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CRIMINAL JUSTICE AND POLICE SYSTEMS: MANAGEMENT AND IMPROVEMENT OF POLICE AND OTHER LAW ENFORCEMENT AGENCIES, PROSECUTION, COURTS AND CORRECTIONS; AND THE ROLE OF LAWYERS

Working paper prepared by the Secretariat

Summary

In pursuance of Economic and Social Council resolutions 1993/32 and 1994/19, the present document reviews major developments in the management of criminal justice, including the privatization of crime control and other most recent legal and technological developments in justice systems that have an impact on policing, prosecution, courts, prisons and the role of legal defence. The document covers the questions of new forms of policing, changes in prosecutorial practices, complex criminal trials, and special groups of prisoners, as well as the use of non-custodial sanctions as one of the measures to assist in alleviating overcrowding. Finally, it reviews issues of international cooperation in criminal justice management and information technology.

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INTRODUCTION

A. Legislative background

1. On the recommendation of the Commission on Crime Prevention and Criminal Justice at its second session, the Economic and Social Council adopted resolution 1993/32, in which it approved the provisional agenda for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, which included the substantive topic "Criminal justice and police systems: management and improvement of police and other law enforcement agencies, prosecution, courts and corrections; and the role of lawyers". Subsequently, the five regional preparatory meetings for the Ninth Congress considered in detail the four substantive items of the provisional agenda (items 3-6). On the recommendation of the Commission, the Council adopted resolution 1994/19, in section I of which it took note with appreciation of the reports of the regional preparatory meetings* and invited Member States and other entities involved, in their preparations for and their discussions at the Ninth Congress, to take into account the conclusions and recommendations contained in those reports. In sections II-V of that resolution, the Council made a number of recommendations on each of the substantive items of the provisional agenda. The present report reviews current developments concerning item 5 of the provisional agenda, entitled "Criminal justice and police systems: management and improvement of police and other law enforcement agencies, prosecution, courts and corrections; and the role of lawyers" (topic III).

B. Substantive background

2. The first half of the 1990s has been marked by serious political instability in many parts of the world, as well as widespread economic stringency and hardship. These phenomena have been associated in many countries with increased levels of reported crime, including organized crime, higher levels of public anxiety about crime, and demands for more punitive treatment of offenders. As a consequence, many countries are experiencing unprecedented levels of prison overcrowding as well as delays and congestion in the criminal justice process, including unacceptably high numbers of accused persons being held in pretrial detention. International and transnational crime is increasingly being recognized as a source of many problems, both within and between countries. There is concern in many quarters that the human rights of accused but unconvicted persons, as well as of convicted offenders, are not being fully respected, contrary to established international standards and norms on the humane and efficient processing of offenders.

3. At the same time, many positive developments may be seen in police and criminal justice systems in many countries. Those developments include new approaches to improving relations between the police and the community, new styles of organization of criminal justice agencies, improved planning and more comprehensive application of information technology, as well as further innovation in relation to alternatives to imprisonment. There have also been a number of controversial criminal justice developments, the most sensitive of which has probably been the privatization of some aspects of policing and corrections and the electronic surveillance of offenders. Higher levels of international cooperation in criminal justice management

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*See the report of the Asia and Pacific Regional Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Bangkok from 17 to 21 January 1994 (A/CONF.169/RPM.1/Rev.1 and Corr.1), the report of the African Regional Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Kampala from 14 to 18 February 1994 (A/CONF.169/RPM.2), the report of the European Regional Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Vienna from 28 February to 4 March 1994 (A/CONF.169/RPM.3 and Corr.1), the Report of the Latin American and Caribbean Regional Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at San José from 7 to 11 March 1994 (A/CONF.169/RPM.4), and the report of the Western Asia Regional Preparatory Meeting for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Amman from 20 to 24 March 1994 (A/CONF.169/RPM.5).

have also been seen in recent years; they represent a new dimension in criminal justice operations that has emerged in the wake of the growing transnationalization of crime.

I. CRIMINAL JUSTICE AND POLICE SYSTEMS

A. Traditional view of the criminal justice process

4. Much of the discussion on operations of the criminal justice system assumes that they involve three or four separate elements that are deliberately designed in such a way as to maintain the highest possible level of independence within each element. Whether a criminal justice system is seen as comprising three or four elements depends upon whether or not prosecution is counted as a separate and independent element. If it is, and that would seem to be the prevailing view, one that was emphasized at the regional preparatory meetings, then there are four elements: police, prosecution, courts and corrections. Individual cases are seen as passing from one element in the series to the next, thus justifying the term "criminal justice process". Outside this process, but within the preview of justice administration, there is still the role of lawyers; those who defend the perpetrators but also, at times, exercise on behalf of their clients other functions, including private prosecution.

5. Even though this model of the criminal justice process sees each element as independent, it is widely accepted that criminal justice systems should incorporate a number of checks and balances that are designed to ensure that the total system and its constituent elements operate according to the law and in the best interests of society at large.

6. At the same time, however, the reality of practical operations is that the balance of power within the criminal justice system is different in every country and that within each national criminal justice system, there are historical changes in the roles those agencies play or have played. This traditional view of criminal justice may have some attraction for criminal justice practitioners, as within broad limits it allows them considerable freedom to decide how to do their work, but it increasingly fails to recognize the realities of crime and justice and also makes it difficult to impose any concept of comprehensive management on the total system.

7. One of the realities of crime and justice not recognized by the traditional view of criminal justice is that the majority of incidents of unlawful behaviour are not reported to the police, as is shown by national criminal justice statistics, and at the international level, by the United Nations surveys of crime trends and operations of criminal justice systems. The reality of the criminal justice process in most countries is a picture of, at times, a massive attrition of cases from one stage to the next, to the extent that it might be claimed that the people who are processed through to the corrections end of the system are the unlucky symbols of how society would like to deal with its offenders. The offenders may serve the purpose of showing how the criminal justice system is designed to operate, but neither the performance of the system nor the way in which offenders are treated can be expected to make any significant impact on the level of crime in the community.

8. Another significant development changing the picture of criminal justice operations concerns cases involving transnational organized crime. Criminal justice systems are increasingly dealing with such difficult legal cases and actions, which are at times extraterritorial in nature, and the verdicts on them may have unprecedented international ramifications.

9. The traditional view of criminal justice is also unrealistic in that it fails to recognize that social control is maintained by many organizations and agencies other than those that constitute the formal system. For example, in most societies there are many times more law enforcement officials, or persons whose primary

task is the enforcement of the law, than there are members of the police service. Law enforcement officials include taxation officials, health inspectors, customs and excise officers, private security guards and agents, and many other occupational groups that have some responsibility for the enforcement of specific areas of the law. Furthermore, the courts are not the only agencies that determine guilt or innocence and impose penalties for wrongdoing. In most societies there are numerous tribunals, commissions and quasi-judicial bodies, such as those controlling lawyers and medical practitioners, which are more pervasive in their influence over human behaviour than are the criminal courts.

10. The most serious shortcoming of the traditional view of criminal justice systems, however, is the difficulty it causes for a management approach. If each of the elements maintains its traditional independence, an improvement in planning, coordination and efficiency is unlikely to be achieved as the impact of changes in one element on the others will not be fully recognized. At the Asia and Pacific Regional Preparatory Meeting for the Ninth Congress, it was pointed out that the inability of the agencies concerned to expedite the apprehension, prosecution and incarceration of the perpetrators of crime had contributed to an erosion of public confidence in the criminal justice system (A/CONF.169/RPM.1/Rev.1 and Corr.1, para. 49). An increase in police numbers may well be expected to increase the workload of prosecutors and the courts, while laws imposing harsher penalties may well be expected to increase the number of offenders undergoing one or other form of correctional supervision. Conversely, ineffective correctional programmes characterized by high numbers of escapes, prison disturbances and high recidivism would undoubtedly have an impact on the work of the police, prosecutors and the courts. If confidence and rationality is to prevail in criminal justice, an appropriate balance must be struck between the independence of the elements and overall planning and coordination.

