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CRIMINAL JUSTICE PROCESSES AND
PERSPECTIVES IN A CHANGING WORLD

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INTRODUCTION

1. The continuously changing nature of the world is reflected in all complex social operations, including those of the criminal justice system. However, the nature and pace of change differ from country to country. Economic, cultural and political developments in Member States shape the structure and operations of social and legal institutions, which, in turn, influence those developments in a reciprocal and continuous manner. Economic conditions, income distribution, the demographic characteristics of the population and many other factors affect the functioning and administration of criminal justice. Consequently, the Caracas Declaration of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders emphasized the importance of comprehensive policy formulation and planning in criminal justice. Resolutions 1 and 2 of that Congress also stressed the need for better collection and dissemination of information on all aspects of crime prevention and control, and for the entire machinery of criminal justice to be responsive to changing economic and social conditions in individual societies. 1/

2. At its seventh session, the Committee on Crime Prevention and Control agreed that the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders should, in one of its agenda items, concentrate on the analysis of the machinery of the criminal justice system as a whole, in the context of changing conditions, and that there was an urgent need for a systemic approach to criminal justice, which must duly take into account the protection of human rights. 2/ Consequently, on the recommendation of the Committee, the topic "Criminal justice processes and perspectives in a changing world" was included in the provisional agenda of the Seventh Congress, which was subsequently approved by the Economic and Social Council in its resolution 1982/29. The present document introduces that topic.

3. As one of the five substantive items of the provisional agenda of the Seventh Congress, the topic has been considered by the regional preparatory meetings for the Congress, and was the exclusive subject of discussion of an interregional preparatory meeting for the Seventh Congress that was held at Budapest from 4 to 8 June 1984. An international congress, held at Milan in 1983, and organized by four major non-governmental organizations concerned with crime prevention and criminal justice, was also devoted specifically to the topic, as was a seminar on effective, rational and humane criminal justice, conducted in May 1984 by the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations. 3/ The three meetings are hereafter referred to as the Budapest, Milan, and Helsinki meetings respectively, in the present document, which incorporates many insights derived from those meetings.

1. THE CHANGING WORLD

A. Socio-economic changes in relation to criminal justice

4. Past United Nations work in the field of crime prevention and control has generally focused on the formulation and implementation of guidelines and standards in the administration of justice, and on the interrelationship between the socio-economic environment and criminality. More recently, greater emphasis has been placed on the day-to-day operations of the criminal justice system. The present document attempts to identify some salient features of criminal justice operations in a changing environment, and to highlight specific problems that require concrete solutions.

5. Social and economic changes occur in a network of cause and effect where no simple linear sequence of events can be described. Recent decades have witnessed rates of social change, especially demographic, unprecedented in human history. During the period 1975-1980, almost 75 million more people were added to the global population each year. According to recent estimates, the rate of increase is still growing annually: 76 million for the 12 months ending in June 1981, 78 million for the succeeding 12 months, and an expected further increase to 89 million between 1995 and 2000. 4/

6. Population growth occurs at different rates in different regions. During the second half of the 1970s, in Africa, the annual rate of population growth, at 3.0 per cent, was the highest in the world. Other regions experienced a declining rate of natural increase due to falling fertility ratios. In South Asia and Latin America, the annual rate of population growth in the late 1970s was 2.3 per cent and 2.4 per cent respectively. In East Asia, it was 1.4 per cent, as compared to 2.2 per cent a decade earlier.

7. As a consequence of the urban concentration of economic activities, which is itself generally recognized to be a necessary pre-condition for economic development, countries of developing regions have experienced a rapid growth of urban populations. This urban growth is expected to increase even faster than the overall rate of population growth. In 1975 almost 38 per cent, and in 1980 approximately 40 per cent of the world's population, lived in urban areas; two decades earlier, urbanization affected only 34 per cent of the population. Such global figures, however, disguise disparate situations in different countries and regions. On the whole, developed countries are highly urbanized with over seven out of every ten inhabitants residing in urban areas. However, less than one third of the population in less developed countries was living in urban areas in 1980. The process of urbanization is projected to continue throughout the years 2000 to 2025. By the year 2000, projections suggest that probably over half the world's population will be living in urban areas. While urban populations are projected to reach 79 per cent of the total world population by the year 2000, and 85 per cent by 2025 in the more developed regions, there is increasing evidence that urbanization is stabilizing in some of the more developed countries.

8. The fact that population growth is accompanied by an even faster rate of urbanization in all but the most developed countries is particularly significant for criminal justice: demands on the criminal justice system seem, in most countries, to be disproportionately higher in urban situations. This is, to some extent, a result of different responses to criminal events, including different recording practices, in urban and rural areas. But the anonymity of a city seems to encourage people to resort to formal, rather than informal, styles of response to crime. Increasing urbanization may, in itself, create an increased demand for the services of all criminal justice agencies and thus

a need for greater resources to respond to that demand. Criminal justice systems will require comprehensive management, which includes informed planning and subsystem co-ordination. In short, it is clear that increasing urbanization could create new demands on, and operating conditions for, the agencies of criminal justice, even if there was no change in the "real" rate of criminal behaviour.

9. In the years to come, different regions of the world will be characterized by different age structures: the regions with the youngest population in 2025 will be Africa and Latin America, with medians of 21.8 and 29.8 years respectively. Population distribution and redistribution affect the development process and therefore development strategies. ^{5/} For example, changes in the age composition of the labour force influence the rate of economic growth, industrialization and technological progress. Economic factors are influenced by population structure, just as the dynamics of population growth are themselves affected by economic change. At present, it is difficult to predict precisely the effect such processes will have on the operations of criminal justice. However, experience so far suggests that factors such as the rate of unemployment and the size of the labour force directly affect the agencies of the criminal justice system, both through the competition for jobs and, consequently, the lack of employment opportunities for prisoners and ex-prisoners, and perhaps through the high levels of reported crime.

10. Urbanization, unemployment, and poverty are traditionally considered to influence crime rates. In 1980, almost 800 million people in the developing countries were estimated to have an annual income per capita of less than \$150 (in 1975 US dollars), and their number is projected to increase by 30 per cent by the year 2000. The pattern of world incomes, as well as changes in the gross domestic product of individual countries, will influence the extent to which poverty is responsible for an increase in crime, both overall and as regards specific types of crime. There seems to be a clear relationship between migration, usually induced by poverty or unemployment, and crime. Any social measures that reduce forced or large-scale migration will probably reduce crime and thus the demands on the criminal justice system, whereas increases in migration could produce parallel increases in the demands made upon the system.

B. Trends in crime and criminal justice

11. The data submitted by Member States in response to the questionnaire for the second United Nations survey of crime trends, operations of criminal justice systems and crime prevention strategies provide examples of the way in which the work-loads of criminal justice agencies and the resources devoted to them are increasing. Two examples at the national level illustrate this point.

(a) The first is a developed country in which patterns in crime and criminal justice statistics are typical of many other developed countries, and which is itself culturally homogenous and socially stable. From the beginning of 1975 to the end of 1980, there was a population increase of approximately 1.0 per cent, but an increase in recorded crime of over 20 per cent; an increase in detained males of nearly 20 per cent, and an increase in police personnel of around 10 per cent. If this rate of increase, for the six-year period 1975-1980 was to continue unchanged to the year 2000, without taking into account other demographic changes, there could be some 1,400,000 recorded crimes, (compared with 762,000 in 1975), 7,500 males in prison or detention (compared with 4,000 in 1975), and almost 28,000 police personnel (compared with just over 18,000 in 1975) in that country. The implications in terms of the projected cost to the national economy alone are disturbing; and the

different level of national resources that will be required will not be because of any sudden leap in any category, but because of a small, steady incremental increase. It is possible, however, that the rate of crime increase will slow down naturally so that these predicted levels are never reached. But either some such intrinsic change in trends must occur, or an explicit strategy must be devised to deal with the problem;

(b) The second example is a developing country in which the population increased by almost 20 per cent during the six-year survey period. Because recorded crime rates fluctuate so much between different developing countries, no one country is typical of developing countries in general. Between 1975-1980, the country in question showed an increase in recorded crime of approximately 46 per cent; an increase in detained males of approximately 10 per cent, and an increase in police personnel of approximately 36 per cent. If this rate of increase were to continue unchanged to the year 2000, there would be some 29,000 recorded crimes (compared with 9,000 in 1975), 14,000 males in prison or detention (compared with 8,500 for 1975), and 13,500 police personnel (compared with just over 4,500 in 1976) in that country. The implications discussed in the preceding paragraph apply just as strongly in this, quite different, context.

