

Opportunities for Renewal in Sentencing and Corrections

A Consultation Paper

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**THE INTERNATIONAL CENTRE FOR
CRIMINAL LAW REFORM
AND CRIMINAL JUSTICE POLICY**

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PREFACEThe *International Centre for*

Criminal Law Reform and Criminal Justice Policy has recently completed a review of its activities in the field of sentencing and corrections. This was done in the light of the growing need for renewal of criminal justice institutions, and took account of the agenda for action defined during two International Symposia on the Future of Corrections; the outcomes of other international meetings; and the stated priorities of the *United Nations Crime Prevention and Criminal Justice Programme*. The present consultation paper has been prepared to serve as the focal point for the development of a program of work by the *International Centre*, in cooperation with *Correctional Service of Canada* and other national and international partners. This work will seek to promote the practical implementation of universally recognized human values and principles applicable to sentencing and corrections. The proposed initiative will set in place a process to build on existing international and regional cooperation in the field of sentencing and corrections and to promote enhanced forms of collaboration between jurisdictions. The initiative is based on the use of information exchange and other forms of mutual assistance, and is designed so that best practices in sentencing and corrections can be identified, assessed and transferred between jurisdictions, to the reciprocal advantage of all. The emphasis is on management excellence. The word 'excellence' is used here in the sense of best practices, adherence to the rule of law, and a thorough regard for justice, with respect for human rights and democratic values. The *International Centre* envisages a preliminary process to consult on the proposed strategy for the initiative and to identify new partners willing to participate in it. This consultation starts with the Ninth World Congress in May 1995 and will use existing opportunities for discussion offered by already planned international, inter-regional and regional meetings. Your comments on the questions raised in the present consultation paper are crucial to the success of the initiative. The *International Centre* looks forward to receiving these comments, and learning of other suggestions and approaches which you may think helpful in this initiative. This discussion paper contains three chapters. The first introduces the challenges facing correctional agencies. The following chapter identifies the context in which the initiative was first developed and concludes with a proposed agenda for action and a strategic framework developed by correctional leaders at two International Symposia. The final chapter concludes with a discussion of existing opportunities for renewal and presents the main components of the collaborative initiative proposed by the International Centre. Daniel C. Préfontaine, Q.C. Director
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Chapter 1

TRENDS AND CHALLENGES

Our societies are undergoing some of the most radical social, political, cultural, economic and technological changes ever faced in our history. Our educational, legal and other social control institutions, even the whole authority structures on which they rest, are deeply affected and are being weakened by these changes. It would be a mistake to depict the challenges facing sentencing and corrections as mere management issues. They are societal challenges which any given society can only ignore at its own peril. In many emerging democracies, people are committed to a just and fair government. They will often measure their government's progress towards social justice and democracy in terms of the criminal justice and correctional systems' demonstrated commitment to these ideals. A people's commitment to democracy and its hope for justice can effectively be shattered by the fear and despair it feels in the face of the abuses committed by or the poor performance of these crucial social control institutions. Among developed nations, perceptions of increased rates of crime combined with feelings of alienation from political power centres have combined to bring feelings of isolation and alienation to communities within these societies. Government institutions are thought to no longer represent the aspirations of ordinary people, but are seen as pursuing their own agenda, unrelated to needs of society or of the public generally. Many have recognized that there are some serious problems and concerns in criminal justice systems around the world and that significant changes must take place quickly, before gloomy predictions of a complete breakdown of all of these systems become a reality. Others still deny the need for change, and would have us hold on to the illusion that harsher punishment and more prisons will suffice to support our society through these critical times. In truth, the renewal of these institutions is urgently required. Should efforts to reform and renew these systems not succeed, other democratic institutions may not long survive. Social control institutions cannot protect order in the abstract, but only the existing order with all its current strengths and weaknesses. Social control need not imply the maintenance of institutions which paralyse a society's attempt to renew itself and to strive towards greater equity, peace, justice. Once peace, justice and democracy are recognized as the fundamental objectives to be pursued, social control institutions are revealed as potent means to support collective efforts towards these ideals, as opposed to means of preventing change and resisting greater social justice. When the World Health Organization adopted a comprehensive definition of health, it provided a vision, a focus for national and international action and cooperation. A comparable definition of justice has yet to emerge and, for the time being, criminal justice systems around the world must find inspiration and guidance in the somewhat vague ideal of the rule of law and in various declarations of human rights. For social control institutions to aspire to the rank of a criminal justice institution, some pre-requisite must obviously be met. A democratic form of government is a main pre-requisite. With respect to the use of criminal sanctions for the protection of existing social arrangements, it should be obvious that the social order thus protected ought to reflect relevant cultural values and to protect fundamental human and political rights of individuals and groups. Another requirement is for these institutions to clearly strive for justice in a way which is meaningful to the people who are subjected to them. Finally, these institutions must contribute to peace and social harmony in a way which does not stifle a society's ability to renew itself and to reinvent social order to reflect changing social conditions - criminal justice institutions must provide for peaceful means of promoting changes in the social order they are designed to protect. The fundamental problems facing the criminal justice systems of the world are so similar that there is much agreement as to the outcome of adhering to the present discredited policies and practices. Many nations hoping to avoid or to solve these problems are seeking new ways forward. But, approaches to dealing with social problems are fragmented. So are approaches to dealing with crime and with offenders, even within one country's criminal justice system itself. In many countries, the credibility of criminal justice institutions has been deeply affected and an increasing fear of crime is a harsh reality that must be addressed before criminal justice systems can regain credibility and public support. A fearful denial of society's responsibility for crime