B. Alternative approaches

1. Integrated criminal justice systems

11. In many parts of the world, Governments have experimented in recent years with alternative approaches to the traditional view of criminal justice, the most common of which have involved the establishment of coordinating or overreaching justice agencies. One manifestation of this approach has been to replace separate government departments controlling police, law and corrections with a single omnibus department of justice. One variation of this approach is to bring all of the relevant agencies other than the police into a single department, the exclusion of the police being justified on the grounds that they must not be seen to be closely controlled by the Government. But the closer meshing of criminal justice elements will inevitably be the subject of some criticism.[1] Another variation is the establishment of criminal justice commissions whose task it is to plan, coordinate and monitor the operation of the total system. Yet another variation is for Governments to establish committees or councils of ministers responsible for each criminal justice element. Under this arrangement, an attorney general, with responsibility for the courts and prosecution, a minister for police and a minister for corrections would be required to meet regularly, perhaps together with senior officers, to discuss developments and plans in their portfolios in order to ensure that a reasonable degree of coordination was being achieved. Whatever the new arrangement is, there is a need to evaluate it, to find out whether it has brought about the expected improvement. The Ninth Congress may wish to consider this point in discussing possible policy recommendations of interest to States that have not yet introduced such changes.

2. New styles of law enforcement

12. Police forces are always the largest single element in criminal justice systems, even though, as indicated above, they are by no means the only law enforcement agencies in any society. Because of the numerical dominance of law enforcement, however, any changes in the ways in which law enforcement agencies are organized and do their work are of great significance to the total criminal justice process, and there have been

many changes in different parts of the world. A notable trend in many countries has been to reduce the total number of law enforcement agencies by amalgamating police forces, for example, in order to reduce administrative costs, to improve the quality of recruitment and in-service training and to raise professional standards. Another trend in the opposite direction is to create specialist agencies, such as national crime authorities, with greater powers than traditional police forces. Similarly, in recent years there have been greater efforts to achieve regional and global cooperation, the International Criminal Police Organization (ICPO/Interpol), and the newly established Europol being examples. While it may be too early to take stock of those new developments, the Ninth Congress may wish to exchange preliminary observations on them in the context of shifting powers of particular law enforcement agencies, as well as in the context of cost reduction and overall improvement in criminal justice performance at the domestic and international levels.

13. Another major trend in policing that has created a great deal of interest in many parts of the world in recent years has been the establishment of closer links between the police and the communities that they serve. That development has taken a number of different forms and names but is most commonly known as community policing.* This term has been applied to any procedures or practices in policing aimed at reducing mistrust and antagonism between the police and the general public. Dividing police into small groups and assigning them to specific areas or locations is a favoured method of encouraging police officers and members of the public to get to know each other on a personal basis. It is assumed that with closer contact, the police will be less likely to be seen, as they are in some developing countries, as "the enemy", and therefore the public will be more likely to report suspicious matters to the police and will, in general, be more cooperative with them.

14. Other examples of police working more closely with the public include the establishment of neighbourhood watch committees, greater emphasis on policing beats on foot or by bicycle than on patrolling in cars, and generally encouraging in cities and suburbs the styles of policing that have been developed in villages and small towns. Furthermore, modern police officers are increasingly being seen as crime prevention advisers, perhaps working closely with community groups and committees, rather than as officials whose principal task is to catch lawbreakers after the event.

15. A further trend in policing that has emerged in the past two or three decades has been the various efforts to increase the professionalism of the police, as illustrated by the promulgation of codes of conduct, or ethical standards aimed at fostering a more reflective and sensitive culture in police organizations (see the Code of Conduct for Law Enforcement Officials (General Assembly resolution 34/169, annex), and the Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials (Economic and Social Council Resolution 1989/61, annex)). Some of the codes of conduct have been specifically directed at the highly controversial issue of the use of lethal force by the police (see the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials[2]). The trend towards higher professionalism has also been shown by a marked increase in educational standards for police officers in recent years. Some police forces even require all recruits to be university graduates with degrees in relevant disciplines such as law, psychology or forensic science.**

16. Another new development in modern policing that has provoked considerable interest is a procedure known as family group conferencing. This is a procedure whereby youthful offenders, with their extended families, meet with their victims and the victims' families under police supervision to resolve their differences

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*For a comparative and historical review of "community policing", see Robert R. Fieldmann, *Community Policing: Comparative Perspectives and Prospects* (New York, Harvester/Wheatsheaf, 1992) and Dlip K. Das, *Policing in Six Countries and the World: Organizational Perspectives* (Chicago, University of Illinois at Chicago, 1993).

**Some police forces have developed their own in-house research capacity, particularly with regard to projecting and monitoring crime trends and planning crime prevention: others rely on the assistance of external research institutes (A/CONF.169/RPM.5, para. 48).

and to reduce the probability of recidivism. Theoretically, the procedure is intended to facilitate the reintegration of the offender into the community through the shaming process that occurs in the conferences.[3] While it is too early for the full impact of that approach to be measured, early attempts at its evaluation have been uniformly encouraging.[4]

17. While closer police/community relations are invariably welcomed and seen as progressive, it is not always recognized that they tend to be associated with higher levels of reported crime. A police force that is trusted and respected will always be given more information by the public than one that is not seen in such a positive light. This illustrates the proposition that assessments of the efficiency of police forces should not be based on whether or not reported crime rates are rising or falling.

18. Of much greater relevance to the measurement of police efficiency is whether or not the police are meeting the expectations of the community that they serve, in terms of ensuring safety and reducing fear of crime. As was noted at the European Regional Preparatory Meeting for the Ninth Congress (A/CONF.169/RPM.3 and Corr.1, para. 95), violations of the human rights of the accused and the detained may result from the feeling of helplessness experienced by the police in combating organized crime, which is particularly sophisticated and most difficult to investigate. Thus, there remains the old dilemma of how to increase the effectiveness of law enforcement without infringing on the human rights of offenders.

19. There are a variety of situations in which the public is more or less sensitive to the violation of human rights by the police. Perhaps the police are most vulnerable to criticism and legal action at the community level when they are dealing with an alleged perpetrator who is a member of the community. Cases involving foreign perpetrators, including those that are handled by the police in deportation proceedings, are less likely to lead to the least criticism or legal action. Police feel that there is much less public scrutiny of their actions, although the law makes no such distinction. As was noted at the Western Asia Regional Preparatory Meeting for the Ninth Congress, violating human rights might appear to satisfy the immediate requirements of law enforcement, but it carries a medium- and long-term risk of creating an adversarial relationship between the police and the public (A/CONF.169/RPM.5, para. 51). Moreover, the international reputation of the police force will suffer if it discriminates against, for example, foreign perpetrators, who enjoy the least legal protection.

20. The Ninth Congress may wish to direct its attention to this dilemma and, in the light of national and international experiences, it may wish to review the question of effective policing. In particular, consideration could be given to the role and accountability of all agencies involved in handling alleged offenders, the independence of the complaint procedures, and the authorization and use of restraint equipment and methods. More attention should be given to the practical aspects of transferring foreign offenders, bearing in mind the legal instruments in that area, including the Model Treaty on Extradition (General Assembly resolution 45/116, annex), the Model Treaty on the Transfer of Proceedings in Criminal Matters (General Assembly resolution 45/118, annex), and the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (General Assembly resolution 45/119, annex).

C. Privatization option

1. Law enforcement

21. Attempts to provide the most economical and efficient law enforcement service have led many Governments to consider inviting private business to undertake a number of law enforcement tasks. This can be an extremely controversial and divisive issue, but there is growing evidence in many countries that not only can private security satisfactorily assume many policing functions previously thought to belong exclusively to public police forces, but it is increasingly doing so, with tacit if not explicit public approval.[5] It would seem that the privatization of law enforcement functions is occurring almost by stealth rather than

as a matter of public policy. It may be one of the reasons for the observation that public authority is gradually being eroded, a matter of great concern that has legal implications for both criminal justice officials and the public at large.*

22. Some of the specific police functions that have been transferred to the private security industry in some countries in recent years include transporting prisoners to and from courts, providing security during court hearings, and guarding embassies and government buildings, using either static posts or mobile patrols. There is also a trend in some countries towards police forces engaging private forensic scientists to assist in the investigation of serious crimes, rather than relying solely on the forensic services provided by government-funded laboratories.

23. Another trend involves contracting private agencies to provide complete police services to particular communities, such as retirement villages, holiday resorts and large business enterprises. In a similar development, police services are provided to indigenous communities, where members of the communities themselves are appointed or elected police officers or peace-keepers. All of these developments have aroused considerable interest, largely because of the questions that they raise about accountability, legality and ethics. But the high priority given in developed countries to achieving the optimum level of cost-effectiveness would seem to suggest that privatization of law enforcement may continue in the future. In developing countries, private policing is necessitated by the insufficient protection offered by official police; in those countries, it is an even more forceful symbol of the undermining of public authority than in developed countries.

