view of the high degree of diversity among those models now in use in various countries and cultural settings. Certain of the questions to be asked are:

(a) If a separate juvenile court structure exists, what categories of offenders should be brought before it?

(b) Who should decide on the necessity of court action, and according to what procedure? (In some countries, this is the responsibility of the police; in others, of a prosecutor; elsewhere, there are other forms of referral.)

28/ The working group was part of the Interregional Expert Group which met at Reno, Nevada, from 28 May to 1 June 1979.

(c) What are the appropriate minimum and maximum ages for jurisdiction of the juvenile courts?

(d) Should the tribunal dealing with young offenders deal also with children in need and children at risk? Or should alternative agencies be used, such as social welfare or other service agencies?

(e) Should the juvenile courts be used only as a last resort (that is to say, whenever possible, voluntarily accepted solutions should be employed)?

(f) Should those who preside over a juvenile justice tribunal be specially trained - for example, should they have knowledge of the social sciences as well as legal skills?

(g) Should members of the community be included in such tribunals or should they be restricted to professionals?

(h) In some countries, juveniles who commit very serious offences may be transferred to an adult court; 29/ in others, the juvenile court has jurisdiction but may employ special penalties. Which model is to be preferred? What is the appropriate age for consideration of such transfer of different sanctions, and for what offences? If it is agreed that, for very serious offences, it is necessary to move away from the protective and educative objectives of a juvenile court towards a greater concern for special and general deterrence or incapacitation, for the protection of society, how is this change in emphasis to be effected?

81. In addressing these questions, the Sixth Congress will also have to consider other equally important procedural questions relating to such issues as the right of juveniles and their parents to due process of law, including a speedy trial - perhaps even a public one - with the presentation of evidence meeting a high standard of proof, the right to appeal decisions of juvenile courts, administrative tribunals or panels of social welfare boards, and perhaps even the right to trial by jury. The demand for more equal and predictable justice in the juvenile justice system poses an important question for the Congress: should the juvenile justice system be allowed to continue to function on the paternalistic principle of rendering its decision in the best interests of the child or should the juvenile offender be accorded the same rights to due process of law as the adult offender?

29/ Spurred by a series of brutal and highly publicized killings in the New York City subways, a new Juvenile Offender Law was enacted by New York State in 1978. It ordered that 13-year-old juveniles accused of second-degree murder and 14- and 15-year-old juveniles indicted for a variety of offences, including burglary and assault, be treated as adults in the eyes of the law and tried in the adult court system. However, to protect juvenile convicts from premature contact with adult offenders, the new law still requires that a convicted juvenile be confined in juvenile facilities until he or she is old enough to be transferred to an adult prison.

82. At present, there exist substantial differences among jurisdictions in the application of due process of law to the juvenile justice system. While some countries have continued to adhere strictly to the principle of acting in the best interests of the child, others have extended more safeguards for due process. For example, the Supreme Court of the United States of America, in the matter of Gerald Gault, ordered that, in every state or federal case in which a juvenile is charged with a criminal offence for which he or she could be incarcerated, the juvenile court must provide timely written notice of the specific charges, the right to court-appointed legal counsel, the right to confront sworn witnesses and cross-examine them, and the constitutional privilege against self-incrimination. 30/ In another case, the Supreme Court ruled that a juvenile's guilt must be established beyond a reasonable doubt, 31/ thus adding another major element of due process to the legal rights afforded a juvenile in the United States.

83. Strict adherence to the principle of acting in the best interests of the child has in some countries led to a weakening of the procedural position of children and young persons. In some Western European countries, for example, children have hardly any rights during proceedings; thus, the procedural positions of juveniles and their parents seem to vary considerably. In the Federal Republic of Germany both the parents and juvenile must be heard; in France, both the parents and juvenile have a right to be represented by counsel; and in the United Kingdom, juvenile proceedings are very much like adult proceedings. 32/ Some jurisdictions have specific provisions in their juvenile justice laws with regard to the right to appeal. For example, the District Juvenile Court of Israel also serves as a court of appeal. The Israeli Juvenile Court Law of 1971 contains a provision for speedy trial of juveniles: except with the consent of the Attorney-General, a minor shall not be brought to trial for an offence if a year has passed since its commission. 33/

84. The issues relating to the right of juvenile respondents to trial by jury will require very careful consideration by the Sixth Congress. This is a matter which has recently received considerable attention in legal circles. In rejecting the contention that a juvenile, like an adult, has a right to a jury trial, the United States Supreme Court ruled that a jury is not necessary to "fundamental fairness" in the trial of a juvenile. 34/

85. Furthermore, the increasing seriousness of offences committed by juveniles is causing a number of jurisdictions to re-examine the need to apply the principles

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30/ See In re Gault, 387 U.S. 1 (1967).