prevention, education and social justice leads to the expectation that the criminal justice system alone will provide a solution. The credibility of criminal justice institutions is further affected by the public's perception, in many jurisdictions, of sentencing, correctional and release decisions as being unresponsive to community expectations. There has been a tendency by authorities to disregard these expectations as simply dictated by a desire for vengeance, fear and ignorance. Victims of crime also have their own expectations of a criminal justice system and are now forming support groups to make these expectations explicit and visible to the public. The lack of response to expectations and public concern has resulted in a back-lash of anger and distrust in the institutions normally entrusted with sentencing and release decisions. Successful moves have been made by legislation to withdraw the authority to make these decisions from the courts and the correctional systems themselves, and to impose statutory minimum sentences and other forms of automatic decisions. That trend, because of its unintended but yet foreseeable consequences, confronts criminal justice professionals with one of the greatest and most immediate difficulties they must face. Over-reliance on the criminal justice system, and incarceration in particular, to deal with some basic societal problems is another problem endemic to all nations. Underlying this is a belief in the efficacy of punishment which is not grounded in reality. In spite of numerous appeals for restraint, many countries are increasing the range of the criminal law and their reliance on penal sanctions. All these factors contribute to prison over-crowding. This, together with the lack of credible pre-trial and post-sentence community alternatives, present insurmountable problems for many correctional agencies. When pre-trial inmates, and inmates who should not be, or do not need to be, in institutions are incarcerated, financial and human resources are stretched beyond their limits; physical plant and workshop facilities become over-crowded. In many countries these problems have contributed to situations where the most basic human rights of prisoners cannot possibly be protected, even by well-meaning and dedicated correctional workers.

- Correctional officials have no control over the number of people detained while awaiting trial or the numbers sentenced to imprisonment. The size of prison populations depends ultimately on social, moral and political choices made by a society, and even more directly on decisions made by other levels of the criminal justice system. The sentencing practices of the courts are an obvious example. Unfortunately, judges have little information on the outcome for offenders of the sentences they impose. They do not know the conditions under which sentences are served, or even - in some cases - whether sentences are served at all. This has led to demands for 'truth in sentencing' initiatives, where sentences are served as the judges ordain. Judges have no feedback on the results of their sentencing decisions, and operate without information about the impact of their decisions. At the same time, they are under relentless pressure from victims and the public generally to sentence offenders to institutions. At present, there are attempts in some societies to mitigate the problem of over-crowding in institutions by increased use of community measures: electronic monitoring, probation, and community services measures. However, these are being overwhelmed as rapidly as institutions. For some probation services, clients are today no more than names in a computer data-base, and the probation order has no relationship to the care and supervision that, in its inception, distinguished probation as a correctional sentence. Soon, community correctional measures are seen as no more than paper sentences, with no real meaning to the offenders, and will inevitably be seen as having no impact on the future conduct of those sentenced. Public demands for 'effective' sentences which 'guarantee protection' from criminal activity will result (and in some countries already have resulted) in harsher laws, with automatic sentencing for repeat offenders to long periods of imprisonment. Without a thrust towards renewal, there seems no foreseeable end to the increased use of incarceration. More and more persons will be sentenced to longer and longer terms of imprisonment. More prisons must be built, throwing additional strain on public resources. Institutions will not be built quickly enough to relieve the strain of over-crowding, and all correctional system dollars will be directed to building institutions, paying

staff and supporting inmates. Few dollars will be available for necessary programs of counselling, re-training, education and preparation for release. Inmates -when they are released - will return without adequate support to a society that increasingly rejects them, while still retaining the criminogenic influences which brought them to an institution in the first place. Eventually, the criminal sanctions may take the place of defence industries in the economy of some developed nations. Concepts of social defence against the internal enemy will replace the plans for defence against external threats. More criminal groups may form in society, to exploit the weaknesses of the criminal justice system. They may begin to attack the economic structure of nations by increasingly sophisticated crimes, based largely in economic motives and by using the newest technology to profit from commercial activity. Attempts at bribery or blackmail of police, prosecutors and judges, and attempts to corrupt and influence release decisions may further erode the efforts of a criminal justice system to operate in a just and fair manner. A perceived unresponsiveness of the criminal justice system to the public demand for safety can generate public frustration and increase support for socially destructive measures. Rich and powerful individuals or groups may increasingly segregate themselves in protected fortresses, purchasing from private sources physical security if not peace of mind. Polarization of society into the advantaged and dis-advantaged may become more extreme. Respect for human rights, tolerance and awareness of human dignity will be diminished as society retreats into an armed-camp mentality, seeking protection for themselves, while supporting any measure, no matter how harsh, which seeks to control the disadvantaged in society. The disadvantaged themselves may band together in groups to resist control. Such a gloomy forecast may seem over-drawn, but the descent into the abyss could be sudden if precipitated by a break-down in confidence in the criminal justice system. Early trends in the direction of societal breakdown are becoming evident in some societies. Only by seizing the opportunity to break the cycle of excessive criminalization of behaviour and of over-incarceration, with resources squandered on buildings rather than building bridges for inmates to return to and helped to re-integration in society, can the eventual breakdown of community trust in criminal justice as a protection be avoided. Another challenge often identified is a perceived lack of adequate resources to manage corrections systems as well as they should be. The impact of scarce resources obviously varies dramatically, depending on the resource base from which corrections systems start. In some nations, lack of resources contributes to problems with maintaining even the most basic human requirements for inmates: food, shelter and medical necessities. In other nations these requirements are met, but lack of resources contributes to inadequate programs and opportunities for inmates to benefit to the maximum from correctional time. No nation can foresee a future where adequate resources are guaranteed. So it is that continued restriction of resources is a future trend and dramatic challenge for the corrections systems of all nations. At the international level, developed countries and international development agencies are called upon by the United Nations to review their aid programs in order to ensure that there is a greater contribution to the criminal justice area. But, how do aid agencies recognize a correctional system which, in spite of its current failings, is genuinely committed to human rights, social development, prosperity and peace, from a correctional system which is ultimately seeking to defeat these goals? The enormity of the challenges faced by existing social control and democratic institutions should not prevent a realization that there are also very real opportunities for new creative and holistic approaches, for a new vision of justice institutions to emerge and guide our collective choices. For example, the new communication and knowledge transfer technologies are opening the door to consultations, exchanges and rich new partnerships which, only a decade ago, were only a dream. These new opportunities must be identified and vigorously seized to affirm a new vision of excellence in sentencing and corrections. These opportunities must be shared between jurisdictions. The obstacles to the transfer of knowledge and opportunities between criminal justice professionals who are inspired by a vision of justice and peace,

through excellence in sentencing and corrections, must be removed. Change cannot be accomplished by the correctional community alone. Whatever leadership criminal justice and correctional experts may provide by proposing renewal and a new vision, the best means of realizing them must ultimately be pursued at a broader, collective level. Nevertheless, correctional leaders have a crucial responsibility to help society understand and share responsibility for these issues, and to do so in a way which will promote social justice, peace, prosperity and harmony.

