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REPORT ON THE LATIN AMERICAN REGIONAL PREPARATORY MEETING
ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Note by the Secretary-General

The Secretary-General circulates herewith the report on the Latin American Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders which was held at San José, Costa Rica, from 31 July to 4 August 1978. The report is circulated to provide participants in the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders with an account of the proceedings of that preparatory meeting.

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INTRODUCTION

1. The Preparatory Meeting for Latin America and the Caribbean on the Prevention of Crime and the Treatment of Offenders was the fourth of a series of regional meetings convened to discuss the provisional agenda and make appropriate recommendations concerning the preparation and documentation for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, to be held at Sydney, Australia, from 25 August to 5 September 1980, in pursuance of General Assembly resolutions 415 (V) and 32/59. The list of the five topics approved by the Committee on Crime Prevention and Control at its fourth session, held at United Nations Headquarters from 21 June to 2 July 1976, and outlined in the discussion guide drawn up by the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs, United Nations Secretariat, 1/ was adopted as the agenda for the Meeting. The question of capital punishment was also considered under topic V, as recommended by the Committee on Crime Prevention and Control at its fifth session, held at Vienna from 5 to 16 June 1978, pursuant to General Assembly resolution 32/60.
2. The Preparatory Meeting was held at San José, Costa Rica, from 31 July to 4 August 1978, with the co-operation of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD). Over 80 participants, including experts from 24 countries and two territories in the region, a representative of the host country for the Sixth Congress and observers of intergovernmental and non-governmental organizations attended the Meeting. Lic. Elizabeth Odio Benito, Minister of Justice of Costa Rica, was elected Chairman. The Honourable Frank King, Magistrate, Barbados, and Professor Manuel López-Rey, Bolivia, were elected Vice-Chairmen and Dr. Carlos Mendoza, Director of Crime Prevention, Venezuela, was elected Rapporteur.
3. At the inauguration of the Meeting, His Excellency, Lic. Rodrigo Carazo Odio, President of Costa Rica, manifested his satisfaction in having Costa Rica serve as the host of the Meeting and expressed his wish that the recommendations made by the participants would become reality through the fruitful work of the United Nations. President Carazo affirmed that the five topics had been very appropriately selected, and expressed special interest in the subject of "Crime and the abuse of power: offences and offenders beyond the reach of the law?", since he considered that in truly democratic countries those acts must be clarified, and that they called for legislation capable of eliminating corruption, bribery, traffic in influence and, in general, the abuse of authority detrimental to the large majority of the people.
4. The Chairman described the determined action of her Government to consolidate and carry out a strategy for the prevention of crime. She emphasized the intention of her Government to strengthen the role and international status of ILANUD, which required also the strong support of all the countries of the region, in order to be able to carry out its training and research

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programme and provide technical assistance. She noted that regional co-operation, especially through the exchange of experience and information, could be highly effective in the fight against crime and in establishing more equitable criminal justice systems.

5. The Director of ILANUD, Lic. Jorge A. Montero, placed emphasis on the educative role of the United Nations in propagating instruments, such as the Standard Minimum Rules for the Treatment of Prisoners, which, while applicable to all nations, had to be adapted to the particular conditions of the different countries and to their political, social and cultural circumstances. In this sense research, analysis, training, and development and implementation of standards were of prime importance in achieving truly effective action that would result in improving the quality of life and general welfare of the people.

6. The representative of the Secretary-General of the United Nations thanked the Government of Costa Rica for the generous support it had given to ILANUD and to the principle of regional co-operation for the prevention of crime and the treatment of offenders. He explained the purpose of the preparatory meetings for the Sixth United Nations Congress, noting that in the special case of the countries of Latin America and the Caribbean, because of their common characteristics and rich and wide experience which made the area virtually a criminological laboratory, the opinions expressed by their representatives could become a guide for world action.

DISCUSSION OF THE TOPICS

I. Crime trends and crime prevention strategies

7. In introducing topic I, "Crime trends and crime prevention strategies", the representative of the Secretary-General pointed out the significant changes in criminal justice that had occurred all over the world: the shift from a purely reactive approach to crime, through the imposition of punishment, to a preventive approach which utilized planned crime prevention strategies. The new approach had to rely on accurate information and data on crime and crime control in order to ascertain trends and determine the impact of crime control methods. Although some countries had made great strides in obtaining data on the extent and causes of crime, many had not progressed far and most countries had not yet developed a method for evaluating the impact and cost of crime prevention strategies. It was necessary therefore, to exchange all available information in a comparative form and to assist each other, for no country should have to repeat costly mistakes made elsewhere. Information had to be provided, particularly on methods of planning and of devising effective strategies for crime control which were consistent with human rights standards.

8. At the outset, references were made by some participants to the significant increases in crime which in some countries clearly exceeded the possibility of effective action by crime control agencies. The growing importance of certain crimes was underlined. Cited in this connexion were economic crimes, trafficking in narcotics, crimes involving international enterprises seeking illicit gain and the criminality of those who took advantage of their social, economic or political position. With regard to conventional crime, the significant increases in crimes against property in developing countries were mentioned. As regards traditional crime, the increase in juvenile delinquency - alarming in some countries - and the growing participation of women in crimes, including serious crimes, were noted. One participant, however, indicated that in his country juvenile delinquency had decreased. Relatively new types of crime in the region were also referred to, such as crimes against the environment, especially air and water pollution and the destruction of forests, kidnapping for profit, hoarding of food-stuffs, certain offences committed by public employees, and attacks and robberies by terrorists. Additionally, there were certain types of organized crime and the appearance of gangs, which in some cases consisted of juveniles.

