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**ALTERNATIVES TO IMPRISONMENT AND MEASURES FOR THE
SOCIAL RESETTLEMENT OF PRISONERS**

Report of the Secretary-General

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INTRODUCTION

1. The Economic and Social Council, in its resolution 1984/46 of 25 May 1984, welcomed the recommendation made by the Committee on Crime Prevention and Control at its eighth session to the effect that alternatives to imprisonment and measures for the social resettlement of offenders should be considered by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, under the item of the provisional agenda entitled "Formulation and application of United Nations standards and norms in criminal justice". Furthermore, the Council took note with appreciation of the report of the Secretary-General to the Committee on those issues (E/AC.57/1984/9) and requested him to update the report, on the basis of information to be provided by Member States and other sources, including relevant non-governmental organizations and professional organizations, for submission to the Seventh Congress.
2. In the same resolution, the Council encouraged Member States to increase their efforts in order to expand further the use of alternatives to imprisonment and of measures for the social resettlement of offenders, and called their attention to the recommendation of the Sixth Congress that the principles on linking the rehabilitation of offenders to related social services should be taken into account when formulating strategies for deinstitutionalization within the overall framework of crime prevention.*
3. It may be recalled that the report above (E/AC.57/1984/9) was based on the replies from 53 Governments to the Secretary-General's note verbale of 2 August 1982. The following countries replied to the survey of the Secretary-General: Australia, Austria, Barbados, Belgium, Belize, Botswana, Brazil, Bulgaria, Burma, Byelorussian Soviet Socialist Republic, Cameroon, Cape Verde, Chile, China, Colombia, Cuba, Cyprus, Denmark, Ecuador, El Salvador, Finland, France, German Democratic Republic, Germany, Federal Republic of, Greece, the Holy See,** Honduras, India, Israel, Italy, Japan, Kuwait, Liberia, Libyan Arab Jamahiriya, Malaysia, the Netherlands, New Zealand, Niger, Norway, Pakistan, Philippines, Poland, Senegal, Spain, Sri Lanka, Sweden, Switzerland,** Thailand, Tunisia, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and Yugoslavia.
4. For the preparation of the present report, the Secretary-General invited Governments and other parties concerned to provide proposals and information in more detail or from a new angle on new areas or developments and on issues already covered.
5. As of 31 May 1985, additional information had been received from 20 countries that had already replied before: Belgium, Byelorussian Soviet Socialist Republic, China, Colombia, Denmark, Finland, German Democratic Republic, Germany, Federal Republic of, Israel, Italy, Japan, Kuwait, Norway, Spain, Sri Lanka, Sweden, Thailand, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics and Yugoslavia. In addition, 10 countries, namely Iraq,

*See 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), chap. I, sect. C.

**Non-member State.

Kenya, Kiribati,* Luxembourg, Madagascar, Mauritius, Philippines, Portugal, the Republic of Korea* and the United Arab Emirates provided information for the first time. Thus, the present report is based on a total of 62 replies, i.e. the 52 countries that replied to the first request for information (including the 20 States that also replied to the second request) and the 10 States that replied only to the second request for information.

6. Replies were also received from other sources, including the Alliance of Non-Governmental Organizations on Crime Prevention and Criminal Justice (Vienna and New York), the Council of Europe, the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, the Institute of Penal Law of the University of Warsaw, the International Society for Criminology, the Max Planck Institute for Foreign and International Penal Law, the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders and the United Nations Social Defence Research Institute.

7. As the recommendations contained in resolutions 8 and 10 of the Sixth Congress refer primarily to alternative measures to be applicable after the public prosecutor or the competent courts have been involved in the judicial proceedings, the replies mainly covered measures related to that stage of the proceedings, although the national legislation of Member States might provide for measures at an earlier stage of criminal prosecution, e.g. during police investigations.

8. Because of the need for continuity and easier reference, a structure similar to the original report has been followed and information contained in that report is included in the present report. Chapter I is an analytical summary of the replies on alternatives to imprisonment and follows the course of criminal proceedings: alternatives at the stage of judicial investigation, in particular concerning the pre-trial custody; alternatives at the trial stage; alternatives at the post-conviction stage; and measures to alleviate imprisonment and to grant prison leaves. Chapter II focuses on measures aimed at a better social resettlement of prisoners, and on staff training.

*Non-member State.

I. ALTERNATIVES TO IMPRISONMENT

A. Pre-trial stage

9. Custody at the pre-trial stage should be seen in the context of the principle of presumption of innocence, which requires that measures should be taken to reduce pre-trial custody. Thus, a restrictive application carefully balancing the interests of the suspect and society seems necessary.

1. Detention

10. The replies show that in most countries, an effort is being made to reduce the time the detainee has to spend in detention while awaiting trial. This goal can be reached by reducing the grounds for detention, by applying pre-trial detention only for a restricted number of offences according to their degree of punishability, and by using alternatives to pre-trial detention. In cases where pre-trial detention seems indispensable, measures are being taken to reduce the length of detention.

11. The main justification for pre-trial detention is the danger that the suspect might otherwise abscond, commit or repeat an offence, or enter into a conspiracy. According to the legislation of some countries, detention of the maximum duration can be applied on any of the above grounds. However, a comparison of national regulations shows that the terms of maximum duration differ considerably from country to country. Some legislation provides absolute limits, after the expiration of which the detainee has to be released; other legislation provides for only relative limits that can, under certain conditions, be extended by decision of the judicial authorities. The expected final punishment should be taken into account in determining the length of pre-trial detention.

12. Recently, measures to reduce pre-trial custody were taken in Denmark* and in Austria; a further reduction of detention on remand is being discussed in Norway. Furthermore, in Sweden, the question has been raised whether adequate directions should not, provisionally, be applicable before the judgement becomes final, thus also reducing the reasons for pre-trial detention.

13. Pre-trial detention may also be replaced or reduced by alternative means that interfere less with personal liberty, such as the suspect being required to promise to appear before the judicial authorities and not to interfere with the course of justice. Further alternatives are recognizance, bail, the commitment to community service, or into the custody of social services, or guarantees provided by individuals or by community-based organizations.

14. The imposition, and the length, of pre-trial detention depend mainly on the severity of the offence, on the personal circumstances of the defendant, and on the degree of danger to which society is exposed. Thus, pre-trial detention is normally used to a lesser extent in juvenile delinquency cases, and the legislation of several countries has reduced the use of pre-trial custody for juvenile suspects. If, however, precaution is deemed necessary even in cases of juvenile delinquency, measures such as the handing over of the juvenile to his or her guardian might be a substitute for pre-trial custody.

*Act No. 299 of 6 June 1984 makes several amendments to the Administration of Justice Act, namely the section dealing with detention of prisoners (limited use of solitary confinement).

15. Statistical data were provided for Japan, where of the 1,355,436 alleged offenders dealt with by public prosecutors' offices in 1980, 86,399 (6.4 per cent) were detained and 59,508 (68.9 per cent) of those persons for less than 10 days. At the end of 1980, 10,904 (32 per cent) of the 34,032 defendants were detained; only 508 (1.5 per cent) were detained in pre-trial custody for more than one year. In 1983, 95,374 (6.7 per cent) were detained, and 65,316 (67.8 per cent) of them for less than 10 days. At the end of 1982, of the 31,845 defendants, 11,687 (36.7 per cent) were detained in pre-trial custody, 540 (1.7 per cent) of them for more than one year.

16. Regardless of the possibilities to reduce pre-trial detention in a particular country, there seems to be agreement that detention served during the pre-trial stage has to be deducted in full from the sanction that is eventually imposed.

2. Discontinuation of criminal proceedings

17. The reduction of custodial measures at the pre-trial stage does not refer only to alternatives to detention on remand. A considerable amount of legislation also provides for measures aimed at a discontinuation of criminal proceedings and for flexibility through the "expediency" approach to the prosecution decision, thereby broadening the scope for the exercise of discretion by the judicial authorities in deciding whether or not to prosecute. A discontinuation of proceedings might, as implemented for example in the Federal Republic of Germany, be conditional on the victim being compensated. Similar possibilities are being discussed in Kenya.

18. Discontinuation includes diversion from the criminal justice process, which is not dealt with in the present report, in so far as further action by judicial authorities is not required. Thus, the exemption from criminal liability, as provided for in particular by the legislation of socialist countries, or a transfer of proceedings to administrative authorities or to community-based bodies of restricted jurisdiction, is considered only in cases where judicially supervised conditions are imposed on the offender. An example of diversion from the criminal justice process was given by the Government of Norway, whereby very young suspects can have their cases dealt with by a conciliation board instead of being subjected to the usual criminal procedure. The conciliation boards consist of individuals from the local community. The board summons both the suspect and the victim to agree among themselves on victim compensation. Similar measures were recently implemented in Finland, providing for a settlement between suspect and victim with the assistance of mediators. However, this alternative is restricted to minor offences where prosecution can only be initiated by the victim.

