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CRIMINAL JUSTICE POLICIES IN RELATION TO PROBLEMS OF
IMPRISONMENT, OTHER PENAL SANCTIONS AND ALTERNATIVE MEASURES

Alternatives to imprisonment and the reduction of the prison population

Report of the Secretary-General

Summary

This report has been prepared in pursuance of Economic and Social Council resolution 1986/10, section XI. The replies of various Member States to a survey on efforts to reduce the negative effects of imprisonment and to develop further the application of non-custodial measures are summarized and analysed. Information received from the United Nations institutes on crime prevention and criminal justice as well as from interested intergovernmental and non-governmental organizations in consultative status with the Economic and Social Council is also included. Special attention is paid to the development of new measures and their application at various stages of criminal proceedings and their effectiveness in providing alternatives to imprisonment. Their role in reducing the prison population is discussed. It is recommended that more attention be paid to the application of alternatives at the pre-trial stage, that the range of available alternatives at the trial stage be expanded and that the use of alternatives after conviction be further increased. The widespread application of conditional release (parole) is also noted.

*A/CONF.144/1.

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INTRODUCTION

1. The Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in its resolution 16 on the reduction of the prison population, alternatives to imprisonment, and social integration of offenders, 1/ recommended, inter alia, that Member States should further increase their efforts to reduce the negative effects of imprisonment and intensify the search for non-custodial sanctions, which would help to reduce the prison population. The Congress also invited Governments to continue reporting to the Secretary-General every five years on developments in those areas.
2. Subsequently, the Economic and Social Council, in its resolution 1986/10, section XI, requested the Secretary-General to prepare a report on alternatives to imprisonment for the Eighth Congress.
3. For the present report, the Secretary-General, by his note verbale of 16 December 1987, invited Governments and other parties concerned to provide up-dated information on alternatives to imprisonment and measures for the social resettlement of prisoners.
4. As of 30 April 1990, 70 Governments had replied to the note verbale of the Secretary-General: Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Bahrain, Barbados, Belgium, Bolivia, Burundi, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Chile, Chad, China, Colombia, Cuba, Cyprus, Czech and Slovak Federal Republic, Denmark, Dominican Republic, Ecuador, Egypt, Finland, France, Gabon, German Democratic Republic, Germany, Federal Republic of, Greece, Holy See, Indonesia, Iraq, Israel, Japan, Kuwait, Lebanon, Libyan Arab Jamahiriya, Luxembourg, Mali, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Singapore, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Uruguay, Yemen, Yugoslavia and Zimbabwe.
5. Replies were also received from other sources, including the Alliance of NGOs on Crime Prevention and Criminal Justice (New York and Vienna), the Howard League for Penal Reform, and the Helsinki Institute for Crime Prevention and Control, affiliated with the United Nations.*
6. In view of the need for continuity and easier reference, a structure similar to the report prepared for the Seventh Congress (A/CONF.121/13) has been retained. Information contained in that report, if still relevant, has been included and used in the analysis of current trends and developments. The report summarizes the replies on alternatives and substitutes to the

*In the reply from the Helsinki Institute, reference was made to Peter J. P. Tak, The Legal Scope of Non-Prosecution in Europe, HEUNI Publications Series No. 8 (Helsinki, 1986), and Norman Bishop, Non-Custodial Alternatives in Europe, HEUNI Publications Series No. 14 (Helsinki, 1988). See also Anton M. van Kalmthout and Peter J. P. Tak, Sanctions-Systems in the Member-States of the Council of Europe, part I (Deventer Kluwer Law and Taxation Publishers, 1988) and part II (Deventer, Kluwer Law and Taxation Publishers, 1990).

deprivation of liberty at the pre-trial, trial and post-conviction stages and on measures to alleviate or restrict the length of prison sentences. Information provided by States to bring up to date section II of the previous report on treatment of offenders, focusing on measures aimed at the social resettlement of prisoners and on staff training, has been incorporated in the report of the Secretary-General on the implementation of the Standard Minimum Rules for the Treatment of Prisoners (A/CONF.144/11). Additional and more detailed information, in particular on training and on efforts by States to include the above-mentioned United Nations instruments in the training programmes of law-enforcement officials, is contained in the reports of the Secretary-General on the implementation of the Standard Minimum Rules for the Treatment of Prisoners (*ibid.*), of the Code of Conduct for Law Enforcement Officials (E/AC.57/1988 and Add.1/Rev.1 and Add.2) and the report prepared by the Secretariat on the implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (A/CONF.144/4), which are before the Eighth Congress. The present report should also be read in conjunction with the report of the Secretary-General on research on alternatives to imprisonment (A/CONF.144/13), prepared for the Research Workshop of the Eighth Congress on this topic.

7. The expression "alternatives to imprisonment" covers a wide range of measures. The term is used here to refer to pre-trial measures intended to avoid formal court proceedings, to non-custodial measures imposed by the court in the trial phase and to sanctions taken at the post-conviction stage, during the enforcement of a prison sentence, in order to alleviate the negative effects of imprisonment.

8. Many countries reported that new penal codes or new criminal legislation had come into force since the 1985 report. In some, such as Austria, Chile, the Czech and Slovak Federal Republic, Luxembourg, the Netherlands, New Zealand, Turkey and the USSR, the provisions on sanctions had been amended in order to restrict the actual term of imprisonment or to facilitate the use of alternatives to imprisonment. In other countries, such as Cuba, a new penal code had come into force with a completely new system of sanctions, also based on recent United Nations standards and norms.

9. Draft bills and proposals for reforming the provisions on pre-trial detention and the system of sanctions had been drawn up in a great number of countries in order to restrict the use of deprivation of liberty. In Argentina, Barbados, Colombia, Cyprus, Egypt, Finland, Greece, Iraq and Switzerland, far-reaching proposals for reform were being discussed. A number of countries, such as Uruguay, reported on model experimental institutions intended to provide information for a general reform of the national criminal justice system.

10. Many countries reported that humanitarian considerations had led to the development of alternatives to imprisonment, but that pragmatic considerations were also a driving force. Almost all the replies revealed that limited prison capacity was a major problem. The development of alternatives to imprisonment is one way to alleviate the situation. The use of alternatives could also be cost-effective; many countries reported that the alternatives were considerably less expensive than institutional treatment.