12. As for an example at the regional level, the most complete data are available for Western Europe. Those data suggest that, based on conservative estimates, recorded crimes could rise by over 25 per cent if the trends of 1975-1980 were to continue to the year 2000. More importantly, the total number of persons detained, i.e. incarcerated in some way, could increase to nearly 500,000. The increase from 1975 to 1980 was from 170,000 to about 230,000. This alone implies that a great number of prisons might have to be built, not simply as replacements for, but in addition to, existing facilities.

13. At the interregional level, the total number of crimes recorded in the 50 countries that provided complete data for the years 1975-1980 rose by almost 20 per cent. If this rate of increase were to continue, the crime rate might almost double by the end of the century, and in those 50 countries, over 60 million recorded crimes might be expected. While the number of persons detained does not show quite the same increase, i.e. 16 per cent, the number detained in the 46 countries providing data will rise from under 1 million to over 1.5 million, according to conservative estimates. These figures could be further increased by:

(a) The fact that the number of police personnel continues to rise (1.5 million in 25 countries in 1975 and 1.75 million in the same countries in 1980), a trend which could lead to 2.5 million police personnel by the year 2000;

(b) The fact that the number of police personnel, as a ratio of the total working population, rose by nearly 14 per cent for the survey period, even at a time when unemployment in most sectors was increasing, as was the size of the working population;

(c) Speculative evidence to the effect that, in general, a slightly higher proportion of those apprehended in 1980, in comparison with 1975, were finally imprisoned in some way.

14. All this adds up to a picture of: more recorded crime, more police to feed cases into the formal criminal justice system, a tendency to use imprisonment more extensively, and a massive increase in the need for court and prison facilities.

C. The criminal justice system and a changing world

15. The criminal justice system interacts with the broader socio-economic environment in several different ways. 6/ Some examples may be given: the criminal justice system returns its "products" to society, most obviously in the form of discharged offenders, and at the same time provides a sense of security from crime, while avoiding an infringement of the basic human rights of both offenders and the public. Although the personnel of criminal justice agencies are perceived as being specialists, they are ordinary citizens and derive many of their attitudes and values from the prevailing social climate of which they are a part. Therefore, changes in the social environment will ultimately be reflected in the working practices of such personnel and thus in the criminal justice system itself. The formal organization of the criminal justice system is likely to mirror the administrative structures and hierarchies currently in use in other social sectors. For example, if strictly hierarchical structures were common at the time criminal justice agencies were first organized, the organization of those agencies might mirror those models. If more egalitarian models later became the norm for many social organizations, criminal justice systems could evolve along similar lines, although probably with some time-lag.

16. There are also long-term, less obvious interactions in which the system influences the social environment which, in turn, influences the system, in both the social and economic spheres; and this two-way influence between system and environment has not been intensively studied in criminal justice. Thus, because both the staff and the inmates of prisons, or the police and their "clients", are in other respects ordinary members of society, their work and attitudes are influenced both formally and informally by the social milieu from which they come, which may have particular political or ideological values. The extent to which these values are accepted by, and incorporated into, the criminal justice system, or are rejected, might be one indicator of whether criminal justice is sufficiently receptive to external requirements.

17. As the criminal justice system influences the social environment, for instance, through the information and impressions that emanate from it on the state of crime and the societal response to it, so it also influences the economic sector in subtle ways. A change in the economic and political environment of a country may give rise to the creation of new crimes, for instance, through regulatory laws proscribing certain behaviour; such laws might include the prohibition of certain currency transactions, or the sale of certain commodities, which previously were legal. The way in which such laws are enforced by the different agencies of justice may affect the view of the public at large as to what is and is not acceptable behaviour. Which, in turn, may affect the willingness of the public to report such behaviour and of the police to record it and react to it. Ultimately, that could mean a changed figure of recorded crime, and any upward change would presumably entail an increased work-load for the criminal justice system.

18. Changes in the dynamics of both criminality and criminal justice processes pose a problem for those concerned with the administration of justice, that of how to respond to the pressures these changes create, while maintaining a fair, humane and speedy delivery of justice. The extent to which this problem is resolved satisfactorily has both practical and moral implications for the peaceful development of society. For instance, the amount of law violation that occurs in any modern society exceeds the amount that can be dealt with by the criminal justice system. Decisions have to be made about just how much formal control to exercise and how to allocate resources in response to various types of violations, consistent with popular tolerance levels.

II. DECISION-MAKING AND CO-ORDINATION OF ACTIVITIES IN CRIMINAL JUSTICE SYSTEMS

A. The systemic approach 7/

19. The operations of the different agencies responsible for the implementation of criminal justice policy in various countries have been extensively studied in recent years. The principle agencies are the police, prosecution, different levels and types of courts, the prison or correctional services, and non-custodial services, primarily probation and parole. A question frequently discussed is: "To what extent do these agencies make up a system and therefore can be examined from a systemic perspective"??* The Budapest meeting also considered the question whether, and in what sense, criminal justice agencies constituted a system. The main conclusion was that, although the term system, if strictly defined or understood in too technical a way, could be misleading, the concept was important, and useful for the development of criminal justice policy. Reference was made to the term "an integrated approach to criminal justice", which emphasizes the same concept from a slightly different perspective. It is suggested, therefore, that the term "system" should be maintained, and that the object of analysing criminal justice operations from a systemic perspective is primarily to increase and facilitate the co-ordination of the activities of different criminal justice agencies, with a view to integrating the objectives and priorities of each into a system. 8/

20. One problem of the systemic approach is that, in nearly all countries, criminal justice agencies were not created as related components, but evolved separately, in response to various perceived needs, which means they are accountable to different authorities and are often financed from different sources of public money. Given these traditions of independent financing and operation, a lack of concern for the operations of the other agencies is natural, and perhaps even inevitable. Probably the main impetus to interest in the systemic approach has been an increasing awareness of the inefficiency, and hence low standards of justice, that such a lack of concern for co-ordination creates, which, in turn, gives rise to another central question, namely: "Who runs the criminal justice system as a whole?" However, no one authority, at least in most countries, has that clear-cut, overall, responsibility for administration. It may be that such an in-built lack of comprehensive control is, indeed, the unavoidable price of the independent and disinterested dispensation of justice. The division of the criminal justice system into independent components may be necessary; it has many positive aspects but it also has many problematic side-effects.

21. The main problem areas that emerge from an examination of co-ordination within and between criminal justice agencies from a systemic perspective are: (a) goal conflict (the conflict of objectives) both within and between different criminal justice agencies; (b) information flow; (c) rationality in criminal justice operations; (d) alternative allocation of resources; and (e) measures of performance.

*The term "systemic" is used to emphasize the fact that the total organization under study has many attributes of a complete system. The term "systematic" is less precise and can be considered as being synonymous with "orderly" or "well arranged".

1. Goal conflict

22. Different components of the same structure or organization often have different objectives and, therefore, different priorities as to what they wish, or are required, to achieve. In some formal organizations, differing priorities do not affect the functioning of the overall system, because areas of responsibility do not overlap. Similarly, the style of operation of one component does not affect the working of another, so long as each is not dependent on the other for information or resources. The criminal justice system, however, is an example of a system where one component, in giving priority to one aspect of its work, can hinder the attainment of priority goals by another component. The component agencies have overlapping responsibilities for the attainment of the general goals of the criminal justice process; therefore, when the continuation of the objectives and working style of the first component creates serious difficulties and obstacles for the second component, goal conflict arises. Either the one component changes its priorities or means of attaining them, or the other is compelled to change its priorities and perhaps settle for a lower level of achievement, or there is conflict as to whose priorities should prevail. Such a situation can be brought about by non-co-operation, or it can arise from other causes and ultimately induce non-co-operation. The belief that goal conflict is the source of serious problems in the administration of criminal justice has gained ground, particularly in recent years.

23. Some goal conflicts may be intrinsic to the functioning of criminal justice; while they cannot be totally removed, they can, perhaps, be ameliorated. Other conflicts may be a result of organizational arrangements, and, as such, can be removed by organizational changes, including different communication methods. Such organizational changes could be either radical and far-reaching, or little more than "fine tuning". 9/

24. Some examples of goal conflict in practical, everyday criminal justice administration follow. While the police are usually thought to be interested primarily in deterrence and pro-active crime prevention, probation and parole officers are mostly concerned with rehabilitation, and, using different information, see the offender in a very different light. The staff of these agencies, both individually and collectively, are likely to disagree on the appropriateness of measures or decisions, as they are pursuing different, incompatible priorities. Sometimes, of course, they do not disagree at all. Similarly, the objectives of the police in making an arrest could be primarily to draw attention to an apparent solution of a case by the arrest of a suspect. The successful subsequent prosecution or sentencing of the offender might be a minor objective. In the case of juvenile justice, a fundamental conflict between the need to protect the public from dangerous offenders and a widespread concern for the rights and welfare of offenders is far more acute than in the case of adults. 10/

25. Some such conflicts might be considered intrinsic to the nature of criminal justice administration as it is organized now. In many countries, police officers of all ranks complain that "we catch them, and the others let them off or let them out"; while the prison staff complain about people being there far too long for what they did, and "clogging the place up". Meanwhile judges, reacting often to the pressure of public opinion, impose increasingly long sentences.