19. However, diversion from the criminal justice process, applicable in cases of minor criminality and in particular to juvenile suspects, should not be disregarded in crime prevention and criminal justice planning as a whole. An advantage is that the suspect is not stigmatized as a criminal, since ad hoc agencies, as distinct from penal institutions, can intervene at an early stage to deal with the suspect's needs, thus concentrating resources on problem-solving in particular areas.

20. Whenever it is deemed necessary to take further judicial action at the pre-trial stage, even if the severity of the offence does not, according to considerations of special and general prevention, require a formal conviction, with all its negative aspects, decisions and measures can be taken either by the courts or by the public prosecutor's office. While the latter mainly takes decisions on the conditional suspension of prosecution, the decisions of the courts are mostly required when measures reducing personal liberty,

through directives and instructions given to the suspect, are adopted. The competence for such decisions depends on how the judiciary is organized in a country. Regulations concerning the assignment of decision-making competence are of minor importance to the suspect; however, it is generally considered that, the suspect must be made aware, through an official reaction, of society's rejection of the incriminating conduct.

21. As for statistics concerning the discontinuation of proceedings by public prosecutors, the United Arab Emirates reported that in 1973, out of the 5,609 criminal cases that were brought before the public prosecutor in Abu Dhabi, the prosecution was not pursued in 446 cases (7.9 per cent) for reasons considered to be in the interest of both the suspect and the community. Such reasons included the young age of the defendant, the renunciation of claims for damages by the victim, or the settlement of damages out of court between the alleged offender and victim. Japan reported a suspension of prosecution in 25.4 per cent of the cases concerning non-traffic offences and in 2.4 per cent of the cases concerning violations of road traffic law in 1983; the reason for the low rate of suspension in the latter case was that less serious traffic cases were dealt with by a civil infraction system, which was already used for 84.3 per cent of the total road traffic law violations in the same period.

22. In order to show public disapproval, the legislation of some countries provides for an admonition, after which the judicial proceeding is discontinued. In some countries this method is applicable only to juvenile offenders, in others it is not restricted. According to the legislation of some countries, proceedings are discontinued when the offender apologizes to the victim, or when compensation is given to the victim by the offender. Admonition might also be used as a lenient punishment for minor offences, with however, the effect of a conviction which has to be included in the offender's criminal record.

23. Where supervision for a certain period is deemed indispensable, the legislation of many countries provides for conditional or provisional discontinuation of proceedings. However, the conditions under which this conditional discontinuation is effected differ considerably under different jurisdictions. Conditional discontinuation can involve community service, supervised by a social service agency. In the socialist countries particularly, offenders are supervised and assisted by the workers' collective, while working at their usual places of employment. While the regulations of most countries provide for some form of provisional discontinuation of judicial proceedings, the legislation of, for example, Austria and the Federal Republic of Germany provides for a provisional discontinuation only for specific offences, i.e. for minor drug offences, where drug consumers, after a medical examination, are required to undergo further medical treatment. Common characteristics of all these alternative measures are that the criminal proceedings are finally discontinued after the expiration of a certain period of supervision provided that the suspect's behaviour has given no reason to warrant the formal re-institution of proceedings.

24. A quite different alternative to obviate the necessity for trial or, at a later stage, imprisonment, was reported by countries such as Cameroon, Israel and Kuwait, where juveniles are released on their own recognizance, or that of their parents, and are not prosecuted, providing no new offences are committed within the probation period. In Kuwait and the United Arab Emirates this

alternative is combined with bail or the pledging of security in kind and, as deemed necessary, with supervision for a period of up to two years. In cases of relapse, the security is retained and the offender brought to trial.

B. Trial stage

25. Discussions on the reduction of imprisonment, using alternatives that do not involve deprivation of liberty, are generally based on the common belief that imprisonment should be applied only as a last resort in cases of criminal conduct. This was clearly stated in the replies of several Governments. However, there are different attitudes regarding the use of alternatives to short-term imprisonment.

1. Short-term imprisonment and alternatives

26. A distinction has to be made between the concept of a statutory minimum period of imprisonment and the definition of short-term imprisonment. In the Federal Republic of Germany, the minimum period of imprisonment is one month; national legislation provides for a minimum term of six months for juvenile offenders. In Poland, the minimum period depends on the category of criminal behaviour, i.e. three months in the case of offences and one month in the case of contraventions. In Sweden, the minimum period of imprisonment has recently been shortened from one month to fourteen days.

27. Because many countries consider it impossible to influence the offender positively when short-term imprisonment is imposed, their legislation provides for other penalties, mainly fines. The upper limits of short-term imprisonment range, however, from three to six months. Thus, a shorter term of imprisonment can be imposed only when the alternatives to imprisonment would not serve the goals of a country's general criminal policy and would, in particular, be counteractive to considerations of special and general prevention. The priority of fines over short-term imprisonment is, for instance, already emphasized in the penal codes of Austria (section 37) and of the Federal Republic of Germany (article 49).

28. Alternatives to imprisonment have to be related also to the question of the discretionary power of the court in fixing the term of imprisonment between the maximum and the minimum periods, taking into account the personality of the offender and the nature of the offence, as well as any extenuating and aggravating circumstances. However, in certain countries, the penal law provides that the court, by applying extraordinary mitigation, may impose in specific cases a sanction that is even lower than that which is the statutory minimum. Therefore, the sanction imposed might be regarded as short-term imprisonment and thus be replaced by other measures.

29. Italian law provides particular guidance to judicial authorities: an alternative to short-term imprisonment is not permitted for offences punishable by a period of imprisonment that exceeds three years. In cases where substitution for short-term imprisonment is applicable, the alternatives depend on the specific sanction. Thus, imprisonment of up to six months can be replaced by semi-detention; imprisonment up to three months, by liberty under supervision; and imprisonment up to one month, by fines. In the case of semi-detention, offenders have to spend 10 hours a day in prison and are able to continue their regular employment. Liberty under supervision is already a non-custodial sanction; the period under supervision is twice the length of the imprisonment term that would have been imposed. As for Polish law, the

use of alternatives to short-term imprisonment is only permitted if the lower statutory limit of imprisonment does not exceed three months and the penalty imposed does not exceed six months of imprisonment. In Kuwait, unpaid work for the Government or the community can be a substitute for short-term imprisonment.

30. While most legislation is restricted to the general demand for alternatives to short-term imprisonment, in some countries, for example, Finland and the United Kingdom, efforts to shorten sentences of imprisonment have led to an increasing number of short-term imprisonments.

31. The important change in sentencing practices concerning short-term imprisonment is reflected in statistical data received from Austria and the Federal Republic of Germany. Following the enactment of new penal codes (in Austria in 1975, in the Federal Republic of Germany in 1970), regulations for the replacement of short-term imprisonment were implemented. In the Federal Republic of Germany, periods shorter than six months were imposed for 20 per cent of all sentences of imprisonment in 1968; while in the period 1971-1980, periods shorter than short-term imprisonment (fixed at six months) were imposed for an average of only 1.7 per cent of all sentences of imprisonment. The imposition of fines increased from 63 per cent in 1968 to an average of 83 per cent in 1971-1980. Similar trends were reported for Austria, where decriminalization brought about a decrease in the total number of convictions after 1975. Moreover, short-term imprisonment dropped from 23.8 per cent in 1974 to 12 per cent in 1975. In countries where similar steps to reduce short-term imprisonment have not been implemented, the burden imposed by short-term prisoners on prison authorities is considerable. In Kenya, for instance, it was reported that 65 per cent of the total prison population are sentenced to short-term imprisonment, which causes overcrowding and severe disadvantages to prisoners who cannot be provided with meaningful treatment programmes because of insufficient time to elaborate them.

32. The use of admonitions, judicial warnings, and public reprimand is often restricted to juvenile offenders. Through public reprimand, the offenders are made aware of the social opprobrium attached to their misconduct; this instrument is mainly implemented in socialist countries, for example Bulgaria, the Byelorussian Soviet Socialist Republic, the German Democratic Republic, the Union of Soviet Socialist Republics and Yugoslavia. Public reprimand interferes in the personal sphere of the offender because the community is notified. Apart from the punitive effect, the community can also provide assistance to the offenders, who are frequently supervised by their collectives.

33. Similar measures are applied in the Scandinavian countries and in the United Kingdom, where extensive use is made of "absolute discharge", which differs from admonitions and judicial warnings in name only, and is applicable for both juveniles and adults.

2. Fines

34. Fines, mentioned above in connection with short-term imprisonment, are the most common alternative to imprisonment; they have universally gained in importance and are now becoming more widely used, covering a broader range of offences.

35. Fines have the advantage of being economical in terms of both money and labour and practical in terms of management and administration; they are also humane, as they inflict a minimum of social harm. However, fines can create inequalities by discriminating against the poor, for whom they are usually converted into imprisonment because of non-payment, thus equating justice with money. This disadvantage, particularly recognizable where fines are imposed as a lump sum payment, has been reduced in the legislation of several countries.

