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

REPORT OF THE INTERREGIONAL PREPARATORY MEETING FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS ON TOPIC II: "CRIMINAL JUSTICE POLICIES IN RELATION TO PROBLEMS OF IMPRISONMENT, OTHER PENAL SANCTIONS AND ALTERNATIVE MEASURES"

Vienna, 30 May-3 June 1988

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RECOMMENDATIONS

The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic II, "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures", after extensive discussion of the various substantive issues related to topic II, as outlined in the discussion guide (A/CONF.144/PM.1) for the interregional and regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, unanimously adopted the resolutions presented below, and recommended their submission, through the Committee on Crime Prevention and Control, to the Eighth Congress for further consideration and appropriate action.

A. The management of criminal justice and the development of sentencing policies

Resolution 1

The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic II, "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures",

Recalling that the Milan Plan of Action 1/ adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders recommended that continued attention should be given to the improvement of criminal justice systems so as to enhance their responsiveness to changing conditions and requirements in society,

Taking into account that the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order 2/ adopted by the Seventh Congress emphasized that crime prevention and criminal justice should not be treated as isolated problems to be tackled by simplistic, fragmentary methods, but rather as complex and wide-ranging activities requiring systematic strategies and differentiated approaches,

Aware that the Seventh Congress, in its resolution 8 3/ on criminal justice systems - development of guidelines for the training of criminal justice personnel, recommended that Member States should develop and implement adequate training programmes for criminal justice personnel, and requested the Secretary-General to develop guidelines for the establishment of training programmes in all parts of the system for criminal justice personnel,

Mindful that the Seventh Congress, in its resolution 9 4/ on development of crime and criminal justice information and statistical systems, requested the Secretary-General to initiate work on the use of information systems in the administration of criminal justice and invited interested Member States to provide for proper measures to enhance the transfer of information within the agencies of the criminal justice system,

Considering that the Seventh Congress, in its resolution 10 5/ on the status of prisoners, noted that the Standard Minimum Rules for the Treatment of Prisoners 6/ inspired the policies of Member States to the benefit of prisoners,

Taking also into account Economic and Social Council resolution 1986/10 of 21 May 1986, on implementation of the conclusions and recommendations of the Seventh Congress, and 1986/12 of 21 May 1986, on crime prevention and

criminal justice in the context of development, and the questions recommended therein for consideration by the Committee on Crime Prevention and Control with a view to their follow-up, as appropriate, by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Convinced that criminal justice management is a matter of concern for States Members of the United Nations for a number of reasons, including the following:

(a) Only if the criminal justice system is well managed can rational changes be made to improve the situation;

(b) Inadequate management of the criminal justice system can be a cause of certain practices, such as long delays before trial, that may create injustices for those whose cases are being processed by the system;

(c) Inadequate management can lead to inappropriate allocation of resources,

Emphasizing that the Standard Minimum Rules for the Treatment of Prisoners establishes a basis for considering issues related to the management of imprisonment,

Convinced also that information systems are an essential instrument of efficient management, and that in many circumstances, the computerization of such systems can enhance the overall effectiveness of the system,

Bearing in mind, however, that there are both costs and dangers involved in almost every aspect of the computerization of a part of a complex organization,

Emphasizing also that Member States can learn from the successes and mistakes made in other jurisdictions, and that Member States can help each other by sharing information concerning software and hardware,

Stressing that the criminal law and the criminal justice process should be seen as instruments of last resort in dealing with wrongdoing in society,

Taking cognizance of the fact that in most countries at present imprisonment is the sanction that is the focus of most criminal legislation, even though it is not the sanction actually used in most criminal cases,

Emphasizing further that Member States should develop explicit sentencing policies which will have the effect of reducing levels of imprisonment worldwide,

Recognizing that successful measures for combating crime are, for the most part, to be found outside the sentencing process, and indeed outside the criminal justice system; that sentencing practices should be seen neither as a cause of current levels of crime nor as solutions to crime problems in the future; and that although a goal of the criminal justice system as a whole is to reduce crime, the purpose of sentencing is to aid that process by responding in a just and measured fashion to wrongdoing in society,

Recognizing also that a sentencing policy that accomplishes the aforesaid goal will contribute to the well-being of society by providing for sanctions that preserve the authority of the law and promote respect for it,

Recognizing further that sentencing is but one stage of the criminal justice system and that, similarly, imprisonment does not occur only as a result of a decision by a judge to sentence an offender,

I. Management and training

1. Recommends that Member States should consider the following policies:

(a) Designing systems according to the specific circumstances, including provisions, in particular, for measuring and projecting trends in criminality and in administrative and judicial practice and for measuring and assessing the results of policy decisions;

(b) Within their respective legal frameworks, structuring the management of each part of the criminal justice system in such a way as to develop an appropriate information base and coherent policies, and ensuring that the impact of decisions in one part of the criminal justice system be considered in the light of their effects on other parts;

(c) Considering decisions within one part of the criminal justice system in the light of the goals not only of that part of the criminal justice system, but also of the criminal justice system as a whole;

(d) Acknowledging that the training of staff in the criminal justice system as a whole should aim at creating an understanding of the role of each person and each service in the context of the overall objectives of the criminal justice system;

(e) Encouraging the training of staff on an inter-service basis in order to promote understanding of the interdependence of the different parts of the criminal justice system;

(f) Encouraging, where practicable, the development of co-operative training programmes between Member States in order to facilitate the exchange of ideas and perspectives;

(g) Facilitating the exchange of information between Member States on the training of criminal justice personnel and on solutions to management problems within the criminal justice system;

(h) Facilitating and, where possible, obtaining the necessary funding for the exchange of personnel between Member States for training programmes;

II. Management of imprisonment

2. Recommends that, in order to reinforce the application of the Standard Minimum Rules for the Treatment of Prisoners and to promote accountable management, Member States consider the following action:

(a) Developing policies and strategies that minimize the use of custody. Such policies should be designed and evaluated in their own right, independently of the problem of overcrowding;

(b) Pursuing, where prison overcrowding nevertheless exists, practical measures such as amnesties designed specifically to alleviate the problem;

(c) Establishing policies and procedures that allow for judicial review and effective control of prison administrative policies or practices where there is evidence that the Standard Minimum Rules for the Treatment of Prisoners have not been followed;

(d) Drawing up specific operational standards for areas covered by the Standard Minimum Rules for the Treatment of Prisoners. Those Rules should be expressed in quantitative terms where appropriate, and should provide a standard against which the administration of prisons can be periodically evaluated;

(e) Making the above-mentioned operational standards readily accessible to all interested parties so they can be used to evaluate prison operations;

(f) Requiring prison administrators to provide opportunities for all prisoners to be reintegrated into life in society, and developing policies and procedures to achieve that goal. Information about such policies and procedures should be publicly available within Member States;

(g) Ensuring that a person who has been released from prison shall be at no more disadvantage than any other member of society in terms of access to publicly provided benefits;

3. Recommends further that Member States periodically report on compliance with the Standard Minimum Rules for the Treatment of Prisoners. Such replies should be made public on request by the United Nations and be accessible to the public in the Member States;

4. Requests the Secretary-General to allocate resources to assist Member States in accomplishing those aims, as appropriate;

III. Management and computers

5. Recommends that Member States consider the following action:

(a) Assessing, prior to a decision on computerization, whether labour-intensive methods should be adopted, given the costs of computerization. In particular, the indirect costs associated with computerization should be carefully considered;

(b) Determining what information to include in an information system, since that will have a direct impact on the factors on which decisions are based (using the information system) at a later stage. The choice of such information is a value-laden decision;

(c) Monitoring the installation procedures and results of computerization carefully to ensure that the original and explicitly stated goals are being effectively met;

(d) Ensuring the protection of the rights of individuals (offenders, victims and others);

6. Recommends also that Member States, during the process of computerization, should consider various aspects of the criminal justice system, including the following:

(a) How decisions about the nature and extent of information collected and the definition of terms or units within the system will facilitate the effective management of the criminal justice system as a whole;

(b) How decisions about the nature, extent and definition of information collected for the information system might be helpful in facilitating the comparative analysis of jurisdictions within Member States at the national and international level;

7. Recommends further that before a move to the computerization of any aspect of the criminal justice system takes place, Member States should take into account the recommendations of the European Seminar on Computerization of Criminal Justice Information Systems held at Popowo, Poland, in May 1987; 7/

8. Requests the Secretary-General to develop a data base of innovative computerization programmes that might be applicable outside the jurisdiction for which they were developed; to facilitate the exchange of information, experience and personnel between jurisdictions that are in the process of computerizing some aspect of the criminal justice system and jurisdictions somewhat more advanced in that process; and to disseminate information on relevant experiences in that respect;