26. Goal conflict is also a problem within agencies. For instance, police forces in many countries are currently giving a high priority to improving their standing and image with the public by "community policing". This

approach emphasizes community relations and "policing by consent". Simultaneously, the same or a neighbouring police force may develop specialist squads or groups for dealing with particularly difficult or dangerous criminals. These groups do not give high priority to the public's opinion of their use of force. The actions of one group, therefore, can diminish or negate the results intended by the other. Goal conflict in everyday situations is often the result of alternative courses of action being given different priority weightings by different agencies, units or even individuals, who then evaluate the offender accordingly. Where the "treatment" approach is widely accepted as the highest goal of a prison system, heated exchanges between the treatment and the security staff of prisons are common. The issue of the extent to which security in a prison can be sacrificed in favour of conditions perceived as necessary for the effective treatment and rehabilitation of prisoners is a long-standing one.

27. The question which of these goal conflicts are intrinsically insoluble, and which result from a particular type of organization or structure has not been closely examined, and research in this area is relatively new. Studies of competing interests within and amongst the different agencies, and how competing priorities are established may be an important step in the development of an integrated approach to a co-ordinated criminal justice system. In the meantime, any criminal justice reform must be aware of, and take into account, inherent goal conflicts.

2. Information flow

28. In complex formal organizations, information flow is a critical factor in ensuring that the system operates efficiently. In the operation of the criminal justice system there is an especially strong impediment to information flow. One potential source of misunderstanding lies in the term "information", which can mean different things in different contexts. In criminal justice, it can be a synonym for "evidence" as presented to the court for its decision to convict or acquit the suspect. It can also refer to data on the past or present circumstances of the offender or the victim, and thus be useful to those responsible for the disposition of the convicted offender. Finally, it can mean data relating to managerial and policy decisions, as in most complex formal organizations. In the following pages, the term refers primarily to the latter two categories. From the legal, evidentiary perspective, each individual case requires examination in a unique context. 11/

29. Traditionally, each agency, and its component sub-units, attempts to solve its own problems using just the information it already possesses. Importance has never been attached to the transmission of information to other agencies except in the case of the personal files of individual offenders that are no longer needed in the original agency. Tradition, as much as technology, has been responsible for the lack of information flow. However, with the explosion in information technology over the last ten years, this situation could well change radically. That change will be more easily absorbed and used constructively if it is anticipated. 12/

30. The impact of new information technology on criminal justice is difficult to assess. Partly for the historical and traditional reasons mentioned above, criminal justice systems have been slow to invest in comprehensive information systems, unlike other sectors of public administration, such as health. Developing countries may be better placed to implement innovations, when there is no existing entrenched apparatus to be modified. Until recently, the cost and fragility of new information technology had limited its use in some

countries. ^{13/} However, information storage and retrieval systems that are extremely robust, with regard to the range of climatic and other environmental conditions in which they can operate, are now becoming available at a much lower cost than their predecessors of only five years ago. This trend towards greater operational flexibility and low cost of hardware is predicted to continue. Therefore, policies and practices that were not even feasible in developed countries in 1975 in respect of the collection, analysis and use of data and the flow of information in criminal justice systems, will become steadily more easy to implement, and probably a normal part of the justice process in most countries by 1990 or soon afterwards. Although experience is limited, this may be an appropriate opportunity for the Seventh Congress to consider the topic of information flow before it overtakes criminal justice systems in most countries. ^{14/}

31. In management science, information flow is advocated as being one of the most effective ways of limiting goal conflict, in that it clarifies previously hidden or latent goal conflicts. Because the first step in the reduction of goal conflict is its clear identification and description, information flow is essential in the development of an integrated approach to criminal justice.

32. As it is possible to have an excess as well as a scarcity of information, however, information flow alone should not be seen as a simple or complete answer to the development of a co-ordinated criminal justice system. This is especially true in complex managerial or administrative decisions. At the Helsinki meeting, research was cited indicating that there is an upper limit to the number of information items a decision-maker can use in reaching any individual decision. The human mind cannot deal separately with more than seven or eight different items of information relating to any one decision at any one time, a finding that has been substantiated in several different research areas. The psychological processes by which excess information is ignored or put aside are not fully understood. The important practical implication is that, while information transmission is critical, the selection of what is transmitted is also extremely important.

33. The problem of excess information must not be allowed to obscure the fact that the first need is for the provision of enough information. Excess information was only mentioned so as to show that problems will continue to arise after the "sufficiency" threshold has been crossed. If all available information concerning individuals, or all information about each component of the criminal justice system, were to be transmitted, the system would be swamped by a vast amount of unprocessed and potentially useless information. In the development of a co-ordinated criminal justice system, the main need, therefore, is not only for information transmission, but for different operators to be able to select truly valuable information, and then to use it to attain the objectives of the system, namely, in both individual case decisions and management decisions concerning, for example, the allocation of resources.

34. Even when the necessity of providing information to other agencies is recognized, the time and effort involved can be a burden to the transmitting agency. Some incentive could therefore be given to the different agencies to exchange information; i.e. there must be some perceived mutual advantage or commonly shared rationale underlying the transmission of different types of information.

35. While it is often said that information should be as widely available as possible, there are problems involving the protection of confidential personal information. Therefore steps are necessary to ensure that while useful

information is freely transmitted, there are strong controls on who has access to that information, when, and in what circumstances. A parallel, equally important problem, is ensuring that the evidential value of the information is clear: this is especially significant if the data refer to the personal background of individuals, or is transmitted through a computerized system.

3. Consistency and rationality in decision-making

36. The provision of adequate information is one of the prerequisites for ensuring rationality in any complex system, including that of criminal justice. As many different characteristics can be attributed to the word "rationality", no one definition can satisfy all criteria or people.

37. Among the main components of the concept of rationality in criminal justice systems are the ideas of a clear linkage between decisions, an appropriate explanation of them and a consistent interpretation of data and regulations. Rationality in criminal justice systems may, therefore, be operationally defined in at least four distinct ways, as set out below. The first two relate to rationality in judicial and other decision-making and in the disposition of individual cases; the last two refer to rationality in the administrative linking of the various agencies of criminal justice:

(a) Coherence in the application of the principles of law to similar cases, and in the perception of which cases come within the purview of a particular law;

(b) Consistency in judicial decision-making so that similarly situated offenders receive similar dispositions;

(c) Efficiency, and the minimization of delays and shortfalls in the administrative co-ordination of criminal justice agencies;

(d) Consistency in the way in which the general principles of criminal justice are translated into practical criminal justice policy, including the consideration of the limits of available resources in the disposition of individual cases, and thus of a range of different sanctions.

38. Concern with rationality is not a theoretical luxury, but is central to the practical question of how decisions are reached in the criminal justice system. Rationality in the context of decisions in individual criminal cases entails developing guidelines that will assist judges and prosecutors in the consistent application of law and legal sanctions in separate criminal proceedings. The prosecutor faces the problem of being consistent in deciding on what cases should be brought before the judiciary, what the charges should be, and what penalties should be requested. Maintaining consistency in prosecutorial decisions may be easier in countries with national prosecution systems; consistency in sentencing may be promoted more effectively in jurisdictions where the prosecutor has a right to appeal judicial decisions.

39. For judges, the problem of rationality lies not only in the consistent interpretation of law, but in the consistent application of penal sanctions to individual cases. Such consistency - an integral part of any definition of justice - is complicated by the fact that written law is almost never as complex as the behaviour it may be used to regulate or, eventually, to sanction. Some discrepancy is practically unavoidable, because even the law itself is constantly changing, in accordance with such factors as new definitions of social need and individual rights, shifting public opinion, and economic developments. The problem of rationality in judicial and

prosecutorial decision-making is magnified by the need to condense and correlate all the information presented in an individual case in order to arrive at a simple dichotomous decision such as whether to prosecute or not to prosecute, find guilty or not guilty, imprison or not imprison. The difficulties created by the application of the clear-cut distinctions of the law to the infinite varieties of human behaviour are well known, but no definitive solution has yet been proposed.