2. Prosecution

24. In many societies, the prosecution of some persons accused of serious offences has always been undertaken by lawyers in private practice, while the prosecution of persons accused of less serious offences, heard in the lower courts, has been undertaken by public prosecutors or by the police. Private lawyers are generally engaged if the cases are particularly complex or controversial and when the public prosecution service has more work than it can handle. Thus, there has always been some degree of privatization in prosecution, but the question of whether all prosecutions should be handled by private lawyers will probably not be resolved to the satisfaction of all those concerned. In several countries, prosecutions are undertaken by qualified lawyers, either private or employed by the Government, rather than by the police, but in other countries, this might be seen as being not only prohibitively expensive but also contrary to a legal tradition that allows private prosecutors broad powers in performing their functions.

3. Courts

25. There is probably less scope for privatization in the criminal courts than there is in the other elements of the criminal justice system. Nevertheless, the development of alternative dispute resolution programmes, particularly for less serious offences, and of new techniques such as family group conferencing, described in paragraph 16 above, provide opportunities for private-sector involvement. The techniques of mediation, conciliation and arbitration, which have been well developed in the civil law environment, may well be more widely applicable in criminal law. For example, it is possible that some of the serious problems that complex and lengthy cases involving fraud and other white-collar crime pose for courts could by reduced, if not entirely eliminated, by applying principles developed in conciliation and arbitration hearings. In particular, if the accused is a corporation or business entity rather than an individual person, the fundamental aim of the

*See the working paper submitted by Miguel Alfonso Martinez to the Subcommission on Prevention of Discrimination and Protection of Minorities, entitled "Study of the issue of the privatization of prisons" (E/CN.4/Sub.2/1991/56), and the outline prepared by Claire Pally pursuant to Subcommission decision 1992/107, entitled "The possible utility, scope and structure of a special study on the issue of privatization of prisons" (E/CN.4/Sub.2/1993/21).

court hearing must be not to impose punishment but to achieve an outcome that is in the interest of society as a whole and to reduce the probability of recidivism.

4. Corrections

26. The privatization of prisons, especially in developed countries, is being considered as a new response to an old problem. Public discussion has been heated and emotional, and the titles of some of the publications reveal the degree of *angst* felt by the commentators.[6]

27. The privatization of prisons has also been under study by the Subcommission on Prevention of Discrimination and Protection of Minorities and has evoked considerable interest (E/CN.4/Sub.2/1991/56 and E/CN.4/Sub.2/1993/21).

28. Some experts on the subject would not accept any degree of privatization in corrections. They see the application of criminal penalties as essentially the responsibility of Governments. Other experts however, draw a distinction between the allocation and the application of punishment. They cautiously accept some degree of privatization in the application of punishment, provided that the allocation or imposition is solely in the hands of the Government and that there is scrupulous monitoring of standards and rigorous evaluation of effectiveness, which still does not seem to be the case.[7] In the view of some Governments, the phrase "privatization of prisons" does not imply the surrender of authority by the public service but could be analysed as associated contracts with the public penitentiary service, corresponding to an experimental form of modernizing penal administration (E/CN.4/Sub.2/1993/21, para. 24).

29. There are many different levels or degrees at which privatization in corrections is currently being pursued. At the lowest level, it involves no more than correctional administrators or the officers in charge of individual prisons entering into contracts with private businesses for the supply of goods or services, such as construction material or security devices. Such contracts also involve the supply of food or clothing, or medical, dental and educational services. With arrangements such as these, the full control of prisons continues to lie with government authorities. At a higher level, privatization contracts are given, for example, for the provision of security at night, when all prisoners are in their cells or dormitories. This type of arrangement does not require the private operators to have any direct contact with prisoners, except in emergencies. In such cases, however, the question of the use of force and firearms, both in the light of domestic regulations and the United Nations standards and norms in criminal justice, would need to be thoroughly reviewed.

30. At an even higher level, private contractors are engaged to take total responsibility for the management of prisons that were designed and constructed by government authorities. This arrangement is what is normally understood to be privatization in corrections. It is necessary under this type of arrangement for the contract to include a great deal of detail about the treatment of prisoners in order to ensure that health standards are maintained and that human rights are respected. The contract must also specify the monitoring arrangements to be used and the appropriate responses to emergencies such as escapes, riots or deaths. These conditions also apply to the highest level of privatization in which the private operator is contracted to design, construct, manage and finance a prison under the supervision of government authorities. These requirements may exceed those in state-run prisons. In this connection, a central question in the debate about privatization in corrections is whether or not privatized prisons are less expensive or better than those operated by the Government. This question seems simple at first glance but becomes increasingly difficult when considering the apportionment of the cost of central administration and emergency services. To date insufficient independent research has been undertaken to answer this question conclusively. Similarly, it has not been established that inmates in privatized prisons have higher or lower rates of recidivism, nor has it been possible to establish that prisoners from any other prisons have higher or lower rates of recidivism. Finally, there is

no impartial evidence that private entrepreneurs have vested financial interest in keeping the prisoners under lock and key, as earlier release (parole) would deprive such entrepreneurs of their profits.

31. In a few years, if privatization still continues, there may be further changes in the scope of public authority in justice administration and more evidence on which to draw informed conclusions. The review by the Ninth Congress of the processes underlying those changes may throw more light on the privatization issue and enable its pros and cons to be assessed. In particular, the Ninth Congress may wish to consider possible controversies in criminal policies: first, the diminishing responsibility of the State for people who, under its authority, are deprived of their liberty but serve their sentences in privately run institutions; and secondly, possible changes in sentencing policies as a result of privatization and if, despite these possible changes, the State is in a position to continue to exercise overall management in operating correctional institutions.

II. PROSECUTION

A. Independence and accountability

32. A widely debated and perhaps ultimately insoluble issue in relation to the prosecution stage of the criminal justice process is to whom should prosecutors be answerable. Should they have the independence of judges of superior courts or should their decision-making be reviewed by a separate authority, perhaps the minister responsible for the operation of the courts? The sensitivity of these questions is indicated, for example, in the brief and tentative reference to the role of prosecutors in the report of the Western Asia Regional Preparatory Meeting for the Ninth Congress (A/CONF.169/RPM.5, para. 54): "With regard to the role and functions of prosecutors, it was felt by some participants that such persons should enjoy a certain degree of authority and immunity. In particular, they should be vested with the power to refrain from prosecution for legal or substantive reasons, subject to judicial review." This statement draws attention to a number of the difficulties that are evident in relation to the independence and accountability of prosecutors (see the Guidelines on the Role of Prosecutors[8]).

33. The role of a prosecutor is essentially to determine if an offence has been committed (on the basis of information supplied by law enforcement authorities), to decide what charge or charges should be laid, against whom, and to decide whether or not there is sufficient credible evidence to prosecute the matter in court. These are challenging questions, but the work of prosecutors becomes even more challenging if the person who may be charged is a prominent public figure, such as a politician, or if there is widespread public emotion expressed about the offence. In some jurisdictions the work of the prosecutor is further complicated by the practice known as plea bargaining,[9] whether formally recognized or not. In other systems, the authority of prosecutors seems to be greater than that of judges as the courts acquit a small proportion of the cases that are brought before them. In most countries, however, the courts exercise a form of indirect control over prosecutors by dismissing cases that are judged unproved or improper. That form of control or accountability does not routinely cover cases where the prosecutor decides to refrain from prosecution, and it is on this issue that some form of oversight has been suggested. One possibility would be for highly controversial cases to be considered by a panel of independent prosecutors, perhaps chaired by a retired judge of a superior court. National laws and practices must have developed some solutions that could be shared and discussed at the Ninth Congress.

34. In all countries, regardless of their legal traditions, growing attention is being paid to the fact that, like the police, prosecutors are faced with case-loads that they cannot handle in a timely fashion.[10] Unlike the police, however, which adapt more dynamically to changing demands, the prosecution service does not seem to benefit as much from improvements in criminal justice management, let alone from the computerization of information and its system-wide processing. Thus, the prosecution contributes to an old saying that

"justice delayed is justice denied" and to the dissatisfaction of the public with criminal justice administration. It is, important therefore, for the Ninth Congress to consider examples of ways to overcome the problem of prosecutors not being able to deal with cases in a timely fashion.