I. PRE-TRIAL STAGE

11. Since, by law, suspects are to be presumed innocent until proved guilty,* they should not be subject to any restrictions unless these are indispensable. Consequently, pre-trial detention should be used only when absolutely necessary and when no other appropriate alternative is available. Pre-trial detention should not last longer than strictly necessary. In the replies, there was broad agreement that detention served during the pre-trial stage should be deducted in full from the sentence eventually imposed. Thus, in the legislation of Burundi, Luxembourg, Qatar and many other countries, such a deduction was obligatory.

A. Detention

12. The main justification for pre-trial detention, also referred to as detention on remand, is the danger that the suspect might otherwise abscond, commit or repeat an offence, interfere with witnesses or otherwise pervert the course of justice. The imposition of pre-trial detention depends mainly on the seriousness of the offence, on the personal circumstances of the suspect and on the degree of danger to which society is exposed.

13. The replies showed that most countries were making efforts to restrict the application of pre-trial detention by reducing or more strictly formulating the grounds for pre-trial detention, by applying it only for a restricted number of offences according to their degree of punishability and by using alternatives. Measures to reduce the length of detention were also being taken. Antigua and Barbuda reported that the introduction of a "no pre-trial custody rule", which could be waived only under very restrictive conditions, had led to a reduction in the prison population.

14. Various alternatives to pre-trial detention were described. Some of them, such as provisional probation in Austria, and home arrest in Indonesia, were recent additions to the legislature. Some other measures had long been recognized as alternatives to pre-trial detention. Examples included recognition and bail, as in Australia, Chad, Luxembourg, Mexico and Nigeria, judicial pre-trial supervision, as in France, and commitment to the custody of the social services, or guarantees provided by individuals or by community-based organizations. Several countries had reduced the use of pre-trial custody for juvenile suspects by using substitute measures, such as the handing over of juveniles to their actual guardians or to third persons. One of the newest alternatives, electronic monitoring, was being considered by expert committees in a number of jurisdictions, such as the Netherlands, Switzerland and the United Kingdom, following small-scale experiments with their use in Canada and the United States of America.

15. The length of pre-trial detention was determined primarily by the progress of the investigation and the trial. Data provided by many countries, such as Australia, Denmark, Japan and the United Kingdom, indicated a continuing increase in the number of remand prisoners. Some countries, however, such as the Federal Republic of Germany, reported a downward trend both in the absolute number and the percentage of pre-trial detentions. A number of countries with large numbers of persons in pre-trial detention and long pre-trial detention periods reported of efforts to speed up investigation and trial. In Argentina, where a high proportion of convicted persons had already served between 50 and

*See, for example, article 14, paragraph 2, of the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI), annex).

90 per cent of their prison sentence in remand centres, a Code of Criminal Procedure had been designed to reduce the length of the proceedings substantially. In the Dominican Republic and the Philippines, universities and lawyers had been asked to provide pre-trial detainees with legal aid in order to speed up the proceedings. Some countries had an absolute statutory maximum term of pre-trial detention laid down in their codes of criminal procedure, which acted as an incentive to speedy investigation, since the detainee had to be released once the term had expired. Other legislation provided for relative limits, which, under certain conditions, could be extended by decision of a judicial authority. The legislation of Finland, the Federal Republic of Germany, the Netherlands, Niger, Nigeria and the United Kingdom, for example, provided for statutory limits on the amount of time spent in custody awaiting trial.

B. Discontinuance of criminal proceedings

16. A considerable amount of legislation provided for measures aimed at the discontinuance of criminal proceedings. When the offence was not serious and public trial and formal conviction were not, therefore, required on grounds of special or general prevention, the disposition could be made either by the court or by the prosecution. While the latter were mainly responsible for taking the decision not to prosecute, the adoption of measures reducing the personal liberty of the suspect was mostly a matter for the courts to decide, through directives and instructions.

17. In a number of countries, for example Burundi, Denmark, France, Japan, Niger, and the United Kingdom, discretionary power to waive a prosecution for reasons of public interest and expediency was vested in the prosecution service. Various reasons for non-prosecution on the grounds of expediency were mentioned in the replies, for example the fact that the criminal offence was a minor one or that the suspect was a first offender or a juvenile. In some countries, discretionary power was widely used. Japan, for example reported a non-prosecution rate of 34.8 per cent in cases concerning non-traffic offences. A waiver of prosecution might be conditional, as in the Federal Republic of Germany, the Netherlands, Norway and Poland. The conditions are often identical to those applying to suspended sentences: for example, compensation of the victim, performance of non-remunerated work for the benefit of the community, or compliance with probation.

18. Discontinuance includes diversion from the criminal justice process, which is dealt with in the present report only in so far as further action by judicial authorities is required. Thus, the exemption from criminal liability because the offence represented little or no danger to society, as provided, for example, in the legislation of the German Democratic Republic, the USSR and Yugoslavia, was considered only in cases where judicially supervised conditions were imposed on the suspect. Diversion was generally used to deal with minor offences, for example in order to provide the administration of criminal justice with additional time and means to deal with more serious offences, thus saving human and financial resources. Many countries had introduced diversion on a large scale, including the transfer of proceedings to administrative authorities or to community-based bodies of restricted jurisdiction, such as juvenile affairs committees in the Byelorussian SSR. China used civic educational groups; the Philippines had dispute settlement boards; Norway and Sri Lanka mentioned conciliation boards, consisting of individuals from the local community who summoned both the suspect and the victim to agree between themselves on victim compensation. Similar experiments were in progress in Finland, aiming at a settlement between suspect and victim, with the assistance of mediators.

19. In order to show public disapproval of the act committed, the legislation of some countries provided for an admonition, after which the judicial proceeding was discontinued. In some countries, such as the Philippines and Thailand, that method applied only to juvenile offenders. In others it was less restricted, for example, in the United Kingdom, where a caution - a reprimand by a senior police officer - was used primarily for young or elderly offenders, those who were mentally disturbed or under particular stress, and first offenders.

II. TRIAL STAGE

20. Numerous examples provided by Governments confirmed the continuing trend towards replacement of prison sentences by alternatives, noted in the last report (A/CONF.121/13, sect. I, subsect. B). In 1986, penalties not involving imprisonment were applied in 75 per cent of all criminal cases in Cyprus and in 86 per cent of the convictions in Canada. The effect of the wider use of alternatives to imprisonment was demonstrated in the reply from Cuba, indicating that, within a little more than one year of introducing the fine as the principal alternative to imprisonment in the new penal code of April 1988, the prison population had declined by some 50 per cent. In the Byelorussian SSR, 75 per cent of all persons convicted were sentenced to non-custodial sanctions in 1987. In Yugoslavia, 35 per cent of all convicted offenders were sentenced to conditional sentences in 1986; 40 per cent to fines and 1.5 per cent to reprimand, declaration of guilt and release with educational measures. The wide agreement on the need to minimize the use of imprisonment and to extend the use of alternatives that did not involve deprivation of liberty was generally based on the common belief that imprisonment should be applied only as a last resort.

