



UNITED NATIONS
GENERAL
ASSEMBLY



Distr.
LIMITED

A/CONF.87/RM.1
28 June 1977

ORIGINAL: ENGLISH

SIXTH UNITED NATIONS CONGRESS ON THE
PREVENTION OF CRIME AND THE TREATMENT
OF OFFENDERS
Regional meetings

DISCUSSION GUIDE FOR REGIONAL PREPARATORY MEETINGS FOR
THE SIXTH UNITED NATIONS CONGRESS ON THE PREVENTION OF
CRIME AND THE TREATMENT OF OFFENDERS*

CONTENTS

	<u>Paragraphs</u>
INTRODUCTION	1
<u>Agenda item</u>	
1. Crime trends and crime prevention strategies	2 - 13
2. Juvenile justice: before and after the onset of delinquency	14 - 40
3. Crime and the abuse of power: offences and offenders beyond the reach of the law?	41 - 51
4. De-institutionalization of corrections and its implications for the residual prisoners	52 - 68
5. United Nations norms and guidelines in criminal justice: from standard-setting to implementation	69 - 86

* To participants only.

INTRODUCTION

1. This discussion guide is intended to describe the five items chosen for the agenda of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, as approved by the Committee on Crime Prevention and Control at its fourth session (E/CN.5/536), the Commission for Social Development at its twenty-fifth session (E/CN.5/556) and the Economic and Social Council at its sixty-second session. The content of each subject item is expected to be developed by a series of preparatory meetings scheduled to be held before the Congress takes place at Sydney, Australia, in 1980. The present outline is therefore intended to focus the discussion by the experts concerned, but not to limit the scope of each item. The aim of this guide is to stimulate discussion of the areas of concern with a view to obtaining material for inclusion in the working papers of the Congress.

Agenda item 1. CRIME TRENDS AND CRIME PREVENTION STRATEGIES

Introduction

2. The gravity of the crime situation and the urgent need for fresh action to cope with it were amply revealed at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which was held at Geneva from 1 to 12 September 1975. The Congress emphasized that crime existed in all countries and had a pernicious effect in many, thereby impeding efforts to achieve more wholesome social and economic development. It also drew attention to the growing seriousness of certain crimes, especially those of a transnational character, and to the fact that the new forms and dimensions of such crime required strengthened national and international action.

3. A survey of the situation relating to crime prevention and control conducted recently by the United Nations Secretariat has revealed that most of the States, both developed and developing, which have transmitted this information to the United Nations in pursuance of General Assembly resolution 3021 (XXVII), are seriously concerned about increases in crime.

Crime trends

4. The consideration of crime trends inevitably entails consideration of the method of compiling criminal statistics, and of the accuracy of the final numbers as indicators of the total amount of criminal activity in society. It has been observed that all official criminal statistics are to some degree really measures of the activity of the criminal justice system. This is more than a technical problem for research specialists. For the fact that the picture of criminality depends significantly upon the way chosen to record and monitor it has implications for the policy maker and administrator. Transnational comparisons can be made, and useful exercises in that area are now being carried out by the United Nations; but simple comparisons without reference to the manner of production of the statistics

might be misleading. Despite these technical problems, however, the ultimate question remains of what countries could learn about the nature of crime and how they might react to it from the experiences of other countries.

5. The way in which transnational co-operation and mutual assistance will most immediately develop depends upon the answers to these questions. For instance, there has been good reason to believe that social and economic development changes the patterns of criminality, and could sometimes increase it. Speculations on the alternative factors responsible for changes in the crime rate can be based only on such comparable knowledge. Thus information based on a source which can be specified, linking changes in crime with other socio-economic changes may be helpful in development planning.

Strategies for crime prevention and control

6. It is not only crime but also the effectiveness or ineffectiveness of countermeasures which gives cause for concern. A number of the traditional methods developed to deal with crime have not only proved unsuccessful but have in many cases tended to aggravate the situation. For instance, the stigmatization of being "criminal" is regarded as a major blockage to rehabilitation of the offender. In view of the limits to the ability of the machinery of criminal justice to control crime, and the cost both of criminality itself and of the apparatus of criminal justice, preventive strategies deserve great emphasis. Because crime and delinquency appear to change with differing social, economic and cultural climates, these strategies will have to be flexible and tuned to the expressed needs and objectives of a given country.

7. The general premise of this orientation is that such policies and strategies in the field of crime prevention require the co-ordination of different sectors within the framework of a unified social policy, the goal of which is to promote national development. This implies an acceptance of the belief that the crime-related effects of any proposed social development are among the costs (or benefits, when the measures can be shown specifically to reduce crime) to be taken into account when evaluating the appropriateness of those measures. It may be that these cannot be estimated in advance: in that case, crime prevention and control can only be reactive; but wherever possible, crime prevention policies must be built into the planning of social and economic programmes, so as to enhance the potential of their contribution to development by neutralizing or mitigating the negative and disruptive effects of criminality.

8. The formulation of crime prevention policies in the context of national development and their incorporation into national development plans require certain types of information and statistical data which are either not available at present or remain to be improved. In some parts of the world there does not yet exist an adequate system for the collection of data, especially statistics, on crime and criminal justice; where such data are available at the national level, they may be inadequate for the purpose of policy formulation. Even where reliable data are available, there is often insufficient capacity to utilize this information in

planning, policy-making and programming both within the criminal justice system and in the broader framework of over-all national policy and planning. But despite these limitations on data, the feasibility of planning for crime prevention remains an issue which must be tackled.

9. Within the area of planning in criminal justice, the objectives of the various agencies which go to make up a criminal justice system require careful consideration and elucidation. It is known that the work of some agencies may be seen as hindering the work of others. Working priorities and short- and long-term goals, may be perceived very differently in different agencies, and co-ordination of agency goals and the relationship and possible conflict between them urgently require examination. The transfer of experience, and the ability of nations to learn from each other, can take place only when the concepts are clearly expressed, and in specific terms.