CRIMINAL JUSTICE POLICY AND THE ROLE OF CORRECTIONS *Historically, our overall approach to the management of offenders has often been inconsistent, vague, reactive, and certainly non-strategic. At one time or another, punishment, retribution, deterrence, and rehabilitation have been the operative framework for our approach to the management of offenders. We have gone from punitive para-military approaches, to active treatment and rehabilitation interventions, to a 'nothing works'/warehousing philosophy without any fundamental and enduring sense of direction or vision. We need a vision that clearly defines for us, our staff, offenders, the public, and our colleagues within the criminal justice systems, what we believe our role is, where we are going and how we expect to get there.* (Co-Chair's Opening Remarks, *Second International Symposium on the Future of Corrections, 1993*). In today's complex social and political world, successful correctional leaders are those who have learned to think and act strategically. They recognize the need to clearly identify the purpose they must achieve and the challenges they must face in order to achieve it. They know that they must be purposeful in their action. They recognize that they must allow the definition of their purpose to be influenced and shaped by a broader process of consultation with each other, with the other segments of the criminal justice system and, most importantly, with the public they serve. This is the basis of their commitment to strategic planning and management. The challenge faced by correctional leaders with a commitment to social justice, human rights and democratic values is enormous. In many nations, the tradition of their profession has been one of isolationism, a faithful service hidden in secrecy and a defensiveness against outside intervention. Yet, they are now called upon to participate effectively in broad social policy debates, to develop partnerships with other social institutions and with the community. Many correctional officials are aware of the need to develop a consensus or agreement on the goals and purposes of correctional measures. Such a consensus, to the extent that it may be based on a greater awareness of what can realistically be achieved by corrections and of the level of resources required by correctional agencies to succeed, could counter a world-wide public trend to over-rely on the criminal justice system, and on corrections in particular. The public sometimes may show a tendency to be suspicious of the contribution of correctional officials to fundamental criminal justice policy debates. Given the track record of most correctional agencies in terms of their openness and willingness to engage in a dialogue with the community they serve, it is not surprising that the motives of correctional leaders who wish to participate in the social debate are sometimes perceived as self-serving. There is no doubt that such a negative perception has significantly thwarted correctional experts' efforts to contribute fully to the development of a consensus within their own country on a realistic role for corrections. As a result, many correctional officials have been tempted to take refuge in a sterile form of internationalism, hoping to obtain confirmation, or official sanction from a higher authority, for a particular vision of the role of sentencing and corrections. All of them eventually return home quite disappointed. Enlightened correctional officials accurately perceive the urgency of the need for a principled statement of a vision for the future of corrections. The development of a consensus on the purpose of corrections, though always a difficult evolutionary process, is more likely to succeed at the national or even, as some would argue, at the local level. There are unfortunately no short-cuts to the creation, at the social level, of a collective sense of the purpose of criminal sanctions and their contribution to justice, peace and democracy. What else should a value-based criminal justice system reflect but the values

held and upheld by the society it serves? Assuming otherwise is a recipe for disaster and only contributes to isolating certain national organizations in a position where they are doomed to failure. That is why, in the field of corrections, an international normative approach, based on the weak promises of moral persuasion and international embarrassment as means to force compliance, can only produce exasperating results. The U.N. adopted the Standard Minimum Rules in 1957.¹ Since then, several World Congresses and countless other meetings have been held. Formal pledges of cooperation were regularly exchanged between nations. Many other standards-setting instruments, most of them focusing on the human and political rights of individuals who are subjected to correctional intervention, have been carefully negotiated and adopted in the context of both the U.N. and other international organizations. Yet, the same international organizations, and indeed the international community as a whole, have continued to be haunted by their own powerlessness to effectively monitor the implementation of, let alone enforce, these standards and thus protect fundamental human rights. Horrendous and indefensible abuses of human rights are reported with clockwork regularity from all parts of the world. The systemic and systematic nature of these abuses is denounced with all the moral authority that international organizations can muster. Very often, the culprits are represented at the very same table at which they themselves approved and ratified the standards. In the rare occasions where they are directly confronted with the carefully documented and heart-rending facts which they have been unable to repress, the patent lies, clever denials, carefully choreographed obfuscation and the false excuses with which they tend to reply are usually left unchallenged. **A NEW PARADIGM FOR INTERNATIONAL COOPERATION** There is a paradigm shift already evident in international circles. The normative approach, which has dominated the field of criminal justice, is slowly giving precedence to an approach which is collaborative and principled, which is respectful of cultural and gender differences and is based on mutual assistance. The traditional normative approach based on formal statements of principles, rules and standards has not been abandoned and neither should it be. Most international normative standards are minima and rarely attempted to define excellence in the criminal justice system. Excellence can of course, by reference to the Universal Declaration of Human Rights, be construed as the efficient contribution of the criminal justice system to the protection of human, social, cultural, economic and political rights. However, until now relatively little has been offered, in a practical sense, by international bodies in terms of a consensus or guidance on how such a broad objective might best and most efficiently be achieved in a democratic society. Now, there is a growing recognition that the effective implementation of any of these can only be achieved by building on the strengths of existing criminal justice leadership and through collaborative efforts to make full use of existing opportunities to: 1) identify best practices and benchmarks of excellence; 2) develop quality assurance processes adapted to suit national circumstances; and, 3) provide a framework for collaboration, technical assistance and exchanges between nations. That new approach is reflected in the Agenda for the *Ninth World Congress on the Prevention of Crime*. It is also clearly the basis of many official statements of priority for action: e.g., A Statement of Principles and Programme of Action of the United Nations Crime Prevention and Criminal Justice Programme adopted at a ministerial meeting in Versailles, in 1991;

¹ *Standard Minimum Rules for the Treatment of Prisoners*, E.S.C. Res. 663 (XXIV) C, U.N. ESCOR, 24th Sess., Supp. No. 1 at 11, U.N. Doc. E/3048 (1957) as amended by E.S.C. Res. 2076 (LXII), U.N. ESCOR, 62nd Sess., Supp. No. 1, at 35, U.N. Doc. E/5988 (1977). These will be referred to hereafter as S.M.R.