A. Short-term imprisonment

21. There is no general consensus on what should be understood by the term "short-term imprisonment". Criteria used in national legislation and penal law practice differ. The upper limits of short-term imprisonment reported, however, in general ranged from three to six months; the six-month limit seemed to be the most widely accepted one. The term "short-term imprisonment" was not the same as the term "statutory minimum term of imprisonment". The statutory minimum term of imprisonment varied considerably. In the Netherlands it was one day, in Sweden and Yugoslavia two weeks, and in the Federal Republic of Germany one month. In Poland, the general minimum period depended on the category of the criminal offence, namely three months for a crime and one month for a contravention.

22. There were different attitudes on alternatives to short-term imprisonment. The reports indicated two trends: on the one hand, efforts to reduce the number of short-term prison sentences by restricting the opportunity to pass such sentences, by altering the statutory minimum period of imprisonment and by widening the applicability of suspended sentences and fines; and, on the other hand, efforts to develop new alternatives and substitutes for short-term imprisonment, and to widen their applicability.

23. In a number of countries, legislation restricted the opportunity to order or implement short-term prison sentences. According to section 49 of the Penal Code of the Federal Republic of Germany and section 37 of the Austrian Penal Code, a sentence of short-term imprisonment up to six months could not be ordered unless special circumstances related to the offence or the offender made a prison sentence advisable because of considerations of general or

special deterrence; the priority of fines over short-term imprisonment was emphasized. The Portuguese Penal Code went a step further; all prison sentences of up to six months had to be converted into day-fines unless the implementation of the custodial sentence was necessary to prevent further offences from being committed. In other countries, such as Belgium and Luxembourg, there was a general policy not to enforce short-term sentences of up to four months unless desirable in the interest of public policy or on account of special circumstances. The Ukrainian SSR reported that, according to the Code of Criminal Procedure, the court was obliged to justify a prison sentence if the penalties provided for in the criminal law also included non-custodial penalties.

24. A number of countries reported that the penal code stipulated that prison sentences could be replaced by non-custodial sanctions, such as pecuniary sanctions, suspension or deprivation of licences or rights and the commitment to carry out non-remunerated work. In most of those countries the use of substitutes was restricted to prison sentences of up to six months, but in some there were no such restrictions. In Greece, for example, a prison sentence not exceeding 18 months could be commuted to a fine. In France, instead of being sentenced to prison, the defendant could have his or her vehicle immobilized, or his or her driving licence or hunting permit withdrawn. In Norway, community service could be substituted for a prison sentence of up to one year.

25. While most new legislation on the system of sanctions responded to the general demand for alternatives to short-term imprisonment, in some countries, such as Finland and the United Kingdom long-term criminal policy was to reduce the length of sentences in general. The statistics from Finland clearly showed the success of that policy. The median length of a prison sentence in Finland for all offences had been 5.9 months in 1960, 5.0 months in 1970 and 3.7 months in 1980. By the mid-1980s it had been reduced to 3.4 months. In the United Kingdom, however, the average length of a prison sentence for men over 21 sentenced in the Crown Courts was increasing: the average was 16.6 months in 1984 and 18.3 months in 1986.

26. An important change in sentencing practices concerning short-term imprisonment was reflected in statistical data received from Cuba, the Federal Republic of Germany, Turkey, the USSR and Yugoslavia, which showed a decrease in either the absolute number or the percentage of short-term sentences and corresponding increase in fines or other substitutes.

27. Where the offence was not serious, or especially where the offender was a juvenile, considerable use was made of admonition, penal warning or other forms of reprimand given during trial. In Europe, public reprimand was mainly used in Eastern European countries, for example the Byelorussian SSR, the German Democratic Republic, the USSR and Yugoslavia. Public reprimand was also an important non-custodial alternative in the Philippines, Thailand, the United Kingdom and Singapore. Public proceedings were, however, discouraged for juveniles, as young persons were particularly susceptible to stigmatization and criminological research showed the detrimental effect of labelling young persons as delinquents or criminals.*

*See, for example, rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (General Assembly resolution 40/33, annex).

B. Fines

28. Fines are the most common alternative to short-term imprisonment. They have gained universal importance and are widely used in many countries for a broad range of offences. Several countries, including the Byelorussian SSR, Cuba, Portugal and Turkey, reported that they had recently extended considerably the use of fines instead of short-term imprisonment.

29. Fines have the advantage of being economical in terms of both money and labour, and practical in terms of management and administration. They are also humane, as they inflict a minimum of social harm. They do not lose their intimidating character, and judicial errors can be more easily corrected. There are two major fine systems: the lump-sum fine and the day fine. In the former, the amount of a fine within the statutory upper and lower limits is left to the discretion of the court, which, in turn, considers both the seriousness of the offence and the offender's financial resources. In the latter, these two factors are assessed independently: the court assesses first the seriousness of the offence in terms of the number of day fines to be paid (within the statutory upper and lower limits), and then assesses separately the offender's means in order to determine the amount of each fine to be paid. The amount offenders have to pay is in direct proportion to their net income and property. A number of countries reported having introduced a day-fine system to counteract one of the disadvantages of the lump-sum fine, namely that the system creates inequalities by discriminating against the poor for whom fines are usually converted into imprisonment because of non-payment (fine default). For that reason some countries, such as the Philippines, did not substitute fines for imprisonment.

30. The day-fine system was introduced in Finland as long ago as 1921 and in Sweden in 1931. Since then it has been adopted in Austria, Bolivia, Denmark, the Federal Republic of Germany and some other countries. The replies showed that there was a clear trend towards use of the day fine and the Governments of several countries, including France and Portugal, reported that they had recently introduced the system. It had been proposed in the new draft penal codes for Belgium and Switzerland.

31. A number of countries reported that the probable conversion of a fine into deprivation of liberty because of non-payment was an indispensable threat that made the fine an effective penalty. In most countries, the term of fine-default detention was regulated by law or expressed in the judgement, in general, on the basis of a statutory fixed conversion rate. In countries that made use of day fines, the number of days of fine-default detention generally equalled half the number of day fines imposed. The maximum period of fine-default detention, as laid down in the penal code of a number of countries, varied widely. For example Yugoslavia reported a maximum term of six months, while the maximum term in Poland and Turkey was three years.