36. One way of overcoming this disadvantage is the day-fine system, which is, in principle, in use in a similar way in the Scandinavian countries, Austria, Bolivia, Costa Rica, Cuba, the Federal Republic of Germany, Hungary, Peru as well as other countries. Traditionally, the amount of a fine is left to the discretion of the court which, in turn, considers both the seriousness of the offence and the offender's financial resources; in the day-fine system, however, these two factors are assessed independently: the court assesses first the seriousness of the offence in terms of a number of day fines (within whatever upper and lower limits may be prescribed) and then it assesses separately the offender's means, in order to determine the amount of each day fine to be paid. The amount offenders have to pay, therefore, is in direct proportion to their net income. A tendency towards introducing the day-fine system is evident and the Governments of several countries reported that the day-fine system was in the process of being implemented.

37. To avoid a conversion of fines into imprisonment, some countries, for example, Bulgaria, Denmark and the Union of Soviet Socialist Republics, have already implemented legislative regulations according to which such a conversion is inadmissible. In the Federal Republic of Germany, uncollectable fines can be converted into community service. In other countries, the term of imprisonment that is substituted for unpaid fines is, in general, regulated by law or expressed in the judgement. According to the legislation of the United Arab Emirates, the term of imprisonment that is substituted for the fine in the case of non-payment must not exceed six months; moreover this term must not exceed one fourth of the statutory sanction if both imprisonment and fines are provided for by law. In Sweden and Finland, however, this process is left to the discretion of the courts, thereby allowing for the possibility of taking into consideration the reasons for non-payment. To avoid conversion of unpaid fines into imprisonment, countries often grant the convicted person a reprieve of payment or the possibility of paying the fine in instalments.

38. The importance of fines is borne out by further data submitted by the Japanese Government. In 1980 the alternative of fines was used in 2,062,282 (96.4 per cent) cases, of the 2,137,999 cases in which guilt was the final verdict (the figures include road traffic offences for which prosecutions were instituted). The proportion of the application of fines to imprisonment further increased in 1983 to 96.7 per cent. To shorten proceedings in cases of minor criminality, where only fines were imposed, an extensive use of "summary orders" was reported for 1982, for 99.9 per cent of the cases in which fines were assessed by the court of first instance.

39. Other pecuniary sanctions are provided for in the legislation of some countries that are applicable either at the pre-trial stage in connection with a conditional suspension of prosecution, or at the trial stage together with a suspension of sentence. In particular, instructions for the compensation of the victim, as in the Byelorussian Soviet Socialist Republic, the German Democratic Republic and Israel, apply only to juvenile offenders; in other

countries this possibility is also extended to adult offenders. In some countries, in the United Kingdom, for example, "compensation orders" are implemented also as primary sanctions. Recognizance, already mentioned above, is applicable also at this stage of proceedings, as in Kuwait.

3. Suspension of sentence or of enforcement, including probation

40. The legal instrument of suspension of sentence, under different legal terms, exists in the legislation of, and is applied in, most countries. In most cases, this alternative implies the conviction and sentencing of the offender, who is given the opportunity of not serving the sentence under certain conditions and directions. The term "suspended sentence" is sometimes also used in the sense that not only is the enforcement of the sentence suspended under certain conditions, but it is a declaration of guilt without the imposition of a sanction. The common feature of this alternative is that the offender must not commit another offence during the period of supervision. Such alternatives can, according to the legislation of some countries, also be combined with other obligations imposed on the offender. In most cases, such measures can be applied only when no danger to the public is recognizable. By committing another offence the offender has, according to the basic ideology of legislative regulations, demonstrated that the trust placed in him or her was not justified and that the enforcement of the sentence is necessary.

41. Even if the offender commits another offence within the period of supervision or does not comply with the conditions or directions in another way, some legislation does not provide for an obligatory and immediate revocation of the conditional suspension but applies various measures to avoid imprisonment, such as a judicial warning or an extension of the period of supervision. The Government of Sweden reported a further possibility, namely, the implementation of short-term custody for a short period of one to two weeks. This is not considered a custodial sentence and should only facilitate the application of appropriate measures. On the other hand, such short-term custody could exert an important influence over offenders by showing them the disadvantages of the deprivation of liberty to which they would be subjected should they further counteract the imposed conditions and thus provoke a revocation. The practical application of this system in Sweden is demonstrated by statistical data for January 1977, when 13,358 persons were under probation. Only 77 of these probationers were judicially warned; 589 were served orders to be taken into short-term custody but only 392 of the orders were carried out, and only in 31 cases was a revocation necessary.

42. Most legislation restricts the suspension of enforcement, taking into account the specific maximum term of imprisonment that may be replaced by a suspension of enforcement. In the legislation of the Ukrainian Soviet Socialist Republic, this period can be up to three years and in cases of offences committed through negligence, it can be up to five years. However, according to the legislation of several countries (for example, Austria, the Federal Republic of Germany and Switzerland) such limits (in those countries, generally of one year, or under specific conditions, two years) are not applicable to juvenile offenders, whose imprisonment can also be suspended in cases where longer prison sentences would be applicable. Other legislation, for example, in the Philippines, grants suspended sentences only to first offenders; and if this criterion is met, even for sentences of not more than six years and one day. In the legislation of some countries, for example, Italy, this criterion is sometimes modified by regulations providing for a suspended sentence even in the case of a second conviction if both the first and second sentences together do not exceed the maximum penalty limiting the use of this alternative.

43. The supervision periods of those under a suspended sentence differ considerably from country to country and range from one to five years. In Italy, where the maximum period is five years, juvenile offenders are given the advantage of a maximum term of three years.

44. Developments in different countries show that suspension of sentence or of enforcement is a highly effective and socially acceptable way of reducing imprisonment. By a statute enacted on 1 January 1983, the Byelorussian Soviet Socialist Republic and the Union of Soviet Socialist Republics extended this alternative, which was formerly restricted to juvenile offenders, to adults. In the Federal Republic of Germany and Japan, the extended use of suspended sentences is being discussed. The Government of Barbados reported that the implementation of suspended sentences for first offenders, sentenced to a maximum of one year of imprisonment, is being considered.

45. In Swedish legislation, convictions withholding the imposition of a sanction are termed "conditional sentences". Under the former Swedish penal code, a suspended sentence meant the suspension of enforcement of the already imposed sanction. But, according to the report of a national committee for the study of alternatives to imprisonment, almost no use was made of this possibility and therefore the committee proposed that suspended sentences should instead be called "penal warnings". The committee also proposed that "conditional imprisonment" should be introduced, a measure somewhere between an autonomously imposed probation and imprisonment. The committee foresaw this measure as consisting of the passing of a sentence of imprisonment together with the suspension of its enforcement. A conditional sentence thus seems to correspond to a suspended sentence in its original meaning. Similar measures were implemented in Portugal recently, namely, the non-application of any penalty for minor offences, if the damage has been compensated for and if conditions of general or of special prevention are met.

46. Statistical data show the importance of suspension of enforcement. In 1983, 58.8 per cent of all prison sentences imposed in Japan were conditionally suspended, which in absolute terms amounted to 45,409 out of 77,279. Similar trends for the use of suspended sentences can be observed in Finland, where the proportion of their use increased from 40.6 per cent in 1974 to 57.8 per cent in 1981. In Switzerland and in the Federal Republic of Germany, the proportion of suspended sentences amounted to 70 per cent approximately; in the Philippines, the proportion was 72.5 per cent for the period from January 1978 to June 1984; and in the Republic of Korea, it was approximately 41.5 per cent for the period 1981-1983. In recent years, conditional sentences in the Byelorussian Soviet Socialist Republic were, on average, applied to 22 per cent of all prison sentences; to avoid misinterpretation, however, this figure should be seen together with that for other non-custodial sentences, in particular the imposition of educational measures, which, in 1981, were applied in 55.9 per cent of all convictions.

47. Another significant alternative, falling largely within the wide scope of suspension of sentence or of enforcement, is probation, which mainly consists of supervising offenders in the community through social-work methods. In some countries, however, instead of sentencing, the court issues a probation order; in others, the court, on imposing the sentence, suspends its execution and simultaneously issues a probation order. In Israel, the combining of probation orders with other sanctions, such as fines or unconditional short term imprisonment, is also being discussed. Furthermore, some of the

alternatives are applicable not only during trial but also during the pre-trial stage. Such diversities in system and practice thus make an exact comparative analysis difficult. The probation method traditionally combines both care and control: care in the sense that it gives offenders the opportunity of acquiring insight into, and if possible overcoming, the personal and social problems associated with their criminal behaviour; and control, insofar as a probation officer supervises an offender's social and personal adjustment.

48. Supervision is usually carried out by professional social workers during probation and after-care services or in government-controlled private organizations. Additionally, para-professionals as well as volunteers with clearly defined functions, appointed from the residents of the area in which probationers live or from their co-employees, such as, for example, the working collective established in socialist countries, play an increasingly important role, with the full involvement of local and regional rehabilitation councils.