B. Presenting the views of victims

35. One positive development in justice administration is the presentation of the views of victims by prosecutors. A major development of the past one or two decades has been the growth of the victim support movement in many parts of the world. The movement has been largely motivated by the need to ensure that both the emotional and the financial needs of victims are met. Another driving force of the movement, however, has been the need to ensure that victims are treated with respect and dignity by the courts, and the recognition that the attention and resources given to offenders often tend to exceed those given to victims. In many countries, the movement has become an effective lobby, putting pressure on Governments to enact legislation that provides adequate compensation for victims of crime and that sometimes provides for the lawful presentation to the courts of documents known as victim impact statements. Such statements, which are prepared by a psychologist or social worker, are intended to bring to the attention of the court the reality of the suffering or harm experienced by the victim. It is generally the prosecutor who is responsible for presenting victim impact statements to the court.

36. Theoretically, this additional role for prosecutors could create difficulties for them, as the primary task of the prosecutor is to represent the State or the entire community and not the needs of an individual victim. Furthermore, in most legal systems the sentence or penalty to be imposed on the offender is determined by the objective facts of the case rather than the subjective reactions of the victim. Nevertheless, when prosecutors have been required to accept this additional responsibility they have generally done so in a professional and appropriate manner, and there is no doubt that victims feel more satisfied with court proceedings if their point of view has been heard. The Ninth Congress may wish to exchange views and experiences on this modern trend in prosecutional practice, which should be made more common in domestic legislation.

C. Prosecuting political and commercial figures

37. As indicated in paragraph 33 above, prosecutors may face particular difficulties if the alleged offenders to be prosecuted are powerful political figures; for example, a minister in a Government in office, or persons of significant business or commercial authority. In the case of the latter, the alleged offender may not be an individual but a company with a budget as large as or larger than that of the State in which the charges are to be laid. In such cases, the assistance and support of experienced prosecutors from larger jurisdictions would clearly be appreciated, but the central challenge remains. It is imperative in such cases to ensure that the impression is not created that some people or agencies are so powerful that they are immune from prosecution, conviction or punishment. The integrity of the total system hinges on prosecutors not flinching from their duty in such cases. It is essential, therefore, that Governments give appropriate moral support to prosecutors without in any way reducing their capacity to make decisions independently of political considerations.

38. This is a sensitive issue in every country, but positive experiences in this area could be shared at the Ninth Congress. Such experiences might centre on practical steps for dealing with the prosecution of prominent figures with a view to ensuring the accountability and transparency of criminal proceedings. It may be recalled that the Ninth Congress will have before it for its consideration a draft international code of conduct for public officials (A/CONF.169/PM.1/Add.1, annex II), which might be helpful in monitoring the extension of accountability and transparency, to all criminal justice officials, including police officers, judges and prison officials.

III. COURTS

A. Judicial independence

39. The question of how independent and how accountable judges and magistrates should be is similar to that discussed in relation to prosecutors in paragraphs 32-34 above, but there is less likely to be any opposition to the notion of complete judicial independence with absolute guarantees of freedom from political interference. That notion is at the core of the Basic Principles on the Independence of the Judiciary,[11] adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and welcomed by the General Assembly in its resolution 40/146. Regardless of whether judges are appointed or elected, there is little disagreement with the notion of complete judicial independence, but there is much room for debate about how such appointments should be made.[12] There is also increasing discussion about the extent to which it is appropriate for the judiciary to reflect the composition of the community in terms of gender, race and social class.

40. With regard to judicial accountability, it is generally believed that the hierarchy of the courts, together with an appeal procedure in which judicial decisions may be reviewed by the next level of the courts, ensures an adequate level of accountability. Also the law itself, which is interpreted and applied by the judiciary, is derived from the legislature, which may amend the law as it wishes. Thus, members of the judiciary are accountable to both the law and their senior colleagues, and the legislature, theoretically expressing the will of the people, is paramount. The Ninth Congress may wish to examine this increasing important global standard and discuss practical ways in which judicial independence contributes to the more humane and efficient treatment of offenders and victims.

B. Mediation and conciliation

41. The courts are traditionally seen as the centre-piece of the criminal justice system, and are generally characterized by high status and authority and freedom from political interference. That image has not changed, but there have been a number of developments in recent years that have resulted in the judicial systems in many countries adapting to meet new demands and pressures. One of those developments has been the diversion away from the courts of many relatively routine cases, resulting in formal court hearings being reserved for the more serious and complex cases.

42. One such diversionary scheme is family group conferencing conducted by the police for juvenile offenders and their victims, described in paragraph 16 above. There are many other similar schemes with similar objectives. The term "alternative dispute resolution" has been coined to describe non-judicial procedures aimed at settling criminal or civil matters without requiring the parties concerned to appear in court. In contrast to court hearings, such procedures are generally informal and inexpensive and do not involve undue delays. For these reasons, alternative dispute resolution is more attractive to the parties involved than an appearance in the courts.

43. Some, but not all, of the alternative procedures involve mediation and conciliation between disputing parties, including offenders and their victims. In such situations, a trained counsellor endeavours to guide the disputing parties to a resolution, sometimes drafting contracts that specify the appropriate reparation or restitution to be made. The reparation or restitution may be in the form of money or services to be performed. The evaluation of the results of programmes in which offenders and victims meet each other has been generally favourable compared with those of traditional court hearings.[13]

44. Mediation and conciliation procedures have also been used in commercial disputes involving large amounts of money. Especially in cases where the disputing parties are located in different parts of the world,

it has been found to be both expedient and less costly to use alternative dispute resolution procedures rather than seeking resolution through the courts.

45. There are also numerous other alternatives to custody, ranging from fines to attendance in education or therapy programmes and, most significantly, to community service programmes. Measures that should be used are listed in the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (General Assembly resolution 45/110, annex).[14]

C. Complex criminal trials

46. There are a number of different types of criminal trials that can cause problems for the courts because of the complexity of the issues and information to be presented. The first of these are commercial trials, or trials of persons accused of white-collar or corporate crimes. The main problem with trials of this type is the enormous volume of information that is to be admitted as evidence. If the defending lawyers in such cases are determined to dispute every piece of evidence, trials of this type can take several months before they are concluded. Furthermore, if a jury is involved, it is highly unlikely that the average jury member will be able to understand all of the information and, therefore, jury members might be more inclined to vote for an acquittal. Even an experienced judge may have difficulty in mastering all of the information presented in this type of case. Quite frequently such cases are even more complicated because the central charges relate to conspiracy involving all persons accused in the case rather than direct criminality.

47. There are two approaches that may be pursued to make this type of case more manageable. The first is for the judge to insist before the trial on the highest possible level of discovery (or disclosure) of facts not in dispute in order to reduce the number of issues to be formally settled in the court. The second is to devise a means of simplifying the actual presentation in court. Some pioneering work has been done in that area with videotaped evidence, including video images of signatures, cheques and other documents, together with carefully composed charts indicating the flow of money or the relationship between companies or individuals.

48. The Ninth Congress may wish to hear the experiences of countries that have done pioneering work in this area, including the effects those experiences have had on speeding up criminal proceedings, reducing expenditure and arriving at the objective truth in the court's verdict.

49. A further type of criminal trial that may cause some problems for the courts is that in which a number of accused persons are charged with terrorist offences. In many of these cases, there are political overtones, but the practical difficulties arise mainly from the need to maintain security. In extreme cases, it may be necessary for the trial to be conducted in a prison, especially if it is considered too dangerous to transport the accused persons through public streets, but such a solution is likely to result in allegations of secrecy and denial of public justice. A further complication may arise in such cases when one (or more) of the accused persons is willing to give evidence against the others and therefore must be held separately from them. A partial, but by no means complete, solution to those problems may be found in the improved design of courtrooms and in their proximity to pretrial detention facilities, but in times of political crisis it is sometimes also necessary to depart from normal procedures.[15]

50. Compared with the period before the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in 1990, the changing crime scene in many countries presents courts with more complex cases and demands that cannot be handled through alternative resolution techniques or through the negotiation of controversial lenient measures, as in cases involving white-collar offences.

51. Cases involving corporate deviance and organized crime may differ as far as their perpetrators are concerned, but not in their complexity. Therefore, the courts face enormous difficulties in processing such cases, especially when sophisticated financial transactions and foreign defendants are involved. It could be

argued that court action reflects the limited capability of national criminal justice systems to bring to trial offenders who are outside their jurisdictions and whose assets are relatively secure abroad.