40. As regards administrative efficiency, some organizational aspects of the criminal justice system have been affected by the new information technology. The quality and consistency of information flow is an intrinsic part of the rationality of the system as a whole, as one very influential factor on decision-making is the amount of, and the manner in which, information is presented to the decision-maker. To some extent, all criminal justice systems might eventually evolve in new ways, because information technology has its own independent influence on any structure it supports and services. The people who operate the technology become a source of influence, and so the rationality of a system depends, to some degree, on their understanding of and support for the goals of that system. Studies of other sectors have shown that the style of operation of whole organizations has been considerably changed by the use of information technology. In particular, conflicts, irregularities and inconsistencies tend to show up much sooner and more clearly. 15/

41. In assessing the rationality of a system, the ability of that system to adapt to a new situation must be taken into account. In most dynamic systems, such adaptation can take the form of apparently automatic, unrealized changes, or consciously adopted changes of policy at some level. In both cases, the result might be some form of system equilibrium or homeostasis. To a certain extent, such a movement towards equilibrium seems also to occur in criminal justice systems. A possible example of unspecified change has been the refusal of juries or the judiciary to convict the clearly guilty person when the laws involved are generally considered to be too harsh and punitive or improperly evoked. The use of shorter sentences and alternative sanctions to relieve prison overcrowding may perhaps be considered as partly a planned strategy, and partly an unarticulated change of policy. There is, therefore, some degree of flexibility in criminal justice systems, which controls the extent of the changes that can be made in a rational manner. Modern information technology may either reduce or increase system flexibility, depending on whether the information it provides leads to decisions that eliminate or multiply alternative courses of action. Information technology may, therefore, ultimately change the interpretation of a rational policy at the working level. Those responsible for planning and evaluating criminal justice systems, either as a whole or in part, may wish to consider this question in some detail.

4. Alternative allocation of resources

42. It is often argued that the best indicators of the priorities of any management or government are budgetary in nature, i.e. the importance given to any part of the public sector can be measured by the proportion of public money spent on that activity in relation to other activities. Obviously, some activities of equal priority are, by nature, more or less expensive; for instance, education tends to be less expensive than health care per capita. In respect of criminal justice, there are two sets of problems: the total proportion of the national public resources allocated to crime prevention and criminal justice, and how that sum is distributed to the particular criminal justice agencies. 16/

43. At the regional preparatory meetings for the Seventh Congress, several participants reported that criminal justice as a whole was given a very low priority, judging by the budget allocated to it by national Governments. This is an extremely important issue. Although national budgets are subject to national control, there has been little discussion of resource allocation at the international level. The Seventh Congress may wish to consider possible strategies for increasing the resources allocated to criminal justice. The politically unattractive nature of large outlays on crime prevention and criminal justice, however, will certainly have to be taken into account.

44. In a systemic, integrated approach to criminal justice, communication and co-ordination between different agencies will have to be instituted and formalized regarding policy making. This, in turn, will bring about changes in the budgeting process, including revisions in the allocation of budgetary resources to different agencies. For instance, changes in the priorities of the police might result in more offenders being arrested and charged; or in more crime being prevented and a consequent decrease in the number of arrests. Either result has budgetary implications for the work-load of the courts and, subsequently, for the prison and other services. Thus co-ordinated criminal justice implies some form of comprehensive budgeting, even if it only consists of the circulation of guidelines and the transmission of information about future financial proposals by each agency. If policy changes in one agency require substantive or procedural adaptations by another agency, the need for advance co-ordination is even stronger.

5. Measures of performance

45. As scientific techniques of management and organization are increasingly being used in the public sector in countries at all stages of development, interest in the concept of measures of performance has steadily increased. Although research is still rather speculative, and confined to a few countries, some findings are relevant. The first, and most important, is that the choice of measures of performance affects the priorities and working style of any agency. That is to say, if police efficiency is judged by numbers of arrests, the police will give high priority to arresting suspects. If an alternative indicator of the quality or worth of their work is made pre-eminent, the emphasis of their actions may shift from arrests to the new indicator. Secondly, many of the factors used as measures of performance are themselves controlled, at least in part, by the actions of agencies other than those being assessed. Most of the measures of the quality of services provided by prisons are negatively affected by serious overcrowding, but there is little that the prison authorities themselves can do about overcrowding. The initiative for taking effective action lies largely with other authorities, such as prosecutors or the judiciary. ^{17/} Finally, most measures of performance relate to the work and objectives of a particular agency, and not to the attainment of the objectives of the system as a whole. Indeed, the priorities and measures of performance established in one agency often do not take adequate account of those of other agencies. At the level of the whole criminal justice system, no overall goals are known to have been articulated, and so measures of performance for the whole system still have to be worked out.

III. THE REFORM OF CRIMINAL JUSTICE SYSTEMS

A. Institutional reforms

46. The most common institutional reform for improving criminal justice systems consists in setting up special bodies for co-ordinating the work of different criminal justice agencies, for instance, through holding special

joint meetings. Examples of such bodies were mentioned by participants at the regional preparatory meetings, such as those established in one Latin American country, consisting of representatives of the ministries of justice, the interior, the supreme court, the state council and various social organizations. 18/ In some European socialist countries, apart from special co-ordination bodies, alternative councils for co-ordination - with inter-ministerial functions but reporting to one of the leading central agencies entrusted with maintaining law and order - have also been established. In some Western European countries, specific working groups are being set up to study the question of criminal justice reform in detail. 19/

47. Scientific evaluation of the effectiveness of such institutional arrangements for improving co-ordination in criminal justice systems could help all interested Governments to assess, in the context of their own circumstances, whether they should adopt parallel policies. One of the main themes of discussion of this topic at the Seventh Congress will presumably be the development of institutional reforms in criminal justice through the application of the ideas, concepts and techniques discussed in chapter II to the agencies described in chapter IV of the present document.

B. Law reforms: criminalization, decriminalization, depenalization and diversion and their consequences for the system

48. Institutional reforms are often preceded by legislative action, which regulates the existence and functioning of bodies co-ordinating criminal justice activities. In many countries law reform is a continuous process, and can either respond to or anticipate socio-economic changes.

49. Some legislators, responding to popular demand that "there ought to be a law" to regulate a particular phenomenon, seem confident that legislative action is the best means of solving a problem. However, only some legislative actions bring about the effects expected; others either prove to be irrelevant or even make the original problem worse. The twists and turns of legislation in many countries in respect of drug use, sexual behaviour and abortion are good examples.

50. Such examples could be supplemented by a variety of others pointing to the unforeseen consequences of introducing new criminal justice legislation. The Budapest meeting, in reviewing such examples, concluded that:

"In order to ensure socio-economic development as free from crime as possible, it was not always necessary to draft new legislation. Rather, and more frequently, administrative practices and adjustments in development plans might be better suited to accomplishing the purpose." 20/

51. If, therefore, criminal law reforms are to solve real problems, and not to create them, then criminal law itself must continue to grow in flexibility and wisdom. Above all, it must be increasingly attuned to the real needs and aspirations of people, and so shape, or attempt to change, only those aspects of social behaviour where it is socially, economically, politically or culturally imperative for the benefit of the population. Any criminal justice reform must be carefully planned and implemented. At the Latin American regional preparatory meeting, held at San José, Costa Rica from 10 to 14 October 1983, participants stressed that "in order to respect the principles of legality and certainty of the law, reforms in penal legislation and criminal justice had to proceed very slowly." 21/ The financial difficulties that impeded the proper planning and implementation of criminal justice reforms were noted by the participants with regret.

52. Participants at the Budapest meeting pointed out the dangers of hasty or ill-considered moves in respect of any changes involving the different processes of criminalization, decriminalization, depenalization and diversion, in which there is an ethical as well as an expediency component in the decision which to adopt. The ideals of justice, fairness and the humane treatment of offenders must always be at the core of any proposed changes in criminal justice policy. 22/ While considerations of efficiency and expediency contribute to raising the levels of justice, fairness and the humane treatment of offenders within the criminal justice system overall, and a smoothly functioning criminal justice system fulfils its higher-level responsibilities with a minimum of waste and unnecessary effort, efficiency for its own sake should not be the ultimate goal. The decision to criminalize, decriminalize or depenalize affects the smooth functioning of the criminal justice system, as do unintended or unforeseen side-effects of proposed changes in criminal justice policies or processes. There is, therefore, a need for continuous evaluation, particularly since research and policy planning in criminal justice is still at an early stage and there are few data on the specific effects of deliberate policy changes in some countries.

53. In order to measure the effects of such policy changes over time, some form of data base is essential; a statistical time series seems most appropriate, although other kinds of monitoring instruments can be imagined. Experiments with alternative sanctions, other than imprisonment or fines, have been conducted in many countries in recent decades. The range of these alternatives, and what is known of their impact in terms of both reduced case-loads and work-loads within the system, and in terms of recidivism of individual offenders under such alternative sanctions, could be studied to facilitate future policy planning. The Seventh Congress may wish to consider national experience regarding criminalization, decriminalization, depenalization or diversion, or the use of alternatives.