9. In the view of one expert, the present-day crime situation in Latin America was characterized by increases in violent crimes, an increase in economic crimes, including a large incidence of crimes of corruption, embezzlement and bribery, an increase in drug trafficking and in certain crimes linked to technological changes. Not all these offences reached the penal system which concentrated on offences committed by the socially, economically, culturally and politically less privileged classes.

10. Certain reservations were expressed as regards the possibility of detecting and measuring, even approximately, by traditional methods, the diverse forms of criminality within the region. The deficiency of the statistical systems, the magnitude of the dark number of certain crimes and limited criminological research made it very difficult to obtain an accurate picture of the extent, characteristics

and trends of crime. The diversified terminology utilized by different countries, as well as differences in the ways of collecting and processing data, also made the comparison of crime rates between countries of the region very laborious. These conditions pointed to the necessity of moving towards common statistical models and of upgrading scientific research.

11. Some participants noted that certain increases in crime rates might be only apparent, indicative in some cases of the greater efficiency of the organs of crime control or simply of better methods of recording crime.

12. It was noted that, in any case, possible increases in crime should not necessarily be attributed to the development process. The possible correlations, of course, could not be understood in terms of cause and effect. Similarly, one might speak of development which was too rapid or inorganic, or which did not consider in the planning phase the negative repercussions of certain criminogenic factors. In this connexion, the need to use a larger number of development indicators was noted. Those habitually used gave greater weight to quantitative rather than qualitative aspects, excluding certain indicators which would reflect more exactly real standards of living.

13. Some participants criticized the lack of concern demonstrated by many Governments with regard to crime prevention; planning activities had unduly emphasized economic aspects, without giving sufficient attention to social aspects. In other cases the impact of crime on the quality of life had been ignored, with crime prevention considerations being omitted from planning for socio-economic development. It was to be borne in mind, in this connexion, that in every instance planning for crime prevention had to be harmoniously integrated into the general socio-economic planning of the country, taking into account the possible effect of certain programmes on detected crime, as well as on the dark figure, and considering the numerous demographic and socio-economic variables that could influence criminal behaviour. It should be remembered, therefore, that the analysis of crime trends was without doubt more useful or beneficial when used in conjunction with an analysis of such factors. By the same token, it would be useful if existing knowledge of crime prevention could be applied in plans or programmes related to urban development, education, health, social welfare, the mass communication media etc.

14. Some participants expressed confidence that crime could be reduced to tolerable limits by planning for primary, secondary or tertiary prevention. Such planning would have a promising effect to the degree that action is taken at the intersectoral level and community forces are mobilized, making use of interministerial commissions or councils, panels composed of representatives of different bodies, agreements between institutions, the involvement of community agencies etc., which would ensure communication between and integration of the different sectors, and the participation of the organized citizenry. The continuation or modification of the programmes, in each case, should be based on scientific study which would permit the assessment of its true benefits.

15. In the opinion of the representative of a socialist country of the region, such optimism did not appear clearly founded, since the significant reduction of criminality in his country could not have occurred without profound structural

changes. He noted that the intervention of the State in the eradication of unemployment and the raising of educational levels, had greatly reduced criminality, both qualitatively and quantitatively. In his view, this should lead to the conclusion that, although certain general approaches could be adopted in the way of preventive strategy, effective crime prevention required a multifaceted analysis of the socio-economic development process, closely related to the economic, social and political realities.

16. Certain experts called attention to the main characteristics of criminality in the region and to the deficiencies of the means and methods adopted to prevent or control it. Faced with a clear increase in economic criminality, in which many individuals, confident of impunity, abused their economic or political power, countries should respond by introducing profound socio-economic changes and by creating new penal systems that would prevent not only the "poor devils" crimes, but which would also affect the powerful. If the answer to crime lay in adequate planning, then those who represented the concerned sectors of the population, such as trade unions, associations etc., should be involved in it along with professionals. ILANUD, therefore, should develop minimum planning standards to ensure efficient and above all, just planning.

17. It was also mentioned that an improvement in the entire penal system was an important part of crime prevention. A penal system that did not meet existing needs could actually aggravate the situation: stigmatizing conditions in the serving of a sentence could in effect lead to the adoption of a criminal career, rather than permitting effective tertiary prevention. It was suggested that reforms of the penal system should include extensive modernization of laws and codes as well as effective improvements of infrastructures, especially prisons. This required progress in the selection and training of judicial and correctional personnel. It was deemed desirable that the teaching of law be improved so as to provide lawyers with a more complete picture of their social responsibilities. Some participants expressed more confidence in partial reforms which could be achieved more rapidly and were more flexible in their application to new and changing social realities and less likely to become rigid or obsolete than those considered to be integral or definitive. Along these lines, the necessity of seeking new types of sanctions which would be more humane and effective, as well as the urgent need to limit the penalty of imprisonment, were mentioned. A scientific study of the real effectiveness of different sanctions, as applicable to different types of offenders and offences, would seem to be useful. Penal reform should be conducted with the participation of professionals from diverse disciplines, since the purely legal focus on crime problems had shown itself to be clearly inefficacious.