32. Some countries allowed conversion only in certain cases; in Sweden, for example, fines could be converted into imprisonment only if the non-payment was due to unwillingness to pay. To restrict conversion of unpaid fines into imprisonment, countries often granted the convicted person a reprieve from payment or the possibility of paying in instalments. To avoid the conversion of unpaid fines into imprisonment, some countries, for example the Ukrainian SSR and the USSR, had already implemented legislative regulations that prohibited such conversion. Instead of fine-default detention in those countries, the unpaid fine could be replaced by corrective labour without deprivation of freedom in case of deliberate non-payment, or public reprimand could be substituted for it. A number of countries reported on other

alternatives to fine-default detention, such as community service or supervised liberty. In Australia, the Federal Republic of Germany, Norway, Portugal and Switzerland, for example, fines that could not be collected could be converted into community service. Australia and the Federal Republic of Germany reported success with that measure.

33. The importance of the fine system was borne out by several reports. In Japan, a fine had been imposed in 96.8 per cent of all convictions in 1986, while in Cuba - since 1988 when the new Penal Code had come into force - a fine had been imposed in more than 84 per cent of the convictions. The Government of the Federal Republic of Germany reported an increase in the proportion of sentences involving fines, from 81.1 per cent in 1980 to 82.4 per cent in 1986. In Yugoslavia the use of fines increased from 34.5 per cent in 1976 to 40.3 per cent in 1986.

34. A further monetary measure that might help avoid imposition of a prison sentence was the use of penalties paid as compensation, in the form either of a restitution order - to return the property to its legitimate owner - or of a compensation or reparation order, related to the provision of monetary or other compensation for loss, damage or injury sustained by the victim. The orders could be used as a principal sentence or in combination with a suspended or conditional sentence. In some countries, such as the Byelorussian SSR, the German Democratic Republic and Israel, orders for victim compensation applied only to juvenile offenders. In other countries, the possibility was also extended to adult offenders. Restitution and compensation orders, as an important independent non-custodial alternative, were reported by Australia, Cyprus, New Zealand and the United Kingdom. Proposals to introduce a compensation order as a principal penalty in the penal code was being discussed in some countries, such as the Netherlands.

C. Suspension of sentence or of enforcement, including probation

35. Suspension of sentence, known by different legal terms, exists in the legislation of, and is applied in, most countries. Usually, it implies conviction and imposition of the sentence, although enforcement of the sentence is suspended. It may also involve conviction and suspension of the imposition of the sentence. In both cases the suspension is subject to compliance by the offender with certain conditions during a probationary period, and to no further offence being committed.

36. A number of countries, such as Chad, China, Japan, Norway and Thailand, reported that a suspended sentence was combined with the obligation to maintain contact with a probation officer or to be under supervision and control by a probation agency; to notify the officer of any change of address, and to provide essential information about such matters as the offender's life-style, job and earnings. It was also common practice to impose other conditions concerning residence, work, education or treatment. Payment of damages was also a condition in a number of countries, for example Oman.

37. In general, the suspended sentence could be enforced if the offender committed another offence. Two different systems were in use: either the suspended part of the sentence was fully or partially enforced, or the suspended sentence was combined with the sentence imposed for the new offence. The first system was in force in Finland, for example, the second in Norway and Sweden. Some legislations provided for other measures to lessen the use of imprisonment, such as a judicial warning, extension of the probation period or alteration of the conditions of probation. The same measures were applicable if the offender did not meet the conditions or failed to comply with the

directives during the probation period. The suspended sentence could be enforced in full or in part. In many countries, provisions facilitating the conditions for revocation of suspended sentences were under discussion.

38. Most legislation provided for limits governing the imposition of suspended sentences. Often the condition involved the length of the term of imprisonment that can be suspended, which varied considerably. According to Swiss legislation, suspension was possible with sentences of imprisonment of up to 18 months, in Austria, the Federal Republic of Germany and Romania of up to two years, in Argentina, the Netherlands, Poland, Portugal and the Ukrainian SSR of up to three years. In several countries, however, the limits were not applied to juvenile offenders. Some countries, such as Gabon, restricted the imposition of suspended sentences to first offenders.

39. The probation periods of those under suspended sentence varied considerably from one country to another, and ranged from one year to five years, the latter in Burundi, for example. Periods of from two to three years were the most common.

40. Developments in different countries showed that suspension of sentence or of its enforcement was a very effective and socially acceptable way of reducing imprisonment. Many countries, such as Austria, the Federal Republic of Germany and the Netherlands, reported that new legislation had recently been introduced to extend the use of suspended sentences. Others, such as Barbados, Cameroon and Nigeria, noted that such legislation was being discussed.

41. Probation, consisting mainly of supervision in the community through case work, was often imposed as a condition for suspended sentence. In many countries, it could also be imposed as a principal sentence in the form of a probation order. Chad, Cyprus, Israel, Pakistan, Sri Lanka, the United Kingdom, for example, incorporated provisions to that effect in their legislation. Probation traditionally combines both care and control: care, in the sense that it gives offenders the opportunity of acquiring insight into, and if possible overcoming, the personal and social problems associated with their criminal behaviour; and control, in so far as a probation officer supervises an offender's social and personal adjustment.

42. Supervision is usually carried out by professional social workers of the probation and after-care service or by government-controlled private organizations. As in the past, a number of States reported that, para-professionals and volunteers were playing an increasingly important role in probation. Many stressed that the volunteers' functions had to be clearly defined. In some instances volunteers were appointed from among residents of the area in which probationers lived, or from among their co-employees, for example, labour unions and the working collective in socialist countries; often local and regional rehabilitation councils were involved. Canada reported that voluntary probation officers played a role, especially in remote areas. The use of volunteers did, however, require some basic training and adequate supervision. In Japan, volunteers' organizations had gained widespread public recognition as they became the leading contributors to supervision and after-care services for ex-offenders.

43. Some replies indicated that the increased involvement of private welfare organizations in the rehabilitation of offenders and, in particular, in the care of probationers, had financial implications for judicial authorities, as they normally supported such community-based bodies. The cost of increased application of community-based alternatives could, however, be offset to some extent by the decrease in the cost of institutional treatment and in the

decrease of the construction or adaptation of prisons. Volunteers further reduced the cost of probation and related measures.

