



**THIRD UNITED NATIONS CONGRESS  
ON THE PREVENTION OF CRIME  
AND THE TREATMENT OF OFFENDERS**

(Stockholm, 9-18 August 1965)

**PROBATION  
(especially adult probation)  
AND OTHER NON-INSTITUTIONAL  
MEASURES**

WORKING PAPER PREPARED BY THE SECRETARIAT

UNITED NATIONS

Contents

	<u>Paragraphs</u>
I. TREATMENT IN THE COMMUNITY	1 - 17
II. FORMS AND FUNCTIONING OF PROBATION	18 - 49
III. PROBATION AS AN INSTRUMENT OF SOCIAL DEFENCE POLICY	50 - 80
IV. THE DEVELOPMENT OF NON-INSTITUTIONAL MEASURES OTHER THAN PROBATION	81 - 99

## I. TREATMENT IN THE COMMUNITY

1. It is customary to-day to classify the treatment of offenders into two broad categories: institutional and non-institutional. Indeed, it is common to divide personnel who work with offenders according to this same classification and there has emerged a concept that the penological orientation of the two groups is significantly different, their training correctly based on different principles and even that there should be a natural antagonism between the two groups. If one were to catalogue the many causes that have slowed up the evolution of comprehensive progressive social defence policies and practice, this schism would probably have to be ranked high among them.

2. Yet "institutional versus non-institutional" is neither a new concept nor can the line be as finely drawn as often implied. Imprisonment as a penalty postdates non-institutional penalties such as corporal punishment, mutilation, deportation, confiscation of property, and the like. Later, other non-institutional measures were instituted for humanitarian reasons, to provide alternatives to sentences of imprisonment. This practice arose essentially from the desire to spare certain offenders, especially children and adult petty offenders, from the deleterious influence of prison experience. It was achieved through the use of suspended sentences and similar devices. As incarceration policy, with respect to both juveniles and adults, has taken on positive rehabilitative goals and modified practice as well as the physical setting accordingly, a companion development has taken place in the realm of non-institutional treatment. The latter is designed not simply to "save" the individual from incarceration but to provide, positively, the treatment regime most conducive to the resocialization of the person concerned. Thus a common objective of rehabilitation prevails in both approaches providing a common bond between the two. This is, of course, only an ideal conception and progress in the social defence field would be ill-served if the illusion of "rehabilitation" as the over-riding function of many institutional programmes (or even a good number of non-institutional measures, for that matter) were not to be identified as the illusion it is. It is probably fair to say that it is a combination of ideological and pragmatic forces that has served to further the development of non-institutional treatment measures to-day. Such measures, not being based exclusively on a desire to avoid institutionalization, have embraced

/...

2.

certain elements of institutional services and conversely, institutional programmes, no longer preoccupied with the removal of the offender from society, have incorporated features clearly identifiable with treatment in freedom.

3. One of the pragmatic factors supporting the development of non-institutional measures is that penal institutions have not expanded in relation to the increased number of prisoners; an increase which is on the whole due to population growth and/or higher criminality rates. This has led to a problem of overcrowding which demanded solution, often immediate. Moreover, whether or not a prison has a population problem or even whether it is traditional or modern in character, its limitations as regards the rehabilitation of offenders have been increasingly questioned;<sup>1/</sup> this is particularly true for certain types of offenders. It is natural, therefore, that in suitable cases the sentencing authorities should take recourse to non-institutional rather than institutional measures.

4. Such factors, singly or in combination, in a sense led to the creation of a separate penological identity for non-institutional treatment measures. Indeed, non-institutional measures now stand on their own merits to be applied to offenders who require such methods of treatment due to specific personality factors and other circumstances surrounding the offence and the offender. Further, the development of the philosophy and principles of individualized treatment, much of it originating within the setting of institutional treatment, gave impetus to the move towards non-institutional measures.

5. At the same time, great advances have been made in liberalizing the institutional regime by introducing features closely akin to non-institutional treatment. Thus, many countries have tempered their prison regimes by various systems of leave, extra-mural work, frequent contacts with the community and pre-release programmes with relaxed security measures.

6. It may be observed in this connexion that many such innovations, furlough systems, for example, were originally based on the theory that leave from the institution is a privilege which should only be granted as a reward, and has to be earned through conscientious work and compliance with institutional regulations.

---

<sup>1/</sup> See A/CONF.26/4, Section I.

/...

In the recent past, however, a more progressive concept has developed, and leave is tending to be used as a rehabilitation technique. It is now employed in order to facilitate the prisoner's gradual adaptation to the idea of freedom and to impress upon him the feeling that he is still a part of the society to which he will eventually return.

7. Another development along these lines is the system of treatment in semi-liberty. Here the prisoner is allowed to work outside the penal institution, but has to return at night. A variation of this system is for the prisoner to maintain his normal job in the community but to be confined in a penal institution during the week-end.

8. Conversely, the desire to apply non-institutional measures to a greater range of offenders has, in certain instances, led to a tempering of these measures by some elements of custodial treatment. For instance, probation, which is traditionally a method of treatment in the community, has in some countries been applied in combination with a period of mandatory residence in a hostel or of disciplinary training at an attendance centre. Thus the line between institutional and non-institutional treatment has become so blurred in a number of countries that the identifying distinction can be made only on the basis of the nature of the agency or authority under which the treatment takes place.

9. Although prisons are becoming more closely linked with the community through a reduced emphasis on security, with furlough plans, extra-mural work, and other means of maintaining desirable contacts with the outside world, such forms of treatment still involve the offender's temporary removal from the community and the interruption of lines of communication with his usual environment. The point at which free communication is discontinued may provide a useful dividing line for the purposes of definition, separating probation or similar community measures from institutional treatment. Definitions, it seems, are apt to grow progressively more difficult as treatment measures become more diversified. The definition of a continuum may eventually become necessary.