18. Some experts referred to the necessity of evaluating the results of programmes or reforms on a scientific basis. Such a study should also extend to the determination of crime trends. One expert suggested, to that effect, that ILANUD develop models for the collection of criminal statistics. Moreover, ILANUD should promote the adoption of common crime categories, as well as of models for evaluating the comparative effectiveness of preventive programmes. This would

permit the replication of programmes found to be successful, with appropriate adjustments to fit local circumstances. Another expert referred to the importation by countries of foreign programmes which might not fit national reality or the particular cultural, social or economic characteristics of a given indigenous minority, even when this minority represented the largest proportion of a country's population. More attention should be paid to the characteristics of these groups while seeking greater participation of the population in the planning of preventive policies and in the organization and functioning of the penal system. With respect to the question of "judicial discretion", it was felt that it was difficult to control it in the imposition of a sentence and that it would be useful to have groups or committees, made up of professionals, representatives or workers and other organizations, as well as ex-offenders, which could modify, replace, suspend or terminate the sanctions imposed.

II. Juvenile justice: before and after the onset of delinquency

19. In introducing topic II, "Juvenile justice: before and after the onset of delinquency", the representative of the Secretary-General explained that the topic of juvenile justice had been dealt with at the First, Second and Third United Nations Congresses, at which time the emphasis had been on the problems that developed countries encountered, with post-war and subsequent increases in delinquency related to reconstruction, urbanization, loosening of social controls and family disintegration. The subject had not been dealt with at the Fourth and Fifth Congresses, and now the problem was being encountered in developing countries which were experiencing rapid urban and industrial growth. The Committee on Crime Prevention and Control, in defining the topic, had juxtaposed two methods of dealing with the problem of delinquency, and the title of the topic reflected this. "Juvenile justice before the onset of delinquency" was to be understood as a broad prophylactic approach which sought to prevent the problem of delinquency from arising by ensuring social justice for children and their families, through proper nurturing and education, health and social services, and the inculcation of social and civic responsibility in young people. "Juvenile justice after the onset of delinquency" referred to legal justice through the operation of juvenile court systems and similar agencies. Here the problem arose as to whether paternalistic systems, which viewed juvenile delinquents as the victims of social forces beyond their control, were to be preferred to contrasting systems which regarded young law breakers in the same way as adult law breakers, entitled to the same procedural benefits, but also subject to the same responsibilities as adults, or whether a third, amalgamated model had to be created.

20. The participants agreed about the seriousness of the problem of juvenile delinquency faced by most of the developing countries. About 70 per cent of delinquent acts were committed by youths between the ages of 16 and 18. Although in some countries violent crimes against persons had decreased, there had been an increase in property and sexual offences. Decreasing control by parents and communities, an inevitable concomitant of urbanization and industrialization, was seen as a significant causative factor, as was the persistence of social injustice. Some participants pointed out that acts of delinquency were frequently committed by juveniles from underprivileged and deprived population groups that, in effect, were seeking the attainment, by illegitimate means, of goals that were denied them. While some participants argued that the same conditions which caused violence among adults also produced violence among youngsters, others disputed this. In some countries, a frequent cause of delinquency was the pressure by adults on juveniles to commit criminal acts for which the juveniles would not be criminally liable. Such youngsters would grow up with anti-social and often rebellious attitudes. Paternalism, prevalent in the region, had its deleterious consequences. Marginalization of entire population groups, alien cultural influences, unemployment, drug addiction and the growth of slums had to be viewed as promoting anti-social behaviour.

21. All these factors had to be taken into account in planning broadly based delinquency prevention programmes derived from careful institutional analysis and

including the entire range of social and legal services. An assessment of the available resources was also necessary. The identification of pre-delinquent and particularly vulnerable juveniles and the provision of special services for them, was felt to be particularly important. Punishment, as a rule, was not considered to be an effective means of dealing with pre-delinquency or delinquency, just as most treatment programmes, including massive ones, had not really been proved effective. Individualized approaches to rehabilitation were usually called for, in which the needs of the juvenile and the legitimate claims of society were carefully balanced. Individualized approaches required valid classification systems. In no event should an emphasis on individualized treatment of juvenile delinquents claim to be a substitute for the establishment of social and economic justice in Latin America, which was to be viewed as a pre-condition for any effective delinquency prevention.

22. Several participants pointed out that if youngsters had been imbued with understanding and civic responsibility it would make sense to hold them responsible for certain acts. Indeed, to withhold responsibility would signal to these youngsters the wrong message, which could then be easily carried into adult life, thus creating adult offenders. Juvenile courts had an important role to play in this regard, but juvenile court judges frequently lacked the necessary training to play the important role of dispensing justice. To ensure proper treatment of juvenile delinquents, it was necessary to have specially qualified personnel available.