49. The increased involvement of private welfare organizations in the rehabilitation of offenders and, in particular, in the care of probationers has, however, financial implications for the budgets of judicial authorities, as they normally support these community-based bodies. The increasing costs arising from an increased application of community-based alternatives may, however, be offset to a certain degree by the decrease in the costs of institutional treatment and in the demand for the construction or adaptation of prisons. Costs can also be offset by assigning resocialization tasks to volunteers, as, for example, in Japan where some fifty thousand volunteer probation officers work under the supervision of professional probation officers. Such readiness on the part of volunteers to undertake social tasks, however, requires the widespread dissemination of information to the public on the advantages of alternative measures. The involvement of the public, in particular of those with whom probationers come in contact, can be, and has already been, achieved in some countries, particularly socialist ones, by entrusting special tasks to directors of enterprises, work collectives or labour unions, who assist probationers in complying with the obligations imposed upon them.

50. In other countries too, such as Singapore and Thailand, many citizens and private organizations are involved in the rehabilitation of offenders. A volunteer probation officer scheme was introduced in Singapore in 1976. After receiving sufficient training, volunteers are qualified as gazetted volunteer probation officers to take legal responsibility for the supervision of probationers placed under their personal care. By entrusting less problematic cases to such gazetted volunteer probation officers, full-time probation officers can concentrate better on the difficult cases. As of 31 December 1982, 338 volunteer probation officers had supervised 226 cases, which accounted for 25 per cent of the total number of cases. In Thailand, the volunteer parole officers scheme was introduced in 1977 with 48 volunteers, and by 1982 the number of volunteers had increased to 3,830. The scheme aims primarily at alleviating the problem of shortages in full-time after-care officers and at promoting the co-operation of the public with the correctional services. Volunteer parole officers who have received training organized by the Ministry of Interior, supervise parolees, in close co-operation with full-time after-care officers. A programme involving the conditional suspension

of prosecution was embarked on in the Republic of Korea in 1981. Juvenile offenders, whose prosecution is suspended, are placed under the supervision and guidance of selected volunteer rehabilitation workers. In 1984, 7,949 juvenile offenders were covered by this scheme and there were 3,807 rehabilitation workers throughout the country.

51. The complexity of the system in which the multifold probationary services, including professionals, para-professionals, volunteers etc., operate should not be disregarded. Trusted as they are by the courts, the services should be trusted by the offender and vice versa. Thus, probation officers might be placed in a difficult situation, namely, whether or not to report significant cases of misconduct on the part of the probationer to the courts and thus give grounds for a possible revocation.

52. In addition to the general obligation of probation officers to assist and supervise the probationer, many other measures are applicable in the legislation of different countries. Control is exercised through periodical reporting to the police, by assigning probationers to specific homes or treatment centres or, furthermore, by restricted liberty, whereby the offender is confined to a specific area, which he or she cannot leave, even for short periods of time, without the approval of the competent authorities. However, the assignment of probationers to special homes also has a care function, as offenders can be offered educational or vocational training facilities, even though this is not necessarily tied to their being accommodated in such homes. Apart from these generally applicable directives, the legislation of some countries provides special regulations for specific groups of offenders, for example, drug addicts, who are required to undergo a special medical treatment.

53. A combination of probation and short-term imprisonment for one, or, at the most, two months was established in Sweden, to allow time to make the necessary arrangements for residence, education, employment, medical treatment, compensation and so forth.

54. Regarding the revocation of suspended sentences, as a result of the commission of new offences, two different systems are implemented: either the old punishment is enforced in full, or the formerly suspended sentence is combined with the sentence imposed in the recent criminal proceedings. The second alternative is implemented in Norway and Sweden, for example, and the first in Finland. The first alternative may, in the case of several suspended sentences, lead to the disadvantageous result that, in the case of revocation, the term of imprisonment will be very long. In general, provisions are being discussed in many countries to relax the conditions for revocation of suspended sentences. Even if judicial action is deemed necessary, because of the convicted person's conduct during the probation period, measures are being considered in Japan to avoid imprisonment by the establishment of community-based residential facilities, "half-way houses".

55. Concerning the necessity to revoke the suspension of enforcement, the statistical data provided by the Philippines (see paragraph 46 above) demonstrated the success of suspended sentences. As to the Swedish situation, reference is made to the statistics given in paragraph 41 above, according to which the revocation rate was only 31 out of the 13,358 persons under probation.

4. Corrective or compulsory labour

56. A comparison of the various alternatives to imprisonment in different countries shows that certain dissimilarities are recognizable according to national social ideology. The socialist countries place particular emphasis on re-education by work. The measure that least limits personal liberty might be the obligation to accomplish unpaid work for the public welfare, reported by the German Democratic Republic. Two other alternatives were reported by the Byelorussian Soviet Socialist Republic, the Ukrainian Soviet Socialist Republic and the Union of Soviet Socialist Republics, namely, corrective labour and obligatory labour. In the case of corrective labour, the offender usually works in the place of his or her previous employment, assisted by the fellow workers' collective; the supervision period is a maximum of two years. Additionally, a certain deduction of earnings can be imposed. In the case of obligatory labour, the offender has to work in enterprises determined by the competent authorities and lives in special hostels under restricted liberty, i.e. he or she can leave the hostel only with special permission. Sentences imposing corrective labour are imposed in the Union of Soviet Socialist Republics in 20 to 25 per cent of all cases. According to the legislation of the Byelorussian Soviet Socialist Republic, this alternative is applicable only to first offenders for offences punishable by imprisonment for up to three years; or for up to five years in the case of offences committed through negligence. As such measures can be applied not only as primary sanctions, but also as obligations imposed together with a suspended sentence, it is difficult to make a clear-cut distinction between them.

5. Community service

57. Community service, as established primarily in the United Kingdom, is another alternative consisting of compulsory work. The work, which is set for a predetermined number of hours, has to be performed during leisure time and within a period of up to one year. Similar measures are under consideration in Thailand. Community service is certainly a more punitive sanction than suspension of sentence, particularly when the suspension of sentence or enforcement is, apart from the fixing of a probation period, not combined with other directives. Therefore, it is mostly not restricted to first offenders.

58. Community service reduces offenders' isolation by enlisting their services outside the criminal justice system, and trains offenders in social relations. In the United Kingdom, emphasis has been placed on associating offenders with voluntary workers and on tasks that both the offender and the community see as contributing positively to the well-being of others.

59. Community service, under different names and modalities, is also carried out in other countries such as Australia, France, Israel, Kiribati, Luxembourg, Norway, Sri Lanka and the United States of America, and, on an experimental basis, in Denmark* and the Netherlands. Its implementation is also being discussed in Barbados and India.

*A community service has been run on an experimental basis in Denmark since 1982 and in 1984 it was extended to the whole country. Whether it will become a permanent feature of the Danish criminal penalty system has yet to be decided.

60. In the course of its experimental implementation in the Netherlands, community service has been applicable both during the pre-trial and the trial stages if guilt is admitted or if, supposedly, an unconditional sentence of a maximum of six months will be imposed. Part of the community service may also be devoted to compensating the victim. In any case, it is considered desirable to relate the work assigned to the offender to the damage caused by the offence.

6. Other alternatives

61. Further alternatives reported by several countries, such as confiscation of personal property, suspension of driving licences or deprivation of rights and, in particular, of the right to follow certain professions or undertake certain activities, may certainly have a punitive effect. However, these alternatives can also be seen as security measures to prevent the offender from committing specific offences that were related to his or her former occupation, function, or licence. Such measures can be either primary or supplementary sanctions. As reported by the Government of Luxembourg, an increasing tendency to place greater emphasis on accessory penalties is apparent. For traffic offences, for example, a prolonged suspension of a driving licence is given priority over a prison sentence, which is reserved for the persistent offenders.

62. Another alternative to imprisonment was reported by the Government of Thailand. In cases where the actual punishment imposed does not exceed three months, and the convicted person has not been convicted previously, or only for a petty offence, the court may inflict "confinement" in lieu of imprisonment. This means a restriction of personal liberty as the offender is held in a predetermined place, that might even be his or her own dwelling place, but not in a prison.

63. Halfway-houses can also contribute to avoiding incarceration in a prison setting. While they are not an alternative to the loss of liberty, they are an alternative to imprisonment in large impersonal institutions with security implications that are often far away from the offender's place of residence. Such facilities can serve as "halfway-in" houses as opposed to "halfway-out" houses, thereby providing a bridge for offenders to return to their community (see paragraph 119 below).