10. The tempering of non-institutional treatment measures by elements of custodial treatment has raised some controversial issues. It is argued that probation as a method of treatment in the community can stand on its own merits. Likewise, the use of attendance centres as a liberalized variant of custodial treatment may be warranted in terms of their own objectives and philosophy. The blending of the

/...

two forms of treatment does not, however, necessarily lead to satisfactory results. In point of fact, it has been suggested that the tempering of probation and its blending with custodial treatment undermine its very principle and essence, which is the treatment of the offender in the community. It is therefore argued that, whenever the probationer's institutional treatment is required, it should take place not in correctional institutions but in community institutions intended primarily for non-offenders, such as hostels, mental hospitals, clinics or guidance centres.

11. Moreover, it is argued that the combination of two different forms of treatment at one and the same time only complicates the offender's adjustment. The combination of probation with certain forms of penal or correctional institutional treatment seems to be supported neither by theory nor by empirical studies. In specific cases where probation has been combined with a period of disciplinary training at an attendance centre, the results have reportedly been negative. A research study of this form of combined treatment has revealed that it was not as effective as when the training period at an attendance centre was the only form of treatment. The expected failure rates were calculated according to the type of offender to have undergone a period at an attendance centre, with or without probation at the same time. In all cases, the outcome was worse when both forms of treatment were given; all types of risk categories showed a failure rate at least 10 per cent higher than expected.<sup>2/</sup>

12. The interplay of the principles of non-institutional and custodial treatment has in effect created a great variety of treatment measures, ranging from incarceration in maximum-security prisons to treatment in the community; the gamut of treatment measures includes commitment to open institutions, attendance centres, semi-detention houses, hostels and the like. The development of this wide variety of treatment measures is certainly welcome from the humanitarian point of view; more than that, it is a prerequisite for the application of the principles of progressive penology, which are based on the individualized treatment of offenders.

13. The availability to the court of this diversity of treatment measures has another consequence. The court is no longer faced with the simple alternative of

---

<sup>2/</sup> Attendance Centres. Cambridge Studies in Criminology, McMillan, London, 1961.

institutional or non-institutional treatment, for now there are the hybrids as well. In some countries, the courts seem to have developed a reluctance to use the purely non-institutional treatment measures; their reluctance appears to stem not so much from a feeling that a hybrid measure might be better, but rather from a belief that the public would be more approving if some element of custodial treatment were found in the non-institutional measure.

14. The use of non-institutional measures has sometimes been regarded as too "soft" for the treatment of offenders. It has been suggested by persons who remain dubious about its use that there is a large amount of recorded crime in the affluent countries where these methods are extensively used. The crime rates may be relatively high but the evidence does not support a contention that they result from the application of non-institutional measures.

15. Perhaps the best way of expanding the use of treatment in the community would be to demonstrate its effectiveness in comparison with custodial treatment measures. This is not easily done. Many countries lack the resources for such an undertaking. Ethical and sentimental considerations prevent full experimentation. Moreover the question is not flatly one of institutional versus non-institutional treatment but, rather, for whom and under what particular set of circumstances is a specified approach the more effective one to take.

16. Nevertheless, there are two positive arguments in favour of treatment in the community more easy to develop: its humanitarian character and its economic advantage. Yet arguments of humanitarianism have not always succeeded in winning support for non-institutional treatment measures. It seems that such considerations are often balanced by elements of fear and vindictiveness within the community. As regards the economic advantages of non-institutional measures, the argument seems to have been largely unpersuasive with both the public and the legislatures, probably for the same reasons.

17. As institutional and non-institutional measures merge and overlap, the case becomes stronger for a unified service to deal with all programmes in the treatment field. A unified service would offer economies in the use of facilities and personnel. It would also provide the opportunity for greater flexibility in using treatment resources and in altering individual treatment programmes to coincide with shifting factors in the offender's situation. Moreover, and very importantly, it would provide impetus to the development of more effective programmes through integrated analyses and planning.

## II. FORMS AND FUNCTIONING OF PROBATION

18. Probation, like so many social institutions, cannot simply be transplanted from one culture to another. The seed may be sown, but the plant must be allowed to grow in its own way and draw its sustenance from the cultural and legal soil of the country concerned. It is only natural, therefore, that probation should vary from one country to another.

19. Probation is, furthermore, expected to maintain an adaptive character, undergoing modifications and producing mutations. In many ways, through the years, the character of probation has been altered and further evolution is both expected, and welcome. Indeed it is essential that the probation system should constantly adapt itself to changing circumstances in the social setting. When considering probation schemes, therefore, it would be advisable to focus on how they could be developed rather than how they might be preserved.

20. It would be neither possible nor desirable to adopt a definition so wide as to encompass all the various forms of probation. On the other hand, a restrictive definition would inhibit the development of probation and might hinder its penetration in areas where it had not yet been introduced. An operational definition is necessary, however, to identify the basic elements and fundamental principles inherent in any probation system.

21. There are some problems of definition which have their roots in the history of probation. Since probation evolved either as a substitute for or as a complement to institutionalized treatment, the development of probation services reveals two lines of growth. These lines have tended to converge over the years but there are still traces of divergent thoughts.

22. In the Anglo-Saxon countries, for example, the idea has grown out of the binding-over of juvenile or petty offenders in order to save them the experience of prison; probation thus developed as a substitute measure for imprisonment. On the other hand, in countries where probation grew out of a parole system, the emphasis has been laid on the need to supervise and rehabilitate the released prisoner. In New Zealand, for example, "any sentence of borstal or of twelve months' imprisonment or longer is followed automatically by probation for one year"<sup>3/</sup>. Likewise, in

<sup>3/</sup> Crime and the Community, Department of Justice, New Zealand, 1964.  
Government Printer.



Pakistan, the Good Conduct Prisoners Probational Release Act (1956) provides for a licence system whereby the prisoner can remain on probation if he is considered likely to abstain from crime and lead a useful and industrious life. Offenders sentenced to terms of three years or less are eligible for probational release without serving any specified period in prison. However, prisoners sentenced to a longer term have to serve a minimum of one year and a half of their sentence before becoming eligible for probational release. Persons sentenced to less than six months' imprisonment are not eligible for probational release<sup>4/</sup>.