23. However, inasmuch as a criminogenic world had been created by adults, it could not be considered justice to assign blame to the youngsters who were victimized by that adult world. Resocialization of the adult world and re-establishment of a healthy and strong family nucleus were regarded as mandatory measures for the prevention of delinquency. Contrary to the unfortunate trend in some other regions, the emphasis should, therefore, be on preventive and non-institutional treatment of juvenile delinquency, rather than on treating youngsters with the severity of adult penal measures. The schools had a particularly important role to play in this connexion, through education for moral and civic responsibility and a commitment to participation in community life. In some countries there was emphasis on integrating youngsters into the labour force as a preventive and readaptive measure. In any case, efficient co-ordination of all public and private, administrative and judicial agencies concerned with delinquency prevention was called for.

24. The representatives of several countries reported on a rich variety of programmes and services directed towards the prevention of delinquency and the treatment of juvenile delinquents, although frequently these suffered from a lack of co-ordination and a methodology. Yet in some countries little had been done other than the maintenance of traditional reform schools and training facilities, or the fining of parents for inadequate supervision. It was noted that traditional methods had little impact on such massive phenomena of delinquency as prostitution by juveniles - especially at construction and development sites - drug abuse, theft attributable to the growth of consumerism, or stranger-to-stranger violence, often fostered by television programmes.

25. In their suggestions regarding the treatment of this topic, the participants expressed some concern about the use of the term "justice" in reference to "justice before the onset of delinquency". While it was clear that what was meant was the provision of social justice and social services to all citizens, parents and children, so as to avoid the onset of delinquency, in Spanish the word "justice" connoted primarily legal justice. It was suggested that efforts should be made to clarify this in the title of the topic.

III. Crime and the abuse of power: offences and offenders beyond the reach of the law?

26. In introducing the third topic, "Crime and the abuse of power: offences and offenders beyond the reach of the law?", the representative of the Secretary-General pointed out that this topic arose out of the debates of the Fifth Congress, although the focus at that time was primarily on economic offences. The problem of offences by powerful trading partners persisted and their pernicious effects on large groups of victims were beginning to be better understood. Little progress had been made in detecting and combating this type of criminality. But the concept of criminality associated with the abuse of power was broader and extended to the abuse of political power, ranging all the way from bribery and corruption to the suppression of minorities and dissenting groups, the crime of apartheid, torture and maltreatment.

27. The examination of the third theme was particularly significant, due to the peculiarities of the historical development of Latin America at the political level and at the socio-economic and cultural levels. The participants were in agreement as regards the difficulty of defining and limiting the theme because of the diverse forms in which the subject was perceived. Several representatives acknowledged that the abuse of power was a constant in the area and dated from the discovery of the continent by the Europeans. Since that time power had served as the fundamental basis for the introduction of culture, legal institutions, the economic order and social hierarchies among the inhabitants of the area and marked the beginning of the exercise of impunity by those who wielded power.

28. In order to clarify these ideas, the topic was divided into three broad categories: (a) the abuse of power of a foreign origin; (b) the abuse of power by the State; and (c) the abuse of power by economic groups.

29. As regards the abuse of power of a foreign origin, a number of participants were of the opinion that the basis for this was to be found in the forms of domination imposed by the economically developed countries of the area. The exploitation and ransacking, to which the countries of the region had been subjected, had begun many years ago and consisted of the appropriation of their resources, and the control of their economies and their forms of government, circumstances which had in some cases led to a certain political instability in many of the countries and to the consolidation of power minorities who derived benefit from a dependency situation. Some delegations felt that the role of transnational corporations of developed countries should be emphasized in this connexion, linked as they were to the kind of exploitation and misappropriation described above.

30. It was held that the transnational companies operating in the region were perpetrating a series of violations of the penal legislation in effect, such as bribery and the trading of influence. The difficulty of detecting such acts often made any possibility of punishment illusory. In some cases, the behaviour of the companies, although it greatly affected the regional economies, was not

covered by penal legislation. Some of the participants referred to the fact that the fishing wealth of the territorial waters of many countries was being plundered by large foreign fleets, thus violating their national sovereignty. Mention was made of other forms of abuse of power of a foreign origin perpetrated by organizations acting outside the shelter of the law, such as groups specializing in traffic in narcotics and in archaeological objects. Different parameters along which transnational organizations operated in the region could thus be distinguished.

31. As an example of the abuse of power by the State, some of the participants mentioned violence engaged in by the State against its citizens, citing the persecution of political dissidents, torture, cruel and inhuman treatment and the non-observance of human rights and of the Standard Minimum Rules for the Treatment of Prisoners or of persons deprived of their freedom for some reason. This showed the need to distinguish between an excess of power and the abuse of power. The first consisted of a deplorable overstepping of authority, often circumstantial, and very rarely criminal in nature. It was principally a result of excessive zeal on the part of the agents of power and of the imperfections frequently found in the agencies of power and their lack of co-ordination. The abuse of power, on the other hand, involved its deliberate use for specific aims which tended to attain, to do, or prevent from doing, something which could not legitimately be justified. The abuse of power was often for the exclusive benefit of power itself, for the maintenance of a political régime or of an unjust social and economic system. With respect to the latter, reference was made to the unjustified enrichment of high public officials who, protected by their positions, undertook all manner of business, favoured their protégés and received donations and improper "commissions".

