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in the Juvenile Justice System and Its Administration"

PART 1: EXPERTS' PAPERS:

Contemporary Trends in Juvenile Justice Administration

*by Hira Singh**

Introduction

The juvenile justice system, in the modern context, organizes efforts to prevent and treat juvenile social maladjustment in keeping with the rights and interests of children and young persons involved, without undermining public safety. A comprehensive approach towards juvenile justice not only brings within its ambit children coming in conflict with law but also those likely to drift into criminogenic culture because of various situational compulsions. In fact, juvenile justice, as a social justice issue, has to concern itself with the well-being and welfare of all children in need of care and protection. The realization of such a goal necessarily requires a thorough understanding of the nature and genesis of the problem of juvenile deviance as well as the knowledge and capacity to isolate and neutralize such factors in the complex relationship between the fast-growing child and the highly fluid social environment which renders him vulnerable to it. But, despite the advancements in social sciences and behavioural disciplines, the phenomenology of deviant behaviour continues to baffle. The perception of the problem varies in accordance with prevailing cultural norms and social values. The definition of the problem is not only influenced by the societal concern for and the expectations from juveniles as the most precious human resource but also by the political structure that governs the system for prevention and control. Each society tends to qualify behaviour on the part of a juvenile as "deviant" or "delinquent" on a basis specific to indigenous realities. The status of the juvenile in a particular society is a major factor in the manner in which the problem is generally perceived and tackled. Thus, the juvenile justice system in a country has to be viewed in relation to its cultural ethos, socio-economic and political conditions, and of course, the level of public awareness at a given point in time.

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Current Situation

In its global perspective, the juvenile justice administration has been a subject of concerted thought at United Nations forums since the world body initiated its work in the field of crime. Juvenile delinquency, the focal point of juvenile justice operations, was among the main topics discussed at the first three United Nations Congresses on the Prevention of Crime and the Treatment of Offenders, held in 1955, 1960 and 1965. While the problem continued to emerge as an integral part of the crime situation at the Fourth and Fifth Congresses as well, it was only at the Sixth Congress that the concept of juvenile justice both before and after the onset of delinquency was examined at length in light of socioeconomic and political changes influencing juveniles and the rapidly growing advocacy of human rights for children and young persons coming within the purview of the system. In regard to the problem before the onset of delinquency, the issues included: current trends in juvenile justice with special reference to conceptual approaches and dilemmas; basic philosophical approach and applicability of the concept of juvenile justice; responsibilities for the development of children and young persons with specific roles for the family, the educational system, the com-

munity and the state; and planning of development programmes and services for endangered children and young persons. On juvenile justice after the onset of delinquency, the questions pertained to legal and social responsibility, definition of delinquency and juridical nature of juvenile justice, alternatives to juvenile justice systems, and treatment programmes. The Sixth Congress recognized, *inter alia*, that juvenile justice defied a universally acceptable definition. The system must be understood in relation to the historic fabric, social values and norms, and the complexities of the social, economic and political structures of a country. It was found imperative for the system to strike a balance between the protection of the child and protection of society. The participants agreed that each system had to devise innovative approaches to uphold the rights of children coming in conflict with law without undermining their needs. Juvenile justice should not only cater to the special needs of children coming in conflict with law but also to the welfare and well-being of endangered ones. Indeed, the most significant outcome of the Sixth Congress was the resolution on the development of minimum standards for juvenile justice.

The spadework done by the Sixth Congress paved the way for unprecedented global action at various levels. In pursuance of the substantive provisions of the relevant resolution, the process for the formulation of standard minimum rules for the administration of juvenile justice and for conducting research on the causes of delinquency and programmes for its prevention was set in motion, in collaboration with the United Nations institutes and expert groups. On the recommendation of the Committee on Crime Prevention and Control, the Economic and Social Council included the subject of "youth, crime and justice" as one of the five topics in the provisional agenda for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders. Consequently, the whole range of problems and programmes in the sphere of juvenile justice administration came up for review at regional and interregional meetings held in preparation for the Seventh Congress. The Asia and Pacific Regional Meeting, held in Bangkok in July 1983, was concerned about the increasing trend of juvenile delinquency and youth criminality, both in traditional and newly emerging forms, despite strong informal social controls. The changing socioeconomic environment, rapid urbanization and growing affluence were seen to correlate with crimes committed for the sake of excitement or gain. Children and youth in these countries were found more susceptible to immediate environmental influences, especially in the face of a high rate of unemployment and lack of resources for socializing children. There was a unanimous view that juvenile offenders be handled and treated separately from adults through juvenile courts and a necessary infrastructure. It was further recognized that the principles of due process and *parens patriae* should not be regarded as mutually exclusive alternatives, and efforts should be made to harmonize the best of them. Many countries suggested that, wherever possible, young offenders be treated in the community and institutionalization be resorted to as a last measure. The meeting regarded the UNAFEI guidelines for the formulation of the standard minimum rules for juvenile justice administration as "enlightened, progressive, well-worded and representing the best thinking on the processing of young offenders."

The deliberations on the topic in other regions were also characterized by a serious reaction to rising juvenile crime in the wake of such socio-political and economic situations as made the young vulnerable to marginalization, abuse and deviance. The Latin American Regional Preparatory Meeting, held in San Jose in October 1983, identified frustration among youth, "the communication gap," social inequality, racial discrimination, illiteracy, unfulfilled expectations, lack of meaningful opportunities for participating in national development, etc., among the factors responsible for juvenile deviance, delinquency and crime. The meeting pleaded, *inter alia*, for

systematic action to offset the lag between the attainment of biological and social maturity, the lack of social and economic opportunities, uneven rates of change, explosive urbanization, decline of traditional social controls, lack of leisure time and recreational facilities. Advocating a specialized handling and treatment of juvenile offenders, the meeting stressed the need for the juvenile courts to go beyond their merely juridical scope and make optimum use of inter-disciplinary, scientific knowledge in assessing circumstances and correctional requirements of juvenile offenders. The African Regional Preparatory Meeting, held in Addis Ababa in December 1983, analyzed the problem of youth crime from the viewpoint of the larger problems of poverty, destitution and rural-urban migration. Unemployment or underemployment was observed as the most critical factor in the causation of youth deviance, requiring on the part of the international community a more just ordering of the world economy. Since juvenile delinquency was viewed primarily as an offshoot of the breakdown of the family, a strong emphasis was placed on supporting and strengthening the family unit as a preventive device. The relationship of the police with juveniles coming within the jurisdiction of the law was deemed crucial by several countries.

The Western Asia Regional Meeting, held in Baghdad in December 1983, highlighted the role of the family as the principal agency for the transmission of values for the social, moral and educational growth of youth, as contemplated in the Islamic Shari'a in the Arab region, and laid stress on character building and strengthening of moral standards. It was remarked that the "mass media were often profit-oriented and exacted a tremendous social cost at the expense of the moral values of the young." The meeting regarded the use of drugs by youth as one of the grave problems in modern society and recommended a treatment policy rather than purely a penal approach. More importantly, this regional meeting recognized the relationship between youth and extremism involving violence under the guise of religion. It was observed that such activities were often the result of psychological or economic problems which led the youth to thwart the principles of society, law and justice. One country drew attention to the seriousness of sending children to war. In regard to the drafting of minimum standards, the meeting called for an abolition of capital punishment and not merely a retriction of its use. Similarly, the European Regional Meeting, held in Sofia in June 1983, urged the international community to study more closely the criminogenic or non-criminogenic value development processes and the role of mass media in the causation of crime. It brought out the need to develop a greater tolerance towards youth crime and to give priority to re-educational rather than punitive measures. The participants felt that the formulation of effective preventive policies towards youth crime should be based on scientific research conducted through sound and refined methodologies.

The intergovernmental policy orientations emerging at the regional preparatory meetings were considered in depth by the Interregional Preparatory Meeting of experts held in Beijing in May 1984. The meeting called upon the international community to ponder the problems in this field in the wider context of social, economic and cultural realities of different countries. Among the major factors identified as contributory to youth criminality were unemployment or underemployment, social alienation and a sense of cynicism towards political and economic institutions. In developing countries, rural-urban drift, poverty and deprivation were seen to have adversely affected substantial segments of the youth population. In many countries, youth was found to have been marginalized in terms of legal, economic and social decisions that influenced their lives. The family and the educational system were singled out as of vital importance for the socialization and development of young people. The participants agreed that unplanned development created a great deal of problems concerning youth. Econ-

omic and political institutions had failed to provide an acceptable life-style for youth. Long-term solutions to youth problems required fundamental reforms in their economic, social and cultural milieu. It was noted that official data on youth criminality concealed more than it revealed and, therefore, a deeper probe was suggested to have a thorough understanding of the problem. Dwelling on the newly emerging forms of youth criminality, the participants expressed a sense of alarm at the increasing propensity of drug abuse and violence among youth. In this connection, mass media and entertainment programmes were thought to have a considerable impact. It was noticed that new technology had brought innovations that subjected the young to various kinds of cross-cultural influences, some of which were highly damaging. Discussing delinquency prevention and control strategies, the experts reiterated the need for more effective co-ordination among the various agencies concerned, such as the police, the prosecution, social services, educational authorities, medical and health services, juvenile justice organizations and others responsible for the penal system. Due regard to the maintenance and development of social control at the primary level was found necessary. In the larger context of juvenile justice, the meeting underscored the importance of comprehensive measures against child abuse, exploitation and maltreatment inside and outside the home in institutions. Both material and psychological assistance were deemed imperative for abandoned, neglected or maltreated children. It was agreed that the juvenile justice system had to incorporate the basic elements of the due process, social welfare and participatory models, if various categories of children in need of care, protection, education, treatment and rehabilitation were to be covered.

On the basis of the aforementioned considerations, the Interregional Preparatory Meeting came to a number of conclusions. It was agreed: that youth be provided with facilities for full participation in national development, especially in regard to work, education, political life, legal assistance and cultural activities; that the family be strengthened in terms of its role in the socialization of the young and in the prevention of juvenile maladjustment; that the educational system be evaluated from the viewpoint of the emotional and social needs of the young; that special attention be given to the prevention of delinquency in the urban setting, particularly with reference to homeless and street children; that policy makers and research workers at the national, regional and international levels should focus on youth criminality and evolve new methodological approaches towards comprehensive and effective planning in crime prevention; that the phenomenon of illegal use of drugs by the young be studied more closely in view of its growing propensity in many countries; that specific manifestations of youth violence, such as muggings, violent sex crime, street gang violence, violence involving minority groups, unmotivated violence to persons and property, violence associated with drinking, drug abuse, etc., especially in the urban environment, be carefully looked into; that further research be undertaken on the role of mass media in youth crime and its influence on policy makers and practitioners dealing with youth criminality; that the negative aspects of external cultural influences on the young, which indirectly contribute to stress and conflict and eventual youth crime, be examined more precisely; that greater awareness be developed for integrating measures for delinquency prevention as well as for co-ordinating programmes in this field; that more effective linkages be established between the programmes for the prevention and treatment of youth criminality and relevant public structures such as health, education and social welfare agencies; that due consideration be given to the development of participatory models in the juvenile justice processes for resolving conflicts; that an educative approach be given priority over a punitive approach in dealing with youth criminality; that the problems of abandoned, neglected, abused

or exploited children be studied in detail in terms of their relationships to delinquent and criminal behaviour; that care services for such children, both physical and psychological, be extended appropriately; and that in order to provide a comprehensive framework of juvenile justice, international standards be formulated for the care and protection of the young in various cultural, economic and socio-legal situations. Among other suggestions, the meeting urged the United Nations to consider the possibility of proclaiming an international year of crime prevention and criminal justice.

In pursuance of the relevant resolution of the Sixth Congress, the Secretary-General entrusted the task of research in juvenile delinquency to the United Nations Social Defence Research Institute in Rome, in collaboration with United Nations regional institutes. The final report of the Secretary-General, presented before the Seventh Congress held in Milan from 26 August to 6 September 1985, contained a valuable analysis of research undertaken at different levels, pointing towards certain general trends despite variations in the definition and perception of the problem across the world. With regard to the nature, extent and pattern of juvenile delinquency, the report indicated that although young people tended to violate a variety of social and legal regulations, only a small proportion was really involved in serious offences, largely owing to opportunity differences. A considerable number consisted of "dark figures" traditionally dealt with through informal social control mechanisms. Though the peak age range in the frequency of crime by juveniles depended on the type of behaviour and culture specificity, it was generally between 12 and 18 years. The possibility of a distinct "career" in crime could not be established either, though there was generally a history of previous violations in cases involving serious crimes. While recorded delinquency was increasing in many countries, the pattern varied in relation to the age and type of crime. The rate of increase in crime by young females was more substantial, though they still constituted a small proportion. In many countries, a trend in young offenders indulging in crime in the company of others was clearly discernible. The studies across regions and cultures noted correlations, in varied degrees, between delinquency and socio-economic changes arising from industrialization and urbanization as well as other factors such as educational level, social status, housing conditions, family relationships, contacts among peers, abandonment, abuse and maltreatment, etc. A close association was observed frequently between a higher rate of delinquency and unplanned development without social support built into it. It was, however, recognized that most of the research studies pertained to specific issues and circumstances, and it was difficult to draw a theoretical framework for prevention and control of juvenile delinquency which would be universally applicable.

Of course, the adoption of the Standard Minimum Rules for the Administration of Juvenile Justice by the Seventh Congress symbolizes a landmark in international thinking on the problem of juvenile delinquency and the manner in which it can be tackled more effectively in the contemporary world. The wisdom generated at various national, regional and international forums over the years seems to have converged into a set of clearly defined norms for national governments to progressively evolve their formal systems in keeping with the principles of human rights of children coming within the purview of the law and commonly cherished social values. In concrete terms, the Rules lay down criteria for legal protection of children in conflict with law at various stages of the juvenile justice process and for restoring their dignity and worth as a means of improving the quality of life. What is particularly significant is that without compromising the central theme of a fair, humane and effective administration of juvenile justice, the Rules provide for divergent socio-cultural and political systems to translate the ideals enunciated thereunder into actual practices in consonance with the realities of their

field situations. Among other considerations that guided the formulation of specific provisions are: the differences in the definition and perception of the problem of juvenile delinquency and its multifaceted nature and related issues, the existence of a substantial "dark figure" of juvenile maladjustment and youth crime, the effect of handling juvenile offenders and the need to further humanize the system through appropriate changes in procedures and sanctions, the imperativeness of limiting the scope to juveniles who are already in conflict with law, and the need to strike a balance between the justice and welfare approaches on the basis of their mutual interaction in dealing with the problem in all its dimensions. Indeed, the Rules have been framed in relation to current laws, procedures, practices and experiences of different countries, taking into account the results of extensive research and consultations. Obviously, the focus on the child in conflict with law has resulted in several categories of children in situations of irregular behaviour, who would conceptually be a major concern of juvenile justice in its broader sense, being left out of the present rules. In this connection, the specific recommendation of the Interregional Preparatory Meeting for the Seventh Congress on "youth, crime and justice," held in Beijing in 1984, calling for the formulation of a set of rules for other categories of children in need of care and protection from the viewpoint of juvenile justice, deserves attention. In fact, a progressive implementation of the Standard Minimum Rules for the Administration of Juvenile Justice is likely to sharpen the debate on the need for a wider social action for tackling the problem of juvenile delinquency on its growth continuum, through purposeful linkages between the formal system and the informal social control mechanisms on the one hand and between the juvenile justice system and other sectors of social and economic development, on the other.

Operational Strategies

A closer look at juvenile justice developments in the contemporary would bring to the fore certain general trends of profound significance in the future perspective. One aspect clearly evident is the universal acceptance of the principle that a juvenile offender, being still in the process of maturation and growth, cannot be equated with an adult offender, whether in terms of his or her responsibility and accountability for the criminal act or in relation to the requirements of care, treatment and reintegration into the mainstream of social life. While this has led to the emergence and progressive refinement of a separate system of juvenile justice, distinct from the one that regulates adult offenders, the determination of the age at which a juvenile will be held responsible for his criminal act and of that up to which he will be distinguished from an adult offender and dealt with in a specialized manner, continues to be directly influenced by the historical background, socio-economic conditions and political structure in each country. There is, however, a candid awareness in enlightened circles that the age of criminal responsibility should be based on the consideration of the age at which a juvenile starts interacting with social institutions and assuming a role within his milieu. Similarly, the fixing of the upper age limit for the juvenile justice system in a particular country is determined, among other factors, by cultural traditions and societal reaction and degree of tolerence towards juvenile misbehaviour. Thus, variations exist in the lower and upper age limits covered by juvenile justice systems, not only among regions or countries but also, sometimes, among different parts of the same country. Many countries extend their systems to as far as 25 years, though they also tend to differentiate the approach towards children from that towards youth. In fact, many countries subscribe to a separate set of legal, procedural and administrative measures for young adult offenders, mainly on the ground that, despite their exclusion from

the juvenile justice system, they also require treatment different from adult offenders in keeping with the same principles as deemed necessary for juvenile offenders. Such a view has been articulated by several developing countries, especially in the African region, where mass poverty, deprivation and neglect call for the protective umbrella of the juvenile justice system to safeguard the interests of youth as well. On the other hand, in the wake of several newly emerging forms of crime among youngsters in the higher age groups, some of which are even more volitional and disruptive in nature than those committed by adults, public opinion in several countries favours the handling of young adult offenders away from both juveniles and adults. While any dividing line between a juvenile and a young adult, however well intentioned, can be termed arbitrary, there is a consensus that, as far as possible, young adult offenders also need to be saved from the labelling process and the contaminating effect of the criminal justice system.

With rapid industrialization, urbanization and rural-urban drift, resulting in a gradual breakdown of the traditional means of social control, especially the family and the community, there is a strong tendency for an increasing centralization of the authority to correct irregular juvenile behaviour in the hands of the state. This trend has not only contributed to an over-reliance on legal measures and formal institutions of the juvenile justice system in defining and dealing with juvenile misconduct as delinquent behaviour but also to interfering with several situations that would not be objected to when associated with adults. In many quarters, it is felt that certain forms of juvenile misbehaviour termed delinquency are only an offshoot of the process of growing up or a by-product of conditions over which juveniles themselves have no control. Juvenile justice systems are being accused of having gone much beyond the objective of public safety, largely as a result of adult value judgments of the behaviour of juveniles, and, by implication, of having criminalized several forms of conduct that manifest only normal conflicts on their part. The protective approach of the *parens patriae* model is being questioned as having turned parental control into state penology at the cost of the basic rights of the child. But this appears to be an over-simplication of the dilemma of rights and needs under the juvenile justice system. It needs to be remembered that even when delinquency is an outcome of the disorganizational process of the wider social structure, no society ever takes such behaviour as entirely value free. In countries where a large chunk of the population is still below the poverty line and a majority of children and young persons continue to be denied an equal share of socio-cultural and economic opportunities for growth and development, the role of the state in tackling situations responsible for juvenile delinquency in its full range cannot be undermined. Can the question of the rights of juveniles coming within the purview of the formal system be divorced from the status of human rights enjoyed by them in the open society? In conditions of stark deprivation, destitution and neglect, it is possible only through a timely intervention by the state that an effort can be made, if not fully at least partially, to restore the rights of juveniles in irregular situations. There is, however, a definite need to rationalize policies governing the administration of juvenile justice, on the basis of a progressive move towards decriminalization, depenalization, diversion and de-institutionalization, to the extent possible in consonance with the specific socio-cultural and economic conditions of each country. Whereas the recent stress in developed countries on a greater tolerance towards erring juveniles on the part of the state is indicative of a possible swing back to the community and the family, the task before developing countries where the juvenile justice systems have yet to reach all the categories of juveniles in need of care and protection from the viewpoint of social defence, is much more challenging.

Doubtless, most of the countries are faced with issues arising from the increase in the rate of crime by juveniles and the

failure of the traditionally evolved juvenile justice system to adequately cope with the newly emerging forms of the problem. In the wake of a sharp debate and advocacy for human rights of persons in custody and the resultant criticism of penal policies and correctional strategies, the need to formulate a more effective and cogent approach towards the prevention and treatment of juvenile delinquency with full policy options ranging from the management of juvenile misbehaviour within the family to the institutional care of the hardened and the unsafe is imperative. While the efficacy of institutionalization of children and youngsters who endanger public safety is being reviewed, non-institutional modes and community-based correctional devices are also being called upon to establish their credentials to function if not more at least as efficiently as institutional treatment. Doubtless there is a definite opinion that institutionalization has, hitherto, been indiscriminately used. At the same time, it is widely realized that as long as social justice does not reach all segments of the juvenile population in need of care and protection and conditions in the community do not improve to ensure for them an equal sharing of development benefits, institutional care may have to continue as the main recourse. Such a situation has led policy-makers to work increasingly for a purposeful blending of statutory measures with non-statutory welfare approaches, of professionalized services with voluntary efforts, and of state intervention with the informal, collective initiatives of the public. Indeed, in the broader context of the environment that renders the juvenile vulnerable to social maladjustment, a comprehensive strategy towards prevention and control is being emphasized. In this perspective, besides raising the quality of services for the treatment and rehabilitation of juvenile offenders, appropriate linkages are being established between the formal system and other public structures like health, education, employment, labour and social welfare agencies, with the ultimate objective of protecting the rights of young persons, and promoting their interests and general well-being. Experience has revealed that preventive measures against juvenile delinquency are most effective when built into the wider social system, within the overall framework of social justice. For the juvenile justice system, however thoughtfully designed, could not, in its actual operation, go beyond the categories of young persons officially identified for deviant behaviour. Any over-reliance on the formal system not only limits the reach of welfare services but also undermines the inherent strength of the primary institutions like the family, the school and the community, which are often more competent to deal with juvenile deviance, especially in a developing country. It is, therefore, much more advantageous when preventive action becomes an integral part of the development process and deals with the problem before it reaches a point of no return.

In this context, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice aptly spell out the furtherance of the well-being of the juvenile and his family as a fundamental perspective in juvenile justice. Emphasis has been placed on developing conditions conductive to the process of the development and education of the juvenile so as to keep him as free from deviant behaviour as possible within a given milieu. For this purpose, all possible efforts are contemplated to reduce the need for legal intervention as well to develop a system for effective, fair and humane treatment of the juvenile coming in conflict with the law. More importantly, juvenile justice has been conceived as an essential aspect of the national development process within the overall framework of social justice for all children. In this respect, juvenile justice services are proposed to be systematically developed and co-ordinated from the viewpoint of the efficiency of the personnel engaged in this sphere. The basic approach enunciated in the Rules tends to protect not only the rights of the juvenile brought within the purview of the system but also the needs of a particular society. It is significant that the principles propounded

for the handling of the juvenile offender at various stages of investigation and prosecution, adjudication and disposition, and non-institutional or institutional treatment, have also been recommended for extension to the juvenile dealt with under welfare and care proceedings as well as to the young adult offender. Obviously, the scope of the Rules is confined to juvenile offenders without ignoring the rights of other non-delinquent categories of children processed through law in various countries. But the Rules fall short of specifying how non-delinquent categories of children coming within the purview of the juvenile justice system can be differentiated from delinquent ones. Perhaps, such an exercise will be a logical step in the future, especially in relation to the situation obtaining in developing countries, in which it is often difficult to draw a line between a delinquent and potential delinquent just on the basis of overt behaviour. Nevertheless, in so far as the juvenile who commits an offence under the substantive law is concerned, the Rules appear to be wholly in tune with the legal systems in most of countries in this region. Even in countries where a comprehensive juvenile system has yet to take shape, the Rules are bound to provide a direction towards the desired reforms. There still remain wide gaps in most of the countries between rhetoric and reality, between principles and practices, and between standards and situations. The success in bridging these gaps will, however, depend on three important factors: the level of public awareness and political will, the resources available for the development of the necessary infrastructure, and the quality of professional leadership and personnel engaged in the administration of the juvenile justice system. As most of the systems in developing countries have to function under serious constraints in this regard, especially in the face of much heavier demands on other sectors of national development, a more vigorous effort than is generally seen is imperative.

Another perspective underlying the Rules relates to the need for improving and sustaining the competence of personnel engaged in juvenile justice services in terms of their methods, approaches and attitudes. The availability of suitably qualified and trained manpower to operate the juvenile justice system is rather precarious in most of the developing countries. This is primarily because of the low priority traditionally accorded to the juvenile justice system within the overall scheme of criminal justice. In many countries, the shortage of juvenile courts, the multiplicity of functions, the heavy workloads of the police and judiciary and the lack of the necessary infrastructure for the care, treatment and rehabilitation of various categories of children dealt with through the formal system continue to be the main impediments in the development of a progressive system of juvenile justice administration. Apart from the problems of a proper co-ordination among various agencies concerned with juvenile justice, a variety of intra-system conflicts mar the quality of services as envisaged in the law. The police, in most of the countries, inherit an image which hardly fits in with the modern concept of juvenile justice. Only a few countries have been able to organize special police units to deal appropriately with the wide range of problems pertaining to juvenile deviance. In the general police structure, the maintenance of law and order, investigation and prosecution of crime and prevention of juvenile delinquency often generate contradictory trends. In many places, juvenile courts are still presided over by ordinary magistrates without proper regard to the specific needs of the juvenile justice system. Pre-trial detention is not, is due to the lack of proper efforts on the part of law-enforcement agencies. The quality of pre-sentence investigation and supervision of juveniles placed in foster care, sponsorship or on probation leaves much to be desired. Juvenile institutions are not always manned and administered by a qualified and trained staff. The general morale of the institutional staff is often very low. While the juvenile laws, in most of the countries, provide for the legal defence of the juvenile involved in crime, even at the expense of the state if he or she cannot

afford it, in actual practice, it is often left to the commitment, capacity and competence of the presiding officer of the juvenile court to protect both the law and the juvenile. Among the various components of the juvenile justice system, the development of correctional personnel seems to have received the lowest priority in most of the developing countries. As a result, the juvenile justice system in many countries tends to function in isolation from other vital sectors of social development, to the detriment of both the juvenile involved and the society at large.

The care and protection of children in situations of abuse and exploitation and their likely induction into a criminogenic culture is an important area of the juvenile justice system in most of the developing countries. Such non-delinquent categories of children have been specifically defined in the laws. The rationale of the approach is based on the premise that in a developing society, characterized by wide variations in socio-cultural and economic conditions, there are certain circumstances in which legal support becomes a prerequisite for the endangered child to be taken care of. It also defines the obligation of the state to intervene in situations associated with their possible abuse and exploitation and to extend measures for their wholesome growth. In several countries, juvenile laws provide for a differential approach towards non-delinquents or potential delinquents at various stages of apprehension, processing, placement, treatment and rehabilitation. But if due care in this respect is not exercised, the approach is likely to become counter-productive and liable to be a cause of public criticism, as it has been in several countries. The seriousness of the issue deepens when it is realized that, in most of the developing countries, a vast majority of juveniles coming within the jurisdiction of the juvenile justice system consist of non-delinquents, and if the juvenile laws are enforced effectively their number is bound to multiply. Another reality is that while institutional care is deemed under the law as a last measure, it becomes the main recourse in actual practice. It is strange but true that, despite the limitations of institutional care in substituting for the family and the community and its adverse implications on the process of child development, the facilities available in the institutions are often better than the conditions that most of the juveniles were living in before. In fact, the non-delinquent categories of children requiring care and protection are likely to continue to be a major responsibility of the juvenile justice system in most of the developing countries for some time to come. It is, therefore, necessary that all possible innovative approaches are experimented with in order to develop the system in a manner that serves as a vehicle of social justice for all children in need of care and protection. Viewed from this angle, the *parens patriae* model of the juvenile justice system has a strong relevance to the conditions obtaining in developing countries and, lest it become counter-productive, there is a definite need to examine how far the principles of the due process model could be inducted therein. In the ultimate analysis, the participatory model which combines the essentials of the earlier two models holds a great deal of promise for most of the countries in this region.

Preventive Approaches

Experience in both developed and developing countries has abundantly shown that no single factor can be isolated from the intricate situation that makes a juvenile vulnerable to social maladjustment, deviance or crime. None of the personality or environment-oriented approaches or a combination thereof fully explains the causation of the criminogenic process in the life-style of a growing child. In developed countries, delinquency has, of late, been seen to a certain extent as a natural process of growing up in a highly fluid social environment which generates conflicts and denies or provides opportunities for the child to cope as he or she matures and prepares for adulthood. In developing countries, a variety of socio-economic factors which tend to marginalize, victimize or criminalize the juvenile

are more pronounced in precipitating conditions responsible for delinquent behaviour. In both situations, the nature and availability of opportunity is considered crucial in terms of causation and control. This aspect brings into focus the interrelationship between deviance and development which, again, continues to intrigue as ever before. Development is neither a precursor nor a remedy of crime; it could be criminogenic or anti-criminogenic. In order to ensure that it becomes anticriminogenic, increasing stress has to be placed on planned development. From this viewpoint, an effective preventive and control strategy against juvenile social maladjustment needs to be based on wider social action, rather than merely relying on the operation of the formal system and its various agencies. Other public structures concerned with the well-being and welfare of children, like health, education and social welfare agencies, should contribute to juvenile development in a manner that preserves and upgrades the quality of life in keeping with cherished values. Such an objective necessarily calls for the formulation of a comprehensive policy emphasizing an integrated approach towards not only those who deviate from accepted norms or infringe on standards established by law but also the ones who are likely to do so because of various situational compulsions. The basic issues relating to juvenile social maladjustment need to be squarely addressed and acted upon, taking into consideration the needs of both the juvenile and society.

The preventive approach, in the wider sense, has to be related to the problems arising from the changes in population structures; deteriorating conditions of labour and employment, prevalence of illiteracy, poor educational standards and poverty; and inadequate care and support for the total bio-psychosocial development of the juvenile. In developing countries, while the number of children and young persons has been increasing disproportionately, employment prospects are fast decreasing. The economic stresses and strains of industrial and urban life, coupled with a large-scale migration from villages to cities, mostly in search of livelihood, have adversely affected the quality of care and nurture of juveniles. How far can the children of poor families in urban slums, uprooted from their natural milieu and made to live in stark deprivation in the face of plenty and abundance, be expected to withstand the onslaught of harsh realities? In many parts of the world, poverty, hunger and destitution continue to provide a breeding ground for human degeneration, delinquency and crime. In such situations, a vast number of children are not only marginalized, both socially and economically, but are also deprived of the benefits of development because they do not possess a lobby of their own nor are their parents in a position to speak for them, being themselves victims of the larger system. Various kinds of discrimination, that a chunk of humanity continues to suffer on socio-cultural, economic and political grounds, keep a large segment of children and youth away from the mainstream of development processes. On the other hand, in developed countries, affluence rather than deprivation seems to have increasingly alienated the young from the prevailing social order. With socio-economic changes, traditional control mechanisms appear to have disintegrated, giving way to new values and patterns of behaviour among juveniles. The juvenile is inclined not to cling to uninspiring models imposed on him and has also started questioning the validity of adult value judgments in shaping his life-style. The "communication gap" between the young and adults, so pronounced in developed countries, has started finding its echo in affluent sections of developing countries as well. In urban areas, a new kind of youth culture is drawing juveniles from their traditional moorings to experiment with adventure and excitement often through acts that defy the law. Among other factors, mass media is a major source in the spread of this culture across national boundaries, and the precise role it plays in causing delinquency needs to be studied.

The formal juvenile justice system,

however thoughtfully conceived and carefully designed, cannot be expected to take over the responsibility of correcting such aberrations of the wider socio-economic system as are associated with juvenile social maladjustment, especially when the former is a product of the latter. While the juvenile justice system surely contributes to the prevention and control of social maladjustment among children and youth, it cannot prevent the problem by itself. Defences against juvenile social maladjustment have to be built within wider social and economic structures so as to nip the problem in the bud, taking into account the entire milieu in which the child is born, lives and grows up. Despite the assumption that the juvenile justice system, in the sense of social justice, must reach all children in need of care, protection and rehabilitation, in actual practice, it cannot go beyond the categories of children recognized as offenders or endangered to be so because of its inherent limitations. It has to rely on the vitality and strength of other public structures and social institutions concerned with the general well-being and welfare of children. Thus, the prevention and control of juvenile social maladjustment essentially requires an interdisciplinary, inter-sectoral and integrated approach on the part of various agencies involved in social and economic development. But any belief that an overall improvement in living conditions through socio-economic development may be itself reduce juvenile maladjustment would be as misplaced as to think that poverty or deprivation *per se* is a cause of the problem. Of course, socio-economic development might reduce delinquency in the forms in which it presently manifests itself in most of the developing countries, but, in its wake, it is also liable to produce several new dimensions, some of which may even be more intense and disruptive in nature than the existing ones, as has been witnessed in several developed countries. The struggle against juvenile deviance, delinquency and crime is a constant one; it has to be waged if not to win, at least to ensure that it is not lost. Each country has to devise a strategy in consonance with the prevailing levels of socio-economic development, political thinking and public awareness. Indeed, there is much to learn from each other, as the basic problems of survival and destruction are common to the entire human race and juvenile social maladjustment is one such problem that impinges upon the very quality of life.

These considerations do not, in any way, undermine (in fact, these further exaggerate) the need to initiate, promote and develop programmes for the strengthening of basic social organs concerned with the growth and development of juveniles, such as the family, the educational system and the community. In the triangular environment of the juvenile, consisting of the home, the school and the neighbourhood, the family plays the most crucial part in care, control and socialization. However, under the impact of socio-economic changes and technological developments, the traditional role of the family as the principal agency for the protection and transmission of values has diminished of late, especially in developed countries. The social control functions of the family are being gradually taken over by the more complex public structures, in particular by the educational system. In most of the developing countries, though much of the problem of juvenile social maladjustment is still largely tackled by the family, a variety of socio-cultural and economic pressures tend to erode its protective umbrella and ability to guide and determine the style of its young members. The process of rapid industrialization and consequential urbanization, resulting in the shifting of large population groups from backward to affluent areas, has thrown the traditional family structure off-balance in many countries. The nature of interrelationships within the family is undergoing changes with far-reaching implications for child rearing and nurturing practices. The loosening bonds among members of the family, the weakening of religious and conventional values to maintain family integrity, and the changing attitudes towards sex and morality are becoming the common features of such a state of influx. Juveniles from poor fami-

lies are the worst victims of this socio-cultural and economic transition. There is no wonder that most of the juvenile delinquents in developing countries come from extremely low socio-economic strata, and family conditions such as broken homes, lack of parental care, conflicts between parents, anti-social influences within the family, etc., continue to appear as major factors in juvenile social maladjustment. Despite this position, there is no effective substitute for the family in the growth and development of a child, and the primary responsibility for his or her mainstreaming rests with it. The role of the family is, therefore, being universally emphasized as central to various preventive approaches. Besides focusing on the improvement in living conditions within the family, a variety of measures such as family life education, counselling and guidance, adoption, foster care, sponsorship within the family setting, etc., are being experimented with in various regions. It is generally accepted that efforts to secure social justice for children in need of care and protection from the viewpoint of social defence could be most beneficial when centred around the family as the primary unit of society.

In the contemporary world, the educational system has acquired a unique position among various agencies affecting the lives of children and youth. About half of the waking time of a student is spent in the school and, in an urban setting, the influence of the educational system on socialization, character-building and value-formation among juveniles is often more powerful than that of the family. In developing countries, with the growing emphasis on education as a primary tool of human-resource development, an increasing number of juveniles are now going to school during their formative years. The extent to which the school environment helps juveniles to inculcate values of head and heart considerably determines patterns of juvenile behaviour. In this respect, the educational system has to cater progressively to the varying needs and problems of juveniles in the face of prevailing socio-cultural and economic realities. A well-organized educational system not only serves as a vehicle of socialization but also as a shield against juvenile deviance. It is, however, seen that the school environment, in the event of its failure to guide the juvenile to realize his or her potential and to prepare him or her for a socially adjusted and economically productive career, can also be a cause of sway towards anti-social life. In highly disfunctional urban settings, the school is sometimes understandably accused of becoming a source of new forms of crimes among juveniles such as sex delinquency, gang violence, drug trafficking, etc. In either case, it is universally accepted that the educational system needs to be fully directed towards the prevention and control of juvenile social maladjustment. It is widely felt that education should be related more closely to the specific social and economic requirements of a country, on a dynamic basis. Mere academic education widens the gap between high expectations and actual possibilities. Apart from making the educational system more purposeful, a variety of delinquency-prevention programmes in educational institutions are being promoted in several countries. Individually-oriented approaches are based on an early identification of students at risk and remedial services such as counselling, guidance, tutorials, etc. are provided. Group-based programmes tend to emphasize a greater respect for law and ethics. Organization-oriented measures aim at enhancing positive behaviour, academic improvement, social participation and constructive relations among the school, the family and the community. It is, however, necessary that delinquency-prevention programmes in the school setting are planned so as to avoid the possibility of labelling.

The very fact that most of the situations associated with juvenile social maladjustment are beyond the reach of the formal system calls for a vigorous involvement of the community in its prevention and control. A comprehensive approach towards the amelioration of conditions responsible for juvenile delinquency can

evolve only through an optimum use of the inherent welfare resources of the community itself. The effectiveness of the family and the school, as the primary agencies for the care and socialization of erring children, depends heavily on an active support of the community and its institutions. Each community has its own network of interrelationships, communications and corrective measures to regulate the behaviour of young persons. Particularly in developing countries, where a majority of juveniles coming within the purview of the juvenile justice system consist of non-delinquents, community action is of vital importance in the process of their re-integration. In fact, juvenile laws in most of these countries provide for systematic ways of involving the community at various stages of the apprehension, care, protection, treatment and rehabilitation of juveniles. However, experience shows that community services are more effective when administered without invoking legal sanctions. While the association of the community with statutory services through its representatives or organizations is always desirable from the viewpoint of the preventive and protective objectives of juvenile law, the community's primary role relates to the creation of conditions that are anti-criminogenic by promoting awareness and advocacy for the needs and requirements of socially maladjusted children as well as by mobilizing human and material resources for their welfare. In many countries, diverse forms of community participation in delinquency prevention are seen to operate through voluntary organizations, social groups, educational institutions, professional bodies, public agencies, business houses, youth groups, women's organizations, etc. While community action towards delinquency prevention deserves all possible support and patronage by the state, it is necessary to ensure that only such modalities as are socially protective rather than socially disruptive are encouraged under official policies. There is no doubt that any project planned, formulated and implemented on the basis of democratic participation at the community level is assured of much greater success than one imposed by a distant authority. In many countries, community-based services for the young, such as welfare projects for street children, victim assistance, counselling and guidance for children and their families, organized recreation, awareness campaigns against alcoholism and drug addiction, moral education, crisis care, etc., make major contributions to delinquency prevention. In certain developing countries, package programmes for the well-rounded development and welfare of juveniles are being fostered through the communities, with a definite bearing on delinquency prevention.

In developing countries, the state has to assume a major role in delinquency prevention by way of providing specialized services to juveniles in need of care and protection or those found to live in delinquency-prone situations. The socio-economic and political transitions that most of these countries have been going through have considerably enhanced the role of the state in ensuring social justice to young persons through various institutions and agencies. It is now being increasingly accepted that economic development must go hand-in-hand with social development, and in the planning of various development projects, the human aspect cannot be ignored. In this perspective, the overall approach towards the prevention of juvenile social maladjustment should become an integral part of development plans. Towards this end, the state should extend, through its organs, specific measures both for prevention and treatment of the problem, with the ultimate objective of protecting the rights and interests of juveniles at various stages of the juvenile justice process. While the actual modalities of state intervention may vary in keeping with the prevailing socio-cultural and economic realities, these have to be based on the principles of human rights and democratization. In this regard, among the various state agencies, the police, being in the forefront of the juvenile justice system, have to bear the main burden. Besides their traditional roles in the detection and investiga-

tion of crime and the maintenance of law and order, the police are required to perform specialized functions in relation to juveniles coming within the jurisdiction of the formal system. They are more directly exposed to public opinion and pressures than any other agency concerned with the treatment of socially maladjusted children. Besides juvenile offenders, several other categories of potential delinquents are handled by the police, despite assertions to the contrary. As guardians of law in the community, they are also expected to initiate a variety of countermeasures against delinquency. In some countries, the police are even empowered to dispose of petty offences through admonition, instruction, referral, and counselling or guidance of the juveniles involved and their parents, if necessary. The role of the police in the prevention of juvenile social maladjustment is directly influenced by their public image, the confidence of the public and the quality of their community relations.

Obviously, the quality of the juvenile justice policy in each country is dependent on systematic planning for the prevention and control of juvenile social maladjustment. The preventive approach implies not only an integration of various legal, administrative and social welfare measures designed to ensure a happy, healthy and harmonious growth of juveniles and youth but also the formulation of certain need-based, realistic and target-oriented specialized programmes to forestall conditions that render many a juvenile an easy prey of exploitative and criminogenic elements. As has been candidly recognized in the United Nations Standard Minimum Rules, the juvenile justice system can be efficient only when minimum legal intervention is used and, as far as possible, juveniles are dealt with through care and welfare within the framework of an enlightend social policy. In this regard, social justice for juveniles has to become a priority in national development and become part of the formal system as a desired consequence. Such a goal would naturally require comprehensive planning for child care and welfare services as a means to raise the quality of life and ensure a sound system for the delivery of services, with a focus on those endangered or vulnerable to crime. The process may involve a higher investment in expertise and resources from the standpoint of the prevention of juvenile social maladjustment and effective co-ordination among various departments and authorities responsible for the development of these resources. Even the formal control system, in view of the wide range of problems concerning juveniles coming within its ambit, has to heavily rely on the strength of the family and the community; health, education and social services; and the public at large. Target-specific approaches may have to concentrate on groups at risk, with the adequate support of protective legislation and administrative measures. The role of research in the spheres of planning, policy formulation and evaluation of programmes can hardly be overemphasized. But in areas in which specific needs are well established, research may form an integral part of the process of programme development itself, rather than becoming a prerequisite for initiating ameliorative action. It is, however, imperative that a regular system for the planning, monitoring and co-ordination of juvenile justice services is available in each country.

Treatment Modalities

Notwithstanding ideological differences in approaches towards juvenile justice, most of the formal systems eventually concentrate on specialized care and treatment of children recognized as offenders or considered delinquency prone. At the operational level, systems have generally been taken more as a criminal justice issue than as a social policy concern as the concept implies. Because of its limited reach and inherent shortcomings, the formal system relies heavily on the strength and vitality of informal systems, especially in dealing with juveniles in care and welfare proceedings. As the problem before the formal system is basically an outcome of the failure of the wider social system, the

former can only initiate the process of corrective action from the viewpoint of the juvenile involved and cannot be expected replace the functions of the latter. No system can afford to overreach in regard to situations which legitimately belong to other public structures and social institutions concerned with children. So the basic dilemma of the juvenile justice system stems from the very problem it seeks to resolve. Many of the conflicts within the system arise from the fact that the problem of juvenile deviance is so intricately interwoven with a variety of factors within the wider system that it is most difficult, if not impossible, to delineate the scope and jurisdiction of formal intervention. From this angle, the system in developing countries, where traditional, informal social controls are largely functional with a high degree of tolerance and absorption, finds itself much better placed than those in developed countries. The formal intervention towards the prevention and treatment of juvenile social maladjustment tends to supplement the functions of the informal systems responsible for the care and socialization of juveniles in various walks of life. This is, perhaps, the main reason behind the unflinching faith and confidence of the public in the paternalistic or *parens patriae* model that most of the developing countries still possess. In fact, the juvenile justice system in developing countries is being increasingly expected to reinforce its protective, preventive and welfare role in respect of juveniles in need of special care and concerted treatment.

Accordingly, all the components of the juvenile justice system, including the police, courts and correctional agencies, are required to assume a differential approach towards the treatment of various categories of juveniles coming within the purview of law. The treatment process has to be based on a thorough study and diagnosis of each case in terms of the personality traits and behavioural pattern of the juvenile involved, the nature of and the circumstances in which the crime was committed or the juvenile was apprehended, and the assessment of his or her correctional needs and rehabilitative requirements. In this task, every bit of information and knowledge concerning the juvenile since the first contact with law enforcement has to be pooled in working out a basis for individualization. Obviously, the process begins with the handling of the juvenile by the police and the manner thereof considerably influences and guides the course of correctional treatment and responses thereto. Though the specific functions to be performed by the police in relation to juveniles apprehended are invariably spelt out in the relevant laws, rules and regulations, the quality of work is dependent on the competence, calibre and capacity of the individual police officer handling the juvenile. In several countries, special police units, with a separate set of criteria for selection and training and a separate code of ethics, have been set up to deal with juvenile cases. In certain countries, they are also empowered, formally or informally, to dispose of cases involving trivial offences through caution, counsel, instruction, referral or guidance. The basic idea behind the practice is to encourage diversion from formal proceedings to community support so as to avoid the negative effects of the system. But in most of the developing countries, organizational constraints, paucity of resources and lack of specialization within the police departments hardly provide for such an approach. The situation acquires a serious dimension when a large number of non-delinquent juveniles also pass through the police network to welfare institutions. It is, therefore, necessary that adequate safeguards are built within the juvenile justice system to ensure juveniles the protection of their basic rights while in contact with the police. Otherwise, the entire approach towards care and protection is liable to become counter-productive from the very beginning, besides lowering the image of the police. This aspect calls for a systematic programme for the development of manpower resources within police organizations as well as for incorporating a larger measure of accountablility.

The emphasis on the welfare model of

the juvenile justice system in the situation of juveniles in developing countries cannot be allowed to undermine the need for the protection of their basic rights and personal liberty. The deprivation of liberty is justifiable only from the viewpoint of public safety or the interest of the juvenile and is to be established on the basis of objective criteria, reasonable grounds and fair treatment. This consideration places on the competent authority an onerous responsibility in relation to juveniles who cannot always speak for themselves and have to depend largely on the decisions of elders. Such an objective can be achieved by harmonizing the elements of both the due process and welfare models. It also requires the competent authority to be vested with a larger discretion and a wider range of dispositional alternatives to arrive at an appropriate decision in the best interest of the child involved and in keeping with the spirit of the law. The juvenile laws, in most of the countries, provide for, in various degrees, specialized settings, procedures and powers for the prescription and administration of treatment. In the Asia and Pacific region, most laws allow for the constitution of juvenile/family courts, with a variety of options including the management of juveniles within their family, placement with foster parents, probation and other forms of community-based treatment, with institutionalization open to them for selective use. Some systems provide special requirements in the selection, training and appointment of magistrates/judges in juvenile/family courts. The overall approach adopted by the competent authority can be characterized generally as more flexible, humane and treatment-oriented than that in adult courts. The proceedings are conducted in an informal manner, mostly in camera and in the presence of parents. The juvenile accused of an offence has all the rights of due process in most of the countries. Among the various functionaries assisting juvenile/family courts, probation officers play a key role in the study and diagnosis of juveniles. With regard to the processing of non-delinquents brought for care and protection, the proceedings are even more liberal, with a greater stress, on the utilization of community-based welfare resources. In India, the Children Act, 1960, provides for the establishment of child welfare boards, as distinct from children's courts, for the processing, disposal and placement of non-delinquent categories of children. Despite such legal provisions, the position in many countries reflects a wide gap between cherished standards and actual practices. Thus, the main thrust of juvenile justice systems in most of the developing countries is directed towards the development of machinery and infrastructure, quantitatively as well as qualitatively.

Among the various options for correctional treatment, the one that places the juvenile back into the family is always found more conducive for mainstreaming and normal growth. In countries where institutionalization has been used indiscriminately, there is a definite trend towards reinforcing the role of the family as the nucleus for the treatment of its erring child. In the eventuality of the family itself being incompetent, any other mode nearer to it, with or without additional support, would still be preferred over institutional confinement. Experience has abundantly shown that non-institutional care of the juvenile not only saves him from the labelling process and contaminating effect of institutional sub-culture but is also more profitable for society. Certainly, an individual placed in community-based treatment has a much bigger stake in social conformity than the one condemned to incarceration. Such considerations have led to an increasing search for community-based, innovative approaches within juvenile justice systems all over the world. But the move is blended with a sense of caution, especially in regard to the juvenile offender, lest the purpose for which the juvenile is brought within the system becomes self-defeating. Since public opinion operates as the most important controlling variable, progress is dependent on the extent to which non-institutional treatment proves its credentials as a corrective device. In this context, probation has

emerged as the major area of programme development in most of the countries. In many countries, the probation service serves as a catalyst for community-based treatment and rehabilitation of juveniles processed through the formal system. Among the other modes, community-service orders are being experimented with in certain countries. In developing countries, a variety of open institutions for juveniles have been promoted both through official and non-official agencies to function as the basis for community-based treatment. It may, however, be noted that the public attitude in this regard is rather ambivalent. While there exists in many countries a severe criticism of conditions in correctional institutions for juveniles, non-institutional modes of treatment such as probation, community service, restitution, etc., are often viewed as "lenient" approaches and are accused of being factors in the rise of juvenile delinquency. As a result, all sorts of inter- or intra-departmental conflicts tend to arise within the juvenile justice system. Further, in developing countries, there is a real danger of non-institutional modes of treatment being resorted to without adequate organizational and manpower preparedness, with men of means exploiting such measures to their advantage, and the whole system coming into disrepute. It would, therefore, be necessary that community-based treatment be developed on the basis of some well-defined and verifiable criteria.