64. According to the statistical data available, alternatives are replacing prison sentences to a considerable extent. In Bulgaria, in 1981, only 5.89 per cent of all sentences consisted of imprisonment for a period exceeding three years, which demonstrates the decrease in the crime rate. In the German Democratic Republic, corrective measures that do not involve the deprivation of liberty have increasingly been used and are presently applied in 75 per cent of all criminal cases. In Japan, suspended sentences, together with probation, were applied in 17 per cent of all cases in 1983. As for the length of imprisonment, substantial data were provided by the Government of Norway, where in 1978, 3,449 persons were sentenced to unconditional imprisonment; of these, 341 were sentenced for a period exceeding 3 years; 723, for periods of 6 to 11 months; 541, for periods of 91 days to 5 months; and 1,869 for a period of less than 90 days. In 1983, 136 persons were sentenced for a period exceeding 3 years, 540 persons for periods of 1 to 3 years, 865 persons for periods of 6 to 11 months, 484 persons for periods of 91 days to 5 months and 1,877 persons for a period of less than 91 days. These data have to be seen, however, in the context of the legal possibility of conditional release,

according to which a person serving a prison sentence usually will be released on parole after having served two thirds of the sentence, or at least four months of it. In Poland, prison sentences are imposed for 25 to 27 per cent of all offences. The effect of alternatives to imprisonment, as well as of the reduction of long-term imprisonment, is demonstrated by data submitted by the Government of Switzerland, where, in 1980, the average length of imprisonment was 5.2 months and only 19 per cent of convicted persons were sentenced to a period of more than one year. In 1981, in the Byelorussian Soviet Socialist Republic, in 22 per cent of all convictions, conditional sentences were imposed; in 12.8 per cent conditional sentences were combined with obligatory labour; 55.9 per cent of the persons convicted were sentenced to educational measures and only 0.2 per cent of the sentences entailed deprivation of liberty.

C. Post-conviction stage

65. The regulations described below are not alternatives in a strict sense, as they are only applicable once the prisoner has served a part of the sentence or has to serve part of the day in custody. These measures can, however, help to offset the damaging and dependency-producing effects of imprisonment.

1. Semi-liberty or semi-detention

66. The lightest form of custodial sanction consists of instruments such as semi-liberty or semi-detention that range somewhere between full and conventional incarceration, and full liberty among the community. At one end of this spectrum are those measures that merely mitigate the effect of a long prison sentence by permitting the offender, in the latter part of the sentence, to work outside the prison as a step toward resettlement into ordinary life. At the other end are those penal measures that restrict the offender's freedom to live where and how he or she pleases, to certain days or certain times only. The use of the terms semi-liberty or semi-detention, however, varies according to the legislation of different countries; sometimes the two terms are used interchangeably, sometimes they express different concepts.

67. In view of the broad range of measures indicated above, those that do not impose full-time incarceration at the very beginning are discussed first. Such measures are implemented, in particular, in Italy, Sweden, Switzerland and, partly, in the Federal Republic of Germany.

68. According to Italian legislation, semi-liberty is used for sentences not exceeding six months, as well as for longer terms of imprisonment, after the prisoner has served half of the sentence; it is, in any case, excluded for serious crimes. Under semi-liberty, convicts are allowed to spend a part of the day outside the prison to engage in their normal work or to continue their education or vocational training. The rest of the day is spent in special institutions, with the freedom to wear civilian clothing. Similarly, "optional conditional freedom" is applied in Portugal for prisoners sentenced to a term of imprisonment of more than six months. This has, however, to be distinguished from "obligatory conditional freedom", which may be granted to prisoners serving a term of more than six years after they have served five sixths of their sentence (see paragraph 119 below).

69. Swedish legislation provides for a work release which is similar to semi-detention: the convict is permitted to leave the institution for reasons of work, education or vocational training. However, an amendment of the current legislation is being discussed with a view to substituting semi-detention for work release, in which case the offender would, during working hours, lead a normal life in the community but would have to spend the night in an institution. A further alternative is also being discussed, namely, periodic detention: the convict would only spend weekends or the corresponding leisure time in the institution. Periodic detention is already known in Belgium and France and was recently introduced into Portugal, where it is applicable in cases of up to three months of imprisonment, which may be served over continuous weekends, though not exceeding 15 periods.

70. Similar reductions in the length of custody, even in cases of prison sentences, have been achieved in Botswana through the introduction of extramural labour: sentences of less than six months, or prison sentences penalizing non-payment of fines, can be served through the performance of supervised public service outside prison. The difference to the alternatives above seems to be, however, that convicts are not working at their former places of employment but in enterprises determined by the competent authorities. This extramural labour is similar to the enforcement of prison sentences in open institutions; the difference is that extramural labour is applicable from the beginning of the sentence's enforcement, while commitment to open institutions depends on the inmate's progress towards social rehabilitation and is thus applicable only in the last stage of the sentence's enforcement and according to certain classification schedules.

71. Fiji has a system of extramural labour similar to that of Botswana. Under this system called "extramural punishment", offenders sentenced to imprisonment for a period not exceeding 12 months can, if they give their written consent, be released from prison to undertake public work outside prison. Such prisoner-workers are entitled to a monetary allowance. Offenders who have served a prison sentence of more than twelve months, and who are within twelve months of their earliest possible date of release, are also eligible for extramural punishment.

72. To reduce short-term imprisonment in particular, Kenya has, through administrative measures, established an "extra-mural penal employment"; the convicted person has to perform public work for half a day in his or her home area, while residing at home, under the supervision of the provincial administration.

73. To decrease the hardship of custodial sentences, the legislation of some countries provides for partial liberation, as described above, at a later stage of the sentence's enforcement. Thus, prisoners who have served a part of their sentences in a closed institution are enabled to pursue their employment or educational or vocational training outside the institution but, as in the case of semi-liberty, have to spend leisure time in prison. This alternative is applicable in Italy, where semi-liberty in the case of prison sentences exceeding six months can be granted only after the offender has served half of the term of imprisonment (see paragraph 66 above).

74. Delayed semi-liberation is also implemented in other countries, for example, in Chile, Colombia and Sri Lanka. The common feature of all these measures, known as conditional liberty, work release etc., is that at a later

stage of enforcement of sanctions, prisoners have to stay in prison only during their leisure time and are able to work during normal business hours. An additional advantage is that prisoners can contribute to their families' livelihood.

75. Similar alternatives are also being implemented in Italy, such as entrustment to social service in cases where the maximum penalty is two and a half years, or three years in exceptional cases. This alternative can be granted after the prisoner has served at least three months of imprisonment, but is only granted in cases of a positive prognosis, based on the observation of the prisoner during the custodial period. After this period, the prisoner is released under social service supervision and on condition that he or she complies with certain directives concerning employment, residence, compensation of the victim etc.

76. The Government of Italy provided substantial statistical data on instruments of semi-liberty and entrustment to social service in 1981. The proportion of applications for semi-liberty and social entrustment compared to the proportion eventually granted or rejected, as well as the figures on revocation, are of interest.

| <u>Applications</u> | <u>For social entrustment</u> | | <u>For semi-liberty</u> | |
|---------------------|-------------------------------|--------|-------------------------|-------|
| | (No.) | (%) | (No.) | (%) |
| Submitted | 3,642 | (100) | 9,375 | (100) |
| Granted | 1,290 | (35.4) | 6,188 | (66) |
| Rejected | 2,014 | (64.6) | 2,836 | (34) |
| Revoked | 92 | (7.1) | 518 | (8.4) |

Where these measures had been applied, the rate of recidivism was smaller compared to that registered when other penalties were applied, thus demonstrating the effectiveness of these alternatives for special prevention.

77. In Sweden, the implementation of a similar alternative, such as civil commitment as practised in the United States, is being discussed. Primarily planned for specific groups of offenders, such as drug addicts or mentally abnormal offenders, this measure consists of an initial stage of imprisonment followed by a certain probation régime, such as specific treatment in out-patient clinics.

2. Conditional release or parole

78. The best-known alternatives to imprisonment used in the post-trial stage are conditional release and parole. Their common feature is that in the case of a positive prognosis (special prevention) and, according to the legislation of some countries, under the further condition that also considerations of general prevention be met, the prisoner is released under certain conditions including the supervision of his or her conduct for a specific period, generally from one to three years and, in exceptional cases, of up to five years. According to most legislation, this alternative is used after the prisoner has served either two thirds or one half of the term of imprisonment and, according to some legislation, also a minimum period, which can be from three to six months. The practical application of such a regulation can, however, be different. While some countries require a positive future prognosis, interpreting this condition in a rather stringent way, others generally grant release or parole after the minimum periods of imprisonment

have been enforced. Other States have restrictions regarding the maximum penalty for which conditional release or parole are applicable or the minimum period that has to be served.

79. In Italy, for example, conditional release is granted only after one half of the sentence has been served and after at least 30 months of imprisonment; it also depends on the rest of the sanction, which may not exceed five years. These conditions are further restricted for recidivists, who are granted conditional release only after having served three fourths of their sentence. In Denmark, the minimum limit for release has been lowered from four to two months.

80. Specific regulations are contained in the legislation of several countries with regard to sentences of life imprisonment. Conditional release from life imprisonment is often tied to specific regulations, not only in respect of the minimum period of imprisonment, which differs considerably (for example, from 15 years in the Federal Republic of Germany to 28 years in Italy) but also with respect to the length of the probation period.