54. Extensive consideration has been given to the question of alternatives to imprisonment in many forms. The use of additional alternatives would relieve the work-load of many agencies, while reducing the stigmatization of offenders. In many countries, the existence of alternatives is a problem in itself. The African regional preparatory meeting, held at Addis Ababa from 28 November to 2 December 1983, emphasized that alternatives had to be established before they could be used. Their establishment would require professional experience, and also some form of technical co-operation. 23/

55. Although formal procedures have been the norm, even in societies trying to modify the structure of criminal justice inherited from colonial times, the possible use of informal procedures and processes is receiving more attention in many countries. The Budapest meeting recommended that the Seventh Congress should consider, in this connection, "the questions of accountability, discretion, the right of appeal and safeguards for the rights of offenders, as well as victims ..." 24/ Experience from the African region suggests, for example, that some kind of a supervisory arrangement over an informal dispute-settling mechanism could remedy any abuses stemming from such procedures. 25/ It has been suggested that a precise analysis of the possible value of informal procedures for the criminal justice systems of both developed and developing countries is required. The analysis would have to focus on the extent to which procedures are culture-specific, or applicable to similar cultures, or, possibly, universally applicable. The compensation of victims is one facet of this question.

56. Perhaps a more selective approach is required, with a distinction being made between cases that still require formal processing and those that may be equally or more successfully dealt with by informal mechanisms or simplified

procedures. There is a need for a thorough and continuous identification of the bottle-necks in the formal system so that alternative channels for processing alleged offenders may be devised. Governments of Eastern European countries have reported experimenting with informal methods and reintroducing them into the formal system. At the African regional preparatory meeting, several examples were given. The advantages were thought to be primarily (a) an increase in popular participation in criminal justice processes; (b) a lessening of the gulf between the public and the criminal justice system, and (c) a reduction of the delays in the administration of justice. However, the question of how such informal processes should be reintroduced, without a loss of legal accountability in already developed societies, remains unresolved in many countries.

57. The Budapest meeting observed that:

"In some countries it appeared as though decriminalization had ground to a halt. The opposite tendency, that is to say, criminalization, seemed predominant. This reversal was apparently a reaction to popular retributive demands. The public was entitled not only to have an impact on decriminalization policies, but also to be thoroughly informed of plans to decriminalize and of the social long-term impact resulting from such decisions." 26/

It may well be that moves to "get tough" in many different social and cultural settings arise from the perceived ineffectiveness of alternative strategies. It is extremely important that factually-based information on the actual effects of alternative strategies are available to policy-makers. Ultimately, public opinion may also benefit from such information.

58. It seems clear that the framing of legislation, whether to include new crimes or exclude existing ones, is an activity largely influenced by the socio-economic environment and changes in that environment. Thus, changes of public opinion might be a major factor in changes in legal codes. This, in turn, raises the difficult question of whether law-makers should lead or follow public opinion, although in practice it seems that they do both at the same time.

IV. CRIMINAL JUSTICE AGENCIES

A. The police

59. The discussions of the Fifth Congress led to the creation of the Code of Conduct for Law Enforcement Officials, which was adopted by the General Assembly in its resolution 34/169. 27/ The Code established a range of criteria for police behaviour that are designed to aid Governments in developing a national philosophy of policing for countries with differing socio-economic conditions. In recent years, sociological studies of the police have looked at the factors common to police behaviour in different contexts, and the conditions that confront police in the daily exercise of their powers. The context in which various United Nations meetings have considered police matters has been mainly that of human rights. However a more detailed analysis of the role of the police as providers of information for the system might form a topic for discussion at the Seventh Congress, as part of the development of national strategies of policing. Consideration of the systemic approach in training programmes might be a means of encouraging the police to adapt to the changing environment.

60. In any systemic model of criminal justice, the police are usually seen as gatekeepers, or an entrance filter, through which all those who become "clients" in the subsequent processes of criminal justice must enter. The police are not the only agency of entry into the system - in some countries, the prosecution agency or the courts can initiate actions - but police decisions are usually the critical initiating factor.

61. The first United Nations survey of the world crime situation revealed that the proportion of resources devoted to police or law enforcement agencies, in comparison to other agencies charged with the subsequent handling of offenders, differed from country to country. 28/ Initial findings from the second United Nations survey, covering the period 1975-1980, appear to support this conclusion. 29/ The first survey showed that in developed countries, the police form a proportionately smaller part of the criminal justice system; but even so, they invariably form the largest component agency of the criminal justice system.

62. While the activities of the police largely determine the work-load of the criminal justice system, their responsibilities differ from country to country. In some countries, there may be a number of specialized police forces responsible for preventive patrol, criminal investigation, border control, traffic control, enforcement of health or building regulations, pursuit of tax evasion or protection of officials; in others, there may be one all-inclusive agency that is also responsible for fire-fighting and other emergencies. The functions of a police force may be limited to the prevention and investigation of crime, or they may extend to the prosecution of offences; it may be entrusted with certain adjudicatory or dispositional powers, especially with regard to juvenile offenders, or it may be responsible for the custody of prisoners or their supervision on discharge. 30/

63. As the role of police officers has diversified, so has the extent and type of discretion they inevitably come to exercise. Regardless of how their role is legally regulated, police officers are still in a position to disregard a possible crime; they can choose to record an act as a crime or not, and can choose to investigate it immediately or to subordinate it to other priorities. The way in which the case and its accompanying evidence is forwarded to the prosecution office is to some extent in the control of the individual officer. Naturally such discretion decreases with the severity of the offence, as does the possibility that discretionary decisions will be made in the lower levels of the police hierarchy. However, beyond a common-sense level of observation, comparative studies of the degree to which the police exercise their powers of discretion have not been made, at least not at the international level. Such exercises of discretion relate both to goal conflict and to its resolution; to questions of information flow; to accountability and to the rationality of the criminal justice system overall.

64. One example of differing goal expectations and of appropriate information transmission and measures of performance is found in the differing cultural expectations of the police role other than just the immediate detection of crime. The role of the police as agents in the resocialization of offenders, or in the counselling of individuals with the aim of preventing future criminal conduct, seems to vary a great deal from country to country. In some countries, police officers are formally required to take part in programmes designed to rehabilitate ex-prisoners, or to assist those who abuse alcohol or narcotic drugs. In other countries, these types of activities are informally undertaken, but not mentioned in the official description of the officer's responsibilities. In yet other countries the police are excluded from engaging in the supervision of probationers.

65. Consideration of any expansion of the role of the police inevitably leads to a discussion of accountability, covering all aspects of the police's traditional or emerging functions. The core issues may be framed in the form of the following questions:

(a) To whom should the police be accountable in the exercise of their new roles and for what should they be asked to account?

(b) In view of the increasingly diversified functions assumed by the police, should new performance measures be established, or the old ones retained?

(c) How can the police gain public confidence and support with respect to their newly-emerging functions?

66. Improved standards of public education would make the public more aware of their individual rights as regards an expansion of the powers of the police. At the same time, the public increasingly demand that the police should be more efficient while remaining impartial and above corruption. There is, to some extent, a conflict of expectations in such demands; and law enforcement agencies are likely to face, and react to, them in diverse ways. It is important to consider the question of accountability within an overall philosophy of policing so that a clearly understood set of priorities may be established between the police and the community they serve. 31/

67. Consideration of the role and functions of the police must also take into account the limited resources of the public sector. One participant at the Asian and Pacific regional preparatory meeting, held at Bangkok from 4 to 8 July 1983, observed that "the police are under-resourced, under-equipped and under-paid." 32/ In the same region, it was reported that in a province of one country, the population had increased by 40 per cent in the last decade while the number of police had increased by only 1 per cent. Indeed, the adequate financing of criminal justice agencies remains a general problem, especially in developing countries. Some developing countries allocate a relatively high proportion of their scarce criminal justice resources to police forces. 33/ If the police are indeed under-resourced, and yet have more resources than other criminal justice agencies, problems in other parts of the criminal justice system can easily be imagined as being extremely severe. The adequate allocation of public resources to criminal justice systems, and their appropriate allocation between component agencies, are subjects requiring urgent study and action.

B. Prosecution

68. Until recently, the prosecution function had not attracted widespread attention or research. One long-standing distinction in studies of prosecution agencies is that between prosecution in the hands of the police and that which is the responsibility of a separate body. In addition, different systems are based on different policies of prosecution. There are systems that follow the so-called "legality principle", whereby prosecution is instigated in any case where sufficient evidence is seen to exist that a crime has been committed, and where a known individual(s) is (are) considered potentially responsible. In systems that follow the "opportunity principle", prosecution may not occur, even though ample evidence of guilt exists, if the prosecution considers there are strong reasons that a formal charge is inappropriate, or the imposition of punishment is unnecessary. The difference between these two organizational models is how "discretion" operates in prosecutorial decisions. In the legality model, discretion is not considered

a formal value, although researchers in different countries have cast doubt upon whether it is possible to have a totally discretion-free system. In the opportunity model, the exercise of discretion is formally acknowledged and openly institutionalized.