23. It is sometimes argued that the aim of the probation service is the same whether or not the offender's placement on probation follows a term of imprisonment. It may be observed, however, that in cases when probation follows prison confinement, the offender may feel that he has already "paid his debt". The probationary period might even antagonize him since he may not appreciate its purpose. At any rate, a system whereby prison confinement must precede the offender's treatment in the community can more adequately be identified as 'parole' than 'probation'. Such a condition would make probation almost indistinguishable from parole. In this paper, the term 'probation' refers to a method of treatment in the community, with supervision, where a term of imprisonment has not been served first in connexion with the offence for which the probation order was made. This supervision, an essential element of probation, must have a positive social character designed to effect a satisfactory relationship between the individual and his milieu; it must be carried out by persons committed to this approach.

24. Probation may involve suspension either of the imposition of sentence or of its execution. These two formulae are the most frequently observed, although there are others in use. To some extent, these differences relate to the cultural norms and legal concepts prevailing in the countries concerned.

25. In the United Kingdom, for example, probation involves the offender's submission to a specified period of supervision by a social caseworker who is an officer of the court. During this period the offender remains liable to be otherwise dealt with

---

<sup>4/</sup> The Open Correctional Institution in Asia and the Far East, United Nations Report No. TAO/AFE/14, 28 January 1965, page 233-234.

by the court if he is not of good conduct<sup>5/</sup>. If probation fails, the court need not revert to the question of guilt since the probation order is made after the finding of guilt.

26. In some jurisdictions, however, the sentence has to be passed immediately after the pronouncement of guilt. The suspension of the passing of sentence would only be possible in such jurisdictions, therefore, if there could be a simultaneous suspension of the declaration of guilt.

27. In contrast with the British system, the Franco-Belgian (or 'continental') style entails suspension of the execution of sentence. In France, for example, the probation order is combined with a sentence pronounced simultaneously but conditionally suspended. The probation order may thus be regarded as a substitute measure for imprisonment, but not as an independent sentence. The probationary period is generally determined by the court independently of the suspended prison sentence<sup>6/</sup>. In some countries, it is much longer than the prison sentence itself and may vary from one to three years, going up to five years or even more in some cases. There is, however, a marked tendency towards a shorter and more uniform probationary period<sup>7/</sup>.

28. In some countries, the United States, for example, the legal basis of probation rests upon the power of the court to suspend conditionally either the 'imposition' or the 'execution' of the sentence<sup>8/</sup>.

29. The system of 'voluntary probation' or 'custody by the citizens', which has developed in the Soviet Union, may be considered as yet another form of probation adapted to cultural setting and legal concepts<sup>9/</sup>. The court, and in certain

---

<sup>5/</sup> Report of the Departmental Committee on the Probation Service. Cmnd 1650, H.M.S.O., London, 1962.

<sup>6/</sup> Charles Germain. The birth and first steps of probation in France. International Criminal Police Review, No. 157, April 1963, p. 106.

<sup>7/</sup> The Saginaw probation demonstration project, Michigan. Crime and Delinquency Council of the National Council on Crime and delinquency, 1963, p.33.

<sup>8/</sup> Encyclopaedia of the Social Sciences, Mc Millan. New York, 1963.

<sup>9/</sup> For provision governing this matter, see for example, article 52 of the Penal Code and article 9 of the Code of Criminal Procedure of the RSFSR.

circumstances the procurator, may discontinue proceedings and entrust the offender's care and supervision for one year to his fellow-workers, his collective or a citizens' organization. In the case of minor offences when all the circumstances are clear, the judicial authorities may respond to a petition to this effect from the collective or citizens' organization, even before the initiation of criminal proceedings.

30. The Belgian-French system of 'suspension of the execution of sentence' has its counterpart in the Soviet Union. The court may pass a conditional sentence in response to the request of a collective or citizens' organization, due consideration being given to the character of the guilty person and the circumstances of the case. The Plenum of the Supreme Court of the USSR<sup>10/</sup> advised the courts as to the necessity of supervision both by people's assessors and by the general public. The public organizations and workers' collectives may be entrusted with responsibility for the re-education and reform of the offender who is conditionally sentenced upon their request. Often the organization or collective appoints a leading worker who acts as a social guardian, helping the person with his work and supervising his leisure time. The probationary period may range from one to five years<sup>10/</sup>.

31. The power of the court to make use of probation varies from one country to another, and so do the criteria used in the selection of offenders for probation treatment. British courts, for example, may use probation whenever it is deemed necessary and desirable, irrespective of the offender's age and the seriousness of his offence. Conversely, most State legislations in the United States place specific limits to the use of probation by the courts with respect to such factors as age of offender and nature of offence.

32. The tendency is nevertheless to remove, however gradually, restrictive clauses, be they concerned with age, nature of offence, or previous criminal experience, so as to enable the sentencing authority to utilize probation whenever it is deemed appropriate. It is argued that, where such latitude is possible, safeguards must be introduced to prevent unwarranted disparities in sentencing and inequality in the administration of justice.

<sup>10/</sup> Theoretical basis of the Study and Prevention of Crime in the USSR and some practical solutions. Paper prepared by the All Union Institute for the Study of the Causes of Crime and Measures for its Prevention, 1965.

33. In this connexion, it has been observed that courts seem to be generally motivated by two main considerations: the protection of society and the rehabilitation of the offender; these are not always compatible. Thus, within any one jurisdiction, some courts place a far greater proportion of offenders on probation than others. It is sometimes suggested, by way of explanation, that the greater proportion of offenders placed on probation by these courts could be ascribed to the greater proportion of cases for which probation is suitable. This claim has not been substantiated by any research study made to date. Indeed, it would appear that the cases coming before different courts within any single jurisdiction show remarkable similarities; it is more often in the choice of treatment measure that a great deal of variations exist.

34. In order to minimize the risk of sentencing disparities, some countries have established general criteria to help the court in its choice of cases for probation. In the United Kingdom, for example, it has been proposed that the court should use probation in cases where the circumstances of the offence and the offender's record do not require more severe treatment; where the risk to society of setting the offender at liberty is outweighed by socio-economic arguments for his treatment in the community; or when the offender is in need of continuing attention and is capable of responding to this attention while at liberty<sup>11/</sup>.