52. Finally, spectacular court judgements authorizing national law enforcement authorities to act in other countries underline how determined some Governments are to tackle the problem of transnational organized crime.[16] At the same time, however, they show how inadequate existing international judicial assistance is and how vulnerable to criticism any decisive action is that goes beyond the narrow established limits.

53. Because such issues create unprecedented difficulties in administering justice, the Ninth Congress may wish to consider exchanging views on the best ways and means of dealing with them.

D. Pretrial detention

54. In many countries, the court systems must accept responsibility for the fact that there has been a significant increase in the numbers of persons held in custody while awaiting trial. This is a matter of concern as research in some parts of the world has shown that the majority of the accused persons who are remanded in custody are not sentenced to imprisonment as they are either released on bail at a later time, are acquitted or receive a non-custodial penalty.[17] Concern over this situation is increased by the fact that in some countries the conditions in remand centres or pretrial detention facilities are less congenial than they are in prisons occupied by convicted offenders.* This concern has led the Secretariat to publish practical guidelines on administering detention in a handbook of international standards relating to pretrial detention.[18]

55. From the managerial perspective, increasing numbers of pretrial detainees should be dealt with by the courts using two separate strategies. First, the courts should exercise their authority and release more accused persons on bail rather than remanding them in custody; and secondly, the courts should attempt to reduce the period of pretrial detention by increasing their efficiency. The first strategy has been the part of broad policies related to the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules). The second strategy may require more courts and judges, but that is preferable to taking no action at all.

IV. CORRECTIONS

A. Overcrowding

56. At the regional preparatory meetings and subsequently at the third session of the Commission on Crime Prevention and Criminal Justice, the view was often expressed that the most persistent of all problems in justice administration involved corrections. That view is supported by the periodical surveys on the implementation of the Standard Minimum Rules for the Treatment of Prisoners.** Under the question of corrections, two major, frequently interrelated, problems still remain: excessive prison populations and overcrowding. As the results of the United Nations survey of crime trends and criminal justice operations show, both in developed and developing countries, there are high prison rates (A/CONF.169/15). Whereas in developed countries, the high prison rate may be an intended outcome of criminal policy and may, in some cases, be associated with a commensurate investment in building new prisons, in many other countries, both developed and developing, that may not be the case.

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*For a global review, see Human Rights Watch, *The Human Rights Watch Global Report on Prisons* (New York, 1993).

**Inquiries on the implementation of the Standard Minimum Rules for the Treatment of Prisoners were addressed to Governments by the Secretary-General in 1967, 1974, 1980 and 1984 (A/CONF.43/3, annex; A/CONF.56/6, annex I; A/CONF.87/11/Add.1; A/CONF.121/15; and A/CONF.144/11). The sixth survey is currently under way. Its results will be presented to the Commission on Crime Prevention and Criminal Justice at its fifth session, in 1996.

57. The seriousness of the situation is graphically portrayed in the report of the Latin American and Caribbean regional preparatory meeting, in which it is stated that in some countries in the region the number of untried inmates was excessively high (A/CONF.169/RPM.4, para. 57) and that, in many countries in the region, prisons were human hells marked by overcrowding, idleness, drugs, rape, murder and administrative corruption (A/CONF.169/RPM.4, para. 59). Those were probably two of the most forthright statements about criminal justice to be reported recently at a United Nations regional preparatory meeting; however, no less dramatic accounts of the prison situation have been presented by non-governmental organizations, in particular, Amnesty International, Minnesota Advocates for Human Rights and Human Rights Watch. It is, therefore, quite disturbing to observe that human rights assistance in directly improving prison conditions is currently rather scarce, as if investing new funds in that area were contrary to the goal of reforming the criminal justice system in democratic societies.

58. In almost any country, but particularly in countries in Africa, Asia and Latin America, there are prison structures requiring fundamental renovation and expansion, and there are imprisonment policies that continue to send offenders to prisons in spite of the inhumane conditions in those prisons and in spite of the existence of alternatives to imprisonment in general. Bearing in mind the overcrowded conditions of prisons throughout the world, the Ninth Congress may wish to examine the underlying causes of the persistence of traditional sentencing policies in some countries despite the fact that new policies on alternatives to imprisonment have met with success in other countries. Concrete situations that have led such new policies to become well entrenched in, for instance, Scandinavian countries may serve as good examples to be followed by managers and policy makers in other countries, taking due account of their different conditions, as well as the overriding humanitarian objectives of the United Nations crime prevention and criminal justice programme.

B. Minority groups in prison

59. In recent years, there has been increasing interest in and concern about the treatment of minority groups in prisons. In many countries in different parts of the world, attention has focused on indigenous people, who are frequently overrepresented in prisons and are not always provided with programmes and activities that are appropriate to their culture. In contrast, women are always underrepresented in prison and, because of their small numbers, may not always be offered participation in the full range of programmes that are available to men in the same prison system. Also, women prisoners in some countries have claimed that their particular health needs are not being met and that adequate provision has not been made for their role as mothers.

60. The situation of foreign prisoners is similar to that of members of small religious groups who are in prison, perhaps for reasons of conscience.[19] In addition, consideration should be given to pretrial detainees or unconvicted prisoners who may not be considered members of a minority group as in some countries they comprise well over half of the total prison population.

61. Another matter of particular concern is the presence of children and young people in prisons designed for adult offenders. This situation occurs in a number of countries where attempts to build institutions for juvenile offenders have been unsuccessful, as was mentioned in the report of the African regional preparatory meeting (A/CONF.169/RPM.2, para. 69). Even though the worldwide trend is towards deinstitutionalizing juvenile justice, in most countries and jurisdictions there is a need for a small number of juveniles to be held in secure care and it is essential that that group should be kept in facilities designed for that purpose.

62. At the other end of the age scale, an emerging problem for correctional administrators is the increasing frail and elderly segment of the prison population. This phenomenon has been noticed in a number of countries and seems to be a direct result of legislation or sentencing guidelines that allow judges little or no discretion in finding alternative ways of dealing with elderly offenders. Also, recent restrictions on the use of parole and early release programmes have resulted in such prisoners not being discharged from prison as

readily as might have been the case in the past. Many of the common assumptions about how prisons should be run are found to be inappropriate when applied to prisoners who might otherwise reside in homes for the elderly.

C. Health issues

63. According to a study on international prison health care conducted in 1993 by the Alliance of Non-governmental Organizations in Crime Prevention and Criminal Justice,[20] medications were readily available in 37 of the 47 prison systems on which information was provided. Medications were ordered by doctors or medical officers in a majority of the systems. Fourteen prison systems had prison pharmacies. The remaining systems relied on local hospitals or community pharmacies or on relatives to supply the medications needed. Basic health and nutrition were significant problems in eight countries and 15 prison systems. In a majority of the prison systems, a general assessment, including medical and psychiatric screening, was administered to prisoners upon their arrival. In 17 of the prison systems, prisoners with communicable diseases were treated in prison hospitals, in outside hospitals in 2 of the prison systems, and in 25 of the prison systems both prison hospitals and community hospitals were available to such prisoners. The physicians employed in most prison systems worked for either the prison system or the local health department. Likewise, nurses or other health-care workers were employed by the same offices and were available in most systems. Health-care training was offered only to the professional staff in 16 of the prison systems, to officers in 20 of the prison systems and to prisoners in 7 of the prison systems. No health-care training was given in 10 of the prison systems and none of the systems studied offered health-care training for family members. Prisoners exhibiting signs of mental illness were treated in prison in 24 of the prison systems; community facilities were available to such prisoners in nine of the prison systems; and in seven of the prison systems, both in-house and community facilities were available to such prisoners. The health-care standards varied among the prison systems. Most followed the standards set for their communities; however, in many of the prison systems studied, the health-care standards were in need of improvement. In all of the prison systems examined in the study, families of ill prisoners were not allowed to assist them while they were incarcerated.

64. A matter of particular concern to health workers and prison officials has been the rise of the human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS) in prisons in recent years. As HIV is transmitted, *inter alia*, through anal intercourse and through the use of unsterile needles to inject drugs, behaviours common in most prison systems, there is a real reason to believe that HIV/AIDS will spread faster in prisons than in the community at large. This can only be confirmed by extensive testing for HIV in both the community and in prisons, a course of action that few people would recommend. There is evidence that the incidence of HIV/AIDS seems to be considerably higher in prisons and jails than in the community, but that evidence is not conclusive as testing is not as common in the community as it is in prisons,[21] and few people are tested even in prisons.