IV. The application of the criminal law

9. Recommends that Member States should consider the following action:

(a) Creating a process that encourages the prosecutor (or other officials within the criminal justice system) to support non-criminal techniques of resolving disputes and conflicts, such as through mediation and reparation;

(b) Acknowledging explicitly in legislation or published administrative guidelines the advisability of allowing the prosecutor or others to screen some cases out of the criminal justice system, instead of proceeding with prosecutions and formal charges;

(c) Developing guidelines for the equitable use of less punitive ways of dealing with wrongdoings than the criminal justice system, subject to suitable safeguards;

(d) Developing techniques for minimizing the intrusion of the criminal justice system into the lives of members of society;

V. Sentencing policy: general principles

10. Recommends that Member States should consider the following action:

(a) Developing policies including explicit sentencing principles that provide guidance to sentencing judges and facilitate an understanding of sentencing by offenders, victims and the general public;

(b) Formulating the above-mentioned principles in such a way that they can be used to assess individual sentences;

(c) Evaluating whether sentences are fulfilling the purposes ascribed to them within the context of those principles;

11. Recommends that, in developing the sentencing principles referred to in paragraph 10, Member States should take into account the following points:

(a) The responsibility for sentencing policy should lie with the Government, on the basis of consultations with, inter alia, the judiciary and subject to the approval of the legislature. However, the responsibility for the imposition of sentences should rest solely with an independent judiciary;

(b) Sentences should be no more onerous than necessary to express society's condemnation of the behaviour involved and to secure its protection from the most dangerous offenders;

(c) A range of sanctions should be available to enable the sentencing judge to choose the most appropriate one, bearing in mind the following guidelines:

(i) Sentences involving imprisonment should be imposed only if there are demonstrable grounds for believing that community sanctions would be inappropriate;

(ii) The choice between different sanctions of equivalent severity should be made in consideration of such factors as the likelihood of rehabilitation of the offender and the cost and benefits to other members of society and to society as a whole;

(d) Imprisonment should be used as a sanction of last resort;

(e) None but the most serious offences should be excluded from the application of community sanctions. Hence the full range of sanctions should be equally available for all but the most serious offences, with no single sanction taking precedence over any others;

(f) Certain sanctions for special categories of offenders (for example pregnant women or mothers with infants or small children) should be prescribed and a special effort made to avoid the use of imprisonment, in accordance with the various guidelines suggested above;

VI. Ensuring fair punishment

12. Recommends, in order to minimize the punishment of those not yet convicted of an offence, that Member States should consider taking the following steps:

(a) Reducing the time between the commencement of criminal proceedings and the final settlement of a case;

(b) Minimizing the number of those committed to custody awaiting trial. In particular, efforts should be made to enact legislation that has the effect of holding in custody before trial only those persons of whom it can be shown on reasonable grounds that they will not appear for trial, that they will be likely to commit further serious offences, that they will seriously interfere with the administration of justice or that they should be held because of other factors related to the charge;

(c) Ensuring that those for whom one sanction is adjudicated (for example, a fine) are not subsequently imprisoned solely because they did not comply with the terms of the originally imposed sanction;

(d) Creating practices or policies whereby all appropriate information and recommendations relevant to sentencing are made available to the sentencing judge. Such information could come from the defence, the prosecutor or an agent of the court (in the form, for example, of a pre-sentence or social enquiry report);

13. Recommends further that Member States, in order to impose appropriate and just sanctions, should consider policies or practices to ensure that such

sanctions are administered effectively, that information about their operation is provided to the sentencing judge, and judges are made aware of the nature, impact and cost of the sanctions available to them.

B. United Nations draft standard minimum rules for non-custodial measures (The Tokyo Rules)

Resolution 2

The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic II, "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures",

Bearing in mind the Universal Declaration of Human Rights 8/ and the International Covenant on Civil and Political Rights 9/ as well as other international human rights instruments pertaining to rights of persons in conflict with the law,

Bearing also in mind the Standard Minimum Rules for the Treatment of Prisoners 6/ adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and the important contribution of those Rules to national policies and practices,

Recalling resolution 8 3/ of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on alternatives to imprisonment,

Recalling also resolution 16 10/ of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on reduction of the prison population, alternatives to imprisonment, and social integration of offenders,

Recalling further Economic and Social Council resolution 1986/10, section XI, on alternatives to imprisonment, which requested the Secretary-General, inter alia, to prepare a report on alternatives to imprisonment for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and to study that question with a view to the formulation of basic principles in that area, with the assistance of the regional institutes,

Recognizing the need to develop local, national, regional and international approaches and strategies in the field of non-institutional treatment of offenders as well as the need to formulate standard minimum rules as emphasized in the report of the Committee on Crime Prevention and Control on methods and ways to be most effective in preventing crime and improving the treatment of offenders (E/CN/5/536, annex IV),

Convinced that alternatives to imprisonment can be an effective means of treating offenders within the community to the best advantage of both the offenders and society,

Aware that the restriction of liberty is justifiable only from the viewpoints of public safety, crime prevention, just retribution and deterrence, and that the ultimate goal of the criminal justice system is the reintegration of the offender into society,

Emphasizing that the increasing prison population and prison overcrowding in many countries constitute factors which create difficulties for the proper implementation of the Standard Minimum Rules for the Treatment of Prisoners,

Expressing its appreciation to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders for the initiative taken in formulating and submitting to the Meeting a set of draft rules, as well as to the various intergovernmental and non-governmental organizations involved in that process,

1. Notes with satisfaction that the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, under its provisional agenda item "Criminal justice policies in relation to the problems of imprisonment, other penal sanctions and alternatives measures", will consider the issue of the formulation of new standards in the field of alternatives to imprisonment;

2. Notes with appreciation the valuable collaboration between the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and the Crime Prevention and Criminal Justice Branch in the substantive preparations for the Eighth Congress;

3. Invites the Committee on Crime Prevention and Control, at its tenth session, in its capacity as preparatory body for the Eighth Congress, to review and give favourable consideration to the proposed draft rules, with a view to their submission to the Eighth Congress, designating them as the "Tokyo Rules";

4. Calls upon Member States to apply the proposed draft rules, once adopted by the Congress, in their policies and practices;

5. Requests Member States to report on their implementation every five years;

6. Requests also the Secretary-General, in co-operation with competent agencies and bodies and with relevant non-governmental organizations, to prepare periodic reports for the Committee on Crime Prevention and Control on the implementation of the proposed draft rules.

Annex

UNITED NATIONS DRAFT STANDARD MINIMUM RULES FOR NON-CUSTODIAL MEASURES (THE TOKYO RULES)

I. GENERAL PRINCIPLES

1. Fundamental aims

1.1 The aim of the present standard minimum rules is to provide a set of basic principles to promote the use of non-custodial measures.

1.2 Every endeavour shall be made to ensure the fullest possible implementation of the rules within the context of the political, economic, social and cultural conditions prevailing in each Member State, taking into account the aims and objectives of the respective criminal justice systems.

1.3 Member States shall endeavour to implement the rules in such a manner as to attain a proper balance between the individual rights of suspects and offenders, the concern of society for public safety and crime prevention and the needs of victims.

1.4 Non-custodial measures shall be developed by Member States within their respective legal systems not only to reduce the use of imprisonment but also as a necessary component in the rationalization of criminal justice policies from the standpoints of human rights, social justice and social defence.

1.5 The application of the rules is intended to promote greater community involvement in the criminal justice process and specifically in the treatment of offenders.

1.6 The rules shall be applied without any discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Extension of non-custodial measures

2.1 The criminal justice system shall provide a wide range of non-custodial measures.

2.2 Consideration shall be given, where appropriate, and in accordance with legal safeguards, to dealing with suspects and offenders without resorting to formal proceedings or trial by the court.

2.3 Non-custodial measures introduced as alternatives to imprisonment shall be used only as alternatives to imprisonment. They should not be used as alternatives to other non-custodial sanctions.

2.4 Non-custodial measures should be made available to suspects and offenders at the earliest appropriate time.

2.5 In no case should the use of non-custodial measures interfere with or delay efforts towards depenalization and decriminalization.

3. Legal safeguards

3.1 The introduction, definition and application of non-custodial measures shall be founded in law.

3.2 The selection of the non-custodial measure shall be based on an assessment of established criteria in respect of both the nature and gravity of the offence and the personality and circumstances of the suspect or offender.

3.3 The discretion to be exercised by the competent authority at all stages of the proceedings and at different levels, including investigation, prosecution, adjudication and follow-up of the dispositions, on the basis of well-defined criteria, shall be exercised with full accountability and in accordance with judicial principles.

3.4 All non-custodial measures applied before formal proceedings or trial shall require the consent of the suspect or offender.