10. There is an obligation on the part of the United Nations to aid Member States in the minimization of the impact of crime through a long-range world-wide strategy for the next quarter of the century. The Committee on Crime Prevention and Control in its response to the General Assembly's mandate to report on methods and ways likely to be most effective in preventing crime and improving the treatment of offenders and to make recommendations on measures appropriate in such areas as law enforcement, judicial procedures and correctional practices, stressed the need for a new criminal policy based on a clearly demarcated strategy of measures and sanctions, keeping in mind that the criminal justice system alone - even the most perfect one - cannot cope effectively with criminality. In this regard the Committee called for the elaboration of guidelines for the development and implementation of policies designed to ensure the strict observance of fundamental human rights and to promote a more rational, consistent and integrated approach to the prevention of crime. There is a clear requirement for all countries to communicate their experience, both of success and failure, to those countries who have as yet invested little in this area, but wish to learn as quickly as possible.

11. As this topic derives directly from many of the recommendations of the Fifth Congress, Member States may wish to include in their presentations any experiences in implementing those recommendations which they feel would be of value to others. In further consideration of the topic, and in the context of these introductory considerations, the experts may wish to consider the substantive issues under three general subtopics, and the following specific questions: Under subtopic 1, the Congress would consider the nature, extent, seriousness and impact of crime as it reveals itself nationally and internationally on the basis of present studies and investigations. The Congress may wish to make recommendations on the need for countries to undertake the task of improving the information base in this difficult but important area. Under subtopic 2, the Congress would consider crime in the context of recent socio-economic development, with a focus on the social and environmental context in which crime prevention policies need to be formulated in the near future. In this connexion, the scientific forecasting of crime must be considered, taking into account the criminogenic potential of certain forces and processes (such as urbanization, population growth, migration, technological change, changing moral values and other cultural change), and the reasons for

believing that these particular factors are significant with respect to changes in the crime rate. Under subtopic 3, the Congress may wish to reassess crime prevention strategies and policies, with particular emphasis on the advancement of international co-operation in the field of crime prevention. It may also consider means of clarifying and specifying the relationship of the various component parts of the administration of criminal justice to each other.

12. This will help to develop understanding of the appropriate goals and working objectives of each agency, and ultimately of the difficult problem of how criminal justice planning can most appropriately be included in other areas for social development.

Questions for discussion

13. The specific questions to be considered are as follows:

- (1) In the light of the most recent experiences of your country, what changes in crime trends are seen as most significant?
- (2) What are the means for determining these changes? What data are available and how are these data recorded and analysed? What steps have been taken to standardize the basis of recording, either internally or with respect to other countries?
- (3) What possible explanation of such changes, if any, is considered most likely? From this, what are considered the most likely trends for the future?
- (4) What are perceived to be the most immediately serious crime problems, and why are these considered especially urgent? What measures have recently been introduced to deal with these problems, and what evaluation has been made of their effectiveness?
- (5) What measures are taken to evaluate (a) the cost of crime and (b) the cost, and effectiveness, of crime control measures in your country?
- (6) What machinery exists for integrating and co-ordinating the goals and activities of different agencies, within the criminal justice field? How are these considerations incorporated into wider-scope intersectoral planning?
- (7) Is criminal justice planning considered part of national development planning in your country? Is it considered appropriate that it should be?
- (8) What new strategies in crime prevention and control might be particularly applicable to your country? Are international or regional measures called for? How could the United Nations provide specific help in this regard?

- (9) What role should the United Nations play in the field of crime prevention and control, and what bilateral and regional arrangements in gathering crime and criminal justice-related data are considered most urgent? How can the United Nations help in the transfer of experience?
- (10) To what extent and by what means is it possible to monitor discretion in sentencing, or in any other aspect of the criminal justice operation? How can such discretion be controlled?

Agenda item 2. JUVENILE JUSTICE: BEFORE AND AFTER
THE ONSET OF DELINQUENCY

Introduction

14. In its endorsement of this topic for the provisional agenda of the Sixth Congress, the Committee on Crime Prevention and Control noted that the subject of juvenile delinquency had previously appeared on the agenda of the first three congresses. However, in view of the rapidly increasing youthful population and the significant changes in methods and procedures to deal with delinquency, especially the increased emphasis on human rights considerations, it was deemed appropriate that the topic be brought forward again at the Sixth Congress.

15. The Committee's decision to retain this topic was also influenced by the fact that the circumstances under which the topic was considered at the first three congresses had undergone dramatic changes. The discussions then were focused largely on the experiences of the developed countries, as the phenomenon of juvenile delinquency had not yet shown itself to a particularly marked degree in the developing countries. In contrast, recent trends indicate that juvenile delinquency has now assumed new and alarming dimensions in many developing countries, and its manifestations are no longer regarded as minor symptoms of the process of change.

16. The discussion of this topic might begin with a consideration of the social characteristics of young persons who are in conflict with the law. Experience has shown that juvenile offenders are often found to have aspired to certain legitimate social and economic needs to which society has not responded appropriately. In a highly complex and rapidly changing society, young persons have tended to be very critical of society, and have demonstrated an unwillingness to accept those traditional social norms, values, institutions and lifestyles which appear incompatible with their ever-changing values and ideologies.

17. Consequently, the divergent value systems and lifestyles of today's youth have, in many instances, led to conflicts with parents, established institutions and those social forces which seek to maintain long-standing social norms.

18. Many countries have developed juvenile justice systems, designed to deal with youthful offenders. The underlying philosophy of the juvenile justice concept derives from an awareness that the problems of juvenile delinquency and

maladjustment are not amenable to resolution within the framework of the traditional criminal law process. The juvenile justice system, therefore, has been made to respond to the needs of young offenders. In that context, the primary role of the juvenile justice system is to provide specialized preventive and treatment services for children and young persons within a social setting.

19. For a variety of reasons, however, the concept of juvenile justice as a social service, seems to have fallen short of the original objectives and goals set for it in many parts of the world. Factors such as rapidly increasing numbers of young persons, insufficient resources, and aggravated social and economic dislocations, have had a devastating effect on the ability and capacity of the juvenile justice system to deal with a broad range of social problems characterizing juvenile delinquency and maladjustment.

Juvenile justice: before the onset of delinquency

20. The juvenile justice system is generally regarded as the main instrument for the prevention and treatment of juvenile delinquency and juvenile maladjustment in many places. Thus, it is often a common practice to assign to it most of the decision-making relating to the care, protection and control of children and young persons. In carrying out these functions, however, the juvenile justice system must seek to maintain a delicate balance between helping children and young persons and the preservation of their rights and those of their parents, while, at the same time, protecting society from conduct considered to be harmful or disruptive.