65. Many prison systems have introduced extensive education programmes for prisoners and staff in order to increase awareness of the spread of HIV/AIDS. The World Health Organization guidelines on HIV infection and AIDS in prisons, developed in cooperation with the Crime Prevention and Criminal Justice Branch, offer a comprehensive basis for future efforts. The most practical method for preventing the spread of HIV/AIDS may be to make sterile needles and condoms available to prisoners, but this raises serious problems for government officials as it may appear to be condoning illegal or undesirable behaviour. There are also certain operational difficulties. How can prison staff, who are charged with the responsibility of ensuring that illicit drugs are not brought into prisons, issue sterile needles to be used by prisoners for injecting those drugs? One recent alternative approach involves providing for conjugal visits with a view to lowering the level of anal intercourse among prisoners, thereby reducing the incidence of HIV/AIDS.[22]

66. Finally, the highly political and emotional issue of deaths in custody has been the subject of wide discussion and considerable research in a number of countries.[23] The interest in the subject has led to recognition of the need for suicide prevention programmes and training for all custodial staff, and to increased awareness of the need to make adequate provision for the physical and mental health of prisoners. Often people who attempt suicide feel overwhelmed by their problems. Prison staff cannot make such problems disappear, but they can offer support.

67. The Ninth Congress may wish to consider all approaches and policies involved in the treatment of inmates infected with HIV/AIDS and to recommend action in that area. Other issues related to health and accommodation in prisons should also be deliberated, as general improvement in the standard of health care and accommodation will enable advances to be made in dealing with prisoners infected with HIV/AIDS rather than vice versa.

D. Prisoner programmes

68. It is being increasingly recognized throughout the world that the experience of imprisonment must be constructive if the likelihood of further criminal behaviour is to be reduced. That goal can be achieved by providing education, training and treatment programmes specifically designed for that purpose. Such programmes must deal with the real needs of prisoners, instead of conforming to the usual school curricula, and must take into account the fact that prison populations are constantly changing. For those reasons, many prisoner programmes could be delivered by correspondence courses so that individual prisoners could proceed at their own pace. That approach, however, overlooks the motivational value of participation in groups, therefore a mixture of individual and collective activities would be more desirable. Correspondence courses are also unsuitable for the majority of prison populations; namely, prisoners with middle-range intelligence but with lower levels of education and poor self-discipline.

69. Apart from formal and informal educational courses providing for example, basic literacy and numeracy and courses providing training in a vocation or trade, one major development in prisoner programmes in recent years has been the provision of discussion or treatment groups dealing with such issues as anger management, drug, alcohol and nicotine addiction, sexual abuse and other personal and social topics of direct relevance to the offenders' criminality. That approach is seen as having considerable potential, but it has not yet been adequately evaluated.

E. Community involvement

70. Over the past three or four decades, significant changes have been made in the correctional programmes of many countries in order to avoid isolating offenders from the community unless it is absolutely essential to the maintenance of public safety or to the protection of the individual offender. In many countries, probation, parole, community service orders, attendance centre orders and a host of other measures widely accepted by the courts and the general public have been introduced to such an extent that there are many times more convicted offenders serving correctional orders in the community than there are in custody. There is also an increasing number of offenders serving orders that involve some loss of liberty that is less than full confinement. Those orders include weekend imprisonment, periodic detention and home detention, a relatively new development.

71. In addition to this restructuring of the practice of corrections, there has also been a concerted effort in many countries to reduce the social isolation of prisons themselves. That is being done by encouraging visits into prisons by groups and individuals concerned with religion, sport, culture and various aspects of education. Conversely, in enlightened prison systems, prisoners are increasingly being granted short periods of leave to look for jobs or simply to visit their families prior to release. An increasing role is being played

by non-governmental organizations in that area that support official community-related programmes with initiatives at the grass-roots level.

72. All contacts with the community run the risk of being abused. Visitors smuggling drugs into prison pose serious problems for prison administrators, who cannot search every prisoner or visitor.

F. Electronic surveillance

73. The electronic surveillance of offenders may be a relatively inexpensive and effective supplement to the traditional methods of supervising persons on probation or parole. It has also been used in some jurisdictions where accused persons are released on bail while awaiting trial. In some countries, however, after an initial period of enthusiastic support, the measure has fallen out of favour with the judiciary and other criminal justice practitioners.[24] One of the unresolved questions surrounding the use of electronic surveillance has been how to determine who should be placed on this type of regime. Some advocates of the measure see it as appropriate for relatively minor offenders such as those who fail to pay parking fines, while others see it as only appropriate for extremely serious offenders, such as murderers or persons who have repeatedly committed sexual offences, who are about to be released on parole after a lengthy period of incarceration. With such a diversity of views, it is perhaps not surprising that the measure has not yet gained universal support.

74. Possibly the widest application of electronic surveillance in the future will be as an adjunct to home detention, as the random checking of the offender's location by computer-initiated telephone calls is certainly less expensive than physical visits by police or custodial officers. Technologically sophisticated systems that involve the transmission of radio signals by a device worn by the offender may be used, but usually the offender is required to wear a wristband that cannot be removed and that incorporates a unique identifying signal that is transmitted by a telephone. A new development that involves the use of voice identification may reduce the costs considerably.[25] At present, it must be acknowledged that the future of both electronic surveillance and home detention is uncertain. While it is inevitable that technological progress will continue and new control techniques will be introduced, it would be important for the Ninth Congress to consider on the one hand, whether those developments tend to dehumanize the handling of offenders. On the other hand, consideration should also be given to the widening gap between techniques and policies in criminal justice management in developed and developing countries, as exemplified by electronic surveillance.

V. THE ROLE OF LAWYERS

A. Defence of the accused

75. Lawyers play many different roles in criminal justice systems but probably their most noble and humane role is that of defender of people accused of criminal offences. In playing that role, lawyers contribute greatly to the access to justice of members of the community. According to article 11 of the Universal Declaration of Human Rights, adopted by the General Assembly in its resolution 217 A (III), everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. It is doubtful, however, if there has been unfailing respect of that right in any country. Some countries have reached the point where that right is respected if the offence is one that is likely to result in a sentence of imprisonment. While that position may be too costly for many developing countries, there should be no hesitation about the Government providing legal representation to a defendant if the sentence could involve capital or corporal punishment.

76. There are many different approaches that have been developed to ensure that accused persons receive the legal advice and assistance that they need. One traditional approach is for the legal profession itself to provide some of its time and resources, without charge, to defend the poor, as a matter of charity and goodwill. The result is rarely enough to meet the demand, however, and some Governments have created a position known as the public defender, an experienced lawyer who, with the assistance of junior lawyers, defends as many cases as possible. In other countries, Governments have given contracts to private law firms to provide legal representation for accused persons unable to hire their own lawyers.[26] In some countries, elaborate and expensive legal aid schemes, sometimes with separate schemes for indigenous minorities, have been established, but few of the persons working in those schemes would claim that they have adequate resources or personnel. A central issue in the provision of legal defence for poor people accused of committing offences is the quality, or level of skill, of the defence that is provided, as it is sometimes suggested that defence lawyers paid for by the Government are generally less experienced, motivated and competent than private lawyers or prosecutors.

B. Law reform and the advocacy of change

77. Because of the unique training that lawyers have received and because of the experience they gain in the courts, when appearing for either the defence or the prosecution, lawyers are well placed to take an active part in the reform of the law and the criminal justice system. As in most countries the majority of lawyers are independent of the Government, they are also in a strong position to publicly advocate any changes that are needed in the system in the interest of justice, humanity or efficiency. Lawyers can become the conscience of the community as far as criminal justice is concerned.

78. Law reform can be managed in a number of different ways. A Government can change the laws of a country in any way it likes, provided that it continues to comply with international standards and obligations; and it may do so with or without any structured or formal advice. If a Government feels that there is a need for advice on law reform that goes beyond the advice that it receives from its employees, such advice can be provided by special inquiries into particular issues or by permanent law reform commissions or committees. Either of these mechanisms is likely to make extensive use of lawyers, and probably of retired judges.