3.5 All non-custodial measures shall be subject to review by the competent judicial or independent authority upon application of the suspect or offender.

3.6 Non-custodial measures shall not involve medical or psychological experimentation without the consent of the suspect or offender and must not involve undue risk of physical or mental injury to the suspect or offender.

3.7 The dignity of suspects and offenders subjected to non-custodial measures shall be protected at all stages.

3.8 The failure of non-custodial measures, for whatever reason, should not automatically lead to the imposition of custody.

3.9 Appropriate machinery for the redress of any grievance related to non-compliance with human rights shall be provided.

II. PRE-TRIAL STAGE

4. Pre-trial dispositions

4.1 The police, the prosecution or other agencies dealing with criminal cases should, where appropriate, be empowered to discharge the offender whenever they consider that it is not necessary to proceed with the case from the point of view of the protection of society or the promotion of respect for the law or the rights of victims. For this purpose a set of established criteria shall be developed within the respective legal systems.

5. Avoidance of pre-trial detention

5.1 Pre-trial detention shall be used as a means of last resort in criminal proceedings, with due regard for the investigation of the alleged offence and for the protection of the community and the victim.

5.2 In cases where pre-trial detention is found indispensable, it shall last no longer than necessary to achieve the objectives stated above, and be administered humanely and with respect for the inherent dignity of the human person. Alternatives to pre-trial detention shall be employed at as early a stage as possible.

5.3 The suspect shall have the right of appeal against pre-trial detention to a competent judicial authority.

III. TRIAL AND SENTENCING STAGE

6. Social enquiry reports

6.1 Where the possibility of imposing non-custodial measures exists, the judicial authority may avail itself of a report prepared by a competent and authorized officer or agency. As far as possible, the report should contain information on the social background of the offender, the circumstances under which the offence was committed, and the prevailing facts subsequent to the commission of the offence. Such reports shall be factual, objective and unbiased, and expression of opinion shall be clearly identified.

7. Sentencing dispositions

7.1 A wide range of non-custodial dispositions shall be made available to the judicial authority in order to provide a greater flexibility consistent with the nature and gravity of the offence and the protection of society and to avoid institutionalization as far as possible. The judicial authority, in its decision, should take into consideration the rehabilitative needs of the offender, the protection of society and the interest

of the victim who should be given an opportunity to be consulted, whenever appropriate. Sentencing dispositions may include:

Verbal sanction, such as an admonition and a reprimand
Conditional and absolute discharge
Status penalties
Economic sanctions and monetary penalties such as fines, day-fines, confiscation or an expropriation order
Victim restitution or compensation order
Suspended or deferred sentence
Probation and judicial supervision
Community service order
Semi-liberty
Periodic detention
Attendance centres
House arrest
Any other mode of non-institutional treatment

7.2 The development of new non-custodial measures should be encouraged and closely monitored.

IV. POST-SENTENCE STAGE

8. Post-sentencing dispositions

8.1 A wide range of alternatives shall be made available to the appropriate authority in order to provide differential measures, to avoid institutionalization as far as possible and to assist offenders in their early reintegration into society. Such alternatives may include:

Furlough and half-way houses
Licence on recognizance
Work or education release
Parole
Remission
Pardon

8.2 The various forms of conditional release from an institution shall be implemented by the appropriate authority, subject to review by the judicial or any other competent independent authority.

8.3 Any form of release from an institution to a non-custodial programme shall be considered at the earliest possible stage.

V. IMPLEMENTATION OF NON-CUSTODIAL MEASURES

9. Supervision

9.1 When supervision is entailed, it shall be carried out by a competent authority under the specific conditions as prescribed by the law.

9.2 Offenders shall be provided with the necessary psychological, social, and material assistance, so as to facilitate their reintegration into society. Within the framework of a given non-institutional measure, the most suitable type of supervision and treatment should be determined for each individual case. Those measures should be periodically reviewed and adjusted if necessary.

10. Duration of non-custodial measures

10.1 The duration of the non-custodial measures shall not exceed the period established by the competent authority in accordance with the prevailing law.

10.2 Provision shall be made for early termination whenever the offender has responded favourably to the measures.

11. Conditions of non-custodial measures

11.1 The competent authority shall decide the conditions to be observed by offenders sentenced to non-custodial measures, taking into account both the needs of society and the individual needs and rights of the offenders.

11.2 The conditions shall be practical, precise and as few as possible, with the aim of reducing the possibility of the offenders' relapse into criminal behaviour and of increasing the possibility of their social reintegration.

11.3 The conditions could be modified by the competent authority under established statutory provisions, in accordance with the progress made by the offender.

11.4 A breach of conditions may result in the revocation of the non-institutional treatment order.

12. Treatment process

12.1 Whenever it is decided that treatment is necessary every effort shall be made to understand each offender's background, personality, aptitudes, intelligence and values, especially the circumstances leading to the commission of the offence, and to establish a good relationship with the offender.

12.2 Every effort shall be made by the competent authority to utilize purposefully the resources of the community and social support systems such as the family, neighbourhood, school, work-place and social and religious organizations.

12.3 Within the framework of any given non-custodial measure, various schemes, such as case-work, group therapy, residential programmes and specialized treatment of various categories of offender, shall be developed to meet the needs of offenders more effectively.

12.4 The treatment should be guided by competent professionals, trained in social and behavioural sciences. Full use should be made of informal social resources and of the involvement of laypersons and volunteers.

12.5 Case-load assignments shall as far as practicable be maintained at a manageable level to ensure the effective implementation of treatment programmes.

12.6 A case record for each offender shall be properly established and maintained by the competent authority.

13. Discipline and breach of conditions

13.1 At the commencement of a non-custodial measure, each offender shall receive a clear explanation of the programme, the expectations and the consequences of failing to comply with any conditions stipulated in the supervision order.

13.2 A breach of conditions may result in the modification or revocation of the order for the non-custodial measure. If an offender is suspected of having breached any condition, he or she shall be given an opportunity to explain. The modification or revocation of supervision shall be made by the competent authority, and only after a careful examination of the facts adduced by both the supervising officer and the offender.

13.3 In the event of modification or revocation of the non-custodial measure, the competent authority shall attempt to establish a suitable alternative non-custodial measure. A sentence of imprisonment can be imposed only in the absence of other suitable alternatives.

13.4 Powers to arrest and detain under supervision in case the offender breaches the conditions shall be laid down by law .

13.5 Upon modification or revocation of the non-custodial measure, the offender shall have the right to appeal to a higher judicial or independent authority.

VI. STAFF

14. Recruitment

14.1 There shall be no discrimination in the recruitment of staff on grounds of race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, birth or other status. The policy regarding staff recruitment should however in appropriate cases take into consideration national policies of affirmative action, and reflect the diversity of the offenders to be supervised.

14.2 Persons appointed to manage non-institutional measures should be considered personally suitable, and whenever possible have a basic knowledge of social or behavioural sciences and some relevant practical experience. Such qualifications shall be clearly specified.

14.3 To secure and retain qualified professional staff, appointments shall be made on a full-time basis, with civil service status and with adequate salary and benefits, commensurate with the nature of the work and providing ample opportunities for professional growth and career development. Parallel arrangements should be made for part-time specialists.

15. Training of staff

15.1 The objective of training shall be to make clear the responsibility of staff with regard to the rehabilitation of the offender, the assurance of the offender's rights, the protection of society and the necessity to co-operate and co-ordinate activities to that end with concerned agencies.

15.2 Adequate facilities shall be made available for in-service training, as well as for the organization of regular refresher courses, so as to keep the staff informed of developments relating to non-custodial measures.

VII. VOLUNTEERS AND OTHER COMMUNITY RESOURCES

16. Public participation

16.1 Public participation is a major resource and shall be encouraged as one of the most important factors in restoring the ties between offenders undergoing non-custodial measures and the family and the community. It should be used to complement the efforts of the criminal justice administration.

16.2 Public participation should be regarded as an opportunity for the citizens themselves to contribute to the protection of their society.

17. Public understanding and co-operation

17.1 Governmental agencies, the private sector and the general public shall encourage and support voluntary organizations that promote non-institutional measures.

17.2 Conferences, seminars, symposia and other activities shall be regularly organized to stimulate awareness of the need for public participation in the field of non-custodial measures.

17.3 All forms of mass media shall be utilized in helping to create a constructive public attitude, leading to activities conducive to the proper non-institutional treatment and rehabilitation of offenders.

17.4 Every effort shall be made to inform the public of the importance of its role in the implementation of non-custodial measures.

18. Volunteers

18.1 Volunteers shall be carefully screened and recruited on the basis of their aptitude for and interest in the work involved; they shall be properly trained for the specific responsibility to be discharged and shall have access to support and counselling from, and the opportunity to consult with, the competent authority.