32. On the manner of the abuse of power by economic groups, some of the participants emphasized the links existing between these groups and the power of the State in some countries, which explained, first, the lack of coverage by penal legislation of much of the conduct impeding development; secondly, the leniency and inefficiency of punishment in those cases where it was prescribed by law and, thirdly, the lack of adequate measures of control. This kind of criminal activity was classified as being that of powerful persons, as contrasted with that committed by "poor devils" (street crime). Such impunity discredited the criminal justice system, and ever-larger sectors of the population distrusted this state of affairs. Among the most characteristic forms of the abuse of power of an economic nature, the following were mentioned: fraud perpetrated through the flight of capital, the hiding of gain, fictitious balance-sheets, the concession of monopolies, the simulation of prices for fraudulent import/export purposes, large swindles involving real estate and the sale of land, speculation in its various forms and environmental pollution by industry.

33. Attention was drawn to the fact that it was not always easy to identify the victims of such crimes and that it was impossible to make up for the damage caused. On the other hand, it was felt that to a certain extent some transgressors were at the same time the victims of more powerful organizations. Emphasis was placed on the need to analyse all the above not only from the point of view of

the person proposing the commission of the criminal act but also from that of the person who accepted it or co-operated in carrying it out as in the case of many banks and corporations which provided cover for ill-gotten monies and served as fronts. In this connexion, mention was made of the lack of control under certain legislation and the scarcity of the means available to detect such actions. Reference was made to the fact that to this complicity had to be added the ignorance of vast sectors of the community as regards the nature and magnitude of the phenomenon, which served to explain the community's lack of solidarity and co-operation.

34. Consensus was reached regarding the difficulty of undertaking a comprehensive evaluation of the subject and of developing a good methodology capable of providing the information required on the true scope and dimensions of the problem. This difficulty was aggravated by the lack of trained and knowledgeable officials responsible for detecting the above-mentioned acts.

35. Among the concrete proposals in the fight for more effective control of the abuse of power were the following:

- (a) At the legislative level for each country:
 - (i) Inclusion in the legislation of the series of acts which should be defined as crimes involving the abuse of power;
 - (ii) Application of penal norms discouraging the abuse of power, citing relevant statistics;
 - (iii) Promulgation of laws to control adequately the economic activities of companies and provide for criminal liability for abuses committed by their legal representatives;
 - (iv) Adoption of laws to protect the consumer and control the quality of food-stuffs and pharmaceutical products;
 - (v) Laws controlling the excessively quick and presumably inexplicable enrichment of any citizen;
 - (vi) Laws placing the burden of proof on the official accused of an unjustified increase in his wealth (so-called "net-worth method");
 - (vii) Laws appropriately penalizing corporate bodies which, under many penal codes of the area, are not subject to criminal liability and thus escape punishment;
 - (viii) Laws controlling the outflow of foreign capital;
 - (ix) Laws empowering an entity to act as ombudsman overseeing the activities of all the agencies of the State, who could flexibly and rapidly deal with the complaints and accusations of interested parties and of citizens in general;

- (b) At the international level:
- (i) A treaty limiting the economic activity of transnational corporations;
 - (ii) A report from each country in the region to the Sixth Congress regarding the gravity, cost, trends, repercussions and manifestations of criminal activities of transnational corporations during the preceding five-year period, in order to warn other countries of such activity and to devise effective means of eradicating it;
 - (iii) Submission, in due time, to the Committee on Crime Prevention and Control, of statistical data showing the real situation regarding the application of the above recommendations, so that this information can be included in the documentation presented to the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;
- (c) Other recommendations:
- (i) To seek suitable channels for raising public consciousness regarding the seriousness of the abuse of power, in order to seek the indispensable support and participation of the community in the area of crime prevention and control;
 - (ii) To study the efficacy of nationalizing those sectors of the economy in which abuses are frequently committed by transnational corporations;
 - (iii) The training of administrative and judicial officers who are in one way or another connected with these activities;
 - (iv) To eliminate the frequent pardons granted for this type of crime, as happens in some countries;
 - (v) To issue illustrative brochures explaining the functions and operating procedures of agencies entrusted with inspection.

IV. Deinstitutionalization of corrections and its implications for the residual prisoner

36. The representative of the Secretary-General referred to the discussion at the Fifth Congress, which had extended to programmes of rehabilitation and efforts to deinstitutionalize correctional treatment. The Committee on Crime Prevention and Control wished the Sixth Congress to devote additional attention to the question of deinstitutionalization and to techniques for achieving deinstitutionalization, but once tolerance levels had been reached and the maximum number of convicts were actually serving sentences in the community, then the range of problems of the "residual prisoner" would confront correctional systems. These offenders presented the greatest challenge to correctional efforts. Debate was complicated by the controversy over the purposes of imprisonment, i.e., whether the effort at rehabilitation was to remain paramount, or whether society should return to retributive ideas.

37. A number of participants presented descriptions of their correctional systems emphasizing the cultural and legal traditions which had given rise to the current systems and elaborating on the changes which had taken place in recent years. Although Governments were generally agreed on the need for enlightened reforms, looking especially towards increased deinstitutionalization of corrections, a number of obstacles had been encountered.