21. Juvenile justice before the onset of delinquency denotes a concept positively designed to promote and safeguard the well-being of children and young persons. It aims at an early identification of children and young persons with problems and the application of appropriate remedial measures, with full respect for human rights, before the child is in conflict with the law. Therefore, the perspective of juvenile justice in the context of delinquency prevention, must involve a systematic study and analysis of the broad spectrum of institutions, services and resources, and the dynamics of change.

22. For those countries considered to be in a process of development, the preventive aspects of juvenile justice must be closely aligned to the various elements of the development process to determine and minimize their negative effects on the proper development of children and young persons.

23. Foremost among the forces influencing the lives of young people in many countries today is the changing structure of modern society. For example, the role of the family, as well as of other social units which traditionally have exercised social control, is diminishing and passing into the hands of much more complex structures. The rapidity and pervasiveness of social change in modern times has rendered these institutions less capable of coping with complex social forces. This phenomenon is much more pronounced in developing countries which are undergoing rapid political and socio-economic transformation.

24. Rapid urbanization, industrialization, a decline in traditional occupations and enterprises, and an increasing youthful population in many places have all tended to undermine the stability of society and its basic institutions. These developments have often brought in their train social problems that may condition young people to certain types of antisocial behaviour closely identified with criminality.

25. The public school, for instance, may be the most important single institution in determining whether a child succeeds or fails, in terms of becoming an accepted member of his community. Likewise, the local community may be a decisive factor in determining the success or failure of the public school system. It seems obvious, therefore, that the development of strategies for more equitable juvenile justice often requires greater institutional interdependence and interaction. In this connexion, planning for the prevention of delinquency should be an integral and essential part of planning for national development, and should provide for the total well-being of any given community. Such strategies for promoting effective juvenile justice before the onset of delinquency could be categorized in a number of ways.

26. Action could be regarded as a broad strategy designed to improve generally the quality of life of a given community. This strategy may involve, inter alia, some degree of social reorganization or a revitalization of existing traditional institutions, such as the family, the school, the local community organs of social control and social security, and the general improvement of conditions in the home and the environment, geared primarily for the benefit of the pre-school child. Such preventive programmes of a broad nature and scope are of central importance in the formulation of an equitable juvenile justice system that could be beneficial to all categories of children and young persons in need of care, protection and control.

27. A similar broad strategy could also be designed to provide general and specialized assistance to young persons at school to enhance their proper adjustment to the school environment. Assistance of this kind however should not be overtly identified with delinquency prevention. For example, reading difficulties, lack of concentration and difficulties in comprehension should be treated strictly as special educational problems. When proper solutions to such problems could be found within the normal educational system, the dangers of early stigmatization would be minimized considerably.

28. In this regard the implications for the public school system cannot be overlooked. A preventive strategy of this type cannot be effective without the active and direct involvement of the public school system. It stands to reason, therefore, that the social function of the school ought to be upgraded but peripherally aligned with the juvenile justice system.

29. An adequate assessment of the individual needs of troubled young persons is integral to the offering of individualized preventive help of any kind. The achievement of this objective is contingent on the availability and quality of community resources and services, including professional personnel.

30. The types of specific measures designed to assist young persons who are properly identified as being in danger of becoming maladjusted, may vary both in scope and intensity, and the manner of application is usually determined by the prevailing circumstances. Great care should be taken to ensure that any assistance given would seek to maintain young persons in their family setting. Where possible, the emphasis should be placed on individualizing assistance, in a manner consistent with the home environment, the particular circumstances of the situation and the personality characteristics of the young person concerned.

31. For those young persons who are no longer within the public school system, assistance could be extended through a comprehensive system of community services. Such integrated community services could also serve as an ideal setting for the dispensation of assistance to school children exhibiting deviant traits whose home environment or family situation is not conducive to preventive measures. In both cases, however, the use of integrated community services for delinquency prevention should not involve the imposition of formalized sanctions. Essentially, these services should concentrate on developing methods and means for a better understanding of the causal factors of maladjustment and on providing appropriate remedial measures of a social and informal character.

32. Integrated community preventive services may also include comprehensive children's services for the most vulnerable age groups. These could be provided on a community basis through neighbourhood centres operated by professional child-care staff and other groups in the community. One of the advantages of the integrated community services approach would be the consolidation of the benefits and the removal of some of the difficulties posed by competing agencies involved in juvenile delinquency programmes.

33. As a measure designed to provide long-range protection against maladjustment, the integrated approach could facilitate the organization of certain specialized activities to supplement formal school education. These activities may fall into two broad categories: (a) activities for children and young persons in their after-school hours and during week-ends and vacations, and (b) general and remedial education for those who wish to continue their education beyond the compulsory age-limit and for those who drop out of the school system. The latter activities may be designed in such a way as to prepare young people for employment and to improve the qualifications of those already employed. A concerted programme of action of this type may not necessarily involve direct state control, and the role of the State may simply be limited to policy direction and guidance.

Juvenile justice: after the onset of delinquency

34. The consideration of issues relating to measures and procedures for the actual treatment of juvenile offenders is often beset with mixed reactions and contradictions. For many years, the juvenile justice system has been viewed as the most equitable means of dealing with young offenders as troubled young persons in need of care, protection and control rather than as criminals.

35. However, in view of recent trends in both the magnitude and seriousness of offences which are being committed by juveniles, it is obvious that the old approach is not working satisfactorily and that some fundamental changes in methods and procedures ought to be considered. But the type of change or modification that may be envisaged for application to the juvenile justice system should, of necessity, take full cognizance of the special needs of the different categories of youthful offenders as well as the circumstances under which the offences are committed.

36. For practical purposes, therefore, the process of reform in the juvenile justice system should focus attention on the development and application of measures and procedures that could be effective and humane in handling (a) children and young persons who are classified as being in need of care and protection; (b) those who have demonstrated deviant traits, and are considered to be beyond control; and (c) those who have failed to benefit from all protective and preventive measures and have become a real danger to society.