35. The pre-sentence investigation is evidently essential to the selection of cases believed suitable for probation. Certain courts, such as the Court of General Sessions in New York, have specialized services for investigation and supervision respectively.

36. Under the system of "voluntary probation" in the Soviet Union, the organization of fellow-workers may, after a detailed discussion of the offender's behaviour, recommend the court to place him on probation. This discussion takes place at a general meeting of fellow-workers which calls the offender to account. It is pointed out that such a meeting gives an opportunity for evaluation of the offender's personality and hence for a sound decision about sending to court a petition requesting his placement on probation. The meeting must also hear the offender's explanation, which is essential for justifying a decision on 'voluntary probation'<sup>12/</sup>

<sup>11/</sup> Report of the Departmental Committee on the Probation Service, op.cit., para.14.

<sup>12/</sup> Theoretical Basis for the Study and Prevention of Crime in the USSR and some Practical Solutions, op.cit.

37. In most countries, the pre-sentence investigation is generally entrusted to the probation service. The question has arisen, however, as to whether the investigation report should include recommendations regarding the course of action to be taken by the court.

38. It has been observed that probation officers are not and cannot be concerned with all the considerations which the courts must take into account while reaching their decisions. This view seems to be shared by many probation officers, who feel that it is inappropriate to their professional functions to make recommendations about treatment measures. Their reluctance to submit recommendations may spring from a desire to avoid later embarrassment in their work. The officer who advises against probation in a particular case might find himself supervising the offender concerned; his earlier expression of opinion might handicap him in his work with the offender as well as with the offender's family and associates. Naturally, these considerations do not carry the same weight, when the probation officer's report to the court is confidential. In some countries, however, it is an essential part of the due process of law that the defence should be informed of the report and given the opportunity to challenge it.

39. Whether or not the pre-sentence report contains any statement regarding the offender's suitability for probation, it is essential that the court be supplied with sound background information regarding the offender. The report is usually expected to cover information pertaining to the circumstances of the offence as well as to the offender's character and personality, living conditions, attitude towards family and their response to him, work record and spare-time activities, attitudes and response to previous forms of treatment for any previous offences, and history of medical or mental condition.

40. Research conducted recently in some countries on the amount of time devoted by probation officers to their various functions has shown that the diagnostic services related to pre-sentence reports tend to expand at the expense of counselling and other treatment services. It has been observed, particularly in countries where probation is a recent innovation, that the probation officer is so often preoccupied with pre-sentence investigations that he is virtually unable to carry out supervision. The question thus arises as to how diagnostic services could be ensured without in any way sacrificing the real probation work of supervision, counselling and other treatment in the community.

/...

41. In order to ensure effective supervision, it has been suggested that a special category of probation officers, namely "supervisors", should be designated for the purpose of carrying out exclusively supervisory functions. This solution has its limitations, of course, but it may be necessary in certain circumstances, particularly when the probation system is being introduced without sufficient probationary staff.

42. While a probation order usually requires the probationer merely to display good behaviour, the court may add specific conditions in individual cases. It has been emphasized, however, that if these conditions are to serve a useful purpose they should be of such a nature as to enable the probation officer to check on their observance. Otherwise, they may have negative effects in that the probationer could easily violate the probation order without being caught, and may consequently become used to evading his obligations.

43. Among the various specific requirements which may be added to the probation order and which attract considerable attention today are, notably, residence in a probation hostel and submission to group counselling, or to psychotherapeutic treatment.

44. The combination of probation with an initial period of residence in a hostel has been particularly recommended for youthful offenders; it is also thought to help adult probationers to cope with the practical difficulties of the first period of probation. Thus, in Sweden, the period of probation may begin with a few months' mandatory residence in a probation hostel<sup>13/</sup>. It is uncertain, however, whether hostels can be regarded in the same light for all communities or types of offenders. There is considerable scope here for pilot projects and assessment, particularly since hostels may vary according to the purpose for which they are designed.

45. In some countries, the hostel is a temporary facility for providing the probationer with inexpensive food and lodging while he looks for work and arranges for more permanent living accommodation. In others, however, the probationer's residence in a hostel and conformity to its rules is a requirement of the probation order. It has been claimed that the latter practice has not proved successful<sup>14/</sup>,

<sup>13/</sup> I. Strahl. Bulletin de la Société internationale de défense sociale, N.8, 1965, p.39.

<sup>14/</sup> The results of probation. Cambridge University, Department of Criminal Science, Mc Millan, London, 1958.

but this contention was not supported by any rigorous analysis of the types of probationers concerned. Nevertheless, some research work has given collateral support to the idea that probation does not give successful results when mixed with other, more punitive forms of treatment<sup>15/</sup>.

46. There is a growing tendency among probation officers to strengthen their work by the use of group methods. In Singapore, for example, probation officers are, in some cases giving group counselling to three or more probationers at a time<sup>16/</sup>. This form of treatment is substantially different from individual casework.

47. It has been suggested that too little attention is paid to the offender's social milieu, and psychotherapists advocate much greater therapeutic efforts in this direction<sup>17/</sup>. In the United States, group therapy involving members of the probationer's family has been arranged in this respect.

48. The condition that the offender must undergo psychotherapeutic treatment is sometimes laid down explicitly in the probation order. Since probation is by definition treatment within the community, the probation officer should be well acquainted with the resources available in the community. In fact, he has to do many things which could not be written in detail in any job specification or probation order. If he is to be effective and obtain satisfaction in his work, he needs to be given considerable latitude when dealing with individual cases.

49. Apart from treatment in psychiatric clinics or other institutions, the probation officer endeavours to involve the probationer in various forms of local activity which he considers appropriate for his treatment. In a welfare State, the complex structure of social agencies can pose many problems for the probation officer and some attempts to provide coordinating machinery have been noted in this regard. While these may serve a very useful purpose in simplifying procedures and preventing administrative overlaps, they may present some problems in that they may tend to restrict the initiative of officers in handling individual cases. The balance between initiative and control is a difficult one to achieve and needs continuous attention if the machinery of administration is not to become more important than the purpose for which it was created.