In spite of the assertion implicit in juvenile laws that institutionalization be resorted to as the last measure, it constitutes an important area of the treatment of juveniles in most of the developing countries. The situation needs to be analyzed from the viewpoint of socio-cultural and economic realities. Contrary to the position in developed countries, much of the problem of juvenile social maladjustment in developing countries is still largely handled by the informal social control mechanisms of their traditional societies. The quantum that comes within the formal system is a small portion of the problem as it really exists; a problem that stretches beyond the vastness of their systems inherent tolerence and capacity to absorb. More often than not, institutionalization provides an atmosphere comparatively better than those juveniles generally come from, and, on balance, is found more desirable in most cases. Significantly, most of the institutions for juveniles in developing countries, in view of the nature of their inmate population, function primarily as care, education and training centres rather than penitentiaries. Therefore, much of the criticizm of institutionalization in developed countries does not appear to be valid to the conditions and circumstances obtaining in developing countries. Indeed, in developing countries, the juvenile justice system is being progressively geared towards raising the quality of institutionalization as one of the avenues for rehabilitating juveniles, both in the present and future perspectives. Even in developed countries, the increasing stress on non-institutional correctional strategies is bound to sharpen the focus on institutional treatment especially in relation to those for whom community-based treatment has no remedy or public approval. Of course, there is an urgent need for re-instating institutionalization and rationalizing its correctional role on the basis of certain minimum norms to regulate its functioning. In many countries, problems of overcrowding, inadequate facilities for care and treatment, and a lack of qualified and trained staff in juvenile correctional institutions continue to hamper desired progress. The trend against an excessive use of institutionalization should not dampen the spirit of a progressive reform in this sphere; in fact, it should enhance the process on more realistic and surer grounds. Furthermore, institutional care needs to be developed within the whole range of strategies, as an essential part of the correctional cycle, and needs to be utilized on a selective basis, and to the minimum.

At the international level, the basic issue before the juvenile justice system is that of ensuring fair treatment to juvenile offenders within the overall framework of law and justice. It is well recognized that juve-

niles constitute a category that should not be handled and treated on a par with adults through the ordinary judicial process. They need to be adjudicated by a special machinery with full consideration to their individual circumstances and dealt with in a manner that does not entail the consequences of adult criminality. Besides upholding their procedural and substantive rights as available to adult offenders, they need to be protected from the physical and psychological harm of the criminal justice process through special laws, rules and regulations. The juvenile justice system has to ensure the well-being of the juvenile offender at every stage of his or her contact with the system. At the same time, the protective attitude should not be allowed to turn into stringent, harsh or discriminatory measures and to impinge upon basic rights. Sanctions should be non-punitive and based on a prevention-cum-treatment policy, with an optimum use of development resources to promote the juvenile's welfare. The system must react fairly, keeping in view not only the nature and gravity of the offence committed but also the degree of culpability. When legal intervention becomes imperative and implies deprivation of liberty, stigma or punishment, the principles of due process of law must guide the proceedings. The legal and procedural safeguards within the system must apply to juveniles on the basis of equality, irrespective of their sex, race, origin, colour, religion, language or ideology. In this context, special attention is being given to remove any discriminatory practice based on gender. While all these principles of the fair treatment of juveniles in conflict with law are universally acceptable, a number of countries have yet to develop, to the extent desired, the legal framework or the infrastructure for a special handling and treatment of juveniles. Nevertheless, there appears to be a global trend towards providing a fair, reasonable and sound basis to the juvenile justice system, especially in light of several newly emerging forms of juvenile delinquency causing deep public concern, such as drug abuse, violence, sex-related offences, etc. On the other hand, there is mounting demand in many countries to streamline the approach towards "status offenders" who form the bulk of the young population passing through the juvenile justice system in most of the developing countries. A definite move towards depenalization, decriminalization, de-institutionalization and diversion is, perhaps, the cornerstone of the contemporary thinking on juvenile justice administration in both developed and developing countries.

The international community appeared to have reached one of its finest moments in the sphere of crime prevention and criminal justice when the Standard Minimum Rules for the Administration of Juvenile Justice were finalized at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26 August to 6 September 1985. But the Rules only lay down a set of basic guidelines for member states; these have yet to be translated into national policies, programmes and practices in various regions. Further, the rules relate mainly to the administration of the formal system which is only a part of the whole system that seeks to protect juveniles against physical, social and moral hazards. The quality of the formal system for juvenile justice largely depends on the overall strategy for ensuring the well-being and welfare of juveniles in various walks of social life. This aspect necessarily calls for an integrated approach towards juvenile justice in the wider sense of social justice on the parts of various sectors of development that have a bearing on the status of juveniles. In this context, the formulation of the present Rules is bound to open a new era of legal reform, policy re-orientation and programme development in various countries. It is, therefore, necessary that the Rules are widely disseminated so as to create the desired public opinion at the national level as a springboard for concrete action. The regional institutes like UNAFEI have a tremendous role to play in this regard, especially in the areas of operational research, training of personnel and technical assistance to individual countries.

In view of the prevailing constraints on material and technical resources in most of the developing countries in this region, such a role should come as a natural corollary to the formulation of the Standard Minimum Rules.

Alternatives to the Prosecution of Juveniles and the Rights of Children

*by John C. Freeman**

Alternatives to the Prosecution of Juveniles

It is common knowledge that the process of industrialization, the growth of sprawling cities and the decline of rural life have led to traumatic changes in the nature of Western society and the problems of its youth. Values and moral structures have changed and patterns of family life have altered dramatically in recent years. The extended family has given way to the nuclear family; both parents work, or perhaps in these times, do not work, because in many European countries, including the United Kingdom, unemployment is at a very high level. Not surprisingly, children coming up through the schools feel alienated, disillusioned, abandoned and powerless to establish themselves in the world and to achieve their goals and expectations.

This malaise seems common throughout much of the Western world, and it thus seems hardly appropriate for a representative of this kind of cultural regression to be addressing the East where tradition, religion and older values still exert a large influence on everyday life in many places.

All the same, change is coming to the Eastern countries. Several have already overtaken the West in their industrial productivity and modernization has proceeded with almost unbelievable rapidity. An impartial observer might well question how far these developments can go without bringing the disruption and social chaos experienced in the West in their wake. Is it possible for nations and communities to gain the advantage of economic development without a grave increase in juvenile delinquency as a concomitant and unwelcome consequence? How far is it possible to learn by Western experience and Western mistakes? My only reason for being here must be to share some of the experience of the West as exemplified by the United Kingdom and by England specifically and to say, as lecturers so often do, that they can highlight a large number of problems, but not very many solutions.

What does seem plain is that cultural intermingling is becoming more and more rapid. Satellite communications, radio, the pervasive influence of television, more frequent travel between countries far apart (especially amongst young people) is speeding this process. Juveniles are vulnerable to alien influences more than ever before.

Who are the juveniles? In this paper I shall have need to refer to the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held in Milan from 26th August to 6th September this year. "Youth, Crime and Justice" was one of the major topics dealt with there, and as part of the proceedings there emerged *United Nations Standard Minimum Rules for the Administration of Juvenile Justice.*[1] UNAFEI had some part in the development of these Rules which I shall refer to in future simply as the *Standard Minimum Rules*.

The *Minimum Rules* define a juvenile as a "child or young person who, under the respective legal system, may be dealt with for an offence in a manner which is different from an adult."[2] Like much that is contained in the *Minimum Rules*, this definition is something of a compromise. In England "juveniles" are those aged less than 17 years and who thus come within the jurisdiction of the specially-constituted Juvenile Courts. "Children" are persons under the age of fourteen and "young persons" those aged 14 to 17.[3] The youth coming between 17 and 21 years old are often referred to as "young adults." As we

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are here concerned with juveniles, I shall generally be talking about those aged less than 17 years.

The age of criminal responsibility in England is 10 years, although the child's special knowledge of the wrongfulness of his act must be proved if he is under the age of 14. Many countries have a much higher age of criminal responsibility. This does not necessarily mean the children in those lands may not be indulging in a high degree of anti-social misbehaviour for which they can be dealt with quite severely, even by deprivation of liberty, but they are not regarded as being within the punishment (nor be it said, the protection) of the criminal law.

It might now seem appropriate briefly to comment upon some of the principal trends in juvenile crime before turning to alternatives to prosecution in the face of this menace. In his draft Report to the Seventh United Nations Congress, Richard Harding reminded the delegates of difficulties in measurement and also that there were wider variations in the reports forthcoming from the various countries. However, he concluded that ". . . three recent trends were identified: youth involvement in drug abuse and drug-related offences; high crime rates involving migrant youth; and changes in the nature of offending by female juveniles."[4]

In England there is evidence that drug abuse is on the increase. Concern extends not only to taking cannabis, which is and has been for some years very widespread amongst young people, but more particularly to the growing incidence of the abuse of hard drugs such as heroin. The sniffing of glue and solvents is also widespread and gives cause for concern. It is believed that some crime is committed whilst under the influence of these substances and that a certain amount of predatory offending occurs in order to finance the purchase of drugs like heroin. How far this is true and how far it is scape-goating is not easy to know.

Young people continue to play a large part in the commission of serious offences in England. Thus the latest data, for 1984, show that of those found guilty of, or cautioned for, all manner of indictable offences, (that is those crimes which in the case of adults would be triable in the Crown Courts before juries) 53% were under the age of 21, 10% indeed were under 14 years of age and 20% were between 14 and 17.

If one looks within the indictable group to convictions and cautions for certain particular categories of offences, the participation of juveniles and young offenders is even more alarming. Forty-eight per cent of indictable violence is attributed to those under 21. In burglary the proportion is 69%, with 39% under 17. Twelve per cent of the burglars were under 14 years of age. Fifty-seven per cent of stealing is attributed to the under-21s, with those under 14 contributing 13%, and in the case of criminal damage 64% is put down to young offenders, with 15% in respect of children under 14.

There is also some evidence in England that girls are becoming more criminally active. That is to say that they are committing more crime and also more serious crime. Further, whereas in the past if girls were involved at all in serious crime it was likely to be in a relatively minor or ancillary role, girls who take part in serious crime these days are often full participants at the centre of the activity, even where the crimes involve considerable audacity and violence. Nevertheless, boys' involvement in crime still outnumbers that of girls in England by 8 or 10 to 1.

It has for a long time been recognised by research, as well as by common experience and commonsense, that a certain amount of juvenile delinquency is normal to the process of growing up. Children seek excitement and they like to prove themselves and to test out the limits. Their rumbustious behaviour may be annoying to those about them and especially to those too old to remember their own youth. Sometimes the misconduct goes further and is hurtful, dangerous and frightening.

Yet even in the face of persistent provocation it seems very important that society should not over-react. Excessive

social reaction may result in turning childhood steps towards maturation into the byways of a criminal adult life. Studies of the processes of stigmatization and labelling have made it a commonplace to realize that if children who do wrong are described as criminals, processed like criminals and treated as criminals, they come to achieve a criminal self-identity as well as an identification with the criminal sub-culture. Thereafter their behaviour almost inevitably becomes more and more like that which conforms to the label authority has given them.

Thus, it is everybody's effort to keep children from formal involvement with the criminal justice process for as long as possible in the hope that they will get over the difficult teenage years and somehow manage to make the transition to respectable adult life. Although peer-group pressures are very strong, the adults in their lives can do much to aid and support this process. Caring parents, relatives and teachers are all important. Sadly, however, more and more children are finding themselves without satisfactory models in this respect and persist with their delinquency until it comes to official notice.

Many adults in the child's life can serve as gatekeepers to the criminal justice process. They include teachers, welfare-officers, social workers and the police. Traditionally in England, and perhaps still in some parts today, a delinquent child would be reprimanded on the spot by a constable who had caught him in flagrante delicto, maybe given a cuff or threatened with a report to his parents and sent on his way.

However far that informal process might still take place, it has for nearly 20 years been supplemented by a more formal cautioning process.[5] A very wide discretion resides in the police in England as to whether to prosecute or not in any particular matter,[6] whether the offender be adult or juvenile, and especially in the case of juveniles a formal caution has become a widely accepted alternative to prosecution.

In general, the rules are that if the offence is not too grave, and the victim is content to leave the matter to police discretion, and the child admits his guilt and has a good record, then, if the parents are also in agreement, the juvenile is accompanied by them to the local police station, where a formal caution is administered by a senior officer in uniform and an official entry of the incident is made, which may be cited subsequently should the child come to further notice and be produced before a court. One or two earlier cautions will not necessarily preclude a further one. Otherwise the caution does not rank as a conviction and the proceedings form a very useful alternative to prosecution.

Having demonstrated their efficacy, the use of cautions is increasing, but is very uneven in different parts of the country. Thus, as a percentage of those found guilty or cautioned, 70% of males under the age of 17 were cautioned in Bedfordshire in 1984, but only 42% in Cleveland. Those who are younger are more likely to be cautioned than those who are older, and girls are more likely to receive a caution than boys. For example, in Bedfordshire 91% of girls under 17 were given a caution.

This seems to be an instance of what is often claimed in the criminal justice system to be discrimination in favour of females, but it has to be remembered that a girl of, say, 14 years who is apprehended by the police is less likely to have previous convictions than a boy the same age, as the latter are so much more active in delinquency.

The cautioning scheme is, of course, not without critics. Wherever discretion operates in a system there must be a risk of abuse. This is met, as far as possible, by having the grounds on which discretion is exercised fairly clearly spelled out. There is also anxiety that some children, with or without the coercion of their parents, may desire to admit the offence and accept a caution, although had the matter gone to trial, they would have had a valid defence. The subsequent use made of cautions is also important. Though cautions are not formally part of a juvenile's criminal record, they are usually made known to a court before sentence in a subsequent matter. It seems important that a rule

should be applied uniformly—either cautions are always drawn to the attention of the bench, or else they never should be. Uneven practice in this respect could work injustice in sentencing.

Recent research into decisions regarding 1,444 juveniles in five Divisions of the London Metropolitan Police District showed that, "... while legal variables (previous criminal record and type of offence) play a major role in police decision-making, some extra-legal variables (area, age and ethnic group), also have a significant effect. ..."[7]

Research on the efficacy of cautioning has had rather confusing results. Probably cautioning does divert children from coming to court, but only at the cost of bringing rather more children into the net of the legal process.[8] So far as the prevention of recidivism is concerned, Farrington and Bennett conclude, "The present research, admittedly based on small numbers, suggests that the intervention in London of police cautioning for juveniles produced a widening of the net rather than diversion, and that police cautions were no more effective than court appearances in preventing re-arrest."[9]

In further research, Joy Mott has concluded that it is the young children aged 10-13 years who are more likely to be drawn into the criminal justice system by net-widening. She concludes that "... police policy might be modified to the extent that the choice of decision, most particularly for the 10- and 11-year-olds, is between taking no further action and cautioning, rather than between cautioning and prosecution."[10]

In addition to cautioning, both informal and formal, so-called "police-based reparation schemes" have begun to emerge in the last two or three years.[11] These derive their inspiration in part from the alternatives to prosecution found in the United States and elsewhere in the form of mediation and arbitration.[12] The idea, in general terms, behind these schemes is that as an alternative to prosecution an offender may agree to a meeting with his victim (if the victim is willing) in the presence of a lay volunteer mediator, with a view to agreeing with the victim some acceptable form of reparation or other solution.

These schemes owe a lot to writers like Nils Christie,[13] who have pointed out the shortcomings of traditional criminal proceedings in which the victim of the offence tends to come off very badly, being revictimized in a secondary sense by the way in which they are treated by the trial process. If the trial results in the punishment of the offender, this in itself is of little benefit to the victim, who may still be out of pocket or left to pursue an inconvenient civil remedy. The proceedings also leave the offender without the obligation to face up to his victim and to come to terms with the hurt and damage he has caused.

In England for many centuries, prosecutions and trials have been conducted by the Crown according to a notion of the Queen's peace, that is to say the ancient doctrine that an injury to one man by another is an affront not only to that individual, but to the peace of the entire Kingdom. However this might have seemed in the unsettled times of mediaeval England, the doctrine seems frequently outmoded in the present day. Burglary, damage to a car, an assault and so on, mean more to the individual victim who has suffered than to the notional litigant, the Crown.

Of course, the development of alternative schemes of mediation and so on, need to proceed with caution and with regard for justice. It might be said that the State has an interest in an abstract concept of justice which is higher than the issue between the parties. In a criminal trial it might also be urged that the trained judge is present to hold the scales of justice fairly between the parties and not to leave them free to exert their own pressures upon one another by a process of bargaining. But, in a good mediation session the training of the neighbourhood mediator is of key importance, for the very purpose of seeing that one party does not weigh down upon the other unfairly.

This is why it might seem to those proponents of the introduction of schemes of mediation and arbitration as alternatives to prosecution, that they are best em-

ployed between adult victims and offenders whose maturity and bargaining power are in some sense equal. Obviously it is not all, or indeed many cases, where that is sufficiently so; so that these new schemes should only replace some selected prosecutions and by no means all. Proper screening of cases is necessary.

Notwithstanding, some "police-based reparation schemes" have begun to make their appearance amongst the British mediation experiments. Instead of a neighbourhood volunteer, the person in charge of the proceedings will be a police officer from the Juvenile Bureau, albeit one who is given some special training. It will be his task to see that appropriate terms of reparation are agreed between the juvenile offender and his victim as an alternative to prosecution.

Although many would wish to encourage these kinds of experiments in community-based justice, despite their possible shortcomings, others have anxieties that a "net-widening" effect could result. That is to say, they are concerned that children who might previously have been either informally or formally cautioned may now be subjected to this further process and hence dragged more deeply into the criminal justice system, than if the schemes did not exist and they were simply cautioned instead. The answer from some of the police is that they are aware of this risk and do intend to use the reparation schemes only where cautioning has been rejected as inappropriate and yet prosecution seems an unsatisfactory outcome also.

Where juveniles in England are not cautioned or otherwise dealt with, they will find themselves before the juvenile courts. These are benches of specially chosen men and women supposed to be representative of the ordinary community, but in fact rather not. The principal legislation governing juveniles at this point is the Children and Young Persons Act 1969.

When it was introduced it was a rather imaginative and far-sighted measure, although it suffered from concessions and compromises imposed upon it during its passage as a Bill through the parliamentary process.

In 1965 the Government had contemplated that family councils would replace juvenile courts in most cases, and where disputed facts had to go to a court, a special family court would be constituted which would still avoid the stigma of criminality. However, the White Paper in which these plans were outlined[14] proved so unpopular with the various professional agencies who would have been responsible for making them work, that the proposal was withdrawn in favour of a less radical alternative.

A new White Paper, entitled *Children in Trouble*, was published in 1968.[15] It recognized that juvenile delinquency "has no single cause, manifestation or cure." The emphasis which the document placed upon genetic, emotional and intellectual factors, family, school and neighbourhood influences, led to an almost deterministic view of the aetiology of juvenile offending and the consequential idea children who committed delinquent acts were more in need of treatment than punishment.

The grand objective was that children who offended would still be brought to court, but not normally by way of prosecution but rather as being in need of care. The Children and Young Persons Act 1969 was the embodiment of these hopes, but in actuality if a juvenile is being brought to court because of its delinquency it is almost always prosecuted and only very rarely brought as in need of care.

The position in Scotland, which has, of course, a completely independent legal system, is substantially different from that in England. In Scotland, children's panels comprised of lay persons receive cases through the intermediate agency of a functionary known as the reporter who in turn receives his cases on reference from the police. By this means a child may be dealt with without having to undergo prosecution, although if the case is one of any gravity it will not go to the children's hearing, but be referred by the reports to the Sheriff's Court instead.

Michael Freeman has concluded, "In that it is keeping a certain number of chil-

dren out of the formal control system, the Scots have reduced the ambiguities, dilemmas and inconsistencies inherent in the English system, but they remain."[16]

It remains to be said that the Seventh U.N. Congress just ended, did in No. 11 of the *Standard Minimum Rules*, enjoin that appropriate consideration should be given to dealing with juveniles without resorting to trials, that police should have discretion to deal with cases informally, but that diversion to appropriate services should require the consent of the juvenile or his parents.

Children's Rights and Juvenile Justice

Before proceeding to a discussion of the situation where a child is being himself proceeded against for an offence, it might be worth drawing brief attention to the situation where a child is involved in the criminal justice process as a victim or a witness.

There is evidence to suggest that what can be traumatic for children is not perhaps so much the criminal offences which overtake them, but the adult response to these incidents and especially the retelling of the event over and over, finally as a witness in court.[17] The child may be coaxed to recount what has happened again and again and again to relatives, social workers, police and the courts. The matter becomes reinforced in his memory and restructured and aggrandized in terms of adult reactions and interpretations.

In some legal systems children are protected more than in others. For example, the Law of Evidence Revision (Protection of Children) Law 5715-1955 in Israel provides by Section 2(a) that "Save with the permission of a youth interrogator, a child shall not be heard as a witness as to an offence against morality committed upon his person or in his presence or of which he is suspected, and a statement by a child as to such an offence shall not be admitted as evidence." Subsection 2(b) goes on to provide that where a youth interrogator does present a child to be heard as a witness the number of people present at the trial shall be reduced to an absolute minimum. The "youth interrogator" is someone especially trained and appointed by a panel of experts.

This procedure has never been adopted by English law as it breaks the "hearsay rule" and because great reliance has always been placed upon the right of the accused person to be able to cross-examine his accuser. Courts also believe that it is an advantage to them to be able to see a witness for themselves under examination and cross-examination and that this helps them to assess the veracity of the evidence given. The matter exemplifies the difficulties known to victimologists, of rights and interests of victims which, whilst desirable in themselves, then come into conflict with equally important rights and interests of those accused.

I turn now to a consideration of the rights of the juvenile in cases where the juvenile is himself brought into the criminal justice process by reason of his offending. As I shall be referring to arrangements in England from time to time by way of illustration, it might be as well to set out briefly how justice for juveniles is administered there.

About 95% of criminal cases, including juvenile offences, are dealt with by magistrates. Serving a population of about fifty million people are a mere couple of dozen stipendiary magistrates in the main urban areas. These justices, who are trained lawyers, are augmented by some 26,000 magistrates who are appointed by the Lord Chancellor from amongst local citizens of good repute.[18] The lay justices attend short training courses, but rely for advice and guidance on the law upon their clerks who are legally-qualified.

From amongst the lay justices certain are specially chosen to sit in juvenile cases, usually because they are thought to have some special qualifications or experience in dealing with young people. For example, they might be qualified as teachers, social workers, doctors, or have some other relevant experience. It is not usual for magistrates to be appointed to the Juvenile Court over the age of 40 years and most of

those appointed are stably married with children of their own. It is the practice for men and women to sit together in benches of three.

The system of lay justices is a most ancient one going back about 700 years in the history of the legal system, but it is not above criticism. The mode of selection of justices is not very widely made known and the justices can hardly be said to be fairly representative of those who appear before them, since most delinquent children come from poor and deprived backgrounds and most magistrates are from the upper middle classes.

The office is unpaid and therefore it is not easy for some categories of people to be free to serve. Especially in the large urban areas a disproportionate number of the juvenile offenders are black, but it seems to be very difficult to recruit a proportionate number of magistrates from ethnic minority backgrounds. These days even some magistrates are unemployed, but it is often alleged that the benches have no real understanding of the life and problems of the poorer classes.

These days more thought is being given to the rights of children in the abstract, and also to the rights of children as these are recognized and manipulated in the various courts. In England the courts which are at the forefront of people's discussion about juveniles' rights are the Juvenile Courts under the lay justices. Michael Freeman asserts in both his book and his article in the *British Journal of Criminology* that one of the most unsatisfactory features of juvenile justice is that in reality there is very little justice.[19]

This comes about because of some inherent confusion in the role and purpose of the Juvenile Court. The Home Office White Papers, *The Child, the Family and the Young Offender*[20] and *Children in Trouble,*[21] reflected the attitudes of their day in advancing care and treatment as being the appropriate social responses to juvenile delinquency.

It was observed that a child's behaviour was "influenced by genetic, emotional and intellectual factors, his maturity, and his family, school and neighbourhood and wider social setting."[22] As these were inherent or environmental determinants over which the child had no control, it was wrong to blame the child or to punish him. The Children and Young Persons Act 1969, although never fully implemented, reflected this approach of caring, treatment and welfare. The appropriate response was to identify those children who were in need and whose behaviour marked them out for intervention and then to provide care and support for them. This could take the form of supervision or of care orders. Other orders were possible. For example, minor offences sometimes incurred a small fine; but in the case of repeated offences, more serious offences and deprived social or emotional background, supervision by social workers or the probation service, or care orders were likely to be the result.

The consequence of the making of a care order would be that the rights of the parents over an offender would be placed in the hands of the State, acting through case conferences convened by local authority social services and the social workers would determine whether the care orders imposed by the court were to be fulfilled by letting a delinquent child return home, or by placing it in an institution somewhat euphemistically called a "community home."

It would be quite possible for a juvenile to remain in the care of a local authority and in such an institution until the age of 18 years. This placement would be made with the best interests of the child and his welfare in mind. The physical facilities of community homes often greatly exceed the resources of poor parents. Nevertheless the perception of the child and of his family would be of the juvenile having been "sent away." In the name of "welfare" a child could in fact lose his liberty for years, the period of incarceration depending on his perceived needs and not on the gravity of his crime. It was perfectly possible for a child to lose his liberty for years following conviction for a minor theft, thus atrracting a penalty which would only be applied against an adult for a major crime such as

armed robbery.

The problem is illustrated by cases such as those of *Gault*[23] and *Winship*[24] in the United States. In the former well-known case, Gerald Gault, aged 15 years, was committed to an industrial school in Arizona until he became adult at the age of 21 years. His offence was making obscene telephone calls for which an adult could receive imprisonment for no more than two months.

Whilst not rejecting the *parens patriae* doctrine completely, the United States Supreme Court ruled in effect that most of the rights enjoyed by adults should also benefit children, including that of the Fourteenth Amendment to the Constitution requiring due process of law.

In England, the Criminal Justice Act 1982, s.23 now provides that a care order shall not be made unless it is appropriate because of the seriousness of the offence. In the sentencing of adults there has been a move away from the "treatment/welfare" model towards the "just deserts" model and something of the same turnabout is now permeating justice for juveniles.

Of course there are many other injustices arising, for example where two children found guilty of the same offence suffer disparate orders because of differences of social backgrounds, but this is not a problem exclusive to the sentencing of juveniles. It is also possible in many jurisdictions, however, for juveniles to suffer severe penalties for so-called status offences which are not crimes in the case of adults at all.

In the *Standard Minimum Rules*, Rule 1 sets out what are called "Fundamental Perspectives" under the heading of *General Principles*. These "perspectives" enjoin member states to seek "to further the well-being of the juvenile and his family." A "meaningful life" should be ensured for the juvenile especially during those years when he is most vulnerable to criminal temptation and his personal development and education should be as crime-free as possible. It is one of the paradoxes of criminology that while many delinquents come from appalling social backgounds, yet some very good young people emerge from these conditions also and at the same time some delinquents appear to develop under conditions which appear in every way excellent. Of course, if our national social structures were all perfect, there would no doubt be much less crime, but as Vold has said in another connection, "Anyone who can provide a blue-print for accomplishing desired change in a community's culture can rest assured of immortal fame. It is, like walking on water, a neat trick if you can do it."[25]

Rule 1 continues, stressing the need to mobilize all resources, family, volunteers, community groups and schools, seeking to reduce the need for intervention under law. No doubt this is very important. In resisting the pressure for severer penalties for juveniles, the Government in England has said much the same thing. ". . . the Government see the overriding need as being a renewed and sustained effort to make effective use of existing—and by no means negligible—powers and resources, with a particular emphasis on improved mutual understanding; increased community involvement; and a greater acceptance of parental responsibility, and of the part which can be played by teachers, social workers and others. There is no panacea, except a recognition that everyone in the community can help or hinder, individually or collectively, through the part they play in handling the problems of particular children."[26]

It seems to me that this statement is one of the very greatest importance, emphasizing as it does, that every society should use its existing and traditional structures to the fullest extent. No amount of expenditure on sophisticated institutions can adequately substitute for loving families and the most costly and elaborate rehabilitative programmes and facilities are in no way equal to the warmth of a caring neighbourhood community. This is often said and yet cannot be said too often. The sad fact is that, especially in some Western countries, there is a growing tendency to use the criminal law as a first defence against juvenile delinquency instead of holding

them in final reserve for use only in the last extreme.

Rule 2 says that the Rules should be applied impartially without distinction of any kind. It is sometimes asserted that children of minority groups are singled out for adverse reaction and it seems a commonplace that it is children of the lower socio-economic groups who find themselves in conflict with the law, but after going on to allow juveniles, offences and juvenile offenders to be defined according to individual national law and customs, this provision then very rightly emphasizes the need to apply the Rules "thoroughly and fairly."

The third of the Rules extends their application to status offences. That is to say that those protections in the administration of justice which apply to ordinary criminal offences should also be held to apply to the handling of conduct which is only punishable if committed by juveniles, such as truancy, drinking alcohol under age and so on. Rule 3.2 endeavours to extend the principle to children who are dealt with in welfare and care proceedings. This, too, is very important as "civil" proceedings may be used to control the delinquency of those below the age of criminal responsibility and also in some jurisdictions where offences have been committed, there might be a tendency to use welfare or care proceedings as an alternative to prosecution. In such circumstances the child should have the same right to a fair hearing, to representation, to have the rules of evidence and standards of proof etc., enforced as if the proceedings were being brought under criminal law. As has already been pointed out, the powers and sanctions of control might in practice be harsher and more severe under the guise of welfare and treatment than where something closer to the justice model of corrections is being employed.

The last part of Rule 3 says that efforts should be made to extend the principles embodied in the Rules to young adult offenders. No doubt that is right. In general "young adult offenders" in England are regarded as being aged between 17 and 21 years. But it is a truism that chronological age is a very different matter from developmental age. A person of 23 or 24 years may behave at a maturation level of fourteen or fifteen, whilst a person of fourteen or fifteen may turn out to be a thoroughly mature and comprehending criminal of great sophistication.

This leads on to a discussion of Rule 4 which says, "In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, parental and intellectual maturity." This raises again the seemingly insoluble conflict inherent in our efforts to do justice to juveniles. On the one hand we do not wish to stigmatize children as "criminal" who are merely exhibiting fairly normal "acting-out" behaviour in the process of growing up. On the other we wish to protect juveniles with the rights and power of the criminal law against well-intentioned, but excessive, societal reaction exercised in the name of care and welfare.

This point is discussed by Stewart Asquith who reports recent arguments for a reduction in the age of criminal responsibility in Finland.[27] One understands these arguments to have been resisted. It is also relevant to the provisions contained in many legal systems which provide for sophisticated and serious young offenders to be dealt with in adult criminal courts, despite their youth.[28] One of the risks of having provisions of that kind is that they might come to be used excessively. The relevant power in England, Section 53 of the Children and Young Persons Act 1933, which resulted in only half-a-dozen children aged between 14 and 17 years being held in Home Office establishments 20 years ago, now finds more than 100 contained in that way. Whilst this great increase may be in part explained by the rise in the number of serious crimes being committed by juveniles, there is some feeling that Juvenile Courts are more ready to use the section these days than before.

Rule 5 which says that the juvenile jus-

tice system shall emphasize the well-being of the juvenile and have regard for the principle of proportionality appears to be related to Rule 17 which, in part, is saying something the same. I shall look at this more closely when discussing Rule 17, but content myself for the moment in agreeing with Bob Kaplan, when Attorney-General for Canada, that we must "... strike a balance between helping young offenders and protecting society from harmful conduct."[29] Rule 6 calls for "appropriate scope for discretion" "at all stages of proceedings" and then very wisely proposes controls based on accountability and special training. The published commentary says, "Accountability and professionalism are instruments best apt to curb broad discretion."[30] Although justice for juveniles might seem to dictate like action in like cases, almost inevitably the need for the exercise of some degree of discretion will arise. The Commentary referred to emphasizes the need for special training, but often the need for this will occur at a relatively low level in the process. For example, decisions and choices need to be taken by arresting police officers or by social workers. The judiciary are trained to act judicially but this is not necessarily the case with other functionaries and, moreover, an executive decision is not the same as a judicial adjudication.

It is so easy for unfairness to creep in by misjudgements large and small. People tend to act their roles, the police to clear up crime and gain a conviction; the social workers to solve a problem; teachers to find an appropropriate remedy for an otherwise difficult situation in the classroom. All involved can tend to line up in opposition to one another, each trying win his case, as though they were determined lawyers on differing sides of some abstruse legal battle, devoid of human content. Training and professionalism are exceedingly important and so is accountability. It can also help to have spelled out for all to see, the grounds on which discretion may be exercised.

Rule 7 emphasizes what ought to be taken as self-evident, the presumption of innocence, the juvenile's right to counsel, to cross-examine witnesses, to appeal, to have a parent present, to be notified of the charges and so on. If these rights are recognized, as they ought to be for adults, then *a fortiori*, juveniles should be granted them too. But if one is employing some other process in order to avoid a trial because of its stigma, it might be difficult to honour all the safeguards and it is always easier to write principles on paper than to fulfill them with appropriate administration and financial expenditure.

Another example of the conflict of rights occurs in Rule 8 which says, "The juvenile's right to privacy shall be respected at all times. . . ." The other side of this coin is the public interest in the due administration of justice. In fact there was a considerable debate in Committee II at the Seventh United Nations Congress and the ultimate wording of Rule 8 reflects compromise on a number of issues. There had originally been a further draft Rule 15: *Confidentiality*—"15.1 Proceedings in juvenile courts shall not be open to the public. 15.2 The proceedings shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely." The consensus was that the interest of 15.1 was adequately met by Rule 8 and that 15.2 was sufficiently covered elsewhere.

Before leaving *General Principles*, note that Rule 9 serves to make plain that the intention of the *Standard Minimum Rules* is not to be restrictive of other rights and freedoms accorded to juveniles by other instruments. They are intended to enlarge children's rights and juvenile justice and not to be interpreted as imposing qualifications upon those already recognized elsewhere.

Part Two of the *Rules* deals with *Investigation and Prosecution*. Rule 10 calls for notification to the parents immediately a juvenile is apprehended, for release to be considered and for the well-being of the child to be promoted, " with due regard to the circumstances of the case." These admirable desiderata, like some of the

others, must be very often "honoured in the breach" and the Commentary statement, "Compassion and kind firmness are important in these situations" might seem to have about the same chance as that of a snow-ball in Hell. But these *Rules* are offered as a standard minimum!

Rule 11 enjoins diversion, with which I have already dealt in part under the heading "Alternatives to Prosecution" and there will be more when discussing alternatives to custodial measures.

Rule 12 deals with the special training of the police. As I have previously explained, in England the police have organized juvenile bureaux everywhere. They were formerly often staffed by female police officers, but these days any officers may be appointed.

The juvenile's right to his liberty whilst awaiting trial is dealt with in Rule 13. This is generally recognized in England as, after all, a person is innocent until the contrary is proved and so long as one can be sure that he will attend for trial at the due time, there is no need for restricting his liberty.

Almost all juveniles are granted bail by the police or by the Juvenile Courts and this means that they are free to go pending trial; but it also means that if they fail to attend at the proper time without a reasonable excuse, that in itself constitutes a punishable offence.

In suitable cases a court may place conditions upon a grant of bail, for example, of residence, or a curfew, reporting periodically to the police, requiring another person to stand as a surety and so on. Nevertheless, bail will not normally be granted where the offender has broken bail before, where he is likely to re-offend prior to trial, to interfere with witnesses, or obstruct the course of justice.

There is a certain amount of pressure from victims' organizations in some countries for victims to have the right to be heard in court to oppose bail. This has been resisted in England. The right to liberty of any defendant, adult or juvenile, against whom nothing has been proved, is considered to be of the highest importance. The police may bring evidence in court to show why bail should not be granted when the defendant has applied for it, but the victim cannot do so. It is fair to say that some courts appear to grant bail more readily than do others. A juvenile to whom bail is refused may repeat his application to a Supreme Court judge in chambers.

Where it is necessary to hold a juvenile in custody pending trial this will normally be in a children's home, or else in another special juvenile remand centre, if more security is thought to be required. Quite apart from the stigma and trauma which follows a custodial remand, it makes it more difficult for the juvenile to prepare his defence and his accommodation is a needless cost to the State.

The *Rules* then move to Part III, *Adjudication and Disposition*. Rule 14 aims to obtain for the juvenile a fair and just trial and I have alrady explained how Juvenile Courts in England are constituted to this end.

For a juvenile to have a trial that is fair, it is obvious that he should have the help of his parents and of lawyers where necessary and Rule 15 provides for this. In England the legal profession is divided into about 25,000 solicitors, who interview clients, take instructions, advise and indeed do all the work that lawyers can normally do except to appear in the higher courts, which is a right reserved for members of the Bar, who are currently about 2,500 in number. Barristers are thus primarily advocates and specialists who advise in cases of particular difficulty. It is normal practice in England for a juvenile to be granted legal aid so that he may be properly represented in all but the most trivial cases. If the juvenile's family have sufficient financial resources they may be required to pay something towards the cost of the legal aid.

Most Juvenile Courts also have a "duty solicitor scheme" under which local solicitors form themselves into a roster and attend court in turn in order to be able to give preliminary advice to juveniles who have not had time to arrange for other representation. This scheme works extremely well as it serves as a protection to the juvenile and also expedites the work of

the court in guiding juveniles as to how they should plead and so on. Rule 16 is headed *Social Enquiry Reports*, but the intention is to provide investigation into the juvenile's background and circumstances prior to sentence in all but minor matters. It should be recognized that those providing such information are in a powerful position to influence the outcome and proper training is once again essential. Even the best social workers are capable of structuring or editing their reports in such a way as to try to lead courts to what they think the disposition should be.

The need for proper training of personnel is emphasized at several points in the *Rules*, not least at Rule 22. Less is said, of course, about what constitutes proper professional training. It is stated that "juvenile justice personnel should reflect the diversity of juveniles coming into contact with the system." In practice it is not always easy to recruit suitable people who are representative of social minorities.

Other rights recognized for juveniles, as they should be for adults, are speedy trial (Rule 20) and confidentiality of records. In fact, the Rehabilitation of Offenders Act 1974 in England provides for offenders' records to become "spent," or capable of suppression for most purposes, after varying lengths of time.

When all is said and done by the *Standard Minimum Rules*, the basic dilemma between justice and welfare remains. Rule 17 refers to proportionality, but also to the circumstances and needs of the juvenile and of society without indicating how these often conflicting interests are to be reconciled. Rule 17.1(d) says, "The well-being of the juvenile shall be the guiding factor in the consideration of her or his case," just as Rule 14.2 states that proceedings shall be conducive to the best interests of the juvenile."

No doubt England is not alone in recognizing that whilst these rights of children in the juvenile justice system are of great importance, they are far from easy to define in practice and have always to be set against countervailing rights vested in other sections of society.

NOTES

1. A/CONF. 121/L.17/Add. 1.
2. Ibid. Clause 2.2(a).
3. Children and Young Persons Act 1969, s. 70.
4. A/CONF. 121/C.2/L.13, p. 1.
5. See Chief Inspector I.T. Oliver: "The Metropolitan Police Juvenile Bureau Scheme" [1973] Crim. L.R. 499.
6. *R v. Commissioner of Police of the Metropolis, ex. p. Blackburn* [1968] 2 W.L.R. at p. 902. A.F. Wilcox, *The Decision to Prosecute*, Butterworths, 1972.
7. Simha F. Landau, "Juveniles and the Police," [1981] 21 B.J. Crim. 27.
8. Michael Rutter and Henri Giller, *Juvenile Delinquency*, Penguin, 1983, p. 297.
9. David P. Farrington and Trevor Bennett, "Police Cautioning of Juveniles in London" [1981] 21 B.J. Crim. 123, 134.
10. Joy Mott, "Police Decisions for Dealing with Juvenile Offenders" [1983] 23 B.J. Crim. 249, 262.
11. Tony Marshall, *Reparation, Conciliation and Mediation*, Research and Planning Unit Paper 27, Home Office, 1984.
12. See, e.g., Benedict S. Alper and Lawrence T. Nichols, *Beyond the Courtroom*, Lexington, 1981.
13. Nils Christie, "Conflicts as Property" [1977] 17 B.J. Crim. 1.
14. Home Office, *The Child, the Family and the Young Offender*, H.M.S.O., Cmnd. 2742/1965.
15. Home Office, *Children in Trouble*, H.M.S.O., Cmnd. 3601/1968.
16. M.D.A. Freeman, "The Rights of Children when they do 'Wrong'" [1981] 21 B.J. Crim. 210, 217.
17. T.C.N. Gibbens and Joyce Prince: *Child Victims of Sex Offences*, I.S.T.D., 1963.
18. See generally, Elizabeth Burnley: *J.P., Magistrate, Court and Community*, Hutchinson, 1979. Sir Thomas Skyrme: *The Changing Image of the Magistracy*, 2nd edn., MacMillan, 1983.
19. M.D.A. Freeman: 'The Rights of Children When They do "Wrong,"' [1981] 21 B.J. Crim., 210. M.D.A. Freeman: *The Rights and Wrongs of*

Child Abuse, Child Molesting, and the Law

*by Günther Kaiser**

Part I

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice,[1] recently adopted, focus on the well-being of the juvenile, the process of personal development and education that is as free from crime and delinquency as possible (Rule No. 1). This broad fundamental perspective refers to a comprehensive social policy in general and aims at promoting juvenile welfare to the greatest possible extent, preferably before the onset of delinquency. Therefore efforts shall be made to extend the principles embodied in the rules to all juveniles who are dealt with in welfare and care proceedings (Rule No. 3.2). In future, no juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary (Rule No. 18.2). The separation of children from their parents would be a measure of last resort. It may be resorted to only when the facts of the case clearly warrant this grave step, e.g. child abuse. The common background philosophy is the opinion that every child or juvenile, be he an offender or victim—frequently he is both—is in need of help, social support and guidance. According to research, battered children often grow up to be violent offenders. Moreover, as we know, young persons are sometimes seriously involved in domestic and school violence, possibly as victims or as offenders. For these very reasons, violations of child welfare law provisions protecting against acts detrimental to the mind, body and development of children and committed by adults are generally placed within the competence of the administration of juvenile justice or family courts as in Japan.

In opposition to this widespread view, however, the radical children's rights movement and other critical groups are asserting in recent times the "disappearance of childhood" in Western countries.[2] They demand one and the same social and legal status for adults and for juveniles. If this perspective were well-grounded and correct, there would not be any longer a need for an individual protection of juveniles with regard to offences committed by adults against the well-being of minors. Moreover, undesired and serious social consequences could be expected. This actual controversy might justify a special consideration of the problem of child abuse and child molesting.

Child abuse, like child neglect and child molesting, belongs to the group of offences relating to the protection of young people and their socialization. Passive acceptance of such harmful behaviour is detrimental to their successful development; indeed it is occasionally a source of danger to life and limb. To counteract this sort of behaviour there are a number of norms for which provision has been made in civil, public, and criminal law. Whereas civil provisions[3] and public law provisions (i.e. the Youth Welfare Act) are aimed exclusively at the "well-being, benefit or welfare of the child", the relevant criminal law provisions[4] are aimed, in addition, at goals of general and special prevention. Although these individual manifestations of criminal behaviour and the interests protected by law have different characteristics, they are nevertheless linked by the overlapping perspective of youth protection and by the victimization common to both, that is to say, by the victimological perspective. These common features also justify their consideration together.

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Children, Frances Pinter, 1983.
20. Home Office: *The Child, The Family and The Young Offender*, H.M.S.O., Cmnd. 2742/1965.
21. Home Office: *Children in Trouble*, H.M.S.O., Cmnd. 3601/1968.
22. Ibid., para. 6.
23. *In re Gault* [1967] 387 U.S. 1.
24. *In the Matter of Samuel Winship* [1969] 397 U.S. 358.
25. George B. Vold: *Theoretical Criminology*, Oxford University Press, 1985, p. 261.
26. Home Office: *Observations on the Eleventh Report from the Expenditure Committee*, H.M.S.O., Cmnd. 6494/1976.
27. Stewart Asquith: 'Justice, retribution and children' in Allison Morris and Henri Giller: *Providing Criminal Justice for Children*, Edward Arnold, 1983, p. 13.
28. See, e.g., the Canadian Young Offenders Act 1982.
29. Minister of Supply and Services: *The Young Offenders Act – Highlights*, Communication Division, Ministry of the Solicitor-General, 1981, Foreword.
30. United Nations: *Standard Minimum Rules for the Administration of Juvenile Justice*, Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1985, A/CONF.121/L.17/Add.1, p. 12.

We cannot overlook the fact that child abuse and child molesting have—if viewed historically and interculturally—undergone changes in focus and importance as far as the public and the law are concerned. Childhood, force and sexuality, or—to be more precise—the non-violent development of young people in free self-actualization has been the subject of changing evaluation in the course of history. The same applies to changing assessments in groups and classes within society and in different cultures. The law, in particular criminal law, also reflects this change and the differences involved.

The specialized ways in which interested scientists have looked at these matters may indeed have contributed to this. Thus, for example, forensic psychologists are mainly concerned with sexual cases involving indecency with children in view of their participation in credibility investigations. On the other hand, psychoanalytically-oriented social scientists have recently begun to devote most of their attention to child abuse. Since the fifties when indecency with children as the so-called "sexual offence of our time"[5] came to the forefront of scientific contemplation, interest has subsequently shifted to child molesting. Preceding changes of a statistically demonstrable kind relating to the sort of offence being committed have hardly taken place. Instead the almost modish changes in the focus of public and of academic views point to a considerable dependence on society as it changes in its susceptibilities. The three components of our problem, namely, childhood, force and sexuality have been affected differently.

Whilst the idea of youth protection and of minimal interference in the development of young people has continuously held sway down to the present day—indeed if one disregards the lowering of the full-age limit one can say that it has grown stronger—the sensitive contents of this protection as it affects the use of force and sexual morality have changed substantially. Whereas previously development in the sense of the maturing process and of responsible action was thrown into relief, attention is now directed mainly towards ensuring that force is not employed in the upbringing and education of the young. Thus, violence in education and in the family is strongly stigmatized, and its presence is regarded as one of the most important criteria for intervention in the personal and private legal sphere.

The sentencing practice of the courts only reflects these changes and tendencies in a diluted form. Although the imposition of determinate imprisonment on conviction for child battering and child molesting in West Germany was relatively high in 1983 (84 per cent and 79 per cent respectively), the vast majority of these terms were probationally suspended (in 81 per cent and 67 per cent of cases respectively). In roughly 34 per cent of child abuse cases and 14 per cent of molesting cases punishment amounted to six months' imprisonment or less. With regard to fines imposed, 10 per cent and 16 per cent of all sentences, respectively, indicate a low day-fine total, mainly between 31 and 90 day fines.[6]

Part II

In view of the individual and social significance of child abuse, which is being increasingly emphasized in international literature, child abuse as an offence created for the protection of the young and as a criminal law problem must now be subjected to more detailed consideration. Child abuse appears to be as old as humanity itself. However, since the turn of the century public and scientific interest in the subject has been growing. This is probably due to the more extended notion of child and youth protection, which is gaining greater acceptance now. This notion is directed against exploitation arising from child labour, which was formerly widespread, as well as against ill-treatment during upbringing and education. Not only charitable societies such as the former "Society for the Protection of Children against Exploitation and Abuse" but also the system of criminal justice administra-

tion seek to curtail and prevent child abuse.

Although child abuse has by no means lost significance—indeed it has been made a criminal offence in Austria, Switzerland and Germany[7]—we find that since the end of the sixties there has been a further intensification of interest in the subject.[8] In North America there is talk of an actual "discovery" within the context of what doctors call the "battered child syndrome" or "child battery", evidently in misapprehension of the long existing tradition of social work.[9] The reason for this new interest lies in the appearance of groups of professionals who, as specialists in forensic medicine, psychoanalytically-oriented therapists and experts in social pedagogy, have turned their attention to the phenomenon of child abuse. What is important about this discussion is that the interest in child protection is largely confined to protection against the use of force and therefore against violence in the family or during socialization generally, and it is not infrequently linked with a call for more extreme sanctioning of offenders. Critics face the insinuation that they irresponsibly make light of a serious matter, and the lenient sentencing practice of the courts is deplored for being incomprehensible.

Furthermore, the view of German scientists and practitioners has largely been confined to German-speaking areas, and their leading supposition has been that child abuse as a vent for hostility towards children is nowhere more abundant. However, with the growth of international communication in the field of child protection this narrow view has turned into an international perspective. Analysis has not become easier in the process, that is to say, with greater awareness of cultural relativity.

After all, it is notable that in terms of an internationally comparative view manifestations of child abuse are not much discussed in socialist society[10] and until recently in Japan hardly at all.[11] Thus we again face a question which the Italian jurist *Ferriani* raised in much the same sense in 1891, namely, whether in the countries concerned child abuse is merely not discussed or whether it does not occur there at all.[12] If child abuse is non-existent, then we face the further question whether there are possible functional alternatives, i.e. whether there are similar manifestations which, although they do not accord with our conception of child abuse, are nevertheless functionally equatable in their social harmfulness with child abuse in our sense. If we regard excessive corporal punishment, and thus child abuse as well, as an expression of discipline we cannot overlook juvenile suicide in Japan,[13] insofar as it may be viewed as the final avenue of escape from the disciplinary system. In an intercultural comparison it is even more difficult to classify a case such as "child marriage" in India, or that of Sri Lankan children forced by their parents to go begging,[14] or the "evil eye" of religious ritual aimed at individual children in particular social circumstances. The new interest in cross-cultural research on child abuse illustrates the definitional problem. If there is no universal standard for optimal child rearing, there is no universal standard for what is child abuse and neglect.[15] Superfluous to say, it is not intended to blame anybody or any country, but only to look after child rearing patterns that fit into the intercultural concept of child abuse.

As an interim or provisional result of the discussion hitherto it is possible for us to identify the following aspects as fundamental:

- that child abuse is seen in the context of modes or styles of upbringing and education that have been handed down as part of a cultural tradition and which to a large extent still make allowance for corporal punishment;
- that the physical and mental harm caused, especially to small children, is considerable;
- that the number of unreported cases of child abuse is supposed to be extremely high;
- that initial demands for extreme criminalization and penalization of the adults responsible for abusing children

are gradually being supplemented by, and are giving way to, calls for offers of assistance and prevention;
- and that at least as far as the German-speaking area of Europe is concerned potential offenders are generally younger parents whereas teaching staff in schools and firms are, in contrast to the period after the turn of the century, diminishing in importance.