18.2 Volunteers shall encourage offenders and their families to develop meaningful ties with the community and a broader sphere of contact by providing counselling and other appropriate forms of assistance, rather than being merely a means of case-load reduction.

18.3 Volunteers shall be insured against accident, injury and public liability when carrying out their duties in good faith. They shall be reimbursed for necessary expenditures incurred in the course of their work. Public recognition shall be extended to them for the services they render for the well-being of the community.

VIII. RESEARCH, PLANNING, POLICY FORMULATION AND EVALUATION

19. Research and planning

19.1 Efforts shall be made to involve both public and private bodies in the organization and promotion of research on non-institutional treatment of offenders, as an essential aspect of the planning process.

19.2 Research shall be designed and targeted on the problems that confront clients, community, policy-makers and practitioners.

19.3 Research and information mechanisms shall be built into the criminal justice system to collect and analyze the relevant data and statistics on the implementation of non-institutional treatment for offenders.

19.4 Efforts shall be made to exchange information and research results and to promote scientific co-operation between countries in the field of non-institutional treatment for offenders.

20. Policy formulation and programme development

20.1 Programmes for non-institutional measures shall be systematically planned and implemented, as an integral part of the criminal justice system within the national development process.

20.2 Regular evaluations shall be carried out with a view to the more effective implementation of non-institutional measures.

20.3 Periodic reviews should be conducted to evaluate the objectives, functioning and effectiveness of non-custodial measures.

21. Linkages with related agencies and activities

21.1 Suitable mechanisms shall be evolved at various levels to facilitate the establishment of linkages between services responsible for non-institutional measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, education and labour, and the mass media.

22. International co-operation

22.1 Research, training, technical assistance and exchange of information among Member States on non-institutional measures should be strengthened through the regional and interregional institutes, in close collaboration with the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat.

23. Saving clause

23.1 Nothing in these rules shall be interpreted as precluding the application of the Standard Minimum Rules for the Treatment of Prisoners, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice or any other human rights instruments and standards recognized by the international community and relating to the care of offenders and the protection of their basic human rights.

I. ATTENDANCE AND ORGANIZATION OF WORK

A. Date and venue of the Meeting

1. The Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on topic II, "Criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures", was held at Vienna from 30 May to 1 June 1988. It was the fourth of a series of interregional meetings, each convened to discuss one of the substantive agenda items of the Eighth Congress to be held in 1990, in accordance with Economic and Social Council resolution 1987/49 of 28 May 1987 and General Assembly resolution 42/59 of 30 November 1987.

B. Attendance

2. The Meeting was attended by experts from different regions of the world and observers from Member States, United Nations bodies and intergovernmental and non-governmental organizations. A list of participants is given in annex I.

C. Opening of the Meeting

3. The Interregional Preparatory Meeting was opened by the Director-General of the United Nations Office at Vienna and Secretary-General of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The Director-General said that the agenda of the Meeting covered the central issues involved in the prevention of crime and the treatment of offenders. The unacceptable and in some cases deteriorating situation of many men, women and children in prisons was a cause of concern to the international community. Although public and private efforts to extricate prisoners from such conditions should constantly be encouraged, it was also vital for the United Nations to continue to promote universal application of standards for the treatment of all prisoners.

4. The inability of societies to cope effectively with new patterns and dimensions of crime had thrown extra weight on the criminal justice system, and further accentuated the controversy over the use of imprisonment. Besides the traditional argument about the inherent contradictions in the custodial and rehabilitative functions of prisons, additional factors had given a new impetus to the movement for measures other than imprisonment for dealing with offenders.

5. The Meeting was called upon to provide advice on two basic issues. The first was the problem of imprisonment itself, in particular the need for practical proposals both to reduce the number of people in prison and to improve the situation of those in prison. The second basic issue was the question of alternatives to imprisonment. In that connection, she thanked the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) for the formulation of draft standard minimum rules for non-institutional treatment of offenders, which were submitted for consideration to the meeting.

6. The Director-General noted, in conclusion, that policies could be appropriate only if they were based on respect for human dignity, and that while humanizing the penal system was not an easy task, the limitation in resources should only strengthen the resolve of the United Nations to stimulate improvements in that important area of social development.

7. The Representative of the Committee on Crime Prevention and Control, speaking on behalf of the Committee, pointed out that while most Member States were deeply concerned about crime and the management of the criminal justice system, many countries were moving away from imprisonment to a "post-carceral" society, and that the Meeting had a chance to lay the foundations for different approaches to reducing the number of people incarcerated. It was important for the Meeting to combine imaginative innovations with a realistic view of what could be achieved, and to concentrate on specific issues with in-depth discussions leading to practical results.

8. The Chief of the Crime and Criminal Justice Branch, introducing the substantive issues, noted that the problem of imprisonment had been one of the most pressing and constant during the 40 years of United Nations involvement with the topic. The prison in its historical evolution had become an institution to which society had delegated the administration of the most severe form of social control: the penal sanction. The rationale and use of imprisonment, however, had changed in the past and no doubt would change in the future.

9. Certain issues required special consideration. First, the problem of imprisonment should be seen from the standpoint of proper management of the entire criminal justice system, an approach which had been recommended by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The training of criminal justice personnel and the use of computers in criminal justice management were two of the questions on which the meeting should focus its attention. Secondly, there had been a widespread realization that the whole area of sentencing might benefit from reform and the development of clearly stated new policies. Thirdly, the problems of delay of justice, detention pending trial and prison overcrowding had to be considered in their own right. Guidance was needed as to what innovative strategies should be followed. Finally, the meeting should assist in the promotion of the use of non-institutional measures by reviewing the proposed UNAFEI draft standard minimum rules, and adding its own observations on how best to implement those measures, in accordance with resolution 16 10/ of the Seventh Congress.

D. Election of officers

10. The Meeting elected the following officers by acclamation:

Chairman:	Angel Djambazov (Bulgaria)
Vice-Chairmen:	Anthony Doob (Canada)
	Ira Rowe (Jamaica)
	Nissanka Wijeratne (Sri Lanka)
Rapporteur:	Andrew Chigovera (Zimbabwe)

E. Adoption of the agenda and organization of work

11. The Meeting adopted the following agenda:

1. Opening of the Meeting

2. Election of officers

3. Adoption of the agenda and organizational matters

4. Problems and perspectives in criminal justice management

5. Sentencing policies and reforms

6. Problems of imprisonment

7. Alternatives to imprisonment

8. Adoption of the report

9. Closure of the Meeting

II. REPORT OF THE DISCUSSION

12. The Chairman of the Meeting said that the problems involved in the treatment of offenders in both developed and developing countries showed that the topic to be discussed by the Meeting was universal in scope. The discussions would provide new insights into the very complex question of imprisonment and alternatives to it. He emphasized the importance of the exchange of views and experiences and of the contribution of the Meeting to the establishment of two sets of standards, one for the computerization of criminal justice information, and the other for the use of alternatives to imprisonment and the reduction of the prison population.

13. In their opening remarks various experts commended the method of presentation and analysis of the issues covered in the discussion guide for the interregional and regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.144/PM.1). Although the discussion guide might seem to deal with separate and disparate elements, there were important conceptual and theoretical links between the different subjects.

A. Problems and perspectives in criminal justice management

14. It was agreed that the main topic on the agenda of the meeting was imprisonment, and that it had to be considered from three perspectives, namely that of its objectives, of its reduction and of possible alternatives to its use. One expert suggested that the Meeting should concentrate on a few key issues in respect of imprisonment. He pointed out that if general prevention was taken to be the primary objective of the criminal justice system, the efficiency of the system as a whole, particularly as perceived by the public, would be the primary factor in achieving that objective. As a result of a successful programme of general prevention the length and severity of sentences would become relatively unimportant, and could probably be considerably reduced.

15. The Meeting discussed the degree to which the objective of rehabilitation had been discarded in some countries, but then brought back in a new form, while being retained in other countries. It was agreed that the value of extended imprisonment as a general deterrent to other offenders was questionable, and that incapacitation could be achieved only by the use of very long sentences. If a prison system was predicated on the assumption that it did not matter how constructively prisoners were treated because "nothing worked", then one type of prison system would be appropriate. But if it was believed that prisons could play a constructive role, then the required system would differ in important respects. Even in countries that had abandoned the old individual treatment model, the idea that time spent in prison should be used as constructively as possible had now been revived.