General Assembly Resolution 46/152², also adopted in 1991, which accepted the statement of principles and program of actions and called for the creation of the new Commission on Crime Prevention and Criminal Justice. The Statement of Principles recognizes that a humane and efficient criminal justice system, by contributing to the maintenance of peace and security, can be an instrument of equity, social justice and constructive social change, protecting basic values, human rights and democracy. The international community is called upon to increase its support to technical cooperation and assistance activities for the benefit of all countries, including developing and smaller countries, and for the purpose of expanding and strengthening the infrastructure needed for effective crime prevention and viable, fair and humane criminal justice systems. In creating the enhanced U.N. Crime Prevention and Criminal Justice Programme and the new Commission, there was a clear emphasis placed on an approach based on professional training, exchange of information on innovative and successful measures and on technical assistance between states³. In determining the priorities of the program, the resolution emphasized the need to assist local jurisdictions to confront specific difficulties, related to national or international circumstances, in ways which take into account national circumstances and priorities. This new approach is what inspired the *International Centre's* current initiative to promote the affirmation and the practical implementation of universally recognized human values and principles applicable to sentencing and corrections.

² G.A. Res.46/152, U.N. GAOR, 46th Sess., Supp. No.49, at 217, U.N.Doc. A/46/49 (1992). The "Statement of Principles" is included in the Annex to the Resolution.

³ *Idem*, Annex, para. 17.

FUTURE OF CORRECTIONS

COMMITMENT Most analysts have recognized that there is, if not a new vision, at least an emerging impetus for change, a convergence of interests and concerns among correctional leaders and criminal justice policy makers around the world. The issues they are trying to address resonate from the same broad challenges which confront all societies. The renewed commitment of correctional professionals themselves to be more actively involved, not only in the national, but also in international policy debates on criminal justice policies must not be overlooked. Several correctional agencies have international cooperation as part of their own official mandate and they take it very seriously. This is partly a reflection of the growing recognition that many of the current challenges facing criminal justice systems are global in nature. It is also the result of a growing awareness among these leaders of the need to act locally while thinking globally and helping each other. Criminal justice officials with a commitment to social justice can be found in all countries. They refuse to subscribe to the enduring negative view of corrections as the antithesis of freedom and democracy. Instead, they propose a renewed vision of a humane and efficient criminal justice system which, by contributing to the maintenance of peace and security, can be an instrument of equity, social justice and constructive social change, protecting basic values, human rights and democracy. It is a principled approach, open to discussion and refinement, around which they hope to create a wide consensus and a new collective impetus for change. The last several years have seen increased international cooperation, dialogue and exchanges between correctional officials. Bilateral, regional and inter-regional initiatives have multiplied in an attempt by many correctional leaders to solve issues of mutual concern, such as the transfer of foreign prisoners, and to cooperate and assist each other in addressing the great challenges facing corrections today. The Ninth World Congress is an occasion to carefully review the progress achieved by these various initiatives as well as various strategies for further action. While many will look at these recent developments as a reason for optimism, others will no doubt contemplate them with impatience, cynicism or fear. Greater efficiency and cost effectiveness, tighter risk management, modern management techniques and information technology applied to punishment and corrections, can easily evoke a frightening prospect. Greater efficiency in corrections could indeed stand in sharp contrast to the relative inefficiency of current human rights protection instruments and mechanisms. However, there is only one reasonable guarantee that such technological improvements will not be used against democratic values, in defiance of human rights or

simply to prevent social change. This guarantee ultimately rests on the quality of the people entrusted with social control responsibilities, on the depth of their commitment to public scrutiny, openness, social justice and the protection of human rights. **TWO SYMPOSIA**

ON THE FUTURE OF CORRECTIONS We propose here to briefly review the results of two international symposia on the future of corrections. The first symposium, held in Ottawa in 1991, was sponsored by *Correctional Service Canada* and the *Society for the Reform of Criminal Law*. The second one was held in October 1993, in Popowo, Poland, and was sponsored by the *International Centre for Criminal Law Reform and Criminal Justice Policy*, *Correctional Service Canada* and the *Polish Ministry of Justice*. The symposia were an attempt to formulate a statement of the purpose of corrections now and for the future. At the First International Symposium on the Future of Corrections, leading to the formulation of a Strategic Framework document, on improved corrections, the emphasis was on going beyond existing international standards towards a new vision. At the second symposium there seemed to be a rather remarkable congruity in the identification of the nature of the problems facing correctional systems, as well as in a philosophy of approach to the systemic problems. Agreement on a set of values, with justice at the core of these, provided a starting point for further development of an initiative for the pursuit of excellence in corrections. **1991 Symposium (Ottawa - Canada)** At the beginning of the first symposium, there was clearly a hope that, by coming together for the event and proposing a vision of the purpose of corrections based on an international professional consensus, correctional officials could have an impact on shaping national criminal justice policies. In fact, the first symposium was presented as an attempt to make a professional, correctional proposal for a joint agenda with governments, and through them, with the people they serve ⁴. The organizers of the Symposium had wished to find better means of addressing the perceived lack of understanding, on the part of policy makers and the public, of the purposes which can be effectively achieved by corrections. Symposium participants observed that the demise of the role of rehabilitation as the primary goal of corrections had led to disorientation and a prolonged period of questioning the purposes of imprisonment. ⁵The increasing and often excessive use of incarceration, it was felt, has been an ineffective social policy which should be curtailed. ⁶ An over-reliance on the criminal justice system

⁴ INGSTRUP, O. (1991). *Symposium on the Future of Corrections, op. cit.*, p.8.