81. As to the conditions imposed when the prisoner is conditionally released, the regulations are multifold. The most widespread is supervision by a probation officer. However, most of the conditions applicable to suspended sentences are also applicable to conditional release. Thus, in the socialist countries parole or provisional release are often tied to obligatory labour.

82. In Japan, parole was granted to 53.7 per cent of all prisoners in 1983. The Government of Sweden provided statistical material concerning recidivism of probationers: of first offenders, 31 per cent relapsed within one year and 37 per cent within five years; of offenders who had already served a prison sentence, 47 per cent relapsed within one year and 53 per cent within five years. In Denmark, 85 per cent of prisoners were released on parole, 10 per cent after having served one half of their sentence. In the Philippines 52.3 per cent were granted parole from 1976 to 1983.

3. Other measures

83. In many countries the legislation also provides other measures to reduce isolation and contribute to the prisoner's better and easier reintegration into society. These goals can be achieved by reducing security measures in the course of the enforcement of the sentence, thus improving the prisoner's contacts with the outside world. Such actions must not, however, conflict with considerations of public safety. Therefore, continuous observation of the prisoner by prison authorities is necessary to ascertain when the prisoner's liberty may be reinstated.

84. Most prison regulations provide for "classification" of the prisoner on admission into prison or at a later stage. A treatment schedule aiming at resocialization is then established, according to which the prisoner becomes, step by step, eligible for more freedom, in particular as regards the type of institution in which he or she is to be detained. The prisoner starts serving his or her sentence in a closed institution, and may afterwards be transferred to a semi-open, and later even to an open, institution.

85. To reduce the isolation of prisoners, several measures have been implemented in some countries. In Sri Lanka, selected prisoners who have less than two years to serve before their discharge are permitted to live in a Family Rehabilitation Centre with their families. They are employed in a governmental agricultural farm, which is located close to the Centre and are expected to maintain their families out of their earnings. Under the Penal

Colony scheme in the Philippines, colonists (prisoners) may be allowed the privilege of having their spouses and children live with them in the Colony. They may cultivate a piece of land to produce agricultural crops or engage themselves in the manufacture of handicrafts for sale. The proceeds produced during the colonists' own time are given to them for their personal use and 5 per cent of this amount is deducted for the colonists' recreation fund. A similar scheme is being implemented in Thailand.

86. As to the enforcement of prison sentences in open institutions, at present about 20 to 25 per cent of all prison sentences in Finland are served in them.

87. The liberation of the prisoner can also be achieved by other means, for example, prison leave, which is generally granted during the last period of the sentence, thus allowing the prisoner time to deal with personal problems, such as finding a job or accommodation. The conditions for granting leave differ and are related to the length of the prison sentence or the period that prisoners have to serve before they are granted such leave.

88. Apart from prison leave at the terminal stage of sentence, leave is also granted in special cases, for example, for family reasons, for examinations, for education or vocational training or for any kind of medical treatment. According to the prisoner's behaviour, personality and prospects, these special leaves are granted either with or without supervision by a prison officer, either in uniform or in civilian clothing.

89. Apart from this general measure of liberation, some legislation provides for other specific facilities, for example, in Italy through the measure of "anticipated liberty", whereby the term of sentence is reduced by 20 days for every six months of imprisonment served. However, this benefit depends on the prisoner's behaviour and progress and is not granted in cases of severe criminality. A similar benefit is also provided in Thailand through a "good-time allowance", whereby the prison sentence is reduced by three to five days for each month served in good behaviour.

90. Some legislation provides also for work-release programmes, whereby prisoners are allowed to work in their former job (or a new one) outside the prison during the last period of sentence. Thus they are also in a position to provide financial assistance to the family and to reduce the hardship already imposed on them by separation.

91. In China, prison leaves were usually granted to 5.5 per cent of the prison population.

92. Although prison leaves increase the danger of the prisoner's absconding, statistical data show the success of such measures. In the Federal Republic of Germany, the number of prison leaves increased from 95,041 in 1977 to 157,500 in 1980, while the proportion of absconding prisoners was reduced from 4.4 per cent to 2.8 per cent in the same period. In the period from 1977 to 1983, the application of prison leaves increased to 227,800, and, at the same time, the number of absconders dropped to 1.9 per cent. A similar result is demonstrated by statistical data submitted for Sri Lanka, where 99.8 per cent of home leaves and 91.8 per cent of work releases were successful.

93. Prison sentences may also be reduced by acts of grace, pardon or amnesty. Some of these benefits may be granted unconditionally, others on certain conditions, such as substituting conditional release under supervision for the remaining term of imprisonment.

94. In accordance with the legislation of the Union of Soviet Socialist Republics, the original sentence may be alleviated through replacement by exile, banishment or disqualification. These measures are applicable after half the sentence has been served and in cases of adequate resettlement and behaviour.

95. For all the alternatives, the opinion of the general public is of great importance. For this reason the public has to be - and, in practice, is in many countries - informed of planned and implemented legislation in order to promote its understanding and acceptance. Co-operation of the public in the use of alternatives as well as in the after-care of released prisoners is similarly important. An annual campaign takes place in Japan to acquaint citizens with the need for crime prevention and for promotion of rehabilitation of offenders in the community. Local autonomous entities, private organizations and volunteers participate in the campaign, using mass media and various communication measures to inform the general public.

96. The implementation of alternatives is also relevant in terms of costs. Many countries reported that the application of alternatives is reducing the costs of institutional treatment: in New Zealand it costs \$NZ 12,233 a year to keep a person in prison compared to only \$NZ 883 a year for non-residential detention. However, it is only when fewer staff are needed that costs will be significantly reduced. Initially, costs may increase as services for both custodial and non-custodial measures are maintained, but as patterns of sentencing and of custodial measures change, the long-term financial benefits of community-based measures may emerge.

II. TREATMENT OF OFFENDERS

A. Social resettlement

97. The goals of imprisonment, a punishment that in most countries is considered only as a last resort, are, in general, the re-education and social re-integration of the offender. However, these goals must be seen against the political and social background of each country. In China, imprisonment combines productive labour with ideological education. In the Federal Republic of Germany, imprisonment is aimed at a resettlement for life in freedom; Japan views self-reformation efforts as indispensable to correction and rehabilitation.

98. Some countries, for example, Kuwait and Malaysia, have also stressed the deterrent factor of imprisonment without, however, neglecting resocializing facilities applicable to prisoners.

99. To attain the goal of social re-integration, many different measures are applicable, according to various legislations. These measures should, according to views prevailing in Denmark, be implemented according to the following four main principles:

(a) Timing: all rehabilitation measures should be applied as soon as possible, in particular already at the pre-trial stage, for example assistance by probation officers;

(b) Proximity: all punitive measures should be enforced close to the offender's residence;

(c) Continuity: assistance should be granted starting at the pre-trial stage, during the enforcement of the sentence and even at the post-release stage;

(d) Co-ordination: all authorities involved, whether official or private welfare organizations, should keep in contact for the best results.

100. Similar ideas to assist the offender at all stages of criminal proceedings and enforcement, but also with a view to assisting the prisoner's relatives and dependants, are being considered in New Zealand under the term of "through-care". Thus, at the time of trial and during the initial period of the sentence, assistance should be given to prisoners and their families; during the enforcement of the sentence, possibilities for personal contacts by visits or prison leaves should be improved, and assistance should also be granted immediately after release.

101. The classification procedure, as implemented in nearly all countries, should not be restricted to an examination of the prisoner on admission but should be continually adjusted to the prisoner's progress. Thus a progressively graded system of classification could best meet the prisoner's interests. Such a system has been implemented in the Union of Soviet Socialist Republics, where prisoners may be transferred to corrective labour settlements where they can live together with their families, although under supervision.

102. Classification should also take into consideration possible personal abnormalities and thus provide for special medical, psychiatric and also vocational or educational treatment. Drug addicts should be specially treated; some countries have already established special institutions for them.

103. To achieve the goal of social resettlement, work is included in most institutional treatment programmes, without, however, neglecting the need for vocational training, which has gained in importance compared to the assignment of work. As for work, there are differences regarding the question of remuneration and its amount.

104. When remuneration is granted to prisoners, some countries have implemented special regulations according to which prisoners are paid far below the average market wages; of these small amounts, only part is made available to the prisoner, while most of the payment is set aside by the prison authorities and given to the prisoner on release. In Sweden, however, payment at average market wages has already been implemented in some institutions but the availability of the payment to the prisoner is restricted, and most of the earnings are used to assist the prisoner's family. This regulation has the advantage that the prisoner's family need not suffer even more from the prisoner's incarceration.