16. The Meeting agreed that the reduction of the prison population was a most desirable objective in itself. In many countries, the major cause of overcrowding was the large number of prisoners held on remand prior to trial. In some countries the figure could be as high as three quarters of the total prison population. The damaging effects of the use of remand, leading to an increased likelihood of a plea of guilty or a conviction, were described in some detail. In one developing country the prison system was filled with people between the ages of 20 and 30, who were serving sentences of 12 months or less. Such sentences seemed to have no potential for either rehabilitation or incapacitation. To deal with such cases, the use of alternative non-custodial sanctions should be considered.

17. The experts discussed at some length the overall management of the criminal justice system as a means of reducing the prison population. Such comprehensive management might well make it possible to reduce the number of prisoners both before and after sentencing, but it would depend for its efficiency on a clear definition of the responsibility of the body managing the system. For instance, if both the judiciary and the ministry or ministries responsible each thought that they had the ultimate responsibilty, but were unable to exercise it because other agencies failed to co-operate, the system would probably break down. A compartmentalized style of operating the system would leave the problem largely unsolved and would not bring the expected benefits. In that connection, several experts stressed the need to develop trained staff with the ability to see the criminal justice system as a whole, rather than in terms of individual agencies.

18. One expert reminded the Meeting that "nothing was more practical than a good theory", and pointed out that in one developed Western country, an urgent need to look for an underlying set of principles for the managment of the criminal justice system had led to a conscious revision of laws that seemed too harsh, with a resulting decline in the prison population.

19. Discussion of a reduction in the prison population led the experts to consider alternatives to imprisonment and sentencing policy. One of the fundamental obstacles to the whole movement in favour of greater use of alternatives to imprisonment was in the terminology used. The word "alternatives" implied that the normal or natural sanction was imprisonment, and that community-based measures were the exception. Such a message to the public was regularly reinforced by the courts and by judges who referred to the protection of the public as one achievement of imprisonment, thus creating the impression that community-based sanctions were unduly lenient.

20. It was suggested that adopting alternatives as the "normal" sanctions would require an examination of the whole system leading up to conviction. Both police and prosecution tended to portray prison as the appropriate destination of offenders. At the trial stage, the tone of proceedings was overtly prison-oriented, and most laws contemplated prison terms. Such a process had developed even in communities where indigenous traditions of dealing with crime were oriented towards compensation or reparation rather than punishment. In such societies, incarceration seemed particularly ineffective, and there were very high rates of recidivism. In that connection, the role of the victim at the pre-trial, trial and correctional stages was underlined.

21. The view was expressed that a major change in the public expectation of prison as a natural sanction would come about if more attention were paid to the amount and quality of information provided to the public about the specific sanctions used and the effects of those sanctions. Examples were given of public perceptions of parole and other community sanctions and of how far those perceptions diverged from reality. In one country, fines were seen as letting off offenders, and judges who used non-institutional measures were regarded as soft, despite the relatively high success rates of probation. It was also pointed out that there was no need to defend every alternative to imprisonment in terms of its direct impact on crime. If it could be demonstrated that the alternative involved reduced public and social costs without an appreciable increase in risks, that should be sufficient.

22. It was noted that in one country mandatory minimum sentences had been found less than satisfactory because they had increased the number of people in prison without an increase in either deterrent or rehabilitative power.

For that reason they had been replaced by discretionary sentences. If the comprehensive management of the criminal justice system involved special sentencing policies, the latter should presumably be laid down by Government and the legislature. Such action, however, had not yet been undertaken in many countries.

B. Computerization

23. The discussion of sentencing led the Meeting to focus on the need for and use of information, and in particular on the subject of computerization. The great benefit that computerization could bring to the operation and management of criminal justice systems was the possibility of organizing and controlling much more information than ever before. The term control of information meant both that information could be sent wherever it was needed very quickly, and that its form and content could be manipulated. The initial impression that the problems of computerizing criminal justice would be relatively straightforward had not always been borne out by the facts. Although computerization had made many tasks easier, it had not been a simple operation. Nor did computerization solve the major problems of criminal justice; rather it helped to make them clearer.

24. The Director of the Helsinki Institute of Crime Prevention and Control affiliated with the United Nations summarized the recommendations of the European Seminar on Computerization of Criminal Justice Information Systems, held at Popowo, Poland, from 18 to 22 May 1987. 7/ He emphasized that the objectives of computerization had to be specifically described, and that the users, not the specialists or the hardware, must dictate the characteristics of the system. There was strong support from all experts and observers for the Helsinki statement of basic principles on the computerization of criminal justice information developed by the European Seminar, and it was agreed that computerization should be one of the main items on the agenda of the Eighth Congress.

25. Several speakers noted that the period when computers were confined largely to developed countries was over. During the last five years the advent of robust and relatively cheap hardware in the new generation of microcomputers had changed the situation for developing countries, where the main obstacles to computerization were now the economic climate and a certain degree of apprehension about computers which always occurred when they were first introduced. In those countries the main application had so far been in the legal area rather than in the criminal justice system as such. The main needs of developing countries were now thought to be in the areas of software and compatibility.

26. Although the unification of standards was internationally important, one expert warned that it was difficult to prescribe any universal formulas. It might be possible to do no more than establish minimum standards for the monitoring of computerization, of the method and time of installation, and of subsequent use of the system. The value-laden nature of the choice of information to be put into the system must be continually emphasized and appreciated. Words of warning were also raised against excessive complexity in computerization, and it was pointed out that currently one of the most efficient international information systems on crime prevention was based on sending floppy disks through the mail, with no need for on-line facilities.

27. The representative of the Committee on Crime Prevention and Control said that computerization properly used could help to monitor the working of the criminal justice system, thus facilitating the development of its comprehensive

management and ultimately increasing public confidence in its functioning. He suggested that thought should be given to how appropriate recommendations should be presented to the Eighth Congress and to what conclusions should ultimately be sought. In particular, two initial questions should be considered. First, what sort of information should be held and shared by countries? Secondly, what guidance should be made available to countries planning to install or upgrade a computerized system? Perhaps two sets of recommendations should be presented to the Eighth Congress, one on the principles and standards governing the kind of information that jurisdictions were likely to find helpful, and the other on the technical principles involved in the application of computer technology to the information required. The possibility of organizing discussion groups and demonstration workshops on computerization during the Eighth Congress was suggested and strongly endorsed.

C. Sentencing policies and possible reforms

28. The representative of the Committee on Crime Prevention and Control pointed out that the Meeting could propose one of two objectives for the Eighth Congress. On the one hand, it could advise the Eighth Congress to initiate policies for the reduction of the prison population world-wide and to consider the implications of such a move as they arose. On the other, the Meeting could advise the Congress that the problems involved in alternatives to imprisonment were so serious that they should be the sole focus of attention. For instance, extending the use of non-custodial measures would lead to the phenomenon of "net-widening", whereby ultimately the scale of sanctions applied became greater than would otherwise have been the case, and to problems of ensuring respect for human rights in informal systems of justice. The meeting concluded that while the dangers of the promotion of alternatives were appreciated, it was appropriate to pursue the ambitious target of the general reduction of prison population, not least because too great an emphasis on the negative side-effects of the use of alternatives could be counter-productive.

29. The review of the problems and possible reforms of sentencing was therefore undertaken in the light of the decision to advocate a general reduction in prison population. Three possible initial principles were proposed: (a) that there should be minimum intervention in the life of the individual concerned; (b) that where the safety of the community was not at risk, reparation should take priority over deterrence or retribution; and (c) that imprisonment should not be the centre-piece of the system. The combination of (b) and (c) suggested that the use of imprisonment should be limited to those cases where the safety of the community was at risk. However, it was important to remember that the perception of the degree of safety or risk to the community should reflect the views of the public at large. When offenders were not adequately punished in the eyes of the public, there was a possibility of the public's taking the law into their own hands. Likewise, the deterrent aspect of imprisonment in respect of drug offenders and those involved in organized crime was considered very important. Those categories of offenders were also particularly affected by the forfeiture of their assets and the blocking of their support system. The term "safety of the community" must therefore be interpreted widely, and its implications might differ considerably from one culture to another.

30. It was noted that the major obstacles to the reduction of the use of imprisonment might indeed be the level of public confidence in the safety of the community as well as in the criminal justice system. The feasibility of moving from the perception of imprisonment as the centre-piece and norm of the

criminal justice process to a situation where non-institutional measures could become the norm would probably depend primarily on public perception. The minimizing of the use of imprisonment in countries in which it had only recently become widespread was of particular importance. In many countries, in particular developing countries, the ineffectiveness of imprisonment as a rehabilitative measure, combined with its stigmatizing and criminogenic effects, should be the primary reasons for making resources available to create alternative sanctions, without which a formal policy of increased use of non-institutional measures might be counter-productive.