69. A further distinction can be made between those prosecution agencies that have either the right, or the obligation, to conduct independent investigations of their own and those that simply take the material obtained from the police as the sum total of information available. Those prosecution agencies that are allowed, or required, to conduct their own investigations act essentially as a controlling influence on the police. All prosecution agencies, however, can influence and direct the workings of the police by requesting additional evidence or other information. The court's decisions, therefore, depend heavily on the quality and quantity of information provided, and the manner of its presentation by the prosecution. One aspect of the co-ordinating function of the prosecutor's office lies in gathering and transmitting information, which both motivates the police and influences judicial decision-making. That function finds its fullest expression in the frequent formal and informal contacts that prosecutors have with individual members of all other criminal justice agencies.

70. The organization of prosecution ranges from the police having total responsibility for instigating prosecution to the other extreme of an independent prosecution service that also exercises some supervision or control over the work of the police. There are several different types of organizational structures combining different aspects of these two models. The closer a prosecution agency is to resembling the police model, the more likelihood there is of finding the legality principal at work in prosecutorial decisions. Similarly, prosecution agencies organized as independent bodies make prosecutorial decisions more closely in line with the opportunity principle.

71. Most prosecution systems are directly accountable to the ministry of justice or its equivalent. Their relationship with the courts, or with the judiciary, varies with national traditions and consists of either formal or informal negotiations with these agencies. Trends in criminal justice planning and research in different countries indicate that the prosecution function forms one of the most important points of the criminal justice system at which decisions are made. Current studies on the co-ordination of the activities of criminal justice systems point out that the role of the prosecutor is central to any attempt at co-ordinating the flow of information between criminal justice agencies in the attempt to reduce goal conflict. Some studies have suggested using simulation techniques as an inexpensive and wide-ranging research tool enabling rigorous and specific cross-national comparisons to be made on the role and function of the prosecution. 34/

C. Defence counsel and legal aid

72. An aspect of the criminal justice process that does not seem to have been described or researched much, is that of the defence counsel, although the way in which defence counsellors carry out their role influences the results of many trials. Some features of the defence counsellor's role are unique in the structure of the criminal justice process. The first of these is that defence counsellors in some countries are mainly private individuals hired by clients, whose objective is to obtain a judicial decision in their favour. Basically, these attorneys are not public servants of the criminal justice system, as are other officials who play different roles, for example, prosecutors. In some countries, however, defence counsellors may not have a private status. The

role of the defence counsel in the criminal justice process, including the defence counsel's relationship with other key people in various criminal justice agencies, has not been widely discussed, especially at the international level. The type and extent of goal conflict and other kinds of conflict that exist between defence counsels and prosecutors varies with national traditions and practices: but some general, widely valid observations might emerge from a consideration of this subject at the Seventh Congress.

D. The judiciary and the courts

73. The central role of the court in the criminal justice process has long been widely recognized. The court is central in the chronological sense in that the trial process follows arrest and prosecution (although in some systems, the court is involved from the start) and precedes sentencing and the further disposition of the offender. The court is also central in that it decides whether the outcome of the first part of the process is a conviction or not. In addition, it usually decides which correctional alternatives are to be applied afterwards, and for how long. However, the court is neither a part of the system, like other agencies, nor a part of the executive in most countries, but maintains the status of an independent agency.

74. The Budapest meeting noted the special role of the judiciary in co-ordinating the work of various agencies and facilitating the transmission of information in the criminal justice system. The meeting suggested that co-ordination and information flow should be areas of special focus for the Seventh Congress. The independence of the judiciary was seen to be necessary for the fulfilment of their function especially in ensuring fair and speedy proceedings. 35/ The participants recognized the possibility that judicial independence might lead to the isolation or insulation of the judiciary from consideration of the pressures that shaped criminal justice processes. The participants observed that such insulation could have "very important consequences in that it prevented the magistrates from gaining an awareness of the flow of the process and the functioning of the overall system. Indeed, judges had to be aware of the statistical and human consequences of their decisions." 36/ In so far as information flow was seen as the single most important requirement of a co-ordinated system in which the conflict of goals between the sub-systems was to be diminished as far as possible, the participants considered that:

"Co-ordination of the system should be based upon the diffusion of information concerning the different goals of the subsystem. Indeed, no one centre should be capable of dictating goals to the other components of the system, although, ideally, basic policy goals should be agreed upon by all and all the agencies should develop a common language of communication." 37/

Such an approach as that described above allocates a central co-ordinating role to the courts. Without specifying what the goals and objectives of the police or the prison system might be, representatives of the judiciary should take part in the process that establishes such goals. The special role of the courts is to see that the necessary exchange of information at both the policy and the case level takes place.

75. Participants at the Budapest meeting also considered the need for the judiciary and magistracy to understand the consequences of their sentencing policies in the light of prison overcrowding, and the need to use all alternative post-sentencing facilities available. The judiciary at all levels

needed to be informed of many practical aspects of criminal justice operations because, in practical terms, the courts were the central agency responsible for the speedy processing of offenders. Any backlog of cases damaged the delivery of justice, or even denied it, to those on remand. The European regional preparatory meeting, held at Sofia from 6 to 10 June 1983, discussed this in detail, and proposed a fixed time-limit:

"It was therefore proposed, in view of the importance of speedy trial for the offender, the victim and society at large, that Member States could in future agree, within the frame of the Covenant's provisions, to a maximum six months' time-limit between the initiation of the criminal proceedings and the charging of the offender before the court, or before any equivalent body." 38/

E. Corrections

76. The prison system is often considered by most of the population as the most removed, the most mysterious and the least understood aspect of the criminal justice process. It is therefore an area where change is least obvious. Because of its place in the sequence of the criminal justice process, that is, the last in line, the prison system is most affected by policy changes within other agencies. For instance, if the police make more arrests, while the courts do not change their policies, then the prison and correctional services are faced with a much greater work-load. If the courts give longer sentences for types of behaviour that they had previously ignored, or treated leniently, the police might choose to alter their procedures, so as to conform to the judicial policy; ultimately the prison system will be faced with a different work-load.

77. Although the prison system reacts primarily to the output of earlier parts of the system, it also has some influence on that output. In recent years, the tendency in most countries has been for more crime to be reported and more persons to be sentenced. Along with the increased use of remand in custody, perhaps because of the heavy work-load of the courts, the overwhelming characteristic common to prison services in many countries in recent years is that of overcrowding. Most evidence suggests that most countries face quite serious problems in terms of the number of prisoners to be housed on any one day in relation to the facilities available to house them. 39/ The feasibility of rehabilitation is also strongly affected by overcrowding. While the rehabilitation or treatment model has been criticized in certain countries, particularly industrialized Western countries, rehabilitation is still regarded as the main objective in many, and probably most, countries.

78. Overcrowding can be ameliorated by such policies as: committing fewer people for less time, or constructing more buildings. The merits and demerits of these policies might be discussed at the Seventh Congress, and include the question of information transmission, the supply of data, and the conflict of objectives and goals between and within agencies. If prison authorities have accurate information on the changing patterns of crime and apprehension, and prosecution and sentencing trends, their own long-term planning will be facilitated. Likewise, if prison authorities receive all relevant information on individual offenders from other agencies, particularly the police, their rehabilitative tasks become less difficult.

F. Probation, parole and other non-institutional services

79. One way to reduce overcrowding in prisons is through a greater use of alternatives to imprisonment, and thus a commission of fewer people to prison. Some countries have not only developed traditional services such as

probation and parole, but have extended the range of sentencing and dispositional options available to the courts. Intermediate treatment, community service orders and weekend detention are examples of such innovations. Parole has been in use for some time but has been criticized in some countries because it is seen as a second sentencing process, neither under the control of the courts nor, perhaps, easily accountable to either the public or the individual concerned. However, its merits are generally agreed to be greater than its demerits, and its use as both a rehabilitative procedure, especially when a useful after-care service is provided, and a means of relieving institutional overload is widely acknowledged. National and regional experience indicates that the first requirement in many developing countries is to establish alternatives to imprisonment, which do not exist at present. ^{40/} As they are likely to be far less costly than the operation of prisons, the initial investment can be economically justified; and humane administration of justice is likely to ensue.

G. Public participation in crime prevention and criminal justice processes

80. The Budapest meeting emphasized the increasing importance of public participation in criminal justice processes. ^{41/} While the importance of public support for the police has been generally recognized, the police are not unique among criminal justice agencies in their need for public participation and interest. Public confidence and interest in the workings of the courts increases, the more the public has access to the courts. The rehabilitation of offenders becomes more feasible when the general public takes a keen interest in the activities of the prison service and in alternatives to imprisonment. The active interest of the public in prison maintenance and administration could be also a major factor in promoting and defending the rights of prisoners.