<sup>15/</sup> Attendance Centres, Cambridge Studies in Criminology, Mc Millan, London, 1961.

<sup>16/</sup> International Review of Criminal Policy, No. 19, p. 39.

<sup>17/</sup> Saleem A. Shah. Out-patient treatment of offenders (paper delivered at the symposium on "The treatment of offenders" of the American Psychological Association, New York, 1 September 1961).

### III. PROBATION AS AN INSTRUMENT OF SOCIAL DEFENCE POLICY

50. As far back as 1951, the United Nations Economic and Social Council urged all governments to consider the adoption and development of probation<sup>18/</sup>. Since then, the application of probation to juvenile offenders has made good progress, but the development of adult probation has met with considerable obstacles.

51. An effective probation system requires such elements as the legal framework for its application, adequate pre-sentence investigation, sound and flexible supervisory techniques, coherent organization and administration of the probation service, and staff with the necessary personal and professional qualifications. These elements, however, are not always within easy reach, and this is probably what accounts for the slow development of adult probation in many countries.

52. The inadequacy of judicial and administrative machinery for the application of probation is in many countries a major obstacle to its development. It has been observed in this respect that the timely use of probation is often jeopardized by the excessive duration of judicial proceedings and pre-sentence detention.

53. Moreover, it would appear that the judiciary is not always convinced that probation is an effective method of treatment for adult offenders. Even when probation is legally established, its benefits are not always sufficiently known to the courts. It is generally the judge who is responsible for the choice of treatment measure, although in some countries this responsibility is entrusted to a sentencing authority. Since the success or failure of probation depends largely on the suitability of cases selected for probation treatment, it is of the utmost importance that the judiciary should be enlightened as regards the appropriate choice of treatment measure.

54. The availability to the court of a variety of measures to choose from places a heavy responsibility upon the judiciary. The sentencing judge must remain informed on the special merits as well as disadvantages of all possible measures at his disposal. He must also inform himself as fully as possible about the

---

<sup>18/</sup> ECOSOC Resolution 155 C (VII).



personality and potentialities of the offender to assure that the most suitable measure possible will be used. All this implies the acquisition of knowledge and skills not generally imparted in the course of the professional training of the judiciary. In many countries, the judiciary is expected to - and does - rely heavily on the expert knowledge of psychiatrists, psychologists, social workers and the like but such sources are frequently scarce or even non-existent in many countries. Moreover, such services may be unappreciated and unwelcome in some courts. Improvement in this connexion has come about through local conferences and observation tours arranged to impart information and to facilitate use of existing resources, through special publications designed for the purpose and through informal consultations between the judiciary and administrators. In all these approaches, social defence administrators have, in a number of countries, found it appropriate to take an initiative.

55. The shortage of qualified staff is another stumbling-block in the way of probation. This problem is felt, though to varying degrees, in both developed and developing countries. It is so acute in some areas that the value of this treatment measure is seriously jeopardized<sup>19/</sup>. The training of personnel in this sector is perhaps the foremost practical problem to be overcome so that probation may give the expected results.

56. Personnel problems tend to lead to serious discrepancies between the legal provisions for probation and its practical application. In keeping with the modern concept of casework, it is generally advocated that staff who are responsible for giving supervision and guidance should be specially trained so as to give the best possible chance of success to the probation system. In this connexion, it is felt that the supervision of offenders by police officers - a method still used in a number of countries - is not only inappropriate but bound to undermine the effectiveness of probation treatment.

57. The probation officer is generally entrusted with the pre-sentence investigation as well as the probationer's supervision and the planning of his probation treatment. No matter how qualified he may be, the quality of his work will inevitably suffer if he is charged with more cases than he can adequately handle. The professional officer's caseload is therefore the crux of the probation service.

---

<sup>19/</sup> 1963 Report of the World Social Situation, UN publication, Sales No.63.IV.4, p.117.

58. In some countries there is a definite trend towards professionalism and efforts are being made to meet the need for qualified probation staff through pre-service and in-service training. In others, however, the idea of enlisting voluntary workers for supervisory functions is strongly favoured.

59. The use of part-time voluntary probation officers is a common practice in several European countries which have succeeded in involving the public in the process of resocializing the offender. The Netherlands, for example, has a long and successful experience with enlisting private citizens for this type of work. It is reported that its probation service includes some 8,850 voluntary officers and 330 professionals. Austria has started an experiment in the large cities, in which probation supervision for juveniles is carried out exclusively by voluntary workers<sup>20/</sup>. In France, the newly created probation service consists of benevolent workers as well as professional workers, who are mostly éducateurs. In Sweden, the supervision of probationers is carried out by laymen, who are in turn supervised by professional workers (protective counsellors).

60. The idea of part-time benevolent workers has also gained ground in some parts of Asia. Professional officers generally act as supervisors of the voluntary officers, and serve as consultants on difficult cases. Regular training programmes have been arranged for volunteers, and those meeting the requirements now receive certificates to authorize their work. In Japan, for example, volunteers are already playing a notable role in this field. It is reported that there are over 50,000 voluntary probation officers, supervised by 681 professional officers.

61. In Africa, probation has been strongly recommended as an effective method of treatment, particularly for juvenile offenders, but the lack of trained personnel and training facilities has considerably hampered its extension to rural areas. It has been suggested in this respect that local community leaders could advantageously be used as agents for probation officers and that multi-purpose social workers or "éducateurs" could be engaged to meet staffing problems<sup>21/</sup>.

<sup>20/</sup> W. Doleish, "Die Bewährungshilfe in Oesterreich". Bundesministerium für Justiz, Wien. Bewahrungshilfe 1963. 10/3, 199-207.

<sup>21/</sup> Report of the United Nations Seminar on the Prevention of Crime and the Treatment of Offenders; Monrovia 1964 (E/CN.14/328).