37. One of the major considerations for relying so heavily on the judicial authorities for decisions relating to the protection and treatment of juvenile delinquents and other maladjusted juveniles derives from the belief that these authorities appear to be in a better position than administrative bodies (a) to guarantee individual rights against arbitrary power and (b) to provide solutions. To a large extent, the argument in favour of maintaining judicial authority in such decision-making appears to be valid. Therefore, what seems to remain in question is the proper demarcation of functions between the adult criminal justice system and the juvenile justice system, on the one hand, and the assignment of non-judicial functions to the Government and the non-governmental agencies on the other.

38. With proper guidance, and with appropriate supervision by the judicial authority, the administrative organs may be more effective than judicial authorities in providing treatment measures. For example, timely handling of cases requiring some form of care and protection might easily be dealt with without judicial intervention. The more cumbersome judicial procedures in decision-making, though necessary, may have a negative impact on the ability of non-judicial agencies charged with implementing the decisions of the judicial authorities. For this and other reasons, a flexible approach aimed at maintaining a realistic balance and mutually beneficial collaboration between the judiciary and the administration may prove most useful.

39. Such a policy of flexibility could encourage wider participation of various agencies, and the community at large, in the treatment of such juvenile offenders. This approach may also help to reduce reliance on the use of institutions for treatment, thereby promoting a greater and more effective use of community services.

Questions for discussion

40. In the light of these brief explanatory statements on the subject of juvenile justice before and after the onset of delinquency, the experts may wish to consider, among others, the following questions in their preparation and consideration of the topic:

- (1) What are the most prominent problems and issues associated with juvenile justice in your country?
 - (a) What is the extent and nature of the contemporary problem?
 - (b) What type of structural model have you adopted?
 - (c) Can you appraise the success or failure of your methods?
- (2) How can the problems of juvenile justice be more clearly indicated to planners and legislators?
- (3) How can a greater co-ordination and integration of services be established to overcome functional overlapping and gaps?
- (4) What types of institutional arrangements are required for the effective delivery and utilization of integrated community services?
- (5) What should be the proper division of functions between official and non-official agencies and organizations with regard to (a) provision and supervision of services and facilities, (b) recruitment and training of staff, and (c) the provision of adequate funding?
- (6) In what ways and at what levels could other elements in the community such as the family, local leaders, professional groups, trade unions, and industry be involved in the administration of integrated community services?
- (7) To what extent and under what circumstances should formal sanctions be applied in cases involving juveniles, and which judicial branch should have jurisdiction?
- (8) To what extent and in what ways can the judicial authorities maintain a healthy balance between the protection of society and the maintenance of the juvenile justice concept?
- (9) What kinds of intersectoral and interdisciplinary planning are considered appropriate and effective in securing the stability and well-being of the community?

Agenda item 3. CRIME AND THE ABUSE OF POWER: OFFENCES AND OFFENDERS
BEYOND THE REACH OF THE LAW?

Introduction

41. It was noted at the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders that, in addition to the "dark number" of conventional offenders who escaped official detection and prosecution, there was a substantial number of "gilded" criminals "who had political power and wielded it with impunity,

/...

injuring citizens and the community for the benefit of their oligarchy, or who possessed an economic power that was being exercised to the detriment of the community as a whole". 1/

42. Typically, these kinds of offenders victimize large groups of citizens, often entire segments of the population, sometimes whole nations, and often in such a way that the harm to the individual is virtually unidentifiable. Their very strength often shields them from prosecution and punishment. The depredations they inflict are normally not reflected in the crime statistics, owing to non-detection, non-reporting, non-prosecution or preferential (purposely or unwittingly, and for a variety of reasons) treatment by the criminal process.

43. In criminology and criminal justice the emphasis has usually been on street crime, to the neglect of less obvious but often much more noxious types of criminality. However, criminologists, criminal justice specialists, social reformers and others concerned, including the public at large, are increasingly questioning the validity of the traditional focus on offences of a conventional type perpetrated for the most part by the small-scale offender often operating from a position of initial disadvantage compounded by the selective operation of the machinery of justice itself. There have been calls for a wider perspective which would place due stress on those forms of conduct which may in the range and cumulation of their effects be far more damaging for the citizens and the community, and which have so far received relatively limited attention, particularly as far as the development of appropriate action strategies is concerned.

Organization of the agenda item

44. Consideration of this topic might usefully start with a brief discussion of the scope and focus of this agenda item which is likely to ensure most productive treatment.

45. Some of the more salient types of crime deriving from the misuse, respectively, of economic, political or social status and power may be identified, with varying combinations and derivatives. These may range from bribery and corruption to the torture of persons in custody. They would include the illicit practices of powerful trading partners, offences against consumers, including fraudulent advertising, crimes against the environment, against labour safety, tax fraud and evasion.

46. Attention needs to be focused on abuses of economic, political and social power which cause a degree of social harm warranting their criminalization and effective prosecution. The manifestations of the problems at both the national and regional levels might usefully be noted with a view to delineating the scope of and establishing priorities for discussion.

1/ A/CONF.56/10, para. 143.

47. In dealing with this aspect, the emphasis would be on the factors conducive to criminality of this kind and on its effects, taking into account the fact that such activities often interface in cleverly structured and disguised configurations. This includes the effect on potential victims, on the citizenry as a whole, on certain essential national processes and conditions, such as development and economic viability, the moral climate, social cohesiveness, respect for and observance of the law and confidence in public officials and institutions. Some consideration is also required of the economic, political and social structures and processes which may be conducive to abuses of different kinds - including the operation of the criminal justice system itself with a view to preventive planning.

48. Some empirical knowledge of the incidence, seriousness, cost, trends, impact, and manifestations of the phenomenon is necessary as a prerequisite for appropriate action. Information-gathering capability in this respect must be considerably improved. As studies to date have concentrated largely on conventional and less serious forms of crime, imaginative techniques need to be developed to provide indices of "gilded" crime and criminals. In some areas - for example, that of bribery and corruption - this may be particularly difficult but not impossible, ^{2/} as recent initiatives with respect to multinational corporations illustrate. Some countries still lack even basic statistics. In developing meaningful systems of crime-related data, including both statistics and indicators, special attention will be given to the inclusion of information on socially harmful activities of the kinds mentioned above, including their pervasiveness and impact, as a basis for the adoption of appropriate action strategies. For this purpose, also, special studies might be envisaged at the national, regional and international level concerning the economic, political and social structure and processes which permit and facilitate misuse, and the institutional and operational features of legislative, judicial or correctional systems which allow the acts in question and their perpetrators to escape the official mechanisms of social control.