⁵ *Symposium on the Future of Corrections, Op. cit.*, p.22.

⁶ *Symposium on the Future of Corrections, Op. cit.*, p. 16.

and in particular on corrections to solve social problems and to prevent crime is not only observed everywhere, but it is also coupled, due to competing demands for support for other social programs, with an inability or an unwillingness of governments to provide adequate financial resources for corrections. Prison over-crowding and the lack of credible community alternatives appeared to present nearly insurmountable problems for many correctional agencies. A great concern was expressed with the fact that minorities with distinct cultures and low economic status were dramatically over-represented in prisons, the world over. Symposium participants agreed that the public's wish for punitive crime control measures must not be accepted and should be countered by public education, or better still by the development of a national consensus on a realistic role for corrections.⁷ Based on the experience of several jurisdictions, it was generally believed by symposium participants that at least part of the solution lay in a value-based strategic approach to corrections. A commitment to such an approach dictated to them the following agenda for action: (1) defining clearly what was the purpose of corrections and relating that statement to basic societal values; (2) obtaining political support for and commitment to that definition of purpose; (3) strategic planning and strong correctional leadership to ensure the implementation of a strategic plan; (4) cooperation with and proactive communications by correctional administrators with other parts of the justice system and with the public and the media. The symposium demonstrated to participants the need to bring together correctional leaders, human rights advocates, policy makers and international development experts in a concerted effort to improve sentencing and corrections and to thus actively contribute to social justice, peace and respect for human rights. Participants agreed that an editorial committee would be convened to draft a "strategic framework document" to express the values and principles around which a consensual vision of excellence in corrections was emerging.

⁷ QUINLAN, Michael, *Symposium on the Future of Corrections, op. cit.*, pp. 16-17.

1993 Symposium (Popowo - Poland) The result of the work of the editorial committee and subsequent consultations, a draft document titled *Towards Excellence in Corrections*, was discussed and refined during the second symposium⁸. The attempt to articulate a common strategic framework for corrections proved that the exercise itself could facilitate a useful discussion and a stimulating exchange of ideas. However, it also brought to the forefront the great difficulty there is in trying to arrive at a useful common framework with practical applications in the absence of a consensus on the values to be affirmed and the purpose to be achieved by the instrument. The second symposium was perhaps not as much a strategic step toward building an international consensus on the purpose of corrections in a democratic society, as an essential pre-requisite, a reality check on whether such an approach could produce useful results. Even if only a limited number of jurisdictions were represented at the symposium, mostly unofficially, and if broader issues relating to the purposes of criminal sanctions and sentencing in general were not addressed, the test was reassuring. It was encouraging at least in the sense that, in spite of the absence of complete consensus on all principles, support for the approach was clearly expressed by participants who shared a clear sense of solidarity and a confirmation that they were not alone in the struggle to redefine corrections. The exercise may also have revealed the distance that there still was between the various jurisdictions. On the surface, one system's preoccupation with finding enough resources to feed all of its prisoners cannot be equated with the preoccupation of another system for better communication with mass media. On the other hand, one may argue that in both of these situations there is the need for the correctional agency to develop an understanding on the part of other government actors and the public of what can be achieved by the correctional system, provided that resources are available, to contribute to the broader social justice and democratic objectives of that society. In an emerging democracy with severe financial restrictions and a recent history of repressive and deeply distrusted correctional institutions, the challenge will obviously call for a different strategy than that which would be sufficient in a relatively wealthy nation with an older democratic tradition and a higher level of public trust in the state's institutions. In this example, the need to enlist broad public understanding of and support for the correctional agencies and their mandate, as a

⁸. See INTERNATIONAL CENTRE FOR CRIMINAL LAW REFORM AND CRIMINAL JUSTICE POLICY (1993). *Second International Symposium on the Future of Corrections*. Vancouver (Canada).

fundamental strategic objective, is likely to be very much the same in both situations. As such, the objective can be defined in terms which are helpful to both groups and which can serve as a basis for enlightened cooperation between officials of these countries.

AN AGENDA FOR ACTION One cannot help but be concerned by official reports on the horrendous conditions which still prevail in many correctional systems around the world. These systems, as all social systems, are the reflection of complex cultural, social and economic conditions, which correctional leaders can hardly be expected to change by themselves. A significant achievement of the two symposia was the development of an international agenda for action. In order for a new commitment to excellence to be reflected in concrete actions, a continued *concerted* effort on the part of correctional leaders is required. In various international meetings, including the two symposia mentioned above and the following consultation, an agenda for action is tentatively being defined. The agenda calls for a concerted effort on the part of correctional leaders, in partnership with other criminal justice professionals and experts, to:

- explain what correction is and what it can realistically achieve;
- express and explain the values that are vital to corrections in a democratic society;
- broaden the debate to include elements of sentencing and release, and ultimately the role and purpose of criminal sanctions;
- participate in the broader criminal justice policy debate, at the national, regional and international levels;
- contribute to international policy development, through the work of the United Nations Crime Prevention Programme and other U.N. agencies;
- relate current efforts to improve corrections to existing standards, principles and rules (U.N., Council of Europe, Commonwealth, American Correctional Association, etc.);
- define and explain what is meant by excellence in sentencing and corrections;
- identify best practices and benchmarks of excellence.
- provide concrete and practical means to support national and international initiatives to reach for excellence in corrections;
- build a network for cooperation and support existing commitments to a strategic approach at the national level;
- collaborate with each other through joint training, technical assistance and mutual assistance initiatives.