62. These measures go beyond the encouragement of voluntary activity merely to supplement "official" penal practices. Indeed, it is asserted that the treatment of offenders must not be regarded as a restricted area to which only professionals and officials may have access. It is even argued that the volunteer system with professional supervision has advantages over the all-professional system. On the other hand, many professional caseworkers are reluctant to see the service of part-time volunteers used in functions which they see as their particular field of activity. Whether or not the fears often expressed are ill-founded still seems to be a matter of opinion and conjecture. At any rate, the use of voluntary workers may be worthy of careful study, particularly in those jurisdictions where resources are limited. Even in countries where the service is highly developed or professionalized, much could be gained from a study of this nature.

63. One of the important merits of probation is that it does not remove the offender from society or prevent him from fulfilling his social and economic obligations towards his family and community. Its value, however, cannot be gauged solely or even primarily by the privileges which it seeks to preserve for the offender. Account should be taken of both what probation can provide and what it can prevent. Indeed, as a substitute for imprisonment, it preserves the offender from the harmful influences inherent to prison confinement<sup>22/</sup>.

64. Evidence suggests that probation is no less effective than other forms of treatment in preventing the offender from reverting to crime. Some attempts have been made to determine the success rate of probation as compared with that of other forms of treatment. A comparative study of this nature has been carried out in the United Kingdom, on the basis of the great variation in the use of probation by different courts within the same jurisdiction. The results of this study have led to the conclusion that society would have been at no greater risk if probation had been used freely by all courts<sup>23/</sup>.

---

<sup>22/</sup> See A/CONF.26/4 Section 1.

<sup>23/</sup> L.T. Wilkins. A small comparative study of the results of probation. British Journal of Delinquency, January 1958.

65. Likewise, in the United States, a pilot project has been conducted in Saginaw County (Michigan State); the use of probation was considerably expanded and efficient probation services were established. Over the course of three years, the number of commitments to the State prison has been reduced by half. The results achieved during this period suggest that if a sufficient number of trained personnel could work with limited caseloads under competent supervision, the use of probation could be substantially expanded at no greater risk to the community<sup>24/</sup>.

66. An assessment project on the effectiveness of probation treatment was carried out in the United Kingdom; probation success was measured in terms of probationers' non-appearance before the court during a supervisory period of one to three years and for three years after probation treatment. The success rate for adults at the end of the total period was 70 per cent<sup>25/</sup>.

67. In Canada, comparative research into the reconviction rates of ex-prisoners and probationers suggests that the potentialities of probation are not being fully exploited. The conclusion of this study was that probation should be applied to all first offenders and used more frequently for recidivists, while age should not be a criterion in selecting offenders for probation treatment<sup>26/</sup>.

68. In the light of the foregoing, it would appear that the success rates of probation treatment are very encouraging. It must be admitted, however, that the research carried out so far has been too limited in scope and nature to be conclusive. Some authorities stress the need for evaluating probation and consider that this must proceed hand in hand with its development. Others maintain, however, that even if it were possible to evaluate social work, which they doubt, it would be unnecessary and even unethical to do so. Their contention is that the money so spent could be put to far better use in increasing community resources for probation treatment.

---

<sup>24/</sup> The Saginaw Probation Demonstration Project, Michigan Crime and Delinquency Council of the National Council on Crime and Delinquency, 1963.

<sup>25/</sup> The results of probation, a report of the Cambridge Department of Criminal Science, London, McMillan, 1958.

<sup>26/</sup> D.F. Brown. A comparison of the results of probation and imprisonment as methods of rehabilitating offenders. School of Social Work, University of Toronto (thesis, 1962).

69. Even if it cannot be said with certainty that probation has greater success than any other form of treatment, it must nonetheless be agreed that nowhere has it been proved less effective. Moreover, it is certainly less costly and more humane than many other treatment measures.

70. The comparatively low cost of probation has been demonstrated in a number of experiments. The pilot project conducted in Saginaw County (Michigan State ) suggests that an increase in the use of probation would entail proportionate savings in public funds. It has in fact been calculated that the taxpayers of Michigan could be saved several millions of dollars per year in prison, parole and welfare costs if the courts could be provided with adequately trained probation staff<sup>27/</sup>. Likewise, it has been stated that in Israel it is less costly to ensure the services of five probation officers than to maintain two prisoners for the same period<sup>28/</sup>.

71. A shift towards probation in sentencing policies would have the welcome effects of reducing the need for prison construction and the costs of prison administration. As noted earlier, the money-saving advantages of probation have been singularly unpersuasive in the past; it is logical that they should carry more weight in the future, particularly since many countries need and wish to institute penal reforms but have only limited resources to be used for the purpose.

72. In the affluent countries, the probation service has considerable resources at its disposal but this has not always lead to an extensive use of probation. The development of probation seems to depend much more upon the climate of opinion within a country than upon the effectiveness of the system and the results achieved.

73. Perhaps the most urgent matter in this field today is to promote the widespread acceptance of probation by the community, so as to ensure its introduction into many countries and the extension of its use where it has already taken root. It is now increasingly being recognized that the public must be educated to appreciate the advantages of probation and be well informed of its

---

27/ The Saginaw Probation Demonstration Project, op.cit.

28/ D. Reifen. Bulletin de la Société internationale de défense sociale, No. 8, 1965, p. 23.

rehabilitative merits. Furthermore, the public must be convinced that probation does not present a greater risk to the community than any other treatment measure. A public relations programme is thus called for. It is not enough that the probation service should be efficient; its efficiency must be perceived by the judiciary and the community at large.

74. The education of the public constitutes a very important step towards clearing the way for the development of probation. Experience shows that legal provisions for the establishment of probation remain dead letters as long as the public does not favour this method of treatment. In some countries, social defence specialists are at variance with the general public about the use of probation. In such cases, they may succeed in establishing probation by law but their recommendations regarding its application are not likely to be carried out unless public support can be won. In Latin America<sup>29/</sup> and the Middle East<sup>30/</sup>, for example, probation has been strongly recommended in many conferences and meetings, but little progress has been achieved.