81. Crime prevention planning is discussed in a wider perspective under topic I, however, specific crime prevention programmes are mentioned in the present document as current examples of public participation in criminal justice agencies. While the modality varies from country to country, the most usual is for central governments to act as a source of ideas, trained individual experts, and financial resources for local-level groups of citizens. The role of the central ministry, or higher levels of the police, therefore, is to devise training schemes for professionals who can be used as local resource persons, leading and organizing local and specific crime prevention campaigns.

82. Such an approach to crime prevention planning tends to be specific to a particular area and also to a particular type of crime. However, local crime prevention programmes do not apply, by definition, to certain kinds of crime - such as large-scale transnational fraud - which are of increasing concern to many Governments. Research and publications on types of criminal activities, of which the public is largely oblivious or ignorant, and in the prevention of which no clear role for the public has yet been defined, would undoubtedly help to prevent hidden crimes that may substantively affect whole nations.

83. As regards public participation in criminal justice, the media are a critical factor in constructing the social and psychological environment in which criminal justice agencies operate. ^{42/} The media function in three basic ways in relation to the criminal justice system: first, they disseminate information concerning criminal justice processes; secondly, they provide a forum for public debate on issues of criminal justice; thirdly, they shape public opinion regarding criminal justice processes. These functions are

intrinsically positive, yet through the selective presentation, or non-presentation, of information, the media support certain views concerning the "real" nature of crime, either implicitly or explicitly. While these views may reflect the genuine diversity of opinion in society concerning the proper aims and functioning of the criminal justice system, the media do not simply mirror prevailing public debate over issues in criminal justice. Rather, criminal justice news is shaped to some extent by production requirements intrinsic to the media industry itself. This is especially true in cases where the media are independent, commercial organizations. From the viewpoint of the commercial media, a criminal justice event must be, above all, news-worthy enough to command a wide newspaper, radio or television audience. Over-emphasis by such media on the reporting of street crime, violent or sexual crime, may reflect a concern with immediacy, impact and vividness. Consequently, other criminal activities, that are less visible, but no less and perhaps even more harmful, are ignored or given less exposure. The result is that public awareness of, and concern over, such activities remains low, reinforcing stereotypes of popular conceptions of crime and criminal justice. The media can also create an unfounded and uninformed public attitude to crime both by over-emphasizing or ignoring it. Similarly, the popular estimation of victimization - that is, what it means to be a victim, what the probability is of becoming a victim, and of what type of crime - may be an inaccurate picture of the real level and patterns of victimization.

84. As the Budapest meeting emphasized, a major step which agencies of criminal justice can take to rectify public misconception is to develop and maintain a continuous dialogue with the media, opening themselves to the media in all but the most sensitive areas. 43/ There should be clear-cut policies for media reporting, especially in respect of the right to privacy of both victims and offenders. It is in the long-term interests of criminal justice agencies that they provide information on policy and practice for the media, in order to enhance general understanding. If the agencies of criminal justice do not accurately assess public opinion, support from the public will dwindle and the professional tasks of these agencies will become harder to carry out.

V. THE ROLE OF RESEARCH, SCIENCE AND TECHNOLOGY IN AN INTEGRATED APPROACH TO CRIMINAL JUSTICE

85. A consistent theme at all the regional preparatory meetings for the Seventh Congress was the urgent need for more and better research. If the criminal justice system is to adapt continuously to a changing world, it must have a continuing supply of information both about that world and about the operations of the criminal justice system itself. One main source of such information should be research. 44/ However, research into the socio-economic environment as a whole is largely the concern of other sectors, so arrangements for the regular provision of information from these other sectors to criminal justice agencies must be institutionalized. The lack of good data was strongly emphasized by participants at the African regional meeting, both in the context of the absence of an African regional institute for crime prevention and control and in regard to several specific criminal justice operations. Participants at the Western Asian regional meeting, held at Baghdad from 12 to 16 December 1983, stated quite specifically that:

"... there should be greater use of statistics as an indicator and tool for crime prevention and control strategies, and ... extensive research should be conducted on possible interrelationships between crime and socio-economic and cultural realities in order to contribute to the more effective performance of criminal justice operations." 45/

The participants further recommended that:

"... the United Nations should increase technical assistance activities and strengthen its capacity to provide advisory services in the region to assist Member States on aspects related to the effective functioning of criminal justice systems and the performance of their personnel in relation to development issues." 46/

86. A large gap still exists between these requirements and the implementation of practical measures to facilitate such research. The most pressing need is to improve national data bases, which are a prerequisite for research to guide policy and planning. At the regional preparatory meetings, many participants from developing countries agreed that there was a need to improve their national statistical data bases. There is a significant role for the United Nations to play in assisting interested countries to develop their data bases. Data bases with comparable information holdings could greatly increase the benefits for each country, by making international exchanges of opinion and information more specific to user needs. The attention of the Seventh Congress is drawn to the Manual for the Collection and Analysis of Crime and Criminal Justice Statistics, which is being prepared by the United Nations Secretariat.

87. A further problem is that the priorities of research workers and system administrators may be different, leading to poorly-defined mutual goals and expectations. This question has been discussed at previous United Nations congresses, but further consideration of it is still urgently required. Many social scientists believe that empirically-grounded knowledge is seriously under-utilized in important policy decisions, even though its use would improve the quality of public decision-making. Policy makers, however, may be of the opinion that social science research has no immediate relevance for their work. Consequently, often neither formal nor informal interactions between policy-makers and social scientists result in productive research efforts. From the policy-maker's perspective, relevance and time-scale are essential factors to be considered in the question of whether to invest in research. These same concerns can be interpreted by research workers as a failure to respect the scientific complexity of their work, and thus a failure to appreciate both the time it takes to perform the research properly, and the long-term benefits to be derived from it.

88. Bottle-necks in information flow may be experienced or even caused by policy-makers, planners and others because they tend to have distinct vocabularies and styles of language which can act as a barrier between them, and so hinder the co-ordination of their work.

89. The Seventh Congress may wish to suggest to Member States ways and means by which scientific evaluation could contribute to the improvement of the performance of criminal justice systems. As an example, the Fifth Congress drew attention specifically to the advantages of systematic cost-benefit analysis when considering alternative courses of policy action. Later, a number of criminal justice administrations examined the possible use of programme budgeting to eliminate unnecessary spending and ensure a better overview of priorities and objectives, so that resources could be allocated more appropriately.

90. On a more technical level, a major area of development in applied research has been the use of a variety of simulation techniques that can use, but do not require, computing technology. Models were developed in the early 1970s for use in criminal justice planning in North America and Western Europe,

and are now arousing interest elsewhere. There are two main types. The first describes and demonstrates the interrelationships between various subcomponents of a criminal justice system. Through simulation, it is possible to obtain a rapid overview of how, for example, changes in the input level or in resource allocation would change other parts of the system. Some models of this type can handle changing rates over extended periods of time, and so make forecasting possible. Once such models have been devised, refined and tested, they can be used in any interested country, provided that it has the necessary data base. The methodology of such an approach is transferable across cultures, even though the results are probably not. The second type of simulation model is used to examine the way in which policy is translated into action through the decisions of individual officials, such as police, prosecution or probation officers.

91. The integration of such methods into the planning process is still a new area in criminal justice. A proper balance must be struck between the costs of obtaining the information that forms the input for the model, and the value and policy-guiding power of the output obtained. Once this is achieved, these models can begin to be a powerful tool for criminal justice planners. Experience indicates that an optimum balance can be difficult to achieve. No overview of the use of highly formalized planning methodologies is known to exist; but the results of "research on such use of research" could be important. The adoption of such techniques is usually most profitable when undertaken gradually, so that the problems that inevitably arise can be handled one at a time. If problems are allowed to arise all at once through over-hasty implementation, they can prove so difficult as to make a potentially profitable investment counter-productive.

92. The type of decision-making that is typical of criminal justice planning covers issues that require a combination of numerical data and non-quantifiable aspects, such as basic social values. These, and unforeseeable sudden changes, are difficult to include in models primarily oriented towards the standardized processing of routine information. However, some criminal justice authorities are now using such rigorous methods as a means of making explicit the unquantifiable values of criminal justice. Formal model building, however, usually favours the use of easily available, quantitative data. The more complex the planning tasks, and the more fundamental the issues involved, the more important it becomes that decision-makers realize both the potential and limitations of such models.

93. Computers have increasingly become a predominant feature of modern organizations in developing as well as developed countries. They are, from one perspective, the biggest single change in the changing world of the last decade, and will remain so for the next ten years at least. Their initial use as number handling machines for research purposes is now a fact of history. Their use in administration and management is expanding every year; thus the impact of computers on criminal justice systems, both as a source of crime and as a means of organizing a reaction to crime, is becoming a major subject of discussion in its own right.