38. There was, first of all, the economic problem. In general, countries of the region were not prosperous enough to initiate long-range reform programmes which might seem to be more expensive than traditional imprisonment but were actually not so expensive. Moreover, cultural traditions occasionally made it difficult for the public to accept sanctions which did not appear to penalize those who had obviously committed wrongs. Lastly, empirical evidence, which attested to the greater efficacy of extramural correctional programmes, was often lacking. This was sometimes coupled with serious doubts about the human rights implications of some reform programmes. If reservations were expressed regarding the "ideology of treatment" in countries with great economic potential, in which it had come to be considered as not being very effective, then still greater doubts should be voiced in countries where "treatment" was for the most part utopian, and in which the prison sentence was abused, often served under inhuman conditions, and where there were few human resources capable of obtaining "therapeutic" results.

39. Nevertheless, there was a strong conviction that obstacles had to be overcome and that correctional measures should be directed towards the rehabilitation of offenders, with a changed focus which would view them not as passive individuals subject to treatment but rather as people with certain rights, duties and responsibilities. In many cases, it simply meant equipping them with the capacity to participate in the everyday economic life of the community, in a manner consistent with national and international human rights instruments. The effort to integrate offenders into the civic life of the community was frequently an effort to make up for past neglect by the educational and social system of society.

40. It was noted that the Latin American regional meeting had to have a focus on the problem different from that of the other regions, since the majority of persons

in custody were awaiting trial or sentencing. In some countries, people in pre-trial or pre-sentence detention constituted from 75 to 80 per cent of the total prison population. These people, who were theoretically innocent until proved guilty, suffered serious limitations of their rights inasmuch as they usually shared the same prisons as convicted criminals and had fewer rights than those already convicted; for instance, they did not know when they would be granted their freedom and lacked benefits such as a partial remission of sentence, weekend leave, detainment in minimum security institutions or undergoing a progressive system of privileges. This created a very serious problem, which could be fully appreciated if account were taken of the fact that a high proportion of those under trial were ultimately declared innocent or set free by different procedures; that, on occasion, they were released upon sentencing, having already served their prison time in pre-trial detention, and that many of these people remained in pre-trial detention simply because they were poor and could not afford to pay the bail set by the judge.

41. In some countries, many prisoners came from economically deprived segments of the population and suffered doubly since the use of bail instead of imprisonment, as well as of fines, favoured those who could in effect purchase their freedom. A particular burden was therefore imposed on those subjected to lengthy incarceration pending trial, a period during which they could not effectively participate in the defence of their cases. Reform of such discriminatory payments systems and abolition of long-term pre-trial detention were high on the list of needed reforms and had, indeed, been achieved in several countries. Studies in one country had shown that pre-trial detention was necessary for only 20 per cent of those actually detained.

42. A number of proposals were made, among which the most important were that (a) those under trial and those convicted should be placed in separate facilities and receive different forms of treatment, since the contexts of their imprisonment, and therefore their problems, were different; (b) privacy during trial should be ensured for both those accused and those found guilty, so as to avoid adverse publicity, which sometimes could turn into defamation of character, especially in the case of those who were ultimately found not guilty, when it could amount to slander; for those found guilty, a record stigmatizing them should be avoided; (c) with regard to punishment by fine, conversion of the penalty to imprisonment should not be permitted for persons unable to afford it; (d) the right of the State to give "treatment" to persons under trial should be revised, and there should be strict observance of the rights of persons who were presumably innocent until proved guilty; and (e) the State should offer work opportunities to those in pre-trial detention.

43. Reduction of pre-trial detention required an enlightened judiciary that understood criminological and penological principles and had the psychological training to deal with offenders. In addition, it was equally important to train all other persons dealing with offenders, for example, medical and social workers, probation and parole officers and community service workers, and to provide better facilities and a better environment for their work. Guidelines for the judiciary on sentencing criteria should be developed and penal codes might have to provide that incarceration should be used only as a last resort.

44. Participants described a variety of successful programmes. These ranged from repatterning correctional programmes, allowing ever-increasing numbers of convicts to serve sentences in semi-custodial facilities, to the establishment of community treatment facilities and measures alternative to imprisonment. Among the alternatives available to the sentencing judge were community service orders, restitution to victims, work release for public work or employment by private enterprise, payment of fines in small instalments and other alternatives to imprisonment. One delegation proposed that for the term "deinstitutionalization" the idea be substituted of a continuum ranging from complete imprisonment to the undergoing of correctional measures in the community. It was also stressed that certain minimum treatment rules should apply to the offender in the community in the form of norms of after-care and support which could be applied by the councils dealing with released prisoners and other community agencies, helping them to be integrated with the community to find work for themselves and their families and providing them with educational and vocational guidance.

45. Some participants expressed their concern about the short-comings of conventional penal systems which were frequently unable to break the monotony of imprisonment, thus fostering a high recidivism rate, inasmuch as prison did not prepare the inmate for life in the free community, but had the opposite effect. In this era of experimentation with novel correctional and other criminal justice approaches, it was also regarded as particularly important that, following the initiation of each programme, impact studies be undertaken to evaluate the success or failure of such programmes after a period of observation.