A STRATEGIC FRAMEWORK Correctional professionals are attempting to better articulate a tentative vision they could offer as a basis for discussion with other criminal justice partners, politicians and the public. One of the concrete results of such efforts is the document finalized at the Popowo Symposium: *Towards Improved Corrections: A Strategic Framework*, published by the International

Centre in
1994.⁹

The full document can be obtained, in French or English, from the International Centre. A copy of the document may also be obtained electronically on the Internet by means of Gopher (Gopher: view.ubc.ca port 70 or World Wide Web (WWW: [http://view.ubc.ca / Academic Units and Information/International Centre for Criminal Law Reform and Criminal Justice Policy](http://view.ubc.ca/Academic%20Units%20and%20Information/International%20Centre%20for%20Criminal%20Law%20Reform%20and%20Criminal%20Justice%20Policy)).

The proposed framework is not normative and certainly does not purport to offer specific standards of excellence. Although it is limited in scope, it begins to delineate a vision of excellence for corrections in a democratic society and to serve as a reminder of existing opportunities for improvements and cooperation between jurisdictions. The vision which inspired the development of the Framework Document is one which emphasized: the sharing between jurisdictions of opportunities to pursue excellence; the community's responsibility for crime prevention, education and social justice; the need to develop partnerships with members of the public, politicians and the other components of the criminal justice system, based on a realistic expectation of what can be achieved by sentencing and corrections; the need for systemic improvements in corrections and criminal justice policies and legislation through a consistent approach to offenders based a coherent purpose for intervention and on shared values and principles; the urgency of developing improved risk assessment tools and risk management strategies through on-going research and sharing of information nationally and internationally; the urgency of developing credible alternatives to incarceration and non-custodial measures which, combined with effective programs, will address the public concern for safety; the necessity to support any vision of excellence by the careful recruitment, proper training and motivation of managers and staff members who share a commitment to excellence. Symposium participants have expressed their commitment to excellence in terms of the contribution of corrections to social justice, peace, harmony and safety. They offered "justice" as the core value, the cornerstone of this vision. The ideal of justice is culturally defined and each jurisdiction must identify and reflect on the meaning of this essential cultural anchor and its

⁹ INTERNATIONAL CENTRE FOR CRIMINAL LAW REFORM AND CRIMINAL JUSTICE POLICY (1994). *Towards Improved Corrections: A Strategic Framework*. Vancouver (Canada)

implication for sentencing and corrections at the national level. The proposed vision suggests that, notwithstanding cultural differences in defining the justice ideal, this ideal necessarily implies: (1) a duty to protect the rights of offenders, based on established and renewed international standards; (2) a commitment on the part of correctional systems to promote, in staff members and with the public, respect for the inherent dignity, humanity, and worth of all individuals, including offenders; and, (3) a resulting commitment to efficiently manage sentencing and corrections with honesty, openness and integrity. The artisans of the Framework offered, as a preliminary basis for discussion, a series of statements of values and principles which are meant to inspire national and trans-national attempts to develop and implement a new vision of excellence. The eight values identified are the following:

VALUE I - JUSTICE AS THE CORE VALUE Corrections is that component of the criminal justice system, which has the greatest impact on the freedoms, liberties and rights of individuals. Therefore those who are involved in corrections must respect fundamental human rights in every aspect of their work and must be guided by a belief in: · fairness and equality under and before the law; · the dignity and worth of individuals, and · managing with honesty, openness and integrity. **VALUE 2** Fundamental to an effective corrections and justice system is a firm commitment to the belief that offenders are responsible for their own behaviour and have the potential to live as law-abiding citizens. **VALUE 3** The majority of offenders can be dealt with effectively in the community by means of non-custodial correctional programs; imprisonment should be used with restraint. **VALUE 4** In the interest of public protection, decisions about offenders must be based on informed risk assessment and risk management. **VALUE 5** Effective corrections is dependent on working in close cooperation with criminal justice partners and the community in order to contribute to a more just humane and safe society. **VALUE 6** Carefully recruited properly trained and well-informed staff members are essential to an effective correctional system. **VALUE 7** The public has a right to know what is done in corrections and should be given the opportunity to participate in the criminal justice system. **VALUE 8** The effectiveness of corrections depends on the degree to which correctional systems are capable of responding to change and shaping the future.

Preliminary consultation on the basis of the framework document revealed a continued strong interest in the process, initiated by the symposia, to better articulate the emerging vision of excellence in the management of sentences and corrections. Many of the comments received acknowledged that the values expressed in the framework document are culturally defined and that a perfect consensus on them is unlikely. Some comments suggested that it may in fact be counterproductive to attempt to achieve a perfect consensus. Other comments emphasized the need for a strategic international initiative to facilitate national and regional initiatives and to encourage the sharing of experience and the improvement of current policies and practices. Most suggested that benchmarking (identifying the best practices which contribute to success), quality assurance processes and the sharing of other practical means and management tools would be the most useful ways to assist jurisdictions in moving towards the vision of excellence.

QUESTIONS FOR

DISCUSSION What suggestions would you offer to further refine and improve the agenda for action identified above? Are you or your organization able to contribute to the further development of the strategic framework? Do you see an advantage to expanding the strategic framework to include pre-trial processes, sentencing, release decisions and community alternatives? Are there any forthcoming events at which the framework, the agenda for action and this discussion paper could be considered and discussed?

Chapter 3

THE PROPOSED

INITIATIVE

SHARING OPPORTUNITIES FOR

EXCELLENCE There is a very real need and a clear willingness on the part of many correctional and other criminal justice officials around the world to discuss the essential values, principles and eventually the strategies which must inspire the development and the improvement of criminal justice systems and practices to ensure that they fully contribute to peace, justice, democracy and respect for human rights. The promotion of value-based strategic approaches can be sensitive to local historical, cultural and social factors. Such approaches will necessarily continue to be largely shaped by local conditions such as the level of economic development or the relative development of other supporting democratic institutions, political stability and so on. However, agreements on basic values and principles for criminal justice policies are possible between nations who share a similar political commitment to human rights, social peace, justice and democratic principles. These shared understandings can in turn facilitate the sharing of opportunities between countries. Our world and its increased communication and other technological possibilities offers opportunities which never existed before. These opportunities