Despite the many years of discussion of child abuse and the current profusion of relevant literature, there still remain a number of open questions. They relate to the concept of child abuse including possible functional equivalents, to the increase or decrease in the number of child abuse cases, to the class characteristics and causes of child abuse, to abuse by other children and juveniles, and also to the realistic chances of being able to offer effective protection and appropriate assistance as well as prevention.

Nowadays it is generally acknowledged that the phenomenon of child abuse is not only a criminal law and medical problem but also, above all, a social problem. This by no means makes the task of determining what we exactly mean by child abuse easier. A clarifying approach would appear to lie in pursuing the question as to what already amounts to, and what does not yet amount to, child abuse, and also the question as to what child neglect is. Thus the law and the courts not infrequently refer to the criterion of degree when considering the question of causation of physical pain and suffering, and to the criterion of a given duration of repetition when considering the issue of torture and torment. If, however, we include child neglect leading to stunted development[16] further cases must be added. They may be linked through common interference with, or failure to achieve, recognized socialization goals, and also perhaps through common health impairment. Nevertheless, such cases know no differentiation between misuse and neglect.

If, on the other hand, one takes the view that legitimate corporal punishment and physical as well as mental child abuse do not differ in principle, but are only different types of coercion used against children[17] then coercion becomes the basic leitmotiv. Harm to children arising from other causes is not taken into consideration. Moreover, the sociocultural context of the norm (corporal punishment based on common law) is dispensed with here, although this context cannot effectively be ignored when an evaluation is made or for criminal law purposes.

Although both German and Anglo-American literature distinguish between child abuse and neglect, there has been a recent tendency to assign four aspects of harmful behaviour to the sphere of child abuse:
- the use of physical force,
- emotional abuse,
- physical and emotional neglect, and
- sexual abuse.[18]

Thus, recognizably different cases are covered. It is as important that child abuse is not restricted to the infliction of physical pain and suffering only, but that mental abuse should also be included within the definition[19] as empirical coverage is also difficult.[20] Seen in the light of the notion of protection, such a wide concept—of the blanket provision type—may seem sensible. The view restricted to one criterion only, namely, the use of force, is abandoned, and functional equivalents—and thus important forms of harm—are included.

Of course, an extended view of this kind could lead to the conceptual inclusion not only of harmful neglect of an infant but also the neglect of a schoolchild, where, for example, the latter is frequently given money but instead of a hot meal, the money is spent on sweets. The range of variation possible with such a concept of child abuse would go so far as to include cases where permission is given for indiscriminate television consumption or for participation in long Sunday excursions. Much as one might be convinced of the social pedagogical undesirability, or even harmfulness, of such types of behaviour, there still remains the issue of the relevancy of a concept that also stigmatizes such forms of child abuse as those just mention-

ed. From a criminal law and criminological point of view a boundless concept of this kind would be definitely misplaced. Such a concept would also scarcely be needed by the health services in order for their views and interests relating to child protection effectively to be adopted.

Whilst there are obviously structurally specific forms of child abuse that are identified and evaluated as such by laymen and specialists alike, corporal punishment seems to occupy a varying status not only in third world countries but also in Western Europe and North America. Whereas corporal punishment is permissible under the common law in West Germany despite manifold aspirations to the contrary, in Sweden parents were deprived by a law of 1 July 1979 of their right to use corporal punishment on their children. Thus a "smack at the right moment" is just as much prohibited as a "slap in the face" or a "box on the ears" or a "good hiding". In many other countries, however, educative value is still imputed to beating even today. Strokes or blows are often regarded as an economic measure because they are effective and save time. Opinion polls of the population reflect this attitude, although there are considerable differences between attitudes towards corporal punishment and its actual use.

Whether with an even stronger denigration or criminalization of corporal punishment, child abuse would be substantially checked, if not eliminated altogether, seems doubtful, quite apart from the undesirable repercussions on educators who practise corporal punishment but do not abuse their charges. I do not see that through a prohibition of corporal punishment the consequences of abuse would be easier to discover, at least insofar as milder forms of such punishment like a "smack at the right moment" are concerned. The very fact that unwanted, illegitimate, handicapped or disturbed children are everywhere considered to be groups particularly exposed to the danger of child abuse seems to demonstrate that a general prohibition of corporal punishment, which is widely tolerated by the population, could scarcely produce the results desired. Quite apart from this, cases of mental abuse or child neglect, not to mention sexual abuse, would not be covered.

Whereas in the past attention was predominantly focused on the offender, his normality and pathology, discussion nowadays mainly concerns the sociological and psychological areas. Although the assumption that child abuse offenders must in general be regarded as responsible remains unchanged, it is nevertheless realised that they themselves have often acted in the role of a (social) victim. For instance, there may be reports of occupational failure. They generally belong to the lower social classes. For the most part they are in a weak position financially. Some of them are recipients of social welfare benefits. Almost without exception there are reports of a serious shortage of accommodation, of overpopulated slums and of poor hygienic conditions. Economic need, crowded living conditions and the tensions and conflicts that result from these things not infrequently lead to a situation where the child is forced to serve as a scapegoat. Difficulties and problems in the parents' marriage and in their social situation are unloaded on the child. The majority of such offenders are reported to the police by neighbours, teachers, social workers and doctors, and they are controlled and prosecuted by the relevant authorities. The mechanism and intensity of social visibility and control thus determine the selection of young victims. They do not even appreciably differ from other findings of victimology, so far as the latter seen manifestations of force largely as a mode of conflict solution within the lower classes. Accordingly special attention is no longer directed so much towards punishing offenders but rather towards taking in the whole structural field of child abuse.

Recent attempts to assist, which have been substantially influenced by work done within the framework of Dutch child protection homes and North American child protection centres, have been oriented in this direction. As regards abusing par-

ents, who generally fall within the age-group of twenty to thirty, reference is made again and again to the high degree of social isolation that is mainly caused by the discovery of substantial abuse. We are often confronted here by a reciprocal relationship of isolation and abuse. With regard to the distribution of abuse as between male and female offenders, findings are contradictory. Where reference is made to female offenders it must be remembered that as mothers they have small children to look after. The symbolic figure of the "raven mother" known to us from the world of fairy-tales is a relatively rare phenomenon despite a few sensational cases.

The question of the extent of child abuse and of the increase in its occurrence has been a matter of controversy for a long time. If we work on the basis of a wide concept, as outlined earlier, we shall encounter a large number of cases of abuse, which is to be expected. But even if we merely follow the Swiss or the German Criminal Code and focus on "substantial" abuse, we should not fail to realize that only a few cases of this kind reach the courts. It is thought that about 5 to 10 per cent of those cases that have come to the notice of the authorities actually lead to the imposition of punishment.

Obviously the incidence of unreported cases of substantial child abuse goes much beyond this. For more than twenty years there has been a persistent assumption in the literature that only 5 per cent of all cases of abuse are known to the authorities. Estimates of unreported cases range—in relation to West Germany—up to more than 120,000 cases a year. In 1983 the German Child Protection League estimated the number of unreported cases at 60,000 a year.[21] The League thinks that growing unemployment and the consequent drift towards social hardship and poverty has led to an increase in child abuse in the Federal Republic. Although connexions between child abuse and adverse socio-economic home conditions of the kind already mentioned have been stated to exist for a long time, I regard the estimates given as being highly speculative. Furthermore, it seems unnecessary to top up, for example, the 1,223 cases known to the police in West Germany[22]—in Switzerland only 25 cases were reported for the year 1984[23]—with an enormous number of unreported cases in order to mobilize the public, as though the number of cases already known would not suffice for this purpose.

Clearly, the speculation regarding unreported cases has arisen for various reasons. On the one hand, it is based on a commitment to illuminating the considerable harm that is only inadequately indicated by police and justice administration statistics. Moreover, child abuse served as a common vehicle for objections to current social conditions since a connexion is seen between political force and repression in developed class society and the use of force against children in the family.[24] This perspective must seem all the more convincing as in socialist society there is a willingness to discuss—at the most—the question of "criminal law protection of the child"[25] and not the empirical phenomenon of child abuse.[26]

If politico-economic assumptions prove to be too crude and too sweeping, the preconditions for child abuse are said to derive from unfavourable living and working conditions, from the socialization experiences of parents abusing their children, from factors relating to an offender's personal situation such as alcoholism, illness and unemployment, as well as from stress and psychosocial pressure.[27] However authentic this aspect of inadequacies in the situation of multi-problem families may be, we are not concerned here with a specific phenomenon of which relevance to child abuse alone could be claimed. Rather, we are confronted by a set of conditions that we repeatedly face when analysing criminological material where offenders have committed offences of the classical type.

The further question of the class-related incidence of child abuse is also relevant here. Although findings are disputed, not least because of the sometimes uncritical

application of the class concept and of the varying extent to which child abuse is visible, the families where cases have come to light almost always seem to come from the lower classes.[28] Even if the internal strains conducive to child abuse are strikingly similar as regards both "rich"and "poor" parents, the possibilities of control and the consequences obviously differ greatly.

As we have already seen, scientific and practical interest in the subject of child abuse has now changed considerably. On the whole, greater attention may be paid to the demand for earlier social intervention in the interest of taking preventive action at the earliest possible stage. Accordingly preventive strategy may be summed up as follows: "from reactive to active child protection". This means that attention is directed towards establishing which families appear to be chiefly at risk. So-called "perinatal support" beginning at birth has a special role to play here. Early mother-child relations should be important. It seems to be particularly significant to establish whether there is merely routine contact between mother and child or whether mothers go through a "rooming-in" experience during their first days. Although connexions between these factors are clear, a connexion between mother-child contact and the child abuse occurring later has not yet been proved empirically. A number of investigations are seeking to test the interrelationships said to be involved.

Research of this kind is also planned in West Germany. A representative sample of 500 families are to be observed for a period of three years. It seems doubtful whether it is possible to carry out such an inquiry without distortion if we consider the experience gathered from research into socialization. Moreover, an observation period of three years is inadequate for the purpose of including long-term processes and effects. A long-term investigation in the form of a birth cohort study would have greater persuasive force. If we consider the legal policy consequences associated with selecting and labelling those families at special risk, stigmatizing effects and obviously also "self-fulfilling prophecy" effects—i.e. where social predictions develop their own dynamic force—may not be overlooked. Consequently, investigations of this kind seem problematic from the point of view of their persuasiveness and questionable in terms of their results.

The introduction of "child education" as a compulsory school subject is also being considered as a preventive strategy—even at the primary school level.[29] Views differ as to whether the evil can be obviated by a special subject dealing with education. A warning has been given against simply regarding the school as a "dressing-station for society's wounds".[30] However, it seems more important that children should first of all learn and practise co-operative and non-violent social intercourse with one another and with others than that they should be dosed with views on how they should later handle their own children.

At this juncture it must be pointed out that there is a serious gap in current research relating to child abuse, and that is, that the abuse of children by other children and juveniles is notable for its almost total absence as an aspect or subject of investigation. However, in Japan violence by juveniles against others gained serious attention recently. Only in the first half of November 1985 the Tokyo Metropolitan Police Department, after inaugurating a special unit for taking into public custody tormentors in school bullying cases, reported that they received a total of forty calls from victims.[31] Corresponding to that, the number of violent incidents at school cleared by the police has increased during the last five years. But it should be pointed out that bullying in Japan is socially still widely tolerated.[32] Admittedly, the risks of damage to child health may be greater where adults are the perpetrators; nevertheless, the well-founded apprehension of children that they may be abused, tortured or tormented in the playground, on school grounds or in the school bus are great enough. If there is to be a trend away from reactive to active child protection, it ought to begin here, and an end must be

put to the practice of teachers and other adults "looking away" and "letting things slide", instead of which they must be prepared to exercise a socially educative influence.

On the other hand whether courses for parents, collaboration with doctors and clinics, family-centred programmes and also welfare workers that assist parents and their children from birth to school[33] have a substantial effect in terms of prevention seems open to doubt. As in other cases of prevention of deviant behaviour, it must be remembered that the target parent group can only be procured for training courses with difficulty. A doctor can only act as a key figure at all in those cases where the abuse is of such gravity that parents feel compelled to seek medical aid.

The ideas behind the child protection centre in Denver/USA seem to have developed more fully. There is an attempt to integrate the whole family, and if necessary the abused child is removed from the family. In Denver there is a spectrum of various possibilities ranging from stationary or residential admission of whole families to conversational groups that meet in the centre. In addition, hot lines, emergency homes for children, domestic help and, above all, lay therapists are deemed important.

These ideas and initiatives have been largely taken over in the child protection centres that so far exist in the Federal Republic of Germany, with the exception of residential admission of whole families. Alternative child protection models try to offer swift and unbureaucratic assistance.[34] Establishing contact with a family branded above all by the parents' fear of punishment must of course be determined by the principle of voluntariness and of active participation. The prerequisite for this is work which is not oriented towards punishment.[35] In the light of a questionnaire survey, conducted with the support of the German Municipal Conference and encompassing 25 larger municipalities, we find a general orientation towards the principle "aid instead of punishment". Furthermore, it became apparent that almost all municipalities questioned desired co-operation with agencies working in the field of youth and family affairs, not least because they feel themselves to be in need of relief. According to one investigation, the most important obstacle to successful child protection work on the part of youth welfare departments has proved to be the combination of a state watch-dog with a pedagogical mandate.[36] This certainly exposes a real state of affairs, if not actually a "tormenting dilemma" of modern youth and family policy. Nevertheless, it is difficult to change. This problem, however, seems to attract greater attention in the German than in the American literature. Although there has been a duty to report cases of child abuse in the United States since 1964, this conflict has not been given much attention in the American literature.

Part III

Although child molesting is the most frequent form of sexual delinquency in Germany as well as in Austria and Switzerland, it has only accounted for approximately 30 per cent of all sexual offences for the last three decades. Sexual offences involving child victims have averaged no more than 0.5 per cent of all annual sentences in the post-war period. Thus, numerical significance alone is incapable of explaining why in the recent past numerous research scientists have turned their attention to this subject.[37] The temporarily intensive preoccupation with this phenomenon probably results from the special taboo surrounding child sexuality and from an overreaction towards the actual offence involved. Questions designed to test comprehension of the offence show that only about a quarter of the people questioned actually understood the given definition of child molesting correctly without bringing another sexual offence into play.[38]

Certain groups and associations have made their contribution as so-called moral entrepreneurs toward mobilizing the public through relatively intensive publicity. In 1965, for example, the "Association for

the Prevention and Compensation of Crime" called for stricter action against sex offenders and for increased instruction of the public regarding the dangers to which children and young girls are exposed by such offenders. The Bavarian Municipal Association took the initiative in 1967 to restrict "the increasing number of sexual offences committed against children and juveniles". The Association took up a proposal from Berlin that routes to school ought to be worked out so that children might be brought together in "school route groups". The organization known as "German Youth Action" with its seat in Munich called for "life for those who violate children".[39]

Although the "emotions aroused against so-called 'child-violators'" immediately encountered criticism in the literature[40] the number of reported cases of indecency with children rose considerably in the sixties. Since the statistical picture regarding indecency with children is determined by cases reported by private persons to the tune of 70 to 80 per cent,[41] it is not surprising that sexual offences against children registered by the police rapidly increased. Whilst the number of unreported cases of indecency with children was estimated with ratio ranging from 1:6 to 1:20 at an annual total of between 90,000 and 270,000 cases in the Federal Republic as a whole,[42] the police recorded an annual total between 12,000 and 19,000 cases of child molesting.[43] The conviction rate alone did not exceed one-third of the total number of suspects, as we learn from a comparison of the figures in police criminal statistics with those in the justice administration statistics. In 1982 there were 5,817 police suspects as opposed to only about 1,700 convictions.[44] More than half of the suspects were not even brought to trial. In view of these figures we cannot avoid the conclusion that at least some of the charges laid for child molesting are due to recklessness on the part of the public.

With the change of attitude towards sexual behaviour and towards the criminal law relating to sexual offences[45] and also with the increased attention focused on non-sexual crime, the frequency of annually recorded indecency cases began to decline. Nevertheless, we cannot state that there has been a steady decline during the three post-war decades. On the one hand we find that there was a substantial increase in the years 1952 to 1962, faced on the other hand by an even more substantial decline during the following two decades. This development may be interpreted to the effect that the attitude taken by the public and by scientists towards pedophilia has changed in recent years in the wake of changes in sexual and moral values. The decrease in cases reported to the police and in judicial convictions is only one indication of this.

Similar developments have taken place in Austria and Switzerland too, and this is particularly true of the way in which the deviant sexual behaviour of juvenile offenders is evaluated. If we look at the conviction rate, we find that the incidence of such behaviour amongst members of this age-group has dropped by a almost two-thirds in the last two decades. On the other hand, a comparative analysis must take into account that in Switzerland, where we find only one-tenth of the corresponding age-group, almost half as many offenders are convicted annually as in West Germany. Although the protected age-limit in Switzerland is 16 and thus higher than in Germany, it has by no means been set too high when compared with that of other European countries. Belgium, England and Wales, Greece, the Netherlands, Norway, Portugal and, with certain limitations, Italy all make provision for protection up to the age of 16. In Finland the protected age-limit is even 17, and in the United States it is predominantly 16 or 18.[46] If Switzerland is to be regarded as a special case, then this is not because of the nature of its substantive criminal law but rather on account of its comparatively rigorous prosecution practice in the realm of youth protection. Accordingly, in child molesting cases in Switzerland there are five to ten times as many convictions per 100,000 inhabitants as in Austria, West Germany, the Netherlands, Norway,

and England and Wales. In relation to Finland, the Swiss conviction rate is roughly twenty times higher.[47] Since, however, available data based on surveys by no means allow the conclusion that juveniles in Switzerland become sexually active at a particularly early age and particularly frequently, the conviction rates already mentioned can only point to the conclusion that child molesting and the involvement of juveniles therein is subject to a prosecution practice that is incomparably more severe than in other countries. Outside Switzerland child molesting seems only partly to be considered worthy of punishment and, through a tolerant prosecution practice, it actually seems to have been widely decriminalized. As far as the Federal Republic of Germany is concerned, this is suggested, for example, by the fact that proceedings in a considerable number of indecency cases involving children as victims and juveniles as offenders are terminated under the provisions of §§45 and 47 of the Juvenile Courts Act, or that in these cases the prosecuting authorities refrain from taking action. There are differences of opinion regarding the question whether the best solution lies in changing the provisions of substantive criminal law (by reducing the age-limit for the group protected) or in granting a duty-bound discretion to the prosecuting authorities. The application of the principle of compulsory prosecution, which predominates in German-speaking countries, has thus been challenged in this area of the law—in sharp contrast to prosecution of child abuse. Critics, however, do not wish to see action in accordance with the principle of mandatory prosecution replaced by a strategy of discretionary prosecution.[48]

Even if according to modern pedagogical views on sex education the seduction of inquisitive children by sexual offenders remains undesirable and reproachable, indecency with children is nevertheless seen in a more sober light today than it was a decade or two ago. Science and research have also played a part in this change of persuasion. From the point of view of "emancipatory sexual pedagogics" and in the interests of "reducing a restrictively and repressively enforced morality" it is even considered necessary to demand complete freedom from punishment for all juveniles, and for the majority of young adult offenders who have committed the offence of child molesting.[49] This demand, however, suffers from the same lack of differentiation imputed to the law in its present form. Rather, account must be taken in addition to the norms of substantive criminal law—as already intimated—of procedural manipulation including the widespread practice of terminating proceedings and, moreover, of the greater need for protection of victim groups.

In the light of present knowledge, the controversial issue as to whether children may face emotional consequences and delayed damage resulting from sexual offences probably cannot be viewed as resolved. However, it seems as though there is a general tendency to believe that empirical follow-up studies have offered no firm support for the existence of permanent damage.[50] The Kinsey Report and other surveys brought to light a fact which also lends support to this view, namely, that more than a quarter of the women interviewed had had a sexual experience with an adult even before puberty.[51] In more than half of these cases, however, this experience only amounted to witnessing an act of exhibition by an adult. On the basis of such findings it is assumed that roughly 50 per cent of women would have to be neurotic for such sexual experiences —as children or young girls—generally to enjoy the sort of significance imputed to them by some authors.[52] On the other hand, there seems to be agreement that acts of indecency committed by fathers frequently lead to disastrous damage of a permanent kind, not least because they often occur over longer periods of time.

There is, above all, wide agreement that the whole process of investigation and trial with its repeated interrogations is often likely to be more harmful for the victimized child than the offence itself, for it constantly reminds the child of the criminalized act and also puts the child in

a difficult position. In this way younger victims probably often become conscious for the first time of the fact not only that the behaviour in question is the subject of disapproval but also that this disapproval exhibits a certain severity.[53] Misgivings resulting from these considerations carry greater weight when it is remembered that criminalization of child molesting is conceived primarily as an offence for the protection of children and young people in order to ensure their undisturbed sexual development. This protective norm of criminal law cannot be intended to fortify a child's past experiences in such a way that they lead to damage only on account of the criminal proceedings taken. This would mean that exactly the reverse of what is intended by criminal law youth protection would actually be achieved.

Recent research and criminal policy have therefore been concerned not only with the offender, his offence and its effects on the child but also increasingly with problems of prevention and secondary traumatization of the child by criminal proceedings.[54]

The German legislature also drew conclusions from these facts in the seventies. In Switzerland these issues are currently the subject of lively discussion within the framework of a reform of the criminal law relating to sexual offences.[55] The reform of German criminal procedure law in 1974 was aimed at protecting child and juvenile witnesses against mental harm resulting from criminal proceedings. Thus, the Criminal Procedure Code makes basic provision in §241a section 1 for the examination of witnesses under the age of 16 by one person only, namely, the presiding judge. However, the presiding judge may allow questions to be put to a young witness directly where, in the exercise of his duty-bound discretion, he finds that no prejudice to the welfare of the witness is to be feared. Furthermore, the court may order the defendant in accordance with §247 sentence 2 CPC to leave the courtroom during the examination of a witness under 16 where it is feared that examination in the presence of the defendant would be prejudicial to the welfare of the witness. Moreover, §172 no. 4 of the Courts Act provides that the public may be excluded from the proceedings as a whole or from a part thereof where a person under 16 is to be examined.[56] For reasons to be found in the need for protection and in the psychology of interrogation, child and juvenile witnesses should in principle be confronted with one interlocutor only, not least to enable the development of a relationship of trust between the examining judge and the young witness. The witness's interlocutor should, according to the Act, be the presiding judge as the "most neutral" person in relation to whom there is the highest guarantee that no inappropriate or aggressive questions will be put. Apparently, however, legislative expectations are not in practice being fulfilled in the manner which was originally anticipated in the interests of child and juvenile protection and which must be regarded as essential.[57] In this perspective also the proposed right for victim advocacy, even in favour of the battered or molested child, would fit in the judicial system without any difficulties or inconsistencies.[58]

The undisturbed sexual development of the young—as far as possible—requires special protection where potential victims are in a dependent position resulting from a subordinate relationship or from close ties under family law. Moreover, it is also desirable that certain relationships grounded on superiority and care should be kept free of sexual influences for the sake of their social functions. It follows from the goal of protection that is usually immaterial whether the young person consents to, or instigates, the sexual acts in question. In such cases the court may dispense with punishment altogether where having regard to the behaviour of the youthful victim the wrongfulness of the act is insubstantial (§174 section 4 of the Criminal Code). A decision not to impose punishment may be considered in cases of tragic conflict, also where there is genuine romantic attachment, or where the offender has been seduced by a sexually experienced young

person under 16 years of age.[59] According to a police analysis based on more than 2,700 cases, about 10 per cent of the child victims themselves sought the sexual contact involved. About half of these children were aged thirteen. From this we may conclude that some children are following their own interest in sexual experience or are acting out of curiosity when they enter into sexual contact with the offender. Nevertheless, according to police officers responsible for questioning child victims, more than half of the children involved take a negative attitude towards the offence committed.[60] This is also indicated by the fact that more than 60 per cent of the children are ready to tell their parents about the offence immediately. Only about 15 per cent of the children tend to keep their experiences in the dark. If we investigate more closely the attitude of this group towards the offence, we find that children who are prepared to conceal the offence generally had relations with the offender which were based on partnership, with either active or passive consent. Presumably these children regard themselves less as victims and rather more as partners consenting to the sexual acts concerned. Hence they apparently confide in their parents or other adults less frequently.

Part IV

If we attempt a summary of these considerations, the following points seem to be of importance:

1) Child abuse is just as much an offence relating to the protection of young people and their socialization as are child neglect and child molesting. In particular, the use of physical force, emotional abuse, physical and emotional neglect as well as the performance of sexual acts on or with a child belong to this category. By law, and in the view of wide sections of the population, such forms of behaviour are socially harmful and therefore criminally wrongful, for they are not only detrimental to the wholesome and peaceful development of the young but sometimes also constitute a danger to life and limb. The relevant legal interests protected are, above all, physical integrity and undisturbed sexual development of the young.

2) Recently, however, misgivings have been expressed in regard to this predominant view. It is objected that, through present legal regulation, personal integrity and freedom of decision and action for young people are to a large extent not being protected but rather that sexual contacts are still in large measure being resisted. According to this view, harm is not caused by non-violent and anxiety-free sexual contacts but rather by their withdrawal from the intimate sphere as well as by their official investigation, prosecution and adjudication. By way of contrast, the significance of the use of force in sexual relations is unwarrantably minimized. These questions and misgivings, which, like the prevailing legal system itself, are rooted in firm convictions, clearly cannot be fully resolved on a rational basis. The supposition and the measurability of "harm" presuppose certain norms and standards in relation to which, however, there is only partial consensus in modern society.

3) The questions relating to extent and development of abuse and sexual molestation of the young cannot be answered unequivocally. Whereas according to police and justice administration statistics there are annually roughly ten times as many cases of child molesting where action is taken by the authorities as there are of child abuse, the number of convictions tend, like the estimates of unreported cases in both groups of offences, to revolve round a ratio of 1:2. Thus, this differing selectivity and prosecution practice is regarded as a stumbling-block and as an aggravating subject in the criticism of criminal law and of the administration of criminal justice. But even if on the basis of empirical indications only a small proportion of all abuse and molesting cases come to light officially, and of these only a fraction actually lead to a criminal conviction, these acts, which are not infrequently associated with severe physical

and emotional harm or even with homicide, are serious enough as it is. Consequently, they continue to warrant the particular attention of science and the legislature, and of criminal justice administration and social policy.

4) As a result of the change of attitude in the population and also in view of the principle of proportionality (i.e. of last-resort action) and of cost-benefit-analyses, cases of child molesting have decreased considerably in significance over the last two decades. Furthermore, through procedural provisions an attempt has been made to avoid secondary damage arising from repeated questioning of child witnesses during the investigation and trial. Through a selective and cautious prosecution practice where children have been molested by juveniles an attempt is being made to evade the rigours of the law and to avoid the harmful stigmatization of young offenders. Although critics think that young offenders, above all, ought not to be criminalized for sexual behaviour of this kind, the prevailing view taken is that present legal provisions including the protected age-limit of 14 or 16 ought to be retained. In the light of present knowledge this view may be supported insofar as both a prosecution practice based on sympathetic understanding and uniform treatment are guaranteed.

5) Since child abuse often occurs in families with manifold problems arising from social deficiencies, support and help is needed rather than punishment. This also applies to child abuse occurring in the families of foreign workers, who seem to be over-represented in this category of crime in West German police statistics.

In the light of police and judicial experience child molesting and child abuse are largely confined to the lower social classes. In reality this probably follows less from a tendency towards such delinquency than from the particular situation of the lower social classes. Thisf is determined by the fact that the dangers and the likelihood of injury are greater here as are also social visibility and the relative inability internally to contain and informally to control such activities. Thus, the intervention of agencies of formal social control such as the police, youth welfare departments and justice administration largely remains the only possibility of solving these conflicts. That the attitude and the behaviour of the lower classes are also amenable to influence and are capable of change is indicated by changes in readiness to lay a charge and in the manner in which public prosecutors and the courts act.

6) Early diagnosis of endangered family situations, detection of child abuse and the necessity of intervention are all still problematic and—in terms of method—largely unresolved. If both conceptually and in practice we dispense with a certain level of abuse and gravity of physical and emotional impairment, then in view of the wide distribution of light corporal punishment, nearly all children—and also adult educators—immediately seem to be in need of treatment.

7) Although it is true that the importance of measure of assistance and prevention cannot be rated highly enough, there are still doubts about strategies of prevention designed to enable special observation of endangered families even before the birth of a child and, if necessary, "care". Misgivings regarding total control and the dangers of possible stigmatization are so serious here that they might develop into a disastrous self-fulfilling prophecy, that is to say, they might bring about exactly what they aim to prevent. On the other hand, hot lines, emergency homes for children, domestic help, lay therapists and child protection centres seem highly appropriate for offering assistance and protection in an emergency. Although aid on a non-compulsory basis must always be part of child protection, measures that go beyond mere offers are increasingly necessary in child protection centres.

8) In relation to child abuse, literature and research have focused mainly on parents and families during the last decades. On the other hand, corporal punishment of schoolchildren and the role of schools in noting indications of, or detecting, child abuse has hardly been examined. England

is an exception in this respect, where many school authorities continue to adhere to corporal punishment as a result of parental pressure and where appeals to the European Commission of Human Rights will continue to stimulate lively discussion.

9) Abuse of children by other children and juveniles has been almost completely neglected in recent discussion of child abuse. It would seem imperative to create a balance of perspectives here.

10) The recently propounded view that the possibility of "child abuse by the state"[61] should also be borne in mind ought not to be confined to commitment to a home but should also embrace omissions and inactivity on the part of the authorities. Clearly, tension continues to exist between protection of the child, observance of parental freedom of decision, and state intervention that is just as opportune as it is commensurate. This tension, with possible negative side-effects and repercussions, also cannot be removed by carefully-conceived legal regulation and by authorities and experts.

NOTES

1. *United Nations'* Seventh Congress on the Prevention of Crime and the Treatment of Offenders: Standard Minimum Rules for the Administration of Juvenile Justice. Part 1, 1.1. Mimeogr. Paper. Milano 1985.
2. *Postman,* N.: The Disappearance of Childhood. New York 1982.
3. §§1666ff. of the German Civil Code.
4. §§170d, 174, 176 and 223b of the German Criminal Code.
5. See *Naß,* G.: Unzucht mit Kindern – Das Sexualdelikt unserer Zeit, Ursachen und Bekämpfung (Child molesting – The sexual offence of the present time, causes and control). Monatsschrift für Kriminologie 37 (1954), pp. 69–82.
6. *Statistisches Bundesamt*: Strafverfolgungsstatistik 1982, Ausführliche Ergebnisse. Wiesbaden 1983, pp. 108, 131.
7. See §92 of the Austrian, Art. 134 of the Swiss, and §223b of the West German, Criminal Code: §223b StGB Abuse of wards and persons in need of protection: (1) He who tortures, torments or callously abuses those under eighteen years of age or those who are defenceless on account of infirmity or illness, where such person is in his care or under his charge or belongs to his household or is left under his control by the person on whom the duty of care falls or is dependent on him in a service or working relationship, or he who impairs the health of any such person through malicious neglect of his duty of care is punishable with imprisonment from three months to five years.
8. Cf. *Council of Europe* (ed.): The Causes and Prevention of Child Abuse. Strasbourg 1979; *id.*: Criminological Aspects of Ill-Treatment of Children and Family. Strasbourg 1981; *Gil,* D.G.: Child Abuse and Violence. New York 1979; *Trube-Becker,* E.: Gewalt gegen das Kind. Heidelberg 1982; *Baurmann,* M.: Sexualität, Gewalt und die psychischen Folgen. Wiesbaden 1983.
9. See *Pfohl,* St.: The "Discovery" of Child Abuse. Social Problems 24 (1977), 310–323; critical *Antler,* St. (ed.): Child Abuse and Child Protection: Policy and Practice. Silverspring/Md. 1982.
10. Cf. *Akademie für Staats- und Rechtswissenschaft der DDR*: Der strafrechtliche Schutz des Kindes. Records of the 2nd international Symposium of young penalists of the Association de Droit pénal. Vol. I and II. Potsdam/Babelsberg 1980.
11. See *Government of Japan*: Summary of the White Paper on Crime 1984. Tokyo, p. 66, related to the high degree of tolerance of juvenile deviance, especially to bullying cases; further, Japan Times, November 19, 1985, on "Tokyo Police Report Cases of Bullying".
12. See *Ferriani,* C.: Entartete Mütter. Eine psychisch-juristische Abhandlung (1891). Berlin 1897.
13. National Statement of Japan. Crime Prevention for Freedom, Justice, Peace and Development. The Seventh United Nations Congress on the Prevention

of Crime and the Treatment of Offenders. Milano 1985, P. 97.

14. *De Silva,* W.: Some cultural and economic Factors leading to Neglect, Abuse and Violence in Respect of Children within the Family in Sri Lanka. In: Child Abuse and Neglect 5 (1981), p. 97; *Dubanowski,* R.A., *Snyder,* K.: Patterns of Child Abuse and Neglect in Japanese and Samoan-Americans. Child Abuse and Neglect 4 (1980), pp. 217-225.
15. Cf. *Gelles,* R.J.: Family Violence. Annual Review of Sociology 11 (1985), pp. 347-367 (351).
16. See *Wolff,* R.: Kindesmißhandlungen und ihre Ursachen. In: Gewalt gegen Kinder. Kindesmißhandlungen und ihre Ursachen, ed. by H. Bast et al. Reinbek 1975, pp. 13-45 (24).
17. See *Claaßen,* H., *Rauch,* U.: Gewalt gegen Kinder aus sozialpädagogischer Sicht. Cologne 1980, pp. 15ff.
18. Cf. *Kempe,* R.S., *Kempe,* C.H.: Child Abuse. London 1978 (German: Kindesmißhandlung. Stuttgart 1980, p. 15).
19. On this point see also the Swiss literature, e.g., *Killias,* M.: Jugend und Sexualstrafrecht. Eine rechtssoziologische und rechtsvergleichende Untersuchung über die Bestimmungsgründe des Jugendschutzes im Sexualstrafrecht, dargestellt anhand der Geschichte des Tatbestands der Unzucht mit Kindern. Berner Untersuchungen. Vol. 9. Bern et al. 1979; *Killias,* M., *Rehbinder,* M.: "Sexualdelikte und Strafrechts-reform": Sind die Reformer irrational? Zeitschrift des Bernischen Juristenvereins 119 (1983), pp. 291-307.
20. See *Council of Europe* 1979 (Fn. 8), p. 5.
21. Badische Zeitung (Freiburg i.Br.) No. 52 of 4 March 1983.
22. See Polizeiliche Kriminalstatistik (Police Statistics) 1984, p. 89.
23. Polizeiliche Kriminalstatistik 1984, p. 3.
24. *Wolff,* R.: Kindesmißhandlung als ethnopsychische Störung. In: Ohnmächtige Gewalt – Kindesmißhandlung: Folgen der Gewalt. Erfahrungen und Hilfen, ed. by A. Bernecker et al. Reinbek/Hamburg 1982, pp. 69-80 (70).
25. *Akademie für Staats- und Rechtswissenschaft der DDR* (Fn. 10).
26. Allusions to this problem are to be found in Poland and Hungary only.
27. See *Claaßen/Rauch* (Fn. 17).
28. *Gil* (Fn. 8); *Kempe/Kempe* (Fn. 18), pp. 16f.; *Pelton,* L. (ed.): The Social Context of Child Abuse and Neglect. New York 1981, pp. 31, 36.
29. See *Sülzer,* B.: Folter im Kinderzimmer. Plädoyer für ein neues Schulfach. Reinstetten 1979, p. 53.
30. Stated by Mr. *Oschatz,* Minister of Cultural Affairs, in the Frankfurt Allgemeine Zeitung No. 15 of 19 January 1983.
31. *Weinberger,* R.P.: Polizeiliche Prävention durch Öffentlichkeitsarbeit dargestellt am kriminalpolizeilichen Vorbeugungsprogramm in der Bundesrepublik Deutschland. Munich 1984, p. 66.
32. Cf. *Government of Japan*: Summary of the White Paper on Crime 1984. Tokyo, p. 66.
33. See *Gray,* E.: Perinatal Support Programs: A Strategy for the Primary Prevention of Child Abuse. The Journal of Primary Prevention 2 (1982), pp. 138-152 (138f.).
34. Cf. *Honig,* M.S., *Leube,* S.: Zum Stellenwert von Laienhelfern in der Kinderschutzarbeit. In: Sartorius, W. (ed.): ". . . auch wenn das Kind schon blau geschlagen ist. . .". Munich 1979, pp. 177-137; *Wolff,* R.: Der schwierige Versuch, Neues zu schaffen. In: Ohnmächtige Gewalt – Kindesmißhandlung: Folgen der Gewalt – Erfahrungen und Hilfen, ed. by A. Bernecker et al. Reinbek 1982, pp. 111-122; *Bujop-Hohenauer,* E.: Gewalt gegen Kinder: Zum STand von Forschung und Praxis. In: Kindesmißhandlung, ed. by M.S. Honig. Munich 1982, pp. 13-52 (49f.).
35. *Bundesministerium für Jugend, Familie und Gesundheit* (ed.): Kindesmißhandlung – Kinderchutz. Ein Uberblick. Bonn 1980, pp. 24f.
36. *Honig,* M. (ed.): Kindesmißhandlung. Munich 1982.
37. See the references in *Brauneck,* A.-E.: Kriminologie der Sexualdelikte. Hamburg 1970, pp. 12f.; *Heinz,* W.: Bestimmungsgründe der differentiellen Wahrscheinlichkeit strafrechtlicher Sanktionierung bei Unzucht mit Kin-

dern (§176 Abs. 1 Ziff. 3 StGB). Monatsschrift für Kriminologie 55 (1972), pp. 116–130 (120ff.), and *Baurmann* (Fn. 8).

38. See *Villmow*, B.: Schwere Einschätzung von Delikten. Berlin 1977, p. 103.; cf. also §§174 and 176 of the German Criminal Code:
§174. Sexual molestation of wards and persons in need of protection.
1) He who performs sexual acts on any of the following persons, or who permits any of these persons to perform such acts on himself is punishable with imprisonment up to five years of with a fine:
1. a person under sixteen years of age entrusted to him for education or training or whose way of life is entrusted to him for education or training or whose way of life is entrusted to his care,
2. a person under eighteen years of age entrusted to him for education or training, or whose way of life is entrusted to his care, or who is subordinate to him in a service or working relationship where a dependence of such persons based on the educational, training, care, service or adopted child under the age of eighteen.
3. his own or adopted child under the age of eighteen.
2) He who under the conditions stated in section 1).
1. performs sexual acts in front of the ward or person in need of protection, or
2. induces the ward or person in need of protection to perform sexual acts in front of himself in order thereby to be sexually stimulated himself or to stimulate the ward or person in need of protection sexually is punishable with imprisonment up to three years or with a fine.
3) An attempt is punishable.
4) In the case of section 1) number 1 of this paragraph, or of section 2) of this paragraph in conjunction with section 1) number 1 of this paragraph, the court may refrain from imposing punishment under this provision where having regard to the conduct of the ward or person in need of protection the wrongfulness of the offence is insubstantial.
§176. Sexual molestation of children:
1) He who performs sexual acts on a person under fourteen years of age (a child) or permits a child to perform such acts on himself is punishable with imprisonment from six months to ten years, and in less serious cases with imprisonment up to five years or with a fine.
2) He who induces a child to perform sexual acts on a third party or to permit a third party to perform such acts on the child itself is punishable as provided in section 1) of this paragraph.
3) In particularly serious cases the punishment is imprisonment from one to ten years. A particularly serious case usually occurs where the offender
1. has sexual intercourse with the child, or
2. seriously abuses the child physically when performing the act.
4) Where the offender recklessly causes the death of the child the punishment is imprisonment of not less than five years.
5) Imprisonment not exceeding three years or a fine is impossible on a person who
1. performs sexual acts in front of a child
2. induces a child to perform sexual acts in front of himself or of a third party, or
3. influences the child by displaying pornographic illustrations or presentations, by sound production of pornographic material or by corresponding speech in order thereby to be sexually stimulated himself or to stimulate the child or a third party sexually.
6) An attempt is punishable; this does not apply to acts described in section 5) number 3 of this paragraph.

39. See the references in *Kaiser*, G.: Junge Menschen als Opfer von Verbrechen und Unfällen. In: Jugendkriminalität. Rechtsbrüche, Rechtsbrecher und Opfersituationen im Jugendalter. 3rd ed. Weinheim et al. 1982, p. 195.
40. Cf., for instance, *Leferenz*, H.: Kriminologie und Kriminalpolitik. Kriminologische Gegenwartsfragen 8 (1958), pp. 10ff. (22).
41. See the references in *Heinz* (Fn. 37), p. 121.

42. See *Kaiser,* G.: Kriminologie. Heidelberg 1980, p. 434, with further references.
43. See the survey in Polizeiliche Kriminalstatistik 1982, Appendix.
44. Polizeiliche Kriminalstatistik 1982, p. 62.
45. See further *Killias* (Fn. 19); *Kaiser* (Fn. 42), and *Schultz,* H.: Die Revision des schweizerischen Sexualstrafrechts. Schweizerische Juristenzeitung 1982, pp. 245–254.
46. See the references in *Killias* (Fn. 19), pp. 141ff.
47. *Killias/Rehbinder* (Fn. 19), p. 304.
48. See *Killias/Rehbinder* (Fn. 19), p. 306.
49. See the references in *Kaiser* (Fn. 39), p. 196.
50. Cf. *Brauneck* (Fn. 37), p. 17; *Hauptmann,* W.: Gewaltlose Unzucht mit Kindern. Kriminalpolitische und sozialpolitische Aspekte. Munich 1975, p. 37; *Störzer,* U.: Sittlichkeitsprozeß und junges Opfer. Gedanken zu den neuen Vorschriften zum Schutze kindlicher und jugendlicher Zeugen im Strafverfahren (§172 Nr. 4 GVG, §§241a, 247 S. 2 StPO). In: Sexualität und soziale Kontrolle. Beiträge zur Sexualkriminologie, ed. by H. Hess et al. Heidelberg 1978, pp. 101–134 (102ff.).
51. According to a recent survey by the "Los Angeles Times", more than one in every five American citizens has been a victim of sexual molestation in childhood; 27 per cent of the females and 16 per cent of the males stated that as children they had been victims of sexual molestation. Every third victim had not mentioned anything about the molestation before the interview. According to the findings, 41 per cent of the offenders were acquaintances or friends, 23 per cent were relatives, and only 27 per cent were strangers (quoted from the Frankfurter Allgemeine Zeitung No. 197 of 27 August 1985, p. 7).
52. See *Göppinger,* H.: Kriminologie. 4th ed. Munich 1980, p. 605.
53. See *Kaiser* (Fn. 42), p. 439.
54. See the references in *Kaiser* (Fn. 42), p. 435.
55. See *Schultz* (Fn. 45); *Killias/Rehbinder* (Fn. 19), pp. 291ff.
56. See further *Störzer* (Fn. 50), pp. 104ff.
57. Hence, criticism in *Jung,* H.: Strafrechtsdogmatische, kriminologische und kriminalpolitische Aspekte der Kindesmißhandlung. Monatsschrift für Kriminologie 60 (1977), pp. 89–99 (97); furthermore, *Störzer* (Fn. 50), pp. 107ff.
58. See *Wulf,* R.: Opferanwalt. Opferschutz im Spannungsverhältnis von Strafverteidigung und Strafverfolgung. Anwaltsblatt 35 (1985), pp. 489–493.
59. See *Jung,* H., *Kunz,* K.: Das Absehen von Strafe nach §174 Abs. 4 StGB. Neue Zeitschrift für Strafrecht 1982, pp. 409–413.
60. See the references in *Kaiser* (Fn. 39), p. 198.
61. Cf. *Goldstein,* J., *Freud,* A., et al.: Before the Best Interest of the Child. Diesseits des Kindeswohls. Frankfurt/M. 1982.

The Standard Minimum Rules for the Administration of Juvenile Justice – Some Remarks on the Philosophy and Crime Policy Implications of the "Beijing Rules"

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Introduction

In September 1985 the Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders adopted the UN Standard Minimum Rules for the Administration of Juvenile Justice (SMR-JJ). In the introduction to the UN draft which was submitted to the Congress (A/Conf. 121/14, of 11 April 1985) the long and complicated story is told of the drafting procedure which took place between the resolution of the previous Congress in 1980 in Caracas, Venezuela, calling for the development of such rules, and their final shaping for Milan in 1985.

The following remarks are based upon the text of the SMRJJ as after a few changes of the draft, it was finally passed.**

Part I

1. The General Line

The general line of the rules is not expressed in their very first numbers, but in rule 5.1. It reads:

> The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.

If I were to write a commentary beyond the commentary that there is already, I would draw attention to the fact that the rule uses the verb "*emphasize*". That is, the rule does not say "shall by all means be oriented towards the well-being", and it does not say "shall pursue exclusively the well-being of the juvenile", but it only says "emphasize", thus expressing itself rather cautiously, it seems. And another important wording is that the reaction "shall always be in proportion to the circumstances". This demands quite a bit: "*in* proportion"; it would be much easier if the rule read "not out of proportion" instead. For it usually is much easier to describe a reaction as really out of proportion, as going too far, as crossing the line of proportionality. But here we have the demand to keep the reactions *in* proportion to the circumstances. If these circumstances were those of the *offence* alone, neo-classicists could be happy, because that is exactly what they want: a reaction in proportion to the offence. But beyond that rule 5.1 also asks for reactions in proportion to the circumstances of the *offender*, and here precisely we have the whole problem of which approach – "justice" or "welfare" – to follow when dealing with juvenile offenders. This question will come up again further below (7).

As to rule 5.1, it is interesting to note that rule 17.1 (a) uses the same terminology. What is meant by "*in* proportion" is expressed here more in detail than in rule 5:

> The reaction taken shall always be in proportion not only to the circumstances and the needs of the juvenile as well as to the needs of the society.

Therefore rule 17.1 (a) seems to give a sort of continuation, clarification and com-

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** The text of the SMRJJ as it was passed by the UN Congress in Milan, Italy, was adopted by the UN General Assembly in November 1985.

mentary to the general aims which have been laid down in rule 5.

2. Terminology

Throughout the Beijing Rules an atempt has been made to use as consistent a terminology as possible. If you read the Rules carefully you will find that words like "disposition" or "reaction" or "competent authority" or "institutionalization" appear time and again with the very purpose of meaning the same thing everywhere. But in drafting them it has become clear time and again that this would not be possible in all instances. Take for example rule 28.1: Conditional release shall be used not by the "competent authority" but by the "appropriate authority", thereby envisaging a larger spectrum of possible agencies to decide on conditional release than the "competent authority" defined in 14.1. Or take the many different forms of "institutionalization": In view of the particular national situation in each given country it may be quite difficult to apply the terminology of the Rules when considering the given variety concerning correctional institutions, training schools, remand homes, prisons for juveniles etc., and it is not always quite clear whether and to what extent these institutions would be institutions in the sense of the SMR. This issue becomes even more confusing when we extend it to the somewhat enigmatic rule 29 concerning semi-institutional settings and arrangements.

Here we come down to very fundamental questions of communicating by terminology. On the assumption that Mandarin Chinese is the major language in countries such as China, Hong Kong and Singapore, I asked myself about the outcome if in Beijing, in Hong Kong and in Singapore official translators would undergo the task of turning the Beijing Minimum Rules into Chinese, each for the purposes of his own country; I would not be too much astonished if three different translations would result. At least as far as the juvenile justice systems in each country are different, the Chinese rules would just take the wording which would reflect as truly as possible the national situation. You can easily make the same point with a French or even German translation, and one could even see here a question of semantics.

In rule 13.2 reference is made to what is called "alternative measures" to detention awaiting trial. This usage of the term "alternative measures" is very much in line with a certain development in criminology and crime policy. For decades now there has been a call for alternative measures to imprisonment, to detention, to all sorts of measures connected with the deprivation of personal liberty—a development which has clearly been reflected by the post-war UN Congresses. In the context of 13.2 the wording "alternative measures" therefore seems quite appropriate. But of course one can also think of alternatives in a much broader context. There may be good reasons, for example, to consider community service as an alternative to fines, at least as a reaction towards delinquent juveniles. And in still another sense you may look for alternatives to criminal prosecution as such, and may find "community approaches" of different kinds fit into the picture. Yet all three alternatives I have been referring to —alternative measures as an alternative to confinement, community service as an alternative to fines, community approaches as an alternative to criminal prosecution —have one thing in common: They are deemed to do better than their respective alternatives would do.

Finally: The rules obviously represent an effort to use soft terminology instead of hard or strict terminology. They use nice little expressions like "appropriate", "possible", "as far as possible" and so forth. The idea of this is very clear: It is an effort to make the rules as widely acceptable as possible. If you look at them carefully enough you will find outlets provided by soft terminology even within rules which at first glance seem to be worded very strictly. Take rule 19.1:

> The placement of a juvenile in an institution shall always be a disposition

> of last resort and for the minimum necessary period.

The "minimum necessary" period always is a period which still is "necessary", and the very term "necessary" could be used to enlarge a period, still maintaining that a prolonged stay in the institution is needed as the very minimum. Or take rule 20.1:

> Each case shall from the outset be handled expeditiously, without any unnecessary delay.

In my experience there always are many, many delays in procedure. But when criticizing this, I never heard about any "unnecessary" delay: Even a broken typewriter or a holiday may explain the time which the juvenile spent waiting in detention as a "necessary" delay.

Other examples can be found in rules 28.1 and 13.1, where the word "possible" serves the same purpose: If conditional release is recommended as early as possible or to the greatest possible extent, and if detention awaiting trial is restricted to the shortest possible period of time, these wordings seem quite far from making the impossible possible! Even as to rule 4 which concerns the age of criminal responsibility the same point can be made: That age "shall not be fixed at too low an age level". But what is too low? Three years certainly. But from six on we are engaging in arguments.