44. Multifunctional probation services, including professionals, para-professionals, and volunteers, have complex and sometimes inherently contradictory tasks involving both assistance and control. Trusted as they are by the courts, the services should also be trusted by the probationer. Probation officers may be placed in a difficult situation, for example, when they must decide whether or not to report significant cases of misconduct by the probationer to the courts and thus give grounds for a possible revocation of the probation order. Some countries reported that the dilemma of control and assistance was resolved by entrusting the different tasks to separate agencies, for example, to the police, on the one side and probation officers and treatment institutions on the other side.

45. Many countries used other forms of supervision, in addition to, or instead of, the general form of supervision of the probationer through a probation officer. Control was exercised through periodic reporting to the police, by assigning probationers to specific homes or treatment centres, or by restricting liberty, so that offenders were confined to a specific area, which they were not allowed to leave, even for short periods of time, without the approval of the competent authorities. The assignment of probationers to special homes also had a care function, as offenders could be offered educational or vocational training facilities, even though the offer was not necessarily tied to their being accommodated in such homes. Apart from those generally applicable directives, the legislation of several countries provided special regulations for specific groups of offenders, for example, drug addicts, who were required to undergo medical treatment. In Sweden, a system of civil commitment, similar to that practised in the United States of America, was introduced in 1988. The offender, who had to agree to the arrangement, was put on probation and, under the terms of that probation, had to undergo treatment for drug dependence.

46. The importance of the suspended sentence was reflected in its extensive use by the courts. Since Cuba had introduced its new Penal Code in 1988, 63 per cent of all prison sentences had been suspended. In the Federal Republic of Germany, suspended sentences amounted to 68.3 per cent of the total in 1987 and in Poland to approximately 30 per cent of all convictions in 1986. In addition, many countries reported a trend towards the wider use of the suspended sentence. A number of countries cited probation or suspended sentences as means of avoiding short-term imprisonment.

47. The statistical data provided by some countries demonstrated the success of suspended sentences, as reflected in the low number of such sentences submitted for revocation in comparison with their total number. In Sweden, for example, 8,358 persons were on probation at the end of 1987. During the period 1 July 1986-1 July 1987, a petition for revocation had been made in only 63 cases. In the USSR, the overwhelming majority of persons who had received a suspended sentence did not commit repeat offences but conducted themselves in a positive manner, both at work and in everyday life.

D. Work duty

48. A number of countries reported that in their systems of sanctions, particular emphasis was placed on re-education through work, and that the obligation to perform work could be used as an alternative to imprisonment. The work-duty sanction was called by different names, for example, corrective work without imprisonment in Iraq, the Ukrainian SSR and the USSR, reformatory or educative labour in the Byelorussian SSR and the German Democratic Republic,

and limitation of liberty in Poland and Romania. Governments reported that it was used not only as a principal sanction but also as an obligation attached to a suspended sentence. One general characteristic of work-duty was that the offender had to work at a designated work-place, and that a portion of his or her earnings (ranging from 5 to 25 per cent) was retained by the State. In some cases, workers at the offenders' work-place supervised and assisted them and stood guarantee for them. Currently, about 70 per cent of the penalties stipulated in the penal codes of the USSR allowed for corrective work as an alternative to imprisonment; and that penalty was imposed in 25 per cent of all cases.

E. Community service

49. Community service, known for over a century as a substitute for fine-default detention, or even earlier as a substitute for imprisonment in traditional societies, as reported by Nigeria, constitutes a very promising alternative to imprisonment. The legislation introduced in the United Kingdom in 1973, fixing for the first time community service in its present form, has served as a model for a number of countries. Community service involves the obligation to perform a certain number of hours of unpaid work for the good of the community during leisure time, within a given time limit, and is imposed as a sentencing option or condition.

50. The reports showed that community service was used as a punishment mainly for offences considered to be in the middle range of criminality. In so far as non-custodial measures were applicable at all, none of the statutory or experimental regulations excluded particular offences or offenders, in principle, from community service. In some countries, however, for example Denmark, provisional reservations were made for certain offences, such as drunken driving. In France and Switzerland, certain offenders, such as drug addicts or multiple recidivists, were unlikely to receive a community service sentence. In some countries, such as Denmark, the Netherlands and Norway, community service could only be imposed as a substitute for short-term imprisonment. In other countries, it could also be used instead of fines.

51. The advantage of community service lies in the fact that it gives offenders an opportunity to make amends by working for the well-being of others and makes it possible for the community to contribute actively to their integration into society. It also provides an opportunity to educate offenders in social relations. Some countries reported that the form of community service chosen was appropriate to the offence, for example, the offender would work in an area where the offence had caused particular damage. In most countries, emphasis had been placed on associating offenders with voluntary or professional workers. The statutory number of hours of community service to be performed varied considerably from one system to another, ranging from a minimum of 20 hours in New Zealand, 40 hours in Denmark, France, and the United Kingdom and a maximum of 180 hours in Portugal, to more than 2,000 hours in the Federal Republic of Germany. The service must be completed within a time-limit ranging from 6 to 18 months. Non-compliance with the community-service obligation imposed as a principal sentence generally led to a prison sentence. Non-fulfilment of community service imposed as part of a suspended sentence led to enforcement of the suspended part of the sentence.

52. Community service, either as a principal sentence or as a substitute for short-term imprisonment in the form of a condition attached to a suspended or conditional sentence, was practised in Australia, the Federal Republic of Germany, Israel, Kuwait, Luxembourg, the Netherlands, New Zealand, Portugal, Sri Lanka and the United States of America, and on an experimental basis in

Denmark since 1982 and in Norway since 1984, where legislation to implement community service in the system of sanctions was being drafted. Adoption of this sanction was being discussed in Bahrain, Barbados, Belgium, Cyprus, Finland and Switzerland.

53. The actual application of community service as an alternative sanction differed considerably in the various reporting countries. The United Kingdom reported over 30,000 community service sentences a year, the Netherlands 5,000 and Denmark 243. In other countries, such as Portugal, community service was applied very restrictively as an alternative sanction. In New Zealand and Sri Lanka, the provisions regarding community service sentencing had recently been amended to enable its wider use to be made of the sanction. In the Bahamas, the formalization of community service as a sentencing option was being considered.

F. Other alternatives

54. A wide range of further alternatives was reported by several Governments. In a number of countries, confiscation of personal property, in particular vehicles, or suspension of driving licences or licences to bear arms or to engage in hunting, could be imposed as a principal sentence or as a supplementary sanction. Such measures could be used as an alternative to imprisonment, as in France and Luxembourg. Other countries, such as Burundi and Spain, reported that local banishment might be used instead of a prison sentence. The restriction of rights, in particular of the right to engage in certain professions or undertake certain activities, was used as an alternative, for example in the USSR. In Cyprus, the Federal Republic of Germany, Greece, the United Kingdom and elsewhere, a compensation order could be used as a substitute for imprisonment. Some countries noted that those alternatives could be combined with a suspended sentence, if the sentence alone was not considered sufficiently punitive by the court, thus leading to a greater use of alternatives.