105. In some countries, where institutional facilities for work are insufficient, for example in Iraq, work may be performed also outside the prisons. Such possibilities can have a multifold positive effect: the work performed on modern technical equipment improves the professional knowledge of the prisoner, thereby reducing difficulties at the immediate post-release stage and feelings of isolation, and, moreover, the prisoner earns average wages. Ten per cent of the wages are deducted for the institution and the prisoner is given only 30 per cent, while the remaining 60 per cent are deposited in a savings account in the prisoner's name, to be paid at the time of release.

106. The question of unpaid educational and vocational training, as opposed to paid work, has been raised. In order to encourage the former, some countries are discussing the possibility of awarding a certain amount of money to prisoners undergoing training, even when no productive work is being performed. Such regulations already exist in Norway, where, however, subject to some variations, prisoners are paid a fixed amount a day whether they work, undergo training or are ill.

107. Continuation of education is one of the main goals of prison treatment, particularly in the case of juvenile offenders. This can be achieved by offering prisoners opportunities for self education. Compulsory continuation of education may, however, show quicker and better results. In some countries, such as Japan or the Union of Soviet Socialist Republics, secondary education is compulsory. Similar provisions exist in the German Democratic Republic, where - in addition to the completion of secondary school - prisoners up to the age of 25 years must attend general education classes. In Mauritius, educational facilities and a library are provided in all penal institutions and prisoners are encouraged to avail themselves of such opportunities. Also, full-time teachers, seconded by the Ministry of Education, conduct educational classes at the various penal establishments.

108. In addition to general education, vocational training that will enable the prisoner to lead a law-abiding life, according to personal circumstances, upon release is most important.

109. In many countries, where specific training facilities cannot be arranged for in prison, prisoners may be granted prison leave to continue both their vocational training and education, even academic education. However, security considerations must be taken into account.

110. Since certain training courses might last for a period that is not covered by the sentence imposed on the prisoner, some legislation, as in Finland, provides that such courses may also be attended after the prisoner's release.

111. To improve the prisoner's future prospects through educational or vocational training, the courses outside, as well as inside, the prison have to be of equal quality; this is often achieved by employing teachers who also teach outside prison. Furthermore, examination certificates must have the same value as those obtained in the outside world. An indication on the certificate that the courses and examinations were taken in prison facilities, even if the quality of training is considered equal, may be discriminating and thus counterproductive. Thus, in some countries, such as the German Democratic Republic, there is no such indication.

112. To promote the social resettlement of prisoners it is also necessary not to interrupt their personal contacts with the outside world, in particular those with relatives, although security reasons may require a restriction of these contacts. Contacts should also be extended to persons belonging to welfare organizations, who may act as an intermediary between prisoners and their families and contribute to preparation for release and eventually render assistance after release, thus following the concept of through-care (see paragraph 100 above). Apart from these outside contacts, isolation might also be reduced by the participation of prisoners in artistic or sports activities outside the institution, as for example reported by the Government of Iraq. Such activities are aimed at improving self-confidence and can contribute to the preparation for release and reintegration into society.

113. These personal contacts can be maintained through permission to receive letters and parcels or to send letters. However, direct personal contacts seem to be preferable. To improve such facilities, the introduction of day-time or overnight leaves without the escort of prison officials is being discussed in Japan. Here, the principle of proximity is of particular importance, as long distances between the prisoner's residence and the place of detention would impede such contacts. This disadvantage could be partly overcome by permitting visits by people other than relatives, although for the purpose of social resettlement, contacts with persons who will be in contact with the prisoner after release would be of greater importance. Finally, some prison systems, in the Netherlands for example, already provide for the possibility of making telephone calls; in Italy, this privilege is granted only with the special permission of the judicial authority supervising the enforcement of sentences.

114. Whatever privileges are granted to the prisoner, restrictions are necessary in terms of security and prison régime. However, most legislation provides for a progressive régime in favour of the prisoner.

115. In respect to contacts with the outside world, a specific group of prisoners faces particular problems, thus feeling discriminated against. These are the foreign prisoners with no roots in the country of detention. Their isolation is often increased by the barrier of a different cultural background or language; high travel costs often prevent visits from relatives. Thus specific regulations should be discussed and implemented, providing for visits of volunteers of the prisoner's nationality or language. Whenever relatives' visits are made, exceptional regulations should extend their duration, taking into account that usually the foreign prisoner is not in a position to receive visits whenever allowed by the prison régime, for example, once a month or week. Apart from such measures, means of international legal co-operation could also further the aims of penal sanctions and contribute to a decrease of the foreign prisoner's disadvantages, for example: the transfer of prisoners to their countries of nationality or domicile to serve their sentence, or even the transfer of criminal proceedings, whereby a repatriation could even be effected prior to the suspect's conviction.

116. Again, the importance of the co-operation of the public must be stressed, although this depends on how the public is made aware of the specific problems of prisoners, of the importance of prisoners' contacts with the outside world and of the public's contribution towards the rehabilitation of prisoners. Information is also necessary regarding the behaviour of the public towards the families of offenders and also towards offenders after their release. The family often faces financial hardship; personal discrimination would even increase the hardship they already experience. The same applies to the prisoner on release. Legally speaking, there is no discrimination based on legislative regulations; practice, however, may often differ considerably from the law.

117. To assist prisoners and their families, in particular through financial contributions, Spain established a Social Assistance Commission in 1983 that continues its assistance after the prisoner's release, for example, in finding a job. Financial aid given to the prisoner's relatives is also aimed at maintaining contact with them during the period of imprisonment. The number of cases covered by the Commission in 1983 were 4,160 and more than 7,000 cases are estimated for 1985; the budget was 75 million pesetas in 1983 and

182 million pesetas in 1984. The rendering of assistance to prisoner's families was also implemented by the Rehabilitation of Prisoners Authority Law in Israel, which entered into force on 1 April 1984. In the Republic of Korea, Voluntary Visit Committees are an important temporary bridge between institutions and the local community and also provide counselling for inmates and assistance in arranging employment after release. In Kiribati, the Government Welfare Officer visits prisons frequently and renders assistance, especially regarding the social circumstances facing a prisoner on discharge.

118. Additional measures and regulations are also quite important for the prisoner's rehabilitation, such as the question of the prisoner's religious beliefs or the organization of leisure-time activities.

119. The time of release is of crucial importance for the prisoner's prognosis. Thus, at the immediate pre-release stage prisoners should be granted prison leaves that will allow them to seek employment or housing. These prison leaves are also extended by committing the prisoner during the last period of the sentence to an open prison, or to half-way houses, in preparation for life in complete freedom. To give prisoners the opportunity to prepare for their liberation, Portugal has implemented an "obligatory conditional freedom", which may be granted to long-term prisoners who have served five sixths of their sentence. However, the assistance extended at this stage by official or private organizations should not cease on release but should be continued during the immediate post-release period. The legislation of some countries provides for assistance to the released prisoner in job finding or through accommodation in half-way houses; assistance is often also provided by official or private organizations or, as in the German Democratic Republic, by workers' collectives. All these measures should, however, be terminated within a certain period after the prisoner's release.

120. Special regulations concerning post-release assistance were reported by the Government of Thailand; prisoners who have served their sentences in open institutions, normally organized as big farms where they may live together with their families even while serving their sentences, are awarded a parcel of land for farming purposes. Post-release activities were recently also implemented in the Union of Soviet Socialist Republics.

121. A further post-release measure to reduce discriminatory behaviour on the part of the public concerns the criminal record. Several countries have implemented a system of restricted information on criminal conviction, followed by a complete deletion of the conviction from the criminal record. However, these measures depend on the severity of the offence, on the length of imprisonment and on the degree of recidivism.

122. As to the rehabilitative effect of alternative measures in crime prevention and treatment, China reported that 13 per cent of sentenced persons showed clear evidence of reform, while 83 per cent ceased their unlawful criminal behaviour.

B. Staff

123. While questions of treatment not only relate to resolution 10 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders 1/ but also to the Standard Minimum Rules for the Treatment of Prisoners, 2/ staff training and other questions concerning staff are also dealt with by the Code of Conduct for Law Enforcement Officials. Thus, these questions have already been discussed in a broader sense.

124. Positive results of regulations on treatment can only be achieved if the regulations are implemented by qualified personnel. Therefore, at the stage of prison staff selecting, methods and tests have to be used to ensure that the candidates match the high ideals of their employment.

125. The educational requirements for employment differ from country to country. For prison officers, some countries require a degree from a university or technical school. Candidates may not directly enter prison service but are, after an entrance examination, given both theoretical and practical training for a certain period.

126. Apart from basic training, in many countries, prison officers must complete further refresher or specialization courses.

127. As the training of prison staff by experienced teachers with adequate training facilities might be difficult, in particular for small countries, the exchange of prison staff and training abroad is of great importance.

III. CONCLUSIONS AND FUTURE ACTION

128. Contemporary developments in correctional theory and practice have brought about a shift of emphasis from institutional detention towards treatment in the community at large or in conditions of semi-liberty. This approach has been gathering momentum as a result of the accumulating evidence that has tended to erode belief in the efficacy of institutional experience in rehabilitating offenders. As societies revalue human behaviour and their responses to it, the trend to divert delinquents from prison to non-custodial treatment programmes is likely to receive further impetus in spite of an opposite trend in some countries, towards reviving retribution and fixed and longer sentences.