In sum it seems that the more general the wording, the more general the acceptance will be. Rule 26, "Objectives of institutional treatment", is a good example on the other end. Here we find quite general formulations which can easily be shared as common general *objectives*, leaving open of course the question of how they are really attained in a given country.

3. The Role of the Juvenile Justice System within the Beijing Rules

The cases to be covered by the Beijing Rules have been defined in rule 2.2: All juvenile offenders who "may be dealt with... in a manner which is different from an adult" fall within its scope. The breadth of this starting point as well as the breadth of the definition of the "competent authority" given in rule 14.1 suggest that the Rules are taking the existence of a juvenile justice system for granted in each given country. If this is so, they must also be read as referring to a large variety of given juvenile justice systems in the respective *self-understanding* of each one of them. This is important because to Western ears the notion of a "justice system" will easily be associated with the notion of courts, criminal responsibility, just deserts, etc. But the rules go far beyond these, covering also systems of welfare proceedings not depending on an age of criminal responsibility as a prerequisite for taking action against or in favour of juvenile offenders. The very title of the Rules, relating to "the administration of juvenile justice", must be read in this all-embracing understanding.

This then makes all sorts of "juvenile justice systems" the addressees of the whole set of rules numbering from 1 to 30: What is said in the Rules about the police, about the "initial contact" and prosecution procedures, about detention awaiting trial, social services, inquiry reports, about personnel in institutions etc., it all is meant to be applicable and practicable no matter what the peculiarities of a juvenile justice system in a given country may be. Another aspect of this "juvenile justice system approach" concerns what may be called the division of functions and of powers within the systems. In the understanding of the Rules a juvenile justice system will be composed of quite a number of agencies besides the "competent authority": Besides judges, magistrates, councils or boards there are the police and different social agencies, youth authorities, probation officers, community services and/or volunteers. The reason behind this variety is of course the interest in *specialization:* One would not need to divide functions and powers if not for the purpose of having specialists dealing with the different aspects of "juvenile justice" (handling before adjudication, treatment under probation, institutional treatment and so on). Some

rules (6.3; 12.1; 22) are explicitly calling for specialization for this very reason and purpose.

On the other hand, division of functions and of powers necessitates cooperation, or it will soon become dysfunctional. In this regard one may well make the point that the Rules are perhaps following too naive an attitude of "lets-work-togetherism". If I read through rules 23.1, 24.1, 25.1, 26.6, I cannot help getting this impression of a certain naiveté. How easily it may happen that they do *not* work together, that they may even be tempted to work against each other—for many possible reasons. Judges for instance may have the attitude of knowing much better what is best for the juveniles; or social workers or probation officers may rather consider themselves best qualified, and anyway better qualified than the personnel in institutions. So in the end there would be no cooperation, not even competition, which might be a good thing after all, but antagonism and opposition. Or there may simply be the necessity of managing a too heavy workload which might induce one specialist to shift the case from his desk to another, for the one and only reason of getting rid of it. All these situations can be described in terms of conflicts of competence: There either is a positive conflict of competence, several agencies thinking they would be best qualified to do the job, or there is a negative conflict of competence, one agency saying I don't want that case, and another one saying I don't want to have it either. Whoever may be blamed for the results of these frictions, it is the juvenile who will be the final victim of such procedures.

Another aspect of the juvenile justice system approach derives from the "mobilization of volunteers and other community services" as foreseen in rule 25.1:

> Volunteers, voluntary organizations, local institutions and other community resources shall be called upon to contribute effectively to the rehabilitation of the juvenile in a community setting and, as far as possible, within the family unit.

It seems that such "mobilization" is already practised to a large degree in some parts of the world, whereas other parts are quite underdeveloped in this regard. In the countries of the Asian and Pacific region in particular there seems to be a rich supply of traditional institutions dealing with juvenile cases on a local or community base. The Japanese probation system—i.e. many volunteers doing the job with the young probationers under the supervision of a few well-trained probation officers—appears to be a firmly rooted example to this point. Venturing a tentative systematization, one could even think of discerning three different types of regions in the world. There would be in the first place those quite many countries —particularly on the African continent— where Western systems have been imposed in colonial times and where we now hear (and read) an ever-expanding claim to return to the old traditional (maybe even "native", anyway original) ways of dealing with problems of juvenile deviancy within the communities (villages etc.). Secondly, there would be the typical Western example of approaching the problem rather formally, still following a correctional attitude. The State and his organs are "competent authorities", may they follow the State vs. citizen philosophy or the *parens patriae* vs. child approach. The discovery of community-based corrections in many Western countries, seen this way, is nothing but a *re*-discovery of forgotten resources. Suffice it in this context to mention the current debate in the United States about the chances of private management even of prison institutions, or the revival of privately run activities of all kinds and sorts in my own country offering the agencies of "formal social control" their many alternatives to the traditional responses to juvenile delinquency. And the third type in this typology would be the countries of the Asian and Pacific region with all their diversity of existing community initiatives, the competence of which to deal with juvenile cases seemingly being accepted by "offenders", "agents" and "the people" alike. In view of rule 25.1 this region would appear to be the most advanced of

all.

The importance of the issue may finally be stressed by pointing rules 1.3 and 1.4. At the very beginning of the Rules reference is made to "the family, volunteers and other community groups, schools and other community institutions". All these informal or semi-formal social entities are "integrated" here into the juvenile justice system, just as the juvenile justice itself "shall be conceived as an integral part of the national development process."

4. Diversion

Diversion is the subject of rule 11. As a design to do away with juvenile cases, diversion—much debated as it is—most accurately reflects perhaps the actual state of thinking and practice in crime policy concerning juveniles. By using the very term "diversion" which itself is of fairly new origin, and by giving diversion a central position within the framework of the Rules they have attached themselves to a stream in criminal policy which may possibly stop or even be reversed before too long. In other words, by focusing on diversion a principle is made use of which is not only actual, but which because of its very actuality seems to be rather time-bound, the Rules try to establish the idea of diversion for as long a time as possible, whereas nobody really knows how long diversion will be the *cri dernier* in crime policy.

Leaving this question aside, rules 11.1 and 11.2 describe all well-known forms of diversion. On the one hand, we find the distinction between diversion through the police and diversion practised by "other agencies dealing with juvenile cases"; the latter may even be the court or other "competent authority", if only there is no "resorting to formal trial" (judicial diversion). On the other hand, from rule 11.3 one can derive the distinction between diversion without and with referral. As far as diversion with referral (by whomever) is concerned, rule 11.4 gives some examples as to what such diversion may imply. Interestingly enough these examples we also find in the enumeration contained in rule 18.1 concerning the "various disposition measures" resulting from a more formal handling of the case.

This coincidence is important because it reveals an inherent tendency within the rules; a tendency which could be labeled the priority of *"doing less" before "doing more"* in each given case. This we find expressed on the level of procedure as well as on the level of reactions. In an attempt to make that convincing I shall only add a few remarks.

Rule 11.1 clearly makes the point on the level of procedure: "Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial". It does not say "*preference* shall be given", and it adds "wherever appropriate"; still it requires that the question of possibly diverting the case be given at least "consideration" in *all* cases. Rule 14.1 takes up the same principle, when it starts: "Where a case. . . has not been diverted, . . .". And rule 17.1 quite to the same point gives the competent authority "the power to discontinue the proceedings at any time": There can be no other meaning of such power than to "do less" by stopping proceedings instead of "doing more" by continuing them, wherever the first alternative seems to open better chances to the juvenile (if only by doing less harm). On the level of reactions the same leitmotif would require the priority of diversion without referral over diversion with referral, "wherever appropriate" (see rule 11). At other places we find more supporting examples. In rule 18.1 (b) probation ranks among the possible "disposition measures"; now probation certainly is a way of doing less, if otherwise confinement would be resorted to. Rule 18.2 expresses the principle of the-less-the-better in still another way. In rule 17.1 (b) and (c) the question of restrictions on, or deprivation of personal liberty is treated in exactly the same manner; the two "last resort rules" (19.1, 13.1) should also be read in accordance with these. And the recommendation, contained in rule 28.1, of conditional release

"to the greatest possible extent" and "at the earliest possible time" renders the same point final.

We must be aware of the fact that of course not all juvenile justice systems are following this line. Some may do so without using the term "diversion", and others are having problems with police diversion not being foreseen in national legislation (Japan). Last but not least, diversion always poses special problems concerning the use or misuse of discretionary power. Where there has not yet been a formal hearing, the accused person finds himself/herself in an odd half-way status between the presumption of innocence and guilt. He or she may even feel guilty, but not quite as guilty as the prosecution will have it, or not on all points. He or she may even arrive at an attitude of weighing the hazards of formal procedure against the difficulties or proving innocence, and in minor cases diversion even then might be justifiable on the grounds of *volenti non fit iniuria.* But most important is that there must always be the possibility to refuse diversion and insist on formal adjudication. Rule 11.3 gives a corresponding hint, and the Commentary thereto makes it even clearer. With this safeguard—and the additional one in rule 6.2 calling for "sufficient accountability at all stages and levels in the exercise of... discretion"—diversion will be a good thing after all.

5. The Disposition Measures

With this topic we turn to rule 18. Rule 18.1, running from (a) to (h), gives an enumeration of measures, but this enumeration is neither exhaustive nor is it meant to be final. Such measures "may *include*" the examples given thereafter, and at the end we find "other relevant orders" (h). The set of examples given has obviously been taken from the colorful scenes of different juvenile justice systems in the different countries.

Looking at them more closely, one finds that even these few examples are quite different in nature. There are orders that aim at influencing the young person's *behaviour,* as for instance a probation order, a supervision order or an order concerning educational settings; all these address themselves more or less to his or her future life-style. But other orders require some specific *act* of the person, as is the case with compensation and restitution: After the victim has been compensated, or indemnified for the damage done, the measure has so to speak been executed. And there are still other examples which combine these two or even penal ingredients. Community service orders would be the most prominent example. As to these it has very correctly been observed that they incorporate the prevailing correctional philosophies such as punishment, treatment, atonement, social growth and restitution. Indeed these are all reflected not only in the philosophy but also in the experience of actually doing community service, and each community service actually done will reflect them in different shadings and distribution. Community service orders in this regard are participating in the many aspects and facets of human work in general—work for making a livelihood and work for fun in leisure time, work which you enjoy and labour which you hate, and so on. Of course, by demanding the juvenile to work for the common good we add the specimen of a "service" order. In my country, these orders once were questioned in view of some internationally accepted requirements of the International Labor Organization that these shall be no "forced labour" outside prisons—for no one and certainly not for juveniles. As far as community service is done because it has been *ordered,* it might well be considered "forced"; but we argued that here we have no "labour" but a "service" which would give the work being done a different sort of quality.

If the "various disposition orders" are covering quite a variety of ideas and intentions in the understanding of those who "invented" them, they do so even more in the view and the experience of those who have to fulfil them. This is as natural as it is inevitable, since each single notion

in the terminology of rule 18.1 stands for manifold forms of application, of expectations and experiences. Moreover we ought to be aware of the fact that the expectations of those who issue an order do not necessarily go along with the view and the experience of those who are obeying orders. A compensation order may be given, for instance, with quite a bit of "victimological ambition", that is with the idea of making the juvenile realize that he has victimized someone else—and still the same juvenile may "feel" the order not much different from having to pay a fine. Practitioners in criminal law for juveniles are well acquainted with the difficulty of explaining to juveniles that paying a fine is one thing and indemnifying the victim is another thing, that after having paid a fine they are still obliged to return the stolen object, that there is penal law here and civil law there. One could list more examples for the parting of ways between the official intention of an order and the way the juvenile will "live through" the measure: Community service orders, though aiming at the experience of service, may be viewed as forced labour instead. A probation order, though meant to avoid a correctional term may be seen as an unnecessary infringement on personal liberties; and in some cases the youngster will even prefer a term within an institution instead of having to "behave" so long outside.

As regards this very last issue, we should seriously re-think the question of the length of probation terms for juveniles. By putting a young person under probation (or supervision) we do not only require his or her "good behaviour" for a specified length of time, but usually there are some other conditions we expect him or her to live up to as well. And usually the length of probation is not counted in months but is counted in years. By this we all too easily forget what one single year means to a juvenile. Taking our own experience of time passing by faster and faster we expect from juveniles a perspective which they cannot master. One month for them is a long bit of future, and a youngster of—say—16 years of age whom we ask to "behave" for three long years will conceive of himself as an old man by then. In fact, if in these cases we would rather take the sentiment and the perspective of the juveniles into consideration, the results may even be better. If we shape a probation term (or comparable order including conditional release from institutions) to an extent which in the view of juvenile can be seen as a period with an end, realizable by brain and by heart, he himself will feel much more capable of living up to expectations; in my view, one year should be a maximum, whereas a period of many years will only render the juvenile hopeless. Shorter terms would also reduce the case-load of probation officers which would be a very nice side-effect indeed. In Europe, Austria has a much envied legislation to the effect that no probation officer must be in charge of more than 15 cases; but even there they tell you that with only 10 cases or so they could yet do better!

There is one thing the "various disposition measures" seem to have in common: They all look to the future and not to the past. This statement may be challenged in view of rule 18.1 (d): "Financial penalties, compensation and restitution"; and it has to be admitted that these three in particular certainly are looking backwards in so far as they are imposed with an emphasis on the wrong that has been done before. However, when applied as disposition measures towards juveniles, these too fulfil functions of individual prevention (for instance by the experience of making good for the damage caused by the offence). So the statement above will be maintained that all the measures and orders are looking to the future of the juvenile—that at least they do so, I should like to add, *more* than they are looking to the past.

Anyway, for most of the examples given in the enumeration of rule 18.1 some more or less intrinsic mixture of orientations could be analyzed. I shall prove this for only one of them, the "orders to participate in group counselling" (f): On first view this order would clearly be oriented towards future behaviour, namely the prevention of further offences.

But according to all experience with group counselling—experience reported by psychologists and other experts who engage in the job—such counselling, for the very purpose of its success, will have to take up the facts of the offences committed; by talking with the youngsters about what they did in the past one tries to keep them from re-offending in the future.

This "nature" of the disposition measures—i.e. their bearing on the future of the juveniles—makes two other rules that much more important, namely 23.2 and 17.4:

> Such provisions shall include the power to modify the orders as the competent authority may deem necessary from time to time, provided that such modification shall be determined in accordance with the principles contained in these rules.
>
> The competent authority shall have the power to discontinue the proceedings at any time.

Both rules are altogether in accordance with the philosophy outlined above; they both are simply necessary—for two simple reasons. Firstly, when trying to shape or at least influence the *future* of a person, you must have the power to modify and adapt your attempts (the power to discontinue proceedings being just one way of adaptation). Since at the time of disposition you cannot really foresee the future, you can only hope that an intended development will come about. There is of course the question of guarantees against such later modifications that imply more infliction on personal liberty than did the original measure or order; such a modification would not fall in line "with the principles contained in these rules" (23.2). The second reason making the possibility of later adaptations indispensable is the very fact that we are dealing with *juveniles*. Predicting juveniles' behaviour is even more difficult than predicting that of adults. It is more difficult for the same reason I relied upon when suggesting shorter periods of probation, namely because of the personal development which is taking place at that age. In that very short span of our life-time much more happens than in the adult stage, leaps and surprises included. The "competent authority" would be lost without rules 23.2 and 17.4.

6. Institutionalization

The tendency is already indicated in the heading of rule 19, "Least Possible Use of Institutionalization", and the rule itself reads:

> The placement of a juvenile in an institution shall always be a disposition of last report and for the minimum necessary period.

Although reduced to a measure of "last resort" (see point 7 below), rule 19 is not meant as a provision degrading institutional treatment as such. The whole drafting procedure of the rules can be cited to this point. The warning against institutionalization was never meant to degrade the work which is being done in institutions, day after day; otherwise the Rules would not express themselves so clearly and elaborately on the "objectives of institutional treatment" as contained in rule 26. Rule 19 should be read rather as just one more "disposition measure"; it continues the enumeration contained in rule 18, but it does so by using an extra number because of the importance of the issue. In fact, "institutionalization" deserves special attention for two reasons again, an empirical and a legal one.

All research evidence is showing—or at least indicates—that institutional treatment is asked to do much more than it can do or has been found to do. Even where the many good intentions which are contained in rule 26 are followed to a considerable degree, the results in terms of recidivism remain disappointing. One may argue that this is no wonder, looking at the difficult and problem-laden personalities of those who go there at all. But this argument does not devalue the research results still calling for a rather pessimistic approach as to the chances of institutionalization. One may also argue that the research referred to has mostly been carried out in the West, and that Japanese training schools for instance

would actually do somewhat better. But then one would also have to admit that research very rarely really "proves" a point, research itself being a rather pointillist endeavour anyway: If we were to take a map of the world and then mark the regions where research is done, we would find whole liberaries of research quickly reduced to not too many very small spots on this globe.

There remains the "legal" reason. It is the deprivation of personal liberty, the confinement issue, which requires that the Rules be so careful with "institutionalization". The liberty of a person is a fundamental human right, pleading for all guarantees of fair trial and due process of law. For this very reason detention awaiting trial is made the subject of the same minimalistic attitude (rule 13). Rule 5 adds to the picture by calling for "proportionality" in all cases, and rule 17.1 specifies the point in view of our question:

> Restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum.
>
> Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.

All these provisions open one common perspective: It would not be in the spirit of the Rules to send a juvenile to prison for punishment and punishment only. Since the "objectives" contained in rule 26 apply to *all* institutional treatment, no juvenile (as defined in rule 2) must be subjected to *penal* treatment properly speaking (leaving open the question of feasibility of such treatment in institutions for adults). Institutional treatment too is looking to the future, as all other disposition measures do. But within an institution this futuristic perspective is extremely difficult to accomplish in practice; the "least possible use of institutionalization" is in the very logic of these preconditions.

7. The "Last Resort"

According to rule 19 "institutionalization" shall be "a disposition of last resort", and in rule 13.1 detention awaiting trial is made "a measure of last resort". At first sight the motives are quite clear: The "least possible use" of deprivation of liberty is to be recommended for the same reasons of practice and principle which I have just mentioned. This important issue shall be approached here from two slightly different angles.

There is something very seductive about the deprivation of liberty—seductive for those who are using it as a measure. A "measure" literally means something that can be "measured", and deprivation of liberty can be measured in terms of time: of weeks, months or years. It therefore lends itself to retribution. The proportionality "to the circumstances of the offence" (rules 5.1; 17.1 (a)) can be easily attained that way, it seems. (The same is true of course with fines and also, by the way, with the hours, week-ends and so on by which "terms" of community service are ordered; that is why I would predict that community service orders will be used in the long run half-way as a corrective measure and half-way as a retaliatory measure.) But retribution and "just desert" are *not* the aims of the administration of juvenile justice, at least not in the first degree. The "last resort" terminology of the Rules is trying to warn against this danger which is inherent in the "measuring" element in making use of deprivations of liberty: that you are tempted so easily to slip into an attitude of retribution.

In this context one may well ask whether "just desert"—as convincing as it may be on a wholesale level—is not an illusion when it comes to the details of proportionality. Why this or that criminal act justly "deserves" so and so many years or months or months plus weeks of imprisonment, cannot be asserted in an objective way. In practice the question is decided on grounds of tradition and regional standards, of personal opinions of judges and assessors, and above all by the use of discernment

and discretion. This is not surprising, since when following the *parens patriae* or welfare approach you are using lots of discernment and discretion as well. But the difference is that here—when trying to *individualize* the reaction—you are well aware of this fact: You cannot help but be subjective yourself when endeavouring to shape your reaction "in proportion to the circumstances of the *offender*" (rule 5), and it is for this very reason that rule 6.2 calls for "sufficient accountability . . . in the exercise of any such discretion", In the process of "doing justice" however we find that tendency of forgetting about the important role of—here too!—the many (mostly unconscious) personal choices.

Another point in favor of the "last resort" attitude of the Rules has to do with the treatment *within* institutions. As is well known, the modern turn towards "neo-classicism" influences not only the practice of adjudication and disposition, but also the practice of institutional treatment. Certainly now no one would yet advocate the mistreatment of prisoners in order to make them "feel" the punishment —not even for adults. But a policy of "humane" treatment (and of doing not more than this) is becoming quite common in some countries nowadays, and this could easily spring over to institutions for juveniles, if only for the reason that "nothing works" anyway. If we will be left with this, "institutionalization" would really be turned into a merely punitive sanction which would make its "least possible use" (rule 19) that much more important.

Personally I must add that I cannot easily think of a method of "humanely" treating juveniles in institutional settings without at the same time having to follow all the objectives laid down in rule 26. "Humane treatment" is, by the very expression, a way of *treatment.* When you have a juvenile in an institution, you have him/her there with all personal needs, psychological and developmental problems etc. Heeding all of those is nothing other than "humane treatment". In fact the whole issue of corrections versus retaliation can be reduced to near to nothing, as far as the treatment of juveniles in institutions is concerned; for the most humane treatment would be precisely the one which is required by the rules, 26.1 and 26.2 in particular.

There remains the question as to which resort really is the "last" one. There is a question of time and one of alternatives. You sometimes hear the opinion that young people could have been stopped in a criminal career by locking them up much earlier than when it is too late anyway. In other words, at some earlier time institutionalization would have appeared as a measure—if not of "first resort"—at least of "best resort". The problem with these cases is that it is so very difficult to sort them out "early" enough; a "criminal career" mostly is a question of adults in retrospective, not of juveniles in prospective. And even if prediction methods would allow for such a prospective, we will still have to ask whether there is really no alternative to institutionalization with all its additional misgivings, its detrimental influences, its dubious chances.

But there really do exist cases where there is no alternative in sight. I am thinking here of abandoned children or youngsters who without being "institutionalized" would continue to have to live "in the streets" with all that that means; there are terrible family situations with no relatives or friends available who could "help"; and there exist criminogenic environments from which there seems no (other) way of escape. In these cases the idea of "last resort" would not be hurt if "positive custody" is resorted to, not as to the best alternative but because *for the juvenile* it is the least harmful one.

Part II

Having dealt with the Beijing Rules so far in a so-to-speak introspective manner —by trying for instance to give some background information on the meaning of the terminology used in the Rules—, we shall now reverse the approach: Looking at them "from outside", they shall be dis-

cussed as an instrument of crime policy. More specifically, the question will have to be asked to what extent crime policy can profit, among its many other tools, from the Standard Minimum Rules as a means to its ends.

The Beijing Rules are a tool that have been prepared by the United Nations. This international body with near to no executive power has little choice but quasi-legislative endeavours if it wants to express itself in matters of long run policy. The best known example of course is the Universal Declaration of Human Rights (1948). In the course of time many other international conventions, declarations and covenants have been added. In the field of crime policy, the Standard Minimum Rules for the Treatment of Prisoners (1957/1977) is the most outstanding example so far; by their very title they partly reflect the broad subject of the UN Congresses on "the Prevention of Crime and the Treatment of Offenders" being held every five years, at the very first of which those standards in favor of prisoners had already been adopted (Geneva, 1955).

8. The Beijing Rules: Just a Sector

As one UN Congress on crime policy followed the other, almost inevitably the idea had to spring up some time of drafting Standard Minimum Rules concerning juvenile justice. In 1980, the Congress at Caracas had called for such rules relating to "the administration of juvenile justice *and the care of juveniles*" (A/CONF. 121/L. 17/Add. 1, of 4 Sept. 1985, p. 2). The Rules now at hand more or less leave out the issue of "the care of juveniles". The reason is good and simple: Within the five years which were at the disposal of the UN organs and bodies to draft the Rules this would have meant asking too much. By envisaging a procedure of progressing step by step it was decided to start with an emphasis on the administration of juvenile justice.

Still the Rules as they stand do not entirely rule out the question of the care of juveniles, as may be seen from rules 3.1 and 3.2:

> The relevant provisions of the rules shall be applied not only to juvenile offenders but also to juveniles who may be proceeded against for any specific behaviour that would not be punishable if committed by an adult;
>
> Efforts shall be made to extend the principles embodied in the rules to all juveniles who are dealt with in welfare and care proceedings.

Whereas rule 3.1 is dealing with the "delinquency" issue properly speaking as it is understood in some national legal systems, rule 3.2 addresses itself precisely to the care issue in the sense of the Caracas mandate. Interestingly enough rule 3.3 continues:

> Efforts shall also be made to extend the principles embodied in the rules to young adult offenders.

So in rule 3 we find a sort of frame-work for the Rules altogether, describing the boundaries towards proceedings dealing with non-offending juveniles on the one side and towards proceedings against young adult offenders on the other. This frame-work is not clear cut however, giving for instance no clear age limits for the groups "inside" and "outside" the boundaries, but it seems somewhat blurred instead: As to welfare and care proceedings and as to young adult offenders, the Beijing Rules shall even be *extended* beyond their proper scope of administration of juvenile justice: a provision of disquieting generality?

I think rule 3 will work best in the end if it is not overinterpreted in the beginning. One has to listen to its cautious wording: It is not the Beijing Rules that shall be extended but the *principles* embodies therein, and instead of having to be extended, only "efforts shall be made" in that direction. This language is certainly not as strict and definite as we find it comparison with most other parts of the Rules. Instead, rule 3 sounds much more like a reminder of something still to be done, of tasks yet to be fulfilled.

The policy function of rule 3 may also be seen in that it helps us understand what clearly falls *within* the Rules. Concerning

young adult offenders, there is no problem: As long as "efforts . . . to extend the principles . . ." have *not* yet been made successfully, this group stays outside the Rules (in Federal Republic of Germany for instance the judge has discretion to deal with young adult offenders between 18 and 21 years of age according to "juvenile" instead of "adult" criminal law). Concerning rule 3.2, the issue is somewhat more difficult. On first sight, welfare and care proceedings, that is also questions of the protection of children and measures taken in view of pre-delinquency, are as clearly "ruled out" by 3.2 as is the group of young adults by 3.3. Rule 3.2 should be screened, however, against the background of rule 2.2. For by virtue of this rule also *such* proceedings fall *within* the Beijing Rules that within a given national legal system would be "welfare" or "care" proceedings, if only dealing with "juvenile offenders". In countries where the notion of criminal responsibility (see rule 4) applies to adults only (as in many Latin American countries) such proceedings can yet deal with "a child or young person . . . for an offence in a manner which is different from an adult" (rule 2.2 (a)). In Brazil for instance the new legislation (Codigo de Menores, 1979) subjects all children and juveniles who are in a "state of irregularity" to welfare proceedings: One example for such irregularity would be the abandonment *of* the child or juvenile, another one would be criminal offences *by* the child or juvenile; and the latter cases open the respective proceedings to the applicability of the Beijing Rules. So rule 3.2 might be understood best by saying that it "rules out" welfare and care proceedings unless the "principles embodied in the rules" have successfully been extended to those proceedings, *and* unless rule 2.2 applies.

The last statement in this context concerns the prevention issue. Of course there is a main impact of the Rules on what is called "secondary prevention", that is the prevention of re-offending. The ways of adjudication, the measures of disposition, the objective of institutional treatment—all these aim at avoiding future offences being committed by the offender being dealt with. But what criminology calls "primary prevention", that is the ideal of preventing the first offence, does not fall within the function and policy of the Rules. If there need be a proof of this, I can point to a further resolution which has been passed at this year's UN Congress in Milan: In the same breath, so to speak, by which the Beijing Rules were passed, the Congress adopted a resolution concerning the future "Development of Standards for the Prevention of Juvenile Delinquency". This tremendous task (for which the UN has already asked UNAFEI for assistance) happily falls outside our review.

9. Difficulties of Implementation

By the same time the Seventh UN Congress in Milan also called for "the effective implementation of the Beijing Rules"—a challenge which makes evident that the formulation of the Rules must be considered as the very first step only, and a useless one if it is not followed by the many steps of gradual implementation. These steps will meet difficulties time and again. Some main difficulties will reflect prior difficulties of formulation, or in other words: Some main problems which have been met in the process of drafting the Rules will reiterate themselves in the process of implementation. The following examples shall illustrate this point.

The Beijing Rules, by their very heading "*administration* of juvenile justice", have to do with procedural law (for instance remand in custody) *and* with substantial law (for instance disposition measures). In view of the large variety of given juvenile justice approaches and systems this will necessarily cause all sorts of difficulties when it comes to "implementation". There is a considerable difference in this regard between the objective of the Beijing Rules and that of the Standard Minimum Rules for the Treatment of Prisoners; for prisons are very much alike all over the world, quite contrary to the administration of juvenile justice.

An example of the variety just mentioned is hidden in rule 17.3:

> Juveniles shall not be subject to corporal punishment.

It is hidden there because the seemingly clear and simple phrase conceals what had been a heated controversy in the time of drafting. Some countries of the African continent in particular strongly opposed this rule, maintaining that corporal punishment be a commonly accepted "measure" at home. And when saying "commonly" they really meant it, making the point that not only governments and parliaments would not go along with abolishing corporal punishment but also the people would prefer that measure to "Western" reactions such as all forms of (semi-) institutionalization (see No. 3, *supra*). It was even maintained that the juveniles themselves will in most cases rather undergo whipping—which hurts for a while and then is forgotten—than be sent far away for "indefinite" education. In the end, rule 17.3 was upheld as it had been proposed —for the mere reason that it was not new at all: In the commentaries to the same rule ample reference is made to international instruments emerging or already existing, and expressing themselves to the same effect.

Then there is the example of a most delicate balance between firmness and flexibility within the rules. To carry this beyond the question of terminology (No. 2, *supra*), one can only wonder how many (possibly) conflicting aims and ends shall be "implemented" harmoniously. Rule 1.4 sees "a comprehensive framework of social justice for all juveniles" as a factor contributing, among others, to "the maintenance of a peaceful order in society"; according to rule 5.1 the juvenile justice system "shall emphasize the well-being of the juvenile", but the rules and provisions relating thereto shall also be "designed . . . to meet the needs of society" (rule 2.3 (b)). Here we are soon back again to questions of most basic general orientations; these having been controversial throughout the drafting period, some of the rules by way of compromise seem to just transfer the disagreement to the next—the "implementing"—stage. There has been, for example, a very early proposal for a "guiding principle" (by myself) which ran:

> "The best interest of the juvenile should always be prior to the interest of protecting society".

When the 64th International Training Course of UNAFEI reviewed this proposal (and other ones) here at Fuchu in 1983, the wording was considered too one-sided and not likely to attract world-wide consensus; some participants even argued that the interest of the State in the end must always prevail over other fractional interest (in offenders' rehabilitation, victims' compensation etc.). In the end, the meeting at Fuchu adopted an alternative formulation (see UNAFEI Resource Material Series No. 25, Tokyo 1984, p. 229):

> "The welfare of the juvenile shall be paramount in the consideration of his or her case".

And in favour of this phrasing it was aptly argued that the "paramount" role attributed to the "welfare of the juvenile" would not detract from the significance and prominence of the needs of society in general. The corresponding part in the Beijing Rules now reads (17.1 (d)):

> The well-being of the juvenile shall be the guiding factor in the consideration of her or his case.

So far so good, even taking into account the still somewhat "softer" formulation. But then we find "the needs of society" instead in the rules at a rather late stage of drafting (rule 2.3 (b) 17.1 (a)): Will this not weaken the "guiding factor" of rule 17.1 (d) when it comes to implementation? Of course it needn't do so. In this case I would argue, however, that the later insertion was redundant. If in a given national jurisdiction the "varying needs of juvenile offenders, while protecting their basic rights", would be really met to the extent which rules 2.3 (a) and 17.1 (a) are calling for, what will be left then for "the needs of society"? I think to efficiently meet the needs and truly protect the rights of juvenile offenders, is all that society can desire, strive at, and legitimately ask for

in our context. On the other hand, if it comes to times of social unrest or unexpected overflows of criminality, each society will take resort to reactions of self-defense (for instance to measures of general deterrence), be they foreseen in the Rules or not. Such extraordinary measures to meet the "needs of society" in extraordinary situations will have to be respected; but they should not carry the blessing of the Beijing Rules.

This is a very personal view, and it will not be commonly shared. But I still do think that with the repeated reference to the "needs of society" there sneaked into the Rules an expression of the theory that criminal justice always is a way of societal self-defense anyway. This may be true where we have to deal with adults, but it may be challenged as to juveniles. How this may ever be, the two-fold orientation towards the "needs of juvenile offenders" and towards "the needs of society," although meant to smooth the way for general acceptance, will predictably cause frictions in implementation.

10. The Rules before the Congress

The Rules' way of implementation has itself been made part of the Rules: Right after paying homage to "the needs of society" each national "system", by way of developing its administration of juvenile justice, is summoned to "implement the following rules thoroughly and fairly" (rule 2.3 (c)). This indispensable follow-up could have been seriously impeded if the final draft version of the Rules which was submitted to the Milan Congress were changed substantially before adoption. It is part of the many hazards connected with the process of generating such an international instrument that at each stage of review of the draft any amendments added may not only contribute to improving the text, but may also cause confusion. This danger is most imminent at the final step when a UN Congress—that is many hundreds of participants—will be asked to pass the "final" draft. There is the inherent danger that amendments of the last minute will either be incompatible with the structure and the terminology of the Rules, or that such an amendment, if motioned in order to enhance the text's general acceptability, will make the whole composition not only more flexible but also more powerless (if not meaningless).

In August/September 1985 this fortunately did not happen. The basic structure and the main impetus of the Rules were upheld ("were saved", I should like to say). The "last minute" brought about only two major changes and one minor one; on these, including one quite interesting footnote, I shall briefly comment.

There are two insertions of the last minute, both concerning the "General principles", which may be called "saving clauses" in the interest of existing "systems" in Member States. In rule 1 we find a new No. 1.5:

> The manner of implementation of these rules shall proceed in the context of economic, social and cultural conditions prevailing in each Member State.

And in rule 2.2 concerning the definitions used which starts: "For purposes of these rules, the following definitions shall be applied by Member States . . .", it has been added:

> in a manner which is compatible with their respective legal systems and concepts.

The character of these additions is quite evident: By way of compromise they were meant to ease the adoption of the rest, adding so to speak some grease in order to facilitate the launching of the whole vessel. Critically one might remark that they give license to each Member State to go on doing their juvenile justice business as usual. But will this not happen anyway, according to the weight and force of the respective national traditions and concepts? So if the two insertions really *did* help to pass the Rules in Milan, they may also be looked at more positively: They *were* useful then, and they hopefully *will be* harmless!

The second change concerns a principle of procedure which previously had been stated in No. 15 of the draft rules, under

the somewhat misleading heading "Confidentiality": "Proceedings in juvenile cases shall not be open to the public", was the very simple statement of old draft rule 15.1. This principle was opposed in Milan –strongly enough to have it deleted. The idea that the public participating in the hearing is a part of basic procedural guarantees seems to have prevailed over the idea of a more protective way of procedure against juveniles. But the latter idea was not done away with altogether: What formerly had been draft rule 15.2, has now been made rule 14.2 with a Milan addition which is italicized here:

> The proceedings *shall be conducive to the best interests of the juvenile and* shall be conducted in an atmosphere of understanding, which allow the juvenile to participate therein and to express herself/himself freely.

The relevant practice in Member States differing widely, the meaning is quite clear: If you deem that the best interest of the juvenile require proceedings *not* open to the public, just go on with that; if not, don't.

The one minor change mentioned above concerns the separation of juveniles from adults whilst they are held in custody either awaiting trial or after adjudication. Rules 13.4 and 26.3 have been worded unequivocally to that effect. The change which came about in Milan is in the Commentaries. To both rules there has been an addition in the Commentary, stating that the respective rule "does not prevent States from taking other measures against the negative influences of adult offenders, which are at least as effective as the measures mentioned in the rule".

The reason for this is a formal observation which was introduced in Milan by the Scandinavian States (Denmark, Finland, Iceland, Norway and Sweden, see A/Conf. 121/L. 17 of 4 Sept. 1985, p. 2). In this region–as has been reported–adults who by their offences and their biography are rather on the side of ordinary citizens than on that of career criminals are sometimes kept together with juveniles for the purpose of exerting a salutary, instead of detrimental influence; and the warning if not deterring effects of those elder mates sitting in the same boat–detention before trial or under institutional treatment with juveniles–seem to at least counterweigh the negative influences commonly observed (and already recognized in the Standard Minimum Rules for the Treatment of Prisoners, No. 8 (d) and No. 85 (2)). As to the Beijing Rules the Scandinavian intervention led to the strange situation that the rather clear statements in the text of rules 13.4 and 26.3 are now officially commented upon as not really being meant that way. But this is possibly too technical an interpretation. For the idea behind the respective rules themselves of course is to avoid harm to juveniles; and if that very idea can be realized by other techniques having proved "at least as effective" as the separation technique, using the former ones would still be in accordance with the spirit–though not the letter–of the Rules.

Finally to the "footnote" I wanted to make: In adopting the Rules in Milan some delegations (other than Scandinavia) also filed their "observations", but without the "success" of having at least the Commentaries changed on their behalf. Among these, France stated an opinion concerning rule 11: The delegation "observed that the police in France do not have the right to settle cases involving juveniles by way of diversion". As is well known, diversion practices are most colourfully scattered within the community of UN Member States. In contrast to some Anglo-Saxon countries, France has a long-standing traditional system where there is no power of the police to divert a case. But France is no lonely exception in this regard–Japan for instance could make the same reservation, and in the Federal Republic of Germany too there is only judicial diversion (by the prosecution or by the court) and no police diversion. In substance, however, the headache of the French delegation reveals a misunderstanding. For the text of rule 11.2 only asks for diversionary power for "the police, the prosecution *or* (!) other agencies dealing with juvenile

cases", and in the Commentary thereto the "other agencies" are defined "such as courts, tribunals, boards or councils". There can be no doubt: Wherever *one or more* of the agencies referred to in rule 11.2 can divert a case, the rule is implemented.

11. Crime Policy through the Beijing Rules?

In UN language, the Rules should "serve as a model for Member States", and since "such standards may seem currently difficult to achieve in view of existing social, economic cultural, political and legal conditions, yet these standards are nevertheless intended to be attainable as a policy minimum (!)" (A/Conf. 121/L. 17/Add. 1, of 4 Sept. 1985, P. 2, 3). In view of these objectives one would envisage, of course, the level of *legislation* in the first instance. One can only hope that national initiatives will be taken on that level, and one can foresee that such endeavour will stir up a lot of sophisticated arguments as to the compatibility or incompatibility of the Rules with existing national law.

Another activity essentially in the same direction would be the drafting of *guidelines* to the Rules (or to some of them) in order to make them accepted and practised. Such guidelines which may be formulated on a national or international basis will serve as a sort of extended commentary specifying the many possible ways of implementation. In the Commentary to rule 6 the need for such guidelines is expressly related to the need to add some flesh to the bone of "accountability". Another field for guidelines is opened, for instance, by rule 27 which makes the UN Standard Minimum Rules for the Treatment of Prisoners "applicable as far as relevant. . .": Here the lack of details is so obvious that the Milan Congress even formally resolved itself in favour of the development of a corresponding set of standard minimum rules. But whichever of these may be accomplished—new national legislation, new guidelines or new standard minimum rules—, they will all take their time, and that time will be too long to wait for "implementation" on those levels only.

Therefore it would seem equally important (and in terms of time even more important) to strive for implementation on the level of the *practitioners in the field.* The courts, police agencies, social workers and the personnel in institutions need not wait until they are told by law or by their superiors to follow the Rules. A police officer for instance who is heeding rule 10 at the occasion of an "initial contact" with a juvenile offender will in no country of the world act against the law of the land by doing so. A "competent authority" dropping a case because restitution has been made to the victim, or another such authority trying once more to avoid institutionalization, will act in accordance with rules 17, 18, 19 everywhere, maybe without yet knowing them. And treatment in institutions will, as has been observed earlier (No. 2, *supra*), nearly never disagree with the objectives laid down in rule 26.

If the "policy minimum" represented by the Rules will have to be attained on very different levels and in many different contexts, then "implementation" becomes primarily a question of *spreading knowledge.* And no wonder this is so: For if we understand the Rules as a means of crime policy, they will have to address themselves to *all* those who are engaged in crime policy (an apt and adequate translation of the text in each given language being a primordial condition), and these are not only governments, parliaments and ministries, but are also the practioners of all professions engaged in juvenile justice. Asking for more inventiveness in this regard and looking around in the field, we may also find university professors as addressees of crime policy, and national as well as international meetings (symposia, training courses, congresses and the like) offer themselves as means of multiplication. Such spreading of knowledge is perhaps even more important, at least for the future at hand, than the official follow-ups to the Rules including periodi-

cal reporting to the UN about all the progress made. Innovative thinking in this direction will certainly open still other channels of communication. The actual needs for communication will most likely differ from place to place. There may be places (and persons) where it is most important to give information about *specific details* of the Rules; and there may be others where it matters much more to spread *the general attitude and philosophy* of the Rules as I tried to outline in part I. of this paper.

The Beijing Rules have been added now to the impressive number of UN "international instruments". For the time being, their main function in crime policy is that of a standing invitation to turn them into as much reality as possible. Or, to express the same idea by borrowing from the philosophy of penal law: Here you have the well-known theory of "general deterrence" which assumes that law-abiding citizens are law-abiding citizens because of the very existence of criminal law and criminal sanctions. The opposite idea of general deterrence would be *"general persuasion"*, and this is precisely what the Rules have to offer: persuade people in Member States to "follow" them. Since there is no power or force behind the Rules to make them binding, persuasion is all there is. But if you take the Latin origin of "persuasion", the word has a double connotation; it is "conviction" on one side and "seduction" on the other: "conviction" of course in the sense of having been convinced of something which you now agree with rationally. And if you are seduced, it means that you go along with something (or someone) emotionally after having been told "well please, come along now!" so often. "Persuasion" is both, which makes it the very opposite of deterrence. If we look at the Rules as an instrument of "general persuasion", we just hope that they will make friends all over.

12. The Rule of Law

Despite this romanticist spree the Beijing Rules remain just a compound of regulations. Whatever progress they achieve will therefore also be a bit of progress in the direction towards a "world law". This idea of world law was a very strong and lively one in the years after World War II —quite understandably so against the background of the disastrous plight of the world at that time. Nowadays we wonder whether there still is "one world" at all. Politically the globe has been split up into two, three or more "worlds", which makes industry and economics the main unifying force of our days. What unity there is, is the uniformity of consumerism and consumption habits, of entertainment by the mass media, of automobilism, taste and fashion. All this contributes considerably to a uniform world *civilization*; but one may question whether it has to do with *culture*. Law instead, since Hammurabi's days, has always been a facet of culture, a main approach to understanding any given society being to learn about its *legal* traditions.

So if there really is a chance to establish, by virtue of the Beijing Rules, an international "policy minimum" in juvenile justice, this will be an achievement on the cultural (and not only on the civilizational) level. For the so-called Rule of Law, as long as there is no Rule of Love in sight, is superior to any other rule we can think of in terms of culture and humanity. That Rule will have profited from the Beijing Rules at the first instance when the first juvenile in the world will himself (or herself) profit from the very existence of those 30 bits of regulations which we have discussed here.

Longitudinal Research as a Tool of Criminal Policy

*by Marvin E. Wolfgang**

The issues are *effectiveness* and *efficiency* in both juvenile and criminal justice systems. The implications of research findings may apply only to the United States and not to other countries. It would be arrogant of me to argue the universality or transferability of findings in Philadelphia to Indonesia, Malaysia, China, India or to other countries. However, as a social science researcher, I would be less than modest if I did not say that I think there is much lateral transportability of many of our findings from Europe and America to Eastern and less industrialized countries.

Some readers may already be fully acquainted with our longitudinal research and our efforts in what is called psychophysical scaling of the seriousness of crime. For those who have read some of our research, I shall be redundant. Let me begin with the meaning of "effective." To me, to make the juvenile justice system more effective means, among other things, increasing progress toward meeting assigned goals. One of those goals is crime reduction. Crime reduction can occur through treatment of the offender, rehabilitation, through general deterrence, and through a term I have not heard here but which is very popular in the States—incapacitation.

Incapacitation means to prevent a person from committing additional crime during the time of his punishment and treatment. Goals of crime reduction mean achieving these goals more effectively. The other meaning is meeting the goals of justice. Without elaboration, I refer to the just deserts model. One of the goals of justice is to provide a community reaction of the sentiments of prescription and proscription of conduct. There are many first-degree murderers, including juveniles, who may never need to be rehabilitated because they are not career criminals. They may not lead an ordinary law-violative life. Yet, our sense of justice requires that there be a relatively severe sanction applied to that relatively grave crime. Thus, to meet and maintain these goals of justice and crime reduction we must, I believe we all agree, want to maintain minimum or higher than minimum standards of humane treatment, standards of humane treatment in the conduct of the state in maintaining harmony between the protection of society and the rights of the offender and his victim.

If we can do all of those things, we are effective. Effective also means reduction of recidivism. To reduce recidivism in individuals who pass through the juvenile and criminal justice systems is our announced goal, and we have claimed regularly that we want to do that by altering behavior from norm-violative to norm-conforming behavior. We do that—reducing recidivism in individuals—by reducing the rewards of committing crime and increasing the punishment for offending behavior. We seek to reduce recidivism by locating the intervention strategies that work; namely, those that satisfy the goals which we have assigned.

Maximizing efficiency means to me, among other things, increasing the alacrity (that is, the speed), the velocity, with which we process offenders through the system with, however, full protection of due process and the rights of the offender. We increase efficiency by using the most parsimonious set of variables for making decisions. Generally, by parsimonious we may mean simplicity (but not entirely so), such as using the most parsimonious set of variables for making decisions about altering behavior through incapacitation, rehabilitation, for example. Finally, we want to

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do these things in order to increase efficiency while simultaneously reducing the time and labor of the helping professions and the volunteer lay persons, as well as reducing costs. So it is increasing speed, being as parsimonious as possible in the set of variables, reducing time, labor and costs that involve our notions of efficiency.

It is theoretically conceivable that a system can be more effective but not more efficient. That is, a system could be more effective by an excessively expensive technique, by taking an unwarranted amount of time—such as ten years under individual psychoanalysis. I do not mean to imply that ten years of psychoanalysis is necessarily effective. Or, we could be intolerably punitive, using chains, electric shock, or fail to pay attention to human rights. We could have corporal punishment, heavy use of the death penalty. Such punishments could increase the effectiveness of the system but they would not necessarily be efficient.

It is also conceivable that a system can be efficient, that is, quick, have diminished costs, be simple and require a reduced staff *without being effective.* Those things are obvious but I want to point them out. If we want the twin values and virtues of effectiveness and efficiency, a balance of acceptable, democratic variables must be achieved. We know these things in general and in principle; it is to some of the specifics that I would now like to turn.

I shall refer to at least two of our major studies from our Center at the University of Pennsylvania. In order to get to the point of the specific findings that have any relevance to effectiveness or efficiency, I must burden you with some of the methodological details of how these studies were performed.

One study is entitled "Delinquency in a Birth Cohort." The publication occurred in 1972. A 'birth cohort' is a demographic term that refers to a group of people born in the same year and who passed through history in the social cultural macro-world at the same pace. We call it Birth Cohort I because we now have a second birth cohort. Birth Cohort I was approximately 10,000 boys born in 1945, 9,945 boys. We concentrated only on males. This was the first longitudinal study in the field of delinquency and crime in the United States. There have subsequently been a few more, but ours was the first in this field. There have been longitudinal studies in medicine, of course, for many years, particularly heart disease and cancer research, but there had been no previous birth cohort studies in delinquency and crime.

I would be remiss, however, if I did not mention that Sheldon and Eleanor Glueck, the famous husband and wife team at Harvard Law School for many years, had been doing longitudinal research, not of birth cohorts, but of males who had been released from the Massachusetts State Reformatory back in the late 1920s. They followed the same 500 offenders released from prison for a period of fifteen years and published three different books on those young men. In that sense, they were pioneers in longitudinal research.

The reason that Thorsten Sellin and I wanted to do a longitudinal study was to answer a simple question which was unanswerable by cross-sectional research; namely, what is the probability of a young male growing up in urban America ever being arrested at least once before reaching age 18. There was no answer to that question except in inadequate simulation models using cross-sectional data.

The National Institutes of Mental Health supported our original research and the Office of Juvenile Justice and Delinquency Prevention, which is part of the Justice Department in Washington, continues to support our birth cohort studies.

Cohort II includes all males and females born in 1958. We have been tracking them from birth and have just completed a report to Washington. The criteria used for inclusion in Birth Cohort I were anyone who was born in 1945 and who lived in Philadelphia from at least age 10 to age 18. We used those particular years because the likelihood of anyone being arrested before age 10 is almost zero; and we wanted to have persons who were subject to the same

general city environment, juvenile justice system and police administration from ages 10 to 18.

Without going into too many details, any person who was born in Philadelphia, that is, a male, in 1945 and whose parents moved when he was two years old to California was excluded. Any person born in, let us say Florida in 1945, who came to Philadelphia, let us say, at age 15, was not included. There were only two criteria: one was having been born in 1945 and the other was having lived in Philadelphia from ages 10 to 18. Now, this is not a sample of a universe; it is the *entire* universe that meets these criteria. Thus, every percentage figure we provide is indeed a probability figure. We did not have to use inferential statistics as one does when one has a sample; we had a total universe.

Cohort II—which I mention now and then—does include females because we were accused of male chauvinism in Cohort I for not paying attention to women. But, as you know, the delinquency rate for females is so much lower than that of males and the seriousness of their offending behavior is so much less that it is not very cost-effective to spend the amount of time and labor we have used in tracking females.

Cohort I had 9,945 subjects; there are 28,000 subjects in Cohort II.