55. Another alternative to imprisonment was noted by Australia. In appropriate cases a home detention scheme was introduced to keep suitable offenders out of prison. Their prison term might be suspended in favour of home detention, with conditions imposed by a court or by the Director of Correctional Services. The conditions could include counselling, treatment or the obligation to abstain fully or partly from alcohol. All offenders on home detention were subject to strict and random surveillance, both at home and at their place of employment.

56. The mere declaration of guilt by a court, without the imposition of a penalty, was possible as a principal sentence in a number of jurisdictions in Europe, such as Austria, the Federal Republic of Germany, the Netherlands and Portugal, particularly for minor offences, if compensation had been made for the damage or if the offender had suffered personally in committing the offence, and if conditions of general and special prevention were met.

III. POST-CONVICTION STAGE

57. The measures referred to in this section are not alternatives to imprisonment, in a strict sense, but are alternative modes of implementing a prison sentence which, in effect, may lead to a reduction of the actual deprivation of liberty. Semi-detention, semi-liberty, week-end detention, work-release, permission to reside in a therapeutic community outside the prison, conditional release, parole, and a number of other alternative modes of implementation,

have as one of their objects alleviation of the negative effects of imprisonment, while at the same time they provide the means whereby prisoners can improve their personal situation.

A. Semi-liberty or semi-detention

58. A number of countries reported that a prison sentence was not necessarily enforced as an actual deprivation of liberty for 24 hours a day, and that forms of enforcement had been developed that restricted the deprivation of liberty to certain days or certain hours only. Such modes of detention were known as semi-detention, semi-liberty, periodic detention, or week-end detention.

59. Under semi-detention, convicts were allowed to spend the night, and in some cases the week-end, with their families. In the day-time, convicts either stayed in prison, did work connected with prison industries outside prison, or took part in educational programmes or vocational training, which, however, were monitored by the prison authorities. Under semi-liberty régimes, convicts were allowed to spend part of the day outside the prison at their regular jobs, or to continue their education or vocational training.

60. An increasing number of countries, for example Australia, Belgium, Bolivia, Ecuador, France, the Federal Republic of Germany, Italy, Luxembourg, Nigeria, Nicaragua, Sri Lanka, Singapore, Sweden and Switzerland, mentioned that selected prisoners were permitted to serve a part of their sentence in an open or semi-open institution, or that their legislation provided for work-release programmes, whereby prisoners were allowed to work in their former jobs or new ones outside the prison during the last period of sentence. A similar arrangement was known as overnight confinement in Chile and preparatory day-time release in Colombia. The Czech and Slovak Federal Republic reported on the introduction of open wards. In the Bahamas, a non-governmental organization planned to open a halfway house to assist in the social resettlement of offenders. Such measures had the advantage of reducing the hardship imposed on offenders by imprisonment, for example by allowing them to maintain regular contact with their children and other relatives. In addition prisoners could then be in a position to help their families financially. Many countries, such as Sweden, reported on their attempts to facilitate this further by paying prisoners average market wages for their work. Often the prisoner did not personally receive full payment for the work done, since most of the money earned was used to help his or her family. The Czech and Slovak Federal Republic reported that prisoners were entitled to equal remuneration for their work. Attempts were also being made to provide equal working conditions; in Yemen, for example, a prisoner who worked outside the prison was employed on equal terms with other employees, for example as regards hours of work, wages, rewards for excellence etc.

61. Vocational training had gained in importance as an integral part of many non-custodial measures, and an increasing number of countries, for example, Barbados, Burundi, Greece, Lebanon and Morocco, indicated that it was a prime factor in enabling the prisoner to lead a law-abiding life after release, especially when basic vocational courses were offered, such as programmes for illiterate inmates in Greece and Lebanon. In many countries, where specific training facilities could not be arranged in prison, prisoners might be granted leave to continue both vocational training and education, including academic education.

62. Regardless of the terminology employed, semi-detention and semi-liberty were used mainly at a later stage of sentence enforcement, after a prisoner

had served part of the sentence under full deprivation of liberty. It could, however, also be used from the beginning of the sentence. In Italy and the Netherlands, short-term prison sentences could be served entirely in half-open or open prisons, where a convict had to stay only at night and during leisure hours. Placement in open institutions depended mainly, however, on the inmate's progress towards social reintegration and was thus applicable only at the last stage of the sentence, in accordance with certain classification schedules.

63. In some countries, such as Colombia and Italy, prisoners in the transitory phase between deprivation and final release were granted preparatory release or anticipated liberty. During that period, the prisoner was permitted to work and reside outside the prison but was obliged to report periodically to the prison administration.

64. The temporary release of the prisoner could also be secured by other means, for example, by prison leave, as reported by a large number of countries, for example Burundi, Cyprus, Egypt, Indonesia and Turkey. Temporary prison leave was generally granted during the last period of the sentence, allowing the prisoner time to deal with personal problems, such as finding a job or accommodation. The conditions differed and were related to the length of the prison sentence or the period that prisoners had to serve before they were granted leave.

65. A further alternative was periodic detention, in which the convicted offender spent only week-ends or holidays in prison. Periodic detention was used, for example, in Belgium, France, New Zealand and Portugal. In Portugal, sentences of up to three months could be served over consecutive weekends.

B. Conditional release or parole

66. Many countries reported that their prison regulations provided for the establishment of a treatment schedule aiming at resocialization, whereby the prisoner became eligible for more freedom step by step, in particular as regards the type of detaining institution. The prisoner started serving the sentence in a closed institution and could afterwards be transferred to a semi-open and later to an open institution. Conditional release, often referred to as parole, was the last phase.

67. Thus, conditional release was the major means of reducing the actual period of incarceration. The concept of "conditional release" varied considerably, since it was based on diverse ideas and objectives. In some countries, such as Egypt, the Libyan Arab Jamahiriya, Mexico, Qatar and Romania, it was used as a measure to improve discipline in penal institutions. In others, such as China, France, Gabon and New Zealand, it was also seen as a probationary measure. In a third group of countries, conditional release was used to improve the security of society by placing the parolees under strict supervision so as to prevent them from committing new crimes. Finally, countries such as Bolivia, the Netherlands and the United Kingdom also used the option as a means of reducing overcrowding in the prisons.