must be pursued vigorously to meet current challenges and to realize justice and democracy. There is a growing recognition of the need for renewal of criminal justice institutions, particularly sentencing and corrections, to deal with the well-recognized challenges. There is a corresponding recognition that major national, regional and international efforts are needed to identify and to follow the best ways forward. Innovation in corrections has taken place at different times, has taken different directions, and has achieved different results in different systems. The costs and troubles of innovation, the often uncertain outcome of new initiatives, and the resource implications of the often massive efforts needed to bring substantial change to corrections mean that no single nation can contemplate or undertake a comprehensive but isolated renewal of its national corrections system. Too many resources are tied up in physical plant, staff training, public awareness and justice system expectations to allow a complete renewal exercise, even if such were deemed possible or desirable. Change must be planned and implemented carefully, strategically, and therefore incrementally. It must be carefully assessed and unintended consequences anticipated and controlled, and even then, success is often elusive. The only realistic way forward for corrections systems is to share the opportunities, and thus the risks, as well as the benefits of innovation. Many nations agree that they could benefit from a fuller understanding and awareness of programs that have been put in place in other jurisdictions. However, several preliminary steps must be taken before transferability of programs from one nation to another can be considered, and such transferability will never be easy. Obviously, a lot still remains to be learned from recent and current bi-lateral and multi-lateral cooperation projects. Better coordination of initiatives and new expertise regarding the most efficient methods of transfer must still be developed. Learning from existing experiences should be greatly facilitated by the databank on technical assistance projects which is being developed by the Crime Prevention and Criminal Justice Branch. Yet, there is a widely held perception that participating jurisdictions need to develop, plan, execute and learn from these projects in a more strategic and systematic manner. A review of current technical assistance initiatives may show that successful programs established within one nation's criminal justice system are not necessarily applicable or appropriate within another jurisdiction. Differences in the legal or the criminal justice system themselves; in the sentencing process; in correctional policies and in the process of release are often enough to prevent the simple transfer of successful programs. Socio-cultural differences, including language barriers, may be sufficient to prevent the successful transfer of programs between nations which are

geographically close, or similar in legal and corrections system background. Obviously, the more akin nations are in such historic similarities, the more likely it will be that one nation's successful program can be easily and beneficially transplanted to another. And, it is evident that in terms of world history, nations with historic similarities are likely to be geographic neighbours. Thus, we may expect that regional transfer of corrections programs will be more likely to be seen as useful than, for example, inter-regional transfers. But, this is not always so: the dissemination of major criminal justice approaches which took place in the period of colonization sometimes resulted in very different systems being established in adjoining countries. Each innovation in corrections must be tested for relevance, effectiveness and efficiency in any other national setting which may be considering its adoption. To assist in this, thorough evaluations of programs considered for transfer must be undertaken. These should include a careful assessment of the environment in which they are established, together with measurements of the population to which they were applied. This is required to allow the criteria for success and failure to be put in context. Note, too, that it not necessary for a program to be successful in one country for it to be considered for adoption in another country. Conditions for success may not exist in the first, but be present in another country or region.

Identifying Opportunities with the Greatest Promise The field of activity includes not only the institutional care of inmates, but the sentencing of offenders, community programs to deal with them and the arrangements for the release of inmates as well. Excellence in corrections is inextricably linked to excellence in sentencing and to excellence in release decisions and supervision. So it is that a wide range of programs which are being experimented with in different corrections systems can be considered for adoption in other nations. Innovative sentencing approaches which are being made the subject of experiments include house arrest; part-time detention; and, week-end detention. Different schemes of offender re-training, set up to meet the needs of different classes of offenders - dangerous or drunken drivers, or substance abusers, for example, may also be worth transplanting. New approaches to deterrence, such as the 'three strikes' penalty of life imprisonment are being tried, but have also been heavily criticized. New approaches to community healing - the use of healing circles - have recently come to the attention of correctional administrators. Similarly, new approaches to the management of corrections systems, such as privatization are being looked at as ways to increase efficiency. More involvement of the community, as volunteer probation and parole supervisors, or managers of community-based sentences, is being considered. Within

institutions, new management tools, such as best practices models, quality assurance measures and strategic planning promise future gains in effectiveness. Many other important aspects of corrections management lend themselves to consideration for transfer. Among these are staff selection, training and development programs. Nations may choose to establish joint staff training ventures. Management experience and instruments can be transferred, perhaps most effectively by loaning or exchanging managers and staff for periods of time. Nor is it necessarily only the innovative new programs which may be considered for transfer. Regimes which are well-established in some nations may be judged suitable for adoption in some corrections systems. Experiments with electronic monitoring for pre-trial surveillance and for house arrest are well-developed in some jurisdictions. Of course, there will always be interest in truly innovative programs - meditation, education, work skills transfer, anger management; substance abuse management; the management of sex offenders and high risk inmates, to mention only a few. Underlying innovative programs must be the identification of inmate needs and the development of program suitability assessment tools. These, too, can be transferred. A prerequisite of the process of technical assistance and transfer is, as has been mentioned, careful description and evaluation of the programs which are underway. Only in the light of full knowledge about the target population, the environment in which the programs are placed, and the careful measurement of results and unintended consequences can good judgments be made as to the suitability of measuring instruments and programs for transfer. In summary, an important challenge facing correctional administrators and managers is to work nationally, regionally and internationally to share the advantages of each nation's efforts to enhance sentencing and corrections administration and management, in the mutually beneficial search for excellence in corrections.