We obtained the names of the cohort from the public school records and from private and parochial schools. The public school records were centralized. The parochial, meaning mostly Catholic, schools and private schools were decentralized, and data collection was more difficult. It took us a year-and-a-half to two years to collect the names of persons for our cohort. We then went to the Juvenile Aid Division of the Philadelphia police and matched the names, race, date of birth and address, although we had the addresses from the schools. After making those matches from the school records, we were then able to produce our first statistic; namely, out of the cohort of nearly 10,000 boys, 3,415, which is 35 percent, a probability of .35, had at least one arrest before reaching age 18. Now that figure was much higher than we or any of our colleagues anticipated. I remember talking with people like Lloyd Ohlin, Al Reiss and others and asking them to estimate what our figures might be. Ordinarily they said, "Well, probably 5 percent; at most, 10 percent of any birth cohort would have a police record before reaching age 18." Black males in our cohort had, as you might suspect, a higher probability of arrests than whites. Whites had about .29, 29 percent; blacks had slightly over 50 percent of young males, growing up in Philadelphia, arrested before reaching age 18.

The 35 percent is a figure which we now believe is fairly constant. I mentioned that there are some other places that are doing longitudinal birth cohort research. Professor Lyle Shannon at the University of Iowa has been doing some studies in a small town, Racine, Wisconsin. This is not the wild, nasty, brutal Hobbesian urban community of Philadelphia; this is a sweet, gentle little town and approximately 36 percent in his cohorts also have been arrested before age 18. And there were very few blacks.

I just received a volume from Sweden a couple of weeks ago, translated into English, called "Violence in Everyday Life in Sweden." They have been following some metropolitan birth cohorts in Stockholm for some time now, although they go up to age 25 instead of 18. Approximately 32 percent were arrested at least once by the time they reached that age. In Cohort II, of the nearly 14,000 males born in 1958, the *prevalence* rate (the statistical term prevalence refers here to the proportion of people who are subjected to any given phenomenon, whether getting a heart attack, a cold, etc., in this case getting arrested) is almost an identical 34 percent in Cohort II for those who were arrested at least once before age 18.

The *incidence* rate is different. Incidence refers to the frequency with which a given phenomenon occurs; in this case, the frequency with which delinquencies are committed. In Cohort I, these 3,415 boys

committed 10,214 offenses before age 18. The boys in Cohort II, having the same prevalence rate, the same proportion getting into trouble with the law as juveniles, nonetheless have an incidence rate that is three times that in Cohort I, particularly with respect to violent crime. Cohort II males are much more violent than those in Cohort I. Probably the connection between drugs and violence is present, because in Cohort I, out of 10,214 offenses before age 18, only one was a drug offense. The drug culture had not yet arrived in Philadelphia. We are usually behind New York and Los Angeles in all these things and we were behind in the drug culture. In Cohort II we have thousands of drug violations which we think produced much violence in drug-related offenses, such as burglaries and robberies.

I am moving to a finding that will be related to effectiveness and efficiency. Although 35 percent of the cohort committed 10,000 offenses, most of those offenses were committed by a very small cadre of boys; 627 out of nearly 10,000, which is only 6 percent of the cohort, were responsible for 53 percent of the offenses. Six hundred and twenty-seven boys were arrested for 5,300 offenses before reaching adulthood, 19. Between two-thirds and three-fourths of all the serious felonies, and particularly felonies of violence, assaultive behavior—homicides, forcible rapes, robberies, aggravated assault—were committed by this small group of 627. These are the persons we call chronic offenders, meaning that each offender had five or more arrests before age 18.

We are finding the same thing in Cohort II. Instead of 6 percent, we now have 7 percent. The prevalence is the same. In Cohort II, chronic offenders are committing not just 53 percent of the offenses of the cohort; it is now around 62 percent and they are committing more offenses and more violent offenses.

We have a diagram to show that after the first offense most juveniles stop and do not go on to a second offense. We refer to this stopping point as desistance. In Cohort I, 47 percent of juvenile delinquents stopped after the first offense and did not go on. That is nearly half and are described as one-time offenders. Thirty-eight percent stopped after the second offense and approximately 29 percent stopped after the third. Now the curve of desistance drops rapidly after the first and second offenses and even the third, but then maintains a constancy out to the fifteenth offense. That is to say, about 28, 27, 29 percent stop after the third offense. The same proportion stops after the fourth offense, the fifth and the *n*th offense; we can only take the analysis out to the fifteenth offense.

Regardless of what was done to the arrestees—whether they were simply warned and turned back to their parents, or whether they were formally arrested and not diverted but were disposed of at the intake interview with a social worker, or went the whole way through to the adjudication—the percentage of desistancy seemed to be unaffected. One of the policy implications that we have made from that desistance rate, and relative also to the chronic offender and the serious contribution that he makes to the total amount of social harm in the community, is the following: that we should perhaps do nothing or have what one of our Senators from New York said about ten years ago relative to black families, that perhaps we should have a policy of "benign neglect." That is to say, interfere as little as possible in any formal administrative, executive or judicial way with the first and perhaps the second offender. To use a clinical, psychiatric expression, there is a kind of "spontaneous remission" that occurs with the first-time and even the second-time offender. No matter what we do, most of them will not continue, partly because the first and second offenses, ordinarily, are trivial. Their triviality is associated not with delinquent careers but with some Dickensian-like term, peccadillos, little things that kids do: a little shoplifting here and there, and they do not escalate into more serious offenses.

We have said that, relative to desistance rates and relative to what we know about

chronic offenders and the seriousness of their crimes, and because we have limited time, labor and talent in the helping professions and limits in natural resources, we should concentrate the attention of the juvenile justice system on the repeat offender, maximally at the second or third serious offense.

Many persons may not agree with this suggestion, but persons working in the juvenile justice system have begun to adopt this general rule. That does not mean that if a first offender has committed a forcible rape or an armed robbery and hospitalized somebody that we do nothing. Obviously, we are concerned about the seriousness of the offense, even a first offense.

We have found a lack of specialization in the offending behavior of the juvenile population in the cohort. Our sketch is meant to suggest that, from birth, a child can go to a variety of delinquent acts: an injury offense, a theft, a damage, a combination of theft and damage or theft and injury or to what we call a nonindex offense, using the FBI's Uniform Crime Reporting system. A nonindex offense is one that is not in the Crime Index of the FBI; it is not a serious offense. Our labels are: Injury, theft, damage, combination and nonindex, to the first offense. Then one can go from any of those positions to a second offense. We can draw lines from each of these. We call this our "snowflake" analysis, or branching distribution. We have taken this analysis out to fifteen offenses. The question is, if the first offense is a bodily injury, an assault, what is the probability that the next offense will involve an injury? Or, if the first offense is a theft, what is the probability that the second offense will be a theft? It turns out that because of the lack of specialization, the probabilities of going to any one of these stations remain fairly constant, despite the frequency of offending. There is some slight tendency for white males to go from a theft to a theft, some slight tendency for nonwhite boys to go from an injury to an injury, but not in any statistically significant way.

This kind of analysis is called a stochastic process, or a Markov chain. In effect it says, is the second offense to be committed a function of the character of the first offense? Expressed symbolically, is the *k*th offense a function of k minus I? The answer is no. The chances of going to an injury offense as a first offense is about .07. The chance of going to a nonindex offense, a relatively nonserious offense, is .47. Those probabilities remain virtually the same as we move to the fourth, fifth, sixth offenses. Delinquents seem to zig-zag, to move around from different types of offenses. We could call the process a smorgasborg of offending behavior rather than one of specific specialization.

I will modify that generalization in one way. If the juvenile has committed a violent offense, the chance that some time in the future, not the next offense, maybe not even two offenses from now, but some time in his career, he will commit another violent offense is about .50. If he has two violent offenses in his career, the chance of his committing a third is about .80. Nonetheless, our capacity to predict future behavior has not been improved by the longitudinal studies to any great extent. I do not mean to suggest, by pointing out the recidivism of violence, that we have much improved our capacity to predict future dangerousness.

The modal age of offending, the age that has the highest frequency, the highest incidence, is age 16. The average age at which delinquency begins in our cohort, that is, the age at onset, is age 14.

We assigned a seriousness score to each of the 10,214 offenses. I must say a word or two about deriving those scores. I have asked to have photocopied a bulletin from the Bureau of Justice Statistics that came out in January. It is called "Severity of Crime." This is an executive summary of a book that has just been published by the Bureau of Justice Statistics. It is entitled "National Survey of Crime Severity." The volume gives details of findings and elaborates the methodological descriptions and mathematical equations. This is a national random, representative population study.

In an earlier study, Thorsten Sellin and I

were funded by the Ford Foundation and were asked to provide a better measurement of delinquency than existed because the Foundation had funded many community activities and delinquency prevention programs, but it was unknown whether the programs worked, and they did not know how to measure effectiveness. Sellin and I produced a book, *The Measurement of Delinquency*, published in 1964. That study was an effort to scale the seriousness of criminal acts—we were particularly concerned with delinquent acts—in such a way that would give more clarity, more chiaroscuro, to the meaning of the legal labels that we ordinarily have, such as robbery, burglary and larceny. Knowing full well that a robbery can mean all kinds of things with very serious consequences to a victim and lots of money stolen, or it can be, as the police recorded in most jurisdictions, highway robbery in which a 13-year-old boy twists the arm of another 13-year-old schoolboy and steals his lunch money. Tremendous ranges can occur in the degrees of injury and the amount of money theft, or things we wanted to capture.

Crime is a culturally subjective definition. When I use a standard legal or sociological definition of crime such as "crime is an act that is believed to be socially harmful by a group of people who has the power to enforce its beliefs and that places such acts under a positive penalty," that kind of definition could apply anywhere, in space or in time. But who is the group that has the power to enforce its beliefs, that decides which acts are harmful and therefore will be declared criminal with a penalty?

If crime is a culturally subjective definition, then the degree of seriousness of crime also has its subjective dimension. If we think that murder is more serious than rape, or rape is more serious than robbery, how much more serious? Sellin and I set out to establish a sclae of the severity of crime. Originally, we used about 1,000 subjects in Philadelphia. We did not have enough money to do a national survey so we used about 300 police officers, juvenile court judges in the state of Pennsylvania and the usual captive audience—students in several universities. The process of obtaining the scores is relatively simple; the analysis can be very complex and complicated.

We asked people to give us a number that indicated how serious they thought specific crimes were. In the original study, we used two kinds of scales; one was called a category scale and the other a magnitude estimation scale. A category scale is the most typical used in social science research. That is, we set number 1 as the least serious crime and number 11 as the most serious. So we asked subjects to pick any number between I and II; we did it that way with half of our subjects. A magnitude estimation scale asks the subject, upon receiving certain stimuli, namely description of a criminal offense, to pick any number above zero and less than infinity, any number at all or fractions thereof. There is a long literature in psychophysical scaling that came to a culmination with Professor Stevens at his Laboratory of Psychophysics at Harvard some years ago, and there had been much laboratory research dealing with physical continua asking people, for example, how much louder were certain noises than others, which was simply a matter of subjective perception of decibels of noise. Decibels of noise means that it is a physical continuum and you can indeed have a little machine that tells which noise is louder and which is softer. They did it with degree of light: how much brighter is this compared with that, and so forth. Aristotle did this, after all, he was an empiricist, and he did this same thing with stones: how much heavier is one stone compared to another? This is psychophysical scaling, a big word for a simple act.

What had not been done was scaling nonphysical phenomena, such as crime. It is true that there are certain physical aspects of crime—one can be dead as a consequence of one particular act, or have 25 stitches. One can measure the degree of injury to a certain extent. One can measure the amounts of money lost as a kind of

disutility function of crime. But these acts do not mean that 25 stitches in the head or chest are 25 times more serious than one stitch. It does not mean that the theft of $1,000 is twice as serious as the theft of $500. So we sought to get specific responses from people. We had responses, as I said, from about 1,000 subjects. We found that the magnitude estimation scale was far superior to the category scale, for the category scale is limited; that is, the respondent could not go higher than 11. We call that the truncation effect. Even if we had a scale from 1 to 100, or 1 to 1,000, it is not too much of an improvement.

We engaged in elaborate methodological processes of making sure that the process of responding to the stimuli was unbiased; that is to say, if you give a sequence of offenses, as you well know, if you start off with a disorderly conduct or a trivial offense and then the second offense is a murder, you are going to jump enormously. Or, if the first offense you are asked to grade is a murder and the second is a truancy or something minor, you may or may not be affected by the presence of the murder as you may go up too high or down too far. In order to avoid that, we completely randomized the sequencing of offenses for every subject; that is, we produced a complete random distribution, and we pulled the numbers together into a geometric mean score. When you are dealing with scores of this sort, it is a geometric rather than an arithmetic mean. Through a process of common denominators we were able to reduce the total numeric scale.

We did the scaling for 141 offenses 20 years ago. We have now completed a national representative sample of households in the United States, drawn by the Bureau of the Census. As the bulletin mentions, we had nearly 60,000 interviews or responses from 60,000 subjects. We now have score values for 204 offenses. We have included in these offenses environmental pollution, political corruption and bribery, fraudulent medical practices, corporation crime; in other words, we included many white-collar crimes that we did not think about in the earlier Philadelphia study.

We have attached seriousness scores to each of the offenses. In Cohort I we used the Philadelphia scores; in Cohort II we used the national scores. One does not need, even in a country of 240 million population, 60,000 interviews in order to get a national scoring of the severity of crime; 2,500 would have been enough. But the Department of Justice wanted us to do a *survey* as well as devise a *scale* of the severity of crime. That meant they wanted us to look at regional differences, sex and race differences, income and educational differences and so forth. And, particularly, because the Bureau of the Census has been doing a victim survey analysis since 1973 for the Bureau of Justice Statistics, they were interested in knowing whether having been a victim of a crime caused one to rate the offense as more serious than not being a victim.

The Philadelphia study of scaling was done as a paper and pencil test; the national study was orally administered as the Census enumerator read offenses to the subject, in Spanish if necessary. Each subject rated about 20 offenses. There were four similar items that appeared in every interview. In the original study, we had said to some of the subjects: "The Offender is a male, 13 years of age"; other subjects were told, "The Offender is a male, 17 years of age." That was the upper age limit of our juvenile justice statutes. Others were told, "The offender is 27 years of age"; that was the median age for prisoners. Our study has been very thoroughly replicated in Italy, Germany, Puerto Rico, Taiwan, the Congo, when it was still the Congo, and several other places.

Replications have been consistent, in the sense that ratios among the offenses remain fairly constant. This is a ratio scale, so that a score of 70 is twice the seriousness of a score of 35, and so forth. The IQ score is not a ratio scale, for a person with an IQ of 150 is not simply twice as intelligent as one with 75. Our scale is a ratio scale, and the ratios have been maintained across different legal codes and cultures around the world. The constancy and consistency remain highest at the upper

half of the seriousness scale. As one moves into less serious offenses, there are more variations across cultures and nations. But one of the things that impressed us, both within the United States by regions of the country and by ethnicity, age and sex is the consensus that people have about the seriousness of specific crimes. On an international basis, there is an amazing amount of consensus about the severity of crime, specific crimes, which in theoretical terms lends a great deal of strength to a kind of consensus perspective rather than a conflict perspective in the administration of juvenile and criminal justice.

As a result of the cohort study, I and my colleagues at the Criminology Center at the University of Pennsylvania have, over the years, been testifying before Senate and House Judiciary committees in Washington so that Congressmen have become well acquainted with the study. We are told that, partially as a result of our cohort longitudinal analysis, with the special focus on the chronic offender who is responsible for so many crimes, that the federal government launched our criminal career programs in about 87 jurisdictions around the country.

The criminal career programs are those that were housed in prosecutors' offices designed to increase the effectiveness and efficiency of prosecution of the repeat offender, particularly the serious and violent chronic offender. As a result, the conviction rate has increased in almost all those jurisdictions, and the conviction rate increase results in a greater amount of incapacitation of chronic offenders.

Regression analysis in the last couple of years showing the tremendous increase in the prison population, while at the same time, since 1981, a reduction for the first time in many, many years for serious crimes in the United States, is partially attributable to the career criminal program and incapacitation of the career criminals. When I say partially, I mean somewhere between 15 and 25 percent of that decrease in the crime rate for the last four years is believed to be a function of incapacitation. Keep in mind that not only chronic offenders, but especially chronic offenders, are committing many offenses for which they are not arrested. On the average, we found in Cohort I, upon interviewing a 10 percent sample when they were age 25, that, for each offense for which an offender was arrested, he had committed approximately 10 or 11 offenses for which he had not been arrested and which he reported to us in a self-report interview.

A couple of years ago an effort was made to evaluate the criminal career program which the federal government sponsored. It was found that the average age of the criminal career, so designated by his prior convictions of certain types of serious offenses, was 29. When we had a conference on the criminal career program, which I chaired, we suggested that the criminal career program starts too late. If the average age is 29, we know from previous studies and now from our own follow-up of Cohort I up to age 30—now we have data on the sample up to age 40—that there is a process commonly referred to as "aging out": as they grow older, people have diminished offense behavior and around ages 29 and 30 there is the greatest decrease in recidivism. We still do not know exactly why. There are social, psychological and physiological hormonal changes that occur as we grow older, as you all know. At any rate, the average age was 29 and we figured that we are not stopping too many offenses by increasing conviction and incapacitation of 29-year-olds.

Consequently, within the last year or so, the Office of Juvenile Justice and Delinquency Prevention, which is part of the Department of Justice, launched a program called "The Serious Violent Habitual Juvenile Offender," and a similar focusing on the kind of delinquent career is now taking place in at least 12 different jurisdictions as an experimental pilot study. Again, it is based on the information about the repeat offending behavior or chronic juveniles. We do not have an evaluation of that program yet, for it is too early, but I suspect it will be as effective and perhaps more effec-

tive than the earlier criminal career program.

The focus, as I said earlier, is on the time, talent and money spent on the violent few, with an emphasis on incapacitation. This process, however, I should add parenthetically, does not mean that concerted efforts will not be made to try to change the behavior of the chronic and violent offender. Because of the concentration on that sub-population, more intensive care and treatment programs are being developed. For a reduction of crime recidivism can reduce more social harm in the community than most broadside prevention programs. This is not to deny, as Dr Singh pointed out earlier, that we should not have an emphasis on general social welfare and social policy. We know to a great extent the disadvantaged population is overrepresented in our cohort and most delinquency statistics: the poorly educated, the dropouts from school, the unemployed families, the poor in general are victims of institutionalized racism and all kinds of other untoward social conditions. The policy of the state should be directed to improving those conditions in general, without respect to crime or delinquency. The state cannot legislate love, but the state can do something within the justice systems to improve effectiveness and efficiency.

Relative to this serious violent juvenile offender program, and the criminal career program, many of us have been testifying about juvenile records. There is a panel of the National Academy of Sciences that is just about to publish a new report on criminal careers. I am on the panel and Professor Alfred Blumstein is the chairman. When a panel of the National Academy of Sciences publishes a report, most of the government listens. The Academy is a quasi-governmental organization, but is independent. It is funded by the federal government and was first set up by Abraham Lincoln during the Civil War. The Academy publishes reports on nutrition, on outer space, heart and cancer research, medical research, all kinds of things. They have been publishing now, over the last ten years, special reports dealing with crime and punishment. We have had special reports on rehabilitation, on deterrence and incapacitation, and now a new one should be out in early 1986 on criminal careers.

One of the things that we discussed on the panel was the availability of juvenile records in the adult criminal court. I believe it is in the minimum standard rules, Rule 21.2, which says, "Records of juvenile offenders shall not be used in adult proceedings in subsequent cases involving the same offender." Our panel, I think, will recommend that a juvenile record of serious and violent offenses be made available in the adult criminal career. We had differences of opinion, but the prevailing opinion is the availability of those records. Not all juvenile records, not of all juveniles who pass through juvenile justice, but those who have committed serious, violent juvenile offenses: serious violent offenses that, if committed by an adult, would be serious, violent crimes.

One of the reasons is that, in our fifty state jurisdictions, there is no uniformity in the availability of those records. In some jurisdictions there is an explicit statute that prohibits the transmission of juvenile records to an adult court. In most jurisdictions there is no explicit statement and in a few jurisdictions there is an explicit prohibition or permission. In some cases they explicitly permit it; in others they say nothing about it. Even within the same state there are variations by counties so there can be tremendous ranges in the utilization or nonutilization of juvenile records.

One of the reasons that our panel at the Academy is likely to recommend availability in serious, violent juveniles is that at age 18 one begins with a virginal offense, but we know that our chronic offenders had 15 or 30 prior offenses, and we have some with 100 official arrests, many of them serious, before reaching age 18. In those jurisdictions that have a dual system of recordkeeping, the same offender upon reaching age 18 is viewed as a first offender, no matter what his offense. Conse-

quently, because most statutes permit judges to give lighter sentences, to give probation for first offenders, many of these juveniles who were in our chronic offender population and had inflicted an enormous amount of social harm in the community were let go, almost free, as adults. They were reborn, in effect, and while we understand the underlying rationale of the original intentions of not permitting such records in the adult court, there is considerable disutility in denying access to juvenile serious offense records.

We have been following up Cohort I; the chronic offenders represented only 6 percent up to age 18. That figure jumps to 14 percent by age 30, so some of them became chronic offenders, had five or more arrests, after age 18. We have done analyses splitting them into early and late chronics and have examined their differences. My point again about the availability of the juvenile record is that, if they are not stopped or if they are not handled in a more retributive action at 18, 19 and 20, they will continue as very severe chronics without proper reaction from the community.

The National Academy of Science panel argued most about the issue of prediction. We do not have a consensus on the panel. There are those who have argued that predicting future dangerousness, while not accurate, nonetheless should be taken into account at the sentencing stage and that the penalties for those who are predicted to be future offenders, and particularly future violent offenders, should be augmented. We have a phrase that has been created by my colleague, Peter Greenwood, at the Rand Corporation in California, called "selective incapacitation." I shall not go into that topic in detail, but, in effect, it claims that those persons who are at highest risk of continuing on in their delinquent or criminal careers should be given a more severe penalty or longer incarceration: longer period under supervision or restraint or restriction or incarceration than those who are considered to be low risk. The other panelists, including myself, have argued against that policy because, even with our best actuarial statistical modelling, the false positives are intolerably high; that is, we overpredict future recidivism and future dangerous behavior, and we do only slightly better than by tossing a coin in determining who is likely to go on to more crime. Under those circumstances, and using the "just deserts" approach, we emphasize that people should be punished, reacted to, treated on the basis of what they have done and not what they might do in the future. All of this concern relates to the earlier issue I have mentioned—maintaining equity in the system.

The Juvenile Justice System of Sweden

*by Knut Sveri**

Introduction

How a country handles the problem of juvenile delinquency is partly a reflection of the prevailing political and moral *ideologies of the country* and partly a result of whether juvenile delinquency is considered to be a serious *problem* or not.[1] When defining how serious the problem is the modern states today rely upon empirical information, especially police and court statistics with additional knowledge coming from other types of studies such as victim and self-declaration surveys.

However, it is important to remember that crime policy problems never can be "solved" by empirical studies, but only by means of political decisions enforced by the authorities. Empirical studies can furnish the policymakers with better knowledge and nothing more—whether the knowledge leads to better politics or not is in the last instance decided not by the criminologists but by the politicians. And they may decide to disregard the information and form the policies according to their ideology.

When describing the juvenile justice system of a country it is necessary to give some information both concerning the existing ideology in relation to juvenile justice and to describe the main characteristics of the crime problem.

Ideological Problems

In the old Swedish laws very little is said about the responsibilities towards children from the side of the parents and the authorities. The care and upbringing of the new generation obviously primarily was a matter for the parents. We know, however, that the church considered it its duty to make checks on the farms and in the villages in order to instruct the older generation in matters of the morality of children. And from very old times there were arrangements for limited care for those children who were without any guardians at all. As children were cheap labour with no power of their own, there is no doubt that many of them had a very hard time. The first awareness that they were in need of special protection came during the last half of the 19th century when industrialization had started in Sweden. Families who had moved into the cities to work in the factories had—in order to survive and in accordance with the rural tradition—to send their children to work. The working hours for children were the same as for adults, usually 12 hours a day and often nightshifts.

Since these conditions quite often existed for children at the age of only 12 years a humanitarian effort was made in 1852 to forbid nightshifts for young persons under the age of 18 years. However, neither the employers nor the workers accepted this rule, which might be remembered only as a first attempt to look upon children and childhood as something different from the status of being adult.

In criminal law the age of criminal responsibility had all through the Middle Ages been 14 or 15 years. However, this must hardly be looked upon as a rule made for the benefit of children or as a humanitarian motivated regulation (although it did lead to such effects), but as the result of a solution to a philosophical and moral problem, namely the question of individual "responsibility" as the basic requirement for using punishment. Since children often do not understand the moral nature of their acts the solution was to fix a certain age, from which this mysterious moral insight started.[2] We must, however, not believe that younger children got off without any consequences—the court could

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instruct the parents to give the child "a lesson" usually by birching him or her.

Physical punishment, such as spanking, birching and flogging, was accepted as a means to get conformity, not only within the family but also within the schools, by the landlords towards their workers, by the church towards sinners, in the merchant marine and in the military forces, not to mention prisons and other institutions. While in a rural society such punishments were matters of keeping discipline within the family, the early industrialized society introduced a new dimension into the picture, namely in the way that punishment was inflicted upon the child by someone from above and outside the family circle. Oscar Wilde has made the most penetrating analysis of this in a letter to a London newspaper from Reading Gaol:[3]

> "The present treatment of children is terrible, primarily from people not understanding the peculiar psychology of a child's nature. A child can understand a punishment inflicted by an individual, such as a parent or a guardian, and bear it with a certain amount of acquiescence. What it cannot understand is a punishment inflicted by society. It cannot realise what society is."

With the growth of the cities the problem with juvenile delinquency came out in another light. A notable increase in young delinquents made the respectable part of the citizens shocked and scared, and initiatives were taken to bring the situation under control. In 1902 the Swedish Parliament enacted two laws, one with the title Law on Compulsory Education, and the other called Law on Education of Delinquent and Morally Depraved Children. The first one gave the courts the option of changing short-term prison sentences (up to 6 months) for youngsters between 15 and 18 years of age to treatment in closed institutions, and the second one gave the school authorities (with the local priest as the chairman) the right to interfere with the privilege of the parents to be in charge of their children; the authorities could decide to take a child under the age of 15 years away from its parents and place it in a foster home or in an institution in order to secure its moral training.

These laws represent a change in ideology. It is no longer just a family responsibility to train children to be good and useful citizens but a state responsibility as well. And it is recognized that children are a different and special group of persons with special needs. On the other hand, the reason for the new legal institutions was not the needs of children but the needs of society—they were created in order to safeguard the well-being of the respectable bourgeois citizens *not* to care for the children as such.

It is important to notice that the power to decide in cases concerning children under the age of 15 years was given to *an administrative authority* and not to the courts. This idea came from Norway, where administrative authorities called Child Welfare Boards had been created to handle such cases. In Norway, however, it was not the local priest but the local judge who should be the chairman of the board.

The juvenile court system, which we know from the United States, was invented at about the same time. Although the ideas behind the Scandinavian and the American systems seem to be identical, there is a difference in the choice between an administrative or a court system. Since in Anglo-American criminal law the age of criminal responsibility was much lower than in Scandinavia, namely 7 years, this probably was the main reason for the difference in choice between a court and an administrative system.

The big ideological change in the Swedish juvenile system came in 1924 with a new Law on Child Welfare. As its main principle it adopted the tenet that the state has a responsibility to care for children and young adults and that the care shall be based upon the needs of the children and not on the need of the society to protect itself. In every local community there should be a Child Welfare Board with five members elected by the local council. There was no prescription concerning the qualifications of the members except a recommendation that one of them should

be a lawyer. The board had a general responsibility to help and support parents and children in the community.

Concerning children and young persons charged with crime, the board was given full responsibility for those under the age of 15 years, which was in accordance with the law of 1902. However, the responsibility of the board for those above 15 years of age was now extended to 18 years and in some cases to 21 years of age. Since there was no change in the age of criminal responsibility, this meant that a *competetive situation* arose between the child welfare boards and the courts—a problem which still exists today.

Since 1924 there have been many changes in practice and in 1960 these changes brought about a new law.

In 1980 a complete reformation of all social welfare activities took place with the introduction of a *Law of Social Services* in the local communities. All the different boards—including the child welfare boards—were integrated into one single administrative authority, the Social Board, with duties covering many different fields, from the care of children, handicapped and old persons to economic aid for families and persons in need. This is the paragon of the Swedish welfare state intending to ensure for every person the highest possible standard of living. It declares that the state has a duty to ensure this and that it is a legal right for the people to have it. However, there have been no formal changes concerning the handling of juvenile delinquents with one exception, namely that the final decisions concerning "care and protection" are in the hands of the local administrative (not criminal) court.

As for the criminal justice system proper, the development has been more conservative. The fight between the advocates of the treatment ideology as the base for the measures prescribed in criminal law and those which place more stress upon the general preventive functions of these measures has been going on during the whole century. In a famous proposal from 1956 a law commission suggested that the concept of punishment should be completely abandoned, and that criminal measures instead should have the aim of individual rehabilitation. However, this idea did not appeal to the parliament, and in the Criminal Code of 1962, which is in use today, the conflicting ideologies of our criminal law are reflected in the 7th paragraph, where it is stated that:

> "In the choice of sanctions, the court—with an eye to what is required to maintain general obedience to the law—shall keep particularly in mind that the sanction shall serve to foster the sentenced offender's rehabilitation in society."

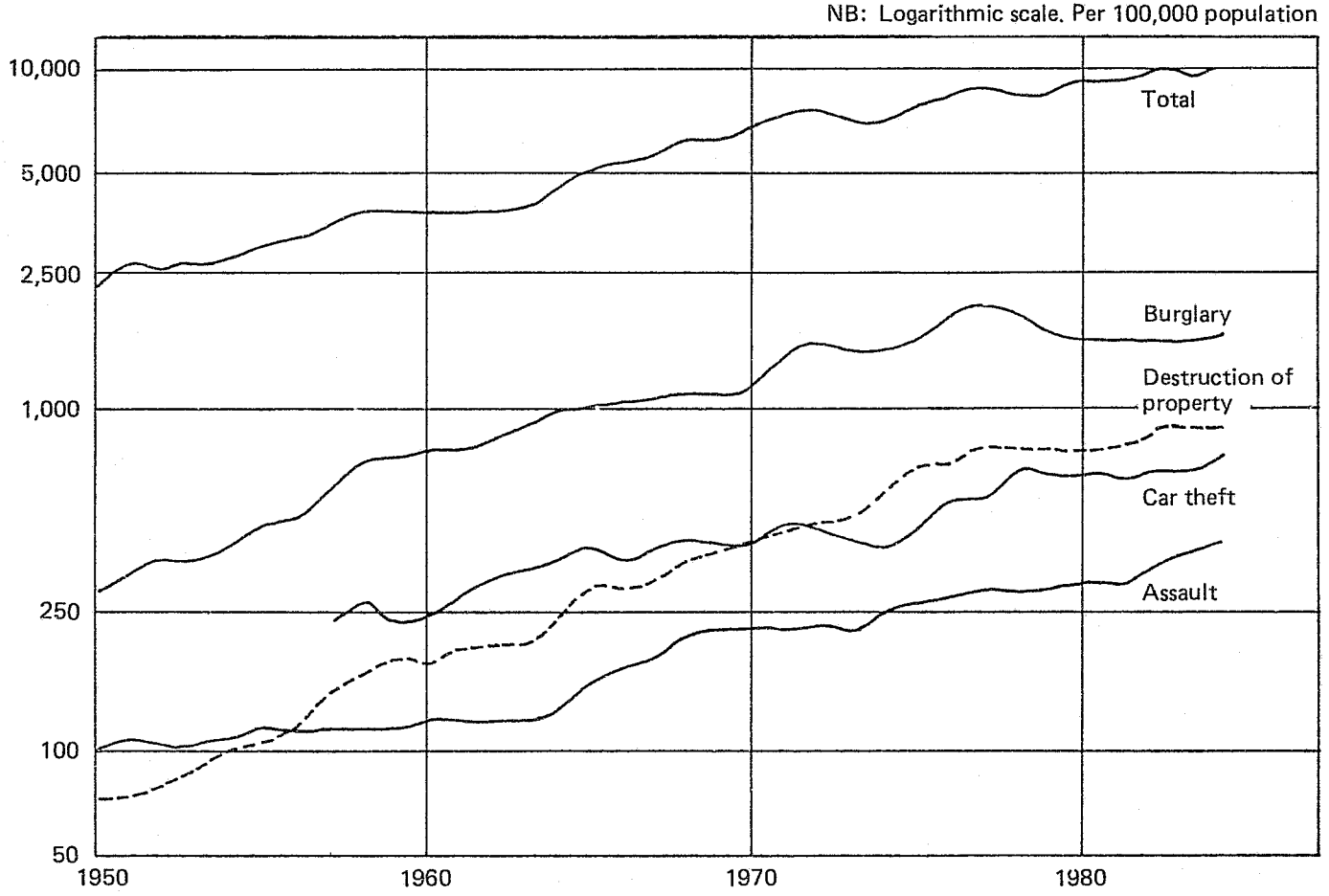
In plain words this means that the criminal courts when sentencing a person shall think both of the deterrent and of the rehabilitative effect of the measure—an undertaking which in many cases is logically quite impossible. However, the difficulty is less concerning young offenders, since the commonly accepted ideology is the welfare model: Children and young people should be handled with care and when the crime is so serious that in the case of an adult a prison sentence would have been used, a young person's care will always be decided finally by the child welfare system.

To sum up, the ideology which has slowly developed during the last 75 years and has been the base for the Swedish juvenile justice system is that children under the age of 15 years shall never be punished, but shall be cared for by the social welfare authority and that those between 15 and 18 years of age shall get a criminal sanction only when there is no immediate need for the care that can be offered within the welfare system. Furthermore, the guiding principle for the social welfare authorities is that institutionalization shall be avoided and that a young person shall be helped in his family setting, preferably by assistance and guidance.

Juvenile Crime

Crime in general has been increasing in Sweden since about 1925 although the different types of offences have increased at different rates. I do not, however, intend to go further into the historical aspects but

Fig. 1: Crimes against the Penal Code Registered by the Police (Sweden 1950-84)



will restrict my presentation to the most salient traits of the development since 1950.

The main trends for traditional offences (= offences against the Penal Code) will be found in Fig. 1. As can be seen from this figure, the number of registered crimes per 100,000 population has increased from 2,300 in 1950 to 10,000 in 1984, which means about 4 times as many crimes. Concentrating on the most frequent offences, the increase has been biggest for destruction of property (11 times as many in 1984 as in 1950), while burglary, car thefts and assault have a development similar to that of the total.

The question now is how much of this increase is due to an increase in criminal activity by juveniles. This question is just as important as it is difficult to give a straight answer. It is important because the crime policy activity certainly would be quite different if the answer is positive that if it were negative. Shall the activities be directed more toward juveniles than toward adults?

The existing empirical evidence is very difficult to interpret. There are two such empirical sources, namely statistical information about the age structure of *known* offenders and the results of studies made on samples of the *ordinary* youth population. The first type of information has some serious limitations which seldom are discussed, since we usually seem to accept that the age structure in the cases not cleared up is the same as in the cases cleared up. Certainly, if the clearance rate is high—such as it is with assault, we may be on fairly safe ground when we assume that these age structures are similar. But, unfortunately, the clearance rate for other types of crimes is very low—for burglary only 12 percent, for car theft and destruction of property only 20 percent. Who are committing the rest of the offences, these 80 to 88 percent not cleared up?

If we look at the age distribution of offenders found guilty, we find that there are *less* juveniles registered in the 1980s than in the 1950s. The approximate rates per 1,000,000 population are shown in Table 1. However, if we draw from these figures the conclusion that juvenile crime has decreased I believe we are wrong. There are two main reasons for my doubts. First, there has been a clear change in crime policy *priorities* in the 1960s and the 1970s. In the middle of the sixties narcotics became the main target for the police and in the seventies in addition to this the police were ordered to concentrate on economic crimes. As a result of this, less work was done in order to clear up traditional crimes—and especially the less serious offences usually committed by juveniles. Secondly, there has been a decrease in the clearance rate, which between 1960 and 1982 dropped from 40 percent to 30 percent for all Penal Code crimes, from 60 to 30 for assault and from 26 to 15 for theft. This decrease is probably due to a loss of interest in juvenile crimes on the side of the police.

From our studies of samples of school children and youngsters we know that it is not unusual for them to commit crimes, such as theft and destruction of property. In fact, in these studies practically every boy admits that he has committed such offences at least 2 or 3 times. On the other hand less than 10 percent of these

Table 1

	15–17		18–20		21–24		25–39		40–67	
	1960	1982	1960	1982	1960	1982	1960	1982	1960	1982
Total	2,650	2,300	2,300	2,200	1,260	1,660	600	920	200	270
Property offenders	1,300	1,650	1,200	1,200	540	650	220	240	70	100
Assault	120	100	200	190	160	160	70	112	25	30

boys have been detected and reported to the police for their offences.

It is fairly obvious that a large number of those crimes that are registered by the police but not cleared up must be committed by these boys. And there are no indications that their activities have decreased. On the contrary, since Fig. 1 shows increases in the general crime picture, it is probably so that *juvenile criminality has increased* in spite of the fact that the number of young adults registered by the police has diminished.

The Problems of Juvenile Delinquency

In what way may the presented facts be said to constitute a problem—or to be more precise: For whom may juvenile criminality constitute a problem? There are at least two answers to this question, one stating that juvenile crime mainly is a problem for the victims and represents a threat to a peaceful life in society, while the other states that juvenile crimes foremost represent a problem for the juveniles themselves because they may run the risk of becoming persistent offenders.

As for the first view most offences committed by young people are directed toward the property of other people. However, Sweden is a rich country, where practically everybody is covered by insurance against economic losses due to criminal acts. Therefore it is very rare that the victim of a juvenile property crime has such a loss that it causes any real damage to his or her situation. In most cases, the economic loss is negligible—and there is mostly only cause for irritation. But there are other victimological effects which are more important. First, if the crime has been committed in such a way that it represents a threat to the privacy or safety of the victim (such as a burglary in the apartment or house of the victim, or purse-snatching by a gang of provocative children) there will often be negative psychological effects for the victim. Secondly, there is always the risk that such activities will increase the gap between the older and the younger generation and will even have the consequence that many adults become afraid of young people. This may easily escalate the negative gang-behaviour from the side of the youngsters towards adults. But I want to stress that such provocative and violent behaviour is not an ordinary phenomenon in Sweden, although it sometimes exists. Concerning violent crimes the victim—in any age group—practically always is a person belonging to the same age group, which means that juveniles usually fight other juveniles and only seldom grown-ups.

We may therefore say that juvenile crimes—with some exceptions—seldom constitute any great danger to the society and its "respectable" members. They are nuisances causing immediate anger and irritation. It is when the delinquent acts become violent—or in other ways threatening—that they may become a real serious problem for the society (such as in the case of robbery, threat by means of weapons etc). So far, we have not reached that stage in Sweden. However, I must admit that the increase in property offences has brought about many irritating consequences.

What consequences does the delinquent behaviour have upon the offenders themselves? Do the young delinquents really run the risk of becoming persistent offenders if they are not stopped in time? A "life in crime" is not recommendable as a career, since it means very little or no family life, with high risk of becoming an alcoholic or a drug addict, long periods of imprisonment and quite often an early death.

As I have said earlier, most teenagers commit crime but the point is that their criminal activities are *temporary* and concentrated on the ages between 12 and 17-18 years, when they leave the "gang-age". This is a normal phenomenon and has no further consequences for their social adaptation. Most of them are never caught for their activities, but it may be presumed that some of those who are caught belong to this category. On the other hand, there obviously exists a selection process in regard to who is caught and who is not

caught: Among those who are caught we find more youngsters who either have committed more crimes than what is normal among children or who have committed more serious crimes. It is among these youngsters we can expect to find those who are running the biggest risk of continuing their lives in crime.

This has recently been confirmed in a follow-up study of boys from Stockholm who at the age of 15 had been registered for property crimes by the Stockholm police and of a representative sample of other boys.[4] They are now adult men from around 35 to 40 years of age. Some striking results are shown in Table 2. It is an amazing fact that the boys who were registered for one or two or more crimes before the age of fifteen show such big differences in adjustment in comparison with those without any registration. It is obvious that whether or not a boy is registered for property crimes and how many times he has committed such crimes has a prognostic value in regard to his later adjustment.

On the other hand it is important to notice that *most* of the boys registered have *not* become persistent criminals. The figures only indicate that there is an increase *risk* involved for those who have been caught by the police. This is further underlined in the results of the study when a battery of psychiatric, social and psychological prediction variables are included. Although these factors are reasonably well able to sort out youngsters with good or bad risks, there is a considerable amount of both positively and negatively inaccurate predictions. Among the boys with an extreme negative loading of different factors—a group which no social worker or child psychologist would believe ever could become well adjusted—there are a considerable number of persons who are today very well adjusted. And among those boys for whom the different prediction variables were quite normal in their childhood there is a handful belonging to those least adapted as adults. What this means is simply that we are not able to make any good predictions on an *individual* level and that we must be very careful in allowing such predictions to be the base for state intervention.

To recapitulate, the increase in juvenile crime in Sweden is an established fact. It raises two important problems, the first being the damage it does to victims and to society, the second being the injury it does to the maladjusted delinquents themselves in running the risk of becoming persistent offenders. Up to now the attitude of the public is one of toleration—the increased number of persons being the victims of theft, burglary, car "loans" and of destroyed property carry the harm inflicted upon them with patience as long

Table 2

	Number of registered crimes before 15 years of age			N = 287 (percentage)
	None	1 crime	2 or more crimes	
Sentenced to prison at the age of 25 to 29 years	4	14	26	
Sentenced to prison at the age of 30 to 34 years	4	12	21	
Dead before 1984	1	8	11	
Intravenous drug abuse after 25 years of age	1	7	15	

as the insurance covers the heavier losses. There is a fairly general agreement that most of the offences can be looked upon as children's play and not much to bother about. But on the other hand there is also a common understanding that it is necessary for the state to intervene in those cases where the juvenile offender is running the risk of becoming a maladjusted adult. This is the duty of the social and not the criminal justice authorities which are in a difficult position since their possibilities in making the right prognoses in order to single out those youngsters who run such risks are fairly limited.

The Juvenile Justice Process

The Swedish criminal justice system is built upon *the principle of legality*, which in practice means that a police officer has a duty to intervene and report every offence coming to her/his knowledge, and that the prosecutor shall prosecute whenever he believes that he has such evidence against a suspect that it will lead to a conviction.

However, by necessity there are *exceptions to this principle.* A police officer may warn a lawbreaker without writing a formal report if the transgression is a minor and excusable one and if the law is only stating fines as the maximum penalty. This may even be done by a superior of the police officer after a report has been written. Furthermore, for breach of (mostly) traffic regulations a policeman may issue a "ticket"—a summary fine—on the spot. We do not know the number of warnings, but we know how many tickets have been issued—but, unfortunately the statistics do not include the age of the offenders and therefore this information is useless for the present purpose.

In all other cases, such as those involving offences against the Penal Code, we have more detailed information which makes it possible to single out the juveniles.

An outline of the authorities of the Juvenile Justice System will be found in Fig. 2.

Children under the age of 15 years do not range within the criminal justice system. Such cases are sent from the police to the social board, which has the sole jurisdiction in these cases.

Cases against juveniles in the age group 15 to 18 years are handled by the prosecutor, who within the limit of law and practice has different options.

1) The prosecutor may decide to close the case with a warning if "in case of a court trial the sentence would only be fines and that there is no public interest in the trial of the suspect" (PB 20:7.1). This is a general rule which applies to all suspects above the age of 15 years.

2) The prosecutor may use a similar rule stated in a law applicable only to persons 15-18 years old (1965:167).

3) The prosecutor can issue a writ of "summary penalty" if the offence is such that in the case of a court trial it would only lead to a fine. The writ states the crime and a certain number of day fines. If this document is signed by the suspect, it will have the same effect as a court sentence. "Summary penalty" may be used for all age groups above 15 years.

4) In more serious cases the prosecutor will send the case to the social board which will make an investigation of the social situation of the juvenile. The board will then, if it thinks it to be necessary, take measures according to a "law on special care of young persons" (1980:621). Then the case (with the social investigation and the information concerning the measures taken) is referred back to the prosecutor who will decide whether these measures are sufficient. If the prosecutor thinks so he closes the case by an "omission of prosecution". However, if the social board decides to do nothing or if the measures taken according to the prosecutor are not sufficient, the prosecutor only has the option to charge the young offender before the criminal court.

5) The prosecutor may also, if there are special reasons for it (e.g. unsolved questions of evidence) charge the young person directly before the criminal court without having the case referred to the social board.

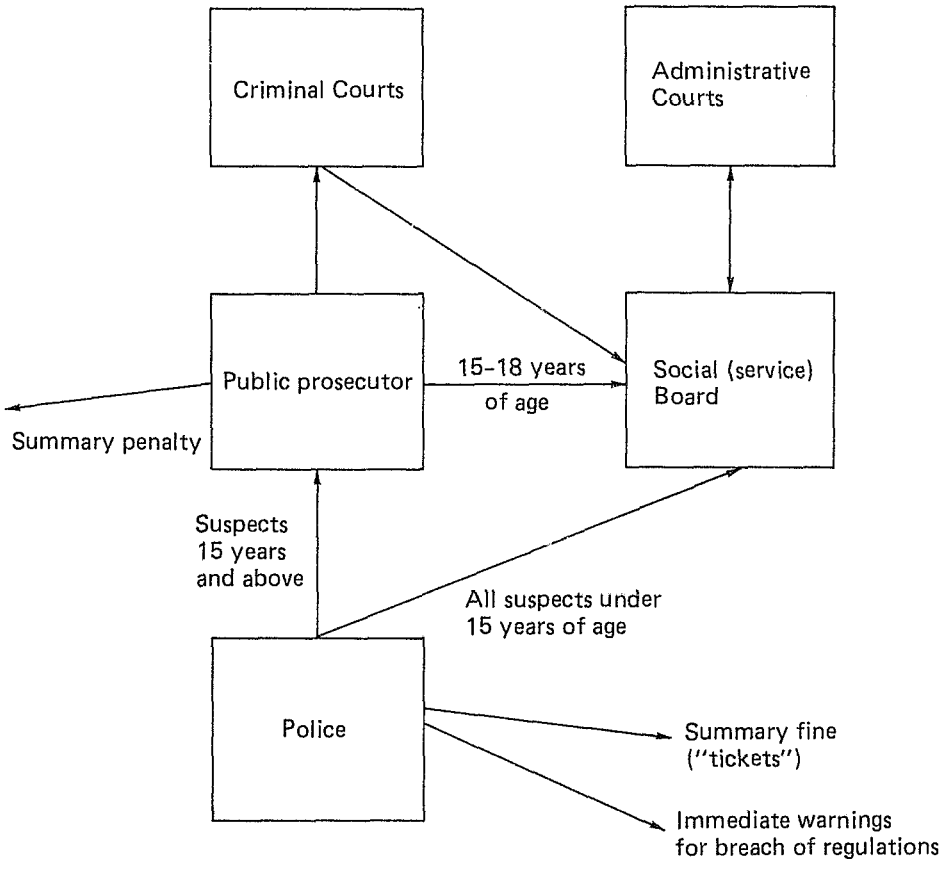
6) The criminal court has, after having found the young offender guilty, different options for sentencing. It may sentence the person to *imprisonment*, but there must be "extraordinary reasons" for using this punishment against a 15 to 18 years old person (BrB, 26:4). Instead it may sentence the offender to "care by the social board". Usually a representative of the board will be present in court and make a declaration as to what the board intends to do if the court decides on such a measure.

However, the court may be use *probation* (within the Prison and Parole System), give a *suspended sentence* or just mete out *day fines*, measures which may be used for all age-groups.

As can be understood from this resumé of the system, the *trivial* cases are handled solely by the prosecutor who decides to give a "summary penalty" or to omit prosecution with a warning. The more serious cases, however, will—either directly by the prosecutor or via a sentence by the criminal court—be a matter for the social board.

The social boards are the lowest authorities within the social welfare system. They have—as already mentioned—a general duty to serve all people in need of help and service within the local community. That part of their work which involves juvenile delinquents is only one tiny but difficult area of their duties. The difference between the work done by the criminal justice system and the social welfare system lies in the *aim* of the respective systems. *While the aim of the criminal justice system in principle is to get conformity to the*

Fig. 2: Juvenile Justice System of Sweden



laws of the society by using punishment or by threatening with punishment or other similar unpleasant measures, the only aim of the social welfare system is to care for its clients and the measures used must only be for the benefit of the client.

The leading rule of the welfare law is that there should be as *little coercion* as possible towards the clients, something which is attained by means of *agreements* between the social board and the client. If the board considers some measures to be necessary for a better adjustment of a young person the first step will be to discuss the matter with the juvenile and his/her parents and to get them to agree to the arrangements. The law specifically states that when a juvenile has reached the age of 15 years he or she must not only participate in such a decision but actually also concur with it.

It can be assumed that most of the cases referred to the social boards by the criminal justice system are taken care of in this way. If the board suggests a change of school, a supervisor, some psychological treatment, a placement for some time in another family or similar arrangements the parents and the child will in most cases accept the intervention and be thankful for it.

However, sometimes it is not possible to come to an agreement—or the agreed measures do not have the expected effects. In such cases the social board may decide that there is a need for coercive methods. The law (1980:621) states the following requirement for this:

> "Care should be given to a child or a juvenile if _____ the child or the juvenile exposes his/her health and development to serious danger through drug misuse, criminal activity or other similar behaviour."

If the board considers a child or a young person under the age of 18 (or under certain circumstances 20) years of age to fall under this rule, it has to apply to the *local administrative court* in order to be allowed to take the juvenile in custody. If there is an immediate danger involved in waiting for the decision of the court, such an action may be ordered by the social board or by its chairman; in that case the social board shall apply for a confirmation of its decision to the court within a week.