68. A common feature of conditional release in most countries was that in the case of a positive prognosis (special prevention) the prisoner was released at a certain time, with the further condition that requirements of general prevention must also be met. Since in a number of countries conditional release and suspended sentences were closely linked, conditions similar to a suspended sentence might very often be attached to a release order. The most common condition was supervision for a specific period, generally from one to three

years. In the legislation of most countries, that alternative was used after the prisoner had served part of the sentence specified by statute, which might range from one third, for example in the United Kingdom and Belgium for first offenders, to three quarters, for example in Spain. Some legislation also set an absolute minimum term to be served before a prisoner could be eligible for release. In a number of countries, specific regulations on the minimum period of imprisonment and length of the probation period were issued in the case of conditional release of life-term prisoners. In a number of reports, the view was expressed that limits had to be placed on maximum sentences, if alternatives were to be introduced.

69. The practical application of the provisions on release differed considerably. While some countries required a positive future prognosis, interpreting that condition rather stringently, others generally granted release or parole after the minimum period of imprisonment had been enforced. In Japan, parole was granted to 56.8 per cent of all prisoners in 1987. In Denmark, 90 per cent of all prisoners serving sentences of more than two months were released on parole after serving two thirds of their prison term. In the Netherlands, where new provisions on release had come into force in 1987, all eligible prisoners were automatically released. Prisoners serving a sentence of up to a maximum of one year had to be released after serving six months plus one third of the remaining term. Prisoners serving a sentence of more than one year had to be released after serving two thirds of that sentence. Since the new provisions on release had come into force, the release was no longer conditional but automatic and final, in that it could not be revoked. No conditions could be attached to the release, which was therefore described as "early" rather than "conditional".

C. Other measures

70. A number of countries had introduced into their legal systems further methods of shortening the actual period a long-term prisoner had to serve in detention. A major method, known as "remission" was recognized in the legal systems of Colombia, France, Italy, Greece, Mexico, Spain, Sri Lanka, Thailand and the United Kingdom, one of its common features being that a prisoner could earn remission for good conduct, for work performed, or for special activities, such as serving as a blood donor or passing educational or vocational examinations.

71. Almost all the reporting countries had taken steps to reduce the isolation of prisoners and to facilitate the maintenance of their personal contacts with the outside world, particularly with relatives. Contacts could also be extended to persons belonging to welfare organizations, who could act as intermediaries between prisoners and their families, help prepare them for release, and eventually render assistance after release, although it might be necessary to restrict such outside contacts for security reasons. Isolation might also be reduced by participation in cultural or sports activities outside the institution. Such activities could improve self-confidence and help to prepare prisoners for their release and reintegration into society.

72. In many countries, contacts could be maintained through correspondence and telephone calls from and to prisoners. In some countries, such as the Federal Republic of Germany, day-time or overnight leaves without prison escorts were provided for in the prison regulations, in recognition of the fact that personal contact was preferable. This principle of proximity is of particular importance, as a long distance between the prisoner's residence and the place of detention tends to impede such contact. In Canada, therefore, offenders could be transferred from one prison to another so that they could

be nearer to their home communities and families. Another way in which the disadvantages of distance could be overcome would be to permit visits by persons other than relatives who could be expected to stay in contact with the prisoner after release.

73. Foreign prisoners with no roots in the country of detention have particular problems in maintaining or establishing contact with the outside world. Their isolation is often increased by the barrier of a different cultural background or language; high travel costs often prevent relatives from visiting them. Thus, specific regulations may be considered and implemented, providing for visits of volunteers of the prisoner's nationality or language. Whenever relatives visit, exceptional regulations may extend the time they are allowed to spend together, taking into account the fact that the foreign prisoner is usually not in a position to receive visits when they are normally allowed by the prison régime. International legal assistance and co-operation could also further the aims of penal sanctions and contribute to a decrease in the foreign prisoner's disadvantages, for example: the transfer of prisoners to their countries of nationality or domicile to serve their sentences, or even the transfer of criminal proceedings, whereby repatriation could even be effected prior to the suspect's conviction. Nigeria, for example, reported having recently entered into bilateral agreements with Benin and Ghana for the exchange of prisoners. Similar bilateral or multilateral agreements existed between a number of European countries.

74. The United Nations Model Agreement on the Transfer of Foreign Prisoners and recommendations on the treatment of foreign prisoners, ^{2/} adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, was aimed at promoting such developments. The Eighth Congress will consider the draft model treaty on transfer of supervision of offenders who have been conditionally sentenced or conditionally released, which, if adopted, will facilitate the conclusion of bilateral and multilateral agreements.*

75. Apart from prison leave at the last stage of the sentence, in many countries furlough was also granted in special cases, for example, for death or birth in the family, examinations, educational or vocational training or for any kind of medical treatment. According to the prisoner's behaviour, personality and prospects, the kind of crime committed and the supposed danger for society, the special leaves were granted with or without supervision by a prison officer, either in uniform or in civilian clothing.

76. Although prison leaves might increase the danger of the prisoner absconding, the data provided point to the success of such measures. In the Federal Republic of Germany, the annual number of prison leaves increased from 227,800 to 258,594 between 1983 and 1986, while the percentage of absconders dropped from 1.9 to 1.3. Sri Lanka reported that out of 1,489 long-term prisoners granted seven days' home leave, only two had violated the conditions imposed.

77. The actual term of imprisonment could also be reduced by acts of grace, pardon or amnesty. Some of those benefits might be granted unconditionally, others subject to certain conditions, as reported by Chad and Zimbabwe, where prisoners had been released on several occasions through general amnesties or

*See the working paper prepared by the Secretariat on United Nations norms and guidelines in crime prevention and criminal justice: implementation and priorities for further standard-setting (A/CONF.144/18).

other acts of grace. In the Czech and Slovak Federal Republic, as a result of two successive amnesties by the end of 1989 and early 1990, about two thirds of all prisoners had been released.

78. According to the legislation of the USSR, an offender released conditionally could also be released from additional punishment imposed in the form of exile, banishment or disqualification.