49. The main emphasis of the discussion should evidently be on the implications of the empirical evidence for policy-making and action. This would include both efforts at prevention and measures against criminality of this kind once it has been perpetrated. It requires new detection techniques, drawing on advances in science and technology and sophisticated administrative and management techniques. At the national level, improvements might be introduced to meet problems created by the complexity, length and cost of legal proceedings with respect to white-collar and corporate crime and to procedural and evidentiary principles and guidelines consistent with the observation of fundamental human rights. As suggested by the Committee on Crime Prevention and Control, the possibility might be explored of drafting an international convention with respect to the investigation of economic offences and of formulating international guidelines on the matter.

^{2/} For example, possible indices of corruption may be provided by expenditure patterns, organizational forms such as the use of proxies, estimates of the extent to which the normally slow bureaucratic process is speeded up in certain instances etc.

50. Above all, a more even-handed criminal justice system, which is genuinely and not merely nominally just, may be the best safeguard against "gilded" criminality. There may also be scope for other approaches closely related to the type of criminal activity (for example, economic strategies to deal with economic crime), particularly from a preventive standpoint. There will be special implications for education in citizenship, for value and norm formation and for the constructive use of public opinion and popular participation at different levels and stages. The discussion should ultimately lead to some concrete proposals for strategies to deal with the problem of "gilded" crime at both the national and international levels.

Questions for discussion

51. The following questions might serve as a basis for discussion on this subject:

- (1) What kind of approach to this agenda item would you consider most useful in both a national and regional perspective? How would you delimit its scope and sharpen its focus?
- (2) What kinds of offenders and offences related to abuses of power constitute the most serious problem in your country? In the region, in your view?
- (3) What combinations and configurations of such abuses can be considered most damaging?
- (4) How do such abuses escape official detection and/or successful prosecution?
- (5) How do they interface with legitimate activities (with which they may be mutually supportive)?
- (6) What are their implications and ramifications - for different groups, for the society as a whole, for the economy, for national development, for public morale and confidence in national authorities and institutions, including the legislative and criminal justice system?
- (7) How large is, in your view, the figure of "gilded" crime in your country? How much of it comes to the attention of the public and how (via official criminal statistics, reporting by the mass media, civil suits, class actions etc.)? How much is "hidden" criminality?
- (8) How could this problem be more scientifically assessed? What information capability already exists or could be further developed for this purpose?
- (9) How could regional data-sharing arrangements and international assistance contribute in this process?
- (10) What action-research studies could usefully be initiated nationally or regionally to identify the structures and processes facilitating "gilded" criminality and their imperviousness to the official agencies of control?

/...

- (11) What preventive strategies to deal with crimes related to abuses of power could usefully be adopted at the national, bilateral, regional and international levels?

It would be useful if this question could be discussed with reference both to comprehensive strategies and to specific measures aimed at different kinds of "gilded" crimes or "gilded" offenders, including those related to the kind of crime (e.g., economic strategies to deal with economic offences).

- (12) What activities particularly harmful to your society are not now criminalized that should be so?
- (13) How can the exploitation of differences in national legislations and of legal and procedural intricacies be successfully avoided, while maintaining the necessary safeguards, and what mutual and/or United Nations assistance could be provided in this regard?
- (14) What procedural aids and safeguards could usefully be adopted and what sanctions utilized in efforts at control?
- (15) What collaborative arrangements could be particularly helpful in this connexion?
- (16) What auxiliary strategies might be adopted to lessen public tolerance of socially harmful activities and provide a climate of opinion favourable to their control?
- (17) What international initiatives (guidelines, conventions, models, research studies, regional training and research institutes, advisers etc.) would be particularly helpful to countries in preventing and controlling criminality linked to abuse of power?

Agenda item 4. DE-INSTITUTIONALIZATION OF CORRECTIONS AND ITS
IMPLICATIONS FOR THE RESIDUAL PRISONERS

Introduction

52. This topic reflects the long-standing concern of the United Nations with the treatment of offenders, in custody or in the community, and derives directly from recommendations of the Fifth Congress which, inter alia, recognized that "a wide range of alternatives could be used ... to replace imprisonment" and emphasized that "as a matter of public policy the use of imprisonment should be restricted to those offenders who needed to be neutralized in the interests of public safety and for the protection of society". ^{3/} The Committee on Crime Prevention and Control, in

^{3/} A/CONF.56/10, paras. 264 and 268.

its report prepared in pursuance of General Assembly resolution 3021 (XXVII) on "methods and ways likely to be most effective in preventing crime and improving the treatment of offenders", expressly stated that the debate concerning the purposes to be achieved by imprisonment and on the role and functions of prison in modern societies had reached the point at which concepts and methods that were universally accepted in the past were presently being challenged and disputed, and that the main task, in this perspective, was that of reducing as much as possible the number of persons requiring such an ultimate form of control and of devising for all others community alternatives to institutional corrections.

Imprisonment and alternatives

53. Within the broader context of humanization of criminal justice and the correctional system, efforts have been made in many countries to reduce the prison population - either through the use of shorter prison sentences, or the process of decriminalization and depenalization, especially through the development of alternative measures, diversion and community-based programmes.

54. One important aspect highlighted by recent research is that two goals which are in fact separate may easily be confused in this consideration. These are the objective of reducing, over-all, the number of people in prison so as to lessen overcrowding and the financial cost involved; and the objective of keeping out of prison all offenders not regarded as a direct threat to public safety, because prison is generally counter-productive to the reintegration of the offender into society.

55. The first objective is usually being achieved by shortening prison sentences; and the second by the development of diversion techniques to remove from prison those offenders susceptible to rehabilitation, who are often merely social nuisances.

56. But there is a conflicting issue: in the view of the public at large, and of many law enforcement officials, any convicted offender not receiving a prison sentence is regarded essentially as having escaped "real" punishment, whatever non-custodial sanction he may receive. Therefore, any substantial lowering of the proportion of convicted offenders not imprisoned may have to be accompanied by a parallel sensitization of both agency personnel and the general public, if it is not to have adverse side-effects.