31. The Meeting expressed strong general support for the use of sentencing reform as a major tool for the reduction of the prison population. In a comprehensive view of the criminal justice system, a sentencing policy would be part of the management of that system. The policy would require contacts between those responsible for it and those working in other parts of the system, including those parts which currently had no influence on such matters as the prison administration or the prison population itself. The extent to which the public believed that the current level of sentencing in their society was too severe or too lenient was difficult to assess accurately. It was thus very easy to conclude that the public wanted more severe sentencing, particularly if the techniques used for investigating the question were likely to lead to biased answers.

32. The Meeting was informed of the case of one country where the proportionality principle had been found to be a useful element in the assessment of sentencing policy. However, by itself it was only a necessary condition to establishing a downward revision of the sentencing scales, and not a sufficient condition. It had proved helpful, in conjunction with the proportionality principle, to bring sentencing policy explicitly into the public domain, but the Government had found it a difficult matter to deal with. It was suggested that more alternatives to imprisonment should be formally embodied in legislation, and in that context community service was particularly mentioned.

33. The experts discussed at some length the possibility of bringing about changes in sentencing levels and practices by influencing both the judiciary and the public, taking into account different levels of development and different political systems. A consensus emerged that changing the traditional attitudes of the judiciary was a process to be undertaken step by step, in terms of both the different techniques to be used and the speed of change in the attitudes of individual judges. It was suggested that much of the sentencing behaviour of judges derived from a combination of factors, including habit, and that the use of less severe alternatives could be learned gradually. The perceived necessary level of severity in sentencing could also be reduced if the concerns of victims were taken into account. It was recommended that consideration of the role of the victims, and the amount of support given to them, should be a major factor in sentencing.

34. The experts then considered the specific problem of the extent to which the judiciary were accountable for prison overcrowding and for the effects of their sentencing policy. It was suggested that while the independence of the judiciary was a foundation of many civil liberties and human rights, and as such a major component of the social fabric, it did not imply the unaccountability of judges. There was a distinct difference between interference in individual decisions, which was unacceptable, and direction of policy in general, which was appropriate. The types of sentences imposed should be subject to review by the legislature, and it was not improper to hold judges accountable if they were ignorant of the effects of their decisions on the

rest of the criminal justice system. The level of ignorance of many judges of the realities of the criminal justice system was very high, and the costs of their decisions in both monetary and human terms should be made clear to them.

35. The idea that judges had some unique wisdom that enabled them to make correct decisions was challenged by several experts. Research was cited to show the extent to which judges might well disagree among themselves as to the appropriate form of sentence, for instance, whether the sentence should be for an institutional or non-institutional sanction, and if the sanction were institutional, what would be the appropriate length of sentence. There was also evidence that they might even disagree on the question of guilt or innocence of the accused party.

36. Further research was quoted to show that the level of severity judged appropriate could be reduced simply by changing the unit of count from years or months to days. A reduction of one third from the sentence prescribed in the larger units was regularly reported. One country had already introduced such a change for its less severe sentences, which were turning out to be much shorter. Research was also quoted to show how the introduction of administrative law in place of penal law, in an attempt to decriminalize some activities, had actually led to longer rather than shorter periods of institutionalization of the offenders (vagrants).

37. Considerable attention was given to the judiciary as an institution, and it was pointed out that the sociology of the judicial profession was not at all developed. The attitude of judges, who were jealous of their powers of discretion and sometimes resented and rejected the idea of their decisions being reviewed, was a factor to be taken into account. While the appellate courts were intended to control the use of discretion in some countries, appellate judges in fact seemed loath to interfere unless there was a marked departure from established principles. The difference between judges with a reputation for severity and those with a reputation for leniency was noted in many, perhaps most, cultures. That was thought to lower the confidence of the public in the system, and therefore, while the Basic Principles on the Independence of Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders 11/ were a great step forward, further guidelines might well be helpful for consistency of sentencing.

38. Attention was also given to the question of how influence could be brought to bear on the judiciary. At the formal level, the independence of the judiciary could be defined in different ways in relation to the legislature. While the judiciary retained its independence in individual cases, it should be subject to guidance by changes in legislation and by commentary from the legislative body on those changes. It was considered to be very difficult to assess the extent to which the judiciary was influenced by the pronouncements of the legislature, other than in those cases where maximum and minimum sentences were prescribed. When the legislature laid down minimum sentences, the judiciary sometimes tended to give sentences above the minimum, and so the result was counter-productive from the point of view of the reduction of the prison population. The use of legislation to guide the judiciary was not limited to criminal law, either in redefining offences or in laying down maximum and minimum sentences, but extended also to procedural law.

39. The Meeting discussed several strategies for making the judiciary more aware of the interdependence of its role with the activities of the other agencies of the criminal justice system. Those activities included the following:

(a) Enacting appropriate legislation;

(b) Training, which had been rare at least in some countries, because it was regarded as unprofessional and improper by some traditional judges. There could be considerable controversy over who should direct the programme and what the programme should consist of. Several experts commented on the extent to which training programmes were being increasingly developed in law schools and special colleges;

(c) Institutional measures such as the establishment of sentencing councils or some kind of standing conference on the general management of the criminal justice system. Such ideas were still in their infancy and it was too early to assess their impact;

(d) Changing the constitution of the judicial profession by introducing career changes that would entail spending time doing other work in connection with the criminal justice system.

40. Such strategies were discussed at length and it was suggested that the United Nations should bring together judges from different systems in cross-training exercises, particularly at the informal level. The useful experiences of UNAFEI and the United Nations Latin American Institute for the Prevention of Crime and Treatment of Offenders were recalled in that respect.

41. The question was raised of the extent to which judges took notice of information presented from external sources, such as statistics on the current state of the criminal justice system or research findings on the effects of their decisions. Opinion seemed divided as to the exact impact of such a specific structuring of information. An example was mentioned of the use of microcomputers to provide immediate information to judges on cases they were considering. They would apparently turn to the computer for help in extremely complex cases, but would not refer to it for what they considered to be routine cases.

42. It was agreed that the problem of sentencing could not be solved entirely by training or by providing information to judges; those techniques were necessary but not sufficient. Different ways of making judges aware of the objectives of criminal policies and of the implications of those objectives for sentencing were not mutually exclusive, and a battery of strategies might be developed to bring about the changes needed to have a positive impact on judicial behaviour.

43. Most of the experts said that prisons were overcrowded in their countries. The main reasons for overcrowding were probably the following: too many offenders were sent to prison; sentences were too long; too many people were in prison awaiting trial; and some of those people were in prison "by accident".

44. There was general recognition of the need to make less use of incarceration. However, such a policy must be planned and legislatively based. One country was mentioned where increasing the parole rate had led to public cynicism and even greater overcrowding because judges then gave longer mandatory sentences. Although all the experts agreed that non-custodial sanctions were greatly preferable from all points of view, most admitted that there were not enough viable alternative mechanisms.

45. Some experts pointed out that in many societies those who were imprisoned were almost always poor people with no social connections, and that it was

most unfair to cause further damage to their already weak family and social ties by imprisoning them. Clear national policies regarding the purposes of imprisonment should therefore be articulated and existing penalties re-examined to determine whether imprisonment was in fact the most suitable one.

D. Problems of imprisonment

46. The Meeting recognized that problems of imprisonment had several dimensions, one of the most serious being prison overcrowding. The causes of overcrowding could be found in factors both external and internal to the correctional system.

47. With regard to external factors, the experts emphasized that both legislation and sentencing policies helped to determine the size of the prison population. The more custodial sanctions were laid down by the law, the less the chance of not resorting to imprisonment. It was observed, however, that legislation alone would not offer viable alternative solutions to the problem of overcrowding, if such alternatives were not accompanied by the availability of adequate infrastructures. There was also a general feeling that offenders should be given equal treatment, even if it was unlikely that a particular offender (such as a convicted stock market manipulator) would commit the same crime again.

48. The Meeting noted that among other external factors, the state of the labour market could have a positive bearing on the number of the prison population and overcrowding, if there was a demand for work which the penal institution could indirectly meet. That could be one of the reasons why the United Nations had paid great attention to the question of prison labour in its earlier work, at a time of relative economic difficulty, and then later took up the more humanistic question of alternatives to imprisonment, in times of relative economic prosperity. A current revival of United Nations interest in the question of prison labour, including research work carried out by the United Nations Social Defense Research Institute (UNSDRI), might be a reflection of current economic difficulties in various parts of the world. An UNSDRI survey of prison labour in 72 countries was expected to be completed in 1989, in time for consideration by the Eighth Congress. The UNSDRI study focused on the value of employment while in prison - as an alternative to prison - and upon release - as the key to successful rehabilitation. It was stressed that the value of prison work should be re-examined to prevent idleness, to give prisoners a sense of self-esteem, to provide an income for them and their family and, finally, to enable them to provide restitution to the victim and society.