46. Experiments had been undertaken in a number of countries to reduce the prison population by deinstitutionalizing those offenders who did not require custody. This raised considerable problems with respect to those offenders who could not be deinstitutionalized. The discussion guide referred to this group as the "residual offenders". In practice, they were often persons prone to recidivism, who had mostly committed violent offences, or who had otherwise shown that they were to be regarded as socially dangerous. There was by no means agreement within criminal justice systems as regards the characteristics of offenders in that category. In one country, for example, they included all persons who were found in the possession of fire-arms. A distinction was made, however, between dangerous offenders with a high probability of recidivism and "difficult" ones who were not necessarily dangerous but did not adjust to institutional rules and had persistent behavioural problems. It was noted by some participants that the judicial authority should be empowered to decide the "dangerousness" of an offender, and that the administrative authority should ascertain the "difficult" character of the prisoner. There was, thus, a great need for the exchange of information, including clinical criminological information, on the characteristics of offenders who could not be dealt with by any means other than institutionalization.

47. When it came to the question of treatment, particularly for the "residual offenders", serious questions arose about whether penal systems had lived up to the promise of treatment. Many treatment programmes were nominal at best. Yet programmes had to be devised precisely for the residual offender who could not be

dealt with in the community. Thus, as regards these offenders, the need for innovative treatment programmes was as great as the challenge to deal with them in a manner consistent with national and international human rights standards, especially the Declaration against Torture and the Standard Minimum Rules for the Treatment of Prisoners.

48. Long-term imprisonment, sometimes without the possibility of parole, had been regarded in some places as the inevitable sanction for the hard-core offender. Yet the experience was that prolonged confinement caused a considerable deterioration of the human personality and was, thus, incompatible with the rehabilitative ideal. Efforts had been made in several countries to use imprisonment beyond three years only in the rarest of cases. The suggestion was made in this regard of including a clause in penal codes which would permit a periodic revision of the penalties and systems for treating offenders, perhaps every five years, in order to adapt them to the changing needs of the people and to the definition of certain types of crimes. It was recommended, also, that institutions be classified as open, semi-open and closed, disregarding the designations of "low", "medium" and "maximum" security prisons, which were considered inappropriate.

49. Since it was the ultimate aim of all correctional systems to correct, that is, to reintegrate the offender as a law-abiding citizen into his/her own community, special problems arose with respect to offenders who were convicted abroad and who could not or should not be integrated into an alien community. It was necessary, therefore, to enlarge the incipient system for the return of offenders to their home countries for the service of their sentences.

50. Correctional reform remained a matter of concern not only to the criminal justice system but to community and mass organizations and to the population at large. In some countries, organizations of former prisoners could play a particularly useful role in this connexion.

V. United Nations norms and guidelines in criminal justice:
from standard-setting to implementation

51. In introducing the last topic on the agenda, the representative of the Secretary-General described the existing network of standards, norms and guidelines covering various phases of crime prevention, criminal justice and the treatment of offenders. Some of these were directed primarily towards protecting the human rights of those coming into contact with the criminal justice system; others, towards reaching agreement on the effective administration of criminal justice. Two questions were of paramount significance: first, the extent to which the world community should direct its efforts towards creating a whole system of standards, norms and guidelines for crime prevention and criminal justice - or at least filling existing gaps - and, secondly, the degree to which the world community was ready to commit itself to the effective implementation of those standards. There was, moreover, a request before the meeting, made by the General Assembly in resolution 32/61, to deal with the question of capital punishment, especially by reports on the extent to which countries were achieving its abolition.

52. The participants who took the floor welcomed the emphasis which the Committee on Crime Prevention and Control had placed on these issues. Human rights were a matter of concern to all, affected every public official, every citizen and, ultimately, the victims of crime as well, who should not be forgotten.

53. In Latin America, although the laws were almost universally oriented towards the protection of all these human rights, in some countries putting them into practice often lagged far behind, which, in the opinion of some participants, was frequently because the economic situation made implementation difficult. Some participants felt that the Standard Minimum Rules for the Treatment of Prisoners were thus often not applied in practice because of a lack of material resources and not because of any governmental decision. Consideration was given to the extent to which standards of world-wide applicability could be applied in poorer countries which lacked the means to implement them. Uniform criteria for the application of the Rules needed to be developed. It was important to determine which violations of the Rules constituted violations of human rights. With respect to the prevention of torture, it was suggested that further action was needed to secure its suppression.

54. An obstacle to the observance of the Rules was also the lack of proper training for those responsible. Judges usually lacked an adequate background in criminology, and criminologists an applied focus, perpetuating the gap between theory and practice. Under present conditions, such aspects as suitable vocational training and prison labour integrated with national development planning remained desiderata only rarely translated into practice, making the process of reintegrating offenders into the community all the more difficult. There was an excessive emphasis on the institutional approach, though particular practices differed.