VI. CONCLUSIONS

94. The topic "Criminal justice processes and perspectives in a changing world" presents the Seventh Congress with a number of challenges. The Budapest meeting emphasized the importance of adopting an integrated approach to criminal justice processes to enable the criminal justice system to plan rationally and effectively for the increasingly heavy burden it is expected to

carry in the coming years. The issues raised in the present document suggest that there is a need to develop and implement guidelines in different areas of policy-making. These areas could be classified as follows:

(a) The need for guidelines for the greater co-ordination of criminal justice agencies to assist them in adapting in a more coherent and consistent manner to changes in the socio-economic environment;

(b) The need for guidelines on the role of the prosecution service as one of the pivotal points for the co-ordination of criminal justice agencies;

(c) The need for guidelines for further technical assistance in the development of national data bases for both administration and planning;

(d) The need for guidelines on the role of computers, including the new information technology, in the organization and administration of criminal justice systems; and, separately, in the co-ordination of action against computer crime;

(e) The need for guidelines for the training of personnel of the different agencies of the criminal justice system, with particular reference to the adoption of an integrated approach to criminal justice.

95. In this context, the Seventh Congress may wish to reaffirm the continuing role of the United Nations in the transfer of administrative and technical experience and in the exchange of information between countries. The United Nations has developed over time a number of instruments for technology transfer and the Technological Information Exchange System (TIES) of the United Nations Industrial Development Organization and other such initiatives may provide working models from which directly applicable techniques may be derived.

Notes

1/ Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980 (United Nations publication, Sales No. E.81.IV.4), pp. 5-6.

2/ "Report of the Committee on Crime Prevention and Control on its Seventh Session" (E/CN.5/1983/2), paras. 130-135.

3/ "Report of the Interregional Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic II: 'Criminal justice processes and perspectives in a changing world'", Budapest, 4-8 June 1984 (A/CONF.121/IPM/2); Criminal Justice Processes and Perspectives in a Changing World: Documents Submitted to the Milan International Congress (14-17 June 1983) Organized by the Ministry of Justice of Italy and the Centro Nazionale di Prevenzione e Difesa Sociale (Milan, Centro Nazionale di Prevenzione e Difesa Sociale, March 1984); Effective, Rational and Humane Criminal Justice: Report of the European Seminar Organized in Helsinki, Finland, 31 May-3 June 1984, Publication Series No. 3 (Helsinki, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, 1984).

4/ See, further, World Population Prospects: Estimates and Projections as Assessed in 1982 (United Nations publication, Sales No. E.83.XIII.5); Population Distribution, Migration and Development: Proceedings of the Expert Group on Population Distribution, Migration and Development, Hammamet (Tunisia), 21-25 March 1983 (United Nations publication, Sales No. E.84.XIII.3); Patterns of Urban and Rural Population Growth (United Nations publication, Sales No. E.79.XIII.9).

5/ See, further, "Survey of recent and prospective trends and fundamental changes in the field of socio-economic development: 1985 report on the world social situation" (E/CN.5/1985/2).

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7/ For a general theoretical outline to this approach, see Systems Analysis: Selected Readings, S. Optner, ed. (Harmondsworth, Middlesex, Penguin Books, 1973).

8/ See V.N. Kudratsev, "Ugolovnaya yustitsiya kak sistema" (Criminal justice as a system), Pravovaya kibernetika (Legal cybernetics) (Moscow, 1973), p. 17; J.R. Kubiak and J. Jankowska, "Systemowe ujecie wymiaru sprawiedliwosci karnej" (Systemic approach to criminal justice), Zeszyty Naukowe Instytutu Badania Prawa Sadowego, No. 10, 1980; R.M. Emerson, "Holistic effects in social control decision-making", Law and Society Review, vol. 17, No. 3 (1983); P. Robert, "La recherche operationnelle dans le systeme de justice criminelle: études relatives à la recherche analogique", VIII Strasbourg Conseil de l'Europe 1971.

9/ See Alex Himmelfarb, "Criminal justice information: notes, credibility, reliability and validity technology fetishism: means and ends", paper submitted to the Interregional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic II: "Criminal Justice Processes and Perspectives in a Changing World", Budapest, 4-8 June 1984.

10/ United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders, Criminal Justice in Asia: The Quest for an Integrated Approach (Tokyo, 1982).

11/ P.A. Lapinskaya, "Resheniya v ugolovnom sudoproizvodstve" (Decisions in criminal proceedings by the courts) (Moscow, 1976); J.M. Groshevoy, "Problemy formirovaniya sudeyskogo ubezhdieniya v ugolovnom sudoproizvodstve" (Problems in the judicial decision-making process) (Kharkov, 1975).

12/ "The United Nations Expert Group Meeting on the Second United Nations Survey of Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies, Sam Houston State University, Huntsville, 25 October-4 November 1983: A working paper prepared by the Secretariat", paras. 11-39.

13/ See, further, A/CONF.121/IPM/2, paras. 84-92; "National household survey capability programme: survey data processing - a review of issues and procedures" (DP/UN/INT-81-041/1, 1982); "Problems of software development in developing countries" (UNIDO/IS.383); Informatics for Industrial Development, Development and Transfer of Technology Series No. 22 (ID/326).

14/ See A/CONF.121/IPM/2, para. 101.

15/ See, for instance, Barry, Brian and Russell Hardin, eds., Rational Man and Irrational Society: An Introduction and Sourcebook (Beverly Hills, California, Sage Publications, 1982).

16/ See, in this connection, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, "Report of the Ad Hoc Expert Group on the 'Cross-National Study on Trends in Crime and Information Sources in Criminal Justice and the Crime Prevention Field in Europe'" (Helsinki, 1984).

17/ A/CONF.121/IPM/2, para. 65.

18/ See, "Report of the Latin American Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders" (A/CONF.121/RPM/3), para. 38.

19/ See, "Report of the European Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders" (A/CONF.121/RPM/1), paras. 49, 52 and 53.

20/ A/CONF.121/IPM/2, para. 22.

21/ A/CONF.121/RPM/3, paras. 44 and 45.

22/ A/CONF.121/IPM/2, paras. 70-78. See, also, European Committee on Crime Problems, Report on Decriminalisation (Strasbourg, Council of Europe, 1980).

23/ See, "Report of the African Regional Preparatory Meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders" (A/CONF.121/RPM/4), paras. 27-28 and 30-31. See, also, F. Dünkel and G. Spiess, Alternativen zur Freiheitsstrafe: Strafaussetzung zur Bewährung und Bewährungshilfe im internationalen Vergleich, Band 14 (Freiburg im Breisgau, Max-Planck-Institut für ausländisches und internationales Strafrecht, 1983); A. Yakovlev, "Criminal justice as an alternative in dispute settlement", HEUNI Publication Series No. 4/1985, pp. 40-65.

24/ A/CONF.121/IPM/2, para. 29. See, further, paras. 31 and 32.

25/ See, A/CONF.121/RPM/4, para. 27.

26/ A/CONF.121/IPM/2, para. 72.

27/ See, "Code of conduct for law enforcement officials: report by the Secretary-General" (A/CONF.121/12).

28/ "Crime prevention and control: report of the Secretary-General" (A/32/199).

29/ See, "Second United Nations survey of crime trends, operations of criminal justice systems and crime prevention strategies" (A/CONF.121/-).

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31/ See, further, VIIth International Course of Higher Specialization for Police Forces: the Training of Police Officers as the Basis for Investigation of the Judicial Truth and for the Protection of Human Rights (Madrid, Ministry of the Interior, 1985).

32/ "Report of the Asia and Pacific Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders" (A/CONF.121/RPM/2), para. 45.

33/ A/32/199, para. 48.

34/ See, further, M. Joutsen and J. Kalske, "Prosecutorial decision-making in Finland: the results of a simulation study", Paper No. 67 (Helsinki, National Research Institute of Legal Policy, 1984).

35/ See, further, "Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders: Guidelines on the Independence of Judiciary - report by the Secretary-General" (A/CONF.121/9).

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37/ Ibid., para. 47.

38/ A/CONF.121/RPM/1, para. 51.

39/ See, for instance, E. Carranza and others, El preso sin condena en America Latina y el Caribe (San José, Costa Rica, United Nations Latin American Institute for the Prevention of Crime and the Treatment of Offenders, 1983), p. 28; R.J. Wicks and H.H.A. Cooper, eds., International Corrections (Lexington, Massachusetts, Lexington Books, 1981); W. Clifford, comp., Regional Developments in Corrections: Proceedings of the Second Asian Pacific Conference of Correctional Administrators, J. Braithwaite and J. Sandry, eds. (Phillip, Australia, Australian Institute of Criminology, 1982).

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45/ "Report of the Western Asia Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders" (A/CONF.121/RPM/5), para. 42.

46/ Ibid., para. 45.

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