49. The Meeting agreed that the question of prison labour had to be viewed from the standpoint of both external factors and prison overcrowding. Several experts noted that the means of reducing overcrowding through reforms internal to the criminal justice system would include closer collaboration of the judiciary with correctional staff. In many countries such collaboration helped the judiciary to become aware of the impact of sentencing policies on the prison population and to understand the concerns of the correctional staff regarding humiliating conditions in prisons and the ineffectiveness of rehabilitation under adverse conditions. Several experts pointed out the existence of very high rates of recidivism among discharged prisoners.

50. At the most general level, the experts observed that humiliating or dehumanizing conditions could be equated with denying the inmates their basic human rights and with endangering their lives by exposing them, more so than in regular prison conditions, to AIDS and other communicable diseases. During the Eighth Congress the international community should do its utmost to emphasize that aspect of overcrowding.

51. At a more specific level, practical solutions should be found to reduce overcrowding to the greatest possible extent, one seemingly obvious remedy being that of building more prisons. It was noted that prison-building was in fact being pursued in several countries. However, a possible negative side-effect of such construction would be that traditional sentencing policies relying on imprisonment would be reinforced, for judges would see new opportunities to send offenders to prisons instead of dispensing justice by administering alternative sanctions. The speeding-up of criminal proceedings, where preventive detention was involved, and the shortening of prison sentences in general were other possible remedies.

52. The Meeting emphasized that despite the diversity of legal systems based on common or continental law, there should be some practical principles and strategies for reducing detention and imprisonment. In that connection, the following specific suggestions were made:

(a) At the level of detention prior to imprisonment, there should be legislative provisions requiring the courts to adjust the subsequent prison sentence to take into account the period already spent in detention. In that way the courts might be less likely to resort to detention followed by penal sanctions involving imprisonment;

(b) Law enforcement officials and prosecutors should be trained in properly evaluating when detention was really justified. In that way, there could be a considerable reduction in the intake of prisoners from the entire population of alleged offenders;

(c) Wherever the legal system permitted, policies should be pursued to increase the number of offenders on bail or on recognizance;

(d) Both legislators and criminal justice administrators should pay closer attention to the categories of alleged offenders whose detention should be regarded as a last resort. Pregnant women and mothers of infants and small children would certainly fall into that category, as emphasized by the International Alliance of Women;

(e) Criminal legislation should be examined with a view to decriminalizing some of the offences punished by imprisonment. Imprisonment for non-payment of fines should also be avoided;

(f) Visits of prisons by judicial officers should become a rule in all national legal systems. Judicial supervision of places of detention and imprisonment might help to bring the concerns of correctional staff and inmates to an independent authority capable not only of dealing with those concerns outside the prison setting but also of satisfying the prisoners;

(g) Greater attention should be paid to implementation of the Standard Minimum Rules for the Treatment of Prisoners. The questionnaire to be used by the Secretariat in its forthcoming survey of implementation of those Rules should include questions on practical strategies aimed at improving prison management. Attention should be paid to the technical means of reducing overcrowding, including the establishment of new standards for the size of the cells, in accordance with the Standard Minimum Rules.

53. The experts realized that several of those practical strategies might run counter to public opinion, which preferred to see offenders receive their "just deserts", and which, because of its fear of crime, tended to regard any effort to alleviate overcrowding as too risky. But criminal justice administrators

concerned with the dehumanizing effects of overcrowding should spare no effort to convince the public of the overriding humanistic value of such strategies, and should enlist its support in finding new and acceptable solutions.

54. The Meeting emphasized further that the most desirable, but least attainable, solution would be to eliminate imprisonment completely and to pursue only non-custodial sanctions. Regardless of the cost-effectiveness of non-custodial sanctions, they were certainly less criminogenic than imprisonment, since they did not carry such a visible social stigma that prevented reintegration of offenders into the community.

E. Alternatives to imprisonment

55. The Meeting considered at length the question of alternatives to imprisonment. Several experts referred to the recommendations of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, particularly its resolution 16, as the basis for new approaches to a more rational and effective implementation of already existing or newly developed penal measures.

56. One expert explained that the relatively small number of serious crimes committed in his country had had repercussions on the application of the principle of proportionality between crime and sentences. Its penal code had therefore been amended to achieve more flexibility, depenalization and individualization of cases. In particular, stronger sanctions including deprivation of freedom had been reserved for cases involving considerable danger to society.

57. While some experts reported that more than two thirds of all sanctions imposed in their countries were non-custodial measures, others indicated the almost complete absence of such measures in their national practice.

58. It was the opinion of all the experts that community sanctions should have a recognized status, equal with imprisonment, both in law and in practice. They should be "sanctions in their own right". A just and strong emphasis in criminal and penal policy on the availability of community sanctions and on the need for their more frequent and consistent administration by the courts would certainly help to include those sanctions in the catalogue of possible punishments together with other available penal measures. Several experts pleaded for a restriction of custodial sanctions by statutory regulations, for example by requiring a statement of the reasons that led to the choice of imprisonment as the sanction imposed by the court.

59. It was noted that the judicial apparatus might not be readily inclined to make frequent use of community sanctions because of their relative novelty, mistrust in their effectiveness and the resentment of politicians, criminal justice officials and victims, who all tended to prefer the traditional use of imprisonment. On the other hand, several experts mentioned that a very wide range of alternatives could also make the courts refrain from using them, because they might be considered unreliable in their effects and uncertain in their severity. In the view of several experts, the difficulty of establishing a continuum of severity of the various measures increased the reluctance of the courts to use them.

60. The representative of UNSDRI pointed out, however, that there was an extremely powerful potential for making community sanctions more popular by changing public resentment into attitudes more favourable to informal measures. Control over community sanctions was the key to their effectiveness.

61. The recently released UNSDRI study of informal mechanisms of crime control suggested that there must be social acceptance of community sanctions if the latter were to be successful. UNSDRI, together with other regional institutes and the Crime Prevention and Criminal Justice Branch, was in the process of organizing a research workshop on alternatives to imprisonment. It was hoped that by organizing such a workshop many of the issues hampering a wider application of community sanctions could be examined and clarified, and that action-oriented recommendations would be adopted for submission to the Eighth Congress. As part of the preparations, UNSDRI, jointly with the Arab Security Studies and Training Centre, had convened at Riyadh, Saudi Arabia, from 13 to 14 January 1988, the International Conference on Research in Crime Prevention, which had focused on alternatives to imprisonment.

62. The Director of the Helsinki Institute for Crime Prevention and Control affiliated with the United Nations informed the Meeting of the results of its recently published regional analysis of alternatives to custodial sanctions. Among several conclusions drawn from that analysis, it was especially noteworthy that, desirable though they might be, such alternatives might not necessarily reduce the prison population. A judge who was convinced that prison space was available for serving longer sentences would probably pass such sentences. The work-load of the prison administration might not be considerably reduced either, for there would be a need to take better care of those remaining in prison, including inmates who received shorter sentences, and who represented a large and fluctuating proportion of the cases handled.

63. The Meeting acknowledged the many difficulties and possible shortcomings of restructuring criminal policy at the national, regional and interregional level. There was general agreement that social and cultural factors had to be taken into account when introducing non-custodial measures.

64. The Meeting agreed that even if the introduction of community sanctions did not produce all that was originally expected in terms of its rehabilitative effects, lower costs and a reduced crime rate, it was nevertheless vital to the development of a more humane approach to the treatment of offenders. While the selection of offenders to whom community sanctions would apply might raise questions as to the chances of their rehabilitation through such sanctions, such questions could to some extent be avoided by adopting a less selective policy involving community sanctions for many minor offences, irrespective of the offender.

65. The Meeting stressed that community sanctions might have a rationale going beyond rehabilitation. Of equal importance for the victims of crime was compensation or restitution, and community sanctions designed to meet that need might fully satisfy the ends of justice.

66. The experts agreed that regardless of the objective of community sanctions, there should be continuous and serious efforts made at the national and international level to train criminal justice administrators in their use. Information on the purpose of non-custodial sanctions and training was therefore needed for the legal profession and for those involved in the implementation of such sanctions. Not only judges but also probation officers and clerk staff should be aware of the principles governing the application of community sanctions. The importance of information and training was highlighted by the report of one expert who explained that even though alternative measures had been introduced by the national legislature in his country, criminal justice officials had abstained from applying them, partly because their traditional understanding of their professional role made them unwilling to be seen as too lenient.

67. One expert added that the success of alternative measures also depended largely on the ability of managers of enterprises to make use of the services of offenders sent to them to work under a community sanctions scheme. Another expert emphasized that in order for community sanctions to meet with the approval of indigenous populations, their administrators should consider the cultural significance of community reactions and the importance attached to re-establishing social harmony. It was also noted that new technology offered the possibility of electronic surveillance as a means of restriction of the liberty of the offender, without the occasional community involvement so crucial to more traditional community sanctions.