31/ See In re Winship, 397 U.S. 358 (1970).

32/ Justice and Troubled Children ..., p. 84, para. 2.

33/ Ibid.

34/ Orman W. Ketchum, "McKeiver versus Pennsylvania: The last word in juvenile adjudications?" Cornell Law Review, vol. 57 (1971-1972), pp. 561-570.

of the bond and bail system to the juvenile model. In contrast to the adult offender, a juvenile offender has hitherto been presumed not to have an automatic right to individual freedom pending the adjudication of an offence. As a general rule, the juvenile offender is only entitled to protective custody and care while awaiting adjudication or processing. Hence, no right to bond or release on bail exists. But this assumption is now being challenged, and increasing demands are being made for the application of the bond and bail system to the juvenile model.

86. Another significant feature of the juvenile justice model which distinguishes it from the adult model is the concept of continuing jurisdiction. Whereas most criminal courts lose jurisdiction over the criminal after sentencing, a juvenile court legally continues to have responsibility for a juvenile even though he or she has been ordered to some form of treatment or care. Thus arises an important post-dispositional right to petition the original juvenile court for review, modification of its order or for termination of a commitment order. However, a number of jurisdictions are now following the adult model by terminating the jurisdiction of the juvenile or local court when the adjudicated juvenile is committed to an institution rather than to community-based rehabilitation facilities or services.

87. On the basis of current trends, it seems likely that the juvenile justice model of the future will have greater similarity to the adult model in a number of significant ways.

VII. ALTERNATIVES TO THE JUVENILE JUSTICE SYSTEM

88. At the regional preparatory meetings, discussions on alternatives to the juvenile justice system stressed the need for the Sixth Congress to give particular attention to methods for the diversion of delinquent children and youth from court procedures to other means of service and control. In some regions efforts are being made to provide such diversion systematically and on a large scale. Parents, schools, prosecutors and the police are making referrals to community-based services rather than to the juvenile or family courts, and such services are being expanded and increasingly utilized. Similarly efforts are being made to increase the use of the police in community service roles and to employ problem solving techniques other than referral to the courts. In this area, the experience of the developing countries could be especially useful to others. However, various concerns associated with such diversion programmes, before or after adjudication, will require special attention by the Sixth Congress. Such concerns include the protection of children's rights, the avoidance of coercion, the effectiveness of diversion programmes, and indeed, the need to demonstrate, through careful analysis, whether the diversion programmes are successful.

89. Now that the juvenile court is increasingly becoming a legal court of last resort, the Sixth Congress will have to consider whether there is ample justification for continuing the existing system of juvenile and family courts as a separate and independent entity. If the experiences of several countries, especially the developed ones, are any indication of future trends, juvenile crimes will continue to be distinguished from adult crimes and to be treated separately.

90. As dissatisfaction with the over-all performance of the juvenile justice model increases, attempts are being made to develop alternative models of a non-legal nature. For example, Sweden and the other Scandinavian countries have developed a system of child welfare boards to replace juvenile courts for children and young persons; in the United Kingdom, a middle ground has been selected, and effective control of the juvenile justice system rests with the lay public through public commissions and citizen magistrates. In some of the developing countries, attempts are also being made to modify the inherited juvenile justice systems so as to permit and encourage greater use of traditional and other less formal social and legal structures. Although the effectiveness of such alternative structures to the juvenile court system remains to be properly evaluated, the diversion of non-criminal and minor cases of delinquency to socio-administrative structures and mechanisms seems to be more appropriate and less harmful.

91. Furthermore, the adverse effects of the exposure of non-dangerous children and young persons - most of whom have committed no criminal act to the juvenile justice system have given rise to considerable doubts about the usefulness of the system. In particular, juvenile courts have been charged in many countries with failure to deal adequately with very serious acts of juvenile delinquency. In some countries this apparent failure has resulted in a lowering of the age of jurisdiction in order to permit the transfer of very serious juvenile cases to the adult criminal courts.

92. The diversion of juveniles to socio-administrative structures, in combination with broad preventive measures and strategies, has been viewed by some countries as an effective strategy for relieving the juvenile court of an unnecessary volume of minor cases. It is argued that increased diversion of minor cases of misbehaviour (status offences) from the juvenile court to non-legal structures will enable the juvenile court to concentrate its efforts on cases involving very serious acts of delinquency.