57. Two crucial questions must be discussed and answered on the premise that the present trend will continue: (i) how to expedite and maximize the current process of de-institutionalization of corrections? (ii) how to deal with the residual offenders who cannot be left to other alternatives and have to be confined to prison? Obviously both questions should be considered in the light of the manner in which a society responds to crime and to the ability of its various institutions to meet the needs of all its citizens, including offenders, adequately and humanely.

The trend towards de-institutionalization

58. De-institutionalization deserves special attention, both because the correctional system is intrinsically one of the institutions more resistant to change, and because in such a process many different actors, operators and agencies are involved. In this regard the participation of the community is of paramount importance to reduce the isolation and to contribute to the resocialization of the offender.

59. While previous congresses have sought mainly to identify successful alternatives to imprisonment, the main emphasis is now upon the techniques of achieving de-institutionalization; i.e., the interaction of different sectors of the system, the methods and means available to official staff and voluntary organizations to implement community-based programmes, the achievements and failures so far, and the explanations for them, the number and type of offenders most likely to take advantage of such programmes, and finally the means whereby the whole society and its components can become most fruitfully involved in this process.

60. Because of the lack of such basic information, there is today little empirical evidence of the rate of success of the community-based intervention programmes. There is, however, enough evidence that they do not have the counterproductive effects associated with long-term imprisonment.

61. In discussing these problems, a comparative approach stressing the trade-off advantages and possible short-comings of the alternative programmes in different circumstances seems appropriate. The range of options should be analysed taking into account the relationships between particular types of crimes and offenders and treatment methods, and considering the role of all the institutions and agencies involved. In this regard, a distinction should be made between programmes designed completely to replace imprisonment and those directed at lessening the negative consequences of incarceration, either before or after the imposition of the sentence. New laws and regulations should be described, with emphasis on the necessary resources for implementing them.

The residual prisoners

62. For the time being, prison confinement appears to be the only practical or acceptable method of dealing with those offenders who are not eligible for treatment in the community. This raises a number of critical issues regarding these residual prisoners whose profile is beginning to emerge: they are, or are regarded as, particularly dangerous, violent, great security risks, probably psychologically disturbed, prone to recidivism, hard to treat. However, there is some evidence that such offenders, in most countries, form only a small proportion of the prison population. While few in number, they are likely to be the source of the greater part of any violence and disruption, and so pose a threat to each other, their fellow prisoners and the institutional staff. Often, they are aware of and utilize conflicts in society, ideologize this status, and describe themselves as "victims" of the establishment and, ultimately, "political" prisoners. As such, they may feel justified in undermining the fabric of society and in fighting for the destruction of its institutions of social control.

/...

63. Throughout history the two measures usually employed in dealing with the most dangerous offenders have been capital punishment and long-term maximum security confinement, perhaps for life. The moral and human rights aspects of these have been extensively discussed, as well as the underlying inescapable conflict of interests between the individuality of the offender and the protection of society. In fact, the problem is that of devising appropriate solutions for coping with "dangerous" men and women who may pose serious difficulties in terms of control, discipline and security, and at the same time avoiding having the prisons become depositories for human beings and the prisoners becoming buried alive. It is understandable that this debate has revived the dispute over capital punishment.

64. Determining which offenders require extended custody poses a further dilemma. Offenders most feared by the public are not necessarily regarded as hard-core criminals by criminological and correctional specialists and, likewise, offenders who are extremely dangerous when at large may be perfectly treatable when in custody. Although the concept of "dangerousness" must, ultimately, be defined in accordance with the values of a given culture, it would be helpful to search for general principles from which to develop guidelines to define the types of offenders for whom in the future imprisonment will be required; and to construct an inventory of evaluative methods and practices for the identification, restraint and control of dangerous offenders.

65. Because the dynamics of prisons for the especially difficult offender are likely to be particularly stressful, and personal relationships within and between staff and inmates unusually abrasive, on occasions, specific problems in particular emerge: should such prisoners be dispersed among different institutions, perhaps segregated in high-security sections, or concentrated in "maxi-maximum" security institutions; or are there other strategies available? What place is there for various instruments of behaviour modification, including pharmacological developments, in controlling such prisoners, considering the proper restrictions placed on the use of legitimate force by staff and the permanent need for the protection of basic human rights?

66. If institutional programmes have to be consistent with human dignity and basic concepts of fairness they must involve prisoners in determining their own goals and eventual fate, making their involvement in most programmes voluntary, and providing them with mechanisms for appealing correctional decisions affecting them. This implies that all major decisions controlling progress through the prisons should be carried out in accordance with formally and openly declared standards and procedures having a basic consistency. In this regard, the use of indeterminate sentences must be seriously questioned and scientifically evaluated. Indeed for this group of prisoners, such a type of sentence can easily become, de facto, an indefinite sentence for those who do not comply with the rules fixed by the institution.

67. Finally, even for these residual prisoners, it may be useful to utilize community methods in order to prepare them for release. Thus the possibility of bringing members of the community more effectively into the prison should be explored, along with planning feasible pre-release activities and after-care programmes including supervision.

Questions for discussion

68. In the light of these broad issues, the experts may wish to consider the following questions and to prepare statements reflecting the position of their respective countries, so that the Secretariat can use such information in finalizing the working paper on this agenda item:

- (1) What have been the results and conclusions of any recent debates on the aims of imprisonment and the role of prisons, and how have these been reflected in changes in criminal legislation, policies and practices?
- (2) What changes in sentencing policy have occurred recently in your country? Which offenders receive sentences of imprisonment more frequently? Which offenders receive longer ones? What is the explanation for these changes?
- (3) What have been the most successful alternative measures and community-based programmes? What criterion of success has been employed? What explanations have been given for low success rates of given measures?
- (4) Has any evaluative study been carried out on the effectiveness of community-based programmes? If so, please describe it.
- (5) Among the total number of the prison population in the most recent years, how many prisoners have been sentenced to more than five years? (Please provide figures.)
- (6) Does your country have life imprisonment? If yes, how many prisoners are at present serving life sentences? Can a life sentence be commuted to long-term imprisonment? If so, is there a minimum period?
- (7) How are "dangerous" and "difficult" offenders defined and labelled? What are the legal implications and consequences? Is the decision primarily for the judiciary or the executive? If the decision is taken by administrative authorities, how could judicial supervision and control be most effectively organized?
- (8) What have been the policies in your country for coping with hard-core, dangerous prisoners, e.g., centralization in one or a few prisons, dispersion among several, others?
- (9) Has any evaluative study been carried out in your country on the effects of long-term imprisonment on: (a) the prisoners, (b) the staff and the functioning of the institution, (c) the prisoners' families and (d) society? If yes, describe their results.
- (10) What, if any, would be the right, duty or responsibility of the institution with regard to treatment methods designed to modify the behaviour of prisoners, and, conversely, to what extent would the prisoners have the right to reject such programmes?