55. The situation was particularly grave in the area of pre-trial detention. Many Latin American countries operated under out-of-date criminal procedures which

led to chronic prison overcrowding. While some countries had made significant progress in curtailing the length of pre-trial detention, the problem persisted in many others and called for remedial measures. Pre-trial release should on principle be granted as a general rule except where the interests of society required otherwise. It should be granted by the judge as an act within his judicial discretion, and should not be subject to limits deriving from the severity of the possible penalty to be imposed or the type of crime involved. It was suggested that there should also be legislative provisions prohibiting the accumulation of cases and that every effort should be made to avoid preventive detention and its conversion into the penalty of imprisonment. It was proposed, in this connexion, that if sentencing did not take place within one year, the charge should be dismissed. United Nations guidelines might be most appropriate in this area, so as to reduce the time of detention, ensure counsel to detained persons and protect their rights. Legal aid should start at the police stage and a public defender's office should be established so as to balance the power of the public prosecutor and to properly represent defendants, especially disadvantaged ones.

56. If imprisonment were limited to those who could not be dealt with otherwise, United Nations standards could be more easily observed. Other available options also had to be used appropriately. The application of existing provisions for "conditional sentences" should be adapted to local realities and new correctional developments. Probation, for example, was no longer giving the desired result in countries where the clientele had changed. New modes of non-institutional treatment were called for, such as the use of community service instead of imprisonment. Conversely, the community, universities etc. should be sensitized to existing needs and participate as much as possible in correctional treatment. Non-governmental organizations could play a useful role in this respect, though they were sometimes under-represented in developing countries.

57. Another problem causing serious concern was, as stated above, the presence in many prisons of persons from other nations and cultures who could not be integrated into the society in which they were serving their sentence. Provision should be made for transferring them to their home countries, with the consent of the sending and receiving States and of the convict.

58. Several participants agreed with the Committee on Crime Prevention and Control that guidelines were also needed on the establishment of procedures for redressing grievances. The appointment of an independent authority, for instance an ombudsman, to avoid abuses such as arbitrary detention and excesses against prisoners, could be very useful in this connexion.

59. The question of capital punishment was regarded as of great significance. Many Latin American countries were abolitionist and regarded capital punishment as unacceptable. Yet extremely long-term imprisonment was equally detrimental in many respects. A comprehensive approach, imagination and compassion had to be employed to create humane sanctions even for long-term offenders, and guidelines should be developed in this regard. Concern was also expressed by some participants about the problem of extra-judicial execution and the disappearance of persons.

60. There was agreement that, on all matters affecting human rights in criminal justice, far greater international co-operation was called for. Such co-operation was frequently impeded by the lack of comparability in techniques, concepts and terminology; these should be made more compatible, as a basis for more consonant policies, and a compendium of such terms compiled. The United Nations should take the initiative in this respect, and the United Nations Latin American Institute elaborate a glossary of the relevant terms. Technical assistance should also be granted to countries wishing to carry out the necessary reforms.

REGIONAL CO-OPERATION

61. At the concluding meeting, the participants unanimously adopted a draft resolution sponsored by the participants from Bolivia, Colombia, Mexico, the Netherlands Antilles and Venezuela, which called for continuing and strengthened regional co-operation and support and an intensified level of technical assistance for the benefit of the countries and peoples of the region. The text of the resolution is contained in annex I to the present report. In that connexion, a number of participants expressed appreciation of the role and achievements of the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) which had been carrying out a successful programme of activities with the generous support of Costa Rica and some other countries from within and outside the region, and expressed the intention of their Governments to contribute actively to that effort so that further impact could be made. It was also decided to send a cable to the Administrator of the United Nations Development Programme, stressing the urgent need for intensified technical assistance to the Institute which was fulfilling such a pioneering role.

Annex I
RESOLUTION

The Regional Preparatory Meeting for Latin America and the Caribbean for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

Bearing in mind the activities carried out by the United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD) at San José, Costa Rica, and the necessity of strengthening them and extending them to all the region in order to assist Governments in the formulation of appropriate criminal policies, ensure continuing co-operation and facilitate technical assistance through ILANUD,

Recalling that the General Assembly, in resolution 32/59, urged that high priority be given to the provision of regional and interregional technical advisory services and co-operation, particularly in the light of recent directives of the policy-making bodies of the United Nations focusing on regional and intercountry activities and the proved success of this approach to crime prevention,

Recalling further resolution 32/60 in which the General Assembly requested that all Member States co-operate effectively in the prevention of crime and the treatment of offenders,

Expressing its appreciation to the Republic of Costa Rica for the generous support it has given to ILANUD and to Governments from within and outside the region which have effectively aided the Institute,

Considering, nevertheless, the need to ensure its continuity and to expand the international activities of the Institute,

Invites the United Nations and the Governments of Latin America and the Caribbean to give the Institute their full co-operation and support, including economic assistance within their possibilities, for the benefit of the peoples of the region.

San José, Costa Rica
4 August 1978

Annex II

LIST OF DOCUMENTS

<u>Symbol</u>	<u>Title</u>
A/CONF.87/RM.1	Discussion guide for regional preparatory meetings for the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders
A/CONF.87/BP/1	Report on the European Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders
General Assembly resolution 32/61	Resolution on capital punishment, adopted by the General Assembly at its thirty-second session
E/5616 and Corr. 1 and Add. 1	Report of the Secretary-General on capital punishment
ESA/SDHA/1	United Nations Standard Minimum Rules for the Treatment of Prisoners and related recommendations

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