93. However, the search for appropriate alternatives to the juvenile justice system will involve a serious resolve to correct the socio-economic disparities now existing in many parts of the world. In this regard, the attention of the Sixth Congress is drawn to the following issues, to which the preparatory meetings for the Congress drew particular attention:

(a) Massive social problems such as hunger, poverty, malnutrition, illiteracy and so on require direct and specific types of intervention and can not be solved by the juvenile justice system alone. Such problems should be tackled directly as affronts to humankind and not because of their possible association with crime or delinquency;

(b) In society's response to anti-social behaviour by youth, the formal system should be used only when other social agencies and primary institutions of social control have failed or are not available: this implies a somewhat delimited role and function of the court (or its equivalent) and a reduced scope or range of intervention;

(c) The court's intervention should always be supplemented by appropriate screening devices - police, special panels, consultations between police and social workers, prosecutors and so on - and adequate mechanisms for uniformity and consistency within the system by all those involved in the process must be established in order to ensure effectiveness and fairness;

(d) Courts should protect the rights of children, be easily accessible to everybody and have the power to order and monitor the delivery of services;

(e) Whenever a problem is susceptible to voluntary solutions, they should be preferred - if possible, with the participation of the local community;

(f) Developing countries should be assisted in developing their own systems according to their own values, and indigenous social control mechanisms should be strengthened.

VIII. TREATMENT PROGRAMMES

94. A great variety of treatment models aimed at secondary prevention of delinquency have been devised in many countries. The models range from special educational programmes to work programmes and study and vocational training programmes. They are usually implemented in the community or in institutional settings. In many countries, however, treatment programmes are beset with difficulties. The apparent failure of such programmes to effect a decrease in the number of adjudicated delinquents who commit further offences has led to disenchantment with the rehabilitative ideals of the treatment model.

95. While acknowledging fundamental gaps in both programmes and evaluation research, it may be argued that too little is known for anyone to conclude that rehabilitative programmes are not effective in reducing delinquency. Many programmes have not taken sufficient care to protect the integrity and strength of the treatment intervention, and the evaluation procedures are often methodologically flawed. Furthermore, it is still unclear whether, under the parens patriae concept, the State has the right to impose treatment designed to change an offender without that person's full and informed consent (and if it does have that right, to what extent it may exercise it), or whether the State has a right only to impose punitive sanctions commensurate with the nature of the offence and culpability of the young offender. Thus, questions are raised as to whether treatment may be imposed or only used without coercion; whether and when a child has a right to refuse treatment; and whether treatment may be required but only to the limits of deserved punishment.

96. Another aspect of this controversy concerns whether a child has a right to treatment. If he does, the issues of appropriate mechanisms to assure and enforce that right pose another set of problems. When various forms of treatment potentially useful in the rehabilitation of the young offender are considered, the concept of differential treatment has to be taken into account, in view of the growing recognition of the likelihood that not all forms of treatment can be equally applicable to all kinds of adjudicated delinquents. Therefore, there is need for improving the classification procedures of the treatment model and the development of specialized programmes for each category of juvenile offender and measures for the evaluation of the effectiveness of such programmes. It has to be recognized also that, in many jurisdictions, despite the special needs and circumstances of young offenders and in view of the importance of emphasizing the rehabilitative aims of juvenile justice, young offenders in many countries are confined in institutional facilities with adult offenders. Such a practice poses very serious obstacles to rehabilitation.

97. In the reports of the preparatory meetings for the Sixth Congress, a clear preference was expressed for the use of community treatment programmes for adjudicated delinquents, whenever possible, as opposed to the use of institutional facilities. This is consistent with the trend in various countries to "de-institutionalize" the treatment of young offenders. It must be noted that, in many instances, young offenders are confined in pathetic conditions of imprisonment, often far from their homes and families, with very little offered them in the way of programmes that could realistically enhance rehabilitation.

98. Reducing over-reliance on institutional treatment will entail developing and testing alternative sanctions and methods of treatment and control, particularly in the community. The planning and development of appropriate community services, as discussed in part one of the present paper, is equally applicable to programmes for use after the onset of delinquency. Similarly, alternative sanctions, some of which are already in use in some jurisdictions, must be further explored and utilized where possible. Finally, as in the case of programmes for the prevention of delinquency, there is need for improved information on adjudicated delinquents, on the dispositions of the courts, on the effectiveness of differing measures, and for mechanisms to permit a greater sharing of experiences among various countries in the development of more rational and humane treatment programmes for juvenile delinquents.

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