- (11) How can the preservation of human rights and the application of the Standard Minimum Rules be adequately ensured and stimulated for the residual prisoners in a maximum-security institutional environment?
- (12) In the event that new standards are to be drafted for these residual prisoners, what would be the main issues to be emphasized and stressed?

Agenda item 5. UNITED NATIONS NORMS AND GUIDELINES IN CRIMINAL JUSTICE:
FROM STANDARD-SETTING TO IMPLEMENTATION

Introduction

69. Since its foundation the United Nations has increased its efforts to secure the rights and preserve the dignity of all those who come into contact with the criminal justice system. The Universal Declaration of Human Rights refers to the protection of human rights in criminal justice in its articles 7, 8, 9, 10 and 11. The principles proclaimed in those articles have been set forth, inter alia, in the International Covenant on Civil and Political Rights (articles 9, 14 and 15), 4/ the Standard Minimum Rules for the Treatment of Prisoners, 5/ the draft principles on freedom from arbitrary arrest and detention, 6/ the draft principles on equality in the administration of justice, 7/ and the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 8/ which has become central to recent efforts towards drafting standards in criminal justice.

70. In pursuance of General Assembly resolution 3453 (XXX), paragraph 3, the Committee on Crime Prevention and Control in 1976 elaborated a draft code of conduct for law enforcement officials, to be submitted to the General Assembly in 1977.

4/ Adopted by General Assembly resolution 2200 A (XXI), in force since 23 March 1976.

5/ First United Nations Congress on the Prevention of Crime and the Treatment of Offenders: Report by the Secretariat (United Nations publication, Sales No. 56.IV.4), annex I.A. The Rules were approved by the Economic and Social Council in resolution 663 C (XXIV).

6/ Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile (United Nations publication, Sales No. 65.XIV.2) and "Study of the right of arrested persons to communicate with those whom it is necessary for them to consult in order to ensure their defence or to protect their essential interests" (E/CN.4/996).

7/ Study of Equality in the Administration of Justice (United Nations publication, Sales No. E.71.XIV.3). The draft principles were approved by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 3 (XXIII).

8/ Adopted by the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and by the General Assembly in resolution 3452 (XXX).

/...

The code deals with the rights and duties of law enforcement officials in the performance of their duties, stressing in particular the obligation to respect and protect human dignity and human rights, the prohibition of torture or other cruel, inhuman or degrading treatment or punishment and the inadmissibility of all acts of corruption.

71. Moreover, in accordance with General Assembly resolutions 3453 (XXX), paragraph 2 (ii) and 31/85, paragraph 4, the Commission on Human Rights is expected to submit to the General Assembly in 1978 a comprehensive report on the elaboration of a body of principles for the protection of all persons under any form of detention or imprisonment.

72. The General Assembly by resolution 31/85, paragraph 5, also invited the World Health Organization to prepare a draft code on medical ethics relevant to the protection of persons subjected to any form of detention or imprisonment against torture and other cruel, inhuman or degrading treatment or punishment, and to bring it to the attention of the General Assembly in 1977.

73. In 1976 the Committee on Crime Prevention and Control also undertook efforts to strengthen the Standard Minimum Rules for the Treatment of Prisoners, the validity of which has been recognized by most Governments and which have contributed to the improvement of prison conditions in many countries. In pursuance of Economic and Social Council resolution 1993 (LX), paragraph 6, the Committee recommended a new draft rule 95, ^{9/} seeking to assure the applicability of the Rules to all persons arrested or imprisoned with or without charge, and elaborated draft procedures for the effective implementation of the Rules. The revised rule was approved with some changes by the Council in 1977 (Economic and Social Council resolution 2076 (LXII)).

74. Finally, the Committee recommended the development of new standards to: 10/

(a) Ensure just and effective judicial proceedings, improved selection and training of judges and prosecutors and the establishment of safeguards against the abuse of discretion in sentencing;

(b) Provide minimum rules for the treatment of offenders in the community;

(c) Strengthen inmate grievance procedures by ensuring the prisoners the right of recourse to an independent authority at both the national and international levels;

(d) Facilitate the return of persons convicted of crime abroad to their domicile to serve their sentences; and

(e) Improve the situation of persons detained in police or prison custody before trial.

9/ Report of the Committee on its fourth session (E/CN.5/536), para. 95.

10/ Ibid., para. 86.

Implementation procedures

75. In relation to the emerging network of United Nations norms and guidelines in criminal justice, there is a need for devising effective means and procedures for national and international implementation and for encouraging and strengthening the existing formal and informal structure of international co-operation in order to protect the rights of individuals who come in contact with the criminal justice system. United Nations standards in criminal justice, like any other standards, depend in the last resort on the willingness to accept and enforce them.

76. The draft procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners, developed by the Committee on Crime Prevention and Control, could serve as a model for further implementation efforts. In these procedures all States are requested to adopt the Rules, embody them in national legislation and other regulations and make them available to all persons concerned with their application and execution in the criminal justice system, as well as to all prisoners and to all persons under detention. The draft procedures also provide for a reporting system and for dissemination of information concerning the Rules, and further authorize the Committee on Crime Prevention and Control to assist the General Assembly and the Secretary-General, when requested, with recommendations relating to reports of ad hoc inquiry commissions, whenever these are appointed, with respect to matters pertaining to the Rules and their application and implementation. Communications relating to violations of the Rules may be addressed to the Secretary-General.

77. Moreover, the procedure established by Economic and Social Council resolution 1503 (XLVIII) would be applicable if the organs concerned (the Sub-Commission on Prevention of Discrimination and Protection of Minorities and its working group and the Commission on Human Rights) considered that an alleged violation of the Standard Minimum Rules could be regarded as possibly revealing "a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms".