IV. INVOLVEMENT OF THE PUBLIC

79. As in the past, many countries stressed the need to keep the general public informed and to seek its involvement. The acceptance of alternatives to imprisonment by the general public is vital for the success of alternative measures. For this reason, the public has to be - and, in practice, in many countries is - informed of planned and implemented legislation in order to promote understanding and acceptance of it. The co-operation of the public in the application of alternatives, as well as in the after-care of released prisoners, is equally important. In France, for example, a campaign had been conducted by the National Council for the Prevention of Delinquency to acquaint citizens with the need for crime prevention and promotion of the rehabilitation of offenders in the community. Autonomous local entities, private organizations and volunteers had participated in the campaign, which used the mass media and various other means of communication to inform the public and increase its sensitivity to the problem. In other cases, private enterprises had participated in programmes aiming at the integration of unemployed offenders by providing work that prisoners could continue to do after release. The United Kingdom reported on the recent publication of two major policy papers on the involvement of the private sector in the remand system and punishment, both in custodial methods and treatment in the community. In order to involve the general public in the new policy, the Government solicited comments on the proposals set out in its policy papers.

V. CONCLUDING REMARKS

80. Member States indicated a continuing interest in non-custodial measures as alternatives to imprisonment, as already noted in the previous report on the subject to the Seventh Congress (A/CONF.121/13). As factors contributing to this trend, States mentioned prison overcrowding, rising costs of maintaining, expanding or building prison facilities, and the belief that imprisonment should be used only as a last resort. In a number of cases, the expansion of non-custodial measures was seen as part of a general move towards depenalization. The diversion of offenders from prison to non-custodial alternatives was, however, countered by a contrary trend in some countries, where tougher measures and fixed, longer sentences had been introduced in line with a retributive approach. That trend is reflected in the results of the Second United Nations Survey of Crime Trends, Operations of Criminal Justice Systems and Crime Prevention Strategies.* Concern was also expressed in some replies that the new low-scale penal sanctions might be applied in addition to already existing sanctions and not as alternatives to imprisonment, thus leading to

*Contained in a technical publication to be issued by the Secretariat. See also the working paper prepared by the Secretariat on criminal justice policies in relation to the problem of imprisonment, other penal sanctions and alternative measures (A/CONF.144/10).

a higher level of control and an increase in sanctions altogether ("net-widening effect"). The Eighth Congress may therefore wish to review current penal policies and their effects on both the use of non-custodial measures and prison overcrowding.

81. Countries reiterated the need for further exchanges of information and experience, and repeatedly called for increased international support through technical assistance and advisory services, in particular through the United Nations system. It was emphasized that special initiatives, including further comparative research, evaluation of the success of the various non-institutional options and intensified training to extend their use would further the application of more effective and humane non-custodial measures within the criminal justice systems.

82. In various replies it was stressed that non-custodial measures in general seemed to be no less effective and could ensure public safety to an extent comparable to imprisonment without the latter's adverse effects and high cost.

83. It was also noted that the scope of non-custodial measures could be wide enough to allow the application of appropriate alternatives at all levels of the criminal justice process, including the pre-trial and trial phase. The great number of persons reported to be held in detention on remand and the long time served before trial by many prisoners were of special concern to States. An extended use of non-custodial measures could help to alleviate that situation. Some replies suggested that the discretionary power of the judicial authorities responsible for pre-trial detention needed to be broadened in order to apply such sanctions, with proper guarantees regarding accountability and the protection of the basic rights of offenders. The draft United Nations standard minimum rules for non-custodial measures* which are before the Eighth Congress, contain specific recommendations.

84. The need for a wide range of measures at the trial stage, also dealt with in the draft United Nations standard minimum rules for non-custodial measures,* is well illustrated by the example of fine defaults. While in the past fines were considered to be a non-custodial sanction functioning relatively well, a number of replies indicated that, owing to the economic crisis facing many countries, the number of fine defaults leading to imprisonment for circumstances beyond the offender's control was increasing rapidly. At the post-conviction stage, alternatives to confinement in closed prisons could be more frequently applied, in so far as that would be compatible with the seriousness of the offence, the characteristics of the offender, and the protection of society.

85. It was noted that practical reasons, such as lack of proper information, lack of resources, qualified personnel and lack of structure to administer programmes, often hindered the effective use of alternatives. In some countries where a wide range of alternatives existed, legislation often restricted their application to certain types of offences or types of offenders. - It may be opportune to review such restrictions. In cases where available alternatives are not applied by criminal justice practitioners, even though they

*See Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/108. For further details of earlier discussions, see also A/CONF.144/IPM/4 and Official Records of the ECOSOC, 1990, Supplement No. 10 (E/1990/31), chap. IV.

are available, prosecutors, judges, probation officers, lawyers and other interested persons need to be properly informed of the advantages of alternatives and of the experience gathered so far, and encouraged to make better use of them.

86. For the successful application of alternatives, the active participation of the media, the community and the public at large is certainly needed. Many countries reported on the successful use of volunteers. Contacts with social welfare organizations, employment exchanges, and other services were provided by numerous States, in appropriate cases. They helped to stabilize the offender's situation in the local community, and acted as intermediaries between the offender and public institutions, employers, the neighbourhood or the family, as necessary.

87. Non-custodial measures could be applied to foreign offenders as well. In appropriate cases those measures could be carried out in the offender's country of origin or domicile. International co-operation could help to establish a system of supervision of those foreign offenders, allowing them to return to their country of origin or domicile while at the same time providing judicial authorities with the possibility of supervising the offender's compliance with the conditions set up. Bilateral and multilateral agreements for supervision in the offender's country could be concluded. Further harmonization of legislation on suspended sentences, probation and other alternatives to imprisonment would facilitate the conclusion of such agreements. A draft United Nations model treaty on the transfer of supervision of offenders conditionally sentenced or conditionally released is before the Eighth Congress for this purpose.*

88. The importance that non-custodial measures have acquired as separate, independent penalties is reflected in the development of international standards for their application. The Eighth Congress has before it the draft United Nations standard minimum rules for non-custodial measures,** which provide a set of basic principles as well as minimum safeguards. The rules would be applicable to all persons subject to prosecution, trial or the execution of a sentence. If adopted, the rules would be an important instrument to promote the further use of non-custodial measures while at the same time providing a legal framework for their application with a view to balancing the concern of society for public safety and the rights and needs of individual offenders and victims.

Notes

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985 (United Nations publication, Sales No. E.86.IV.11), chap. I, sect. E.

2/ Ibid., sect. D.

*See Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/121. See also the working paper prepared by the Secretariat on United Nations norms in crime prevention and criminal justice: implementation and priorities for further standard-setting (A/CONF.144/18).

**See Official Records of the Economic and Social Council, 1990, Supplement No. 10 (E/1990/31), chap. I, sect. C, decision 11/108. For further details of earlier discussions, see also A/CONF.144/IPM/4 and E/1990/31.

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