The court shall within a week after it has received the application hold a formal hearing in order to decide the matter. The juvenile or the child and his/her parents (guardians) shall be present and may be represented by council. (If they are not satisfied with the sentence they may appeal to the Administrative Court of Appeal and finally to the Supreme Court.)

The consequence of making the child or juvenile a "case of the social board" is that he/she at first always will be placed outside his/her home. The placement may start in a foster home or in an institution. During the time of placement the social workers will make a plan for restoration to the family and the child will—as soon as possible—join the family again. Of the types of placements used, foster homes are favoured today. Institutionalization has proved to be a failure and is avoided as far as possible. I may add that when I talk about "institutions" for children and young persons in Sweden it is not the question of big, gloomy, fenced-in places, where a large number of juveniles are kept. The Swedish institutions are small, situated in the countryside, built according to the "cottage" model and they have capacities to take care of up to 30 youngsters with about five in each cottage. Within strict limits prescribed in the law the institutions have the authority to use coercion with the aim of keeping order and avoiding absconding. There are about 15 institutions of this type in the country.

The Actual Use of Different Measures

Unfortunately, there is a gap between the criminal justice and the social welfare systems in statistical information. We are therefore unable to follow up in the social welfare statistics what the social boards decide to do in those cases where children and juveniles are referred to them by the police, the prosecutors and the courts. Furthermore we lack any reliable data

about the number of children suspected of crimes and the disposition of such cases. The following material will restrict itself to the age-groups *15 to 17 years (inclusive).*

In the year 1984 a total number of *17,821 persons* in this age-group were found guilty of crimes. (In addition to this number quite a few persons were given immediate warnings or tickets for traffic violations but the statistics are not divided

Table 3

	Number	Percent
Crimes against the person	1,017	5.7
Crimes against property of which:	8,936	50.1
theft	(5,963)	(33.5)
motor vehicle "theft"	(845)	(4.7)
destruction of property	(825)	(4.6)
Crimes against peace and order	478	2.7
Serious traffic crimes (e.g. drunken driving)	2,279	12.8
Less serious traffic crimes	4,097	23.0
Crimes against the Narcotics Drug Act	132	0.7
Other violations	882	4.9
Total	17,821	100.0

The *decisions* (incl. sentences) in these cases were the following:

Table 4

	Number
1. Decisions by the prosecutor	
a) Decision not to prosecute according to the law of 1964 on young offenders (mostly referrals to the social board)	6,169[1] [2]
b) Decisions not to prosecute according to the Criminal Procedure Code (less serious offences)	1,076
c) "Summary penalty" (fines)	7,934
2. Sentences by the criminal courts	
a) Imprisonment	20
b) Closed psychiatric care	7
c) Probation	132
d) Suspended sentence	165
e) Referral to social boards	503[2]
f) Fines	1,779
g) Other	36

[1]: The figure includes 294 decisions not to prosecute juveniles who had committed crimes while placed in social welfare institutions.

[2]: The total number of referrals to the social boards was (max) 6,169 + 503. Of these approximately 150 were placed *in institutions* by the welfare boards *for the first time.* Unfortunately it is not possible to know how many of the 17,821 cases involved juveniles "cared for" by social boards but *not* placed in institutions.

Dividing this information according to *the seriousness of the measures taken,* we get Table 5.

Table 5

	Number	Percent
1. Incarceration		
a) Imprisonment	20	0.1
b) Psychiatric care	7	0.0
c) Social institutions (appr. 294 + 150)	444	2.5
2. Other measures		
a) Within the criminal law system	1,409	7.9
b) Within the social welfare system	6,228	34.9
3. Fines	9,713	54.5
Total	17,821	100.0

by age).

Table 3 gives the main offences which the juveniles committed. As can be seen from Table 5 incarceration—in prison as well as in youth institutions—is seldom used in Sweden. The number of young persons sentenced to ordinary imprisonment was only 20, half of which got sentences of less than 3 months, 8 between 4 months and 1 year and 2 between 1 and 4 years. As for incarceration in institutions within the social welfare system 150 *new* cases were sent to such institutions. The rest, 294 cases, were decisions concerning juveniles who already were placed in such institutions but who had committed crimes and now were returned to institutional care.

Final Remarks

The big increase in crime since the 1920s is undoubtedly to a large extent due to an increased criminal activity among teenagers. It could have been expected that the answer to this challenge to society should have been a more extensive use of the traditional measures of punishment within the criminal justice system. But due to the influence of the ideology of the welfare state model this did not happen. When in the 1950s and 60s the juvenile delinquency problem came into focus in the general debate, the ideology had just as much support from responsible politicians and others as the more traditional punishment-oriented view had.

Recent laws (such as the Penal Code of 1962, the Law on Social Services of 1980 and the Act on Special Care for Young Offenders) represent a kind of compromise between the two extreme standpoints: Punishment or care and treatment. As can be seen from the figures presented above, the system functions in such a way that *both* these views are involved. Those delinquents who are under 15 years of age are in the hands of the welfare system, but those who are between 15 and 18 years of age are primarily handled by the traditional criminal justice system. The important authority in deciding by which system each individual shall be handled is the prosecutor. According to the laws instructing the prosecutor in this matter it is his duty to decide in favour of a referral to the social board in those cases where the crime itself together with the information in the social report indicate that there is a *need* for the juvenile to be given such help and treatment as the social services can offer. If the juvenile has committed a very serious crime or if he/she has committed a series of minor crimes, there

is a presumption in favour of a referral to social welfare. The ordinary types of punishment will then be used—as can be seen from the figures in section 4—mainly for minor offences and mostly for first-time offenders.

At the same time it is interesting to notice that the social boards are faced with a dilemma. The basic ideology behind the laws governing their activity is that they shall avoid using coercion and instead come to an agreement with their clients concerning what measures shall be taken. But in cases involving juveniles with serious, often repeated criminality and other types of misbehaviour, they are actually forced to use coercion and to use institutionalization against the will of the juvenile and his/her parents. If they do not use it—at least occasionally—they know that there will always be a risk that the ordinary criminal justice system, represented by the prosecutor, will charge the young offender before a criminal court and will argue for an ordinary punishment. (So far, however, this does not represent an immediate threat to the social welfare authority, since in 1984 only 20 juveniles were sentenced to imprisonment.)

Lastly, I would like to recall the big problem involved in making predictions in individual cases. For the ordinary criminal justice system where punishments are meted out more on the basis of a general deterrent ideology, this raises less of a problem than it does for the social boards. Their ideology forces them to make predictions in individual cases and to plan their measures accordingly, but they also know that these predictions may be wrong in half of the cases.

NOTES

1. Depending upon the political structure of the society these two elements may or may not be in conflict. It may be that a certain political regime refuses to accept—or at least to make official—that juvenile delinquency actually *is* a problem because to admit this would mean that the political ideology of the regime put into actual use has been a failure. It is a typical feature of the democratic world that official crime statistics are gathered and made available in print to everyone to study and that the authorities encourage critical criminological research to be done. It is just as typical, however, for the totalitarian states that their criminal statistics are kept secret and that their criminologists have restricted access to the files belonging to the criminal justice system.
2. In common-law countries this is still a problem. The age of criminal responsibility may be as low as 7 or 10 (England) but between that age and 14 the judge will have to make a test of the mental and moral development of the child.
3. The Daily Chronicle May 28, 1897.
4. Sarnecki, Jerzy: Predicting social adjustment, The National Council for Crime Prevention, Stockholm 1985.

PART 2: PARTICIPANTS' PAPERS

Combating Juvenile Delinquency: Need for an Integrated Approach

*by Renu Sharma**

Somehow the fact that ultimately everything depends upon the human factor gets rather lost in our thinking of plans and schemes of National Development, in terms of factories, machines, and general schemes. It is very well important that we must have them but ultimately, of course, it is the human being that counts; and if the human being counts well he counts much more as a child than as a grownup. – Pandit Jawaharlal Nehru, First Prime Minister of India

Introduction

One cannot forget that today's child is tomorrow's citizen—a person who will reflect the social norms, culture and values of the society, of which he is part and parcel. The Constitution of India, while guaranteeing equality to all its citizens, permits special legislation for children. The provision is an exception to the rule against discrimination on grounds of religion, race, caste, sex or place of birth. The Constitution envisages the goal of a Welfare State. Article 38 states that "the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life."

The National Child Welfare Policy has recognized children as the greatest national asset, whose welfare is paramount. In any nation, the state of children is an index of its social and economic well-being. Today in India, there is a shift of emphasis from crime to the criminal. Special legislation for children and weaker sections of our society has been the result of our Constitutional sanction and humanitarian philosophy entering the Criminal Justice Administration. The main focus of the social legislation dealing with young offenders neglected, uncontrolled and socially/physically handicapped children is on what is best for the child rather than on the protection of the society. The emphasis is not on the acts done by the child but the circumstances that were inducive to the cause of crime or delinquent behaviour.

According to the 1981 Census, out of the population of 685,184,692 there were approximately 355 million persons below the age of twenty-one. From the figures compiled by the Bureau of Police Research and Development, Ministry of Home Affairs Delhi, of the crime statistics on a national basis, a trend that has come to be focused on is the increasing involvement of the juveniles in crime. The data that has been collected of the cognizable crimes apprehended by the Police show a continuous increase of crime by juveniles from 2.4 per cent to 4.4 per cent during 1971 to 1981. Similarly, the volume of juvenile crime per *lakh* of population increased from 4.9 in 1971 to 8.9 in 1981.

Crime Pattern

The total of 61,019 cognizable crimes were committed under the Indian Penal Code (Codified Penal Law of India) by the juveniles and youthful offenders during 1981 against 55,129 in 1980; thus, record-

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ing an increase of 10.7 per cent in 1981 over 1980 (see Annex 1).

No doubt, crime statistics cannot be a totally accurate reflection of the true crime position. They are, however, a fairly accurate record of reported crimes, and these statistics show the trend of crime in society. Legally, any act prohibited under IPC or Special Laws relating to arms, drugs, excise, gambling, prohibition when committed by a child between seven and sixteen and in some states of India up to the age of twenty years is termed juvenile crime. The break-up of juvenile crime under Indian Penal Code for the important types of crime revealed that the highest number of crimes committed by the juveniles during 1981 was under the heading "Thefts followed by riots and burglary." These three together accounted for 56.1 per cent of the total crime committed by the juveniles. The relevant statistics are presented in Annex II.

A total of 190,567 juveniles and youthful offenders were arrested during 1981 out of which 43.2 per cent were arrested for committing crimes under IPC. Under the Local and Special Laws Prohibition Act, 25,654 juveniles were arrested and 22,429 were arrested under the Gambling Act. Girls were arrested mainly under the Prohibition Act and Suppression of Immoral Traffic Act. From 1971 to 1977, there was a gradual increase in the involvement of girls in juvenile delinquency from 5.3 to 7 per cent. In 1978, it came down to 6 per cent. It further declined to 5.7 per cent in 1979, 5 per cent in 1980 and 4.6 per cent in 1981.

From the socio-economic background of the juvenile delinquents who were apprehended in 1981, the consistent factors were that the majority of the delinquents were living with their parents and they belonged to the lower income group. Out of the 190,506 apprehended juveniles, 84.2 per cent were first offenders, 46.6 per cent were illiterate and only 6.8 per cent were matric and above; 61,251 were below primary, 27,488 were above primary and below matric.

From the statistics given above, one can have a fairly good idea about the crime trends amongst the young offenders and the factors mostly responsible for such deviated behaviour. Human behaviour is influenced by certain factors and is the result of certain motivations, and an effort can be made to eliminate such factors which lead children to commit offences.

Delinquency is mostly a rebellion against the social conditions which deny the individual his basic rights and the satisfaction of his needs. It is a social problem and like every social phenomenon, there is no single factor which alone can be said to be responsible for the causation of juvenile delinquency.

Causes Leading to Juvenile and Delinquent Behaviour

Population Increase

The present population of India according to the 1981 Census has been estimated as 685,184,692. It is estimated that we will have a population of 801.2 millions by 1991. This rapid increase is bound to have its own implications for the crime scenario giving rise to social tensions and delinquency. From the pattern of crime, with the increase of population, poverty, illiteracy, and unemployment, are some of the factors for juvenile crime.

Break-Up of the Traditional Family System

Another important factor in the increase of juvenile crime is the break-up of the traditional family system. With the advancement of education, rapid growth of industrialization, urbanization and modernization and at times socio-economic factors, more families are leaving their traditional professions like agriculture, and crafts and moving to urban industrial centres in search of gainful occupation.

These families live under adverse circumstances in urban slums and unplanned congested localities deprived of basic amenities of life which has an adverse effect on the growing children. In rural areas, traditionally the child used to take up the occupation of his family but now a

new trend has set in where more and more young people flock to towns to make a livelihood or easy money and have a taste of city glamour, with the result that family bonds are becoming weak.

Economic Hardships

Economic hardships are a source of frustration for all members of the family, more so the children. Due to the influx of families from rural to urban areas, many a time children have to start working from an early age to contribute to the family mint. Once he goes out to work, he is exposed to all the hazards of adult life. Due to lack of supervision, the child is easily attracted towards vices and anti-social behaviour. He feels frustrated and becomes aggressive and revolts against the set order.

Social and economic stresses are resulting in parental neglect, family discord and tensions, and they also are an important factor to push the child towards deviate/delinquent behaviour. Over-indulgence and harsh treatment are also counter productive.

Criminal Families or Tribes

There are certain tribes in India for whom crime is still the way of life and source of livelihood. Tribes like the Bampatas, Kaikadis, Kanjars and Pardhis have no doubt been denotified after Independence, but still they are continuing to commit crime and their offspring have a great likelihood of being delinquents.

Change in Social Norms and Values

Contrary to what is taught at home and school, at the level of social interaction one sees dishonesty and that crime pays today. A man's worth is being judged on the basis of possession of material goods and not his goodness. False values in life, stress of violence in mass media like cinema and television are the misguiding forces which perpetuate juvenile behaviour amongst the youth.

Juvenile Justice System

The juvenile justice system in India is based on certain basic assumptions that the young offender is not considered to be criminally responsible for his actions and he should not be subjected to the same laws as adults. Children who are delinquent should receive separate treatment for their rehabilitation instead of the traditional penal approach to offenders, of "punishment." The child is treated as the ward of the State who has deviated from set norms, who has to be guided firmly, with love and patience, to a realization of the wrongness of his actions. The juvenile in conflict with law is subjected to the process of education, control and constraint under a legal system based on principles of social defence so as to protect him from criminal labelling on the one hand, and to save him from the bad influence of the adult criminal on the other.

All the twenty-two States of India and nine Union territories except Nagaland have enacted Children Acts providing for custody, trial and treatment of juvenile offenders and protection, care and maintenance, welfare, education and rehabilitation of neglected/uncontrolled and victimized children. Presently, out of the 424 districts of the country, 349 districts are covered by the Children Acts.

A comprehensive procedure for apprehension, remand, observation, disposition, institutional and non-institutional care, release on licence and after-care is laid down in the Children Acts. These enactments include specialized handling on the part of the police, a separate trial, confidentiality in proceedings of juvenile courts, and protection of the basic rights of the child. The stress is not on the offence committed but on the offender. The Court takes into consideration the age, sex, socio-economic background, and antecedents of the child, while passing any orders.

The setting of the juvenile court is informal, where the child is expected to open up his inner complexes which led him to deviate from the set social norms of behaviour. The special significance of the juvenile courts lies in the social investigation conducted with the help of the probation officer, superintendent of the remand/observation home, and family

background of the child. The overall approach is to help the child. The gravity of the offence has no correlation with the treatment plan prescribed by the juvenile courts under the Acts. No delinquent is sentenced to death or life imprisonment, or committed to jail in default of payment of fine or failure to furnish security.

The dispositional alternatives open to the Children Courts are:

1. Children may be allowed to go home after advice or admonition.
2. The child may be released on probation of good conduct in cases where parent/guardian or other fit person execute a bond, with or without supervision for a specific period by a probation officer.
3. Child may be institutionalized and sent to a special/approved school.
4. He may be ordered to pay a fine if he is over 14 years of age and earning.

No disability is attached to conviction under the Children Acts.

Certain conditions have been laid down for the police who apprehend or escort the juveniles to the Children Courts. They have to appear in the Court in "mufti." Children are not to be handcuffed and within twenty-four hours of arrest the child has to be brought before the juvenile court magistrate. It is the duty of the police officer to inform the parents and the local probation officer immediately about the child's arrest.

The juvenile court is presided over generally by a bench of three persons, a judicial magistrate and two social workers, one of whom is a woman.

Appraisal of the System

The Children Acts do not have an effective diversionary system, where certain cases of juvenile delinquents can be effectively dealt with by the police and the probation officer at the local level without bringing the case for trial to the Courts. Besides, an average policeman has many jobs to perform and he is not specifically trained to deal with children. Police can be of help not only at during pre-trial period but also in after-care services. Systematic training courses in correctional work are necessary, and they will go a long way to introduce special police task forces to deal with young offenders, neglected/homeless and victimized children effectively.

Along with the family, schools can play a vital role in juvenile crime control. Schooling must be made compulsory up to a particular level. Besides imparting basic education, an effort must be made to inculcate social and moral values in the child. A child when he grows up is what society tells him he is and fashions him to be.

By making maximum use of probation services, crime can be controlled effectively. Besides making provisions in the Children Acts, the government has enacted The Probation of Offenders's Act to deal with young offenders.

Probation officers not only help and aid the Court in providing case histories, they also supervise the child under their supervision and help him in his reassimilation back into society.

The crime data of the juveniles apprehended and tried by the Courts during 1981 show that probation and supervision have been given insufficient priority. In deciding a case, the probation officer's report has not been made compulsory and in a large number of cases probation is awarded without supervision of the probation officer. Of the 137,874 juveniles sent to Courts in 1981, 57.1 per cent of these cases remained pending and out of the disposed of cases only 4.1 per cent were placed on probation.

Juvenile Guidance Bureaux should be set up at district level to provide guidance, organized recreation, educational activities, nutrition, medical and, psychiatric and mental health, and which can, besides improving the physical and mental health of the children, channel their energies into constructive lines through organized recreation. All efforts are being made to improve conditions in the community to assure for everyone his rights and dignity as a human being. But as long as children are exploited by anti-social elements and the social

environment is conducive to delinquent behaviour, the support of law to bring them back to the mainstream of social life cannot be undermined. Along with this, the promotion of community awareness about the healthy development of the child and a happy family life is also important. Special schemes for the welfare of the children with the families have been started in the country. These programmes, like the Integrated Child Development Service, present a model of multi-sectoral and inter-disciplinary planning for child welfare. By the end of 1984, there were 822 such projects where children in the age group of 0-6 and expectant mothers are provided a package of services like health-care, nutrition, and immunization. Day-care centres for working and ailing mothers are being opened. During 1983-84, 7,683 creches were catering to 192,075 children. The work of protection and welfare of destitute and delinquent children is being done through orphanages, remand homes, children's homes, and special schools. These institutions take up the responsibility of care, observation, training and treatment of the children.

Recognizing the importance of non-institutional measures, adoption, foster-homes, S.O.S. Family Homes and Children's Village are favoured, while dealing with destitute and neglected children. But such institutions are still in their infancy due to lack of participation by voluntary organizations and the community.

As long as socio-economic factors conducive to crime are there, institutionalization with close supervision may be the only answer in a number of cases. Presently, institutional facilities are limited and the courts are also using these provisions scantily. Out of the disposed-of cases in 1981, only 1.4 per cent were sent to special schools and institutions.

From the data available for 1982-83, there were 219 remand/observation homes, 90 approved certified schools, 24 children's homes, 119 fit-persons institutions and 39 after-care institutions with a total capacity of 35,117 under the Children Acts.

After-care organizations are an extension of the institutional services rendered to a child. The change from institutional life to full freedom is drastic and requires major re-adjustments. Involvement of voluntary organizations can prove most beneficial and the young delinquents can be effectively rehabilitated in the community.

Conclusion

Having identified some of the major causes of juvenile delinquency, one has a clear indication of the magnitude of the problem and plans and programmes that have been formulated to deal with it in the most effective manner. The Constitution of India envisages India as a welfare state committed to social justice and development of human resources. Children get top priority in any plan of economic development; there are over 250 legislative enactments dealing with children, but still juvenile crime is on the increase. Juvenile delinquency being a social problem, no amount of governmental policy for social control or correction methods can prove as effective as community participation. The family, being the nucleus of the society, has a vital role to play. The child's emotional, physical and mental needs can be satisfied best at home. As mentioned above, no single factor can be said to be the root cause of delinquency. Truancy, vagrancy and delinquency are due to neglect of the child in early stages of childhood. Thus as a preventive measure, delinquency must be curbed at the initial stages. The absence of a proper atmosphere at home which is essential for the overall development of the child leads to problematic behaviour in children. In India, in the case of the inability of the family to take care of a child, the joint family used to provide for the children. But with the weakening of this social institution, urbanization, and socio-economic factors, juvenile delinquency is on the increase. Constant efforts are being made to provide the children opportunities for their development and adjustment in the society as normal citizens. But any child development and welfare programme to be effec-

tive has to be based on the needs of the community. Each delinquent child has to be studied in relation to his own local situation. The home, school, neighbourhood, and leisure time influence the individual in shaping his personality. Efforts are being made not only to tackle the child but also his family surroundings, his school and in fact, the whole community which effects his upbringing. Non-institutional services, children's clubs, boys' clubs or contact clubs, and appointment of social workers who after studying the case history of children advise the child's family of the best mode to bring up children in a healthy atmosphere, are being provided. Their aim is to wean away the prospective delinquents, vagrants and beggars at an early stage by diagnosing them and offering services for recreation, education, counselling, and crafts to children and their families.

To be successful, a plan for prevention, control and rehabilitation of the juvenile delinquents requires the close co-operation of all the agencies involved in child welfare, namely, home, school, voluntary social-work agencies, police, courts, and the correctional institutions. The community should actively involve itself in creating situations conducive to the healthy growth and development of juveniles. The voluntary child welfare institutions can play a pioneering role in promoting child welfare. They can bring in the required involvement and ultimate rehabilitation of children in the society. Many States like Gujarat and Maharashtra are associating voluntary organizations and the public in the work under the Children Acts. There is a lot of scope in utilizing the public as voluntary probation officers, fit-person institutions, advisory bodies and in after-care and rehabilitation work. Pandit Nehru recognized the importance of "the development of team spirit in national work and the sense of participation of the people in great undertakings."

India is striving for a systematic and scientific program for the prevention and treatment of juvenile delinquents and neglected/uncontrolled children. There is an increasing concern for the care and protection of the younger generation by the government and non-government agencies to eliminate factors conducive to juvenile delinquency. Most of the Children Acts, especially the Children Act of 1960, have incorporated the provisions of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice and appropriate implementation machinery is being formulated to make them effective.

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Annex I

Total Cognizable Crime under IPC, Juvenile Crime under IPC, Proportion of Juvenile Crime to Total Crime and Volume of Juvenile Crime per One *Lakh* of Population

Year	Population in millions (estimated mid-year)	Total cognizable crime cases under IPC	Total juvenile crime cases under IPC	Percentage of juvenile crime to total cognizable crime	Volume of juvenile crime per *lakh* of population
1971	551.2	952,581	26,846	2.8	4.9
1975	600.8	1,160,520	39,888	3.4	6.6
1976	613.3	1,093,897	37,015	3.4	6.0
1977	625.8	1,267,004	44,008	3.5	7.0
1978	638.4	1,344,968	44.284	3.3	6.9
1979	651.0	1,336,168	46,351	3.5	7.4
1980	663.6	1,368,529	55,129	4.0	8.3
1981	684.0	1,385,757	61,019	4.4	8.9

Annex II

Juvenile Deqlinquency

Types of Crime	Number of cases reported during					Quin-quennial average 1976–80	Cases reported during the year 1981	Change in 1981 over	
	1976	1977	1978	1979	1980			Quin-quennial average	1980
Total cognizable crime	37,015	44,008	44,284	46,351	55,129	45,357	61,019	+ 34.5	+ 10.7
Murder	586	864	718	812	1,038	804	1,228	+ 52.7	+ 18.3
Kidnapping and abduction	376	329	597	493	482	455	527	+ 15.8	+ 9.3
Dacoity	222	285	288	359	455	322	613	+ 90.4	+ 34.7
Robbery	514	630	741	743	941	714	1,057	+ 48.0	+ 12.3
Burglary	5,720	6,549	6,218	6,275	6,434	6,239	6,720	+ 7.7	+ 4.4
Thefts	14,444	16,069	14,148	15,376	17,093	15,246	17,516	+ 13,5	+ 2.5
Riots	2,871	4,903	5.049	6.195	8.384	5,480	9.979	+ 82.1	+ 19.0
Criminal breach of trust	195	265	244	224	287	243	272	+ 11.9	– 5.2
Cheating	260	219	292	259	292	264	285	+ 8.0	– 2.4
Counterfeiting	3	–	3	2	2	2	15	+ 650.0	+ 650.0
Miscellaneous	11,824	13,895	15,986	15,613	19,721	15,408	22,807	+ 48.0	+ 15.6

An Outline of the Existing Juvenile Justice System in Thailand

by Trakul Winitnaiyapak*

Introduction

In Thailand the rising trends of crime in both urban and rural settings of the contemporary Thai society pose a serious threat to the safety of life, property and liberty of the Thai people and may to a certain degree inhibit progressive development of the country. The issue of how to reduce the crime rate to a satisfactory level is therefore a matter of great concern to all Thai criminal justice agencies. In order to deal with crime problems more effectively, we must realize that youth comprises a large segment of contemporary society and will be our future citizens and leaders of society. To have good leaders, every effort must be made for the rising generation, especially juvenile delinquents, to help them not to be adult criminals in the future but to be the good and strong pillars of tomorrow. This should be done urgently and properly in dealing with crime problems more effectively.

We, the Thai criminal justice agencies, are happy to note that the Thai Government is planning to adopt a number of crime prevention and criminal justice policies. These policies are to be manifested and set forth in the 6th National Plan for Economic and Social Development for the period of 1987-1991. Among other things, top priority will be given to provision for the family and the educational system with a view to strengthening the family and to developing the educational system for the needs of youth. These, when implemented, will help to prevent crime committed either by adults or youths on a long-term basis. However, in the author's opinion, further consideration should be given to the administration of the Thai juvenile justice system itself whether the existing juvenile procedure is satisfactorily meeting the goal of justice or not.

Historical Background

The historical measures of juvenile delinquency had been enforced in Thailand at least two hundred years ago as they appeared in The Law of Three Seals Code in the reign of King Rama the First of the Chakri Dynasty, and they were gradually changed to suit the changing society and scattered in various Acts. The first legislation in Thailand pertaining to this context was The Criminal Act B.E. 2452 (1919) which prescribed several alternative measures to be imposed on juvenile delinquents. Then came the Primary Education Act of 1935 and The Act on Instruction and Training of Certain Classes of Children of 1936.

In 1951, the first two modern laws were enacted, namely The Act Instituting the Juvenile Court B.E. 2494 (1951) and The Juvenile Court Procedure Act B.E. 2494 (1951). One year after, the Central Juvenile Court and the Observation and Protection Centre were set up by virtue of the said laws. With them came various kinds of treatments including the handling of juvenile cases, roles and functions of juvenile courts, police and public prosecutors, etc.

It is to be noted here that due to the lack of funds and expertise, even though the said Acts have been operating for more than thirty years, only six juvenile courts in six out of seventy-three provinces exist. Thus, in the provinces where there is no juvenile court, a juvenile trial will be held as though the juvenile were an adult. This is the question of fair and just trial for the juvenile offenders in Thailand. This needs to be considered without any delay by all authorities concerned.

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Act Instituting the Juvenile Court of 1951 and the Juvenile Court Procedure Act of 1951

Under the two Acts above, the concept of *parens patriae* was adopted as well as the legal set-up of the juvenile court which relies on the assumption that the juvenile offender is not a criminal but is the one who needs assistance and understanding. Thus, the provisions of the two Acts require that there be a thorough study of the personality and environment of the juvenile offender, including a physical, mental and emotional examination, conducted at the same time as the investigation and inquiry done by the police. The information regarding the juvenile offender derived from this study will assist the concerned authorities to dispose of the case and to determine the kind of treatment with the aim of rehabilitating him to good citizenship, not to punish him as a criminal. In addition there also will be a supervision and after-care programme for those released who will be assisted in getting themselves adjusted to the community.

Outline of the Existing Juvenile Justice System Age of Criminal Responsibility

According to the Thai Penal Code of 1975, the age of criminal responsibility is seven in Thailand. A young person over seven years but not exceeding fourteen years assumes liability but is subject to lenient disposal by the court in various manners, e.g., admonition, being put under bond or probation, or being placed under the care or attention of an appropriate person or institution. And whenever a person over fourteen years but not over seventeen years of age commits an offence, the court (not the juvenile court) will take into account the sense of responsibility and all other things concerning him before deciding as to whether it is appropriate to convict him. If the court does not deem it appropriate to convict him, it may also impose such lenient measures as mentioned before.

The above measures are the system of treating juvenile offenders where no juvenile court exists. In practice, a number of convicted persons are sent to an existing training school of the Observation and Protection Centre after the case has been tried by the ordinary provincial court.

When the case is under the jurisdiction of the juvenile court then the Act Instituting Juvenile Courts of 1951 will be put in motion. It is described in such Act that *dek* or *child* means the person who has reached the age of seven years or upwards but not exceeding fourteen years and *yaowachon* or *young person* means the person who has reached the age of fourteen years or upward, but not exceeding eighteen years, and excluding any person who has become *sui juris* by marriage. In other words, the juvenile court has the jurisdiction in any criminal case where a juvenile whose age is over seven but does not exceed eighteen is alleged to have committed what the Thai laws have provided to be an offence.

Investigation

In principle, police officers can arrest a juvenile when he has committed an offence on the spot or upon the request made on the spot by the injured party or on a warrant for arrest under the Criminal Procedure Code. The officer arresting must give notice of such arrest to the Director of the Observation and Protection Centre under whose jurisdiction the arrested juvenile comes, as well as to his parents, guardian or the person with whom he is residing. After the arrested juvenile has been questioned by the inquiry official, the Director of the said Centre may take the juvenile with the purpose of keeping him in custody at the Centre or may release him temporarily by entrusting him to the care of his parents, guardian or the person with whom he is residing with or without bond or with bond and security, or may entrust him to the care of any person or institution deemed appropriate. In the case where an inquiry official has to keep the arrested juvenile in custody before the Director of the Centre comes to take him within a

period not exceeding twenty-four hours, the juvenile may not, if possible, be kept in custody with adult offenders nor may he be kept in custody in the room used for detaining alleged adult offenders (Juvenile Court Procedure Act, Section 23-25).

Upon receiving notice of the arrest, the Director of the Observation and Protection Centre will proceed as follows:

1) make an order to the probation officers to search for the facts and to collect information on the age, biography, conduct, intelligence, education, health, mentality, character, occupation and social status of the arrested juvenile as well as of his parents, guardian and person with whom he resides, including his environment and criminal motive, and

2) make a report on the facts and information as said above and stating his opinion on the motive of the act which the law has provided to be an offence and transmitting such report and opinion to the inquiry official or public prosecutor or to the court whichever is in charge of the case at the time (Juvenile Court Procedure Act, Section 26).

Practically speaking, there is another main criterion pertaining to the Observation and Protection Centre's duties that deserves mention—the Remand Home. The Remand Home is a place in which observation of the behaviour of an arrested juvenile is executed, and a report on the result of the observation will be sent to the probation officer by its superintendent. At the same time, the Remand Home will see to it that the juvenile gets proper education or vocational training as well as preliminary treatment in order to correct his delinquent behaviour as deemed appropriate in his short stay at the Remand Home. After the trial, the Remand Home either transfers the juvenile to a training school or to an institution or else releases him according to the order of the court.

Speaking of the role of inquiry police officers during the pre-hearing stage, there is no special juvenile section for police officers to inquire about the arrested juveniles. The police officers who deal with juveniles are the ones who work regularly on adult cases without any special instruction or training. Moreover, there is an official guideline providing that "In general, the inquiry officer is not obliged to collect evidences in favour of the accused, his main duty is to find and collect the evidences to support the prosecution of the accused and not to determine his guilt or innocence" (Interior Ministerial Regulation No.1/2498 Concerning Police Investigating Practices, Volume 1, Section 8). Thus, most of the Thai police officers tend to have the attitude that it is one of their duties to suppress the criminals, not to correct nor rehabilitate the accused persons no matter if they are adults or juveniles. This is very dangerous to the juvenile justice system because police officers are the initial point of contact with the juveniles, so it is essential that they act in an informed and proper manner, if not it might entirely influence the juveniles' attitude in a negative way towards law enforcement agencies as a whole.

Prosecution

No criminal prosecution shall be instituted by any injured person in any juvenile court unless permission has been given by the Director of the Observation and Protection Centre having jurisdiction over the accused juvenile (Juvenile Court Procedure Act, Section 31). However, the vast majority of criminal prosecutions are carried out by the public prosecutor. Perhaps when the injured person found that the person who had committed an offence is only a young person, he might feel pity for him and not want him to go on trial.

According to the Criminal Procedure Code, the process of prosecution commenced by the public prosecutor begins only when the file of inquiry (or investigation) is referred to him by the police officer. Before that, it should be noted here that the public prosecutor in Thailand has no power to initiate, to commence, nor to carry out the investigation by himself. He may only direct the police to make a further investigation or inquiry or request the police to send any witnesses to him for

examination as he deems necessary. This is rather a limited responsibility while maintaining the same qualification and status compared to the judge. However, his authority to issue a prosecution or non-prosecution order is not restricted by law. He can exercise discretion not to prosecute even though there is sufficient evidence to support the prosecution and this is applicable to both adult and juvenile cases. Moreover, the public prosecutor is empowered to issue a non-prosecution order in another situation. Whereas it appears from the file of inquiry that even though the juvenile has committed an offence carrying a maximum term of imprisonment of less than five years, and the Director of the Observation and Protection Centre reports his opinion to the public prosecutor that the juvenile can reform and the said juvenile consents to be kept in the custody of the said Centre not exceeding two years, then the public prosecutor is able to issue a non-prosecution order if he deems fit. Such an order is final.

Apart from the above power of the public prosecutor in dealing with the juvenile cases, there seems to be a significant gap in the law in a case when the public prosecutor feels that prosecution of the case is impossible due to insufficient evidence, but still he believes that the accused juvenile is delinquent and should be rehabilitated and supervised by the appropriate authorities concerned. He may not, according to the existing law, direct any advice in such a manner but must simply issue a non-prosecution order.

In addition, it should be noted here that even though the Thai Public Prosecution Department has set up special divisions and offices to deal with juvenile cases, most personnel assigned to these divisions and offices are not specially instructed and trained prior to taking the position. Thus, when they come to be involved in the administration of juvenile justice some of them do not even know the modern concept of the juvenile justice system. Then, the situation is much the same as mentioned before on the part of the police officers who investigate the cases.

Disposition of Juvenile Cases

In Thailand, out of seventy-three provinces throughout the country, the juvenile justice system fully operates only in Bangkok and five other major provinces. In all the rest, the juvenile offenders are subjected to the normal criminal procedure of the ordinary provincial courts.

The usual residence of a juvenile and the locality where the juvenile has committed an offence play a significant role with regard to the jurisdiction of the juvenile court. It is provided in the Juvenile Court Procedure Act that a case where a juvenile is charged with the commission of a criminal offence will be tried in the juvenile court of the locality of his usual residence, and secondly, the juvenile court of the locality where the juvenile has committed an offence has the power to try the case (Section 28). If there is an absence of such juvenile court, the regular system of treating an adult offender is still in operation, but the court is empowered to send the juvenile to any existing training school of the Observation and Protection Centre after the case has been adjudicated by a provincial court.

In Thailand, a juvenile court's jurisdiction is also determined by the age of the juvenile at the time of the juvenile court's deliberation. This rule was set by Supreme Court decision No.1220/2496. However, once the file of prosecution has entered the juvenile court, the court may continue to have jurisdiction over the case even though such juvenile subsequently reaches the age of eighteen or become *sui juris*.

According to the Juvenile Court Procedure Act of 1951, Chapter 5, when the juvenile court has accepted the case for trial, the court will give notice of the date and time of the trial to the Director of the Observation and Protection Centre and to the juvenile's parents, guardian, or the person with whom he is residing.

The juvenile court must be presided over by a quorum consisting of two career judges and two lay judges, one of the latter

being a woman, so as to have full jurisdiction. Before proceeding to read out the charge to the accused, if the judge deems it necessary, he may call the accused juvenile before him in chambers to question the facts concerning the charge, motive, character, personality, attitude, and other matters which may be of assistance to the trial and adjudication of the case.

Normally, the trial of a juvenile case will not be conducted in a court room used particularly for conducting ordinary cases. The juvenile has a right to have a legal adviser who will act on his behalf in a similar manner as an attorney and such legal adviser must meet the qualifications set up by the juvenile court. In the case where the juvenile has no legal adviser, the court will appoint one for him regardless of his own wishes to have or not to have a legal adviser.

The trial of a juvenile case must be conducted *in camera* and only the following persons may be present at the trial, namely:

1) the accused juvenile, his legal adviser, his parents, guardian or the person with whom he is residing;
2) the prosecutor, court officers, witnesses, experts and interpreter;
3) the probation officer and the Observation and Protection Centre's officer; and
4) other persons whom the court thinks fit to permit.

However, if the juvenile court deems it improper for the accused juvenile to be present at the hearing of any part of the testimony of any witness, the court may order him out of the trial room provided that on his return the court, if it deems proper, may relate to him the testimony given in his absence. In another case, where deemed proper, the court may discuss any matter privately with the juvenile and may order all other persons or the person whose presence is undesirable out of the trial room.

The juvenile court is empowered to call up the parents, guardian or the person with whom the juvenile is residing to appear as a witness for questioning concerning the facts about the juvenile for the purpose of discovering the motive of crime.

It is to be stressed here that the trial of cases in a court having jurisdiction over the juvenile will be conducted without strict adherence to the law on procedure. Simple language will be used so that it may be well understood by the juvenile, and full opportunity will be given to the juvenile as well as his parents, guardian or the person with whom he is residing to state and explain facts, feelings and opinions and to produce witnesses as well as to cross-examine witnesses at any stage of trial.

According to the law, the court is required to take and observe the age, biography, conduct, intelligence, education, training, health, mentality, character and occupation of the juvenile as being pertinent to the trial. Further it is also required to take into consideration the welfare of the juvenile as well as his future and the possibility of his future and the possibility of his getting training and instruction with a view to reforming him rather than to mete out punishment. And likewise, in passing the judgement it is required to take into consideration the particular personality, health and mentality of the juvenile as distinguished from those of the others, and the court will inflict such punishment or employ such measures as may be suitable to each juvenile and the particular circumstances of his comitting the offence charged even in the case where several juveniles have jointly committed an offence.

In bringing the juvenile to and from the court and in keeping him in custody before appearing before the court during trial, the juvenile must be kept separate from adult offenders. Photographs of any juvenile charged with the commission of a criminal offence are not allowed to be taken or published in any newspaper or periodical. The same rule is also applied to the facts found during inquiry or trial which may reveal to the public the name or surname of the juvenile, his residence or school. And whoever infringes the said rule will be fined not exceeding 500 baht or given imprisonment not exceeding six months or

both.

Adjudication

According to the Juvenile Court Procedure Act of 1951, it is required that the judgement must also be read *in camera* and only the persons allowed to be present at the trial will be allowed to be in the court room while reading the judgement. The parents, guardian or person with whom the juvenile is residing must be summoned by the court to be present at the judgement reading. In publishing any judgement or order of the juvenile court, no mention may be made of the juvenile's name nor may any statement which might establish his identity be given.

In adjudicating the cases, the judge may take any of the following measures:

a) Treatment in freedom
   1) Admonish the juvenile and then release him
   2) Release the juvenile and caution his parents or guardian
   3) Place the juvenile under the care of any person or organization the court considers fit for giving training and instruction
   4) Release the juvenile on probation
   5) Substitute corporal punishment for him
   6) Fine

b) Institutional treatment
   7) Send the juvenile to a training school
   8) Send the juvenile to an annex of a training school
   9) Imprisonment, but no imprisonment shall be imposed upon a juvenile under fourteen years of age

In the case where the court orders the release of a juvenile for not being guilty, if the court deems it appropriate to lay down any conditions for his conduct for the purpose of safeguarding his welfare and future, the court is empowered to give the following orders:

1) forbid the juvenile to enter any place or any locality which might corrupt him such as a brothel, gambling house, liquor shop, etc;
2) forbid the juvenile to leave his residence at night time, save in case of necessity;
3) forbid the juvenile to associate with any person deemed undesirable by the court;
4) forbid the juvenile to do any act which might corrupt him;
5) order the juvenile to report to the court or probation officer; and
6) order the juvenile to take up education or carry on substance occupation.

In the case where the court gives any order as prescribed above, the probation officer will have the power to supervise the compliance therewith.

However, the period of time for the compliance by the juvenile with the above conditions is required by the law not to exceed the time when the juvenile becomes twenty-four years of age, and if the juvenile does not comply with such conditions the court may order him to undergo training at the Observation and Protection Centre for a period not exceeding one year.

After giving a final judgement or order awarding punishment or employing any measures for a juvenile, if it appears to the court that there is a change of circumstances the court is empowered to amend the said judgement or order.

Judgements or orders of the juvenile court may simply be appealed to the Appellate Court and Supreme Court in the same manner as in ordinary cases under the provision of the Criminal Procedure Code except in certain cases where appeal is specifically barred by the Act Instituting Juvenile Courts of 1951.

Treatment of Juvenile Delinquents after Adjudication

After a juvenile has been adjudicated as delinquent, there are two main kinds of treatment in Thailand, namely, non-institutional treatment and institutional treatment.

Non-institutional Treatment

Probation is a non-institutional method of treating juvenile delinquents by releasing them on good behaviour upon conditions prescribed by the juvenile court and under the guidance of probation officers who belong to the Observation and Protection Centre. Probation has a dual purpose, the first aims at rehabilitating juvenile delinquents and the second aims at protecting society. It might be accepted that probation officers perform their duty as social workers to guide the conduct of juveniles under probation to see that juveniles behave themselves according to the conditions stipulated by the court and do no harm to the others.

Probation treatment starts right after the court orders a juvenile on probation. The Director of the Observation and Protection Centre will assign the case to a probation officer. The probation officer then will explain the order and the conditions of release to the juvenile. The execution of probation must follow the conditions laid down by the court. A probation officer will draw up a program of supervisory treatment that is suitable for rehabilitating the individual juvenile and he, as a counselor and guide, will help the juvenile to improve his behaviour. For example, he will find ways by which the juvenile may regain acceptance and affection from his family, he may introduce him to new good friends or encourage him to have new interests in his study, work and his leisure time and implement in him a desire for doing good. If it appears, through an evaluation on each individual adjustment during the probation period, that the probationer has been completely rehabilitated, the Director of the Centre will then file a report with the court stating that probation is no longer needed. If the court deems it justifiable, the juvenile on probation will be discharged and set free. On the contrary, if such juvenile violates the said conditions the director may recommend that the court revoke or terminate probation and adopt more severe measures suitable to changing circumstances.

However, if the above method is not effective because the home condition is unfavourable, a foster home will be used instead. It is believed by the concerned authorities that more foster homes for juveniles should be made available due to the increasing number of juveniles under probation and as the violation of probation orders becomes more frequent. Here again the difficulty arises as few people would prefer to take juvenile delinquents into their home. Such a problem is believed to be solved by setting up probation hostels for probationers having unfavourable home conditions by taking a lease from private individuals and assigning a certain number of officials to act as house parents and take care of the probation.

Nonetheless, while the juvenile court has increasingly come to make use of the probation services, the number of probation officers is still inadequate at the present time. It is believed that a programme of unpaid volunteers working side by side with officers is required urgently. A volunteer is expected to render services to probationers and to see to it that the probationers are well-behaved and that they report to the probation officers in charge, then the officer will be able to step in at a suitable time. In that way, it is possible to have several juveniles placed on probation even with a limited number of probation officers. This is an ideology of using manpower in the community for the benefit of the society, but still many people cling to some rather ridiculous beliefs such as that a volunteer, since he lacks legal authority to do the supervisory job, cannot help the probation officer and the probationer nor yet can the probationer trust or respect the volunteer.

Institutional Treatment

Thailand, in common with many other countries, values institutional treatment as one of the measures to correct delinquent acts of juveniles. The method is to offer the delinquent juveniles vocational training suitable to individual needs and to take proper care and custody of juveniles so that they may in time become good

citizens. However, if later the court should consider that treatment by way of probation would be more effective, the court may do away with the institutional method since the expense is rather high and juveniles are also deprived of their freedom.

Institutions used by the Observation and Protection Centre are of two kinds: one is a training school which takes in juveniles by an order of the court when it appears to the court that other means of rehabilitation cannot cover all their needs for schooling and education. The other is in the form of an annex to a training school where strict discipline is enforced. Juveniles sent to this section of a training school are those who are seriously demoralized. Normal treatment in the normal training school is rather inadequate yet imprisonment appears too severe for these juveniles.

At present there are eight training schools for boys and six training schools for girls all over the country. These training schools are cottage-plan institutions and their policy is to give as much benefit as possible to a juvenile who shows progressive adjustment and gradually allow him more privileges. In the case where there are signs of him becoming rehabilitated, the Director of the Observation Centre will make a recommendation to the court to release him.

In the training school, primary education courses as well as vocational training programmes are offered and those who pass the examination will receive certificates from the Ministry of Education. Physical training, religious training, as well as the method of self-meditation, are also given to the juveniles in the training school with a view to prompt rehabilitation.

Aftercare

It is also the duty of the Observation and Protection Centre to provide an aftercare programme with a view to assisting in the matters of accommodation, occupation and education of a juvenile who has been released by the court's order from the training school at a minimum period upon condition until the end of the maximum period or to a juvenile who is considered perfectly well-behaved and the training programme is satisfactorily performed meaning that no further training is needed. In this situation, a social worker will act in the same manner as a probation officer taking care of the juvenile and giving advice on how he should behave until the condition is over. Moreover, there is a job-finding programme for juveniles with good conduct who have to earn their own living. Experience which is in need in the job market includes welding, carpentry and brick laying. It is to be noted here that even though there are many social service activities run by private sectors, only a few aim at helping delinquent children, so it is difficult for the concerned authorities to seek any assistance from such agencies. Thus, the concept of after-care in the view of its implementation is at an unsatisfactory level due to the increasing number of delinquents which contrasts with the available after-care personnel and the assistance agencies.

General Trends in Juvenile Delinquency

Figures concerning the age and sex of the juveniles who have been brought to the Observation and Protection Centre are shown in Table 1.

Table 2 shows whether arrested juveniles are students or not.

Table 3 shows whether arrested juveniles had guardiants or not.

Table 4 shows the major offences which had been committed by the juveniles.

Table 5 shows the number of juveniles arrested and prosecuted and the court's verdict of guilty.

Table 6 shows the causes of offences of the juvenile where the court's verdict was guilty.

Table 7 shows the punishment and measures for the delinquent juveniles used by the court.

Table 8 shows the results of probation orders.

Table 1

Year	Children (age 7 to 14)			Young Persons (age 14 to 18)			Total
	M.	F.	Tot.	M.	F.	Tot.	
1974	463	44	687	4,106 (493)	230 (19)	4,337	5,024
1975	358	41	399	3,425 (198)	171 (14)	3,596	3,995
1976	326	36	362	3,521 (230)	299 (24)	3,820	4,182
1977	439	51	490	3,123 (226)	216 (19)	3,339	3,829
1978	287	72	359	3,333 (176)	250 (15)	3,583	3,942
1979	491	89	580	3,179 (224)	251 (19)	3,430	4,010
1980	470	47	517	2,822 (212)	271 (13)	3,193	3,710
1981	256	33	289	2,039 (124)	170 (15)	2,209	2,498
1982	290	34	324	1,846 (176)	159 (13)	2,009	2,333
1983	313	48	361	1.936 (163)	183 (8)	2,119	2,480

Note: Figures in parentheses represent those over 18 years of age who were brought to the Centre.