75. One way to make probation more appealing to the public is to dispel the misconception that a person placed on probation has been "let off". The disciplinary aspects of probation must therefore be stressed. In the United Kingdom, for example, probation tends to be regarded as indistinguishable from other punitive measures that the court might take<sup>31/</sup>. Although it is necessary in many systems to obtain the offender's consent to being placed on probation, this consent is generally given in the knowledge that any alternative is likely to be less congenial to him. It is of course valuable that the probationer, however grudgingly, should accept obligations about his future conduct, since this helps him to feel responsible for controlling his own behaviour. Nonetheless, there is from the probationer's viewpoint a strongly disciplinary element, even tantamount to a punishment, in the requirement to submit to supervision, particularly at the outset when he has to accustom himself to the obligations and restrictions imposed by probation.

---

<sup>29/</sup> Report of the Latin American Working Group of Experts on the Prevention of Crime and the Treatment of Offenders, Caracas, 1963, ST/TAO/SER.C/68, paras. 168-169.

<sup>30/</sup> Report of the Third United Nations Seminar for the Arab States on the Prevention of Crime and the Treatment of Offenders, Damascus, 1964.

<sup>31/</sup> Report of the Departmental Committee on the Probation Service, op.cit. para.11.

76. The element of compulsion also exists under the system of "voluntary probation" as employed in the Soviet Union, though the effects of supervision and the influence of the public are primarily moral in character. This is particularly felt when the offender placed on "voluntary probation" abuses of the collective's confidence. The collective may decline further care and supervision, and in this case criminal proceedings would start anew against the offender<sup>32/</sup>.

77. It is axiomatic that public support could easily be enlisted when the probation system is in accord with cultural norms. In some countries, the probation officer is encouraged to emphasize an egalitarian approach and identify himself with the probationer. This may not be the most suitable approach in all instances. It is probable that in certain Asian countries, for example, the teacher-student relationship is more suitable between the probation officer and the offender placed under his supervision. The traditional respect for the teacher which is so much a part of some cultures is certainly not discordant with the concept of probation work in the treatment of offenders. The direct importation of foreign techniques may need considerable modification if the concept of probation is to be effective with probationers and accepted by the community.

78. In countries where the view prevails that probation constitutes unwarranted leniency, it has been suggested that probation could be introduced more easily if it were at first combined with a suspended prison sentence rather than used as an independent measure. The public could thus be assured that, in cases of failure, the prison sentence could be enforced without retrial.

79. Likewise, the suggestion has been made that it would be desirable if probation could first be restricted to certain localities, types of offenders and categories of offences, with the possibility of later expansion<sup>33/</sup>.

80. Whatever measures are required to enlist public support and ensure the development of the probation system, they could be taken, as long as they do not affect the essential principles of probation. Such measures as the supervision of the probationer by police officers or the combination of probation treatment with prison confinement, would undermine the value of probation. If these measures were indispensable for gaining public support, it would be preferable to delay the introduction of probation rather than to warp its character.

<sup>32/</sup> Theoretical Basis of the Study and Prevention of Crime in the USSR and some Practical Solutions, op.cit.

<sup>33/</sup> Report of the Third United Nations Seminar for the Arab States on the Prevention of Crime and the Treatment of Offenders, Damascus, 1964.

SECTION IV. THE DEVELOPMENT OF NON-INSTITUTIONAL  
MEASURES OTHER THAN PROBATION

81. Perhaps the greatest change in penological thinking to have taken place in recent years is reflected in the development of non-institutional measures for the treatment of offenders. Some of these measures have long been known; what is new is that they are now increasingly being used for broader categories of offences and offenders. Innovations with a wide field of application have also made their appearance.

82. Apart from probation, which is dealt with in preceding chapters, a number of non-institutional measures have emerged as substitutes for imprisonment. The need for such measures is being increasingly felt because the complexities of modern times have greatly contributed to the increased number of "unintentional" offences which do not truly reflect criminal behaviour. Consequently, there is now an increasing number of offenders who do not require custodial treatment and for whom such measures would be extremely harmful. In this respect, mention may be made of drug addicts, chronic alcoholics, traffic violators and various types of petty offenders.

83. There are some non-institutional measures which not only preserve offenders from the experience of imprisonment but also relieve the courts from overcrowding and hence contribute towards the acceleration of the correctional process. In certain countries, the public prosecutor has fairly wide discretionary powers enabling him either to continue proceedings or to dispose of cases of minor gravity as he sees fit. In Japan and Belgium, for example, the public prosecutor may even order para-probationary supervision for suitable cases. Likewise, in the Scandinavian countries, the conditional suspension of prosecution dependent on good conduct has been recognized by law. In applying such methods it is considered essential that the public prosecutor should keep the offender's rehabilitation in mind and be able to overcome legal inflexibility and formalism in favour of such considerations as humaneness, fairness and social usefulness<sup>34/</sup>.

---

<sup>34/</sup> Ninth International Penal Law Congress, The Hague. August 1964, conclusions of Section III.



84. The increased number of unintentional offences has also led many countries to devise a summary procedure whereby prosecution is stayed without a judicial hearing if the accused admits to having committed the offence and submits to an order for the payment of a fixed sum of money, thus avoiding further penal action<sup>35/</sup>.

An even simpler method is being used in a number of countries, where the police are authorised to collect fines on the spot for minor traffic offences.

85. It has been observed that, in some minor cases, admonition would better serve the purpose than any other treatment measure. This may take the form of a judicial or administrative warning, given either in camera or in an open hearing by the judge or the administrative authority concerned. Even without any express admonition, the "absolute discharge" from court of a person found guilty of a minor offence may in itself constitute sufficient warning to prevent repetition of the offence.

86. The suspended or conditional sentence pronounced by the court under normal procedure has already been referred to in its frequent combination with probation. As a separate penal sanction it has assumed an important function since the end of the last century and has proved its merits as an alternative to short-term sentences. It is perhaps the simplest means of dispensing with imprisonment and may warrant more extensive use, especially in developing countries.

87. Fines are, of course, often used as a substitute for imprisonment. While several countries have gone far in developing this practice, others hesitate to use it on the grounds that it discriminates between rich and poor. In order to obviate this risk, a system has been introduced in the Scandinavian countries whereby "day-fines" are fixed proportionately to the financial means of the offender.