68. The representative of UNAFEI introduced the draft standard minimum rules for the non-institutional treatment of offenders, and described how the draft had been prepared in the course of a number of international training courses and expert meetings organized by UNAFEI for that purpose.

69. The Meeting unanimously welcomed the draft as a highly important document, commended its outstanding quality, and decided that it should be used as the basis for further discussion of the issue. A number of experts emphasized the importance of taking into account the work being carried out in that field by various institutions and organizations, such as the Committee on Co-operation in Penitentiary Matters of the Council of Europe, the European Standing Conference on Probation, which had produced a draft text of standard minimum rules in the field of non-custodial measures, the Alliances of Non-governmental Organizations on Crime Prevention and Criminal Justice in New York and Vienna, and the International Penal and Penitentiary Foundation. In that connection, four reports discussed by an international symposium organized by the Centro Nazionale di Prevenzione e Difesa Sociale on behalf of four major non-governmental organizations dealing with crime prevention and criminal justice, held at Milan, Italy, from 29 November to 1 December 1987, were also mentioned.

70. Finally, the Meeting emphasized that criminal policies relying on community sanctions depended very much on the whole body of State and community administrators who had to give effect to those sanctions on a daily basis. Their efforts would help to establish sanctioning policies reflecting a new social reality based on both the general principles of law and day-to-day practice in response to changing circumstances.

71. The discussions of the experts were followed by computer demonstrations of the software used in the administration of the juvenile justice system and prison department in Italy, and in assisting judges in the sentencing process in Canada. 12/ The Meeting expressed its appreciation for the demonstrations.

III. ADOPTION OF THE REPORT OF THE MEETING

72. The Meeting unanimously adopted the draft report introduced by the Rapporteur at its final session. The recommendations of the working groups, as reflected in the resolutions placed at the beginning of the present report, were also unanimously adopted.

73. The Meeting endorsed the proposal that the draft standard minimum rules for non-custodial measures should be known as the "Tokyo Rules", and expressed its gratitutde to UNAFEI for undertaking the heavy responsibility of initiating a project leading to the adoption of an important new United Nations instrument by the Eighth Congress. It was proposed that UNAFEI, which was to hold an additional expert group meeting on the subject in July 1988, should be encouraged to concentrate its work on preparing the commentary to the text of the draft rules as agreed upon by the Meeting.

74. In their closing statements, the representative of the Committee on Crime Prevention and Control paid tribute to all those who had contributed to the elaboration of the recommendations adopted by the Meeting; the Director of the Social Development Division of the Centre for Social Development and Humanitarian Affairs noted that an important link had been established by the deliberations of the Meeting between the decisions and recommendations of the Seventh Congress and the expected results of the Eighth Congress; the Chief of the Crime Prevention and Criminal Justice Branch emphasized the role played not only by UNAFEI, but also by UNSDRI and the United Nations regional institutes; and the Chairman commented on the extremely useful results achieved by the Meeting.

Notes

1/ See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. B.

3/ Ibid., sect. E.

4/ Ibid.

5/ Ibid.

6/ See Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.83.XIV.1), sect. G.

7/ Helsinki Institute for Crime Prevention and Control affiliated with the United Nations, "Computerization of criminal justice information systems: realities, methods, prospects and effects", report No. 12 (Helsinki, 1987).

8/ See Human Rights: A Compilation ..., sect. A.

9/ Ibid.

10/ See Seventh United Nations Congress ..., chap. I, sect. E.

11/ Ibid., sect. D.

12/ See Anthony N. Doob and Norman W. Park, "Computerized sentencing information for judges, an aid in the sentencing process", Criminal Law Quarterly, vol. 30, No. 1 (December 1987), pp. 54-72. Information concerning the software is available from the Director, Center of Criminology, University of Toronto, Canada. Information concerning the software presented by the observers of the Government of Italy is available from the Director, Studies, Research and Documentation Office, General Directorate of the Institute of Prevention and Punishment, Ministero di Gracia e Giustizia, via Silvestri 252, 00164 Rome, Italy.

Annex I

LIST OF PARTICIPANTS

Experts

Abbas Abushama (Sudan), Chief of Police, Khartoum

Andrew Ranganayi Chigovera (Zimbabwe), Acting Attorney General, Ministry of Justice, Harare

Angel Djambazov (Bulgaria), Deputy Minister of Justice, Ministry of Justice, Sofia

Anthony Newcomb Doob (Canada), Director, School of Criminology, University of Toronto

A. R. Khandker (Bangladesh), Inspector General of Police, Police Headquarters, Dhaka

Jiri Nezkusil (Czechoslovakia), Director, Research Institute of Criminology, General Prosecutor's Office of the Socialist Republic of Czechoslovakia, Prague

Gustavo Barreto Rangel (Mexico), Director, Instituto Nacional de Ciencias Penales, Mexico City

Ira de Cordova Rowe (Jamaica), Justice of the Supreme Court, Kingston

Patrick Andreas Tornudd (Finland), Director, National Research Institute of Legal Policy, Helsinki

Nissanka Wijeyeratne (Sri Lanka), Minister of Justice, Colombo

Representative of the Committee on Crime Prevention and Control

David E. R. Faulkner (United Kingdom of Great Britain and Northern Ireland), Deputy Under-Secretary of State, Home Office, London

States Members of the United Nations represented by observers

Argentina, Austria, Bulgaria, Canada, Cuba, Egypt, German Democratic Republic, Germany, Federal Republic of, France, Indonesia, Italy, Philippines, Thailand, United Kingdom of Great Britain and Northern Ireland, Union of Soviet Socialist Republics

United Nations Secretariat units

Department of Technical Co-operation for Development

Division of Narcotic Drugs

United Nations bodies

Helsinki Institute for Crime Prevention and Control affiliated with the United Nations

United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders

United Nations Social Defence Research Institute

Other intergovernmental organizations

League of Arab States

Non-governmental organizations

Category I: International Council of Women; Soroptimist International

Category II: Airport Associations Coordinating Council; Conference of European Churches; Friends World Committee for Consultation; Howard League for Penal Reform; International Abolitionist Federation; International Association of Judges; International Commission of Jurists; International Council for Adult Education; International Federation of Human Rights; International Federation of Senior Police Officers; International Federation of Social Workers; International Institute of Humanitarian Law; Pax Romana; World Safety Organization

Roster: Third World Academy of Sciences

Other organizations

American Correctional Association; Inter-American Institute of Human Rights; International Penal and Penitentiary Foundation

Annex II

LIST OF DOCUMENTS

A. Basic documents

A/CONF.144/PM.1	Discussion guide for the interregional and regional preparatory meetings for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders

B. Background documents

United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders	Formulation of the basic principles on alternatives to imprisonment and minimum safeguards for persons subjected to alternatives to imprisonment; proposed United Nations draft standard minimum rules for the non-institutional treatment of offenders, Tokyo, March 1988
Helsinki Institute for Crime Prevention and Control affiliated with the United Nations	Non-prosecution in Europe. Proceedings of the European Seminar, HEUNI Publication Series No. 9 (Helsinki, 1986)
	Norman Bishop, Non-custodial Alternatives in Europe, HEUNI Publication Series No. 14 (Helsinki, 1988)
	Peter J. P. Tak, The Legal Scope of Non-Prosecution, HEUNI Publication Series No. 8 (Helsinki, 1986)

Report of the International Expert Meeting on United Nations and Law Enforcement: the role of criminal justice and law enforcement agencies in the maintenance of public safety and social peace, Baden, Austria, 16-19 November 1987

Recommendations of the European Seminar on Computerization of Criminal Justice Information Systems, Popowa, Poland, 18-22 May 1987

United Nations Crime Prevention and Criminal Justice Newsletter, Numbers 14/15 (December 1987), special double issue on the computerization of criminal justice information

Alliance of Non-Governmental Organizations on Crime Prevention and Criminal Justice, New York Branch, "Draft guidelines for alternatives to imprisonment", 8 March 1988.

Hans Kerner, Director of the Institute of Criminology, University of Tübingen, "Report for the International Society for Criminology on criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures"

Vincent Lamanda, Vice-President of the Tribunal de Grande Instance, Paris, "Report for the International Society of Social Defence on criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures"

Helge Rostad, Justice of the Supreme Court of Norway and President of the International Penal and Penitentiary Foundation, "General introductory report on criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures"

Thomas Weigend, Professor of Criminal Law, University of Cologne, "Report for the International Association of Penal Law on criminal justice policies in relation to problems of imprisonment, other penal sanctions and alternative measures"