78. The Sub-Commission, under the procedure set forth in its resolutions 7 (XXVII), 4 (XXVIII) and 3 A (XXIX), reviews annually developments concerning the human rights of persons subjected to any form of detention or imprisonment on the basis of information received from Governments, the specialized agencies, regional intergovernmental organizations and non-governmental organizations in consultative status. It would be worthy of the attention of the organs concerned whether under this procedure, the Sub-Commission could also concern itself with patterns of violations of the Standard Minimum Rules, with the assistance as appropriate of the Committee on Crime Prevention and Control, if such information is brought to its attention.

79. New international procedures for the objective monitoring and assessment, on a continuing basis, of human rights issues concerning the administration of criminal justice exist consequent to the entry into force of the International Covenant on Civil and Political Rights and its Optional Protocol. The Human Rights Committee, established under the Covenant, is called upon to study the reports submitted by the States Parties and to transmit comments to the States Parties and to the

/...

Economic and Social Council. The Committee is also competent to deal with State versus State communications in respect of States Parties which have made a special declaration under article 41 of the Covenant upon receipt by the Secretary-General of 10 such declarations. Moreover, in cases of State Parties to the Optional Protocol, the Committee is competent to consider communications from individuals.

80. While gaps in the substantive and procedural provisions of United Nations standards in criminal justice are being filled, there is still a long way to go towards effective implementation. It is true that nothing prevents States Parties to the statute of the International Court of Justice to agree to submit to the Court, for judicial determination, disputes regarding the application or interpretation of various human rights treaties. Moreover, the Security Council may impose sanctions upon a State if its conduct, violative of human rights, is deemed to constitute a threat to the peace, under Chapter VII of the United Nations Charter. However, apart from these special procedures, there is not yet in operation in the United Nations an automatic and general enforcement mechanism for the judicial determination of disputes and the application of sanctions. As mentioned above, the procedure under Economic and Social Council resolution 1503 (XLVIII) is applicable to complaints from individuals only if such complaints tend to reveal a "particular situation which appears to reveal a consistent pattern of gross and reliably attested violations of human rights". The International Covenant on Civil and Political Rights and its Optional Protocol obligate only those States which have ratified them. Furthermore, States can ratify the Covenant without accepting the implementation provisions, apart from the obligation to report. Finally, neither the periodic reporting system set up under Economic and Social Council resolutions 450 (XIV) and 1074 C (XXXIX) nor the draft procedures for the effective implementation of the Standard Minimum Rules for the Treatment of Prisoners provide for an enforcement system. The same is true for the periodic reporting procedure under the Convention on the Elimination of all Forms of Racial Discrimination.

81. Reliance upon public opinion as a sanctioning technique towards the implementation of United Nations standards in criminal justice is regularly suggested as the ultimate "remedy". Although the effect of efforts to enlighten public opinion as a means of influencing government decisions may be slow and unspectacular, often even unremarked, publicity is the medium through which norms and guidelines in criminal justice come to be understood and recognized, and their denial where it occurs, made known; it is, therefore, an important means of protection of the individual in the criminal justice system and, thus, a real and essential means for the implementation of standards.

Future action

82. On the basis of the existing standards and implementation procedures as well as present efforts towards the development of new norms, the Congress, with the advice of the Division of Human Rights, could examine the potential of the United Nations to consolidate a consistent network of norms and guidelines in criminal justice. In this regard the Congress would wish to take into account the diversity of United Nations instruments and implementation procedures regarding human rights

/...

and criminal justice: one instrument has been adopted after the other, in an incremental process, in order to close gaps, and most of these instruments contain saving clauses safeguarding stronger rights which may be granted under other treaties or declarations.

83. As the first step in pursuance of its task the Congress could review the existing United Nations standards and implementation procedures with a view to suggesting methods and ways for their improvement with particular attention to the way in which public opinion could be most effectively organized against refractory Governments. In this respect the Congress would wish to take into account that while a diversity of implementation procedures may appear at first glance to be somewhat untidy, such a variety might be considered, on balance, as a strongly positive asset for the victims of violations of human rights. Relevant experience tended to show that the most effective redress of violations was often secured through the combined use, by various bodies, of international procedures of overlapping scopes ratione material and ratione loci: periodic reporting systems, regular reviews of general developments, consideration of individual complaints or communications, inquiries into the situation regarding human rights in specific countries, etc.

84. Secondly, the Congress could consider extending the range of application of the present standards, for example the Standard Minimum Rules for the Treatment of Prisoners, by developing standards applicable to new forms and methods of treatment of persons deprived of liberty.

85. Finally, the Congress could explore the possibility of formulating new norms and guidelines in criminal justice, taking into account the recommendations of the Committee on Crime Prevention and Control, the experiences in developing previous standards, as well as the conclusions of the Ad Hoc Meeting of Experts on Expeditious and Equitable Handling of Criminal Cases, convened by the Secretary-General and held at Reno, Nevada, United States of America, in May 1977.

Questions for discussion

86. The discussions could concentrate on the following issues:

- (1) To what extent are the existing United Nations norms and guidelines in criminal justice consistent with each other and with existing corresponding regional standards?
- (2) Is there a need to extend the range of application of present standards or to adapt their provisions to new developments?
- (3) Are the United Nations norms and guidelines in criminal justice being effectively implemented at the national, regional and international levels?
- (4) What are the obstacles standing in the way of effective implementation, at what levels and stages are they to be encountered and how could they be overcome?

/...

- (5) Are the present reporting procedures satisfactory or should efforts be undertaken towards promoting investigation and publications?
 - (6) How could public opinion best be mobilized towards implementation of United Nations standards in criminal justice? In what way are their goals transmuted into authoritative and controlling decisions? What is the role of non-governmental organizations and other private groups in influencing decision-makers by communications?
 - (7) Is there a need for the creation of new standards and, if yes, in which areas?
 - (8) In which of the priority areas for the development of new standards indicated by the Committee on Crime Prevention and Control is action most urgently needed?
-

This archiving project is a collaborative effort between United Nations Office on Drugs and Crime and American Society of Criminology, Division of International Criminology. Any comments or questions should be directed to Cindy J. Smith at CJSmithphd@comcast.net or Emil Wandzilak at emil.wandzilak@unodc.org.