129. The United Nations began considering alternatives to imprisonment and social resettlement of offenders already before the Sixth Congress. Progress was further encouraged by the adoption by the Sixth Congress of the Caracas Declaration and, in particular, resolutions 8 and 10. ^{3/} Efforts in most countries continued to be directed towards reducing prison sentences. Alternatives to imprisonment were seen as one of the effective means of reaching this goal. Special consideration was also given to measures for the social resettlement of offenders.

130. Social resettlement is aimed at the re-socialization of offenders for a life in freedom in society, through community-based measures that are being successfully implemented in most countries, thereby enlarging the scope of non-custodial sanctions. Moreover, the application of alternatives does not lead, as is shown by the data provided, to any substantial increase of criminality, especially when such measures are properly planned and implemented, with the full support of the community and the public at large. Such measures should encourage further developments to reduce even more the application of sanctions involving the deprivation of liberty.

131. To secure the public's understanding, which is a prerequisite for the adoption of any new alternative measures to imprisonment, the public must be adequately informed and made aware of the importance of the new trends in

crime prevention and the treatment of offenders, the final goals of which - namely the reduction of criminality and recidivism - should be seen in a wider context within the socio-economic situation of each country as well as in a broader international perspective. For this reason and so as to achieve positive results in crime prevention, increasing international co-operation and the exchange of views are all the more necessary.

132. Recent developments clearly demonstrate the more frequent use of simpler and curtailed procedures with the aim of shortening proceedings for minor offences. Moreover, an increasing consideration of the rights of the victim can be observed. Thus, a settlement of claims for damages with the victim is often a condition for the application of alternatives.

133. As for the treatment of prisoners, the preparation for release, by, for example, improved vocational training, is gaining in importance. At this stage, the participation of the public is of great importance.

134. Even though the experience of countries in using a wide range of alternatives to imprisonment seems to differ, the underlying principles and relevant issues are not greatly different. In view of this observation and of the repeated call of previous Congresses for the formulation of guidelines, the Seventh Congress might wish to examine the desirability and feasibility of preparing a new set of minimum guiding rules for offenders under community treatment comparable with, and parallel to, the Standard Minimum Rules for the Treatment of Prisoners, by first articulating principles and standards for programmes that would constitute alternatives to imprisonment, and then closing with guidelines concerning the content of such programmes. In this effort, the different judicial and social systems, cultures and traditions in Member States would have to be taken fully into account, in consonance with basic human rights standards. In developing such common standards, the following considerations should be borne in mind:

(a) Imprisonment should be considered only when strictly necessary in view of the nature and gravity of the offence and the personality of the offender;

(b) The aims of criminal prosecution and sanctions can be achieved not only by the imposition of unsuspended prison sentences but also by the use of alternatives, the scope and variety of which have gained increasing importance;

(c) In the use of alternatives to imprisonment, care must be taken so as not to jeopardize public safety or arouse public alarm;

(d) Compensation of the victim should be considered as an important factor of criminal justice both in developing and applying alternative measures to imprisonment;

(e) The general public should be better informed of:

(i) The importance and advantages of alternatives and their proven efficiency and usefulness;

(ii) The fact that alternatives are effective and humane sanctions with no negative effects on public safety;

(iii) The necessity of active public participation in the successful application of alternatives;

(f) Whenever possible, the use of alternatives should be linked to related social services to assist the offender's social re-integration;^{*}

(g) Social contacts of prisoners with the outside world, including social welfare organizations, should be promoted in accordance with the Standard Minimum Rules for the Treatment of Prisoners. In the case of foreign prisoners, their transfer to their country of nationality or domicile should be considered with a view to facilitating their resocialization (see draft model agreement on the transfer of prisoners); 4/

(h) Efforts should be made to decrease the enforcement of prison sentences imposed because of the non-payment of fines, taking into account particularly the reasons for non-payment. Instead of substituting imprisonment sanctions, alternatives other than fines, for example, community service, might be applied;

(i) In no case should the use of alternatives interfere with, or delay, other measures such as depenalization and decriminalization;

(j) International co-operation should be established for the supervision of foreign offenders who, after having been conditionally sentenced and conditionally released, have returned to their countries of nationality or domicile. Such co-operation is needed as there is a tendency to apply alternatives for foreign offenders to a lesser degree due to the fact that there might be no or only little opportunity to observe the convicted persons' behaviour after their return to their home country; 5/

(k) The exchange of information, including statistics, at the international level, should be continued and improved in order to facilitate the planning of alternatives on the basis of experience elsewhere;

(l) The regional and interregional institutes in the field of crime prevention and criminal justice should be encouraged to strengthen their programmes further so as to promote the formulation and application of effective and humane alternatives to imprisonment.

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. 13-14.

2/ Economic and Social Council resolution 663 C (XXIV) of 31 July 1957.

*For details, see "Principles on linking the rehabilitation of offenders to related social services: working paper prepared by the Secretariat (A.CONF.87/12).

3/ 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. 3-4, 11-14.

4/ Formulation and application of United Nations standards and norms in criminal justice (A/CONF.121/8), chap. III, A.

5/ Ibid., chap. IV, E.



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**ALTERNATIVES TO IMPRISONMENT AND MEASURES FOR THE
SOCIAL RESETTLEMENT OF PRISONERS**

Report of the Secretary-General

Addendum

This addendum contains new information received from Canada, Suriname, Trinidad and Tobago and the United Kingdom of Great Britain and Northern Ireland, to be inserted in chapters I and II, as indicated below. Since the latter country had replied previously, the total number of replies to the inquiry increased from 62 to 65 (see para. 5 of A/CONF.121/13).

Chapter I: Alternatives to imprisonment

In Canada, there has been during the last decade a concerted search for innovative alternatives to imprisonment: suspension of prosecution of selected offenders on the condition that they participate in a community project; use of community service orders or restitution orders as complete sentences and not only as an adjunct to imprisonment; bail verification providing for realistic conditions for bail and, if required, for community supervision to avoid remand in custody; fine option programmes that permit the offender who would normally be imprisoned for fine default to perform community service instead; and post-trial victim-offender mediation, in which a settlement is communicated to the judge for incorporation in the sentence. Some of these measures have been implemented in some provinces on an experimental basis, others are awaiting changes in federal legislation.

In Suriname, certain criminal proceedings can be discontinued at the pre-trial stage by the prosecution, which can also reprimand the offender or grant conditional discharge. At the trial stage, alternatives to imprisonment include the use of fines, suspension of sentences and probation. At the post-conviction stage, conditional release or parole are granted under certain conditions, and measures are taken to reduce isolation, such as prison leave and work outside the prison.

In Trinidad and Tobago, pre-trial custody is being reduced by recognizance, bail and guarantees provided by individuals. In cases of juvenile delinquency, alternatives to imprisonment include remand in the custody of parents or other responsible adults, social services or community-based organizations. In addition, probation services have been in operation and gradually expanded since 1948.

In the United Kingdom, alternatives to imprisonment are increasingly being considered. As regards the pre-trial stage, a scheme is being developed to apply time limits to the preliminary stages of criminal proceedings up to the start of trial. In addition, some experimental projects are in operation or being proposed to divert offenders from the criminal-justice process, for example, through community-based mediation between victim and offender. At the trial stage, the introduction of a sentence of intermittent custody is being examined, that is, part-time imprisonment served on certain days of the week only. The use of community service orders, probation and bail hostels (where an offender is required to reside as a condition of a probation order or of being allowed bail) is continuously being expanded. In the post-conviction stage, when prisoners are assigned to prison, their needs are being considered with a view to reducing isolation. Moreover, the Government is providing financial support to voluntary organizations engaged in the rehabilitation of offenders.

Chapter II: Treatment of offenders

In Canada, current policy allows inmates to correspond freely with almost any person and affords ample opportunity for visits. There are various half-way houses available to prisoners released on unescorted temporary absence or day parole. All federal penitentiaries have employment programmes. Academic education and vocational training are provided in many institutions. Upon release, inmates can apply to various employment centres sponsored by private agencies, which also provide supervision to some of the released prisoners in the community.

In Suriname, the Department for the Care of Delinquents, which has good contacts with other social services, undertakes and co-ordinates efforts for the social resettlement of offenders.

In Trinidad and Tobago, the prison authorities, in co-operation with the Prison Welfare Agency and the Probation Service, are responsible for the resocialization of offenders. As there is no parole system, prisoners must serve the full term of their sentence with remission, however, for good conduct.

In the United Kingdom prisoners are afforded ample facilities for outside contacts with a view to their social resettlement. The importance of vocational training is fully recognized by the provision of a wide range of courses. Full-time education is obligatory for those under school-leaving age. Careful preparations are made to ease a prisoner back into the community, and all appropriate supporting agencies are involved as far as possible.

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