Table 2

Year	Student	Not Student		No Career	Total
		Helping the guardian-operated career	Carried on private career		
1974	351	1,011	2,690	972	5,024
1975	478	874	1,933	710	3,995
1976	518	1,098	1,237	1,329	4,182
1977	660	847	1,342	980	3,829
1978	526	1,046	936	1,434	3,942
1979	653	773	1,674	910	4,010
1980	727	437	1,631	815	3,610
1981	567	254	1,194	483	2,498
1982	496	228	981	624	2,329
1983	716	208	954	602	2,480

Table 3

Year	Vagrancy	Resided with				Total
		parents	father	mother	other	
1974	76	2,966	467	543	972	5,024
1975	172	1,550	600	600	1,073	3,995
1976	58	1,578	598	643	1,305	4,182
1977	40	2,021	400	626	742	3,829
1978	128	1,193	469	927	1,225	3,942
1979	67	2,100	280	770	793	4,010
1980	95	1,967	272	680	596	3,610
1981	43	1,226	339	569	321	2,498
1982	55	1,125	218	567	362	2,329
1983	77	1,215	265	584	339	2,480

Table 4

Year	Theft	Bodily harm	Gambling	Snatching	Indecent act	Arms and ammunition	Criminal association	Gang robbery	Drug addiction	Others	Total
1974	1,547	255	–	–	61	467	973	–	885	836	5,024
1975	1,225	271	158	–	44	302	757	–	755	483	3,995
1976	1,163	241	–	–	70	394	662	–	800	852	4,182
1977	1,009	245	129	–	64	245	917	–	752	468	3,829
1978	1,290	302	–	167	52	–	969	–	557	605	3,942
1979	1,358	267	–	–	64	164	934	–	626	597	4,010
1980	1,264	188	62	123	47	160	1,009	68	416	273	3,610
1981	934	140	55	83	52	140	221	49	337	487	2,495
1982	967	170	50	85	50	110	226	29	319	283	2,329
1983	870	132	51	89	64	150	479	28	235	382	2,480

Table 5

Year	Arrested	Prosecuted	Verdict of guilty
1974	5,024	2,644	2,208
1975	3,995	2,271	2,204
1976	4,182	2,235	2,035
1977	3,829	2,160	2,028
1978	3,942	2,299	2,249
1979	4,010	2,299	2,239
1980	3,610	2,890	2,302
1981	2,498	1,673	1,486
1982	2,329	1,840	1,305
1983	2,480	1,598	1,192

Table 6

Year	Causes of Offences					Total
	Family, mental, emotional	Associated with bad friends or being inclined or hiring	Economic	Physical or mental status	Others (such as sexuality, negligence, gambling)	
1974	811	722	398	24	253	2,208
1975	765	655	510	31	243	2,204
1976	703	671	364	42	255	2,035
1977	491	778	402	61	296	2,028
1978	846	529	459	47	368	2,249
1979	899	515	568	87	233	2,302
1981	681	347	206	59	193	1,486
1982	200	642	59	246	158	1,305
1983	125	562	36	292	177	1,192

Table 7

Measures used by the court	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
Number of delinquent children referred to the Observation Centre before trial.	5,024	3,995	4,182	3,829	3,942	4,010	3,610	2,498	2,329	2,480
Number of delinquent children who were judged guilty (referring to delinquent children who were judged in the same year as they were arrested and tried).	2,208	2,204	2,035	2,028	2,249	2,239	2,302	1,486	1,305	1,192
1. Admonition	41	69	48	64	121	144	88	45	62	38
2. Caution to parent or guardian	428	368	324	354	383	249	319	437	383	317
3. a Suspension of judgement or punishment with probation	693	842	778	656	692	692	803	374	183	265
b Suspension of judgement or punishment without probation	247	246	215	165	147	282	156	31	65	45
4. Substitute fine by giving corporal punishment	–	–	–	–	–	–	–	–	–	–
5. Fine	23	24	31	45	64	11	24	22	14	16
6. Training school order	772	649	628	728	827	836	909	555	471	367
7. Annex of training school order	–	–	–	–	–	–	–	–	82	144
8. Imprisonment	4	66	11	16	15	25	3	2	3	1

Table 8

Results of probation orders	1974	1975	1976	1977	1978	1979	1980	1981	1982	1983
Number of delinquent children on probation in each year, both old and new	2,596	3,071	3,607	3,281	2,844	2,485	2,662	2,399	2,249	2,388
1) Discharge from probation	448	482	918	936	881	784	978	760	518	559
2) Revocation of probation	284	215	194	190	229	141	184	174	126	106
3) Dismissal (e.g. death, unknown, etc.)	7	5	4	7	4	8	6	8	3	6

Note that the statistics shown are only those in the jurisdiction of the Central Juvenile Court.

Conclusion

In concluding, one crucial point that should not be overlooked is that no matter how well written words and measures are provided in the Juvenile Laws, still their implementation is limited to some major areas of the country. It is as if the right of those who are outside such jurisdiction to be tried as a juvenile is not provided by the juvenile laws. That is not correct because in such laws it is provided that in all provinces other than Bangkok a Juvenile Section shall be set up in the Provincial Court and shall have the same jurisdiction as the court in which the Juvenile Section is set up. Moreover, law also provides that where there is no Observation and Protection Centre operating in any locality where a juvenile court is functioning, a Committee, namely the Observation and Protection Committee consisting of the Provincial Commissioner as chairman and the President of the District (Muang) Municipal Council, Provincial Public Health Officer and Provincial Education Inspector as members together with not more than three qualified persons appointed by the Minister of Justice as members, shall be formed and shall have the duties as the Observation and Protection Centre. This Committee shall also have the power to appoint any person who is willing to serve as a probation officer and other officers as may be deemed proper. So that, in order to counter the problem of a lacking budget, a juvenile section in every provincial court is to be set up instead of establishing the juvenile court itself, and at the same time the provision of volunteer services should be implemented to its full capacity. These may to some extent be used as a solution to provide equal protection to all juvenile offenders in Thai society.

Apart from the aforesaid consideration, there is another obstruction which inhibits progressive development of the criminal justice system in Thailand, that is the lack of coalition among the concerned authorities. The struggle for power which is one of human nature may be the cause of isolation, for example the police officer prefers to have sole power to investigate rather than to act under the supervisor of the public prosecutor, and the same applies to the public prosecutor who wants to control the power of the police and may also be applied to the question why the juvenile section has not yet been established. The problem of isolation from each other of the concerned authorities, if not promptly taken into account, may cause an impediment to further progress in the overall criminal justice administration.

PART 3: REPORT OF THE COURSE

Report of the Workshop on Implementation Modalities of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice

Fuchu, Tokyo, Japan, 31 October–7 November 1985

Purpose of the Workshop

The Workshop was convened by UNAFEI to discuss implementation modalities of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules). The adoption of the Rules by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan from 26 August to 6 September 1985, stands out as one of the most outstanding achievements of the international community in the sphere to crime prevention and criminal justice. It came as a fulfilment of a long-felt need to lay down principles in concrete terms to guide the development of systems governing the handling and treatment of juveniles coming in conflict with law, in keeping with the spirit of the internationally recognized human rights instruments, echoed in Resolution 4 of the Sixth United Nations Congress held in Caracas in 1980. Significantly, the first reaction to the resolution was provided by UNAFEI, Tokyo, in the form of proposed guidelines for the formulation of standard minimum rules prepared at the 58th International Training Course in 1981. The process initiated by UNAFEI became self-generating as is evident from the proceedings of various regional, interregional and international meetings held subsequently in preparation for the Seventh United Nations Congress. Thus, the adoption of the Rules by the Seventh United Nations Congress represents a very satisfying culmination of a series of intense exercises undertaken at various levels in which UNAFEI has played a leading part. Of course, the United Nations Rules on the subject provide both an opportunity and a challenge to member states to respond to the call of progressive thinking in evolving their framework on the basis of a universally cherished set of values regarding the rights and interests of juveniles coming within the purview of the criminal justice system.

UNAFEI, at the request of the Committee on Crime Prevention and Control, wished to submit the first response to the newly adopted Standard Minimum Rules by conducting a workshop during its 70th International Training Course to deal specifically with implementation modalities. Each participant related the current situation in his or her country regarding compliance with the Rules. If a gap existed between actual practice and the principles of the Rules, then implementation modalities were proposed.

Thus, UNAFEI has, once again, assumed a pioneering role in setting the pace for an effective follow-up of the Standard Minimum Rules for Juvenile Justice Administration at the international level. The discussions of the Workshop on various aspects of the subjects are bound to have a salutory effect on the processes of opinion building, law reform and programme development, not only in the countries represented but also in other parts of the world.

General Principles

The United Nations Standard Minimum Rules for the Administration of Juvenile Justice provide both an opportunity and a challenge to member states to respond to the call of progressive thinking in evolving their framework on the basis of a universally cherished set of values regarding the rights and interests of juveniles coming within the purview of the criminal justice system. The Rules spell out the criteria

and principles of formal intervention in a manner that restores and preserves their dignity. The Rules render an ample scope for divergent socio-cultural and political systems to realize the ideal in consonance with their indigenous realities. Among the main considerations are: the differences in the definition and perception of the problem; the existence of substantial "dark figures" in juvenile youth crime; the effect of handling juvenile offenders and the need to further humanize the system through changes in procedures and sanctions; the imperativeness of limiting the scope to juveniles who are already in conflict with law; and the need to strike a balance between the justice and welfare approaches. It is evident that the Rules have focused on the formal system concerned with juveniles in confrontation with law rather than on the issues arising from the concept of juvenile justice in a changing social scene.

The well-being of the juvenile and his or her family is one of the fundamental perspectives in juvenile justice administration. Emphasis has been placed on creating conditions conducive to the development and education of the juvenile to keep him or her as free from deviant behaviour as possible. All efforts are contemplated to reduce the need for legal intervention and to evolve a system that provides for effective, fair and humane treatment. Juvenile justice is an essential aspect of national development within the framework of social justice for all children. In this respect, juvenile justice service are proposed to be systematically developed and coordinated. The basic approach of the Rules is protecting the rights of the juvenile as well as the interests of society. Moreover, the principles for handling juveniles at the various stages of apprehension, disposition and treatment have been recommended for extension to the juvenile dealt with under welfare and care proceedings and also to young adult offenders. The scope of the Rules is confined to juvenile offenders while safeguarding the rights of non-delinquent children processed through law. But the Rules fall short of specifying how non-delinquent children coming within the formal system can be differentiated from delinquent ones.

For the effective implementation of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice in each country, an intensive study and discussion about whether each country is in conformity with the Rules or not is essential. By doing this, not only will problem areas be discovered but integrated approaches in challenging and solving such problems either by means of short-term or long-term approaches can be attained.

The view that the rights and welfare of juveniles must not be hampered by criminal justice agencies was well accepted by all participants. In particular, the principle of proportionality as stated in Rule No. 5 was viewed to be important while discussing this aspect.

The presumption of innocence as provided in Rule No. 7 was unanimously agreed to by all participants as one of the basic principles in juvenile criminal justice. Therefore, the facts are to be found on the basis of evidence, the degree of proof must reach beyond a reasonable doubt, and the benefit of the doubt should be given to the defendant. The same enthusiasm was also revealed for the right to be notified of charges, the right to counsel, etc.

In some countries there is no legal provision directly referring to all of these points at the stage of investigation and prosecution, but in practice such rights as mentioned in Rule No. 7 are already guaranteed by law-enforcement agencies. This seems to be the short-term approach in solving this problem which most countries are taking.

With regard to this Rule, there was a question raised whether parents or guardians should always be allowed to be present during the interview. In some countries, during the interview of a juvenile the parent or guardian is not allowed to be present, and it was pointed out that it affects the legal status of the juvenile. In another country, it depends on the circumstances of the case whether to allow the presence of a parent or guardian, since the intention of interviewing is to

get the truth, and such permission might work both ways. Sometimes the juvenile might tell the truth if the parents or guardian are with him or her and sometimes otherwise. In one country, the law says that a juvenile has to decide whether he or she wants the parents or guardian to be present at the time of interview, and if he or she does not want them present, then a social welfare officer will be substituted.

However, as a general view, most of the participants agreed that, with regard to this issue, it should be left to the discretion of the interviewer, either the police or other agencies concerned, whether or not the parent or guardian should be allowed to be present at the time of interview. In cases where the presence of such persons may hamper or prejudice the progress of investigation, the interviewer should definitely not allow them to be there during the interview. It was commented by a visiting expert that in some jurisdictions the presence of a parent or guardian is mandatory.

It was emphasized that the concerned authorities should also recognize the right to speedy disposal which should be viewed as one of the rights of juveniles in relation to this Rule. A shorter period of time in conducting the investigation and prosecution would lessen the dilemma and burdens the juvenile in such a situation has to bear.

It was also agreed by all participants that law-enforcement officials at the time of conducting the investigation and prosecution should be very careful in not having the identity of a juvenile revealed to the public. This issue is related to Rule No. 8. It was noted that even though in most of the countries there exist no legal provisions to this effect, in reality, the mass media respect the privacy of juveniles, and the authorities concerned prefer this approach rather than resorting to legal control.

Some specific examples of countries trying to embody the general principles of the Rules in their juvenile justice activities are given below:

In Japan the prevention of juvenile delinquency is as important as the treatment of juvenile delinquents. Volunteer organizations like the Big Brothers and Sisters Movement, Friends of the Courts, etc., are being used to promote the well-being of juveniles. All the personnel of the family court are trained systematically to improve and sustain their competence at national institutions and offices.

The Nepalese participant mentioned that although Nepal has no family court, the principles contained in Beijing Rules 1.1-6 and 5.1 have been covered by various statutes.

Bangladesh is not a developed country. Consequently, it is not able to provide full amenities to juveniles. Volunteers are being utilized in community-based treatment, but this is still in its infancy. Child welfare is included as an essential component of national economic planning. The government also gives financial aid to those organizations which encourage youths to engage in games, sports and social welfare activites.

In China, out of the total population, about 300 million are juveniles and youth. Hence, special attention is being paid to the growth and health of juveniles who are regarded as the "hope and future" of China. Every May fourth, China celebrates its Youth Day. There are various agencies which co-operate to promote the education of juveniles. Juvenile justice is an integral part of national development. This is reflected by the establishment of specialized research units in various ministries by China's Juveniles Co-ordination Committee.

Currently there is no juvenile court in China. But in line with the socialist modernization programme, juvenile courts will be established in due course. Personnel in the juvenile justice services receive special training courses once every year or two to enable them to cope with their respective tasks. The Chinese judiciary applies effective measures including punitive measures to prevent juvenile delinquency and rehabilitate juvenile delinquents. The People's Courts pay special attention both to juveniles' privileges and the interests of society.

In Singapore the well-being of juveniles is always taken into account by the appropriate authority. The state is taking every possible step to provide recreational and educational facilities for juveniles. Annually, a Youth Festival is held. Volunteers, schools and community groups are involved in campaigns to educate the young to be responsible citizens. These agencies also help to organize and promote social activities for youths. School children are encouraged to join the various uniform groups such as the scout movement, police cadet corps, army cadet corps, St. John Ambulance Brigade, etc. Volunteers and community groups are also being utilized to supervise youthful offenders. Part of the national budget goes to the development of the juvenile welfare and justice system. Opportunities are also provided by the state for personnel involved in juvenile justice services to attend courses to improve and sustain their competency.

The Indian Constitution provides for each state to enact special provisions for women and children. Moreover, the Constitution stipulates that each state should pay special attention to the rights of juveniles and should prevent child abuse. The Children Act contains provisions against ill-treatment of children and provides for neglected children. There are special programmes to ensure that the community, the children and their families are involved in crime prevention. There are also youth programmes like the Boys' Club, scout movement and Girl Guides to get children involved in constructive activities. The national plan includes the development of children and their future. The government is also encouraging personnel involved in juvenile justice services to attend courses, seminars and conferences to improve the handling of juveniles. The principle contained in Rule 5.1 is reflected in the Children Act. While passing orders, the competent authority has to pass orders in proportion to the circumstances of both the offender and the offence.

Investigation and Prosecution

The topic of this session was divided into three parts, namely: diversion, specialization within the police and detention awaiting trial. While discussing the aforesaid topics, the main aspect that has to be kept in mind is the balance among the welfare of the juvenile, the interest of society and the due process of law. This is to ensure the achievement of appropriate strategies and/or mechanisms in implementing the objectives of juvenile justice as stipulated in the Rules.

With regard to Rule No. 10.1, even though in some countries there is no legal provision which requires the parents or guardian to be notified of apprehension, in practice it is always done by the agencies concerned. It is, in fact, the first line of action by police regardless of the existing law, since this type of initial contact creates a better atmosphere for a juvenile as well as his or her family. However, in countries where there is no law existing in this aspect, it may be necessary to have some kind of legislation going along with this Rule.

Regarding Rule No. 10.2, there was not much discussion since every country has competent authorities which consider the issue of release. Therefore, implementation of this sub-Rule poses no problem. However, in some countries the words, "without delay," as provided in this Rule are not incorporated in the juvenile law, thus a participant from one of these countries believed that the inclusion of this word in national legislation to remind the relevant authorities to work promptly is needed.

During the discussion, the interviewing issue which is very significant for law enforcement agencies was discussed at length and finally recommendations were drafted as follows:

1) the interviewer must possess certain qualifications such as basic knowledge of relevant sciences, a professional attitude, perseverance, discretion and the ability to command respect;

2) rapport is to be developed between the juvenile and the interviewer;

3) the interviewer must be fully acquainted with the facts and circumstances of the case before starting the interview and relevant records shall be made available to the interviewer paying due attention to the privacy of a juvenile;

4) the interview shall be conducted in a place where the privacy of a juvenile can be well protected and at a time which will not be harmful to the juvenile's welfare;

5) at the outset of the interview, the legal rights of the juvenile shall be notified;

6) the interviewer must be friendly and show interest and confidence during the interview. Physical force shall not be used and verbal abuse shall be avoided. Promise or deception shall not made; and

7) proper assessment of the juvenile shall be made through close observation during the interview, paying special attention to the physical structure, habits, movements, mental capacity and general attitude of the juvenile.

In addition to how the interpretation and implementation of this Rule should be carried out, one of the participants from the investigation area explained the situation in his country. He said that the police, in dealing with juveniles, try to arrest juveniles as infrequently as possible. In conducting the investigation, the police also avoid doing the interview during nighttime or extending the time of the interview to midnight. Especially when the juvenile is a student, the police will not conduct the investigation at the time he or she has to go to school. Furthermore, what the police aim at most is to obtain the truth from the juvenile. The rights of the juvenile in this context are not in conflict with the interest of society, but instead it is in the best interest of the juvenile to confess the truth as it is the first step of repentance which leads to his or her spontaneous rehabilitation. Again, he added, if the attendance of the parents or guardian contributes to getting the truth, the police will allow their presence. Otherwise, if their attendance is unfavourable to getting the truth, then their presence will not be allowed.

In connection with the issue of initial contact, a participant referred to the law and practice regarding arrest in his country. The police are to avoid arresting juveniles as far as possible, especially arresting those under the age of 16 and those suspected of an offence punishable only with a fine.

a) Diversion

Regarding diversion in Rule No. 11, it was pointed out by most of the participants that the various stages of diversion differ from country to country, but diversion as stated in this Rule covers only the stage prior to formal trial by the competent authorities referred to in Rule 14.1. Thus, in some countries there may be some difficulty in having this Rule implemented due to their existing legal systems. Therefore, appropriate legislation is to be enacted if these countries really want this Rule to be implemented in their legal systems. However, it was noted that most of the countries already have the provisions dealing with the principle set forth in this Rule.

During the discussion, a system of suspension of prosecution by replacement of indictment with judicious guidance as utilized in Korea was referred to as one of the measures which could be adopted in practising diversion.

Under this scheme, the public prosecutor has broad discretionary power in deciding whether or not to institute prosecution. In juvenile cases, the public prosecutor exercises his discretionary power even more effectively. He can decide the suspension of indictment (prosecution) for juveniles. About 48.8 percent of all juvenile offenders were disposed of by suspension of indictment in 1983. And approximately 20 percent of such juvenile offenders were committed to judicious guidance. This type of suspension of indictment is called "replacement of indictment with judicious guidance." It is the most essential part of the Juvenile Guid-

ance and Protection System in Korea.

The Juvenile Guidance and Protection System aims at rehabilitating juveniles who were not indicted by replacement with judicious guidance and those who were detained within the facilities of juvenile correctional institutions or juvenile training schools after being sentenced to some term of imprisonment or a protective disposition, with the support of voluntary juvenile guidance members who assist juveniles both in material and spiritual ways to prevent them from recommitting offences.

Replacement of indictment with judicious guidance is the procedure used to drop any charge against juvenile delinquents who are deemed not likely to commit further offences. They are not indicted on the condition that they do not commit another crime. After the disposition of suspending the indictment is made by a public prosecutor, the juvenile is assigned to a juvenile guidance member who contacts him or her from time to time and helps both materially and spiritually. The member reports the results of his or her contacts once a month to the public prosecutor who handled the case. The term of judicious guidance by the juvenile guidance member is six months, and the public prosecutor can extend the period twice. The limit of extension is three months. If the public prosecutor does not see any progress in the juvenile or the juvenile commits another offence, the public prosecutor may prosecute him or her in a criminal court or transfer him or her to a juvenile court for protective custody.

Most of the participants agreed that this system as stated in the report has various merits. It also covers cases of major offences where the juvenile is a first offender or he or she is the victim of circumstances when the offence was committed.

Mention was also made of Rule No. 6 in connection with diversion. It was stated that legal measures to check the abuse of discretionary power during the investigation stage, e.g., the system of receiving complaints from the victims as well as from the juveniles, are needed.

Referral to the Japanese family court can also be deemed diversion prior to formal trial. In this regard, the unique and significant role of the Japanese family court was stressed by a participant.

It was observed by some participants that the proper implementation of discretion under this Rule together with the measures described in Rules 24 and 25 will assist juveniles' rehabilitation. This means that the process of rehabilitation should start as the initial stage of investigation or arrest or even before that, whichever comes first, and develop through all stages. It is hoped that the well-being of juveniles will be promoted through such a rehabilitation process, which the Rules appear to intend. With regard to diversion, a visiting expert stated that diversion shall take place as soon as possible in the criminal justice process.

b) Specialization within the Police

With regard to Rule No. 12, it is to be noted that only a few countries have a specialized unit dealing with juveniles. It was revealed by the participants that it is good to have special units but still there are a number of obstacles, largely financial constraints.

In some countries, though there are specialized units in this regard, most of the personnel employed for this job are not specially trained in dealing with juveniles. This matter, in the general view of all participants, calls for more attention in most of the countries. Furthermore, it was pointed out that policewomen can in a number of cases deal with juveniles more effectively than policemen. This should be taken into account as one of the approaches for improving the procedures of the police in the prevention of juvenile delinquency.

Several activities of police in Japan in this regard were referred to. The police are taking various kinds of measures to prevent juvenile delinquency and to contribute to the sound growth of juveniles by means of rehabilitation at the earliest stage of delinquency. Some of these measures are police counselling services for juveniles and juvenile guidance activities. Furthermore, the police in Japan are looking for

ways to promote new, comprehensive measures, together with better implementation of the current measures, for juvenile problems. These new actions include improvement of counselling services for juveniles, strengthening of ties with community residents and legislation aimed at cleaning up the environment. Such measures could be some of the best modalities in implementing the Rules more effectively.

In this connection, it was added that having specialization units may be the ultimate goal, but in terms of short-term measures to achieve the goal, police should increasingly stress specialization and where special units are not available, police officers should be trained and certain individuals specifically in charge of such work should be identified. Thus, training must be emphasized as an immediate goal while a long-term goal may be the setting up of units in all big cities as has been written in the Rule. Moreover, training should not be oriented merely towards ways to handle juveniles but also towards how to link with other services, e.g., counselling guidance or specialists available in the community.

c) Detention Pending Trial

With regard to Rule No. 13, in some countries detention of juveniles is deemed an exceptional measure. And, as mentioned earlier, in these countries compulsory measures against juveniles, particularly arrest, are sparingly resorted to. Moreover, subsequent detention can be imposed only when there are compelling reasons. On the other hand, in countries that have adopted different legal systems, those suspected of more serious offences are usually arrested and detained, but release on bail is available at the investigation stage. Hence, in these countries the possibility of wide application of a bail system has to be seriously considered. The participants from these countries believed that efforts should be made to collect sufficient evidence prior to arrest. This was also deemed necessary to avoid unnecessary detention especially in cases where the suspect is a juvenile.

It was added by another participant that during investigation and prosecution, detention must be avoided unless there exist special circumstances. And since in most of the participating countries investigation and prosecution take quite a long period of time, the bail system is widely used in these countries. It was the view of many participants that the bail system is essential in juvenile proceedings because if pre-trial detention is harmful for an adult, it is more harmful and traumatic for a juvenile. One of the Japanese participants observed that judicial review of arrest or subsequent detention can be as effective as bail in protecting the rights of a juvenile.

The next issue is that juveniles pending trial may be unnecessarily exposed to the negative influences of adult detainees as well as of other delinquent juvenile detainees. It was pointed out that many countries have detention homes used both for delinquents and potential delinquents due to the lack of safe places in the community run by voluntary organizations in the community. Thus, the situation forces the concerned authorities to put potential delinquents and delinquents in the same detention home. Moreover, there may be a situation where a juvenile, either pre-delinquent or delinquent, is put in the same prison with adults even though they are separated. It was the consensus of all participants that to put a juvenile pending trial in such a place is not conducive to the juvenile's welfare. So, there is a need to have at least a system where they should be separated as far as practicable if countries have the funds and resources. Moreover, the idea of using alternative measures, such as placing juveniles pending trial in safe places or with responsible persons or families or in an educational setting or home run by a voluntary organization, must also be given more emphasis in each country. A visiting expert strongly recommended that in the case of juveniles, to avoid possible harm, detention pending trial shall always be the exception.

d) Conclusion

In the discussion the participants have broadened their views and identified the viability of implementing the relevant parts of the Standard Minimum Rules for the Administration of Juvenile Justice at various stages of investigation and prosecution. It was found that many of these Rules are implemented in respective jurisdictions. Although there are some difficulties encountered in the process of implementation, serious efforts are being made to overcome these situations. Mention must be made of the fact that the formulation and adoption of the Rules *per se* constitute a great step forward in the right direction in juvenile justice administration. The next logical step is the full implementation of the Rules, in which concerned efforts of criminal justice agencies as well as international co-operation are vitally important.

Adjudication of Juvenile Delinquency

After much deliberation and discussion, it was decided that the framework for discussion be divided into three topics. They are a) the competent authority, b) hearing and c) disposition. These items cover Part III of the Rules. The objective of the Workshop is to identify how the international community can implement the Rules successfully and effectively. The participants examined the general social policy towards juvenile welfare in the various countries. In respect of the competent authority, the participants discussed the constitution and jurisdiction of the adjudication body. The rights of and safeguards for juveniles were related under b) hearing. When discussing disposition, participants not only outlined the various disposition measures but also the social-enquiry report. Based on information from the various countries, suggestions were made to secure conformity in the application of the Rules.

a) The Competent Authority

1. Constitution (Rule 22)

In Bangladesh there is only one Juvenile Court which is located at the correctional institute in Tongi near Dhaka. Juvenile Court magistrates possess professional qualifications and also receive in-service training at the National Institute of Public Administration (PATC). But it is not a prerequisite for them to receive training in sociology, child psychology or other behavioural sciences. This feature also prevails in Fiji, Sri Lanka and Singapore.

The participant from Bangladesh suggested that there should be in-service training in the behavioural sciences for the magistrates. It was also pointed out that probation officers are university graduates trained in the behavioural sciences.

There are no juvenile courts or probation officers in Nepal. Juvenile cases are handled by the district court. The Nepalese participant stated that to enact a separate Children Act and establish a juvenile court in accordance with the Rules would be good for Nepal.

China also has no special court for juveniles. But it is in the process of establishing juvenile courts in the big cities and eventually in the small cities and rural areas. There are a lot of judges, lawyers, police officers and probation officers in China who are university graduates. They attend special training courses to prepare them for their jobs.

In Japan, other than judges of summary courts, judges including judges of the family courts must pass the National Bar Examination and receive two years of training at the Legal Research and Training Institute. After their appointment as judges, they receive systematic training. Moreover, every year relevant judges, probation officers, parole officers and other personnel from juvenile training schools or classification homes conduct case studies on particular juveniles. The results of the case studies are collected by the Correction Bureau which then distributes them nation-wide. This enhances the expertise of the various personnel of the juvenile justice service.

Family court probation officers are university graduates who majored in psychology, pedagogy, sociology or behavioural science and must have passed the necessary examination. They receive two years of systematic training at the Research and Training Institute for Family Court Probation Officers. After their appointment as full-fledged probation officers, they receive further systematic training. Family court clerks too are well qualified in that they are usually law graduates or graduates from other fields, while some are senior high school graduates. After passing the National Examination, these clerks receive systematic training relevant to their vocation at the Research and Training Institute for Court Clerks for one to one and a half years.

In Singapore the Juvenile Court is presided over by a magistrate who is assisted by two advisors, one of whom is a female. The magistrate is a law graduate. On the other hand, the advisors are usually well versed in medicine, sociology, or other behavioural sciences. The probation officers are graduates from the humanities, particularly social work. There is no national institute for the training of judges or magistrates, but occasionally they attend training courses organized by UNAFEI or other international agencies. These opportunities are also extended to probation officers, police officers and prison officers.

All the 22 states in India have the Children Act. The juvenile court is presided over by a magistrate who is assisted by two social workers, one of whom is a female. The magistrate is legally qualified but is not trained in child psychology, although the Act says the magistrate must be well versed in child psychology. A children court magistrate holds proceedings only on specified days in a week. Probation officers are attached to the children courts. Their minimum qualification is that they should be university graduates, preferably trained in social work. There are pre-service and in-training service courses organized for them from time to time.

In the Philippines there is no special court to try juvenile cases. But the Supreme Court may designate a particular regional trial court which is presided over by a judge qualified in behavioural science and who is married and has children, to hear or try juvenile cases exclusively. All judges attend training courses conducted by the Supreme Court in conjunction with a university, to update themselves on the law and its application. Judges, public prosecutors and members of the bar visit the various penal institutions once every year. This gives them an insight into the corrective system. The social workers who prepare social report/special-intake studies for the courts' consideration must be social work graduates and must pass the national examination for social work. They undergo a three-month basic training course and in-service training. Court clerks also attend training courses. It was mentioned that there is a law which requires government departments, including the components of the juvenile justice system, to employ minority groups, namely Muslims and cultural minorities. There are also female judges presiding over regional or metropolitan trial courts.

In Fiji juvenile cases are heard in the juvenile court presided over by a magistrate. Probation officers are professionals and also receive in-service training. The Police Juvenile Bureau is headed by a female. There are also female public prosecutors.

In Hong Kong, all newly recruited magistrates, including those who will be appointed as juvenile court magistrates, must attend orientation courses including visits to the various penal institutions. Visiting the various institutions and having discussions at the institutions enhance a magistrate's knowledge of the penal system.

During the discussion, it was suggested that to ensure the professionalism of all personnel involved in juvenile justice administration, there should be orientation courses organized for these personnel. National institutes should also introduce and conduct in-service programmes regularly. In this regard, countries could enlist the aid of Japan to provide the consultancy services and expertise available at UNAFEI to them as part of the technical programme

for developing countries. Joint seminars with UNAFEI conducted in the respective countries also serve as a means to enhance professionalism. Besides training facilities, the appointment of more personnel in various components of the juvenile justice system and the introduction of volunteer probation officer schemes will further improve the administration of juvenile justice. In the long run, special institutes should be established to conduct the necessary courses and training in juvenile justice administration.

2. Jurisdiction
(Rules 14.1, 2.1-3, 3.1-3, 4.1, 6.1-3)

(a) Rule 14.1

Most countries represented have a special court to deal exclusively with juvenile cases. Juveniles in Bangladesh are not only tried by the juvenile court but also by the ordinary magistrate courts presided over by first class magistrates. The ordinary magistrate courts which try juvenile cases are overcrowded with adult cases. Hence they cannot devote due care and attention to juvenile cases. But more juvenile courts are to be set up to solve this problem.

In Japan all juvenile cases must be sent to the family court which is the sole agency to determine whether the case is to be tried by the family court or the district court.

In Singapore all juvenile cases are heard by the juvenile court other than cases where offences carry the death penalty or life imprisonment. Moreover, it does not hear cases where the juvenile is jointly charged with an adult. Such a case will be dealt with by the appropriate court.

In India juvenile cases are tried by the juvenile court including heinous offences like murder.

Colombia, Fiji, Hong Kong, Korea, Malaysia, Papua New Guinea, Sri Lanka and Thailand also have special courts to hear or try juvenile cases.

(b) Rules 2.1-3

In respect of Rule 2.1, all participants agreed that there is no discriminatory practice in their countries. But it was pointed out that although Thailand has a Juvenile Law, it is not applicable throughout the whole country because not every province has a juvenile court. Hence, it has to be ensured that in fact it is being applied. It was also unanimously agreed that Rule 2.2 poses no problem in its implementation.

Regarding Rule 2.3, those countries which do not have appropriate legislation or institutions applicable to juvenile justice are making efforts to establish them.

(c) Rules 3.1-3

Most countries have machinery to deal with status offences and juveniles who need care and protection. All participants agreed that the Rules should be extended to status offenders. In China the normal mode for dealing with offences or status offences is through education and reasoning by the various elements of society other than the official authority.

Regarding Rule 3.3, it was stressed that not all principles embodied in the Rules can be applicable to young adult offenders. All participants agreed that those principles on treatment may be applicable. But it was emphasized that young adult offenders must be separated from juveniles where they are institutionalized together. A case in point is the Detention Centre in Hong Kong. The Centre houses juvenile offenders and young adult offenders, but young adult offenders are strictly segregated from juveniles.

(d) Rules 4.1

The discussion highlighted the fact that there is no consensus as to the minimum age of criminal responsibility. The minimum age in Bangladesh is 12 years; in Nepal 8 years; in China 16 years; in Japan 14 years; and in Singapore and India it is 7 years. But in both Singapore and India, juveniles between the ages of 7 and 12 are not criminally liable if they have not attained a sufficient maturity of understanding to judge the nature and consequences of their conduct.

(e) Rules 6.1-3

The adjudication bodies in the various countries, after hearing cases, have various dispositional measures. But not all adjudication bodies have discretionary power before or during trial to discontinue and dispose of cases. This is because in some countries which follow the adversarial system, e.g. Singapore and Bangladesh, adjudication bodies are not able to exercise such discretion at that stage as their courts are not apprised of the circumstances of the case without a full hearing. On the other hand, there is no such problem in Japan and India. Japan has adopted the inquisitorial system, while India has adopted a combination of the inquisitorial and adversarial systems. Accordingly, the courts in these countries can exercise their discretion not to try or to discontinue a case at any time. It was also pointed out that in Singapore, the prosecution has the discretion to discontinue or not to proceed against a juvenile at any stage of the proceeding. It was stressed that there must be a basis for the exercise of discretion.

b) Hearing–Rights of and Safeguards for Juvenile Delinquents (Rules 14.2, 15.1-2, 20.1, 21.1-2, 7.1, 8.1-2, 9.1)

In Nepal proceedings of juvenile cases are open to the public. There is no restriction imposed on newspapers in the publication of accounts of a juvenile and his or her trial. Although there is no special statutory provision allowing for juvenile cases to be dealt with differently from adult cases, in practice, courts conduct juvenile trials in a cordial environment and in a very soft manner. There is a statutory provision requiring the court to explain the charge in a simple manner. The law also provides that the juvenile has the right to counsel and appeal. But there is no free legal aid provided by the state for juveniles. The general law provides for the disposal of juvenile cases by the court within six months subject to extension by the appellate court for another three months. But an aggrieved party may apply to the appellate court against delay by the lower court. There is a statutory provision for supervision of the lower court by the appellate court at least once a year. In this way, delay in any proceeding is checked.

There is lacking in Nepal a provision such as Rule 21. Hence, the court can make use of the record of a juvenile offender in an adult proceeding. When applying for a government job, the juvenile must disclose his or her previous criminal record. Therefore, appropriate legislation is needed to implement Rule 21.

In Papua New Guinea, the Philippines, Sri Lanka and Indonesia, the juvenile's record can also be used in an adult proceeding.

When a juvenile is tried by the People's Court in China, he or she has all the safeguards provided by Rule 7.1. Such safeguards also exist in many other countries including Bangladesh, Singapore, Japan and India. The Chinese government also provides free legal aid to the juvenile. The hearing is conducted behind closed doors and the juvenile's name and particulars cannot be disclosed. In sexual offences, such facts cannot be disclosed either. The judgement must be pronounced within a month after the court has accepted the case.

The Chinese participant also said that a juvenile's record cannot be used in an adult proceeding. Other countries such as Malaysia, Colombia, Bangladesh, Hong Kong and Fiji also follow this principle.

In Bangladesh the proceedings of a juvenile case can be held *in camera* if deemed necessary in the interest of the child. Moreover, the court can hear the case in the absence of the child. A newspaper cannot disclose the identity or particulars of a juvenile offender. Singapore and India also have such provisions in their laws.

The participant from Bangladesh added that all criminal cases must be disposed of within three months. But to avoid the three-month rule, a case may be transferred to another court and the three-month time-limit starts again. Normally, a juvenile case is disposed of within two to three days of

a hearing. It was pointed out that records of juveniles are confidential. This principle is also practised in the Philippines, Indonesia, Malaysia and Colombia.

In Japan the law provides that juvenile proceedings must be conducted in a cordial manner. The family court has a duty to explain in simple language the alleged offence to the juvenile and his or her guardian or parent. The Juvenile Law does not include the hearsay rule. Other countries such as Singapore and India have adopted this rule. The layout of the family court is different from the ordinary court. The Japanese family court judges do not wear robes when hearing juvenile cases. No hearing is conducted without the presence of the juvenile. Japan also has several provisions concerning speedy trial. For instance, once the trial or hearing has started, it should be continuous. When a juvenile is under detention, the hearing must be concluded within two to four weeks. For minor cases, the family court can dispose of cases without a hearing after family court probation officers have screened them or have conducted a short investigation. These requirements ensure a speedy trial. In fact, about 80 percent of juvenile cases are concluded within one to three months. The participants were also informed that a juvenile has a right to counsel. The Juvenile Law does not adopt the system of public attendants. However, when necessary, the family court gives the juvenile an opportunity to select an attendant through the Legal Aid Association or Friends of the Family Court.

There is no legal sanction against newspaper publication of the name or identity of a juvenile. Nevertheless, the publication companies voluntarily abstain from disclosing juveniles' identities. As regards juveniles' records, only persons authorized by the court may have access to them.

In cases where a juvenile is tried by a district court, ordinary criminal procedure applies. But the district court observes the same considerations applied by the family court. For example, the trial is held in a cordial manner, the juvenile is tried separately from adults, etc. With both parties' consent, the district court may look at the social report which is part of the juvenile's record. It may also refer to the juvenile's medical history which is sometimes important and useful at sentencing in a criminal trial.

In Singapore only the appropriate persons can be present at the trial of a juvenile. The juvenile court must explain in simple language the substance of the alleged offence to the juvenile. There is no free legal aid provided by the state except in capital cases, and there is no time-limit fixed for the court to dispose of a juvenile case. But the accused can apply for a discharge amounting to an acquittal if there is undue delay on the part of the prosecution.

In relation to records of juveniles, only persons authorized by the court can have access to them. The legal position is not clear as to whether the juvenile's past antecedent can be used in an adult proceeding. Such past record, if it is used, is for the purpose of sentencing only. In the interest of the juvenile, it was suggested that the state should pass a law prohibiting the introduction of the juvenile's past conviction.

In India the procedure in the juvenile court is governed by the Children Act. Policemen in the juvenile court are not in uniform. The judge does not wear robes. Only authorized persons can be present, and the hearing cannot proceed without the presence of the juvenile. The court explains the offence in simple language to the juvenile and if possible in his or her own language. There is no provision for free legal aid. However, some states have societies whereby the juveniles can apply for free legal aid. These societies are manned by lawyers who are paid a nominal fee by the states.

There is no time-limit fixed for disposal of cases by the court. But under administrative instructions, high court rules and others, judgement has to be delivered within 15 days after the end of the trial subject to extension up to 30 days. When a juvenile is under detention, his or her case must be disposed of at the earliest

moment, and the period between each hearing should be no more than 15 days. If there is unnecessary delay, the accused can apply for an early disposition of the case or ask for a discharge which, if granted in cases where evidence has already been recorded, will amount to acquittal (Section 258, Cr.P.C.). A social report is not compulsory. But if it is ordered, it must be submitted within ten weeks. With respect to the investigation report, it must be completed and filed with the court within 60 days.

There is no disqualification attached to a juvenile's conviction. Hence, he or she is not required to disclose a conviction when applying for a government job. There is no specific rule as to whether or not a juvenile's record can be used in an adult proceeding. It is provided in the Evidence Act that the character or antecedent of a person is inadmissible unless good character is alleged by the accused. This rule seems to cover Rule 21.1. But it would be better if the provisions of Rule 21.1 were specifically incorporated into the Children Act.

In some countries such as Fiji and Papua New Guinea, the juvenile courts sit only once a week. Many countries also face a shortage of manpower in the juvenile justice services. All these factor contribute to a delay in juvenile proceedings.

In Korea no trial can proceed without a juvenile being represented by defence counsel. The family court will appoint counsel for a juvenile when he or she cannot afford one. Similarly in Thailand and Colombia, the court can appoint counsel for a juvenile. Free legal aid for juveniles also exists in Sri Lanka, the Philippines, Indonesia and Hong Kong. In Malaysia and Papua New Guinea free legal aid is provided by the state only in serious cases. In Fiji there is no free legal aid, and the parents of the juvenile must be present during the proceeding which is heard *in camera.*

During the discussion, it was suggested that there should be free legal aid in each country. Community participation in this area is also desirable. It was mentioned that to implement Rule 20.1, the countries should establish more courts. The case-load for the juvenile courts must be reasonable. There should also be a check on pending cases. Resources for the various components of the juvenile justice system should be increased.

The participants disclosed that their countries already have provisions similar to Rule 15.2. It was unanimously agreed that Rule 9.1 is a useful rule and can be incorporated into their countries' legislation.

c) Disposition
(Rules 16.1, 17.1-4, 18.1-2, 19.1, 11)

In Nepal a social inquiry is conducted during the investigation of a crime. It is called *sarjamin* in the Nepalese language. It is compulsory for the investigation authority to conduct *sarjamin* in every criminal case before it submits the prosecution report to the court. The social-inquiry report contains information on the social and family background of the juvenile, his or her character, social status and circumstances leading to the crime. This report is considered by the court at the beginning of the trial.

In adjudication and disposition, the Nepalese courts follow all the principles laid down in Rule 17.1. In fact, many countries such as Bangladesh, Singapore, Japan, India, Thailand and Colombia follow Rule 17.1. In Nepal, no capital punishment or corporal punishment can be imposed on juveniles. Usually for those between 8 and 12 years old, the courts dispose of cases by rebuking the juvenile. A fine is normally imposed for those between 12 and 16 years old.

In Bangladesh the social-inquiry report must be taken into account by the juvenile court when sentencing. The report is prepared by a probation officer. It contains the juvenile's character and social background. The various disposition measures available in Bangladesh and other countries are shown in the Annex. Juveniles in Bangladesh are generally not detained. Usually they are fined, admonished or released on

probation, but they cannot be subjected to corporal punishment. The death penalty is usually not imposed on juveniles.

A social-inquiry report is required before disposition in every case sent to the People's Court in China. The report is prepared by the public security agency by interviewing relevant people including the parents of the juvenile, his or her neighbours and school teacher. It contains the circumstances leading to the offence, the juvenile's social background and a recommendation of how the case should be disposed of. During adjudication and disposition, the People's Court gives due consideration to the well-being of the juvenile. The death penalty cannot be meted out to juveniles. Usually, minor cases are dealt with by subjecting juveniles to re-education. But serious cases are dealt with severely. The principal punishments are: control, criminal detention and imprisonment.

In Japan, a family court, in appropriate cases, may order its probation officers of investigate and prepare a social-inquiry report. The report contains information on the juvenile's character, history, environment, custodian, medical history, educational background and the circumstances leading to the delinquency. This report is considered by the court when it renders a dispositional order. It was also pointed out that family court probation officers screen all cases to determine whether the case is of a minor nature or not. If it is a minor case, then the social-inquiry report is not necessary. It is only when the court orders that a social-inquiry report is required that a family court probation officer can begin the investigation and preparation of the report. Minor cases include theft involving less than 5,000 yen and can be dealt with summarily without a hearing. All the Workshop members agreed that no social-inquiry report is required in minor cases.

When a person is under 18 years of age at the time of the commission of an offence, he or she is not to be punished with the death penalty, and there is no provision concerning corporal punishment. A family court has the discretion to discontinue a case at any time. In some cases, the court may order tentative supervision by family court probation officers. Along with the tentative supervision, the court may commit a juvenile to a suitable institution, agency or individual for guidance. Disposition measures stated in Rule 18.1 (c), (e), (f) and (g) are connected with tentative supervision. In respect of Rule 18.1 (g), the court uses the Big Brothers and Sisters Movement. For traffic-violation cases and glue-sniffing cases, juveniles are subject to special training programmes, e.g., attending lectures given by family court probation officers or viewing films on the dangers of traffic violations and glue sniffing. For minor traffic offences, a juvenile offender can pay an administrative fee to avoid coming to court. If the juvenile does not pay the fine, the case is sent to the family court. But the court can give the juvenile another opportunity to pay the traffic infraction fine. In only 2.2 percent of general cases are juveniles sent to juvenile training schools. The period of institutionalization at a training school ranges from about 70 days to one year.

In Singapore, after finding a juvenile guilty but before sentencing, a court calls for a social-inquiry report. It is prepared by a probation officer. The report contains information as to the juvenile's general conduct, home surroundings, school record and medical history to enable the court to deal with the case in the best interests of the juvenile. Every court in dealing with a juvenile is required by law to have regard for the welfare of the juvenile and, when necessary, to take steps for removing him or her from undesirable surroundings and for ensuring that proper provision is made for his or her education and training. The various disposition measures available to the court are shown in the Annex. A child under ten cannot be sent to an approved school or remand home unless the court is satisfied that he or she cannot suitably be dealt with otherwise. The decision to commit a juvenile to an institution is normally taken only after probation

has failed or when home conditions are not conducive to the offender's rehabilitation. Capital punishment may be meted out to a juvenile by the High Court. But in murder cases, instead of subjecting the juvenile to the death penalty, the court may direct him or her to be detained in such a place and on such conditions as the Minister may direct. No juvenile can be sentenced to corporal punishment by any court other than the High Court. As Singapore follows the adversary system, only the prosecution has the discretion to discontinue a proceeding at any time. The common disposition measures imposed by the juvenile court are fines, probation or sending the offender to an approved school.

In India, whenever a juvenile is apprehended, the police should inform the probation officer so as to enable the latter to prepare a report on the juvenile's social background. This report also contains a recommendation by the probation officer as to how to dispose of the case. In practice, the probation officer starts an investigation only after it is ordered by the court. The report is considered by the court after the juvenile has been found guilty. If the probation officer does not submit the report within ten weeks after being informed of the arrest by the police, the court can proceed without this report. In cases of neglected or uncontrolled children, the competent authority asks probation officers to investigate and prepare a social-inquiry report.

Boys who are 14 years old or older and girls who are 16 years old or older can be institutionalized for a period not less than three years at an approved school and in other cases till they have reached 18 years old (age of majority). The death sentence cannot be imposed on the child nor is he or she subject to corporal punishment. The court can discontinue proceedings at any stage. All the measures contained in Rule 18.1 other than 18.1 (c) and (e) are available to the court for disposing of a case. Minor traffic offences can be compounded without resort to the court. Generally, juvenile cases are disposed of by giving admonition, probation, fines or release on a bond of good behaviour with or without supervision and care ' , the parents. In 1981, only 0.6 percent of all juveniles were sent to approved schools.

During the Workshop, it was unanimously agreed that institutionalization should not be resorted to other than as a last resort and for a minimum period. It was pointed out that the period of institutionalization is shortened by parole in Singapore. In India the court has the power to reduce the period of incarceration after considering a report submitted by the institution. Moreover, the Children Act empowers another agency called the Administrator to release a juvenile offender on licence in fit cases after receipt of a report from the institution. In Bangladesh, although there is no parole system, the government can discharge a juvenile offender from an institution under the Children Act of 1974.

It was mentioned that most countries are in the process of developing probation officers' services. In developing such a scheme, both the quantitative and qualitative aspects must be kept in mind. To increase the quantity, volunteers may be engaged. Consequently, full-time probation officers will have more time to devote to the improvement of the quality of the pre-sentence report.

Besides Colombia and Japan, which already have the availability of the community service order, it is heartening that some countries such as Thailand and Hong Kong are in the process of establishing such a scheme.

Non-Institutional Treatment of Juvenile Delinquents

Discussion of the following topics mainly focused on Rules 23, 24, 25 and 29. In addition to these four Rules, the group also discussed Rule 22 on professionalism.

Non-institutional treatment plays an important role in the treatment of juvenile delinquents. Correctional institutions tend to isolate juveniles from society, both phy-

sically and psychologically; cutting them off from schools, jobs, families and other supporting influences and increasing the probability that the label of criminal will forever be with them. Since these negative effects are certainly more acute for juveniles than for adult offenders because of their early stage of development, non-institutional treatment has been used for the treatment of juveniles more than institutional treatment. For the same reason, Rule 9 recommends that, "The placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period." In addition, non-institutional treatment has been positively used because of its effectiveness. Re-integration or re-socialization of a juvenile, which is the goal of treatment, is likely to be furthered much more readily by working with a juvenile in the community rather than by incarcerating him or her.

a) Effective Implementation of Non-Institutional Treatment

There are a number of options available to the competent authority when it issues its disposition orders, and these are generally classified as being either non-institutional or institutional methods of treatment.

Non-institutional measures that are presently used by countries in Asia and the Pacific region include admonition and reprimand, parental custody, discharge on a bond, probation, foster care, compensation, fines, community-service orders and others. The Annex shows the specific non-institutional methods that are currently used and the countries that have adopted them.

Foster care should be implemented for those juveniles who are in need of such placement. However, in their interest, placement should be made in the most appropriate situation available.

The community-service order can be considered another form of community-based treatment for juvenile offenders. It incorporates most of the prevailing correctional philosophies such as punishment, treatment, atonement, social growth preparation and restitution. The offender pays back society in terms of time and labour, is offered constructive activity and is encouraged to develop his or her talents. However, a community-service order should include the possibility of the guidance and help of a friendly counsellor who will work for the offender's re-integration into the community.

The participants also discussed whether restitution and victim compensation should be used depending on the nature of the act committed, the circumstances and the capacity of the offender, parent or guardian to compensate the victim.

Although finding, as a disposition, has the advantage of being economical, practical and humane, there are also some disadvantages since fines can create inequalities by discriminating against the poor. In order to overcome this disadvantage, a community-service order can be an alternative.

From among these various alternative measures, the probation system is the most widely used in the Asian countries, although the extent of such treatment varies from one country to another depending on the social, cultural, economic and political situation.