88. As regards the conversion of fines into subsidiary imprisonment, it is felt that this method is discriminatory and unacceptable, particularly as there are other ways of settling the obligation, either in instalments or by work or services rendered in freedom. The suggestion has even been made that a person should never be deprived of his liberty for non-fulfilment of any financial obligation, especially of a contractual kind<sup>36/</sup>.

---

<sup>35/</sup> Such summary proceedings have different names in French: condamnation sans débats, procédure transactionnelle, oblation volontaire, amende de composition; see the enquiry conducted by the International Penal Law Association and published in: Revue internationale de droit pénal, 33e année, 1962, Nos. 3-4.

<sup>36/</sup> For a more extensive discussion of this subject see Congress document A/CONF.26/

89. In their efforts to dispense whenever possible with sentences entailing deprivation of liberty, several countries have developed systems of work or services to be rendered under a penal sentence while the convicted person remains in complete or partial freedom. This method of extra-mural labour is sometimes used as a substitute for imprisonment in the case of inability to pay a fine, but may also constitute an independent form of penal treatment suitable for certain types of offenders. The practical arrangements are such that the offender can, while serving this type of sentence, continue to live with his family and pursue his normal employment for the rest of his working day.

90. In the Soviet Union, for example, corrective labour without deprivation of liberty is an essential feature of the penal system. Under article 25 of the Fundamentals of Criminal Legislation for the USSR and the Union Republics of 25 December 1958, the sentence is served either at the offender's place of work or at some place in the vicinity of his residence. The amount of deductions of earnings made for the benefit of the State is fixed by the sentence but does not exceed twenty five per cent. This measure is applicable for periods up to one year. It is rather like payment of fines by instalments except that the co-workers are expected to assist in the re-education of the offender.

91. In some countries, serious difficulties have arisen in organizing extra-mural labour, especially for non-manual workers<sup>37/</sup>. In others, the prevalence of unemployment is said to have prevented the introduction of such schemes. Also, some penologists are apprehensive of the risk that extra-mural labour might be perceived as a form of "forced labour" or exploited for gains by private individuals<sup>38/</sup>. It would appear, however, that that extra-mural labour could be acceptable if it were applied for the purpose of compensating the victim of the offence.

92. It has been observed in this connexion that the victim of the offence is practically ignored in modern penal law and that the situation could be substantially improved if restitution or compensation for the damage caused by the offender were made either an independent measure or an intrinsic part of the treatment measure imposed on the offender.

93. In some countries, some efforts have been made in this direction. Restitution, for example, is in some instances made a special condition attached to a suspended sentence or provided for in a probation order. In certain parts of Latin America, the victim is either compensated by the offender in instalments, or receives compensation from a special fund financed by the State which later recovers the

<sup>37/</sup> A/CONF.17/5, paras. 391-408.

<sup>38/</sup> Report of the Damascus meeting 1964, op-cit.

amount from the offender. In the United States, Australia and Italy, legal provisions are being considered which would provide for the indemnification of victims of violence from a similar compensation fund. In France, there exists a special fund to provide for the indemnification of victims of road accidents when reparation cannot be obtained from the responsible party; inter-state agreements have been made with neighbouring countries in this respect. In the Socialist countries, the people's courts often impress upon the offender the need to pay for the damage caused.

94. Notwithstanding these measures, it is argued that the victim of an offence deserves much more attention than he is given under modern penal law. The suggestion was thus made that restitution should be restored to the position which it originally occupied in many cultures. Restitution, it is felt, could in many cases contribute decisively and in a particularly desirable manner to the effectiveness of penal action. It has been pointed out that in a number of simpler societies, the communities, tribes, extended families, etc., under many circumstances demand no more of the offender than formal apology accompanied by full restitution.

95. Some non-institutional measures have developed as adjuncts to institutional treatment. Where release from penal institutions is conditional or on parole, the after-care of prisoners has gradually become part of a "treatment continuum" and is being integrated into the correctional process. In fact, parole and after-care are now the rule in many countries for most prisoners serving sentences of medium and long duration. They are often used to reduce the length of sentence and to facilitate transition to community living. Some countries have thus organized after-care schemes carried out by the State or by voluntary associations with government subsidies.

96. In this connexion, some experiments in community-centred programmes have been conducted with public grants in the United States of America. Guidance hostels have been established whereby pre-release orientation is given in the form of counselling services. The results of such experimental centres, some of which are run by private prisoners' aid societies, tend to show that a therapeutic community approach meets a real need and greatly contributes to the prevention of recidivism by serving as a bridge from prison life to responsible citizenship<sup>39/</sup>.

---

<sup>39/</sup> "Residential after-care: an intermediate step in the correctional process" by Maurice A. Breslin and Robert G. Crosswhite, Federal Probation, March 1963, pp. 37-46.

97. It has been observed that the problem of keeping out of prison certain persistent and socially inadequate offenders will not be solved until sufficient hostels and half-way houses have been established. Such centres have in many countries demonstrated their value as a base from which offenders can be gradually eased out into an independent existence.

98. One aspect which has special bearing on the reintegration of such prisoners into the community concerns the various methods of self-help and mutual assistance which have been promoted in recent years. A classic example is the thirty-year old world-wide Alcoholics Anonymous movement, in which former alcoholics assist in curing their fellow men from liquor dependence. In Belgium, to give one illustration, Alcoholics Anonymous has been enlisted by the judicial authorities in a probationary scheme for alcoholics.

99. A more recent movement of a similar kind, known as "Synanon", started a few years ago among former drug addicts in California. It is patterned after the group-therapy methods of Alcoholics Anonymous; groups of ex-prisoners hold group counselling sessions in prison for addict inmates and run hostels for addicts who are in the process of readjustment to normal life. While taking regular jobs outside, the residents contribute part of their wages to the Synanon group, all members of which assist each other according to strict rules which are applied by the community in case of relapse<sup>40/</sup>. It has been observed that such social movements, representing a form of intense group interaction, may have possibilities beyond the addiction problem and could find their application in other treatment techniques.

---

<sup>40/</sup> See "The Anticriminal Society: Synanon", by Lewis Yablonsky, Federal Probation, September 1962, pp. 50-57.

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