C. Ombudsmen and administrative review

79. Prompted by the complexity of living in a modern society, and by the increasing awareness of the rights of individuals, many Governments have in recent years created positions or organizations known as ombudsmen, parliamentary commissioners or administrative review tribunals. Such positions, which are almost always filled by lawyers, provide a different dimension to the notion of access to justice than that provided by the courts and alternative dispute resolution models and can be of central relevance to the operation of the criminal justice system. For example, the two elements of the criminal justice system that generally produce the strongest flow of complaints and grievances are the police and prisons. In the interest of maintaining public confidence in the police, it is imperative that any complaints that are made about police conduct are fully investigated by an independent authority, such as an ombudsman. Similarly, if prisoners' grievances are summarily dismissed without reasonable inquiry and investigation, the end result could be riots and other disturbances involving injury and even loss of life. In these and many other areas, lawyers can play a major role in ensuring that the criminal justice system is as fair and reasonable as it possibly can be to all citizens, including those who have broken the law.

80. Persons in the legal profession, and defence lawyers in particular, are facing new challenges presented by organized crime and transnational organized crime. At the European Regional Preparatory Meeting (A/CONF.169/RPM.3 and Corr.1, para. 92), it was noted that there was a need to permit defence lawyers to have appropriate access to international cooperation, including participation in judicial proceedings in foreign

States for the collection of evidence, where appropriate, in the same way as the police and prosecutors. The Ninth Congress may wish to consider the extent to which existing international instruments take into account the requirement of equality of arms between the defence and prosecution in criminal cases. Finally, at the international level, the right to defence has been recently strengthened by the adoption by the General Assembly in its resolution 49/59 of the Convention on the Safety of United Nations and Associated Personnel, a demonstration of the growing internationalization of criminal justice in the wake of an intensification of the peace-keeping role of the United Nations.

81. Finally, the internationalization of crime has alerted criminal justice officials to possible abuses of the right to defence that might create obstacles to the appropriate functioning of justice. It was noted at the European Regional Preparatory Meeting (A/CONF.169/RPM.3 and Corr.1, para. 93) that, in some instances, procedural technicalities raised by defence lawyers led to inadmissible delays in criminal proceedings, while in other cases, defence lawyers played the role of intermediaries between alleged terrorists and justice officials. Consequently, the Ninth Congress may wish to consider how to refine the deontological codes of lawyers in order to ensure the effective and legally correct exercise of the right to defence.

VI. INTERNATIONAL COOPERATION IN SYSTEM MANAGEMENT AND INFORMATION TECHNOLOGY

A. Accountability of criminal justice operations

82. It is important for all aspects of the operation of the criminal justice system to be as accountable as possible in order for the system to gain public trust and respect, nationally and internationally. This means that the system must be open and transparent, as opposed to secretive, vague and unresponsive. While it is always necessary for some parts of the system to be confidential (personal records and criminal intelligence, for example), a system that uses computers to generate clear and understandable information on its operations and that releases such information to the public is more likely to be appreciated and respected than one that does not. It is possible for a criminal justice system to be transparent and open without a significant commitment to computer technology, but computerization entails accountability, even if in the beginning of the automation process there may still be political and administrative hindrances to opening the criminal justice system to more public scrutiny than it was used to with traditional management tools.

83. Accountability of the criminal justice system is part of the concept of good governance.* The implementation of that concept, in turn, warrants the success of a sustainable society, that is, a society that functions in a way that does not jeopardize the resources that will be needed by future generations. Building checks and balances into the criminal justice system by improving its human rights and administrative performance is one way of reducing fear of crime and of increasing public confidence in a just and fair criminal justice process, which is also a scarce resource.

84. An important illustration of the extent to which a system may be described as transparent is the way in which it deals with its own failures and indiscretions. An open and honest system might be embarrassed if one of its members has, for example, broken the law, but it will not hesitate to take action against the recalcitrant member and to draw the matter to the attention of the public. In contrast, a closed and secretive system will invariably try to keep the matter hidden from public attention. The way that an organization responds to its own internal problems may be seen as the strongest single test of its integrity.

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*See the report of the Secretary-General on progress made on the fourth and fifth surveys of crime trends and operations of criminal justice systems, and other initiatives under way to acquire, process and distribute crime prevention and criminal justice data (E/CN.15/1994/2, para. 9).

B. Measurement of crime and criminal justice operations

85. As it is possible for computers to process vast amounts of information in little time, the operation of all stages of the criminal justice system can be monitored more closely than ever before. It must, therefore, be possible for hot spots or log-jams to be quickly identified and for action to be taken to resolve the problems. For example, a sudden increase in the number of accused persons held in pretrial detention can be foreseen and action can be taken to improve the capacity of the courts to ensure a smooth and timely flow of cases. Similarly, at a more mundane level, a computerized criminal justice information system must be able to identify periods and places in which requests for police assistance are higher than usual and that information can be used to guide the allocation of police resources.

86. The above-mentioned issues will be discussed in more detail in a two-day workshop entitled "International cooperation and assistance in the management of the criminal justice system: computerization of criminal justice operations and the development, analysis and policy use of criminal justice information"* to be held within the framework of the Ninth Congress.[27]

C. A global view of crime

87. The advances in computer technology that have occurred in the past decade have made it possible for sufficient data to be collected and analysed to develop for the first time a truly global view of crime and criminal justice. The principal instrument has been the United Nations survey of crime trends and operations of criminal justice systems, which are being conducted biennially. This survey is yielding increasingly valuable findings; however, there is still a need for Member States to provide more systematic and comprehensive information, a point that may be discussed in more detail during the two-day workshop to be held on the basis of an interim report on the results of the Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (A/CONF.169/15). The Ninth Congress may wish to consider this issue and the long-term political, humanitarian and financial benefits stemming from managing the criminal justice in a more humane and efficient way.

D. Evaluation of programmes and procedures

88. One of the most important challenges in the operation of criminal justice systems is that of evaluation. Even though for the past decade a greatly increased sensitivity to the need for proper evaluation of all aspects of criminal justice has developed, in almost every country insufficient resources are devoted to evaluation. One of the reasons for this is that evaluation is often seen as an additional task that is undertaken after a new programme or procedure has been established. Another reason is the fact that criminal justice practitioners are generally not themselves familiar with evaluation methodology and are, therefore, unsure about what needs to be done. A further consideration is the fact that the costs of evaluation can sometimes be excessive, even approaching the costs of the programmes that are to be evaluated. Finally, the built-in resistance to reform makes it difficult to innovate by introducing evaluation. Therefore, the Ninth Congress may wish to consider the development of international standards for the conduct of cost-effective evaluation in criminal justice. Such recommendations would be most welcome and valuable, as they might encourage senior decision makers to consider examples of more modern approaches to criminal justice administration.

E. Privacy and surveillance

89. Another challenge to the integrity of the criminal justice system is the way in which it deals with privacy and surveillance issues. As with many other technological developments, there is a negative as well as a

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*See the background paper for the workshop (A/CONF.169/13).

positive side to the progress facilitated by increasingly powerful computers. In the criminal justice arena the significant advances that have been made need to be balanced against the violations of personal privacy. In particular, care should be taken to ensure respect for the confidentiality of the records of individuals, both offenders and criminal justice personnel: a matter dealt with by the General Assembly in its resolution 45/95, annex, on guidelines for the regulation of computerized personal data files. The possibility that the confidentiality of records may not be respected is an unfortunate side-effect of the whole process of data automation, which increases the availability of records at the risk that they may be misused more often than was the case before automation was introduced. Moreover, restrictions on access to that information are costly and troublesome to establish. This consideration is particularly relevant where integrated criminal justice data systems have been established and, for example, individuals working in different stages of the system may have access to information collected about individuals in other stages of the system.

90. Respect for the confidentiality of records is by no means the only issue related to privacy raised by the expansion of computer technology. Computer technology has moved beyond the stage of storage and retrieval of information to being able to make a direct contribution to criminal justice operations in many areas. In prison security, for example, movement and sound detectors coordinated by computers may be used as a cost-effective adjunct to physical surveillance by prison staff. Also, in the area of non-custodial corrections, electronic surveillance devices activated by computers have been found to be relatively inexpensive and effective. In police investigations, many applications of modern computer technology have been found, including the automatic scanning of many thousands of fingerprint records and the analysis of financial transactions. Even though some of these uses of computer technology have almost become routine, they raise issues relating to the privacy of offenders under surveillance or under investigation.