THE PROPOSED INITIATIVEThe purpose of the initiative is twofold. It will contribute to the further articulation of a vision of excellence for sentencing and corrections. It will also help to identify and make the most of the existing national and international opportunities to implement that vision. The objectives of the initiative will be further refined following the Ninth World Congress and the consultations initiated by the present document. The initiative will set in place a process to build on existing international and regional cooperation in the field of sentencing and corrections and to promote enhanced forms of collaboration between jurisdictions. The emphasis is on management excellence. By using information exchange and other forms of mutual assistance, best practices in corrections and sentencing can be identified, assessed and transferred between jurisdictions, to the reciprocal advantage of all. Management tools of evaluation assessment set against benchmarks of achievement, coupled with quality assurance measures and strategic planning will be developed and used to identify what may be described as best practices. The *International Centre* envisages a preliminary process to consult on the proposed strategy for the initiative and to identify new partners willing to participate in it. This period of consultation starts with the Ninth World Congress in May 1995. Existing opportunities for discussion provided by already planned international, inter-regional and regional meetings will be used. The *International Centre* encourages all interested groups and organizations to use the present document during their own meetings and to communicate to the Centre the results of their deliberation and their suggestions. Whenever possible, the Centre will accept invitations to present the initiative and to participate directly to the discussions. Your comments on the questions raised in the present consultation paper and on the approach which is being proposed are crucial to the success of the initiative. The proposed approach would use the *International Centre for Criminal Law Reform and Criminal Justice Policy* as a place to facilitate exchanges between established networks. It would seek links with CPCJD, the United Nations Regional Centres, the Centre for Human Rights and, where appropriate, with other agencies and affiliates of the U.N. concerned with sentencing and corrections. These include, among others, the Committee Against Torture, the Human Rights Committee, and elements of agencies such as UNESCO. Using modern technology to transfer information, the Centre and its staff are uniquely equipped to undertake this work. Links will be forged with inter-governmental organizations and other regional groups, as well as with non-governmental organizations. The initiative must build on the wealth of the existing partnerships between jurisdictions and on their willingness to broaden the circle of cooperation and

exchanges. The mechanisms of co-operation may include the development of joint projects; databanks with agreed data elements and the circulation of newsletters. Symposia, conferences, and working groups would be co-ordinated, while staff and scholar exchange programs would be fostered. But more importantly, the initiative must be based on a strategy to make the optimum use of the opportunities provided by existing bi- and multi-lateral, regional and inter-regional initiatives and projects. In these ways a global network of co-operation to enhance corrections in all interested nations can be established, to the benefit of each and the mutual advantage of all.

DIRECTIONS AND NEXT STEPS The objectives of the proposed initiative will necessarily go through a series of successive redefinitions during the developmental phase of the project. However, it is possible, based on the work to date, to begin to articulate a general direction for the initiative which relates to the U.N. priorities and proposes a response to the broad strategic challenges identified by correctional leaders. Four basic components are envisaged: (1) Identification of partners in the initiative and finalization of the Centre's program of work, as developed following responses to this consultation paper and other discussions and input. (2) Continued consultation on and improvement to the "vision of excellence" and the statements of values and principles expressed in the strategic framework finalized in Popowo. (3) A program of work aimed at identifying existing "opportunities for excellence", assessing their transferability and widely communicating that information within and between regions. (4) A program of work aimed at identifying and addressing current and foreseeable obstacles to the sharing and transfer of opportunities for excellence. **Identification of partners in the initiative and finalization of the Centre's program of work.** The *International Centre* and its current partners invite all jurisdictions, regional and international organizations and other experts interested in participating in the initiative to participate to its planning and development. A meeting of all the partners in the initiative for the purpose of finalizing an agenda for action is tentatively planned for the Spring of 1996. **Continued consultation on and refinement of the "vision of excellence" and the values and principles expressed in the strategic framework developed in Popowo.** The *International Centre* and its current partners invite all jurisdictions and other interested parties to consider the Strategic Framework Document already published and to offer their comments and suggestions. They are also invited to use the framework freely during their own meetings and to comment on its usefulness. The objective is to finalize a more comprehensive framework document during the Summer of 1996. **A program of work aimed at identifying**

existing opportunities for excellence , assessing their transferability and widely communicating that information within and between regions. The *International Centre* invites all interested organizations and jurisdictions to participate in the development of a strategic program of work to ensure that existing opportunities for excellence are identified, assessed and communicated widely. Such a program could include specific projects such as: Collaboration to the development of the database on existing technical assistance projects by the U.N. Crime Prevention Branch; Assessment of impact and effectiveness of selected recent technical assistance projects; Identification of current benchmarking initiatives (national, bi-lateral, regional); Inventory of existing bi-lateral and multi-lateral projects in the field of staff development and training; Study of existing quality assurance, self evaluation, accreditation and other instruments in use in the field of sentencing and corrections or in other fields; Participation in other existing projects such as U.N.I.C.R.I.'s project on community sanctions; Systematic sharing of research and evaluation information between jurisdictions. Eventual creation of international databases on best practices and benchmarks of excellence in areas such as:

- Legislative initiatives
- Holistic approaches
- Minority groups and the criminal justice system
- Pre-trial practices
- Sentencing
- Staff development
- Programs (e.g. such as substance abuse)
- Management training
- Management techniques
- Risk assessment
- Security and risk management
- Community involvement strategies
- Public awareness and participation
- Performance indicators
- Findings of evaluations
- Community corrections
- Use of volunteers
- Conditional releases and supervision
- Accreditation processes and quality assurance techniques
- Privatization.

A program of work aimed at identifying and addressing current and foreseeable obstacles to the sharing and transfer of opportunities for excellence. The *International Centre* is inviting other organizations and jurisdictions to participate in the development of a strategic program of work aimed at identifying and addressing obstacles to the sharing and transfer between jurisdictions of opportunities for excellence. This program could include specific projects in the following areas:

- a)- Transferability** Barriers caused by language difficulties Problems associated with cultural anchors and differences in cultural values Differences caused by differences in legal systems and traditions
- b)- Financial** Study on the impediments to access to international development funds; International consultation with international development agencies; Identification and show-casing of successful technical assistance transfer;
- c)-**

Communication International correctional network building.-----
-----**QUESTIONS FOR DISCUSSION.** Can you or your organization accept the Centre's invitation to participate in this initiative and join the international correctional network? Can you or your organization participate in an strategic program of work to identify existing opportunities for excellence, assess their transferability and communicate information within and between regions? Are you aware of any existing technical assistance or other cooperative initiatives in the field of sentencing and corrections which the Centre should consider in refining its own program of work? Which priorities have already been identified by you or your organization for technical assistance and international cooperation in the field of sentencing and corrections? Would you be able to participate in the proposed meeting of partners in the initiative if it was held in the Spring of 1996?