Probation has a dual purpose; to promote the correction and rehabilitation of the juvenile offender and to protect society. Probation as an alternative measure has its obvious merits; it is much more economical than institutional treatment, and above all, the interest of the juvenile as well as that of society can best be served if the juvenile is treated without segregating him or her from the mainstream of social life.

In Thailand juvenile probation was introduced in 1956 by the Juvenile Court Procedure Act. The Central Juvenile Court is responsible for juvenile probation which may be granted to a child (between the ages of 7 and 14) or a young person (between the ages of 14 and 18) who has been found guilty of any offence or who has not been found guilty but needs protection.

Probation treatment starts right after the court orders probation for a juvenile. The Director of the Observation and Protection Centre will assign the case to a probation officer who will then explain the order and the conditions laid down by the court and, subsequently, draw up a program of supervision suitable for the juvenile's rehabilitation. If it appears that the probationer has been completely rehabilitated, the Director will submit a report to the court informing it that the probationer will be discharged. However, if the juvenile violates the conditions of his or her probation, the director may recommend the revocation or termination of probation and may adopt more severe rehabilitation measures. While the juvenile court has increasingly come to make use of probation services, the number of probation officers is still inadequate to cope with the increasing caseload.

In Singapore probation is available for juveniles between the ages of 7 and 16 and provides the court with a viable sentencing alternative for dealing with offenders outside the institutional setting. It involves the conditional release of an offender under the supervision of a probation officer for one to three years. To determine the suitability of the juvenile offender for probation, the court will call for a pre-sentence report. One of the features of the probation system in Singapore is the utilization of volunteers called volunteer probation officers which was introduced in 1971. This scheme will be further discussed under Rule 25.

To solve the problem of juvenile delinquency and to ensure the rehabilitation of young offenders, Bangladesh introduced correctional services in the form of probation of offenders under the aegis of the Department of Social Welfare Services. Initially, these services were in operation in only five districts but later were extended to all the districts of Bangladesh. The probation of offenders scheme is supported by the Probation of Offenders Act of 1964, as amended, thus providing a legal basis for the operation of social services to juvenile offenders. Probation is considered a suspension or postponement of a prison sentence against an offender proven guilty under criminal law, subject to a display of good behaviour. Probation provides the offender an opportunity to correct himself or herself by living in freedom in society. Probation is granted under certain conditions favouring rehabilitation for a specific period of time with the supervision of a probation officer and the utilization of community resources.

In India, the court may direct a juvenile to be released on probation under the care of parents, guardian or any other fit person, on their executing a bond with or without surety when necessary or order supervision by a probation officer during the period of probation. If, at any time during the period of supervision, the court receives a report that a child has not behaved during the period of supervision, after due inquiry, the child may be sent to a special school.

Although the probation system in Hong Kong was established in 1933, it was not until 1956 that the Probation of Offenders Ordinance was enacted extending probation to both adult and young offenders. The characteristic feature of the probation system in Hong Kong is the volunteer scheme for probationers and probation homes or hostels which will be further discussed under Rule 25.

The probation system in Colombia was established in 1920 by Law No. 98 enacted in that year. Prior to Law No. 83 of 1946, which is the Minors' Law in Colombia, probation was already used by the Minors' Court as a measure of "control and vigilance" directly executed by a Minors' Court judge. Probation can be ordered at any moment of the juvenile process, namely, before or after sentence. In addition, a juvenile on probation may be discharged early from probationary supervision by a Minors' Court judge. The Tutelar Minors' Law states that probation shall be not longer than three years, but not less than one year. When a juvenile is ordered on probation, he or she will be placed under the custody of parents, relatives or any other fit, honourable person or institution

designated by the judge. A social worker will be assigned to assist the juvenile's rehabilitation. The order of probation can be modified by the judge who executed the order on the basis of a report presented to the judge by the social worker assigned to the case or from the person under whom the child was placed. If the minor placed on probation does not abide by the specific conditions imposed, or when the conditions are not found conductive for rehabilitation, he or she is liable to be sent to an institution. Although this system has been in place since 1920, it is still very poorly organized, and therefore the results up to the present moment have not been very successful. In most cases, the juveniles placed on probation will appear again before the court for the commission of new offences.

In the Philippines probation granted to juveniles was introduced in 1974 by the Child and Youth Welfare Code. In addition, the Dangerous Drugs Act of 1972 stipulated probation for drug offenders. The characteristic feature of probation in the Philippines is the post-sentence investigation report. A juvenile under suspended sentence or who has been previously convicted to serve imprisonment of not less than six years and one day may file a petition for probation to the trial court. If the court finds that he or she is not disqualified for the grant of probation, it will refer the case to a probation officer who will conduct the post-sentence investigation. The contents of the post-sentence investigation report are the same as those of the pre-sentence report submitted to the court not later than 60 days from receipt of the court order. The post-sentence investigation report is a prerequisite to court disposition. Another feature is the utilization of volunteer probation aides to assist probation officers in the supervision of probationers. This topic will be further discussed under Rule 25.

In 1980, the Republic of Korea established the Social Protection and Rehabilitation Bureau under the Ministry of Justice which provides probation and aftercare services to juvenile offenders. In 1963, the Family Court was established in Seoul and juvenile protection cases are under the jurisdiction of the Juvenile Department of the Family Court in Seoul. In 12 districts, there are 12 special juvenile departments with machinery for the processing, handling and rehabilitation of juvenile offenders as well as pee-delinquents. In places where there is no juvenile court, cases of juvenile offenders are sent to the nearest district court.

Juvenile probation in Japan is extended to juveniles who have committed an offence or have been adjudged pre-delinquent by a family court. The legally prescribed maximum period of supervision for this category is two years or until the juvenile reaches the age of 20, whichever is longer. The Offenders' Rehabilitation Law (1949) prescribed the purpose of probationary supervision as well as the conditions to be observed.

Every probation order issued by the court contains conditions which aim at promoting the rehabilitation of the probationer and, at the same time, serve as the framework within which the probationer and the probation officer base their future programme of action. The conditions can be divided into two categories: (1) mandatory or general conditions which intend to make supervision more effective, and (2) special conditions which intend to promote the re-integration of the probationer into the mainstream of community life. Ideally, the conditions of probation should be flexible, that is, they should be subject to revision, amendment or modification depending on the circumstances of each probationer at any given point in time. In almost all countries where probation is available, a serious breach of the conditions of probation or the commission of another offence will cause the modification or revocation of probation.

With regard to Rule 23.2, this Rule may go beyond the actual situation in this area since judges tend to oppose the modification of court orders by agencies other than courts. Therefore, it is important to discuss in detail effective ways to implement this Rule.

In all countries which recognize the division of power among the executive, the legislative and the judicial branches, this division or balance of power is the heart of the constitutional issue. However, in England, there has been come movement of sentencing power from the judicial to the executive branch in the last forty years. For example, when a judge sentences an offender to six years imprisonment, the important matters, such as whether the offender is confined in an open or closed institution and whether he or she gets one-third off for good behaviour, remain executive matters. The same thing can frequently apply to younger offenders. So, there has been a shift of power from the judicial to the executive branch. However, in the last five or ten years there has been a movement back in the other direction. For a variety of reasons, modern legislation is restoring to the judiciary more final power and more direct control.

In the Federal Republic of Germany the fundamental idea of juvenile justice is to assist juveniles to rehabilitate themselves. This task has been done better by social workers than by the judiciary. In addition, more and more, important parts of the implementation of court orders have been handled by social workers. Although it is necessary to set some criteria for implementation, it can be done better by social workers than the judiciary since social workers have the knowledge to set such criteria while the judiciary does not.

In addition, equity should be kept in mind when considering the major issues in criminal justice, both adult and juvenile. That is, persons who commit the same offence should receive similar sanctions. In the United States, judicial discretion has been reduced, but it is not for the benefit of increasing the power of the executive branch. As a matter of fact, more than a few states have passed bills to abolish the parole system. For the last ten years there have been moves in the direction of reduction of disparity in sentences, i.e., reduction of the individualization of sentences, particularly at the adult level. Although more flexibility if still afforded in the disposition of juveniles, there is increasing concern for maintaining uniformity of disposition even within the juvenile justice system. Therefore, an increasing number of sentencing committees have been established.

In some countries like the Philippines, Singapore, Thailand, Colombia and Japan, probationers may be discharged early from probationary supervision by the court or an administrative body. Singapore has a Juvenile Case Committee which automatically reviews the progress of every case where a probationer has completed at least six months of the probation period.

The power to terminate probation earlier than the specific period should rest with the court or an administrative body if it appears that the probationer has made a good adjustment to society and that further supervision is no longer necessary. Early discharge would give the juvenile probationer a sense of achievement, thus exerting a favourable influence upon his or her future conduct.

It is true that almost all of the countries in this region have implemented the probation system. However, it is equally true that the probation system in some of these countries does not function effectively. Therefore, it is necessary to examine the factors that cause ineffectiveness and inefficiency. Mentioned here and some of the factors which the participants identified:

i) There are excessive caseloads for probation officers. In one country, one probation officer has to supervise about 100 probationers a month without the assistance of volunteers. In another country, the caseload of a probation officer exceeds 1,000 probationers a month. Under these circumstances, it is humanly impossible to effectively supervise probationers.

ii) The juvenile justice system as part of the criminal justice system has its own problems in attempting to function as a system. There is an unfortunate tendency for each part to blame its problems on the others. The police tend to blame the courts and are critical of court decisions; judges frequently find fault with the prosecution

for their repeated failure to bring good cases to court; and the police, prosecution, courts and the community blame corrections for their failure to rehabilitate offenders.

iii) It is not an easy task to select suitable types of offenders for probation. If an offender who is placed on probation is unwilling to be rehabilitated in the community, it is impossible for a probation officer to supervise him or her. This may, however, lead to the failure of supervision and the loss of public confidence in the probation system.

iv) In some countries in this region, the lack of transportation has been an obstacle to the development of probation.

v) There are insufficient or inadequate financial outlays for institutions, programmes and services.

vi) Professionalization and upgrading of probation personnel is needed.

Therefore,

i) In order to make probation an effective tool for correctional treatment of juvenile delinquency, a probation officer should be assigned only an amount of cases considered necessary to enable him or her to render effective supervision. The number of cases assigned to the probation officer will depend on the intensity of the work required. There are a number of cases which are extremely demanding and should be seen to frequently and for long periods. Others require much less time. The caseload must be related to the other work which the probation officer does, like attendance in court, making observations, etc., which are a burden upon his or her time. It is really difficult to come up with a specific number as it depends on many factors.

ii) The supervision and rehabilitation of juvenile offenders are not the responsibility of any agency of the juvenile justice system alone. Major policy questions for pursuing this objective require the integrated approach of all the components of the juvenile justice system.

iii) Before placing a juvenile offender on probation, the court should call for a comprehensive report from the probation officer so that probation is used only when found as the best disposition.

iv) Suitable transportation measures are imperative for the development of community-based corrections.

v) Budgetary restrictions and imbalances in the allotment of financial resources affect the efficacy and efficiency of the overall operation of the criminal justice system. Appropriations must be in proportion to the component's needs in terms of personnel, programmes, projects and facilities, and must be dictated by the intricacies of the functions and services rendered.

b) Needed Assistance to Juveniles

Governments should utilize all resources at their disposal but the co-operation, participation, involvement and commitment of other sectors of society are needed in providing assistance to juveniles. To this end, emphasis is placed on educating the community to assume a greater role in the care, protection and control of young offenders.

In Japan the Offenders Rehabilitation Law (1949) provides rehabilitation aid in the form of education, medical treatment, recreation, lodging accommodations, vocational training and employment.

In a case where it is possible that a person placed under probationary supervision may be prevented from being rehabilitated by reason of injury or sickness or by lack of proper temporary lodging, residence or job, the chief of the probation office shall assist such a person to obtain medical care, food, lodging, employment or other necessary help from public health and welfare facilities or other such institutions. When emergency help cannot be obtained from these welfare institutions, the chief of the probation office shall provide assistance and pay necessary expenses within the limit of the budget.

Such emergency aid is broken down as follows:

1) accommodation
   a. rehabilitation aid hostels—privately operated but receive govern-

ment subsidy;
2) meals
   a. 300 yen per juvenile per day or
   b. 500 yen when the juvenile is travelling;
3) clothes
   a. up to 3,000 yen;
4) employment
   a. Public Employment Office, or
   b. co-operative employer; and
5) others
   a. education or
   b. medical care.

In Colombia efforts have been made to provide juveniles with necessary assistance at all stages of the proceedings in co-operation with private or voluntary agencies. Such assistance includes fee legal aid, admission to outside educational institutions, placement in hostels, financial assistance to families or juveniles, purchase of books, equipment and training tools, etc. This assistance has enriched the treatment programmes, both institutional and non-institutional, conducted by the government.

In most countries, needed assistance is taken care of by the social services department, but since the information and data on this subject are extremely limited, it is difficult to elaborate.

A participant from Japan commented that monetary assistance alone will not serve the purpose. Spiritual assistance is also needed. He is in full agreement with community-based treatment. However, one problem that exists is that when a juvenile is placed back in society, he or she does not know how to live a wholesome life because of relationships with organized gangsters. Society cannot institutionalize all these juveniles with gangster relationships. In reality, there is no choice but to place him or her back in society for treatment. To belong to these groups is a way of life for these juveniles and probation officers find this difficult. Therefore, spiritual assistance is needed along with monetary assistance.

c) Public Participation in the Treatment of Juvenile Delinquents

A variety of services may be needed for the treatment and rehabilitation of juveniles coming in conflict with law. With a view to meeting diverse problems of various categories of juveniles, it must be emphasized that the social resources available in the community should be fully used for dealing with juveniles. Community approaches currently used in several countries seem to be more successful in saving juveniles from social stigma than those of the police, courts and correctional agencies.

In Hong Kong a volunteer scheme for probationers was launched in 1976 to meet the specific needs of probationers through personal service offered by volunteers and to promote the participation of citizens in the criminal justice system. Volunteers do not take over the role of probation officers but support probationers by means of guidance in the use of leisure time, tutoring, befriending, etc. In this point, this scheme is different from volunteer-probation-officer schemes in Singapore, Thailand and Japan. Normally, the period of volunteer service is six months and is subject to renewal.

Like the volunteer shceme for probationers in Hong Kong, the Philippines recruited and trained 6,000 volunteer probation aides in 1984. They were selected from among persons of proven integrity in the community and were issued appointments for one year subject to renewal. They assist probation officers in the supervision of probationers and are given a maximum of one hundred fifty pesos for reimbursement of expenses while supervising at least five probationers a month.

The utilization of volunteers called volunteer probation officers was introduced in Singapore in 1976. After receiving rigid training, volunteers are qualified as gazetted volunteer probation officers to take legal responsibility for the supervision of probationers placed under their personal care. By entrusting less problematic cases to these volunteer probation officers, full-

time probation officers can focus their attention on more problematic cases.

In Japan there are about 48,000 volunteer probation officers who form the mainstay of the rehabilitation services. Their role is to help offenders rehabilitate themselves in the community and to influence the public's attitude towards their acceptance into society. In addition to volunteer probation officers, a number of private organizations and associations co-operate in programmes to rehabilitate juvenile delinquents. Among them are: (1) Big Brothers and Sisters Movements —the members of these associations establish individual relationships with troubled juveniles and engage in counselling activities with a view to individualized rehabilitation and delinquency prevention, (2) Women's Associations for Rehabilitation Aid—these associations are formed by women volunteers who, in their roles as housewives and mothers, are concerned with the prevention of crime and delinquency in their communities and assist in the rehabilitation of juvenile delinquents and offenders, (3) co-operative employers—about 3,000 Japanese enterprises voluntarily offer employment to ex-offenders and assist their rehabilitation.

Indonesia has the Rukun Tetangga, a basic indigenous organization in the community. A community which is composed of ten to fifteen households is covered by one Rukun Tetangga, the members of which are chosen from young persons as well as adults in the community. This organization is very effective in helping the community in social activities and in the prevention of crime within the community, and this organization usually has the power to influence and guide juveniles to behave well in the community.

Papua New Guinea has the village court system. In rural areas in Papua New Guinea, minor offences are dealt with by the village court which consists of village court magistrates, clerks and peace officers who perform police functions. Penalties imposed by the village court are limited to fines, orders to work on community projects and orders to compensate victims. Offenders who fail to comply with village court orders may be sent to prison after their warrants are endorsed by the local or district court. However, this system has some problems such as lack of training for officials, poor selection of persons for positions and insufficient support from the appropriate authorities.

In Malaysia there are several volunteer organizations that deal with welfare services. For the treatment of juveniles, PEMADAM (National Anti-Drug Association) was launched in 1976 with the objective of bringing together citizens involved in the prevention of drug addiction as well as the operation of rehabilitation centers and after-care centers for drug addicts. PEMADAM has a wide network of branches in all states in Malaysia with members drawn from the community. Information campaigns against drug abuse and alerting the public to the dangers of drug abuse are being vigorously pursued by this organization through the mass media. Apart from this, drug operation rooms at national and state levels are manned around the clock to receive information and give advice and counselling.

In the Philippines, Presidential Decree No. 1508 established a system of amicably settling disputes at the *barangay* level and provided for the creation in every *barangay* of a Lupong Tagapayapa, composed of the *barangay* captain as chairman and not less than ten or more than twenty members that try to settle minor disputes among constituents. This system has worked wonders in that it does not only contribute to the decongestion of court dockets, but it also maintains serenity and understanding among the members of the *barangay* thereby preserving and developing the time-honoured tradition of amicably settling disputes among family and *barangay* members.

With a view to meeting the diverse problems of various categories of juveniles, the utilization and mobilization of volunteers and voluntary organizations in the rehabilitation of juveniles as well as the settling of disputes of juveniles coming in

conflict with the law outside the purview of the formal system through basic, indigenous organizations should receive the fullest support. To this end, more voluntary organizations are encouraged to participate in developing programmes for the rehabilitation and treatment of juvenile offenders with government technical support.

However, it was pointed out that the utilization of volunteers and voluntary organizations may be subject to misuse which will hamper the rehabilitation process and be counter-productive. Therefore, it is recommended that some criteria or guidelines for selection, recruitment and training of volunteers as well as rules and regulations for voluntary organizations be formulated.

In the case of the mobilization of village courts, Rukun Tegangga, *barangay* and other basic, indigenous structures, it is recommended that these bodies be integrated into the entire juvenile system so that there will be uniformity in the application as well as the implementation of their rules and regulations.

It was commented that the village court and other forms of social control which can be either formal or informal may go far beyond the scope of Rule 25. They aim at the maintenance of law and order in the community and sometimes they exert punitive powers such as settling minor criminal cases. However, Rule 25.1 requires the mobilization of volunteers and local institutions to contribute more effectively to the rehabilitation and reintegration of juvenile offenders or delinquents in the community setting. It would be advisable here to call for same guidelines that try to mobilize these existing bodies in the specific interest of rehabilitation, not in the general interest of keeping order and peace in the community.

d) Semi-Institutional Arrangements

It is true that some-institutional arrangements have been used as one kind of after-care service. But recently they have been used as one kind of community-based treatment programme. Semi-institutional arrangements are used for after-care and for probationers who are not committed to institutions.

After-care services are community-based treatment methods used for the primary purpose of providing the continuing help necessary for re-adjustment of the juvenile to normal life in the community; thus, community involvement becomes an essential part of the rehabilitation of juvenile delinquents.

In Singapore there are special semi-institutional programmes. When juveniles are placed on probation by the juvenile court, they may be ordered to reside in a hostel as a requirement of probation. The hostel is an open institution. Juveniles are allowed to go to work or attend school on their own. Those who are neither working nor in school keep themselves busy with carpentry, gardening and maintenance work. Opportunities are provided for juveniles to use their independence responsibly and to acquire socially accepted values. At present, these are several hostels throughout the country, and all of them are operated by the government.

In addition to the hostel system, Singapore has an after-care service. Whenever juveniles are discharged from correctional institutions, after-care officers continue to provide follow-up services for periods ranging from six months to two years or more depending on the juvenile's progress. When lodging accommodation is necessary, the after-care officer may provide appropriate lodging facilities for the juvenile. Such facilities are operated by the government.

In Japan private organizations maintain semi-institutional facilities under the authority of the Minister of Justice. Rehabilitation-aid associations operate half-way houses for probationers and parolees as well as other discharged offenders who have been referred to them from the probation office. The state subsidizes lhe expenses for such care. At presen, there are 101 half-way houses throughout Japan.

Semi-institutional arrangements for juvenile offenders are available in Colombia

in the form of open homes, half-way houses, hostels, training centers, etc., for both males and females. Several private, voluntary organizations are utilized for the placement of abandoned or neglected juvenile offenders who are in need of a stable living atmosphere in order to achieve their rehabilitation. Juvenile offenders whose home environments are unhealthy or not conducive to their rehabilitation or those who do not have a place to live but do not require institutionalization can temporarily find lodging accommodation in these after-care homes. Religious congregations, women's associations, Rotary Clubs, Lions Clubs and many other private organizations sponsor these types of after-care programmes in order to assist abandoned juvenile delinquents. These programmes are co-ordinated and assisted by the Colombian Institute of Family Welfare (ICBF).

In Thailand it is also the duty of the Observation and Protection Center to provide an after-care programme to assist with the accommodation, occupation and education of a juvenile offender who has been released by order of the court. In this situation, a social worker will act in the same manner as a probation officer, taking care of the juvenile and giving him or her advice as to proper behaviour and conduct. There is also a job-finding programme for juveniles with good conduct who have to earn their own living. Experience that is needed in job-market placement includes welding, carpentry and bricklaying experience. The concept of after-care arrangements in Thailand is at an unsatisfactory level due to inadequate personnel and budgetary restraints.

Although after-care service facilities may be present in the other countries in the Asian region either through governmental or non-governmental resources, the participants did not discuss them further due to lack of information and data. Some participants also noted that with some exceptions, there is still an urgent need in the Asian region to encourage the development of semi-institutional arrangements by voluntary organizations. Inadequate personnel for after-care services was identified as another problem.

Therefore,

i) Minimum standard rules should be set up by countries to regulate the establishment of after-care service agencies.

ii) These agencies should receive financial aid from their governments.

iii) The services of these agencies should be extended not only to those who have been released from institutions but also to those who have not yet been introduced into the formal system.

iv) A uniform and systematic programme of after-care services should be developed.

v) Closer links among social welfare agencies in the community should be encouraged.

vi) Facilities should be locally based.

e) Professionalism of Social Workers and Probation Officers

Some participants felt that the Rules did not go far enough in recognizing that professional specialization should be required where feasible for social workers and probation officers.

An examination of the basic requirements for appointment of a social worker or probation officer in some of the Asian countries revealed that among the basic requirements for appointment, the applicant should at least:

1) have a college or university degree in psychology, sociology, law, criminology, social work or any other behavioural science;
2) have passed a national examination in his or her respective field; and
3) have a certain amount of practical experience in corrections, social work or other related fields.

It is, therefore, recommended to re-examine the merits of this Rule with a view to upgrading and raising social workers and probation officers to a professional level not only because a juvenile offender's life is spent longest in interaction with social workers and/or probation officers, but more importantly because, as a subcomponent of community-based correc-

tions, probation officers and social workers have the competence equal to those in any other component of the juvenile justice system.

Dr. Springorum quite keenly recalled the evolution of Rule 22 and of the commentary at the time. There was a much more stringent rule for social workers and probation officers, but there was so much resistance coming from representatives of various countries that the Rule was finally implemented in its present form.

f) Conclusion

There are substantial problems which stand in the way of the full implementation of non-institutional treatment of juvenile delinquents. These problems include: the negative attitude of local residents to non-institutional treatment, a shortage of manpower and financial resources and a lack of research on the subject of non-institutional treatment.

Community-based treatment cannot be effectively implemented unless citizens become involved and actively participate in rehabilitation services. The existing bodies of social control should be purposefully involved in the planning process from the very beginning so as to ensure that public co-operation is readily available at all stages of implementation.

Fragmentation, or the lack of a centralized framework providing for communication and cohesion among components and the co-ordination of their functions, poses an obstacle to the effective, efficient administration of juvenile justice in most countries of this region. Fragmentation demands integration. How integration can be achieved and maintained effectively remain questions for the different countries to answer, considering the variations in their juvenile justice systems and processes. However, every approach towards integration should basically instil in the personnel of every component proper critical awareness and appreciation and understanding of the goals, functions, activities, resources and limitations of other related components.

Institutional Treatment of Juvenile Delinquents

The above-mentioned issue covers the following four substantial topics which were taken up for discussions: objectives of institutional treatment, application of the United Nations Standard Minimum Rules for Prisoners, conditional discharge and use of institutionalization as a disposition of last resort.

a) Objectives of Institutional Treatment

1. Objectives of Training and Treatment (Rule 26.1)

It was agreed that the provisions of this Rule were satisfactorily met in all systems. It was the agreeable position that training and treatment of juveniles in institutions appeared to be clearly directed towards the provision of adequate care and protection. Educational and vocational skills were also being developed with the objective of returning juveniles to their due place in society.

2. Provision of Required Care, Protection and Assistance (Rule 26.2)

The opinion was that provisions of the Rule were being adequately covered, though the employment of full-time staff in all areas in juvenile institutions would be a desirable feature in terms of efficient and effective management. Several participants pointed out that in their institutions, doctors' and psychologists' services were obtained from the outside.

Discussion centred around the advantages and disadvantages of having full-time staff in all fields as against obtaining these services on a part-time basis from outside the institution. The degree to which the latter would prove successful would depend heavily on the quality of those appointed. Some participants spoke of success with this method where the staff concerned were dedicated, and others spoke of the lack of this application where the quality of full-time personnel was questionable. The tendency to appoint

staff to institutions when they are unable to make their mark in their fields outside was mentioned.

Therefore the question of supply and supervision assumed important proportions. Some thought that staff work best when they are part of the normal community structure, and it was agreed that there was a limit to the extent to which community resources can be drawn on.

The final opinion appeared to be that some full-time staff were necessary as a base for running institutions while working with community agencies to obtain efficient and interested outside personnel to perform part-time duties at the institutions. In this way the utility of such services could be maintained at a high level and help in gaining the objectives set out in this Rule.

3. Separation of Institutionalized Juveniles from Adults (Rule 26.3)

When this Rule was discussed several participants spoke of the lack of sufficient institutions and said it constituted a drawback to the implementation of this Rule. Due to such restraints, while efforts were always made to keep juveniles in institutions separate from adults, situations sometimes arose where defaults were unavoidable. These occasions sometimes arose while juveniles were in transit from one institution to another or when being taken to court when transportation was insufficient. Contact with adults was for short periods only, but the possibility of the evil consequences of such contagion could not be denied.

An interesting opinion expressed was that the view that young males and females in institutions should be kept strictly apart needed reconsideration. In the normal community setting co-education is a common feature of educational systems. So the possibility of males and females together in juvenile institutions was raised. Mention was made in this regard of a European institution where adults were not kept separate from juveniles.

These ideas, though they were received with considerable interest, were admitted to be outside the range of feasibility in the national settings of most of the represented countries. The consensus finally expressed was satisfaction with the existing position in regard to this Rule. Minor infractions were due to constraints which were recognized as needing elimination as soon as possible.

4. Attention to Needs and Problems of Institutionalized Young Female Offenders (Rule 26.4)

When this Rule was discussed most participants expressed the view that the implementation of its provisions in their countries was satisfactory.

The position in Japan in this regard was reviewed at length as it presented some novel features. The inability to obtain sufficient recruits to maintain a cadre of female staff was mentioned as well as the absence of female staff in some small juvenile classification homes. The operational systems of homes for juvenile training and education were such that they did not allow a totally female staff.

The discussion again included the separation of females from males in juvenile institutions. It was pointed out that the total number of females in juvenile institutions was much smaller than males. This in itself would present difficulties regarding the possibility of co-education in institutions.

The view was also offered that the problems of young females in institutions are more aggravated than those of the male group. The solution to their problems therefore necessitates a different approach.

A participant pointed out that in a particular system where many of the female delinquents were institutionalized for sexual delinquency it was imperative that they be kept separate from males. The result, otherwise, was likely to be failure of their treatment programme.

The conclusion was that the general practice in regard to this Rule was good. The participants felt that in institutions like the Japanese homes for juvenile training and education where the existing

system of operation did not permit it, a totally female staff could not be maintained.

5. Right of Access of Parents or Guardians (Rule 26.5)

When this Rule was taken up for discussion there were no reported shortcomings from any participating country. According to the information supplied, access to institutionalized juveniles was available as required. Visits were allowed regularly and exchange of letters between juveniles and parents, guardians and others outside the institution was allowed. Further, some countries also reported that welfare officers attached to the institutions made efforts to re-establish contact between juveniles and their close relatives. In this way a line of communication and support was opened.

The opinion of other participants was sought in the discussion. It was mentioned that sometimes parents or guardians themselves have a bad influence on the juvenile, and access to them would not have a salutary effect. This was especially so when these persons had played a part in setting the juvenile on the path to delinquency which resulted in ultimate institutionalization.

6. Inter-ministerial and Inter-departmental Co-operation Ensuring Adequate Training (Rule 26.6)

During discussion of this Rule information was supplied regarding the various systems of education operating in juvenile institutions in different countries. From the reports it appeared that the positions in this regard were satisfactory. A good level of instruction and training appeared to be maintained, and the juveniles' knowledge and skills improved during institutionalization.

In some systems, the juveniles were allowed to leave the institution to attend schools. In others, educational programmes in line with those of the education department and with qualified and trained teachers were followed in the institutions, and successful juveniles were issued certificates which had the same standing as those issued in outside schools. The problems involved in these programmes were discussed. One of these was stated to be relations with outside pupils.

The view was put forward that there shoud be integration whereby all agencies should be linked together to provide the best educational opportunities for institutionalized juveniles. Better co-operation could be obtained through the contact of heads of institutions with outside agencies, so that there could be schemes like sending juveniles to work in factories and returning them to institutions at night. The skills learned and training received by juveniles would play a vital part in rehabilitation.

Some participants, while conceding that the provisions of the Rule seemed to be adequately met in most cases, were of the view that co-operation should cover a wider range than "institutionalized juveniles." It would be more fitting if reference in the Rule could cover "assistance and co-operation of all agencies to all juveniles in need of such assistance and co-operation." This view was supported and accepted by other participants.

b) Application of the United Nations Standard Minimum Rules for the Treatment of Prisoners

1. Application to Institutionalized Juveniles (Rule 27.1)

Shortcomings in some countries were reported when this Rule was discussed. These included the lack of facilities to ensure the complete separation of untried juveniles from convicted prisoners. Sometimes circumstances forced a situation where they had to be kept together, though not for long periods of time. Where overcrowding was a problem separate cells could not be provided for juveniles. When transportation was insufficient juveniles were taken to court along with adult prisoners, and they were sometimes taken by public transport. When females were escorted the escort officers, in some places, included males. The requirement of a resident doctor was also not met in many

countries. Others reported that sometimes juveniles worked with adults though efforts were made to have some sort of separation in the workplace.

During the discussion it was conceded that all these Rules were not relevant to juveniles. The Rules for prisoners contain details regarding the regulation of daily prison life. The reason why there were no separate rules for institutionalized juveniles was brought up. It was explained that the Rules for prisoners had not been fully implemented yet and that there had been varying degree of implementation in different countries. It was felt that rules for institutionalized juveniles would probably go beyond the Rules for prisoners and, in view of the fact that the latter had not been fully implemented, this was not visualized immediately.

The final accepted position was that, in spite of minor shortcomings in some countries, provisions of these Rules appeared to be well covered.

2. Implementation to Meet Specific Needs of Juveniles (Rule 27.2)

When Rule 27.2 was discussed the participants stated that the requirements were being met. It was said that necessary amendments had been made to relevant laws and ordinances to ensure that specific needs of juveniles were seen to. Rules had been formulated and enacted to implement the principles laid down in the Rule.

The separation of drug users for purposes of treatment was discussed. Some participants pointed out that because the problem was serious in their countries they already had effected such separation. It was agreed that the drug problem among juveniles was escalating, and measures to meet it will have to be forthcoming soon.

Another subject raised was the position of regular staff in adult and juvenile institutions. It was admitted that the attitude of the outside community towards institutional staff was adversely affected by the fact that they worked there.

Participants wondered whether the task of the staff in a juvenile institution was more difficult than in an adult institution and whether adults were easier to deal with. They also wondered if staff prefer working in an adult institution. These were questions raised and discussed. It was stressed that the staff in juvenile institutions should be capable of getting along with juveniles. A different approach was indicated which required more professional skill and the question of whether they should receive more pay was also discussed.

The participants agreed that the implementation of this Rule had far-reaching consequences, and that it was important to review progress regularly. Norms had to be evolved in each country differing according to cultures and life-styles.

Types of efforts being made to implement the principles laid down in the Standard Minimum Rules for Prisoners were investigated. Some sort of instrument was needed to measure the degree of implementation of the Rules. This should be done regularly; perhaps once every five years.

c) Conditional Release

1. Greatest Possible Extent and Earliest Possible Time (Rule 28.1)

The wording and terms of this Rule were widely discussed. The flexibility of the terms was commented on. There could be different views of "earliest possible time." One would be the earliest possible time the subject's release could be risked and another could be when he or she could be found a place to live in, employment and a person to take care of him or her. It was pointed out that the wording of the Rule gave a wide range for implementation in different countries.

The factors to be taken into consideration when the release of a juvenile was being looked into were disucssed. One participant was of the view that it was not practical to complete education or re-education in an institution. Education in an institution and probation should be regarded as one programme. Once a juvenile reaches a certain level of progress in the institution he or she should

be placed outside and education can continue while the juvenile is under supervision, thereby making progress continuous.

The question of who should grant conditional release was also discussed at length. The significance of the use of the word "appropriate" authority as against "competent" authority was commented on. The releasing authority therefore need not be a judicial body. In some countries institutions might have the power to release.

One participant said it was not an institutional decision only. While the staff were best able to judge and assess the progress of a juvenile in an institution they would not perhaps know enough about the probable environment after release, assistance available, etc. The probation or supervising officer's views must be co-ordinated to make the system effective.

Another participant said that there were many things to be considered, and a third-party organization was necessary when considering release. Care should be taken in selecting the organizations which would have this authority.

The risk of keeping a juvenile in an institution until his or her treatment or education is completed as against a sentence according to the gravity of the crime was discussed.

Detention for longer than the principle of just deserts dictates was also discussed. It was argued that if a juvenile was kept in an institution because of future dangerousness, it would amount to punishment for what he or she might do and not for what he or she had done. Motives of rehabilitation should not mean greater deprivation of liberty. This system would be punitive for those who were not conditionally released. Conditional release could be an administrative or executive action and not a judicial one. The changes would not be known to the judge and some would be released earlier than others.

2. Assistance, Supervision and Support after Conditional Release (Rule 28.2)

Participants described the assistance, support and supervision of conditionally released juveniles. Support was provided and supervised by the officer or organization in charge of after-care.

Mention was made of half-way houses where a juvenile who was for some reason unable to return home was housed until he or she was able to feel confident in the community. From here he or she could go to the place of work and return at night. In some places, rehabilitation aid hostels are run privately with assistance from the state.

However, the repugnance shown to a person released from an institution stood in the way of full implementation of the Rule. The participants were of the opinion that there should be stronger ties and closer liaisons between the correctional sector and community organizations. Every effort should be directed at a change of attitude towards a released juvenile to enable him or her to enter society more easily.

d) Use of Institutionalization as a Disposition of Last Resort

The terminology of the Rules where institutionalization was referred to was taken up along with the use of such treatment as against non-institutional measures.

It was pointed out that institutionalization was referred to as a last resort, making it seem as if it was only resorted to when all other measures had failed. Institutional treatment, it was felt, can be effective but has to be very carefully considered as it deprives a juvenile of liberty. It should be considered not as the last or least important treatment but as part of the system as a whole. It should be proved that institutional treatment can be very effective in rehabilitating juveniles. Selection of the best and most adequate form, it was pointed out, is vital to place institutional treatment in its proper perspective.

The effect of this attitude on society was considered to be very important in relation to the rehabilitation of juveniles. Unless the last resort picture is altered, juveniles sent to institutions will be seen

as those who are beyond correction by other methods. There was, it was argued, a lot in what was said regarding society and its attitude toward a juvenile who had been institutionalized. If regarded as a "drop out" or "no hoper" in need of last resort treatment in an institution, he or she is seen as a reject.

Institutional treatment, it was pointed out, though referred to as the last-resort happens to be a main resort in actual practice. It should also not be forgotten that non-offenders are sent to institutions. It was argued that sometimes a juvenile could better profit from institutionalization at an early stage when delinquent tendencies were clearly manifested.

The participants felt very strongly that institutions should be cast in a better light to correct society's aversion towards those who have been institutionalized. Otherwise the attitude could become more pronounced producing the opposite effect to that which is desired.

Rule 19 was taken up in this regard and lively discussion followed with several views being expressed. The value of institutionalization was gone into at length.

Institutionalization is one of the diverse methods available for treatment. Even a first offender can be institutionalized if this treatment is considered to be the best for him or her. It was argued that many juveniles go from institutions fully rehabilitated to lead normal lives.

All agencies were thought to have their functions. Their merits and demerits have to be evaluated. The aim of all modes of treatment is rehabilitation but there are obligations to victims as well as to offenders. The importance of institutions could not be disregarded but did the use of the words last resort degrade institutional treatment? Others argued that the wording, on the contrary, upgrades the quality instead. The juvenile comes here for more intensive treatment than in other modes.

Society looked at institutionalized juveniles in the worst way. Children were regarded as going into institutions only when every other remedy had been tried and had failed. It was argued that the use of criminal law against juvenile delinquents should be the last resort. They should be dealt with by measures outside criminal law in view of stigmatization. Institutionalization was held to reduce the opportunity for rehabilitation and for juveniles to become decent citizens. Society had a mistrust of institutional treatment.

The principle of just deserts also entered into the discussion. Some argued that for more serious offences, punishment should be heavier with the deciding factor being how much protection was needed for a juvenile. The argument regarding stigmatization was that it was a matter of degree. Even coming to court or police questioning resulted in some degree of stigmatization.

It was argued that institutional treatment has been the main mode of treatment. Sometimes legal support is needed to take juveniles away from certain conditions contributing to delinquency. Some argued that institutionalization produces as much criminality as it succeeds in reducing and was an index of the failure of society to provide successful alternatives. Supporters of just deserts said that this approach does not always call for institutionalization. It was the last resort in a scale of offences and was the last penal sanction.

The final, though in many cases, reluctant conclusion was that institutionalization was the last resort when other modes of treatment were not considered enough or suitable. The words last resort therefore did not lower estimation of the value of this mode which was considered as one in a series of modes.

It was then decided to discuss parts of the Standard Minimum Rules for Prisoners where it was felt there were, or should be, significant differences where treatment of juveniles was concerned.

The absence of fully female staffs in some institutions for female juveniles in Japan was discussed in relation to the requirement of totally female staff. The reasons for the failure to maintain a

cadre of female officers was discussed as well as the merit of having a male officer as a father figure in institutions for juveniles, especially where there were male juveniles too. The consensus of opinion was that totally female staffs where female juveniles were institutionalized was desirable, and if male staff had to be employed they should always work in conjunction with female staff.

The desirability of separating pre-delinquent and delinquent juveniles in institutions was also discussed. The possible ill effects of mixing the two groups were discussed, and it was the opinion of the participants that although strict separation was impracticable, efforts should be directed towards implementation of a different treatment programme for each group.

Discipline, punishment and instruments of restraint were discussed next. It was agreed that there should be different rules in this regard for juveniles. Less severe punishment than for adults was thought to be necessary. It was also the opinion of some participants that dietary punishment for juveniles should be done away with where it was in use, and that where corporal punishment was on the list of punishments it should be used only in very extreme circumstances.

The reference to the use of corporal punishment "in extreme circumstances only" was also taken up. The reason was due to a participant's submission that steps were being taken to re-introduce it in his country.

Strong objection was raised by some participants to the use of corporal punishment, and it was argued that the use of corporal punishment could be said to cover dietary punishment and even the effects of the use of restraints and confinement in cells.

A full discussion followed on the need for and use of punishment in institutions. Different views were aired regarding the use of corporal punishment. One submission was that the treatment of juveniles should cover the three aspects of corrections: retribution, deterrence and reformation. They should go hand in hand and always be present in the treatment programme. It was important that there should be no undue stress on leniency, and punishment should emphasize the aspect of retribution. Another participant stressed the need for punishment to maintain discipline in institutions. Any elimination of means of punishment should coincide with provision of alternatives.

It was also argued that while the main function of punishment in adult prisons was to maintain order and discipline, the use of disciplinary punishment in juvenile institutions was to reform and differed from punishment imposed in the maintenance of order. The attitude of staff in juvenile institutions, in this respect, thus assumes vital importance. It was pointed out that it was also important to study a juvenile's treatment programme when deciding on punishment.

Final opinion was that although the participants were against the use of corporal punishment they should recognize the importance of differences in cultures and life-styles and respect individual systems in countries with other views.

Regarding treatment programmes for juveniles, it was felt that they should emphasize training and re-integration into society. It was thought very necessary to diversify treatment methods as has already been done in Japan. Emphasis should be on well-planned treatment which will cut down the period of detention necessary to effect rehabilitation. Treatment plans should be put into effect as soon as possible.

Some participants also stressed that religious care for juveniles in institutions should be a necessity in all countries.

Work and vocational training were also discussed. Emphasis, it was agreed, should be on diversification of vocational training. There should be more types of vocational training available to juveniles. They should be taught useful trades so that they can make a living on discharge. Work regarding vocational training should not be aimed only at increased productivity in prison industries. It was strongly felt that phrasing of the Rules should ensure that juve-

niles were protected from severe forms of work which might be too strenuous in relation their stage of physical development.

Where education and recreation were concerned, some participants thought that in view of their ages, juveniles should enjoy more facilities and equipment. While the education programme should follow that laid down by the education department, there should be a specific programme of recreation for juveniles.

e) Conclusion

The fear of some participants was that the discussion would be limited by the fact that other participants, being from other agencies of the juvenile justice system, would lack relevant information regarding institutions in their countries. This was borne out and lent strength to the conviction that stronger ties should be established between the different agencies. This would, it was felt, foster an eagerness to know more about each other's work, methods and prevailing conditions and could have a vastly beneficial result in that such interest would result in fuller co-operation among agencies relying on helpful criticism and suggestions.

One fact that surfaced at the discussion and which illustrates the barrenness in this area was that judges, probably in most countries represented, have little knowledge of actual working conditions in institutions, not having visited any.

What emerged from the discussion was what appeared to be a consensus that the position in most countries in regard to matters connected with the subjects discussed was satisfactory. Conditions naturally differed, sometimes widely, in the different countries. But this was only to be expected taking into consideration the different cultures and life-styles and also prevailing economic conditions. However, the final conclusion that could be drawn was that, in the main, the different systems had satisfactorily incorporated the Rules in keeping with prevailing conditions.

Research, Planning and Policy Formulation

Participants examined the role of research in the process of policy formulation and application in juvenile justice administration. In Japan there are many research and planning programmes being carried out. For example, the *White Paper on Crime* published by the Ministry of Justice; the annual report of judicial statistics published by the General Secretariat of the Supreme Court which analyses the tendencies and causes of crime; a magazine which highlights particular problems, e.g., glue sniffing and hot rodders, published periodically by a committee of the family court; and recommendations on the improvement of the legal system submitted to the Minister by the Legal Council of the Ministry of Justice.

Nepal has no special research and planning organization for legal problems. But the annual report of the Supreme Court and the police provide information on the crime rate. An annual conference is also organized involving personnel of the Supreme Court, the Attorney-General's office and the police to discuss law enforcement.

In Bangladesh there is no research facility for the development and planning of the juvenile justice system because of resource constraints. But statistics on the disposal of cases are sent to the government which implements its policies on the basis of these data.

In China research and planning for juvenile justice administration is implemented under the leadership of the Juveniles Coordination Committee. Specialized research units have been established in the Ministry of Public Security, Ministry of Justice, Ministry of Education and the Social Scientific Institute. Annually, personnel from these four ministries meet to discuss problems of juvenile justice administration. The necessary data, information and other requirements for research are supplied by the national and local governments. The research emphasizes the causes and prevention of juvenile delin-

quency and juvenile justice policy. Many periodicals publish various studies on juvenile criminal justice. Funds for development and research are provided by the state budget. The local governments and departments also render financial and material support for the administration of juvenile justice. The workshop participants were informed that China is planning to set up a Central Committee for Defending Juveniles under the leadership of the State Council. The main tasks of this committee are to organize and promote the work of defending juveniles, to draft planning and policy formulations and to conduct research on the work of juveniles.

In Singapore each component of the juvenile justice system co-operates in the collection and compilation of statistics on crimes. Annually, the Criminal Investigation Department publishes various statistics on the crime rate and the profile of offenders. Campaigns and policy formulation to counter juvenile delinquency are implemented based on these statistics. Computers are utilized to store and analyse data. Part of the national budget goes to the juvenile justice administration as part of national development efforts.

In India each state collects its own statistics on crimes and organizes seminars and conferences at the district level. At the national level, there is a systematic programme for research and planning and the welfare of juveniles. The National Institute of Social Defence, Police Research and Development Institute, Indian Law Institute, etc., collect data throughout the country on the basis of which national policy is formulated. Annual seminars, conferences and training courses are organized by the national institutes mentioned above to improve the criminal justice system including the juvenile justice administration.

Several participants said the available facilities and machinery were insufficient to meet on-going requirements. While some countries outlined existing organizations as being very satisfactory, others said that even a permanent statistical officer was not available.

During the discussion the view was presented that the accent seemed to be heavily on statistics as against research. It was agreed that what appeared to be more necessary in terms of utility would be actual research, providing a means of testing the effectiveness of modalities.

Conclusion

The participants of the Workshop discussed implementation modalities for the Rules. It was recognized that the Rules were generally in tune with the thinking that guided the development of juvenile justice services in their countries. There is, then, still a gap between standards and practices in most of the countries, mainly because of the constraints on resources in the face of much heavier demands on other sectors of development. The progress towards bridging this gap depends on three factors: the level of public awareness and the political will, adequate resources for the development of the requisite infrastructure, and the quality of professional leadership and personnel. In many countries, the shortage of juvenile courts, the multiplicity of functions and heavy workloads of the police and judiciary, and the lack of necessary facilities for the care, treatment and rehabilitation of various categories of delinquent and non-delinquent juveniles were cited as the main impediments to the desired goal. Priority was given to improving the quality of personnel in terms of methods, approaches and attitudes. The participants were of the opinion that in view of the socio-cultural and economic conditions in their countries, the *parens patriae* and due process models have to be blended in their systems to deal with the problem of juvenile social maladjustment on its growth continuum. They stressed the need for an integrated approach based on inter-disciplinary, inter-sectoral and co-ordinated planning.

Deliberating on the provisions of the Rules, the participants expressed a sense of caution in working out implementation modalities. They were of the opinion that although the ages covered by the formal

system had to relate to the culture of each country, the Rules could not extend to young adult offenders, especially in view of newly emerging forms of youth criminality involving gang violence, sex deviation and drug abuse. At the same time, focus on the formal system should not undermine the strength of the traditional social control mechanisms such as the family, the community, religion, etc. As institutional care still constitutes a major area for the mainstreaming of erring juveniles in most of these countries, the tendency of the Rules towards diversion and de-institutionalization, though conceptually desirable, should not degrade its role. Institutionalization as a "last resort" should not lower the status of institutional care within the range of policy options. In fact, the participants felt that the enlargement of dispositional alternatives within the community would ultimately lead to institutional programmes for juveniles requiring concerted care, protection and treatment. From this viewpoint, the participants thought that the formulation of additional standard minimum rules for juveniles coming within the system for care and welfare was a logical step in the future.

The conclusions of the Workshop are bound to have a salutory effect on opinion building, law reform and programme development, not only in the countries represented but also in other parts of the world. It is, however, imperative that the outcome of the Workshop is widely disseminated among various countries to create public awareness as a springboard for desired progress. It may also be necessary for the United Nations to support the efforts initiated by UNAFEI by providing facilities for technical assistance to member states to enable them to translate these Rules into concrete practices.

Adoption of the Workshop Report

The Workshop Report was considered for adoption at the last session of the Workshop. The Report was introduced by the Rapporteurs on the invitation of the Director. The Workshop, after duly authorizing the Rapporteurs to make the necessary editorial amendments, adopted the Report.

Closure of the Workshop

After the adoption of the Workshop Report, statements were made by the Director and Deputy Director of UNAFEI. The statements thanked the participants, visiting experts and UNAFEI faculty and staff for the success of the Workshop. After this, the Workshop was declared closed.

Annex: Types of Disposition

	Admonition	Parental Custody	Discharge on Bond	Probation	Foster Care	Fine/ Pecuniary Penalty	Approved School/ Special School/ Training School	Imprisonment	Dismissal/ Aquittal	Others
Bangladesh	X	X		X		X	X	X	X	X
China				X		X	X	X	X	X
Colombia	X	X	X	X	X	X	X		X	X
Fiji	X	X		X		X	X	X	X	X
Hong Kong		X	X	X	X	X	X	X	X	X
India	X	X	X	X	X	X	X	X	X	X
Indonesia		X		X	X	X	X	X	X	X
Japan		X		X		X	X	X	X	X
Republic of Korea		X		X		X	X	X	X	X
Malaysia	X	X	X	X	X	X	X	X	X	X
Nepal	X					X		X	X	
Papua New Guinea	X	X	X			X	X	X	X	X
Philippines	X	X		X	X	X	X	X	X	X
Singapore		X	X	X	X	X	X	X	X	X
Sri Lanka	X	X	X	X	X	X	X	X	X	X
Thailand	X	X	X	X		X	X	X	X	X

Note: This table was researched and created by the participants of the Workshop.