91. In financial transactions, computer technology may have been as helpful to offenders as it has been to law enforcement officials, as the international electronic transfer of funds is widely used in money-laundering. This type of criminal activity poses serious challenges to all Governments and raises questions about the privacy of records in general. Breach of confidentiality in banking transactions and violations of the privacy of communications or personnel records are practices that are by no means restricted to the borders of one country. General conclusions should be drawn up on the value of information as such and on how, within the framework of national and international criminal law and justice systems, computer-processed data and information may change current legal principles regarding responsibility for perpetrators of criminal acts and regarding efforts to bring them to justice.[28]

92. The subject of computer-related crime has recently been extensively reviewed in the United Nations Manual on the Prevention and Control of Computer-Related Crime,[29] which concluded that a much higher level of international cooperation was needed for progress to be made in that area. The Manual emphasized the need for the laws of different countries to be harmonized in order to avoid the unintentional creation of havens,[30] where offenders using computers unlawfully would either not be prosecuted or would be treated with inappropriate leniency. It may be found necessary for Governments, in future, to impose greater restrictions on the international transfer of funds, as well as on international travel, if money-laundering cannot be controlled by less intrusive means. The Ninth Congress may wish to consider these matters in the light of national and transnational legal developments, as the place of commission of the offence and its legal effect may involve two or more countries.

F. Information exchange and networking

93. Until the 1990s, before the introduction of the international exchange of computerized information on a wide scale, societies formed and dealt with their collective interests and attitudes mostly according to their geopolitical proximity. Global transformations in the 1990s, however, have opened societies to the benefits of more intensive and quick international electronic communication, whereby common interests, rather than only geopolitical proximity, determine groupings of peoples and countries. As the world is increasingly

becoming a global village, cross-cultural exchanges may well make a considerable contribution to international understanding and the cause of peace.

94. The spectacular developments in information exchange in recent years have been almost entirely electronic: the facsimile machine and electronic mail have largely replaced traditional means of correspondence, such as letters, while international computer networks, such as Internet, have created opportunities for rapid communications that were previously unknown. In the field of criminal justice, the United Nations Crime and Justice Information Network (UNCJIN), supported since 1989 by the Bureau of Justice Statistics and, at present, also by the National Institute of Justice, both of the United States Department of Justice, has proved an invaluable tool for persons seeking information and will continue to provide its services after its change of location from the State University of New York at Albany to the United Nations Office at Vienna. The UNCJIN services which are constantly evolving, have been supplemented by a number of smaller networks, or news groups, of criminologists and criminal justice practitioners at the national or regional level.

95. It should be emphasized, however, that the pace of development of UNCJIN may not be commensurate with the overall growth of electronic networking. While, over the past few years, the membership of UNCJIN has increased considerably to about 500 worldwide, Internet is estimated to have about 30 million users. Thus, the international criminal justice community is still at the tail-end of this most advanced technological development.* Consequently, the Ninth Congress may wish to consider action-oriented recommendations on information exchange and networking, especially during the two-day workshop on international cooperation and assistance in the management of the criminal justice system (see document A/CONF.169/13/Add.1) and, more generally, while discussing the increasingly important role of the clearing-house functions of the United Nations crime prevention and criminal justice programme, to be considered under item 3 of the provisional agenda for the Ninth Congress (see document A/CONF.169/4).

VII. CONCLUSIONS

96. A theme underlying many of the issues raised in the present document is the widespread need for improving the level of professionalism, information-gathering, evaluation, technical cooperation, advice and training in the operation of criminal justice systems throughout the world. In particular, the present document draws attention to the need for all countries to give further consideration to the following:

(a) Integrating law enforcement and other criminal justice agencies;

(b) Exploring how relations between the police and the community might be improved;

(c) Privatizing some law enforcement and justice functions;

(d) Creating more cooperative criminal justice systems and improving communications between the elements of those systems;

(e) Drawing on alternative dispute resolution procedures, including mediation and conciliation, restitution and compensation;

(f) Determining appropriate levels of independence and accountability that should apply to prosecutors;

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*See also the report of the Secretary-General on progress made in the implementation of General Assembly resolutions 46/152, 47/91 and 48/103 (A/49/593, para. 79).

(g) Introducing techniques and approaches that will assist in the conduct of complex criminal trials;

(h) Devising strategies to reduce pretrial custody and prison overcrowding, including non-custodial correctional measures;

(i) Improving international cooperation.

97. As for international cooperation, it is apparent that greater efforts are needed to promote and facilitate the repatriation of foreign prisoners, to explore further developments in extradition and mutual assistance, and to expand the availability of technical cooperation, especially with regard to training, study tours and the donation of information technology equipment and expertise.

98. Technical cooperation, advice and training are pressing needs in developing countries. But there is also a need for even the most technologically advanced societies to improve their performance in relation to the collection and dissemination of information, and to the scientific evaluation of their programmes and policies. No country can be fully confident that there is no violation of human rights in some parts of its criminal justice system as there is a noticeable lack of transparency in at least some parts of most systems. If effective monitoring of the criminal justice system is to be achieved, if exchange of information is to be enhanced, and if the coordination of technical cooperation, advice and training is to be improved, it is essential to examine closely constraints, traditions and existing policies in order to adapt them to respond better to the threatening changes that the world is experiencing as a result of the growing sophistication and transnationalization of crime.

Notes

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[5]P. Stenning, "Private policing - Some recent myths, developments and trends", in *Private Sector and Community Involvement in the Criminal Justice System*, D. Biles and J. Vernon, eds. (Canberra, Australian Institute of Criminology, 1994), pp. 145-156.

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[7]R. Harding, "Private prisons in Australia", *Trends and Issues*, No. 36 (Canberra, Australian Institute of Criminology, 1992).

[8]*Eighth United Nations Congress* ..., chap. I, sect. C.26.

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[10]See Peter J. P. Tak, *The Legal Scope of Non-Prosecution in Europe*, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, Publication Series No. 8 (Helsinki, 1986); and *Non-Prosecution in Europe: Report of the European Seminar held in Helsinki, Finland, 22-24 March 1986*, Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, Publication Series No. 9 (Helsinki, 1986).

[11]*Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat* (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. D.2.

[12]M. B. Blankenship, T. B. Spargar and W. B. Janikowski, "Accountability v. independence: myths of judicial selection", *Criminal Justice Policy Review*, No. 6, 1992, pp. 69-79.

[13]S. Roy, "Victim meets offender: a comparative study on juveniles and adults in a midwestern county", *Journal of Comparative Criminal Justice*, No. 9, 1993, pp. 117-131.

[14]See also *Commentary on the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)* (ST/CSDHA/22).

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[16]See George T. Felkenes, "Extraterritorial criminal jurisdiction: its impact on criminal justice", *Journal of Criminal Justice*, vol. 21, No. 6 (1993), pp. 183-194.

[17]J. Walker, *Outcomes of Remand in Custody Orders* (Canberra, Australian Institute of Criminology, 1986).

[18]*Human Rights and Pre-trial Detention: a Handbook of International Standards relating to Pre-trial Detention* (United Nations publication, Sales No. E.94.XIV.6).

[19]See Katarina Tomaševski, *Foreigners in Prison*, Publication Series No. 24 (Helsinki, European Institute for Crime Prevention and Control, affiliated with the United Nations, May 1994).

[20]Alliance of Non-governmental Organizations in Crime Prevention and Criminal Justice, New York Branch, "Working party on prison health care", *International Health Care Report*, April 1993; see also Katarina Tomaševski, *Prison Health: International Standards and National Practices in Europe*, Publication Series No. 21 (Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations, 1992).

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[26]A. P. Worden, "Counsel for the poor: evaluation of contracting for indigent criminal defence", *Justice Quarterly*, No. 10, 1993, pp. 613-637.

[27]See also *Guide to Computerization of Information System in Criminal Justice* (United Nations publication, Sales No. E.92.XVII.6); and *Directory of Criminal Justice Information Programs*, Publication Series No. 21 (Helsinki, European Institute for Crime Prevention and Control, affiliated with the United Nations, 1992).

[28]See also Albin Eser and Otto Lagodny, eds., *Principles and Procedures for a New Promotional Criminal Law: Document of Paper presented at the International Workshop for More Effective International Cooperation* (Freiburg, Germany, Max Planck Institute for Foreign International Criminal Law, 1991).

[29]"United Nations Manual on the Prevention and Control of Computer-Related Crime", *International Review of Criminal Policy*, Nos. 43 and 44, 1994 (United Nations publication, Sales No. E.94.IV.5), paras. 293-294.

[30]Ibid., para. 292.